



**TOTAL TRADING ASIA PTE LTD**

**General Terms & Conditions  
for Sale and Purchase of Petrochemicals**

## CONTENTS

<b>SECTION 1:</b>	<u>DEFINITIONS</u>	3
<b>SECTION 2:</b>	<u>QUALITY</u>	5
<b>SECTION 3:</b>	<u>QUANTITY</u>	6
<b>SECTION 4:</b>	<u>NOMINATION, VESSEL, INSURANCE</u>	7
<b>SECTION 5:</b>	<u>LAYTIME</u>	10
<b>SECTION 6:</b>	<u>DEMURRAGE</u>	13
<b>SECTION 7:</b>	<u>PRECURSOR FOR DRUGS</u>	14
<b>SECTION 8:</b>	<u>INVOICE / PAYMENT / LETTER OF INDEMNITY</u>	14
<b>SECTION 9:</b>	<u>WARRANTY OF TITLE</u>	17
<b>SECTION 10:</b>	<u>VALUE ADDED TAX, EXCISE, CUSTOMS AND OTHER TAXES AND DUTIES</u>	17
<b>SECTION 11:</b>	<u>LIABILITIES</u>	21
<b>SECTION 12:</b>	<u>FORCE MAJEURE</u>	21
<b>SECTION 13:</b>	<u>INSOLVENCY</u>	22
<b>SECTION 14:</b>	<u>TERMINATION, SUSPENSION</u>	22
<b>SECTION 15:</b>	<u>HEALTH, SAFETY AND ENVIRONMENTAL INFORMATION</u>	24
<b>SECTION 16:</b>	<u>ASSIGNMENT</u>	25
<b>SECTION 17:</b>	<u>NOTICES</u>	25
<b>SECTION 18:</b>	<u>WAIVERS</u>	26
<b>SECTION 19:</b>	<u>APPLICABLE LAW, ARBITRATION</u>	26
<b>SECTION 20:</b>	<u>INTERPRETATION</u>	27
<b>SECTION 21:</b>	<u>ETHIC AND BUSINESS PRINCIPLES</u>	27
<b>SECTION 22:</b>	<u>ANTI-CORRUPTION</u>	27
<b>SECTION 23:</b>	<u>TRADE RESTRICTIONS</u>	28
<b>SECTION 24:</b>	<u>DOCUMENTATION</u>	29
<b>SECTION 25:</b>	<u>GENERAL</u>	30
<b>APPENDIX 1:</b>	<u>LETTER OF INDEMNITY WORDING TO BE USED WHEN APPLICABLE</u>	33
<b>APPENDIX 2:</b>	<u>STANDARD FORM LETTER OF INDEMNITY TO BE GIVEN IN RETURN FOR DELIVERING CARGO WITHOUT PRODUCTION OF THE ORIGINAL BILL OF LADING</u>	34
<b>APPENDIX 3:</b>	<u>PURCHASE OF PRODUCT UNDER PURCHASE CONFIRMATION</u>	36
<b>APPENDIX 4:</b>	<u>EU DOCUMENTATION</u>	38
	<u>ADDENDUM N°1 EXW DELIVERIES</u>	40
	<u>ADDENDUM N°1 FOB DELIVERIES</u>	41
	<u>ADDENDUM N°1 CFR DELIVERIES</u>	42
	<u>ADDENDUM N°1 CIF DELIVERIES</u>	44
	<u>ADDENDUM N°1 DAP DELIVERIES</u>	46
	<u>ADDENDUM N°1 DDP DELIVERIES</u>	48

## SECTION 1 - DEFINITIONS

In the Agreement (as hereinafter defined) unless the context otherwise requires:

- Affiliate:** any company or legal entity directly or indirectly controlling or controlled by a party to the agreement or controlled directly or indirectly by any company or other legal entity having direct or indirect control over that party; where “control” means the power, direct or indirect, of one person to direct or cause the direction of the management or policies of another, whether by contract, through voting rights or otherwise.
- Agreement:** means; a) Specific Terms; b) these GTC, including any Appendix and Addendum N°1; c) Any other agreed forms in writing by both parties.
- ASTM:** means American Society for Testing Materials.
- Banking Day:** means a Day, where the Day in question shall be a Day where banks are open in New York, USA, unless otherwise agreed in the Specific Terms.
- Barge:** means; (a) a self-propelled Vessel or towed/pushed dumb craft employed in port areas and sheltered waterways which is not classified as a sea-going Vessel (inland Barge), and/or (b) a towed/pushed dumb craft classified for sea-going trade (sea-going Barge).
- Bill of Lading:** means the document of title which evidences a contract of carriage and the loading of the Product by the shipper and against which the carrier undertakes to deliver the Product at destination.
- Buyer:** the buyer of the Product as specified in the Specific Terms.
- CFR:** has the meaning ascribed to CFR in Incoterms 2010, except as modified by the Agreement. If there is any inconsistency or conflict between said Incoterms and the Agreement, the Agreement shall prevail.
- CIF:** has the meaning ascribed to CIF in Incoterms 2010, except as modified by the Agreement. If there is any inconsistency or conflict between said Incoterms and the Agreement, the Agreement shall prevail.
- Day:** means a calendar day.
- Delivery:** means the time when the Product has been placed or procured to be placed at the disposal of the Buyer at the time and place agreed upon. “Delivery” includes “procure to be delivered” and the term “Delivery” shall be construed accordingly, and “deliverable and “delivered” shall be similarly construed.
- Discharge Date Range:** has the meaning ascribed to it in Addendum n°1 to the GTC for each respective Incoterms rule.
- Discharge Terminal:** the place in a safe port or ports/safe berth or berths and/or the receiving terminal, facilities at which the Product is discharged or is to be delivered.
- DAP:** has the meaning ascribed to DAP in Incoterms 2010, except as modified by the Agreement. If there is any inconsistency or conflict between said Incoterms and the Agreement, the Agreement shall prevail.
- DDP:** has the meaning ascribed to DDP in Incoterms 2010, except as modified by the

Agreement. If there is any inconsistency or conflict between said Incoterms and the Agreement, the Agreement shall prevail.

- e-AD :** means Electronic Administrative Document.
- ETA:** means estimated time of arrival.
- EMCS:** means the Excise Movement Control System as established pursuant to the European Council Directive 2008/118/EEC, any amendments thereto and any other subsequent successor or subordinate legislation.
- EU** means European Union.
- EXW:** has the meaning ascribed to EXW in Incoterms 2010, except as modified by the Agreement. If there is any inconsistency or conflict between said Incoterms and the Agreement, the Agreement shall prevail.
- FOB:** has the meaning ascribed to FOB in Incoterms 2010, except as modified by the Agreement. If there is any inconsistency or conflict between said Incoterms and the Agreement, the Agreement shall prevail.
- GTC:** means the present General Terms and Conditions for Sale and Purchase of Petrochemicals issued by TTA (December 2018).
- Incoterms 2010:** means the International Commercial Terms 2010 (as amended from time to time) as issued by the International Chamber of Commerce (ICC). If case of inconsistency between said Incoterms and the Agreement, the Agreement shall prevail.
- Intra Community Acquisition:** as defined by article 20 of VAT Directive 2006/112/EC.
- ISPS Code:** means International Ship and Port Facility Code in accordance with chapter XI of SOLAS (ISPS Code), as amended.
- Loading Date Range:** has the meaning described to it in Addendum n°1 to the GTC for each respective Incoterms rule.
- Loading Terminal:** means the safe port or ports/safe berth or berths and/or loading terminal, facilities at which the Product is loaded or is to be loaded/delivered.
- Metric Ton or MT:** means a quantity equivalent to a weight of 1,000 kilograms in vacuum or air as agreed in the Specific Terms.
- Month:** means a calendar month.
- Nomination:** has the meaning described to it in section 4 to the GTC.
- Nominating Party:** means the party nominating the Vessel to the other party.
- Nomination Validity:** has the meaning described to it in section 4.1 of the GTC.
- N.O.R.:** means the valid Notice of Readiness that the Vessel is in all respects ready to load or discharge cargo, as the case may be, as given by the master of the Vessel to the Seller (or its representative) at the Loading Terminal or to the Buyer (or its representative) at the Discharge Terminal respectively.

<b>Product:</b>	means the petrochemical product as specified in the Specific Terms.
<b>SDS:</b>	means the Safety Data Sheet (also known as Material Safety Data Sheet, "MSDS") containing the information which is in compliance with the applicable laws and regulations of the country in which the Loading Terminal is located.
<b>Seller:</b>	means the legal entity of the seller of the Product as specified in the Specific Terms.
<b>Shipment:</b>	means any specific quantity of Product delivered or to be delivered under the Agreement as one full or part of cargo lot.
<b>SOLAS:</b>	means the International Convention for the Safety of Life at Sea 1974 (as amended).
<b>Specific Terms:</b>	means the specific terms relating to any particular sale or purchase.
<b>TTA:</b>	means Total Trading Asia Pte Ltd.
<b>Union Goods:</b>	as defined by article 5.(23) of the Union Customs Code, Regulation (EU) No 952/2013.
<b>Vessel:</b>	means a tankship or other vessel which is adapted for the carriage of Product and shall, except where otherwise provided, be deemed to include Barges.
<b>Working Day:</b>	means a Day, where the Day in question shall be a Day when TTA's office is open for business.

## SECTION 2 - QUALITY

- 2.1** Save as expressly provided elsewhere in the Agreement, the quality of the Product delivered under the Agreement shall not be inferior to the specification (if any) set out in the Special Terms. Whether set out in these GTC or in the Special Terms neither typicals nor any stipulation as to time of delivery shall form part of the Product's description, quality or fitness for purpose. This section 2.1 constitutes the whole of the Seller's obligations with respect to the description, quality and fitness for purpose of the Product and (save to the extent that exclusion thereof is not permitted or is ineffective by operation of law) all statutory or other conditions or warranties, express or implied, with respect to the description or satisfactory quality of the Product or its fitness for any particular purpose or otherwise are hereby excluded.
- 2.2** In case of FOB, CFR or CIF Delivery, the quality of the Product shall be determined by the analysis performed by an independent surveyor, appointed by Seller or Seller's supplier and acceptable to Buyer, on samples drawn from the shore tank(s) prior to loading or from an in-line sampler drawn during loading (upon Buyer's request, when available) according to the procedures in force at the Seller's or the Seller's supplier's loading facilities. This analysis shall be carried out in accordance with the methods agreed in the Specific Terms and its findings shall, save in case of fraud or manifest error, be conclusive and binding upon the parties for invoicing purposes. The costs of such quality test shall be borne by the Seller. The independent surveyor shall issue the quality certificate upon completion of loading.
- 2.3** In case of EXW Delivery, the quality shall be determined by the independent surveyor, appointed by Seller or Seller's supplier and acceptable to Buyer on samples drawn from the shore tank(s) prior to the transfer. The results of such analysis shall, save in case of fraud or manifest error, be conclusive and binding upon the parties for invoicing purposes. The costs of such quality test shall be borne by the Seller. The independent surveyor shall issue the quality certificate.

- 2.4** In case of DAP or DDP Delivery, the quality of the Product shall be determined by the analysis performed by the independent surveyor, appointed by Buyer and acceptable to Seller, on samples drawn from Vessel's Product tank(s) on arrival at the Discharge Terminal according to the procedures in force at the Buyer's or the Buyer's receiver's discharge facilities. This analysis shall be carried out in accordance with the methods agreed in the Specific Terms and its findings shall, save in case of fraud or manifest error, be conclusive and binding upon the parties for invoicing purposes. The costs of such quality test shall be borne by the Buyer. The independent surveyor shall issue the quality certificate upon completion of discharge.
- 2.5** The party appointing the independent surveyor shall instruct the surveyor to make the results of the surveyor's analysis for quality available to both parties as soon as practicable after the results are known.
- 2.6** Buyer shall be entitled to request in writing at the latest ten (10) Days after completion of discharge date, that the official samples taken at the Loading Terminal for Delivery under FOB, CFR and CIF (Discharge Terminal for Delivery under DAP and DDP), if analytically acceptable, be referred for quality testing to a mutually agreed independent laboratory of international repute, provided always that the written request shall include the reason why the Buyer wishes to have the Product so tested. If such a written request has not been received by the Seller ten (10) Days after completion of discharge date, all claims by the Buyer regarding quality of the Product shall be deemed to have been waived by the Buyer. The said quality tests shall be conducted in accordance with the method agreed in the Specific Terms, unless otherwise expressly agreed between the Seller and the Buyer, and notwithstanding sub-sections 2.2 till 2.5, shall be conclusive and binding upon the parties save in case of fraud or manifest error. The costs of any such quality test shall be borne equally by the parties. Any claim of variation of quality shall be admissible only if notified in writing to the Seller no later than ten (10) Days after release of the quality test results by the mutually agreed independent laboratory and accompanied by evidence fully supporting the claim. If such a written claim has not been received by the Seller ten (10) Days after release of the quality test results by the mutually agreed independent laboratory, all claims by the Buyer regarding quality of the Product shall be deemed to have been waived by the Buyer and any liability on the part of the Seller shall be extinguished.

In case of EXW Delivery, any claim of variation of quality shall be admissible only if notified in writing to the Seller no later than three (3) Days after completion of transfer and shall be accompanied by evidence fully supporting the claim. If such a written claim has not been received by the Seller three (3) Days after the completion of transfer, all claims by the Buyer regarding quality of the Product shall be deemed to have been waived by the Buyer and any liability on the part of the Seller shall be extinguished.

### **SECTION 3 - QUANTITY**

- 3.1** Save as expressly provided elsewhere in the Agreement, the Seller shall deliver the Product within maximum five per cent (5 %) more or less of the quantity (in Metric Tons).
- 3.2** In case of FOB, CFR or CIF Delivery, the quantity certificate of the Product loaded shall be issued by the independent surveyor appointed by Seller or Seller's supplier and acceptable to Buyer. It shall be determined at the Loading Terminal by measurement on static shore tank(s) which are properly calibrated or on mass meters, at the completion of loading before the Vessel's departure unless the EDP (Early Departure Procedure) at the installation in question is being followed. Save in case of fraud or manifest error, the quantity mentioned on the certificate of quantity shall be conclusive and binding upon the parties for invoicing purposes. The costs related to the issuance of the certificate of quantity shall be borne by the Seller.
- 3.3** In case of EXW Delivery, the quantity certificate shall be issued by Seller or Seller's supplier's representative on the transfer date. Save in case of fraud or manifest error, the quantity mentioned on the certificate of quantity shall be conclusive and binding upon the parties for invoicing purposes.
- 3.4** In case of DAP or DDP Delivery, the quantity certificate of the Product delivered shall be issued by the independent surveyor, appointed by Buyer and acceptable to Seller, on vessel quantity discharged. This analysis shall, save in case of fraud or manifest error, be conclusive and binding upon the parties for

invoicing purposes. The costs of such quantity test shall be borne by the Buyer. The independent surveyor shall issue the quantity certificate upon completion of discharge.

**3.5** The party appointing the independent surveyor shall instruct the surveyor to make the results of the surveyor's analysis for quantity available to both parties as soon as practicable after the results are known.

**3.6** Any claim of deficiency of quantity shall be admissible only if notified in writing to the Seller no later than ten (10) Days after completion of discharge date and shall be accompanied by evidence fully supporting the claim. If such a written claim has not been received by the Seller ten (10) Days after completion of discharge date, all claims by the Buyer regarding deficiency of quantity of the Product shall be deemed to have been waived by the Buyer and any liability on the part of the Seller shall be extinguished.

