



**TOTSA TOTALENERGIES TRADING SA  
GENERAL TERMS & CONDITIONS FOR SALES AND  
PURCHASES OF PETROCHEMICALS PRODUCTS**

2020 edition  
Version 1.2

TRADING & SHIPPING

Please note that effective from 11<sup>th</sup> January 2023 (the “Effective Date”) the TOTSA TotalEnergies Trading SA General Terms and Conditions for Sales and Purchases of Petrochemical Products shall apply. This version cancels and supersedes the first edition and Version 1.1 of TOTSA Total Oil Trading SA General Terms & Conditions for Sales and Purchases of Petrochemicals Products (the “Previous GTCs”). Please disregard the Previous GTCs. Any reference during deal negotiations or in the Specific Terms to TOTSA TotalEnergies Trading SA General Terms and Conditions for Sales and Purchases of Petrochemical Products 2020 or similar shall be a reference to this Version 1.2.

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## DEFINITIONS

In the Agreement (as hereinafter defined), the following terms shall have, unless the context otherwise requires, the meaning defined below:

- **ADN** The European Agreement concerning the International Carriage of Dangerous Goods by Inland Waterways (ADN) adopted on 26 March 2000 on the occasion of a Diplomatic Conference held under the joint auspices of the United Nations Economic Commission for Europe (UNECE) and the Central Commission for the Navigation of the Rhine (CCNR).
- **Affiliate** A company or other legal entity which directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with a party. For this purpose "control" means the direct or indirect ownership of fifty per cent or more of the voting rights attached to the issued share capital of such company or other legal entity.
- **Agreement** The present General Terms and Conditions together with the Specific Terms and any agreed amendment(s) thereto.
- **Applicable Laws** All laws, statutes, regulations, ordinances, codes, rules, guidelines, orders, and permits of any governmental authority that apply to the parties or the subject matter of this Agreement.
- **Banking Day** A day upon which major banks are open for banking business in the place(s) where payment is required to be received hereunder.
- **Barge** (a) a self-propelled craft or towed/pushed dumb craft employed in port areas and sheltered waterways (inland barge), which is not classified as a sea-going vessel and/or (b) a towed/pushed dumb craft classified for estuary trade (estuary barge).
- **Berth** A berth, buoy, dock, anchorage, submarine line, single point or single berth mooring facility, offshore location, alongside vessels or lighters, floating storage or any other loading or discharge place as may be indicated by the party in question.
- **CET** Central European Time or Central European Summer Time, as appropriate.
- **CFR/CIF/DAP/FCA/FOB** Shall have the meaning ascribed thereto in the Incoterms® 2020 Rules (as amended from time to time), except as modified by the Agreement. If there is any inconsistency or conflict between the Incoterms and the Agreement, the Agreement shall prevail.
- **CIM** The Uniform Rules concerning the Contract of International Carriage of Goods by Rail.
- **CLP** 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, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006 (REACH).
- **CMR** The Convention on the Contract for the International Carriage of Goods by Road.
- **Credit Support** Any form of financial support as designated by Sellers, including but not limited to (1) an irrevocable standby letter of credit, (2) an irrevocable documentary letter of credit, (3) payment in advance (which shall be based on the Seller's estimated value of the Product plus 10%), (4) guarantee; or (5) any similar security, at Seller's sole discretion.

- <b>Declaration of Security</b>	As defined in the ISPS Code.
- <b>Discharge Dates</b>	As defined under sub-section <u>16.2</u> .
- <b>Discharge Terminal</b>	The place in a safe berth/safe port and/or the receiving facilities at which the Product is discharged or is to be discharged.
- <b>EMCS</b>	The Excise Movement Control System as established pursuant to the European Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty, any amendments thereto and any other subsequent successor or subordinate legislation.
- <b>ETA</b>	The estimated time of arrival. For Barges, ETA shall constitute one whole calendar day.
- <b>EU</b>	European Union.
- <b>EU qualified</b>	When the Product is or will be in free circulation within the EU and not subject to any import duties; "non-EU qualified" means Product that does not fall within the meaning of EU qualified.
- <b>FIP</b>	Free Into Pipeline.
- <b>Full Cargo Lot</b>	A quantity of Product under the Agreement which occupies all of a Vessel or Barge's operational capacity or which is the sole quantity on board and is loaded and carried without other cargo.
- <b>Importer of Record</b>	The entity responsible for ensuring that Products are imported in accordance with the law of the import jurisdiction.
- <b>Incoterms® 2020 Rules</b>	ICC Rules for the Use of Domestic and International Trade Terms, ICC Publication no. 715E, 2020 Edition. In case of inconsistency between said Incoterms and the Agreement, the Agreement shall prevail.
- <b>Indicative Discharge Dates</b>	For CFR or CIF deliveries, the date or range of dates within which the Vessel is intended to arrive at the Discharge Terminal.
- <b>Inert Gas System</b>	An inert gas system compliant with the requirements of SOLAS.
- <b>Institute Warranties</b>	the most recent warranties and/or navigating limits issued by the Institute of Chartered Underwriters in London.
- <b>International Ship Security Certificate</b>	As defined in the ISPS Code.
- <b>In writing</b>	A letter, e-mail or comparable means of communication.
- <b>Laytime</b>	The period of time allowed for loading/discharging the Product (as applicable).
- <b>Loading Terminal</b>	The loading in a safe berth/safe port and/or facility where the Product is loaded or is to be loaded.
- <b>Locomotive</b>	A self-propelled vehicle that runs on rails and is used for moving Rail Tank Cars.
- <b>L.O.I.</b>	Letter of Indemnity.
- <b>NCTS</b>	New Computerized Transit System.
- <b>N.O.R.</b>	Notice of Readiness that the Vessel has arrived at the Loading/Discharge Terminal and is in all respects ready to load/discharge the Product.
- <b>Original</b>	First issued copy, in hard or electronic format when applicable.
- <b>Part Cargo Lot</b>	A quantity of Product under the Agreement which is loaded and carried on a Vessel or Barge together with other quantity which is not bought or sold under the Agreement.

<b>- Product</b>	Such petrochemical product(s) and/or any other product as more specifically described in the Specific Terms and sold or nominated to be sold under the Agreement.
<b>- Rail Tank Car</b>	The rail tank car(s) and all equipment on the rail tank car(s).
<b>- Rail Tank Car Requirements</b>	The requirements (including, but not limited to contractual and legislative requirements) that the Loading Terminal and/or Discharge Terminal, as applicable and in force. Such requirements shall include but not be limited to those relating to i) health, safety, security and the environment; ii) personal protective equipment or technical requirements relating to the Rail Tank Cars and Locomotive(s); and iii) the required configuration(s) of the Rail Tank Cars and Locomotive(s).
<b>- REACH</b>	Regulation (EC) n°1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Regulation, Evaluation, Authorisation and Restriction of Chemicals substances (REACH), and its latest amendments.
<b>- SDS</b>	Safety Data Sheet containing the information set out in REACH and in CLP.
<b>- STS</b>	“Ship-To-Ship” means transshipment or lightering.
<b>- Supplier</b>	Any legal entity supplying, or expected by a party to supply, to that party directly or indirectly the Product, services or ancillary goods necessary to deliver the Product to the other party.
<b>- Shipment</b>	Any specific quantity of Product delivered or to be delivered under the Agreement as a Full Cargo Lot or a Part Cargo Lot.
<b>- SOLAS</b>	The International Convention for the Safety of Life at Sea 1974 (as amended).
<b>- Specific Terms</b>	All the specific terms relating to a particular sale or purchase which has been agreed upon orally or in writing, whether in the form of a written agreement, letter or other written form of communication (including e-mail or pdf document), in which the present General Terms and Conditions are incorporated.
<b>- Terminal Operator</b>	Any legal entity which at the time of loading/discharge is the operator of the loading/discharge facilities where the Product is i) loaded or is to be loaded; or ii) discharged or is to be discharged.
<b>- TTB</b>	Tankschiff Transport Bedingungen rules (latest edition).
<b>- Vessel</b>	Any mechanically propelled seagoing vessel including but not limited to tankers, ships, and coasters used for the transportation of Products over sea.
<b>- Vessel Presentation Range</b>	The day or range of days (or part thereof) in which the nominated Vessel/Barge must tender a valid N.O.R. at the Loading Terminal (or the day or range of days (or part thereof) in which the rail tanks cars / road tankers must arrive at the Loading Terminal, as applicable). Vessel Presentation Dates shall be either as specified for delivery in the Specific Terms or as established in accordance with the procedures set out, or referred to, in the Specific Terms or if not so specified or established, as notified by Seller to Buyer.
<b>- Working Day(s)</b>	A day other than a Saturday or Sunday or a public holiday in the jurisdiction of Seller's principal office.