Notwithstanding the foregoing, no claim shall be admitted in respect of any deficiency of quantity where the difference between the quantity determined at the Loading Terminal and the quantity determined at the Discharge Terminal (in each case by a mutually appointed surveyor as per the above) is 0.3% of the loaded quantity or less.

In case of EXW Delivery, any claim of deficiency of quantity shall be admissible only if notified in writing to the Seller no later than three (3) Days after completion of transfer and shall be accompanied by evidence fully supporting the claim. If such a written claim has not been received by the Seller three (3) Days after the completion of transfer, all claims by the Buyer regarding quantity of the Product shall be deemed to have been waived by the Buyer and any liability on the part of the Seller shall be extinguished.

## **SECTION 4 – NOMINATION, VESSEL, INSURANCE**

**4.1** Buyer's nominated Vessel (Seller's nominated Vessel for DAP and DDP Delivery, as applicable) is subject to both Seller's and Loading Terminal operator's acceptance (to both Buyer's and Discharge Terminal operator's acceptance for DAP and DDP Delivery, as applicable), Seller's acceptance (Buyer's acceptance for DAP and DDP Delivery, as applicable) not to be unreasonably withheld.

Such Nomination for Vessel by the above Nominating Party shall not be deemed valid unless the party receiving the Nomination notifies the Nominating Party in writing before the end of the Nomination Validity as stated in the Nomination.

Notwithstanding any prior acceptance of the Vessel, the party receiving the Nomination shall have the right (which right may be only exercised prior to the passing of risk hereunder) to reject the Vessel (i) if the Loading or Discharge Terminal Operator, as the case may be, rejects the Vessel on the basis of information not already disclosed at the time of the Nomination, such rejection not being unreasonably withheld; or (ii) on any reasonable ground if the Vessel is involved in any incident or more recent information regarding the Vessel becomes available to the party receiving the Nomination at any time after such prior acceptance.

In case of CFR or CIF Delivery, Seller shall provide carriage of the Product under bills of lading, which may incorporate charter party conditions.

### **4.2 Nomination procedure for Vessels:**

**4.2.1** Save expressly agreed otherwise in writing, the Nominating Party shall make the Nomination during office hours minimum ten (10) Days prior to the first (1<sup>st</sup>) Day of the proposed Loading Date Range (proposed Discharge Date Range for Delivery under DAP and DDP, as applicable). Such Nomination shall contain the following information:

- Confirmation number as per the Specific Terms;
- Name of Vessel;
- Quantity in MT (in Vacuum / air) and identification of Product requested to load;
- Q-88 or gas form C, as the case may be, duly completed;

- Compliance with ISPS Code requirements;
- Origin/Destination of Product, as the case may be;
- Proposed Loading Date Range (not required DAP and DDP Deliveries);
- Proposed Discharge Date Range (required for CFR and CIF Deliveries with Discharge Date Range at the Discharge Terminal as per the Specific Terms and for DAP and DDP Deliveries);
- ETA of the Vessel at Loading Terminal and ETA at the Discharge Terminal (save for FOB Deliveries);
- Port agents full style and contacts;
- Details of any in transit cargo(es) on board;
- Last three cargoes;
- Presentation clause;
- Maritime conditions; voyage charter party form which shall include a weather clause; the allowed laytime and applicable demurrage rate.

**4.2.2** In respect of any Vessel named in the Nomination, the Nominating Party may, or if necessary to perform its obligation under the Agreement must, substitute for another Vessel provided that the Loading Date Range (or Discharge Date Range for DAP and DDP Deliveries, as applicable) and other information contained in the Nomination remains unchanged.

**4.2.3** If for whatever reason the Vessel named in the Nomination is substituted by the Vessel owners, the procedure set out here above shall be repeated in full before the Nomination can be considered as valid.

**4.2.4** The Nominating Party shall cause the Vessel owner to comply with any laws or regulations applicable at the Loading and Discharge Terminal.

### **4.3 Nomination procedure for Barges:**

**4.3.1** Save expressly agreed otherwise in writing, the Nominating Party shall make the Nomination during office hours minimum three (3) Working Days prior to the first (1<sup>st</sup>) Day of the proposed Loading Date Range (or Discharge Date Range for DAP and DDP Deliveries, as applicable). Such Nomination shall contain the following information:

- Confirmation number as per the Specific Terms;
- Name of Barge and registration number;
- Quantity in MT (in Vacuum / air) of identification of Product requested to load;
- Origin/Destination of Product, as the case may be;
- Proposed Loading Date Range (not required for DAP and DDP Deliveries);
- Proposed Discharge Date Range (required for CFR and CIF Deliveries with Discharge Date Range at the Discharge Terminal as per the Specific Terms and for DAP and DDP Deliveries);
- ETA of Barge at Loading Terminal and ETA at the Discharge Terminal (save for FOB Deliveries);
- Details of any in transit cargo(es) on board;
- Last three cargoes;
- Presentation clause;
- Chartering terms and conditions including allowed laytime and the applicable demurrage rate.

**4.3.2** In respect of any Barge named in the Nomination, the Nominating Party may, or if necessary to perform its obligation under the Agreement must, substitute another Barge provided that the Loading Date Range (or Discharge Date Range for DAP and DDP Deliveries, as applicable) and other information contained in the Nomination remains unchanged.

**4.3.3** If for whatever reason, the Barge named in the Nomination is substituted by the Barge owners, above procedure needs to be repeated in full before the Nomination can be considered valid.

**4.3.4** A "To be nominated" (**TBN**) Nomination for Barges will not be accepted.



- 4.3.5** The Nominating Party shall cause the Barge owner to comply with any laws or regulations applicable at the Loading and Discharge Terminal.
- 4.4** In the event that it has been agreed that the CIF/CFR/DAP/DDP Buyer has discharge options as per actual charter party, such options shall always exclude Florida, Puerto Rico, West Coast of USA or Canada (Alaska/California range). Buyer shall exercise any such discharge options in accordance with the terms of the relevant charter party available to Seller. Whenever Buyer exercises such discharge options, the price shall be adjusted by the freight differential calculated in accordance with the terms of such charter party (or as otherwise agreed between the parties) and based on the applicable Bill of Lading quantity. Buyer shall be liable for any additional costs incurred by Seller, including but not limited to: any deviation costs, costs in respect of any additional bunker consumption and any other costs specified in Worldscale as being for charterer's account.
- 4.5** For each Vessel (including for Barges, where applicable) specified in, or nominated under, the Agreement:
- (a) The Nominating Party warrants that the Vessel is owned or demise chartered (throughout the entire period of the voyage to and from the Loading Terminal and up to discharge of the product at the Discharge Terminal(s)) by a member of the International Tanker Owners Pollution Federation Limited (ITOPF).
  - (b) The Nominating Party shall exercise reasonable efforts to ensure that:
    - (i) The Vessel carries on board a valid certificate of insurance as described in the International Convention on Civil Liability for Bunker Oil Pollution Damage Convention 2001 and/or, as appropriate, as described in the 1992 International Convention on Civil Liability for Product Pollution Damage (CLC);
    - (ii) The Vessel is entered in and shall remain throughout the entire period of the voyage to and from the Loading Terminal and up to discharge of the Product at the Discharge Terminal(s) in a P and I club which is a member of the International Group of P and I clubs, and
    - (iii) The Vessel has in place (throughout the entire period of the voyage to and from the Loading Terminal and up to discharge of the product at the Discharge Terminal(s)) insurance cover for oil pollution in an amount of no less than the highest standard oil pollution cover available under the rules of the international group of P and I clubs.
  - (c) The Nominating Party shall procure that:
    - (i) The Vessel shall comply with the requirements of the International Safety Management (ISM) code, the International Code for the Security of Ships and of Port Facilities and the relevant amendments to Chapter XI of SOLAS (**ISPS code**) and, if the Loading/Discharge Terminal, as applicable, is located within the United States of America (the **U.S.A**) and territories of the U.S.A. (**U.S. Territories**), with the US Maritime Transportation Security Act 2002 (MTSA) and shall have on board a valid safety management certificate for the Vessel, a copy of the Vessel's manager's document of compliance, an international ship security certificate as well as any other required valid certificates and documents, issued pursuant to the ISM code, the ISPS code, the SOLAS convention 1974 as amended as well as, if applicable, the MTSA; and
    - (ii) The Vessel shall when required submit a Declaration of Security (DOS) to the appropriate authorities prior to arrival at the Loading Terminal.
  - (d) Notwithstanding any prior acceptance of the Vessel by the non-Nominating Party, if at any time the Vessel fails to comply with any of the requirements set out in paragraphs a), b), and c) above, the

non-Nominating Party may at any time refuse to berth or load/discharge or continue to load/discharge the Vessel and all time lost or spent as a result thereof shall not count against laytime, or if the Vessel is on demurrage, for demurrage and Nominating Party shall be obliged to substitute the Vessel with a Vessel complying with such requirements.

- (e) The non-Nominating Party shall procure that the loading/discharge (as applicable) port/terminal/installation shall comply with the requirements of the ISPS code and, if the Loading/Discharge Terminal, as applicable, is located within the U.S.A. and U.S. Territories, with the MTSA.

Any costs or expenses in respect of the Vessel including demurrage or any additional charge, fee or duty levied on the Vessel at the loading/discharge port/terminal/installation and actually incurred by Nominating Party resulting directly from the failure of the loading/discharge port/terminal/installation to comply with the ISPS code or, if the Loading Terminal is located within the U.S.A. and U.S. Territories, with the MTSA, shall be for the account of the non-Nominating Party, including but not limited to the time required or costs incurred by the Vessel in taking any action or any special or additional security measures required by the ISPS code or the MTSA (as applicable).

Save where the Vessel has failed to comply with the requirements of the ISPS code, or, within the U.S.A. and U.S. Territories or waters, with the MTSA, the non-Nominating Party shall be responsible for any demurrage actually incurred by Nominating Party arising from delay to the Vessel at the loading/discharge port/terminal/ installation resulting directly from the Vessel being required by the terminal operator, the port authority or any relevant authority to take any action or any special or additional security measures or undergo additional inspections by virtue of the Vessel's previous ports of call.

The non-Nominating Party's liability to the Nominating Party under the Agreement for any costs, losses or expenses incurred by the Vessel, the charterers or the Vessel owners resulting from the failure of the Loading Terminal to comply with the ISPS code or the MTSA (as applicable) shall be limited to the payment of demurrage and costs actually incurred by the Nominating Party in accordance with the provisions of this paragraph e).

## SECTION 5 - LAYTIME

### 5.1 Laytime for Vessels

#### 5.1.1 For FOB Deliveries

Except as provided for elsewhere in the Agreement, the laytime allowed to the Seller shall be mutually agreed by the Buyer and Seller at the time of Nomination. If no allowed laytime is specified in the Nomination, allowed laytime will be as per charter party of the performing Vessel.

Laytime shall start running:

- (a) if a valid N.O.R. is tendered within the Loading Date Range agreed in the valid Nomination,
- (i) berth or no berth, SIX (6) hours after N.O.R. is tendered at the Loading Terminal by Vessel to Buyer or its representative; or
  - (ii) upon the completion of berthing of the Vessel when Vessel is all fast, if this occurs less than SIX (6) hours after tendering N.O.R. at the Loading Terminal.
- (b) if a valid N.O.R. is tendered before the Loading Date Range agreed in the valid Nomination,
- (i) at 06:00 AM local time on the first (1<sup>st</sup>) Day of the agreed Loading Date Range; or

- (ii) upon the completion of berthing of the Vessel when Vessel is all fast , whatever comes first;
- (c) if a valid N.O.R. is tendered after the Loading Date Range agreed in the valid Nomination, upon commencement of loading the Product.

### **5.1.2 For CIF and CFR Deliveries with Discharge Date Range at the Discharge Terminal and DAP and DDP Deliveries**

Except as provided for elsewhere in the Agreement, the laytime allowed to the Buyer shall be mutually agreed by the Buyer and Seller at the time of Nomination. If no allowed laytime is specified in the Nomination, allowed laytime will be as per charter party of the performing Vessel.

Laytime shall start running:

- (a) if a valid N.O.R. is tendered within the Discharge Date Range agreed in the valid Nomination,
  - (i) berth or no berth, SIX (6) hours after N.O.R. is tendered at the Discharge Terminal by Vessel to Buyer or its representative; or
  - (ii) upon the completion of berthing of the Vessel when Vessel is all fast, if this occurs less than SIX (6) hours after tendering N.O.R. at the Discharge Terminal.
- (b) if a valid N.O.R. is tendered before the Discharge Date Range agreed in the valid Nomination,
  - (i) at 06:00 AM local time on the first (1<sup>st</sup>) Day of the agreed Discharge Date Range; or
  - (ii) upon the completion of berthing of the Vessel when Vessel is all fast , whatever comes first;
- (c) if a valid N.O.R. is tendered after the Discharge Date Range agreed in the valid Nomination, upon commencement of discharging the Product.

### **5.1.3 For CIF and CFR Deliveries without Discharge Date Range at the Discharge Terminal**

Except as provided for elsewhere in the Agreement, the laytime allowed to the Buyer shall be mutually agreed by the Buyer and Seller at the time of Nomination. If no allowed laytime is specified in the Nomination, allowed laytime will be as per charter party of the performing Vessel.

Laytime shall start running:

- (i) berth or no berth, SIX (6) hours after N.O.R. is tendered at the Discharge Terminal by Vessel to Buyer or its representative; or
- (ii) upon the completion of berthing of the Vessel when Vessel is all fast, if this occurs less than SIX (6) hours after tendering N.O.R. at the Discharge Terminal.

**5.1.4** For loading operations, laytime shall end at the time the hoses are disconnected or when documents are on board, whichever latest. For discharge operations, laytime shall end at the time the hoses are disconnected.

Together with aforementioned Nomination procedure, all charterers' protective clauses, not limited to any weather clauses under the valid charter party, shall be deemed incorporated in the Nomination.

The provision "*berth reachable on her arrival*" shall not be applicable.

## **5.2 Laytime for Barges**

### 5.2.1 For FOB Deliveries

Except as provided for elsewhere in the Agreement, the laytime allowed to the Seller, shall be mutually agreed by the Buyer and Seller at the time of Nomination.

Laytime shall start running:

- (a) if a valid N.O.R. is tendered within the Loading Date Range agreed in the valid Nomination,
  - (i) berth or no berth, SIX (6) hours after N.O.R. is tendered at the Loading Terminal by Vessel to Buyer or its representative; or
  - (ii) upon the completion of berthing of the Vessel when Vessel is all fast, if this occurs less than SIX (6) hours after tendering N.O.R. at the Loading Terminal.
- (b) if a valid N.O.R. is tendered before the Loading Date Range agreed in the valid Nomination,
  - (i) at 00:01 AM local time on the first (1<sup>st</sup>) Day of the agreed Loading Date Range; or
  - (ii) upon the completion of berthing of the Vessel when Vessel is all fast , whatever comes first;
- (c) if a valid N.O.R. is tendered after the Loading Date Range agreed in the valid Nomination, upon commencement of loading the Product.

### 5.2.2 For CIF and CFR Deliveries with Discharge Date Range at the Discharge Terminal and DAP and DDP Deliveries

Except as provided for elsewhere in the Agreement, the laytime allowed to the Buyer shall be mutually agreed by the Buyer and Seller at the time of Nomination.

Laytime shall start running:

- (a) if a valid N.O.R. is tendered within the Discharge Date Range agreed in the valid Nomination,
  - (i) berth or no berth, SIX (6) hours after N.O.R. is tendered at the Discharge Terminal by Vessel to Buyer or its representative; or
  - (ii) upon the completion of berthing of the Vessel when Vessel is all fast, if this occurs less than SIX (6) hours after tendering N.O.R. at the Discharge Terminal.
- (b) if a valid N.O.R. is tendered before the Discharge Date Range agreed in the valid Nomination,
  - (i) at 00:01 AM local time on the first (1<sup>st</sup>) Day of the agreed Discharge Date Range; or
  - (ii) upon the completion of berthing of the Vessel when Vessel is all fast , whatever comes first;
- (c) if a valid .N.O.R. is tendered after the Discharge Date Range agreed in the valid Nomination, upon commencement of discharging the Product.

### 5.2.3 For CIF and CFR Deliveries without Discharge Date Range at the Discharge Terminal

Except as provided for elsewhere in the Agreement, the laytime allowed to the Buyer shall be mutually agreed by the Buyer and Seller at the time of Nomination.

Laytime shall start running:

- (i) berth or no berth, SIX (6) hours after N.O.R. is tendered at the Discharge Terminal by Vessel to Buyer or its representative; or

- (ii) upon the completion of berthing of the Vessel when Vessel is all fast, if this occurs less than SIX (6) hours after tendering N.O.R. at the Discharge Terminal.

**5.2.4** For loading operations, laytime shall end at the time the hoses are disconnected or when documents are on board, whichever latest. For discharge operations, laytime shall end at the time the hoses are disconnected.

## SECTION 6 - DEMURRAGE

### 6.1 Demurrage for Vessels

In case of FOB Delivery, Seller shall pay to Buyer demurrage for all time used in excess of the allowed laytime as provided for in the Agreement. In case of CFR, CIF, DAP or DDP Delivery, Buyer shall pay to Seller demurrage for all time used in excess of the allowed laytime as provided for in the Agreement.

Except as provided for elsewhere in the Agreement, demurrage rate shall be mutually agreed by the Buyer and Seller at the time of Nomination and shall be calculated as per the governing charter party terms and conditions. If no demurrage rate is specified in the Nomination, demurrage rate will be as per the charter party rate of the performing Vessel.

Any claim for demurrage must be received by the other party in writing with full supporting documents as specified below within ninety (90) Days after completion of loading for FOB Delivery (ninety (90) Days after completion of discharge for CFR, CIF, DAP and DDP Delivery), failing which the demurrage claim shall be considered waived and time-barred.

Required supporting documents for Vessels are:

- Demurrage invoice and time-computation;
- Signed N.O.R.;
- Port agents' statement of facts signed by Master and supplying or receiving terminal, as the case may be;
- All letters of protest, if any;
- Fixture recap of governing charter party;
- Agreed and accepted Nomination.

Any disagreement pertaining to a demurrage claim, shall be communicated not later than ninety (90) Days after the date of sending of the demurrage claim duly accompanied by all required supporting documents, failing which the demurrage claim shall be considered accepted and the party receiving the demurrage claim shall be deemed to have waived its rights to contest the amount claimed.

### 6.2 Demurrage for Barges

In case of FOB Delivery, Seller shall pay to Buyer demurrage for all time used in excess of the allowed laytime as provided for in the Agreement. In case of CFR, CIF, DAP or DDP Delivery, Buyer shall pay to Seller demurrage for all time used in excess of the allowed laytime as provided for in the Agreement.

Except as provided for elsewhere in the Agreement, demurrage rate shall be mutually agreed by the Buyer and Seller at the time of Nomination and shall be calculated as per the governing chartering terms and conditions.

Any claim for demurrage must be received by the other party in writing with full supporting documents as specified below within thirty (30) Days after completion of discharge, failing which the demurrage claim shall be considered waived and time-barred.

Required supporting documents for Barges are:

- Demurrage invoice and time-computation;

- All letters of protest, if any;
- Supplying or receiving terminal's time statement, as the case may be;
- Agreed and accepted Nomination.

Any disagreement pertaining to a demurrage claim, shall be communicated not later than ninety (90) Days after the date of sending of the demurrage claim duly accompanied by all required supporting documents, failing which the demurrage claim shall be considered accepted and the party receiving the demurrage claim shall be deemed to have waived its rights to contest the amount claimed.

## SECTION 7 - PRECURSOR FOR DRUGS

- 7.1** Some Products sold hereunder are considered as "precursor goods for drugs" as further defined and regulated by such legislations applicable to the Agreement. In such case, Buyer undertakes to supply to the Seller import license at country of destination. If Buyer is unable to provide such licence, Seller shall be entitled to cancel the transaction without any liability towards the Buyer.

## SECTION 8 - INVOICE / PAYMENT / LETTER OF INDEMNITY

- 8.1** The commercial invoice related to the Product shall be based on the relevant quantity certificate save for fraud or manifest error.
- 8.2** The price of the Product and the payment due date shall be as specified in the Specific Terms.
- 8.3** Save as expressly provided elsewhere in the Agreement, payment shall be made in full by the Buyer to the Seller in United States Dollars without any deduction, withholding, set off or counterclaim by telegraphic transfer of same day funds on or before the payment due date specified in the Specific Terms against presentation to the Buyer of:
- (a) in the case of Delivery by Vessel:
- (i) the original bills of lading,
  - (ii) the original certificates of quantity, quality,
  - (iii) copy of certificate of origin,
  - (iii) the Seller's original commercial invoice.

In the event any of the documents referred to above is not available for presentation to the Buyer on or before the payment due date, Buyer undertakes to make payment to the Seller upon presentation of the Seller's commercial invoice and of Seller's letter of indemnity (L.O.I.) in the form set out in Appendix 1 provided by means of courier, facsimile transmission or electronic messaging system.

- (b) in the case of EXW Delivery: against presentation to the Buyer of the Seller's commercial invoice provided by means of courier, facsimile transmission or electronic messaging system.
- 8.4** When the payment due date falls on a Saturday or on a weekday, other than a Monday, which is not a Banking Day, then any such payment shall be made on the nearest preceding Banking Day. When the payment due date falls on a Sunday or a Monday which is not a Banking Day, then any such payment shall be made on the next following Banking Day.

**8.5 Netting of Invoices**

The parties may net invoices for amounts that are due to each other on the same payment due date. In that case, prior to the payment due date the parties shall confirm in writing, the invoice amounts and the balance amount (being the excess of the larger aggregate amount owed over the smaller aggregate

amount owed) due, if any, after netting. When the balance amount has been confirmed (the **Agreed Balance Amount**), each party's obligation to make payments to the other will be automatically satisfied and discharged and replaced by an obligation upon the party by whom the larger aggregate amount would have been payable to pay to the other party the Agreed Balance Amount on the payment date due. Notwithstanding the above, payments for any demurrage, quantity, quality or other claims shall not be included in such netting of invoices, unless agreed otherwise.

## 8.6 Interest

Without prejudice to any other rights or remedies the Seller may have under this Agreement, and without any formal or informal notice of default being required, any delay in effecting payment in full of any sums by the Buyer by the due date shall entitle Seller to receive payment of interest for each Day of delay calculated as per the USD rate for one (1) Month of LIBOR rates as administered by the ICE Benchmark Administration (**IBA**) (or successor thereto) and published on the due date by Thomson Reuters on behalf of the IBA, plus two (2) percentage points per annum, such interest being in no circumstances to be construed as an agreement by Seller to provide extended credit.

All expenses incurred by the Seller, including but not limited to reasonable legal fees, court costs and collection agency fees, caused by delayed payment or non-payment by the Buyer of the full amount of the Seller's invoice shall be for the account of the Buyer and payable on demand upon production of supporting documents.

## 8.7 Provisional Invoice

Except in cases where the price is to be paid by means of documentary letter of credit or cash in advance as per the Specific Terms or as a consequence of the provisions of section 8.8, where the applicable pricing mechanism and/or the availability of discharge quantities (where applicable) does not allow for the preparation of a final invoice prior to the payment due date, the Seller may issue and the Buyer shall make payment against a provisional invoice. The provisional invoice shall, unless otherwise agreed between the parties, be based upon:

- (a) the pricing information available to the Seller at the time it issues such provisional invoice; and/or
- (b) the Bill of Lading quantity, or if not available, the quantity nominated under section 4.

Payment of any balance due by either party shall be made immediately upon receipt of Seller's final invoice, which shall be prepared as soon as practicable after all the relevant pricing and/or quantity information becomes available to Seller. No interest shall be due on the difference between the provisional and final invoice.

**8.8** For Deliveries where TTA is the Seller; if payment by means of provision of an irrevocable documentary letter of credit or by payment in advance is not already provided for in the Specific Terms, Seller shall be entitled at any time before the payment due date to demand payment to be effected by means of provision of an irrevocable documentary letter of credit or by payment in advance notwithstanding the method of payment as described in the Specific Terms. Nothing in this section 8.8 shall relieve Buyer of its obligation to pay the total price of each Shipment as and when due under the Agreement.

## 8.9 Letter of Credit

When, under the Specific Terms or as a consequence of the provisions of section 8.8, payment is to be made by means of an irrevocable documentary letter of credit or supported by a standby letter of credit in favour of the Seller (both herein referred to as an **L/C**), the following provisions shall apply unless otherwise specified in the Specific Terms:

- (a) the L/C shall be issued or confirmed by a bank and in a format both of which must be acceptable to Seller, not later than TEN (10) Days prior to the first (1<sup>st</sup>) day of the Loading Date Range

(Discharge Date Range for DAP and DDP Deliveries), or on such other date and at such time as Seller may in writing require;

- (b) all fees, commissions, costs and expenses incurred with respect to such payment or L/C shall be borne by Buyer;
- (c) the L/C shall cover the mean value of the Shipment at the price specified in the Specific Terms (or the provisional price in the invoice, if the contractual mean value of the Shipment at the price specified in the Specific Terms is not yet known) and a further amount to cover escalation in duties including VAT or similar tax, if appropriate, plus buffer as advised by the Seller and shall at all times be valid for shipment three (3) Days before and seven (7) Days after the Loading Date Range (Discharge Date Range for DAP and DDP Deliveries);
- (d) if for any reason the loading will not take place within the period for such loading referred to in the L/C, Buyer shall either obtain an extension of such period or provide a new L/C in terms acceptable to Seller;
- (e) The L/C shall take effect in accordance with its terms (including any agreed amendment(s) thereto) but no such term of the L/C (nor any agreed amendment thereto) shall amend, alter, add to, or in any way affect the terms of the Agreement (or any of them) unless Seller and Buyer expressly agree in writing to amend the Agreement accordingly.

Payment of any balance due by Buyer to the Seller not covered by the documentary letter of credit or any refund due by the Seller to the Buyer shall be made on the same date as the payment due date specified in the Specific Terms or, where the applicable pricing mechanism and/or the availability of discharge quantities (where applicable) does not allow for the preparation of a final invoice prior to the payment due date, immediately upon receipt of Seller's final invoice, which shall be prepared as soon as practicable after all the relevant pricing and/or quantity information becomes available to Seller. No interest shall be due on the difference between the provisional and final invoice.

#### **8.10 Advance Payment**

When, under the Specific Terms or as a consequence of the provisions of section 8.8, the price is to be paid by means of cash in advance, the Seller shall issue and the Buyer shall make payment against a provisional invoice. The provisional invoice shall, unless otherwise agreed between the parties, be based upon the mean value of the Shipment at the price specified in the Specific Terms (or the provisional price in the invoice, if the contractual mean value of the Product at the price specified in the Specific Terms is not yet known) and a further amount to cover escalation in duties including VAT or similar tax if appropriate, plus buffer as advised by the Seller.

The provisional payment shall be made by the date specified in the Specific Terms or by the date specified in the Seller's notice pursuant to section 8.8.

Payment of any balance due by Buyer to the Seller not covered by the L/C or any refund due by the Seller to the Buyer shall be made on the payment due date specified in the Specific Terms or, where there is no final due date specified in the Specific Terms, immediately upon receipt of the Seller's final invoice which shall be prepared as soon as practicable after all the relevant pricing and/or quantity information becomes available to the Seller. No interest shall be due on the difference between the provisional and final invoice.

- 8.11** Buyer's obligation to pay shall survive the term of the Agreement and shall not be deemed fulfilled for so long as the price of the Product and any other costs, expenses and charges have not been credited in full into Seller's bank account.



- 8.12** It is a condition of the Agreement that Buyer complies with its payment obligations under the Agreement within the time prescribed by Seller and/or by the Agreement. Any failure either in whole or in part by Buyer to comply with any such obligation shall be a breach of condition.

On the occurrence of such breach and for so long as such breach is continuing:

- (a) if the Product has been delivered to the Buyer on board the Vessel, then, at Seller's option exercisable at any time by written notice of Seller to Buyer, the property, but not risk, in the Product shall revert to and/or remain with Seller and, in the event Seller authorizes discharge of the Vessel, Buyer undertakes at its own cost to discharge of the Vessel exclusively to a party notified to Buyer by Seller; and
- (b) in all cases, Seller may at any time by notice to Buyer, without prejudice to any other legal remedies Seller may have and without any liability whatsoever for any cost, loss or damage (including liabilities to third parties) incurred by Buyer, forthwith:
  - (i) cancel Delivery of all or any Shipments; or
  - (ii) without prejudice to any other rights of Seller, withhold commencement of loading or discharge of the Product in question and/or release of shipping documents or letter of indemnity

The Seller may exercise this right whether or not nominations have been accepted and, if the Seller exercises this right, the Seller shall be entitled to dispose freely of any remaining quantity of the Product and the Buyer shall be liable to indemnify the Seller for any costs, losses and damages incurred by the Seller as a result thereof (including but not limited to demurrage in respect of the Vessel or other vessels waiting at the Loading Terminal or Discharge Terminal).

## SECTION 9 – WARRANTY OF TITLE

- 9.1** It is a condition of the Agreement that, at the time property in the Product passes to the Buyer under the Agreement:
- (a) the Seller is entitled to possession of the Product, has title in the Product free of any liens, charges and encumbrances of whatever kind, and has full right and authority to sell and transfer title in the Product;
  - (b) the goods are free from any lien, charge or encumbrance not disclosed or known to the Buyer before the Agreement is made; and
  - (c) the Buyer will have the benefit of the warranty as to enjoyment of quiet possession implied by law.

## SECTION 10 - VALUE ADDED TAX, EXCISE, CUSTOMS AND OTHER TAXES AND DUTIES

### **10.1 Value Added Tax**

- (a) Where Value Added Tax or similar tax (**VAT**) becomes payable under the rules applicable at the Loading Terminal or Discharge Terminal, Seller shall issue an invoice setting out such VAT and the date for its payment. Payment of such VAT shall be made by Buyer to Seller in addition to the contract price of the Product. Seller's invoice can be presented either in the invoicing currency of the Product, converted at the exchange rate prevailing on the date of the tax point under the relevant tax rules or, in Seller's option, in the local currency of the country in which said VAT is payable. Any invoiced VAT amount shall be paid by Buyer to Seller's designated account in full on the date specified by Seller without any discount, deduction, withholding, abatement, set-off or counterclaim.

(b) The provisions of this section 10.1(b) shall apply where the Loading Terminal is located within the EU.