## **PART 1 - FOB DELIVERIES**

### **.1. SUB-PART 1: IN RESPECT OF FOB DELIVERIES BY VESSEL**

#### **Section 1 – DELIVERY TERMS AND PASSING OF RISK AND PROPERTY**

1.1 The Product shall be delivered to Buyer in bulk FOB at the Loading Terminal, onto Vessel(s) to be provided by Buyer. In any event, risk and property in the Product and all liabilities with respect thereto shall pass to Buyer when the Product passes the flange connection between the delivery hose and the permanent hose connection of the Vessel at the Loading Terminal, at which point Seller's responsibility shall cease.

1.2 Notwithstanding the foregoing, and without limiting any other provisions of the Agreement, any loss of, or damage to, the Product occurring during or after the loading operations, which is caused by the Vessel, the Vessel's owner, or Buyer or any of their respective contractors, agents or employees, shall be for the account of Buyer.

1.3 Any claim made against Seller by Seller's Supplier or by the loading Terminal Operator or by any third party in respect of damage to any property of Seller's Supplier or any facilities at the Loading Terminal or to any property of any third party which is caused by the Vessel, the Vessel's Owner or their crew, or Buyer or any of their independent contractors, subcontractors, agents or employees shall be borne by Buyer. Buyer shall indemnify (including for the reasonable legal costs and disbursements which Seller incurs or becomes liable to pay), release and hold Seller harmless from liability for any and all claims or demands arising out of the above.

#### **Section 2 – VESSEL NOMINATION AND OTHER REQUIREMENTS**

2.1 Each Vessel which is to load Product under the Agreement (including, for the avoidance of doubt, any substituted Vessel) shall be nominated by the Buyer in the form specified below (the "Vessel's Nomination"). Such Vessel's Nomination shall be received by Seller no later than five (5) Working Days prior to the first day of the Vessel Presentation Range. In the event that the Agreement is entered into after the above deadline but prior to the first day of the Vessel Presentation Range, then the nomination must be received by the Seller as soon as practically possible.

2.2 The Vessel's Nomination must be given in writing to Seller 12:00 CET Monday to Friday. Nomination received after 12:00 CET Monday to Friday or on a non-Working Day shall be deemed to have been received at 09:00 CET on the following Working Day.

2.3 Unless otherwise specified in the Specific Terms, the Vessel's Nomination shall be made only by email (when Totsa TotalEnergies Trading SA is the Seller, nomination shall be sent to [opspetchems.gva@totsa.com](mailto:opspetchems.gva@totsa.com)). Vessel's Nominations made by phone or made by any other means of communication will be deemed not to have been received.

2.4 The Vessel's Nomination shall specify:

- a) The Vessel's name and specifications including but not limited to, the Vessel's flag, date built, length overall, beam, cargo tank capacity excluding slop tanks, draught and summer deadweight;
- b) The quantity and grade of the Product to be loaded and details of the cargo on board or to be co-loaded if the Vessel is to load a Part Cargo Lot and the loading temperature of the Vessel's cargo tanks;
- c) The Vessel's updated Q-88 form;
- d) The ETA of the Vessel at the Loading Terminal;
- e) The port(s) of discharge and country (ies) of destination if available;
- f) Where applicable, full written instructions needed by Seller to issue documents in accordance with regulations, including any export regulations in force, including but not limited to, an Electronic Administrative Document ("e-AD") where relevant;



- g) Demurrage rate applicable for the performing Vessel in accordance with sub-section 5.6. For the avoidance of doubt, the demurrage rate indicated in the Vessel's Nomination is given for information only and shall be without prejudice to sub-section 5.5;
- h) The specifications of the last three cargoes of the Vessel;
- i) Full documentary instructions regarding the particulars and destination to be inserted into the bills of lading and such other customary documentation which may be required; and
- j) Any other information reasonably requested by Seller or as may be required by the loading Terminal Operator from time to time, including, but not exclusively, in light of developments in law, statute, regulation or equivalent; and in any event in accordance with the applicable regulations in force at the Loading Terminal.

2.5 If the Vessel's Nomination is not received by Seller within the notice period specified above, Seller shall use reasonable efforts to obtain acceptance of such late nomination by the Loading Terminal or Seller's Supplier, but always without guarantee. In any event, Buyer shall be liable for all costs and losses resulting from any delays in loading the Product under the Agreement caused by or connected to such delay in receiving the Vessel's Nomination.

2.6 Where Credit Support is required by the Specific Terms, nominations will be deemed not to have been received until the time and date when Credit Support has been received and agreed by the Seller.

2.7 Each Vessel which is to load Product under the Agreement (including, for the avoidance of doubt, any substituted Vessel) shall be subject to Seller's and Loading Terminal's acceptance (including vetting). Unless otherwise specified in the Specific Terms, Seller may refuse the nominated Vessel by written notice to Buyer no later than two (2) Working Days after receipt of Vessel's Nomination. In case of rejection, Buyer shall promptly nominate an alternative Vessel.

2.8 Notwithstanding any prior acceptance of such Vessel, Seller shall have the right (which right may be only exercised prior to the passing of risk and property hereunder) to reject the Vessel (i) if the Loading Terminal rejects the Vessel; or (ii) on any reasonable ground if such Vessel is involved in an incident or more recent information regarding such Vessel becomes available to Seller at any time after such prior acceptance.

2.9 In the event of a rejection or a delay of the Vessel or other restriction suffered in respect of the Vessel by virtue of the application of any regulations or other applicable requirements of this Section 2:

The Seller shall not be liable for the consequences of rejection, delay or restriction of the Vessel, including demurrage;

The Buyer shall be liable for any costs and/or damages incurred by the Seller arising out of any such rejection of, delay to or restriction of the Vessel; and

The Buyer's obligations under the Agreement to nominate a suitable Vessel and to ensure that it tenders N.O.R. at the Loading Terminal in accordance with sub-section 3.2 shall be unaffected.

Buyer may, at any time prior to tendering N.O.R., if necessary to perform its obligations hereunder, substitute for the Vessel previously nominated (including where such vessel has been accepted by the Buyer) another Vessel whose size and capacity are equivalent to those of the Vessel originally nominated and, if relevant, accepted. The loading quantity and the Vessel Presentation Range in respect of the Vessel originally nominated or agreed shall apply to the substitute Vessel.

2.10 If required, Buyer shall promptly answer or cause the Vessel's owner to answer any questionnaire for the nominated or substituted Vessel as submitted by Seller. If any response as provided by, or on behalf of, Buyer or the Vessel's owner proves to be inaccurate, Seller shall be entitled at any time to reject forthwith a previously accepted Vessel and Buyer shall indemnify Seller and/or Seller's Supplier against any losses and costs incurred by Seller and/or Seller's Supplier, including but not limited to, any demurrage payable in respect of other Vessels waiting at the Loading Terminal.

Buyer also represents and confirms that the Vessel complies with the applicable requirements set out in Appendix 2.

2.11 Buyer represents and confirms at the time of each Vessel's Nomination that it is familiar with the latest vessel size limitations/restrictions, including but not limited to, deadweight, draught, beam, overall length and any other vessel limitations/restrictions in force at the Loading Terminal and repeats such representation and confirmation at the time of arrival. Buyer indemnifies Seller for any costs, damages or liability arising out of the Vessel exceeding, or otherwise failing to comply with, such limitations/restrictions.