(i) In accordance with applicable rules at the Loading Terminal, the sale of the relevant Product may be zero rated provided that:

1. If the destination of the Product is within the EU,

1.1 Buyer provides to Seller, prior to commencement of loading/transfer, evidence satisfactory to VAT authorities at the Loading Terminal that Buyer is entitled to zero rating for the Product, including but not limited to a written declaration stating:

- (a) a valid VAT registration number of Buyer in an EU member state other than the EU member state in which the Loading Terminal is located; and
- (b) the country of destination with name of terminal receiver's name and excise numbers of warehouse keeper and warehouse authorization number, name of customs agent if applicable, and any other information needed by Seller to issue loading documents in accordance with regulations in force; and
- (c) that an Intra Community Acquisition of the Product will be reported in the country of destination; and
- (d) that the Product delivered under the Agreement will be transported from the Loading Terminal to the country of destination by the transporter on behalf of Buyer, or the nominated delivery has already been on-sold to a third party to whom the Product must be supplied in another EU member state and that accordingly, the obligation to transport the Product to another EU member state has been transferred to such third party (as applicable); and

1.2 Buyer provides to Seller, upon demand, evidence satisfactory to the relevant authorities in the EU member states in which the Loading Terminal and Discharge Terminal are located that the transportation arrangements for the Product qualify for zero rating; and

1.3 Buyer provides to Seller, within thirty (30) days of loading the Shipment, satisfactory evidence to the relevant authorities of the EU member state in which the Loading Terminal is located (**Loadport Authorities**) that the Product has been received by Buyer, or some other party acting on Buyer's behalf, within another EU member state, or such other evidence as is satisfactory to the Loadport Authorities to allow zero rating of the sale of the Product;

Or

2. if the destination of the Product is outside the EU, Buyer provides to Seller, within thirty (30) days of loading the Shipment, satisfactory evidence to the Loadport Authorities that the Product has been received by Buyer, or some other person on Buyer's behalf, at a destination outside the EU.

(ii) Where Seller has issued a zero (0) rated invoice in respect of the Product, if Buyer fails to comply with the above provisions, Seller shall be entitled to issue a further invoice for the amount of any VAT payable together with interest either in the invoicing currency of the Product, converted at the exchange rate prevailing on the date of the tax point under the relevant tax rules or, in Seller's option, in the local currency of the country in which said VAT is payable. Such further invoice shall be paid by Buyer to Seller's designated account in full within two (2) Working Days of presentation of such invoice, without any discount, deduction, withholding, abatement, set-off or counterclaim.

- (c) Buyer shall indemnify Seller in respect of any costs or penalties incurred by Seller as a result of Buyer's failure to pay any VAT in accordance with the Agreement.
- (d) If Seller is subsequently able to obtain a credit or repayment from the authorities for any such VAT which has been paid by Buyer, Seller shall within five (5) Banking Days reimburse Buyer with the net amount so credited or repaid less any costs, penalties and interest, and Seller shall use all reasonable efforts to obtain such credit or repayment, it being understood that any costs incurred by Seller in doing so shall be borne by Buyer.

## 10.2 EU Customs Duty and Excise duty

Buyer shall indemnify Seller and hold Seller harmless from any and all liability in respect of customs duty, excise duty or similar tax or duty incurred by Seller, Seller's supplier or the owner of the bonded premises from which the Product is dispatched, including any interest, penalties or costs arising on such customs duty, excise duty or similar tax or duty, where the Product is delivered from any bonded premises in the EU, unless, following information is provided:

- (a) Where the Product is Union Goods,
  - i. and is moving to another EU member state under EMCS with an e-AD:
    - Buyer undertakes to provide to Seller nomination including full details to comply with EMCS requirements, and
    - undertakes to comply with the applicable European legislation and to provide promptly the Seller with a ROR (Report of Receipt) no later than five (5) Working Days after the end of the movement of the Product; or
  - ii. and was taken out from bonded premises without an e-AD:
    - Buyer provides to Seller satisfactory evidence to the EU member state from which the Product was taken out from bonded premises, that the Product was delivered into bonded premises within the EU in circumstances where such delivery allows for suppression of the excise duty or similar tax; or
  - iii. and is exported from the EU:
    - Buyer provides to Seller satisfactory evidence to the EU member state, where the Product was taken out of bonded premises that the Product was delivered to a non-EU member state either duty paid or into bonded premises.

“Satisfactory evidence” means as a minimum and, without prejudice to the provisions of Section 23, a certificate of discharge of the Product.

- (b) Where the Product is non Union Goods,
  - i. and is transiting between two countries using NCTS system and delivered from any bonded premise;
    - Buyer undertakes to provide any information requested by law in order to draw up the transit document under NCTS; and
    - Undertakes to provide to Seller satisfactory evidence that the Product was delivered to the country of destination and that the Product and the accompanying documents (T1) have been properly presented to the customs office of destination; or
  - ii. And is exported from the EU; Buyer provides to Seller satisfactory evidence to the EU member state where the Product was taken out of bonded premises, that the Product was delivered to a non EU member state either duty paid or into bonded premises.

**10.3** Notwithstanding sections 10.1 and 10.2, Buyer shall indemnify Seller and hold Seller harmless from any and all liability for any VAT, excise duty, customs duty or similar tax or duty claimed by any relevant authorities in respect of discrepancies between the loaded and discharged quantities.

**10.4** Where VAT and/or excise duty and/or customs duty or similar tax or duty is payable, Seller reserves the right to request, and Buyer undertakes to immediately issue upon such a request, a letter of guarantee from a bank acceptable to Seller to cover the full estimated amount of such VAT and/or excise duty and/or customs duty or similar tax or duty, such letter of guarantee to be in a format acceptable to Seller.

### **10.5 EU Documentation**

Where the Loading Terminal is located outside the EU and the Special Terms and Conditions provide that the Product shall be EU qualified, meaning that the Product is or will be in free circulation within the EU and not subject to any import duties, or where the Loading Terminal and the Discharge Terminal are located inside the EU, the provisions of Appendix 4 shall apply.

### **10.6 Other taxes and duties etc.**

#### **(a) The Buyer's responsibilities**

Where not already specified in sections 10.1 to 10.5 and unless expressly otherwise agreed by the parties, the amount of any taxes, duties, imposts, fees, charges and dues of every description imposed or levied by any governmental, local or port authority on the Product supplied hereunder, or on its export, delivery, transportation, ownership, sale or use, in respect of any stage after risk in such Product has passed to the Buyer shall be for the Buyer's account.

In the case of EXW and FOB Deliveries, all taxes and duties in respect of the Vessel or the Barge (not the Product) incurred at the Loading Terminal shall be for the Buyer's account.

In the case of CFR and CIF Deliveries, all taxes and duties in respect of the Vessel (not the Product) incurred at the Discharge Terminal shall be for the Buyer's account, except for those specified in Worldscale as being for the Vessel owners' account.

#### **(b) The Seller's responsibilities**

Where not already specified in sections 10.1 to 10.5, and unless expressly otherwise agreed by the parties, the amount of any taxes, duties, imposts, fees, charges and dues of every description imposed or levied by any governmental, local or port authority on the Product supplied hereunder, or on its export, delivery, transportation, ownership, sale or use, in respect of any stage prior to risk in such Product passing to the Buyer shall be for the Seller's account.

In the case of CFR and CIF Deliveries, all taxes and duties in respect of the Vessel (not the Product) incurred at the Loading Terminal shall be for the Seller's account, except for those specified in Worldscale as being for the Vessel owners' account.

In the case of DAP and DDP Deliveries, all taxes and duties in respect of the Vessel (not the Product) incurred at the Discharge Terminal shall be for the Seller's account, other than those that arise in respect of customs and excise entry (except DDP) which shall be for the Buyer's account.

**(c)** Under the Agreement (i) Seller shall be assumed to be the exporter of record; (ii) Buyer shall be assumed to be the importer of record; and Seller agrees to fulfil all requirements applicable to the exporter of record and to pay any applicable export duties or other applicable fees, fines, penalties and costs and Buyer agrees to fulfil all requirements applicable to the importer of record and to pay any applicable import duties or other applicable fees, fines, penalties and costs. For

the avoidance of doubt and in respect of every type of sale (except DDP), the Seller shall not be the importer of record.

- 10.7** There shall be no time limit on claims solely for taxes or duties pursuant to section 10.
- 10.8** Any delay in effecting any payment of any sums under section 10 in full by its due date shall entitle Seller to receive payment of interest for each day of delay, calculated in accordance with the interest provisions of section 8.6. Such interest shall in no circumstances be construed as an agreement by Seller to provide extended credit and is in addition to any other rights of Seller arising out of Buyer's delay in effecting payment.

## **SECTION 11 – LIABILITIES**

- 11.1** Neither party shall in any event, including but not limited to, any negligent act or omission on its part, be liable to the other in contract, tort, breach of statutory duty or otherwise, in respect of any consequential, indirect or special losses expenses or damages of any kind howsoever, as well as, if and to the extent that they might otherwise not constitute indirect or consequential losses or expenses, any loss of profit or anticipated profit, use, goodwill, business receipts, contracts or commercial opportunities, market reputation, or loss resulting from shut-down of any plant of either party, whether or not foreseeable, arising out of or in any way connected with the conclusion, the performance, the failure to perform or the termination of the Agreement. In addition, Seller shall in no circumstances be liable for more than the difference between the market price and the contract price with respect to the relevant quantity of Product limited in all cases to the contract price applicable to such relevant quantity of Product.
- 11.2** Buyer agrees to indemnify, defend and hold Seller harmless from liability for any and all demands or claims arising from injuries sustained or damages suffered following the passage of risk in the Product, and which may arise in connection with the transportation, use or handling of any Product or admixture thereof, whether Delivery is made to Buyer, its assigns, or nominees.

## **SECTION 12 - FORCE MAJEURE**

- 12.1** Seller and Buyer shall be released from any claim to the extent that they are unable to perform any obligation under the Agreement due to force majeure.
- 12.2** For the purposes of this Agreement, “force majeure” shall comprise any events or circumstances beyond the reasonable control of a party which prevent or impede the due performance of this Agreement and which by the exercise of all reasonable diligence such party is unable to prevent, including but not limited to acts of war, sabotage, act of piracy, terrorism, riots, revolution, rebellion or civil commotion, floods, earthquakes, lightning or other natural physical disaster, explosion, fire, expropriation, nationalisation, requisition or other interference by any governmental authority, compliance with any statute, order, by-law or other rule or regulation having the force of law, accident of navigation, strikes, lockouts, breakdown of or accident or injury in or about the plant of Seller or Buyer, machinery, facilities or Vessels, and any curtailment, reduction in, interference with, failure or cessation of supplies of Product and/or feedstock from any of the Seller's or the Seller's suppliers' sources of supply, as well as the inability to obtain or the curtailment of electric power, water, or fuel. For the avoidance of doubt, such event(s) shall also relieve Seller of any liability when these involve Seller's suppliers.

For the purposes of this section 12.2, this list of events or circumstances shall not include delay, hindrance, interference with, curtailment or prevention of a party's accrued obligation to make payment under the Agreement whether in respect of price, dispatch, demurrage or any other financial obligation whatsoever where the impediment is solely caused by lack of funds.

- 12.3** If either party is prevented or delayed from or in performing any of its obligations under this Agreement by force majeure it shall promptly give written notice to that effect to the other party, stating the particulars of

such force majeure and of the obligations thereby affected. A party so affected by force majeure shall take all measures that are reasonable under the circumstances to minimise the effects of force majeure upon the performance of this Agreement and shall promptly resume performance as soon as reasonably possible after removal of the circumstances of force majeure.

- 12.4** If any force majeure event occurs, then, at any time thereafter and for so long as the effect of that event continues, Seller shall be entitled on notice to the Buyer to withhold, suspend, reduce or cancel Delivery hereunder to such extent as Seller shall in its absolute discretion determine. However to the extent that part of the Product remains available from the Seller's producing plant affected by the force majeure, Seller will endeavour to apportion available Product among itself and its purchasers on a reasonable and equitable basis, without incurring any liability for failure to perform under the Agreement. Notwithstanding anything to the contrary, under no circumstances shall Seller be required to purchase or acquire product to replace all or part of the Product supplies disrupted by a force majeure event.
- 12.5** Any additional quantity of Product deliverable hereunder that would, but for any withholding, reduction suspension or cancellation pursuant to the foregoing provisions, have been delivered during the period thereof shall cease to be deliverable under this Agreement.
- 12.6** Notwithstanding anything to the contrary, if the force majeure continues for a period of more than thirty (30) Days, either party shall be entitled to terminate the affected transaction by giving written notice to the other party without any liability save that such termination shall be without prejudice to any other accrued rights and (if applicable) to any other Deliveries or transactions.
- 12.7** No withholding, reduction, suspension or cancellation of Delivery by Seller shall operate to extend the duration of the Agreement.

### SECTION 13 - INSOLVENCY

- 13.1** In the event that a liquidator (other than in respect of a solvent liquidation), trustee in bankruptcy, receiver, administrative receiver, administrator, compulsory manager, trustee in bankruptcy or other similar appointee is appointed in respect of any part or whole of the assets of a party or a party enters into an arrangement or composition with its creditors, or a moratorium of any indebtedness, winding up, dissolution, administration or reorganisation (by way of voluntary scheme or arrangement or otherwise) other than a solvent liquidation or reorganisation, or any similar appointment, arrangement or composition is made under any applicable law in any jurisdiction or a party becomes or is deemed or declared to be insolvent or unable to pay its debts as they become due (howsoever evidenced) (the **Insolvency Event**), then, notwithstanding anything to the contrary elsewhere herein, whether express or implied, the other party (without prejudice to its other rights) may at its sole discretion either terminate the Agreement, cancel a Delivery or Deliveries under the Agreement or forthwith suspend performance under the Agreement until further notice in writing to the party affected by an Insolvency Event.
- 13.2** Notwithstanding the other provisions of the Agreement, termination of the Agreement as per section 13.1 will not affect any obligation to make payment of any and all amounts (whether or not then due) owing under the Agreement and such payment will be made without delay. Termination of the Agreement shall be without prejudice to any rights and remedies accruing to the Parties before such termination. In the case of a winding-up petition, this section 13 shall only apply where such winding-up petition is not frivolous or vexatious and is not discharged, stayed or dismissed within thirty (30) Days of commencement.

### SECTION 14 - TERMINATION, SUSPENSION

- 14.1** Notwithstanding anything elsewhere in the Agreement to the contrary, Seller (without prejudice to any rights or remedies available to Seller) shall have the right, without being liable for any indemnity to Buyer, to suspend or cancel a Delivery or Deliveries under the Agreement or to terminate the Agreement with

immediate effect upon written notice to Buyer in the event that:

- (a) Buyer does not perform any material provision of the Agreement, such failure including but not limited to:
  - (i) the failure by Buyer to pay any amounts owing in full when due, owing, or payable under or in connection with the Agreement or the breach by Buyer of any of its obligations under section 8; and/or
  - (ii) the failure by Buyer to take receipt, during a period or at an agreed date, of any quantity of Product as provided for in the Agreement;
- (b) Buyer is merged with or becomes the Subsidiary of a third party other than its existing parent company or ultimate parent company (if any) or Buyer sells, leases or otherwise disposes of all or any substantial portion of its assets, or there is a change of control of Buyer (where "change in control" means the acquisition (in aggregate) by any individual or entity of beneficial ownership of 10% or more of the outstanding voting shares of Buyer (or the equivalent thereof if Buyer is a non-corporate entity)). Buyer shall immediately provide written notice to Seller of the occurrence or expected occurrence of any of such events as per section 14.1 (b).

If Seller exercises its right to terminate the Agreement, notwithstanding the other provisions of the Agreement, Buyer shall immediately pay any amount (whether or not then due) owing under the Agreement. Termination of the Agreement shall be without prejudice to any rights and remedies accruing to the Seller before such termination.

**14.2** If Buyer does not pay any amounts owing in full when due under the Agreement, or if any events described in section 13 occur in respect of Buyer, then notwithstanding any other provision to the contrary including any provision of section 16 hereinafter, Seller shall be free to assign to any third party any and all of Seller's rights under the Agreement, whether present or future, actual or contingent, including, without limitation:

- (a) any and all rights to require the due and punctual observance, discharge and performance by Buyer of all its obligations and liabilities under the Agreement;
- (b) all rights to moneys received or receivable by Seller from Buyer under the Agreement, whether as a payment, compensation, damages or an indemnity;
- (c) the right to claim for any sums payable or which become payable under the Agreement.

**14.3** Notwithstanding anything elsewhere in the Agreement or in any other agreement to the contrary, without limiting any other rights that may be available to Seller, if any events described in section 13 or section 14.1 occur in respect of Buyer or if Buyer fails to comply with any request made under sections 8.9 within the time prescribed by Seller or by the Agreement; then in any such event (a **Default**) Seller shall have the right, exercisable in its sole discretion and at any time, to set off any or all amounts which Buyer owes to it (whether under the Agreement or otherwise and whether or not then due) against any or all amounts which Seller or any Affiliate of Seller owes to Buyer (whether under the Agreement or otherwise and whether or not then due), provided that any amount not then due which is included in such set-off shall be discounted to present value as at the time of set-off (to take account of the period between the date of set-off and the date on which such amount would have otherwise been due). For this purpose, any amounts may be converted by Seller into the currency in which the other is denominated at the rate of exchange at which Seller would be able, acting in a reasonable manner and in good faith, to purchase the relevant amount of such currency. If an obligation is unascertained, Seller may, in good faith, estimate that obligation and set off in respect of the estimate, subject to the relevant party accounting to the other when the obligation is ascertained.

Seller's rights under this section 14.3 are in addition to, and not in limitation or exclusion of, any other right which Seller may have (whether by agreement, operation of law, in equity or otherwise). Nothing in this section 14.3 shall be effective to create a charge or other security interest.

### **15.1 Safety Data Sheet (SDS) (also known as Material Safety Data Sheet, “MSDS”)**

The Seller shall provide the Buyer with a copy of the current SDS for the Product in compliance with:

- (i) the requirements of all relevant applicable regulations as well as with the standards of the Globally Harmonized System of Classification and Labelling of Chemicals as amended from time to time (**GHS**); and
- (ii) where the Product is loaded and/or delivered in the European Economic Area ('EEA') pursuant to the terms of the Agreement, the requirements of any applicable laws, rules or regulations, including but not limited to (where applicable) Regulation (EC) no 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (**REACH**), the European Agreement concerning the International carriage of dangerous Goods by Inland Waterways adopted on 26 May 2000 (**ADN**) and Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on Classification Labelling and Packaging of substances and mixtures (**CLP**), as may be amended from time to time.

Notwithstanding the above, health, safety and environmental information on Product issued by TOTAL Group Companies is available on <http://www.totsa.com/pub/about/sds.php> (or such other website as notified by Seller from time to time). Should Buyer experience any difficulties in retrieving such information from the website or not have received the SDS from the Seller, please contact Seller's usual operational contact.

### **15.2 The Buyer's Responsibilities**

It is strongly recommended that Buyer passes on to its employees, agents, contractors, customers and other persons to whom it supplies the Product delivered hereunder with either:

- (i) a copy of a current SDS and any other information relating to health, safety and environmental data in connection with the Product delivered hereunder; or
- (ii) other information.

The Buyer shall provide its employees with appropriate information and training to enable them to handle and use the Product delivered hereunder in a manner that does not endanger their health or safety.

Nothing herein nor contained on the above website shall relieve Buyer of its duties in relation to the safe and proper evaluation, storage, use, transportation and disposal of the Product sold under the Agreement. Compliance with any recommendation contained in the SDS or other safety information shall not excuse Buyer from complying with all laws, statutes, regulations or decrees of any state or territory having jurisdiction over Buyer.

### **15.3 Substance Identification**

If applicable, the provisions of this section 15.3 shall only apply in respect of deliveries of the Product under the Agreement where either a Loading Terminal or a Discharge Terminal is located within the EEA.

Both Seller and Buyer shall comply with their obligations under REACH.

- (a) Subject to section 15.4 (b), Seller shall provide Buyer with a Chemical Abstract Services (**CAS**) registry number and/or an European Commission (**EC**) number, which includes European Inventory of Existing Chemical Substances (**EINECS**), European List of Notified Chemical Substances (**ELINCS**), “no-longer polymers” list (**NLP**) and/or any other appropriate identifier for each substance (as defined by REACH), on its own or in mixtures which are contained in or



comprising the product (**Substance Identifiers**).

- (b) In respect of the Product sold under this Agreement, the following shall apply: (i) in providing Buyer with Substance Identifiers pursuant to its obligations under section 15.4(a), regardless of their source, Seller provides no warranty or representation as to the accuracy or completeness of such Substance Identifiers, and (ii) notwithstanding any other provision to the contrary in this agreement, Seller accepts no liability for loss, damage, delay or expense incurred by Buyer for whatever reason arising from its reliance on the accuracy of the Substance Identifiers provided and the existence of a valid registration of the substances to be imported into the EEA.

#### **15.4 REACH Obligations**

For each substance contained in or comprising the Product:

- (a) If the substance originates from an EEA manufacturer or has been imported into the EEA by Seller's supplier, then Seller shall provide Buyer with the corresponding REACH registration number(s) of the EEA manufacturer or of Seller's supplier (as the case may be).
- (b) If an "only representative" (as defined by REACH) has been appointed by a non-EEA manufacturer of the substance, the Seller shall inform the Buyer of that fact and provide the relevant written statement and the contact details of the Only Representative to the Buyer.
- (c) If, pursuant to REACH, the substance is imported into the EEA by either Buyer or Seller, such importer shall comply with those of its obligations which are applicable to the physical introduction of the Product into the EEA. For the avoidance of doubt, where Seller is not an EEA company and the substance does not meet the conditions set out in section 15.4(a) or 15.4(b), then Buyer shall be responsible for ensuring that any obligation with respect to the importation of the Product into the EEA under REACH is complied with.

### **SECTION 16 - ASSIGNMENT**

- 16.1** TTA may assign all or part of its rights and obligations under this Agreement to one or more of its Affiliates.
- 16.2** Subject to the provisions of section 16.1, neither of the parties to this Agreement shall, without the previous consent in writing of the other party, assign this Agreement or any right or obligation hereunder to a third party. Notwithstanding any such consent, the assignor shall nevertheless remain responsible together with the assignee for the proper performance of this Agreement. Any purported assignment in contravention of this section 16.2 shall be void and prohibited.
- 16.3** Notwithstanding sections 16.1 and 16.2, Seller may without Buyer's consent assign all or a portion of its rights to receive and obtain payment under the Agreement in connection with securitisation or bank funding arrangements, providing such assignment does not contravene any applicable law, regulation or decree binding upon Buyer. Any payment made by Buyer to the payee specified in Seller's invoice in respect of the Product deliverable under the Agreement shall be in full discharge of Buyer's payment obligations to Seller under the Agreement. Any such assignment will not detract from Seller's obligations under this Agreement.

### **SECTION 17 - NOTICES**

- 17.1** Any notice or other communication or document in respect of the Agreement may be given in any manner set forth below (except for the N.O.R. in respect of any Vessel) to the contact or address details provided in the Specific Terms or otherwise previously communicated by the other party and will be deemed effective as indicated below:

- (a) if in writing and delivered in person or by courier, on the date it is delivered and, if a particular department or officer is specified as part of its address details, if addressed to that department or officer;
- (b) if sent by facsimile transmission, on the date that transmission is received by the recipient in legible form (it being agreed that the burden of proving receipt will be on the sender) and, if a particular department or officer is specified as part of its address details, if addressed to that department or officer;
- (c) if sent by electronic messaging system, on the date that transmission is received by the recipient in legible form (it being agreed that the burden of proving receipt will be on the sender) at the electronic address specified by the recipient and, if a particular department or officer is specified as part of its address details, if addressed to that department or officer;
- (d) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date that mail is delivered or its delivery is attempted and, if a particular department or officer is specified as part of its address details, if addressed to that department or officer.

**17.2** Any alteration to the contact details specified in the Specific Terms shall be notified immediately as per the provisions of this section 17 to the other party.

**17.3** Either party, by giving not less than FIFTEEN (15) days' notice as per the provisions of this section 17 to the other party, may from time to time change its address.

#### **SECTION 18 - WAIVERS**

**18.1** No waiver or forbearance by either party, whether expressed or implied, in enforcing any of its rights hereunder shall prejudice its rights to do so in the future.

#### **SECTION 19 - APPLICABLE LAW, ARBITRATION**

**19.1** The validity, construction and performance of this Agreement shall be governed by and construed in accordance with English law to the exclusion of any other law which may be imputed in accordance with choice of law rules applicable in any jurisdiction.

**19.2** The parties hereto expressly agree that the application of the "United Nations Convention on Contracts for the International Sale of Goods" (Convention of Vienna 1980) is hereby excluded.

**19.3** Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination shall be referred to and finally settled by arbitration in accordance with the arbitration rules of the Singapore International Arbitration Centre (SIAC rules) for the time being in force which rules are deemed to be incorporated by reference into this section 19. The number of arbitrators shall be three, appointed in accordance with SIAC rules. The third arbitrator, who shall act as the presiding arbitrator, shall be appointed by the other two arbitrators. All arbitrators shall be solicitors with relevant expertise in international oil trading disputes.

The place of arbitration shall be Singapore unless the parties agree to have the arbitration elsewhere. The language to be used in the arbitral proceedings and in the award shall be English.

Any award shall be final and binding upon the parties, and judgement on the award rendered by the arbitrators may be entered in any court having jurisdiction. However, neither party shall be precluded from pursuing arrest, attachment and/or other conservatory, interlocutory or interim actions in any court or

exercising any contractual rights in relation to the Product or Vessel provided for elsewhere in the Agreement.

#### **19.4 Sovereign immunity**

Each party hereto warrants that it has entered into the Agreement in a commercial capacity and that with respect to the Agreement it is in all respects subject to civil and commercial law. Each party hereby irrevocably and unconditionally and to the fullest extent permitted by law waives any rights of sovereign immunity which it may have now or which it may subsequently acquire in respect of its position or any property and/or assets (present or subsequently acquired and wherever located) belonging to it.

### **SECTION 20 - INTERPRETATION**

- 20.1** The Specific Terms and the GTC together form the entire agreement between the parties, and, save agreed otherwise in writing, no additional terms, conditions, representations or warranties shall be incorporated herein.
- 20.2** In case of conflict between the documents forming part of this Agreement, such documents shall prevail in the following order:
- (a) Specific Terms;
  - (b) Addendum N°1 to the GTC (as per applicable Incoterms, included by reference, defined in Specific Terms);
  - (c) GTC, including any Appendix;
  - (d) Any other agreed forms in writing by both parties except if the agreed change relates to a), b) or c) in which case such change shall be deemed incorporated in a), b) or c) as applicable.

### **SECTION 21 - ETHIC AND BUSINESS PRINCIPLES**

- 21.1** Buyer and Seller are fully conversant with TOTAL's Code of Conduct (a copy of which is available at [www.total.com](http://www.total.com), heading "Our Group" or upon request). TTA's counterparty to an Agreement warrants that it has implemented, applies and abides by similar standards and requirements failing which such party agrees to comply with the Total Code of Conduct.

### **SECTION 22 - ANTI-CORRUPTION**

- 22.1** Buyer and Seller each warrant and undertake to the other that in connection with the Agreement and the performance thereof, they will each respectively comply with any laws, regulations, rules, decrees and/or official government orders applicable to such party relating to anti-bribery or anti-money laundering and that they shall each respectively take no action that would subject the other to fines or penalties under such laws, regulations, rules or requirements.
- 22.2** Buyer and Seller each represent, warrant and undertake to the other that in connection with the Agreement they have not paid and shall not pay, directly or indirectly, neither offer, give or promise to pay or authorize the payment of, any monies or other things of value to:
- (i) a government official or an officer or employee of a government or any department, agency or instrumentality of any government;
  - (ii) an officer or employee of a public international organization;
  - (iii) any person acting in an official capacity for or on behalf of any government or department, agency or instrumentality of such government or of any public international organization;
  - (iv) any political party or official thereof, or any candidate for political office; or
  - (v) any other person, individual or entity at the suggestion, request or direction or for the benefit of any of the above-described persons and entities;

- (vi) any person where such payment, gift, promise or advantage would be for purposes of inducing such person to do or omit to do any act in violation of his or her lawful duty or to secure any improper advantage, or otherwise to do or refrain from doing something that would violate the laws applicable to the activities under the Agreement.

**22.3** In particular, Seller represents and warrants to Buyer that it has not made any payments or given anything of value to officials, officers or employees of the government of the country in which the Product originated or any agency, department or instrumentality of such government in connection with the Product that is the subject of the Agreement that would be inconsistent with or contravene any of the above-referenced legislation.

**22.4** Buyer or Seller may terminate the Agreement forthwith, without any liability whatsoever (including but not limited to any damages for breach of contract, penalties, costs, fees and expenses), upon written notice to the other, at any time, if in their reasonable judgment the other is in breach of any of the above representations, warranties or undertakings.

## SECTION 23 – TRADE RESTRICTIONS

### **23.1 Destination**

**23.1.1** Buyer undertakes, and it is a condition of the Agreement, that the Product shall not:

- (a) be shipped directly or indirectly through, or
- (b) be disposed of, directly or indirectly and irrespective of means, by way of resale, exchange, loan or other arrangement for the supply of the Product to any buyer and/or receiver in,

any country which is subject to a prohibition of export by the governmental authorities of the country in which the Product has been produced or loaded.

If Buyer is, or is likely to be, prevented by any law, policy, demand or request to which Buyer is subject or any governmental policy, demand or request by which Buyer is bound, from complying with the above, Seller and Buyer shall meet and discuss the implications for Buyer and Seller and, pending resolution of any difficulty which such event causes or is likely to cause, Seller may at its discretion suspend in whole or in part supplies hereunder.

At any time, Seller may require Buyer to provide any relevant documents for the purpose of verifying the final destination of the Product, and Buyer undertakes to provide such documents upon request.

**23.1.2** Buyer represents and warrants that the Product deliverable hereunder shall not be exported sold or supplied, directly or indirectly and irrespective of means, in any manner that would be prohibited by any laws, regulations, decrees, ordinances, orders or rules of the EU, any EU member state, the United Kingdom, Switzerland, Singapore, the United Nations or the United States of America, or the place of the Loading Terminal or Discharge Terminal, or the place in which the Seller or Buyer is incorporated or controlled, applicable to the Parties relating to international boycotts, trade sanctions, foreign trade controls, export controls, non-proliferation, anti-terrorism or similar laws (the **Trade Restrictions**) and/or that would expose the Seller of being in violation of the Trade Restrictions.