2.12 If the effective date of the Specific Terms is later than any of the dates for notification, nomination(s) and procedures specified in the Specific Terms or this Section 2, then both Parties shall make best efforts to complete as soon as practically possible any outstanding time limited requirements, notifications, nominations and procedures on such party which would have preceded the date of the Agreement aforesaid. Any loss, cost and/or expense arising out of the failure to comply with this sub-section shall be borne by the responsible party.

### **Section 3 - ARRIVAL OF VESSEL AT THE LOADING TERMINAL**

3.1 Buyer shall advise the loading Terminal Operator at the Loading Terminal (copy to Seller) of the ETA of the Vessel at the Loading Terminal at least seventy two (72), forty eight (48), twenty four (24) hours and twelve (12) hours before arrival, and/or as otherwise required by the rules and regulations applicable at the Loading Terminal, advising promptly any variation of more than four (4) hours to the last ETA given.

3.2 Buyer shall ensure that the Vessel shall, within the Vessel Presentation Range and within any time limit prescribed in the regulations, procedures and requirements referred to in sub-section 1.10 of Appendix 2: (i) arrive at the Loading Terminal, complete formalities and in all respects be ready to load the Shipment, and (ii) tender a N.O.R. to Seller and Loading Terminal. Compliance with sub-section 1.10 of Appendix 2 will be a condition on the validity of the N.O.R. tendered by the master or his representative.

3.3 Any change in the ETA notified by the Seller to the Buyer in accordance with sub-section 3.1 shall not affect the Vessel Presentation Range, which shall be revised only with the Seller's specific written agreement. The giving or withholding of such agreement shall be at Seller's absolute discretion.

### **Section 4 - LOADING OF VESSEL AT THE LOADING TERMINAL**

4.1 Provided that the Buyer nominates a Vessel that complies with all the requirements set out in sub-section 2.11 (including but not limited to characteristics, dimensions and draught) from time to time in force at the Loading Terminal, the Seller or its representative shall nominate a loading safe Berth fit for the Vessel to proceed thereto, lie thereat, load the Product and depart therefrom, always afloat.

4.2 Seller may, at its sole discretion, require the Vessel to shift from a safe Berth to another safe Berth, in which case the costs of shifting Berth shall be for Seller's account and the time used for shifting shall be counted as used Laytime or if the Vessel is on demurrage as time on demurrage. In any event, any shifting which has become necessary due to any Vessel's compliance failure will be at the cost and/or time of Buyer.

4.3 Subject to Buyer complying with the provisions of sub-section 3.2 above, Seller, having regard to the regulations, procedures and requirements referred to in sub-section 1.10 of Appendix 2 and the time when Buyer complied with the provisions of sub-sections 3.1 and 3.2 above, shall commence loading as soon as reasonably practicable, even if this means that loading is effected or completed outside the Vessel Presentation Range.

4.4 Notwithstanding anything else to the contrary in the Agreement and in addition to any other rights of Seller, in the event of:

- a) Any breach by Buyer of the obligations set out in sub-section 3.2 above; or
- b) Any withdrawal of a Vessel already scheduled and accepted; or
- c) Seller's availability of the Product being lost or curtailed due to any breach of Buyer's contractual obligations;

then Buyer shall indemnify Seller for all costs, losses, damages and/or expenses (including those to be paid by Seller to Seller's Supplier and loading Terminal Operator) incurred by Seller and/or Seller's Supplier as a result thereof and Seller shall be under no obligation to supply any undelivered quantity of Product.

At Seller's option, the undelivered quantity of Product shall be deducted from the total quantity of Product deliverable under the Agreement.

#### 4.5 Lightering

- 4.5.1 Either party may request to load the Vessel from lighters with such request subject to acceptance by the non-requesting party, such acceptance not to be unreasonably withheld.
- 4.5.2 If the Loading Terminal requires the Buyer's Vessel to be loaded from a lighter or, if Seller requests to load the Vessel from a floating storage facility or from another vessel by means of STS transfer including but not limited to lightering purpose, this shall be subject to Buyer's Vessel and loading Terminal Operator's acceptance. The Buyer may, on any reasonable grounds and without liability, refuse the use of such lighter for the purpose of loading its nominated Vessel.
- 4.5.3 The Seller shall notify the place of lightering to the Buyer, which shall be subject to approval of the Buyer, such approval not to be unreasonably withheld. The place of lightering shall be deemed to be the Berth for the purposes of the present Section and all references therein to the Berth shall be construed accordingly.
- 4.5.4 In the event of lightering required by the Loading Terminal or requested by the Seller and accepted by Buyer, the cost of such lightering shall be for the Seller's account (including any additional costs including but not limited to additional steaming and/or waiting time). The risks and expenses thereof shall be exclusively for Seller's account and Seller shall be liable to Buyer in respect of any losses, costs, damages and proceedings arising therefrom and shall indemnify Buyer in respect thereof.
- 4.5.5 In the event of lightering requested by the Buyer and accepted by Seller, the cost of such lightering shall be for the Buyer's account (including any additional costs including but not limited to additional steaming and/or waiting time (weather or sea conditions permitting or not)).
- 4.5.6 All time expended in connection with any such lightering shall count as running hours for the purposes of calculating the liability for demurrage.
- 4.5.7 Any lighter, floating storage facility or Vessel, or provider thereof, involved in loading from floating storage or STS operation, as applicable, must be acceptable to the Seller, the Vessel owner and the Buyer and remain acceptable throughout the duration of said operation. Seller shall likewise nominate a STS provider acceptable to Buyer and charterers to supervise STS operations. Seller undertakes not to commence STS operation until such approvals are received.
- 4.5.8 Any loading from floating storage, STS operations shall be carried out in accordance with the procedures set out in the ICS / OCIMF Ship-to-Ship Transfer Guide and MARPOL Annex 1 as amended by resolution MEPC.186 (59), Chapter 8: Prevention of Pollution during Transfer of Oil Cargo between Oil Tankers at Sea, Regulations 40, 41 and 42 for the transfer of Crude Oil and Petroleum Products, or any modifications thereto.

Seller shall warrant that, at the STS location, there is no prohibition or restriction on STS operations at the port/place at which the Vessel is ordered to perform STS transfer and further that it has obtained any/all necessary local approvals or licenses to carry out operations at the agreed port/place.

- 4.9 All taxes, duties, fees, charges (including, without limitation, pilotage, mooring and towage expenses) and dues (including, without limitation, quay dues) of any description whatsoever in respect of the Vessel incurred at the Loading Terminal shall be for the account of Buyer. Buyer shall likewise assume and be responsible for payment of any taxes, duties, fees, charges and dues of every description whatsoever imposed or levied by any governmental, local or port authority on, or applicable, attributable or related to, the Product or its delivery, transportation, ownership, sale or use, in respect of any stage after the risk in such Product has passed to Buyer and the amount of the same shall be for the account of Buyer.

## **Section 5 - LAYTIME AND DEMURRAGE**

5.1 Unless otherwise specified, Seller shall be allowed half of the Vessel's charter party laytime allowance or, if different, the time set out in the Specific Terms, pro rata for part cargoes (i.e. based on that proportion of such time which the Shipment bears to the total quantity of cargo loaded on the Vessel at the Loading Terminal or terminals) at each Loading Terminal, Sundays, holidays and nights included, unless loading on Sundays, holidays or during the night is prohibited by the laws, regulations or procedures in force at the Loading Terminal.

5.2 Subject to the strict compliance of the Buyer and its Vessel with all the regulations, procedures and requirements referred to in sub-section 1.10 of Appendix 2, and subject to the Vessel having arrived at the Loading Terminal, completed all formalities and is ready, weather and sea conditions permitting, Laytime shall start running:

- a) If the N.O.R. is tendered within the Vessel Presentation Range, (i) six (6) hours after N.O.R. is tendered; or (ii) upon commencement of loading, whichever occurs first;
- b) If the N.O.R. is tendered before the beginning of the Vessel Presentation Range, (i) at 6:00 a.m. CET on the first day of the Vessel Presentation Range, or (ii) upon commencement of loading; whichever occurs first.

5.3 Without prejudice to any other rights of Seller under the Agreement, if the N.O.R. is tendered after the last day of the Vessel Presentation Range, Seller shall be under no obligation to supply the Product which would have been loaded on Buyer's Vessel unless Seller specifically agrees to do so, in which case Laytime shall begin upon commencement of loading.