Seller represents and warrants that the Product is not sold in any manner that would be prohibited by the applicable Trade Restrictions.

**23.1.3** Should either party be in breach of any provisions of this section 23.1, the other party may at any time thereafter immediately terminate the Agreement, without any liability whatsoever (including

but not limited to any damages for breach of contract, penalties, costs, fees and expenses) to the party in breach.

Moreover, the party in breach agrees to hold the other party harmless from, and indemnify the other party for, any losses, costs, damages, fines and/or penalties incurred by that party resulting from any such breach.

## **23.2 Sanctions and Boycotts**

**23.2.1** Notwithstanding anything contrary elsewhere in the Agreement, neither party shall be obliged to act in any way or to perform any obligation otherwise required by this Agreement (including without limitation an obligation to (a) perform, deliver, accept, sell, purchase, pay or receive monies to, from, or through a person or entity or (b) engage in any other acts) if this would be in violation of, inconsistent with, penalised or prohibited by or expose such party to punitive measures under Trade Restrictions applicable to that party:

**23.2.2** Where any performance by a party would be in violation of, inconsistent with, or expose such party to punitive measures under a Trade Restriction, such party (the **Affected Party**) shall, as soon as reasonably practicable, give written notice to the other Party of its inability to perform. Once such written notice has been sent (email acceptable) by the Affected Party, the Affected Party shall be entitled:

- (a) to immediately suspend the performance of the affected obligation (whether a payment or performance obligation) until such time as the Affected Party may lawfully discharge such obligation; and/or
- (b) where the inability to discharge the obligation continues (or is reasonably expected to continue) until the end of the contractual time for discharge thereof, to a full release from the affected obligation, provided that where the relevant obligation relates to payment for Product which have already been delivered, the affected payment obligation shall remain suspended (without prejudice to the accrual of any interest on an outstanding payment amount as may be earned by the Affected Party) until such time as the Affected Party may lawfully resume payment, and/or
- (c) where the obligation affected is acceptance of the vessel, to require the Nominating Party to, nominate an alternative vessel, insofar as it is reasonably practicable for the Nominating Party to nominate a substitute Vessel of which the estimated time and date of arrival ('ETA') is within the originally agreed Loading or Discharge Date Range, as applicable,

in each case without any liability whatsoever (including but not limited to any damages for breach of contract, penalties, costs, fees and expenses).

**23.2.3** Nothing in this section 23.2 shall be taken to limit or prevent the operation, where available under the governing law of this Agreement, of the doctrine of frustration or any doctrine analogous to it.

## **SECTION 24 - DOCUMENTATION**

**24.1** In the case of FOB, CFR or CIF Delivery, the Buyer shall provide the Seller in a timely manner with full written instructions regarding the particulars and destination of the Bill of Lading and such other customary Loading Terminal documentation which may be required by the Buyer (and, for the avoidance of doubt, the Buyer shall be liable for all costs resulting from any delays in loading the Product hereunder due to failure by the Buyer to supply such information in a timely manner).

**24.2** Seller shall, subject to Loading or Discharge Terminal conditions, custom and practices, endeavour to carry out Loading Terminal documentation instructions or discharge orders as advised by Buyer.

**24.3** In the case of CIF or CFR Delivery, if Buyer requests Seller to discharge the Product at the Discharge Terminal without Bill of Lading or the Bill of Lading has not yet arrived upon the Vessel's arrival at the Discharge Terminal, Buyer shall sign a letter of indemnity to Seller (in Seller's discretion, such indemnity to be furnished by a bank to be approved by Seller) according to INT GROUP A wording of the P and I club as in Appendix 2 against which Seller shall request vessel owner to discharge and release the cargo against this letter of indemnity. If the vessel owner requires terms that deviate from the wording as set forth in Appendix 2 then Seller and Buyer shall mutually agree on a wording for such letter of indemnity as may be suitable to vessel owner. Seller may suspend its performance under this Agreement pending Buyer furnishing such letter of indemnity acceptable to the Seller.

**24.4** In the event that the parties agree in the Specific Terms for electronic documents to be used in the Agreement, the following shall apply:

Any Bill of Lading, waybill, delivery order, certificate, receipt or other document issued pursuant to, or in connection with, this agreement may be issued, stored and signed in electronic form and transmitted electronically using ESSDOCS in accordance with the terms and conditions of the ESSDOCS services and users agreement as amended from time to time in accordance with its terms **DSUA**) and the rights, obligations and interests contained in, represented by or evidenced by any such document (each, an **eDoc**) may be transferred, novated or otherwise dealt with (or the transfer, novation or other dealings with them may be evidenced) electronically in accordance with the terms of the DSUA.

Any requirement of this agreement for presentation of one or more originals or copies of a document is satisfied by the presentation of one eDoc.

Any applicable requirement of law, contract, custom or practice that any Bill of Lading, waybill, delivery order, certificate, receipt or other document or communication issued pursuant to, or in connection with, this agreement (including any negotiation or endorsement thereof) shall be made or evidenced in writing, signed or sealed may be satisfied in electronic form, by an eDoc or by its electronic transfer as appropriate. The parties hereto agree not to contend in any dispute arising out of or in connection with this agreement or any transaction incorporating this section 24.4 by reference that any legal formality requiring any such Bill of Lading, waybill, delivery order, certificate, receipt or other document or communication issued pursuant to, or in connection with, this agreement (including any negotiation or endorsement thereof) to be made or evidenced in writing, signed or sealed, has not been met by reason only that the same has been made or performed in electronic form by an eDoc.

The parties hereto agree that eDOCS which are converted to paper in accordance with the terms and conditions of the DSUA ("converted eDOCS") and which are presented, issued or otherwise utilised pursuant to, or in connection with, this agreement shall be given full force and effect according to their tenor and in accordance with the terms and conditions of the DSUA, and shall not be rejected on the grounds that they are electronic records which have been converted to paper originals, or that the documents have been produced in accordance with the said DSUA terms and conditions.

Any documentary credit issued under this agreement, if applicable, and to be used in conjunction with eDOCS, will be subject to the supplement to the uniform customs and practice for documentary credits for electronic presentation (EUCP) and the uniform customs and practice for documentary credits (2007 revision ICC publication no. 600) to the extent applicable, and may incorporate the documentary credit addendum appended to the ess-Databridge™ services and users agreement or a similar provision.

## SECTION 25 - GENERAL

**25.1 Canal Closure Clause** (applicable to CIF/CFR Deliveries)

(a) If at any time before loading is completed or the Vessel sails from the Loading Terminal it appears that the Vessel would be delayed for not less than seven (7) Days by circumstances beyond Vessel

owner's/Seller's control in proceeding through any waterway, natural or artificial, including the Panama Canal and Suez Canal, which was intended at the time the Agreement was made that the Vessel should transit in the course of the voyage prescribed. The Vessel owner/Seller may require Buyer to declare that the voyage shall be performed by such suitable alternative route as the Master of the Vessel may select and that the sales price shall be increased proportionately to the freight of the consequent increase in the mileage of the voyage. If Buyer declines or fails to declare as aforesaid within 24 hours of receiving the Seller's notice, or if there is no alternative suitable route, the Seller may thereupon cancel the Agreement and, if any Shipment has been loaded, thereupon discharge the same at the Buyer's expense.

- (b) If delay as aforesaid become apparent after the Vessel leaves the Loading Terminal, the Owner/Seller may require the Buyer to make the declaration described in a) above and if the Buyer declines or fails to declare aforesaid within 24 Hours of receiving the Seller's notice, or if there is no alternative suitable route, the Owner/Seller may instruct the master of the Vessel to discharge the Shipment at the nearest safe reachable port and such discharge shall be deemed due fulfilment of this Agreement. Say that if the mileage of the voyage is thereby decreased, the sale price equal to the extra freight which shall be decreased proportionately, all provisions regarding freight, discharge of the Shipment, laytime and demurrage (if any) as agreed for the original discharge under the Agreement shall apply to discharge at the substituted port.

## 25.2 US Waters Clause

Notwithstanding item E of Addendum n°1, where the Loading Terminal is located in Canada, the United States of America (the **U.S.A**) or within territories of the U.S.A. (**U.S. Territories**), risk and property in the Product delivered under the Agreement shall pass to the Buyer immediately after the Vessel carrying the Product leaves the waters comprising the exclusive economic zone of Canada, the U.S.A. or U.S. Territories. For the purpose of determining the time, date and location at which risk and property in the Product passes from the Seller to the Buyer, the time, date and location as indicated on the Vessel master's statement by email/fax sent to the Buyer as the Vessel leaves the waters comprising the exclusive economic zone of Canada, the U.S.A. or U.S. Territories shall be conclusive in the absence of fraud and/or manifest error.

- 25.3 Each party consents to the monitoring or recording, at any time and from time to time, by the other party of any and all communications between officers or employees of the parties, waives any further notice of such monitoring or recording, and agrees to notify its officers and employees of such monitoring or recording.
- 25.4 If it is specified in the Specific Terms that the Agreement shall be held confidential, then details of the Agreement shall not be disclosed by either party to any third party without the previous consent in writing of the other party. Notwithstanding the above, a party (the **Disclosing Party**) may disclose details of the Agreement without the other party's prior written consent if: (a) such disclosure is required by law or by any securities exchange or regulatory or governmental body or fiscal authority having jurisdiction over it, wherever situated; or (b) the confidential information is or was already in the public domain other than through the fault of action of the Disclosing Party; or such disclosure is to an Affiliate of the Disclosing Party, legal advisor, agent, financing bank, insurance company / broker or in connection with any dispute, legal or arbitration proceedings, and the Disclosing Party shall cause all parties in receipt of such information to be bound by the same obligations of confidentiality as contained in the Agreement. Notwithstanding the foregoing, a party may elect to report this Agreement to a price index publication in which case Product description, volume, price, delivery point and delivery date may be disclosed but the identity of the counterparty shall remain confidential.
- 25.5 Each party shall be responsible for obtaining all consents, authorisations, approvals and assurances of whatsoever nature necessary to enable it to comply with its obligations under the Agreement.
- 25.6 Buyer undertakes to comply with all applicable laws and regulations insofar as these affect the implementation of the Agreement.

However, neither Buyer nor Seller shall be required, as a result of the Agreement, to participate in, or cooperate with, any boycott, or to take any action which would violate the provisions of any applicable law or result in penalties of any kind under such law.

Buyer represents and warrants that as of the date of the Agreement, there is no prohibition on purchasing the Product pursuant to the terms of the Agreement in the laws and regulations applicable to Buyer.

- 25.7** Nothing in the Agreement shall be considered or construed as conferring any right or benefit on a person not a party to the Agreement and the parties do not intend that any term of the Agreement should be enforceable by virtue of the Contracts (Rights of third Parties) Act 1999, by any person who is not a party to the Agreement.

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**APPENDIX 1**

**LETTER OF INDEMNITY WORDING TO BE USED WHEN APPLICABLE**

From: (Seller)

To: (consignee or Buyer of Shipment)

We refer to our agreement dated ....in respect of our sale to (Buyer) of a shipment of ..... net Metric Tons of (grade) shipped on board the vessel ..... at the port of ..... with bills of lading dated.....,

To date we are unable to provide you with the requisite shipping documents in relation to the said sale which consist of:

**[please insert the list of agreed missing documents]**

In consideration of your making payment of the full invoiced price of USD.....(and payment when due of any subsequent shortfall apparent on any final invoicing and set out in any final invoice) for the shipment at the due date for payment under the terms of the above agreement without having been provided with the above documents, we hereby expressly warrant that at the time property passed under the agreement we had marketable title to such shipment, free and clear of any lien or encumbrance, and that we had full right and authority to transfer such title to you, and that we are entitled to receive these documents from our supplier and transfer them to you.

We further agree to protect, indemnify and save you harmless from and against any and all damages, costs and expenses(including reasonable legal fees) which you may suffer or incur by reason of the original bills of lading and other documents remaining outstanding or breach of warranties given above including, but without prejudice to the generality of the foregoing, any claims and demands which may be made by a holder or transferee of the original bills of lading, or by any third party claiming an interest in or lien on the shipment or the proceeds thereof.

This letter of indemnity shall be governed by and construed in all respects in accordance with English Law, but without reference to any conflict of law rules. Any dispute arising out of or in connection with this Letter of Indemnity, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration administered by the Singapore International Arbitration Centre (**SIAC**) in accordance with the Arbitration Rules of the Singapore International Arbitration Centre (**SIAC Rules**) for the time being in force, which rules are deemed to be incorporated by reference. The seat of the arbitration shall be Singapore. The Tribunal shall consist of 3 arbitrators. The language of the arbitration shall be English.

The validity of this letter of indemnity shall expire upon our presentation to you of the aforesaid shipping documents.

For and on behalf of (seller)

Name

Title

Authorized signature

=====

If TTA requires the letter of indemnity to be counter-signed by a bank the following wording at the end of the letter of indemnity shall be added:

*Quote*

In consideration of your agreeing as aforesaid, we, as authorized signatories... of bank... , whose customer is.... , hereby confirm that our bank is jointly and severally bound by the terms of the above letter of indemnity.

(date)

(authorized signature)

(title)

*Unquote*

## APPENDIX 2

INT GROUP A

### **STANDARD FORM LETTER OF INDEMNITY TO BE GIVEN IN RETURN FOR DELIVERING CARGO WITHOUT PRODUCTION OF THE ORIGINAL BILL OF LADING**

*[Insert date]*

To: *[insert name of Owners]*

The Owners of the *[insert name of ship]* *[insert address]*

Dear Sirs

Ship: *[insert name of ship]*

Voyage: *[insert load and discharge ports as stated in the bill of lading]*

Cargo: *[insert description of cargo]*

Bill of lading: *[insert identification numbers, date and place of issue]* The above cargo was shipped on the above ship by *[insert name of shipper]* and consigned to *[insert name of consignee or party to whose order the bill of lading is made out, as appropriate]* for delivery at the port of *[insert name of discharge port stated in the bill of lading]* but the bill of lading has not arrived and we, *[insert name of party requesting delivery]*, hereby request you to deliver the said cargo to "X *[name of the specific party]* or to such party as you believe to be or to represent X or to be acting on behalf of X" at *[insert place where delivery is to be made]* without production of the original bill of lading.

In consideration of your complying with our above request, we hereby agree as follows :-

1. To indemnify you, your servants and agents and to hold all of you harmless in respect of any liability, loss, damage or expense of whatsoever nature which you may sustain by reason of delivering the cargo in accordance with our request.
2. In the event of any proceedings being commenced against you or any of your servants or agents in connection with the delivery of the cargo as aforesaid, to provide you or them on demand with sufficient funds to defend the same.
3. If, in connection with the delivery of the cargo as aforesaid, the ship, or any other ship or property in the same or associated ownership, management or control, should be arrested or detained or should the arrest or detention thereof be threatened, or should there be any interference in the use or trading of the vessel (whether by virtue of a caveat being entered on the ship's registry or otherwise howsoever), to provide on demand such bail or other security as may be required to prevent such arrest or detention or to secure the release of such ship or property or to remove such interference and to indemnify you in respect of any liability, loss, damage or expense caused by such arrest or detention or threatened arrest or detention or such interference, whether or not such arrest or detention or threatened arrest or detention or such interference may be justified.
4. If the place at which we have asked you to make delivery is a bulk liquid or gas terminal or facility, or another ship, lighter or barge, then delivery to such terminal, facility, ship, lighter or barge shall be deemed to be delivery to the party to whom we have requested you to make such delivery.
5. As soon as all original bills of lading for the above cargo shall have come into our possession, to deliver the same to you, or otherwise cause all original bills of lading to be delivered to you, whereupon our liability hereunder shall cease.
6. The liability of each and every person under this indemnity shall be joint and several and shall not be conditional upon your proceeding first against any person, whether or not such person is party to or liable under this indemnity.