5.4 Laytime or time on demurrage shall end on disconnection of loading hoses after completion of loading. The Vessel shall vacate her loading Berth as soon as loading hoses have been disconnected after completion of loading. In the event of failure to do so, Buyer shall pay Seller for any resulting demurrage, losses, damages, costs and/or expenses which Seller may incur including, without limitation, any demurrage as may be incurred by Seller or Seller's Supplier due to resulting delay to other vessels awaiting their turn to load.

5.5 Any time spent and/or lost due to any of the following events shall not count as used Laytime or, if on demurrage, as time on demurrage:

- a) The inward passage to the loading Berth;
- b) Any delay due to fault, failure or inefficiency of the Vessel;
- c) Handling of ballast or slops or bunkering when not concurrent with loading operations;
- d) Restrictions imposed by the Vessel's owner, charterer or master of the Vessel;
- e) Any breakdown of the Vessel's equipment or failure to comply with the requirements of the Loading Terminal with respect to equipment aboard or any other matter causing delay or restriction to loading operations; or
- f) Any on board strike by members of the crew.

5.6 Seller shall pay demurrage to Buyer per running hour and pro rata for a Part Cargo Lot for all time used in excess of the allowed Laytime as provided for in the Agreement. The applicable demurrage rate shall be (in order of priority):

- i. The demurrage rate specified in the Specific Terms; or, in the absence of such rate;
- ii. The demurrage rate per day (or pro rata for part of a day) provided for in the charter party / fixture recap entered into for the carriage of the Product (supporting charter party / fixture recap document to be provided) hereunder as specified in the Vessel's Nomination under sub-section 2.4 (g); or
- iii. For time chartered vessels and / or in case no charter party / fixture recap or no demurrage rate is available, the demurrage rate per day shall be mutually agreed by the Buyer and the Seller and specified in the Vessel's Nomination.

The demurrage rate referred to above shall be used when the Vessel is owned, demise chartered or time chartered by Buyer.

#### 5.7 Part cargoes

Seller shall not be liable for waiting or loading time or delay relating to loading of any other product than the Product. Time shall only count as used Laytime or demurrage in respect of Product to be loaded with product from other suppliers:

- a) Whilst waiting to berth at a Berth at which Product is to be loaded;
- b) During loading of Product;
- c) During shifting between Berths to load Product; and/or
- d) During any other periods of delay for which Seller is expressly responsible under the Agreement.

In the event that a particular part cargo other than the Product is directly responsible for the Vessel not qualifying to berth, all time lost before berthing as a result of the delay will be borne by Buyer and shall not count as used laytime or demurrage.

If Part Cargo Lot is delivered and such delivery is loaded together with Product being delivered to the Buyer by another supplier at the same Berth, the Seller shall only be liable for that proportion of the demurrage equal to the ratio of the volume delivered by the Seller to the total volume loaded onto the Vessel at that Berth.

5.8 Loading shall be deemed completed and time shall cease to run upon disconnection of loading hoses. However, time shall recommence two (2) hours after disconnection of hoses if the Vessel is delayed in its departure solely due to Seller's or Seller's supplier's purposes and shall continue until the termination of such delay.

### **Section 6 - QUANTITY AND QUALITY DETERMINATION**

6.1 Unless otherwise agreed between the Parties in the Specific Terms, where the Loading Terminal is operated by Seller (or Seller's Affiliate):

- a) The measurement of the quantities and the taking of samples and analysis thereof shall be carried out by the Terminal Operator in accordance with the latest industry standards in use at the Loading Terminal at the time of loading, unless otherwise provided for in the Specific Terms. The Terminal Operator will issue a certificate of quality and quantity (or such other equivalent documents) which shall be conclusive and binding on both parties, except in case of fraud or manifest error.
- b) Where the Specific Terms provide for the appointment of an independent inspector at the Loading Terminal, the quality and/or quantity of the Product as ascertained or witnessed by such independent inspector shall, except in case of fraud or manifest error, be conclusive and binding on both Parties and the provisions stipulated in sub-section 6.2 below shall apply.

6.2 Where the Loading Terminal is not operated by Seller (or Seller's Affiliate):

- a) The measurement of the quantities and the taking of samples and analysis thereof shall be ascertained or witnessed by an independent inspector jointly appointed by the Buyer and Seller in accordance with latest industry standards. Certificates of quantity and quality so issued shall be conclusive and binding on both parties, except in case of fraud or manifest error.
- b) The Seller shall use all reasonable endeavours to enable the independent inspector so appointed to have full access to the facilities at the Loading Terminal necessary to perform his duties. The independent inspector's report shall be made available to both Parties and all charges in respect of such inspection shall be shared equally between the Parties, unless otherwise provided for in the Specific Terms.

6.3 Notwithstanding sub-sections 6.1(b) or 6.2, if no independent inspector is in attendance through no fault of the Seller, save fraud or manifest error, the quantity binding on both parties shall be determined through the measuring devices available at the Loading Terminal and the quality binding on both parties shall be based on the last certificate of quality made available by Seller for the Product to be loaded.

6.4 The quantity of Product as determined in accordance with this Section 6 (or, where applicable, the Specific Terms) shall be inserted in the certificate of quantity for the Product as per latest industry standards at the Loading Terminal at the time of loading and that quantity shall be used to calculate Seller's invoice.

6.5 The Seller provides no guarantee, warranty, condition or undertaking that the Product shall remain of the quality, specification, condition or quantity so determined at any time after the quality is determined pursuant to this Section.

## **Section 7 - DOCUMENTS**

Seller shall deliver to Buyer Original bills of lading, which may be by means of hand delivery, courier or by mutually agreed means of delivering electronic bills, and certificates of quantity, quality and a commercial invoice.

Upon Buyer's request, Seller shall also provide a certificate of origin in accordance with sub-section 52.2 E, as well as any relevant tax document(s).

In the event that the Original bills of lading or other equivalent carriage documents are not delivered to Buyer on or before the due date for payment, Buyer undertakes to pay Seller upon presentation, by means of courier or email, of an invoice and of Seller's L.O.I. in the form set out in Appendix 1.

In the event the bill of lading format includes two differing dates, the "date shipped on board" will be the deemed bill of lading date for pricing, invoicing, payment and time-bar purposes.

## **SUB-PART 2 : IN RESPECT OF FOB DELIVERIES BY BARGES**

### **Section 8 - APPLICABILITY**

Where the Agreement is to sell and deliver Product on FOB terms on board a Barge in North West Europe, the provisions of Sub-Part 1 of PART 1 of the General Terms and Conditions shall apply, where appropriate, subject to the additions and amendments set out in this Sub-Part 2.

For the purposes of this Sub-Part 2, all references to a Vessel or Vessels in Sub-Part 1 shall refer to a Barge or Barges. All references in Sub-Part 1 to tendering or receiving N.O.R. shall mean making or receiving the Barge master's announcement of the Barge's arrival at the Loading Terminal when the Barge is at the customary waiting area at the Loading Terminal. All references to bill of lading shall mean the loading document issued by the master of the Barge.

### **Section 9 - BARGE NOMINATION AND OTHER REQUIREMENTS FOR BARGES**

9.1 Each Barge which is to load Product under the Agreement (including, for the avoidance of doubt, any substituted Barge) shall be nominated in writing by Buyer to Seller (the "Barge Nomination"). Barge Nomination shall be received by Seller no later than five (5) Working Days prior to the ETA.

Notwithstanding the above, TBN nominations are acceptable provided Seller receives nominations in respect of sub-sections 9.2 (c), (d), (f), (l) and (m) below no later than THREE (3) Working Days prior to the ETA.

9.2 The Barge Nomination shall specify:

- a) The Agreement reference number of Seller;
- b) The Loading Terminal;
- c) The name of Barge and its registration number;
- d) The name of the Barge's owner/operator and/or the name of the carrier (if different) and the name and address of the consignor (i.e. charterer of the Barge) according to the ADN;
- e) The actual quantity narrowed to within any applicable minimum/maximum tolerances and the grade of the Product to be loaded;
- f) The last three cargoes of the Barge;
- g) The origin and status of the Product;
- h) The place of final destination of the Barge, including full details necessary to comply with the requirements of EMCS, and must include (without limitation) full details (name, address and excise licence number) of the relevant excise licence holder (authorised warehouse keeper) and the tax warehouse itself;
- i) Where the Product has not been released for free circulation in the EU (i.e. has T1 status), the Buyer must provide sufficient information about the Product's destination as to enable the Seller to comply with the EU Community Transit rules, including by the use of the NCTS;
- j) Buyer's VAT number and country of such VAT registration, Product consignee's name, excise and VAT number, custom excise number, and any other information needed to issue loading documents in accordance with regulations in force;
- k) The fiscal agent (if applicable);
- l) The ETA of the Barge at the Loading Terminal (only one day acceptable, nominations for two or more loading days will not be accepted);
- m) The demurrage rate applicable for the performing Barge (the transportation agreement demurrage rate, or in case of time charter agreement, the demurrage rate shall be the Binnenschiffahrtsgesetz (latest edition) rate applicable to a Barge with the size and capacity equivalent to the loading document quantity. For the avoidance of doubt, the acceptance of the

Barge Nomination shall not entail acceptance of the demurrage rate indicated by Buyer and shall be without prejudice to the provisions of Section 10; and

- n) Any other necessary information (fiscal or otherwise) reasonably requested by the Seller including, but not limited to, information required by law, statute or regulation from time to time in force.

For the purposes of calculating deadlines under this sub-section 9.2, Barge nominations must be received by Seller before 15:00 hours CET on a local Working Day, before 14:00 hours CET on Fridays and on the day preceding any days which are not local Working Days. Barge Nominations in breach of the above shall be deemed to have been received at 09:00 CET time on the following Working Day.

Barge Nominations shall be sent by email to Seller (when Totsa TotalEnergies Trading SA is the Seller, nomination shall be sent to opspetchems.gva@totsa.com). Barge Nominations made by phone or made by any other means of communication will be deemed not to have been received.

Where applicable, nominations will be deemed not to have been received until the time and date any Letter of Credit (as defined under sub-section 39.10) required under the Agreement or by the Seller in accordance with sub-section 39.10 has been received and agreed by the Seller.

9.3 Any amendment received to any of the information stipulated under sub-section 9.2 will be treated as a new nomination (except for amendments in respect of sub-section 9.2 (a)).

9.4 Seller shall rely on the information given by Buyer to Seller under this sub-section 9.2, and Buyer shall take reasonable care to ensure that such information is accurate and complete.

9.5 Each Barge which is to load Product under the Agreement (including, for the avoidance of doubt, any substituted Barge) shall be subject to Seller's and Loading Terminal's acceptance (including vetting), Seller's acceptance shall not be unreasonably withheld.

Unless otherwise specified in the Specific Terms, Seller shall notify Buyer as soon as practicable after receipt of Buyer's nomination whether Seller accepts or refuses such nomination. In case of rejection, Buyer shall promptly nominate an alternative Barge for Seller's acceptance or rejection.

9.6 Notwithstanding any prior acceptance of such Barge, Seller shall have the right to reject the Barge (i) if the Loading Terminal rejects the Barge; or (ii) on any reasonable ground if such Barge is involved in any incident or more recent information regarding such Barge becomes available to Seller at any time after such prior acceptance.

9.7 Where Buyer, acting in accordance with the provisions of the Agreement, seeks to nominate a substitute for a Barge previously nominated, such substitute Barge must have a size and capacity equivalent to those of the Barge originally nominated. This shall be treated as a new Barge Nomination in accordance with sub-section 9.3.

The loading quantity and the Vessel Presentation Range in respect of the Barge originally nominated shall apply to the substitute Barge.

9.8 Buyer confirms that (for each Barge nominated to load a Shipment) it is familiar with the latest Barge size limitations/restrictions, including but not limited to, deadweight, draught, beam, overall length and any other Barge limitations/restrictions in force at the Loading Terminal at the time of delivery, and Buyer is solely responsible to ensure that the Barge will not exceed, or otherwise fail to comply with, such limitations/restrictions.

9.9 All applicable governmental, local and port authority regulations, Seller's, Seller's Supplier's and/or Loading Terminal Operator's regulations, procedures and any other requirement of any nature whatsoever in force at the Loading Terminal at the time of delivery shall apply to Buyer's Barge (including for determining at what time and date the Barge Master's announcement of the Barge's arrival at the Loading Terminal is effective for the purposes of the Agreement).

9.10 Notwithstanding any prior acceptance of the Barge by Seller and notwithstanding anything to the contrary express or implied in this Section 9 or in Section 10, if at any time the Barge fails to comply with any of the requirements set out in Section 11 below, Seller or Seller's Supplier or Loading Terminal Operator may at any time refuse to berth or load or continue to load the Barge and all time lost or spent as a result thereof shall not count as used laytime, or if the Barge is on demurrage, as demurrage, and Buyer shall be obliged to



substitute the Barge with a Barge whose size and capacity are equivalent to those of the Barge originally nominated and complying with such requirements. Any resulting delay or expenses shall be for Buyer's account (including but not limited to, any time lost or demurrage incurred in respect of Buyer's Barge and any demurrage incurred by Seller or Seller's Supplier in respect of other Barges waiting at the Loading Terminal).

9.11 Buyer acknowledges and agrees that loading is to be made on a first to arrive, first loaded basis and that in consequence all Barges arriving prior to Buyer's Barge for loading at the Loading Terminal in the same Vessel Presentation Range shall be loaded prior to Buyer's Barge.

## **Section 10 - LAYTIME AND DEMURRAGE FOR BARGES**

10.1 Unless otherwise specified in the Specific Terms, the time allowed for loading shall be one half of the total free hours for loading and discharging specified in the Tankschiff-Transportbedingungen Terms and Conditions (latest edition) or its successor ("TTB Rules") for the quantity of the Product loaded for each delivery to the Buyer under the Agreement.

10.2 Partial hours reached in the calculated loading time shall be rounded up to the closest full hour.

10.3 In case of "Push and Pull Combination" (Barge – pusher), each unit will be considered separately and the total Laytime available will be the sum of both allowances.

10.4 Subject to the regulations, procedures and requirements referred to in sub-section 1.10 of Appendix 2 and strict compliance by Buyer and Barge with all provisions of the Agreement, Laytime shall start:

(a) If the Barge arrives at the Loading Terminal within the agreed ETA in case of a Loading Terminal with 24-hour operation (or before 16:00 CET time Monday to Friday / 13:00 CET time Saturday in case of a Loading Terminal without 24-hour operation), on the later of:

- i. The arrival of the Barge; or
- ii. The expiry of the five (5) Working Days notice period required for Barge nomination set out in sub-section 9.1 or upon commencement of loading, whichever is earlier;

(b) If the Barge arrives at the Loading Terminal before the ETA, on the later of:

- i. 00:01 a.m. CET time on the date of the agreed ETA; or
- ii. The expiry of the five (5) Working Days notice period required for Barge nomination set out in sub-section 9.1 or upon commencement of loading, whichever is earlier; or

(c) If the Barge arrives at the Loading Terminal after the agreed ETA and/or after the Vessel Presentation Range in case of a Loading Terminal with 24-hour operation (or before 16:00 CET time Monday to Friday / 13:00 CET time Saturday in case of a Loading Terminal without 24-hour operation), then time shall not start until commencement of loading.

10.5 For the purpose of calculating demurrage due under this Agreement, Laytime shall be treated as reversible and, in particular, any Laytime unused (as per Barge's transportation agreement) in the discharging operation shall be added to the time allowed for loading.

10.6 Laytime or, if the Barge is on demurrage, time on demurrage shall end:

- i. As soon as the loading documents have been placed on board the Barge; or
- ii. If the receipt of documents on board is not recorded on the Loading Terminal timesheet, then two (2) full hours after loading is completed or hoses are disconnected, whichever is the latest event recorded on the Loading Terminal timesheet.

Under no circumstances shall Laytime or demurrage end after the departure of the Barge as indicated on the Loading Terminal timesheet.

For the purposes of calculating demurrage due under this Agreement, time allowed for loading shall not start to run earlier and/or end later than stated in the Barge owner's demurrage calculation.