7. This indemnity shall be governed by and construed in accordance with English law and each and every person liable under this indemnity shall at your request submit to the jurisdiction of the High Court of Justice of England.

Yours faithfully

For and on behalf of

*[insert name of Requestor]*

The Requestor

.....

Signature

## **APPENDIX 3**

### **PURCHASE OF PRODUCT UNDER PURCHASE CONFIRMATION**

#### **A THE PURCHASE CONFIRMATION**

The Seller may issue a confirmation for each Shipment under an Agreement (the **Purchase Confirmation**) confirming the purchase of Product as per the terms set out in this Appendix 3. The terms of the Agreement shall be expressly incorporated into the Purchase Confirmation and in the event of, and only to the extent of, any conflict between the terms and conditions of the Agreement and the terms and conditions of a Purchase Confirmation, the terms and conditions of the Purchase Confirmation shall prevail.

The Seller may grant Buyer the option to nominate another entity or entities to perform the purchase of a Shipment under the Agreement (the **Buyer's Nominee**). The Buyer's Nominee(s) allowed to perform such purchase(s) shall be expressly listed in the Specific Terms and each nomination by the Buyer of a Buyer's Nominee shall be subject to Seller's prior written acceptance of such nomination, such acceptance to remain at Seller's sole discretion. In the event the acceptance is not granted by the Seller or in the absence of reply from the Seller within three (3) Days following the notification received from the Buyer, such request shall be deemed as rejected and the Buyer shall be considered as performing the purchase of the Cargo under the Sale and Purchase Agreement. The Purchase Confirmation shall confirm the Purchase of the Shipment by the Buyer or by one of the Buyer's Nominees listed in the Specific Terms (if any).

The Purchase Confirmation shall be a legally binding agreement for the sale and purchase of Product made between the Buyer or the Buyer's Nominee, as the case may be, and the Seller. The Buyer, the Buyer's Nominee(s) (if any), and the Seller agree and consent to consolidate any arbitration proceedings brought under any relevant Purchase Confirmation and the Agreement in respect of any disputes concerning or arising out of or in connection with any Delivery even where such proceedings have only one party in common.

#### **B OBLIGATIONS OF THE BUYER AND THE BUYER'S NOMINEE**

The Buyer's Nominee nominated by the Buyer and accepted as per item A above by the Seller to perform the purchase of a Shipment under an Agreement agrees to observe, perform, discharge and be bound by all of the Buyer's liabilities and obligations under the Agreement (including, without limitations, all payment obligations of the Buyer under the Agreement) for a Shipment and to be bound by the terms of the Agreement in relation to the same in respect of the Shipment in every way as if the Buyer's Nominee was a party thereto for this purpose. All references to Buyer in the Specific Terms of the Agreement, the GTC and the Purchase Confirmation shall be read and construed as references to the Buyer's Nominee.

Notwithstanding the preceding paragraph, the Buyer specified in the Specific Terms shall continue to perform its obligations under the Agreement, shall remain liable for any breach of the Agreement and shall be jointly and severally liable with the Buyer's Nominee for the full performance of its obligations under the Purchase Confirmation. The Buyer shall indemnify the Seller against all liabilities, costs, expenses (including but not limited to legal fees), damages and losses that Seller suffers or incurs in connection with the Purchase Confirmation as a result of any failure by Buyer's Nominee and/or Buyer to perform its obligations under the Purchase Confirmation.

#### **C RIGHTS OF THE SELLER**

For the avoidance of doubt, the Seller (without prejudice to any other rights or remedies available to Seller) shall have the right, without any liability to the Buyer and/or to the Buyer's Nominee(s), to suspend or cancel a Delivery or Deliveries under the Agreement or to terminate the Agreement with immediate effect upon written notice to the Buyer in the event that: Buyer or Buyer's Nominee does not perform any material provision of the Purchase Confirmation, such failure including but not limited to:

- (i) the failure by Buyer or the Buyer's Nominee to pay any amounts due, owing, or payable under or in connection with this Agreement and/or the Purchase Confirmation, or to make arrangements in relation to payment;
- (ii) the failure by Buyer or the Buyer's Nominee to take receipt, during a period or at an agreed date, of any quantity of Product as provided for in the Agreement or any Purchase Confirmation; and/or
- (iii) the failure by Buyer or the Buyer's Nominee to do anything expressly or impliedly required under the Agreement to facilitate payment or Delivery and/or which results or could result in (i) or (ii) above.

If Seller exercises its right to terminate the Agreement in accordance with this item C, Buyer shall immediately pay Seller any and all amounts (whether or not then due) owing under the Agreement.

## APPENDIX 4

### EU DOCUMENTATION

#### A IMPORTS INTO THE EU FROM NON-EU MEMBER STATES

The following provisions apply where the Loading Terminal or, where the Product has been declared under T1 (the External Community Transit Procedure) or similar procedure in the EU member state where the Loading Terminal is located (or, if applicable, the country of origin of the Product) is located outside the EU and the Specific Terms provide that the Product shall be EU qualified.

- A1 If the Loading Terminal (or, if applicable, the country of origin of the Product) is located in a country with which the EU has a preferential agreement whereby the Product enjoys a generalised tariff preference, Seller shall provide to Buyer the relevant original qualifying document (e.g. GSP Form A, EUR 1) allowing Buyer to benefit from such tariff preference.
- A2 Buyer shall be responsible for providing such original qualifying document to the relevant local customs authorities, at the Discharge Terminal.
- A3 If Seller is unable to provide the relevant original qualifying document and, in consequence, Buyer is compelled by the relevant customs authorities to make payment of the corresponding duty, Seller shall reimburse such duty to Buyer against supporting documents, but as soon as the relevant qualifying document is subsequently delivered to Buyer, Buyer shall exercise all reasonable efforts to have it accepted by the relevant customs authorities, whereupon Buyer shall promptly pay to Seller the amount previously paid by Seller in respect of the duty.

#### B MOVEMENTS BETWEEN EU MEMBER STATES

The following provisions apply where the Loading Terminal and the Discharge Terminal are located inside the EU (except where the Product has been declared under T1 or similar procedure in the EU member state where the Loading Terminal is located).

- B1 Seller shall provide to Buyer the relevant original document (e.g. an INF3 or an AD) showing that the Product is EU qualified and therefore in free circulation within the EU and import duty is therefore not payable with respect to such Product.
- B2 Buyer shall be responsible for providing such original qualifying document to the relevant local customs authorities, at the Discharge Terminal.
- B3 If Seller is unable to provide the relevant original qualifying document and in consequence Buyer is compelled by the relevant customs authorities to make payment of the corresponding duty, Seller shall reimburse such duty to Buyer against supporting documents, but as soon as the relevant qualifying document is subsequently delivered to Buyer, Buyer shall exercise all reasonable efforts to have it accepted by the relevant customs authorities, whereupon Buyer shall promptly pay to Seller the amount previously paid by Seller in respect of the duty.

#### C PRODUCT IN TRANSIT UNDER THE EXTERNAL COMMUNITY TRANSIT PROCEDURE (T1)

The following provisions apply where the Loading Terminal is located in an EU member state where the Product has been declared under T1 or similar procedure and the Discharge Terminal is located inside the EU.

- C1 Seller shall provide to Buyer an original copy of the T1 transit declaration.
- C2 Buyer shall be responsible for providing such original declaration to the relevant local customs authorities, at the Discharge Terminal.

- C3 Buyer shall ensure that a copy of the transit declaration, receipt of which is officially acknowledged, is timely returned by the customs authorities in the member state where the Discharge Terminal is located to the customs authorities in the country of the Loading Terminal in a form acceptable to the latter, failing which Buyer shall indemnify Seller and hold Seller harmless from any and all liability in respect of any customs duty, excise duty, VAT or other tax or duty incurred by Seller, Seller's Supplier or the owner of the premises from which the Product is dispatched, including any interest, penalties or costs arising on such duties or taxes.

## **ADDENDUM 1**

### **EXW Deliveries**

- A Conformity of the Product** As per Incoterms 2010.
- B Licences, authorizations and formalities** As per Incoterms 2010.
- C Contracts of carriage and insurance** As per Incoterms 2010.

Following the transfer of risk and property in the Product, it shall be entirely at Buyer's risk, costs and duty to arrange for proper transport acceptable to the relevant storage company.

- D Delivery**

Subject to the provisions of the Agreement, Product will be delivered by Seller to Buyer, in bulk, EXW at the storage tank designated by the Seller at the Loading terminal and within the Loading Date Range as specified in the Specific Terms or as established in accordance with the procedure(s) specified in the Specific Terms.

Subject to section 11.2, Buyer shall make its own arrangements to take delivery of the Product from Seller's bonded storage tank pursuant to the standard operating procedures of the relevant storage company in use at the time of Delivery. However, if requested by the Buyer, Seller can assist Buyer in arranging loading operations without any liability whatsoever of the Seller for any cost, loss, damages and/or expenses (including liabilities to third parties) incurred by Buyer.

- E Transfer of risk and property**

Delivery of the Product supplied hereunder shall be deemed completed, risk and property in the Product and all liabilities with respect thereto shall pass to Buyer as from the moment when the Product passes the outlet flange of Seller's designated storage tank or at another point specified in the Specific Terms. At that point the Seller's (or its supplier's) responsibility shall cease and the Buyer shall assume all risks of loss or damage caused by the Product so delivered and all losses, damage, deterioration, evaporation, spills or other risks of the Product so delivered.

- F Division of costs**

Buyer will pay all costs (including but not limited to loading costs) related to the Product from the time the Product has been delivered to the Buyer. Buyer shall be solely responsible for all customs formalities, import duties, taxes and other charges payable upon the Product.

- G Notices** As per Incoterms 2010.

- H Proof of Delivery, transport document or equivalent electronic message** As per Incoterms 2010.

- I Inspection** As per sections 2 and 3.

- J Other obligations** As per Incoterms 2010.

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## **ADDENDUM 1**

### **FOB Deliveries**

- A Conformity of the Product** As per Incoterms 2010.
- B Licences, authorizations and formalities** As per Incoterms 2010.
- C Contracts of carriage and insurance** As per Incoterms 2010.

- D Delivery**

Subject to the provisions of the Agreement, Product will be delivered by Seller to Buyer, in bulk, FOB at the Loading Terminal. The Loading Date Range shall be the Day or range of Days in which the Buyer's nominated Vessel must tender NOR at the Loading Terminal. The Loading Date Range shall be as specified in the Specific Terms or established in accordance with the procedure(s) specified in the Specific Terms; and further narrowed down in the Nomination.

- E Transfer of risk and property**

Notwithstanding any right of Seller to retain the shipping documents until payment, Delivery of the Product supplied hereunder shall be deemed completed, risk and property in the Product and all liabilities with respect thereto shall pass to the Buyer as from the moment when the Product passes the flange connecting Seller's (or its supplier's) loading facilities to the Vessel's permanent hose connection (manifold) at the Loading Terminal. At that point the Seller's responsibility shall cease and the Buyer shall assume all risks of loss or damage caused by the Product so delivered and all losses, damage, deterioration, evaporation, spills or other risks of the Product so delivered.

- F Division of costs** As per Incoterms 2010.

- G Notices**

Before the Buyer appoints the carrier, it shall nominate the Vessel in line with section 4 and secure beforehand Seller's and Loading Terminal operator's acceptance, which shall not be unreasonably withheld.

When applicable, the Buyer shall arrange for the Vessel to notify the Seller or its representative at the Loading Terminal and, as the case may be, to the Seller's suppliers through the shipping agents at the Loading Terminal seventy-two (72), forty-eight (48) and twenty-four (24) hours in advance of the ETA stating the estimated date and hour of arrival.

- H Proof of Delivery, transport document or equivalent electronic message** As per Incoterms 2010.
- I Inspection** As per sections 2 and 3.
- J Other obligations** As per Incoterms 2010.

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## **ADDENDUM 1**

### **CFR Deliveries**

- A Conformity of the Product** As per Incoterms 2010.
- B Licences, authorizations and formalities** As per Incoterms 2010.
- C Contracts of carriage and insurance** As per Incoterms 2010.

The responsibility for securing cargo insurance on any Shipment, whether against marine, war or other risks, and the costs resulting therefrom shall rest wholly with Buyer.

Any and all costs in respect of war risk insurance for the Vessel's hull and machinery and for cargo in respect of the voyages to any of the Loading or discharge Terminals or any seas through which the Vessel has to travel in the performance of the Agreement, in excess of those prevailing at the date the Agreement is entered into, including any additional insurance or war risk insurance premium, as well as crew war bonuses or any other bonuses relating to the Shipment, shall be solely for the account of Buyer.

Seller reserves the right to refuse at any time:

- (i) to direct any Vessel to undertake or to complete the voyage to the Loading Terminal or Discharge Terminal if such Vessel is required in the performance of the Agreement:
  - (a) to transit or to proceed to or to remain in waters so that the Vessel concerned would be involved in a breach of any Institute Warranties (if applicable) or, in Seller's opinion, to risk its safety; or
  - (b) to transit or to proceed or to remain in waters where there is war (de facto or de jure) or threat thereof; or
- (ii) prior to the commencement of loading, to direct any Vessel to undertake the voyage to the intended Loading Terminal or Discharge Terminal if such Vessel is required in the performance of the terms of the Agreement to transit in waters which, in Seller's reasonably held opinion, would involve abnormal delay; or
- (iii) to undertake any activity in furtherance of the voyage which in the opinion of the Vessel's master could place the Vessel, its cargo or crew at risk.

If Seller agrees to direct a Vessel to undertake or to complete a voyage, Buyer undertakes to reimburse Seller, in addition to other amounts payable under the Agreement, for costs incurred by Seller in respect of any additional insurance premium (including those referred to above) and any other sums that Seller may be required to pay to the Vessel's owner, including but not limited to, any sums in respect of any amounts deductible under such owner's insurance and any other costs and/or expenses incurred by Seller.

### **D Delivery**

Subject to the provisions of the Agreement, the Product shall be placed by the Seller on board the Vessel procured by the Seller for carriage CFR from the Loading Terminal to the agreed Discharge Terminal.

Where a Loading Date Range is specified in the Specific Terms as further narrowed down in the Nomination, the Loading date Range shall be the Day or range of Days in which the Seller's nominated Vessel must tender NOR at the Loading Terminal and loading shall commence and complete as soon as reasonably practicable thereafter. The commencement of laytime at the Discharge Terminal shall be as set out in section 5.

Where no Loading Date Range is specified in the Specific Terms or where a Loading Date Range is specified as further narrowed down in the Nomination, and the Seller provides the Buyer with a date or range of dates as further narrowed down in the Nomination either expressly or impliedly indicating the date or range of dates within which the Vessel shall arrive at the Discharge Terminal (the "Discharge Date Range"), this Discharge Date Range shall be indicative only, made by the Seller as an honest assessment without guarantee. The Seller shall not assume any responsibility for the Delivery of the Product at the Discharge Terminal within such Discharge Date Range. The commencement of laytime at the Discharge Terminal shall be as set out in section 5.