10.7 The Barge shall vacate her loading Berth as soon as loading documents have been placed on board the Barge or have been received electronically (but always subject to considerations of safety of the barge

and its crew). In the event of failure to do so, Buyer shall pay Seller for any resultant demurrage, losses, damages, costs and/or expenses which Seller may incur, including, without limitation, any demurrage as may be incurred by Seller or Seller's Supplier due to resulting delay of other Barges or vessels awaiting their turn to load.

10.8 Seller has the right to verify the exact location of the Barge from time to time after the Barge has tendered N.O.R. and Buyer shall provide Seller promptly with any reasonably requested information with respect to the Barge's physical location and status.

10.9 Seller shall pay demurrage to Buyer for each running hour and pro rata for any part thereof for all time used in excess of the allowed Laytime.

Subject to the following, unless a demurrage rate is specified in the Specific Terms, the applicable demurrage rate shall be the transportation agreement rate specified in the Barge nomination as mentioned under sub-section 9.2 (i). In the event of time charter agreement, the demurrage rate shall be the Binnenschiffahrtsgesetz (latest edition) rate applicable to a Barge with the size and capacity equivalent to the loading document quantity.

#### **Section 11 - REQUIREMENTS FOR BARGES AND ADN DOCUMENT**

For each Barge specified in, or nominated under, the Agreement to carry a Shipment, Buyer shall ensure that the Barge:

- a) 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) in a P and I Club which is a member of the International Group of P and I Clubs;
- b) has in place (throughout the entire period of the voyage to and from the Loading Terminal and up to discharge of the Product) insurance cover for Product pollution in an amount of no less than the highest standard Product pollution cover available under the rules of the International Group of P and I Clubs; shall have (where applicable) a valid ADN Original certificate of approval on board and has in place security procedures on board in compliance with ADN article 1. 10 and shall be equipped with an operational overfill protection system complying with ADN regulations
- c) has hull, machinery, boilers, tanks, equipment and facilities which are in good order and condition, in every way fit for the service required and fit to load and carry the Shipment;
- d) has on board fully qualified, experienced and efficient master, officers and crew;
- e) has the cargo tanks adequately clean and suitable prior to receiving the Shipment; and
- f) has on board an EBIS certificate not older than one year.

#### **Section 12 - DOCUMENTS**

Any document to be provided under Section 7 may be provided by email or other electronic means unless otherwise specifically requested by Buyer.

## **PART 2 - CIF, CFR AND DAP DELIVERIES**

### **SUB-PART 1: IN RESPECT OF CIF, CFR AND DAP DELIVERIES BY VESSEL**

#### **Section 13 - DELIVERY TERMS AND PASSING OF RISK AND PROPERTY**

##### **13.1 In the case of CFR and CIF deliveries:**

- a) The Product shall be delivered by Seller to Buyer in bulk at the Loading Terminal and shipped by Seller CFR or CIF (as applicable) to the agreed destination. In the case where delivery is a Full Cargo Lot or, in the case where delivery is a Part Cargo Lot and where the Product and/or quantity is separately ascertainable, then risk and property in the Product and all liabilities with respect thereto shall pass to Buyer when the Product passes the Vessel's permanent hose connection at the Loading Terminal.
- b) If the Product is sold or nominated to be sold afloat, then risk in the Product and all liabilities with respect thereto shall pass to Buyer as from the time the Product passes the flange connection between the delivery hose and the permanent hose connection of the Vessel at the Loading Terminal, and property in the Product shall pass to Buyer upon acceptance of the nomination of the Vessel by Buyer.
- c) In the case where delivery is a Part Cargo Lot where the Product deliverable hereunder is not identifiable and ascertainable on board the Seller's Vessel separately from product which is destined for receivers other than the Buyer, the risk in the Product delivered under the Agreement shall pass to the Buyer as the Product passes the Vessel's permanent hose connection at the Loading Terminal and property in the Property shall pass to the Buyer:
  - i) when the Product passes the Vessel's permanent hose connection at the Discharge Terminal, if such part cargo is not the last part cargo to be discharged; or
  - ii) immediately upon completion of discharge of all other product if such part cargo is the last cargo to be discharged.

##### **13.2 In the case of DAP deliveries**

- a) The Product shall be delivered by Seller to Buyer in bulk DAP (as ascribed to DES in Incoterms 2000® and DAP in Incoterms 2020® (as amended from time to time), except as modified by the Agreement) at the Discharge Terminal.

Risk and property in the Product and all liabilities with respect thereto shall pass to Buyer when the Product passes from the permanent discharge manifold of the Vessel into the receiving hose at the Discharge Terminal.

- b) Without limiting any other provision of this Agreement, any loss of, or damage to, the Product occurring before, during or after the discharge operations, which is caused by Buyer or the receiver of the Product or any of their independent contractors, subcontractors, agents or employees, or by the Discharge Terminal, shall be for the Buyer's account.
- c) Buyer shall be the Importer of Record into the country in which the Discharge Terminal is situated and shall comply with all Applicable Laws and regulations governing the import of the Product.

#### **Section 14 - CONTRACT OF CARRIAGE AND INSURANCE**

##### **14.1 In the case of CFR, CIF deliveries:**

Seller shall provide carriage of the Product under bills of lading, which may incorporate charter party conditions.

##### **14.2 In the case of CFR deliveries:**

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.

##### **14.3 In the case of CIF deliveries:**

Seller shall procure and pay for cargo insurance against marine 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 minimum cover of the Institute Cargo Clauses (A) and the Institute War Clauses (cargo) (Institute of London Underwriters); and (iv) cover leakage and shortage subject to a deductible of zero point fifty (0.50) per cent of the insured value.

14.4 For all deliveries (CFR, CIF, DAP):

(a) Any and all costs incurred by the Vessel owner and/or the Seller and/or Seller's supplier in respect of war risk insurance (including piracy and loss of hire) for the Vessel's hull and machinery, and / or protections and indemnity, and / or for cargo in respect of the voyages to any of the ports of loading or discharge 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, and the cost of security services provided to the Vessel, shall be solely for the account of Buyer.

(b) Seller reserves the right to refuse at any time:

1. 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:
  - 1.1) 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 to risk ice damage; or
  - 1.2) to transit or to proceed or to remain in waters where there is war (de facto or de jure) or threat thereof; including but not limited to piracy; or
2. 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
3. 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 as referred to in paragraph (ii) of this sub-section 14.4, 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 in paragraph (i) of this sub-section 14.4) 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.

## **Section 15 - NOMINATIONS AND OTHER REQUIREMENTS**

### **15.1 Nomination of the Vessel**

Each Vessel which is to load Product under the Agreement (including, for the avoidance of doubt, any substituted Vessel) shall be nominated by the Seller in the form specified below (the "Vessel's Nomination"). Such Vessel's Nomination shall be received by Buyer no later than five (5) Working Days prior to the first day of the Vessel Presentation Range. In the event that the Agreement is entered into after the above deadline but prior to the first day of the Vessel Presentation Range, then the nomination must be received by the Buyer as soon as practically possible.

15.2 The Vessel's Nomination must be given in writing to Buyer 12:00 CET Monday to Friday. Nomination received after 12:00 CET Monday to Friday or on a non-Working Day shall be deemed to have been received at 09:00 CET time on the following Working Day.

Vessel's Nominations shall be sent by email to Buyer (when Totsa TotalEnergies Trading SA is the Buyer, nomination shall be sent to [opspetchems.gva@totsa.com](mailto:opspetchems.gva@totsa.com)). Vessel's Nominations

made by phone or made by any other means of communication will be deemed not to have been received.

15.3 The Vessel's Nomination shall specify:

- a) The name of the Vessel, date built, summer deadweight and cargo tank capacity excluding slop tanks and flag;
- b) The Vessel's updated Q-88 form
- c) The grade and approximate quantity of the Product to be loaded (or the bill of lading quantity, if known);
- d) The Vessel Presentation Range or the bill of lading date (if known) and the ETA at the Discharge Terminal;
- e) The length of the Vessel and its estimated (or actual, if known) sailing draught on completion of loading;
- f) The Vessel/charterer's agent at the Discharge Terminal, where known; and
- g) Details, if known, of any other cargo on board or to be laden on board if delivery is of a Part Cargo Lot
- h) The charter party demurrage rate, or in case of time chartered vessel and / or in case no charter party fixture recap or no demurrage rate is available, the mutually agreed demurrage rate.

The Vessel shall comply with (a) the Applicable Law(s) at the Discharge Terminal; and (b) the applicable requirements set out in Appendix 2.

15.4 Substitution of the Vessel

Seller may, at any time prior to loading (prior to discharge in case of transfer of risk and/or title at Discharge Terminal), if necessary to perform its obligations hereunder, substitute for the Vessel previously nominated (including where such Vessel has been accepted by the Buyer) another Vessel whose size and capacity are equivalent to those of the Vessel originally nominated and, if relevant, accepted. For CFR and CIF deliveries, the loading quantity and the Vessel Presentation Range in respect of the Vessel originally nominated shall apply to the substitute Vessel.

15.5 Acceptance of the Vessel

Each Vessel which is to deliver Product under the Agreement (including, for the avoidance of doubt, any substituted Vessel) shall be subject to Buyer's acceptance (including vetting). Unless otherwise specified in the Specific Terms, Buyer shall notify Seller in writing within two (2) Working Days of a Vessel's nomination whether Buyer accepts or refuses such nomination, Buyer's acceptance shall not be unreasonably withheld.

15.6 Nomination of Discharge Terminal

- a) In case of CFR or CIF deliveries, unless otherwise specified in the Specific Terms, Buyer shall within forty eight (48) hours from receipt of Seller's Vessel's Nomination, notify Seller in writing the Discharge Terminal and provide full documentary instructions, including any instructions needed by Seller to issue documents in accordance with the regulations in force at the Loading Terminal (including, but not limited to, any export regulations). Seller shall have the right to issue its own instructions if such instructions are not so provided by Buyer. No change to the Discharge Terminal shall be made without Seller's prior written consent.
- b) In case of CFR or CIF deliveries, where under the Specific Terms Buyer has Discharge Terminal options, Buyer shall exercise any such Discharge Terminal options in accordance with the Specific Terms and the terms of the relevant charter party available to Seller. Whenever Buyer exercises such options, the price stated in the Specific Terms shall be adjusted by the freight differential calculated in accordance with the terms of such charter party or as otherwise agreed between the parties. Buyer shall be liable for any additional costs incurred by Seller, including but not limited to, any deviation costs and costs in respect

of any additional bunker consumption. In exercising its Discharge Terminal options, Buyer must take into account the dimensions and characteristics of the Vessel nominated by Seller.

- c) In case of DAP deliveries, the Discharge Terminal shall be agreed at the time of the conclusion of the Agreement in the Specific Terms.
- d) The delivery of Part Cargo Lots shall be deemed accepted by Buyer.

#### 15.7 Prompt delivery

If the date of the Agreement is later than any of the dates for notification specified in the Special Terms or Section 15, then both parties shall make best efforts to complete as soon as practically possible any outstanding time limited requirements, notifications, nominations and procedures which would have preceded the date of the Agreement aforesaid.

### **Section 16 - VESSEL PRESENTATION RANGE AND DISCHARGE DATES**

#### 16.1 For CFR and CIF deliveries:

- i. Where Vessel Presentation Range is specified in the Specific Terms, they shall be the day or range of days in which the Seller's nominated Vessel must tender a valid N.O.R. 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 Vessel Presentation Range or outside any other period specified in the Special Terms.
- ii. Where Vessel Presentation Range is specified in the Special Terms pursuant to sub-section 16.1, if the Seller also expressly or implicitly provides the Buyer with a date or range of dates within which a nominated Vessel shall arrive at the Discharge Terminal, these shall be indicative only (hereinafter referred to as "Indicative Arrival Date Range"), made by the Seller as an honest assessment without guarantee. The Seller shall not assume any responsibility for the discharge of the Product at the Discharge Terminal and, save as regards the calculation of Laytime and demurrage as set out in Section 18, the rights and obligations of the parties shall remain unaffected.
- iii. Where no Vessel Presentation Range is specified in the Specific Terms and the Seller provides the Buyer with Indicative Arrival Date Range, then Seller shall not be in breach of and shall be deemed to have fulfilled its obligation(s) with regard to any delivery providing the loading and carriage of the relevant cargo is on terms (including, with regard to the place of loading, the time of loading, and the expected / customary voyage time) consistent with the arrival at the Discharge Terminal, on the agreed date or range of dates, safe navigation and weather permitting (provided that the Seller has ensured that the Vessel has tendered N.O.R. at the Loading Terminal at a time consistent with arrival at the Discharge Terminal within the Indicative Arrival Date Range, given a reasonable assessment of the customary loading and voyage time and provided the Vessel has not to discharge other parcels of product at other discharge terminals).

#### 16.2 For DAP deliveries

Where delivery dates are specified in the Specific Terms, Discharge Dates shall mean the day or range of days in which the Seller's nominated Vessel must tender N.O.R. at the Discharge Terminal and discharge shall commence and complete as soon as possible thereafter.

- 16.3 As soon as possible after the loading has been completed, the Seller shall, if requested by the Buyer, notify the Buyer of the actual quantity (ies) loaded and the updated ETA of the Vessel at the Discharge Terminal, as advised by the master of the carrying Vessel.

### **Section 17 - ARRIVAL AND DISCHARGE OF VESSEL AT THE DISCHARGE TERMINAL**

- 17.1 For CFR or CIF deliveries, Seller shall notify Buyer as soon as practicable after the loading has been completed, of the loaded quantities of Product together with the ETA of the Vessel at the Discharge Terminal (or port specified by Buyer as destination for orders), and thereafter Seller will

keep Buyer updated of changes to the ETA at the Discharge Terminal or destination for orders as soon as practicable after Seller receives such information from the master of the carrying Vessel.

- 17.2 For DAP deliveries, Seller shall notify Buyer of the ETA of the Vessel at least seventy two (72), forty eight (48), twenty four (24) hours and twelve (12) hours before arrival at the Discharge Terminal, advising any variation of more than four (4) hours to the last ETA given as soon as reasonably practical after Seller receives such information from the master of the Vessel.
- 17.3 For the discharge of each Vessel hereunder, Buyer shall provide to Seller, free of charge, a safe Berth suitable for discharging the Product which the Vessel nominated can, when fully laden, approach, reach on arrival, lie thereat and leave always safely afloat.
- 17.4 Buyer may, in its sole discretion, require Seller to shift a Vessel at the Discharge Terminal from one safe Berth to another safe Berth and shall assume all risks and liabilities and pay for all costs, dues and expenses in connection therewith. Time used for shifting Berth shall count as used Laytime or, if the Vessel is on demurrage, as time on demurrage.

17.5 Lightering

- 17.5.1 Either party may request to discharge the Vessel onto lighters with such request subject to acceptance by the non-requesting party, such acceptance not to be unreasonably withheld.
- 17.5.2 If the Discharge Terminal requires the Seller's Vessel to be discharged to a lighter or, if Buyer requests to discharge the Vessel into a floating storage facility or into another vessel by means of STS transfer including but not limited to lightering purpose, this shall be subject to Seller's Vessel and Discharge Terminal Operator's acceptance. The Seller may, on any reasonable grounds and without liability, refuse the use of such lighter for the purpose of discharging its nominated Vessel.
- 17.5.3 The Buyer shall notify the place of lightering to the Seller, which shall be subject to approval of the Seller, such approval not to be unreasonably withheld. The place of lightering shall be deemed to be the Berth for the purposes of the present Section 17 and Section 18 and all references therein to the Berth shall be construed accordingly.
- 17.5.4 In the event of lightering required by the Discharge Terminal or requested by the Buyer and accepted by Seller, the cost of such lightering shall be for the Buyer's account (including any additional costs including but not limited to additional steaming and/or waiting time). The risks and expenses thereof shall be exclusively for Buyer's account and Buyer shall be liable to Seller in respect of any losses, costs, damages and proceedings arising therefrom and shall indemnify Seller in respect thereof.
- 17.5.5 In the event of lightering requested by the Seller and accepted by Buyer, the cost of such lightering shall be for the Seller's account (including any additional costs including but not limited to additional steaming and/or waiting time (weather or sea conditions permitting or not)).
- 17.5.6 All time expended in connection with any such lightering shall count as running hours for the purposes of calculating the liability for demurrage in accordance with Section 18.
- 17.5.7 Any lighter, floating storage facility or Vessel, or provider thereof, involved in discharging to floating storage or STS operation, as applicable, must be acceptable to the Seller, the Vessel owner and the Buyer and remain acceptable throughout the duration of said operation. Buyer shall likewise nominate a STS provider acceptable to Seller and charterers to supervise STS operations. Buyer undertakes not to commence STS operation until such approvals are received.
- 17.5.8 Any discharge operation onto floating storage, STS operations shall be carried out in accordance with the procedures set out in the ICS / OCIMF Ship-to-Ship Transfer Guide and MARPOL Annex 1 as amended by resolution MEPC.186 (59), Chapter 8: Prevention of Pollution during Transfer of Oil Cargo between Oil Tankers at Sea, Regulations 40, 41 and 42 for the transfer of Crude Oil and Petroleum Products, or any modifications thereto.