**E Transfer of risk and property**

Notwithstanding any right of Seller to retain the shipping documents until payment, Delivery of the Product supplied hereunder shall be deemed completed, risk and property in the Product and all liabilities with respect thereto shall pass to the Buyer as from the moment when the Product passes the flange connecting Seller's (or its supplier's) loading facilities to the Vessel's permanent hose connection (manifold) at the Loading Terminal. At that point the Seller's (or its supplier's) responsibility shall cease and the Buyer shall assume all risks of loss or damage caused by the Product so delivered and all losses, damage, deterioration, evaporation, spills or other risks of the Product so delivered.

If the Vessel has commenced or completed loading prior to being nominated to and accepted by the Buyer pursuant to section 4, then, notwithstanding any right of the Seller to retain the shipping documents until payment, the property in the Product shall pass immediately upon receipt by the Seller of the Buyer's acceptance of such Nomination or as the Product passes the Vessel's permanent hose connection at the Loading Terminal, whichever is later and the risk in the Product delivered under the Agreement shall be deemed to have passed to the Buyer as the Product passes the Vessel's permanent hose connection at the Loading Terminal. At that point the Seller's (or its supplier's) responsibility shall cease and the Buyer shall assume all risks of loss or damage caused by the Product so delivered and all losses, damage, deterioration, evaporation, spills or other risks of the Product so delivered.

**F Division of costs** As per Incoterms 2010.

**G Notices**

When applicable, Seller will notify Buyer or its representative, Vessels ETA at the Loading terminal.

As soon as reasonably possible after loading, Seller will inform Buyer, Vessels ETA at the Discharge Terminal and further seventy-two (72), forty-eight (48) and twenty-four (24) hours in advance of the ETA stating the estimated date and hour of arrival at the Discharge Terminal. The Nominating Party shall give notice as soon as possible of any change(s) in the ETA of the Vessel nominated under the Agreement at the Loading Terminal notified pursuant to this item G. The Loading Date Range shall be revised only with the agreement of both parties. Any ETA at the Discharge Terminal given hereunder shall not place the Seller under any obligation to meet such date (other than to use reasonable endeavours to ensure that the contract of carriage is consistent with the meeting of such date) and, for the avoidance of doubt, in the case of CFR Delivery, shall not be construed as changing the nature of the Agreement.

**H Proof of Delivery, transport document or equivalent electronic message** As per Incoterms 2010.

**I Inspection** As per sections 2 and 3.

**J Other obligations** As per Incoterms 2010.

\*\*\*\*\*

## **ADDENDUM 1**

### **CIF Deliveries**

- A Conformity of the Product** As per Incoterms 2010.
- B Licences, authorizations and formalities** As per Incoterms 2010.
- C Contracts of carriage and insurance** As per Incoterms 2010.

Seller shall provide carriage of Product under transport documents, which may incorporate charter party conditions.

Seller shall procure and pay for cargo insurance against ALL RISKS for ONE HUNDRED AND TEN (110) per cent of the CIF value of the cargo. Such insurance shall: (i) operate from shore tank at the Loading Terminal to shore tank at the Discharge Terminal; (ii) be contracted with an insurance company of good repute; (iii) be in accordance with the ALL RISK cover as per Institute Cargo Clauses "A" of the Institute Cargo Clauses (cargo) (Institute of London Underwriters).

Any and all costs in respect of war risk insurance for the Vessel's hull and machinery and for cargo in respect of the voyages to any of the Loading or Discharge Terminals or any seas through which the Vessel has to travel in the performance of the Agreement, in excess of those prevailing at the date the Agreement is entered into, including any additional insurance or war risk insurance premium, as well as crew war bonuses or any other bonuses relating to the Shipment, shall be solely for the account of Buyer.

Seller reserves the right to refuse at any time:

- (i) to direct any Vessel to undertake or to complete the voyage to the Loading Terminal or Discharge Terminal if such Vessel is required in the performance of the Agreement:
  - (c) to transit or to proceed to or to remain in waters so that the Vessel concerned would be involved in a breach of any Institute Warranties (if applicable) or, in Seller's opinion, to risk its safety; or
  - (d) to transit or to proceed or to remain in waters where there is war (de facto or de jure) or threat thereof; or
- (ii) prior to the commencement of loading, to direct any Vessel to undertake the voyage to the intended Loading Terminal or Discharge Terminal if such Vessel is required in the performance of the terms of the Agreement to transit in waters which, in Seller's reasonably held opinion, would involve abnormal delay; or
- (iii) to undertake any activity in furtherance of the voyage which in the opinion of the Vessel's master could place the Vessel, its cargo or crew at risk.

If Seller agrees to direct a Vessel to undertake or to complete a voyage, Buyer undertakes to reimburse Seller, in addition to other amounts payable under the Agreement, for costs incurred by Seller in respect of any additional insurance premium (including those referred to above) and any other sums that Seller may be required to pay to the Vessel's owner, including but not limited to, any sums in respect of any amounts deductible under such owner's insurance and any other costs and/or expenses incurred by Seller.

### **D Delivery**

Subject to the provisions of the Agreement, the Product shall be placed by the seller on board the Vessel procured by the Seller for carriage CFR from the Loading Terminal to the agreed Discharge Terminal.

Where a Loading Date Range is specified in the Specific Terms as further narrowed down in the Nomination, the Loading Date Range shall be the Day or range of Days in which the Seller's nominated Vessel must tender NOR at the Loading Terminal and loading shall commence and complete as soon as reasonably practicable thereafter, even if this means loading is effected or completed outside the Loading Date Range. The commencement of laytime at the Discharge Terminal shall be as set out in section 5.

Where no Loading Date Range is specified in the Specific Terms or where a Loading Date Range is specified as further narrowed down in the Nomination, and the Seller provides the Buyer with a date or range of dates as further narrowed down in the Nomination either expressly or impliedly indicating the date or range of dates within which the Vessel shall arrive at the Discharge Terminal (the "Discharge Date Range"), this Discharge Date Range shall be indicative only, made by the Seller as an honest assessment without guarantee. The Seller shall not assume any responsibility for the Delivery of the Product at the Discharge Terminal within such Discharge Date Range. The commencement of laytime at the Discharge Terminal shall be as set out in section 5.

#### **E Transfer of risk and property**

Notwithstanding any right of Seller to retain the shipping documents until payment, Delivery of the Product supplied hereunder shall be deemed completed, risk and property in the Product and all liabilities with respect thereto shall pass to the Buyer as from the moment when the Product passes the flange connecting Seller's (or its supplier's) loading facilities to the Vessel's permanent hose connection (manifold) at the Loading Terminal. At that point the Seller's (or its supplier's) responsibility shall cease and the Buyer shall assume all risks of loss or damage caused by the Product so delivered and all losses, damage, deterioration, evaporation, spills or other risks of the Product so delivered.

If the Vessel has commenced or completed loading prior to being nominated to and accepted by the Buyer pursuant to section 4, then, notwithstanding any right of the Seller to retain the shipping documents until payment, the property in the Product shall pass immediately upon receipt by the Seller of the Buyer's acceptance of such Nomination or as the Product passes the Vessel's permanent hose connection at the Loading Terminal, whichever is later and the risk in the Product delivered under the Agreement shall be deemed to have passed to the Buyer as the Product passes the Vessel's permanent hose connection at the Loading Terminal. At that point the Seller's (or its supplier's) responsibility shall cease and the Buyer shall assume all risks of loss or damage caused by the Product so delivered and all losses, damage, deterioration, evaporation, spills or other risks of the Product so delivered.

#### **F Division of costs** As per Incoterms 2010.

#### **G Notices**

When applicable, Seller will notify Buyer or its representative of Vessel's ETA at the Loading Terminal.

As soon as reasonably possible after loading, Seller will inform Buyer of Vessel's ETA at the Discharge Terminal and further seventy-two (72), forty-eight (48) and twenty-four (24) hours in advance of the ETA stating the estimated date and hour of arrival at the Discharge Terminal. The Nominating Party shall give notice as soon as possible of any change(s) in the ETA of the Vessel nominated under the Agreement at the Loading Terminal notified pursuant to this item G. The Loading Date Range shall be revised only with the agreement of both parties. Any ETA at the Discharge Terminal given hereunder shall not place the Seller under any obligation to meet such date (other than to use reasonable endeavours to ensure that the contract of carriage is consistent with the meeting of such date) and, for the avoidance of doubt, in the case of CIF Delivery, shall not be construed as changing the nature of the Agreement.

#### **H Proof of Delivery, transport document or equivalent electronic message** As per Incoterms 2010.

#### **I Inspection** As per sections 2 and 3.

#### **J Other obligations** As per Incoterms 2010.

## **ADDENDUM 1**

### **DAP Deliveries**

- A Conformity of the Product** As per Incoterms 2010.
- B Licences, authorizations and formalities** As per Incoterms 2010.
- C Contracts of carriage and insurance** As per Incoterms 2010.

Any and all costs in respect of war risk insurance for the Vessel's hull and machinery and for cargo in respect of the voyages to any of the Loading or Discharge Terminals or any seas through which the Vessel has to travel in the performance of the Agreement, in excess of those prevailing at the date the Agreement is entered into, including any additional insurance or war risk insurance premium, as well as crew war bonuses or any other bonuses relating to the Shipment, shall be solely for the account of Buyer.

Seller reserves the right to refuse at any time:

- (i) to direct any Vessel to undertake or to complete the voyage to the Loading Terminal or Discharge Terminal if such Vessel is required in the performance of the Agreement:
  - (e) to transit or to proceed to or to remain in waters so that the Vessel concerned would be involved in a breach of any Institute Warranties (if applicable) or, in Seller's opinion, to risk its safety; or
  - (f) to transit or to proceed or to remain in waters where there is war (de facto or de jure) or threat thereof; or
- (ii) prior to the commencement of loading, to direct any Vessel to undertake the voyage to the intended Loading Terminal or Discharge Terminal if such Vessel is required in the performance of the terms of the Agreement to transit in waters which, in Seller's reasonably held opinion, would involve abnormal delay; or
- (iii) to undertake any activity in furtherance of the voyage which in the opinion of the Vessel's master could place the Vessel, its cargo or crew at risk.

If Seller agrees to direct a Vessel to undertake or to complete a voyage, Buyer undertakes to reimburse Seller, in addition to other amounts payable under the Agreement, for costs incurred by Seller in respect of any additional insurance premium (including those referred to above) and any other sums that Seller may be required to pay to the Vessel's owner, including but not limited to, any sums in respect of any amounts deductible under such owner's insurance and any other costs and/or expenses incurred by Seller.

### **D Delivery**

Product will be delivered at the Discharge Terminal and within the Discharge Date Range agreed in the Specific Terms as further narrowed down in the Nomination. The Discharge Date Range shall be the Day or range of Days in which the Seller's nominated Vessel must tender NOR at the Discharge Terminal.

### **E Transfer of risk and property**

Delivery of the Product supplied hereunder shall be deemed completed and risk and property in the Product and all liabilities with respect thereto shall pass to the Buyer as from the moment when the Product passes the permanent discharge manifold of the Vessel and the receiving hose at the Discharge Terminal. At that point the Seller's (or its supplier's) responsibility shall cease and the Buyer shall assume all risks of loss or

damage caused by the Product so delivered and all losses, damage, deterioration, evaporation, spills or other risks of the Product so delivered.

**F** **Division of costs** As per Incoterms 2010

**G** **Notices**

When applicable, Seller will notify Buyer or its representative of Vessels ETA at the Discharge Terminal. As soon as reasonably possible after loading, Seller will inform Buyer of Vessels ETA at the Discharge Terminal and further seventy two (72), forty-eight (48) and twenty-four (24) hours in advance of the ETA stating the estimated date and hour of arrival at the Discharge Terminal.

**H** **Proof of Delivery, transport document or equivalent electronic message** As per Incoterms 2010.

**I** **Inspection** As per sections 2 and 3.

**J** **Other obligations** As per Incoterms 2010.

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## **ADDENDUM 1**

### **DDP Deliveries**

- A Conformity of the Product** As per Incoterms 2010.
- B Licences, authorizations and formalities** As per Incoterms 2010.
- C Contracts of carriage and insurance** As per Incoterms 2010.

Any and all costs in respect of war risk insurance for the Vessel's hull and machinery and for cargo in respect of the voyages to any of the Loading or Discharge Terminals or any seas through which the Vessel has to travel in the performance of the Agreement, in excess of those prevailing at the date the Agreement is entered into, including any additional insurance or war risk insurance premium, as well as crew war bonuses or any other bonuses relating to the Shipment, shall be solely for the account of Buyer.

Seller reserves the right to refuse at any time:

- (i) to direct any Vessel to undertake or to complete the voyage to the Loading Terminal or Discharge Terminal if such Vessel is required in the performance of the Agreement:
  - (g) to transit or to proceed to or to remain in waters so that the Vessel concerned would be involved in a breach of any Institute Warranties (if applicable) or, in Seller's opinion, to risk its safety; or
  - (h) to transit or to proceed or to remain in waters where there is war (de facto or de jure) or threat thereof; or
- (ii) prior to the commencement of loading, to direct any Vessel to undertake the voyage to the intended Loading Terminal or Discharge Terminal if such Vessel is required in the performance of the terms of the Agreement to transit in waters which, in Seller's reasonably held opinion, would involve abnormal delay; or
- (iii) to undertake any activity in furtherance of the voyage which in the opinion of the Vessel's master could place the Vessel, its cargo or crew at risk.

If Seller agrees to direct a Vessel to undertake or to complete a voyage, Buyer undertakes to reimburse Seller, in addition to other amounts payable under the Agreement, for costs incurred by Seller in respect of any additional insurance premium (including those referred to above) and any other sums that Seller may be required to pay to the Vessel's owner, including but not limited to, any sums in respect of any amounts deductible under such owner's insurance and any other costs and/or expenses incurred by Seller.

### **D Delivery**

Product will be delivered at the Discharge Terminal and within the Discharge Date Range agreed in the Specific Terms as further narrowed down in the Nomination. The Discharge Date Range shall be the Day or range of Days in which the Seller's nominated Vessel must tender NOR at the Discharge Terminal.

### **E Transfer of risk and property**

Delivery of the Product supplied hereunder shall be deemed completed and risk and property in the Product and all liabilities with respect thereto shall pass to the Buyer as from the moment when the Product passes the permanent discharge manifold of the Vessel and the receiving hose at the Discharge Terminal. At that point the Seller's (or its supplier's) responsibility shall cease and the Buyer shall assume all risks of loss or



damage caused by the Product so delivered and all losses, damage, deterioration, evaporation, spills or other risks of the Product so delivered.

**F** **Division of costs** As per Incoterms 2010.

**G** **Notices**

When applicable, Seller will notify Buyer or its representative, Vessel ETA at the Discharge Terminal. As soon as reasonably possible after loading, Seller will inform Buyer, Vessels ETA at the Discharge Terminal and further seventy two (72), forty-eight (48) and twenty-four (24) hours in advance of the ETA stating the estimated date and hour of arrival at the Discharge Terminal.

**H** **Proof of Delivery, transport document or equivalent electronic message** As per Incoterms 2010.

**I** **Inspection** As per sections 2 and 3.

**J** **Other obligations** As per Incoterms 2010.

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