Buyer shall warrant that, at the STS location, there is no prohibition or restriction on STS operations at the port/place at which the Vessel is ordered to perform STS transfer and further

that it has obtained any/all necessary local approvals or licenses to carry out operations at the agreed port/place.

17.6 Buyer shall arrange for each Vessel to be discharged as expeditiously as possible. Buyer shall at all material times and at its own expense provide and maintain or cause to be provided and maintained in good working order all necessary flexible hoses, connections, pipelines, tankage facilities and other facilities for discharging the Vessel.

17.7 Taxes in respect of the Vessel:

- a. For CFR and CIF deliveries all taxes, duties, fees, charges (including, without limitation, pilotage, mooring and towage expenses) and dues (including, without limitation, quay dues) in respect of the Vessel incurred at the Discharge Terminal, other than those which are for the account of the Vessel's owner according to Worldscale, shall be exclusively for the Buyer's account.
- b. For DAP deliveries, all taxes, duties, fees, charges (including, without limitation, pilotage, mooring and towage expenses) and dues (including, without limitation, quay dues) in respect of the Vessel incurred at the Discharge Terminal shall be for the Seller's account.

17.8 Buyer shall assume and be responsible for payment of any taxes, duties, fees, charges and dues of every description whatsoever imposed or levied by any governmental, local or port authority on, or applicable, attributable or related to, the Product or its delivery, transportation, ownership, sale or use, in respect of any stage after the risk in such Product has passed to Buyer and/or arising in the country of importation, and the amount of the same shall be exclusively on Buyer's account.

17.9 The Seller shall procure, and the Buyer shall render whatever assistance is required to ensure that the Vessel shall vacate her Berth as soon as discharging of Shipment and ballasting have been completed, provided the Vessel can safely do so.

17.10 Where the Buyer, by written instruction, specifically requests that the Seller discharge a quantity of Product either:

- (a) without bills of lading being available for presentation to the Vessel's master at the Discharge Terminal; and/or
- (b) at a Discharge Terminal or to a party other than that named in the bill of lading; and/or
- (c) that is different from the bill of lading quantity,

and

the Seller procures the discharge of the Product in accordance with such Buyer's written instructions, then the Buyer shall indemnify and hold the Seller harmless against any liability, loss, damage or expense (including reasonable legal costs as between attorney or solicitor and client as associated expenses) which the Seller may sustain by reason of delivering or procuring the delivery of the Product in accordance with the Buyer's instructions. This sub-section 17.10 shall only be effective upon the Seller providing the relevant bills of lading to the Buyer or such person as the Buyer may direct.

## **Section 18 - LAYTIME AND DEMURRAGE**

18.1 Upon arrival at the Discharge Terminal, the master or his representative shall tender N.O.R. to Buyer or Buyer's representative, Berth or no Berth.

18.2 The time allowed to Buyer for discharging each Vessel shall be half of the Vessel's charter party laytime allowance or, if different, the time set out in the Specific Terms, pro rata for part cargoes (i.e. based on that proportion of such time which the Shipment bears to the total quantity of cargo loaded on the Vessel at the Loading Terminal or terminals), Sundays, holidays and nights included. For time chartered vessels and / or in case no charter party fixture recap, laytime allowance shall be mutually agreed by the Buyer and the Seller and specified in the Vessel's Nomination.

18.3 Commencement of laytime

18.3.1 Laytime shall start running:



- a. 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
  - b. 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.
- 18.3.2 CFR / CIF transactions where Vessel Presentation Range is specified in the Special Terms pursuant to sub-section 16.1 i, laytime shall start running:
  - a. If the Vessel tenders N.O.R. at the Loading Terminal and complete loading prior to the first day of the agreed Vessel Presentation Range, running hours at Discharge Terminal shall commence berth or no berth, six (6) hours after N.O.R. is tendered at Discharge Terminal or upon commencement of discharge operations whichever is the earlier. Buyer shall have the benefit of the time running between N.O.R. tendered plus six (6) hours at the Loading Terminal and the first day of the agreed Vessel Presentation Range at 00h01.
  - b. If the Vessel tender N.O.R. at the Loading Terminal after the last day of the agreed Vessel Presentation Range, running hours at disport shall commence, berth or no berth, thirty six (36) hours after N.O.R. is tendered at Discharge Terminal or on commencement of discharge whichever is the earlier.
  - c. In any other case, laytime shall commence shall start running, berth or no berth, six (6) hours after N.O.R. is tendered at Discharge Terminal or upon commencement of discharge operations whichever is the earlier.
- 18.3.3 CFR / CIF transactions with Indicative Arrival Date Range pursuant to sub-section 16.1 ii or iii, laytime shall start running:
  - a. Should the Vessel tender N.O.R at the Discharge Terminal within the Indicative Arrival Date Range given by the Seller, then the time allowed and damages for delay shall be computed in all respects in accordance with Section 18.
  - b. Should the Vessel tender N.O.R at the Discharge Terminal prior to the Indicative Arrival Date Range given by the Seller, then notwithstanding the above, laytime shall start running at 00:01 hours on the first day of the Indicative Arrival Date Range or on commencement of discharge, whichever is earlier.
  - c. Should the Vessel tender N.O.R at the Discharge Terminal after the Indicative Arrival Date Range given by the Seller, then sub-section 18.3 shall be modified to the extent that running hours shall commence Berth or no Berth 36 hours after N.O.R is tendered or on commencement of discharge, whichever is the earlier. Save as aforesaid, Section 18 shall apply in full.
- 18.3.4 For DAP deliveries, if N.O.R. is tendered before the first day of the Discharge Dates running hours shall commence at 00:01 CET time on the first day of the Discharge Dates Range or on commencement of discharge, whichever is the earlier.
- 18.3.5 In all cases, Laytime or, if the Vessel is on demurrage, time on demurrage shall end when the delivery hoses are disconnected after completion of discharging or, if the Vessel's departure is delayed for Buyer's purposes, until the termination of such delay.
- 18.4 Any time spent and/or lost due to any of the following events shall not count as used Laytime or, if the Vessel is on demurrage, as time on demurrage:
  - a) The inward passage to the discharge Berth;
  - b) Awaiting tide, tugboats, pilot or daylight;
  - c) Any delay due to fault, failure or inefficiency of the Vessel;
  - d) Handling of ballast or slops or bunkering when not concurrent with discharge operations;
  - e) Restrictions imposed by the Vessel's owner, charterer or master of the Vessel;

- f) Any breakdown of the Vessel's equipment or failure to comply with the requirements of the Discharge Terminal with respect to equipment aboard or any other matter causing delay or restriction to discharge operations; or
  - g) Any on board strike by members of the crew.
- 18.5 If the Shipment is not discharged within the Laytime allowed in the Agreement, Buyer shall pay Seller demurrage per running hour and pro rata for any part thereof for all time used in excess of the allowed laytime. The applicable demurrage rate shall be (in order of priority):
- a) The demurrage rate specified in the Specific Terms; or, in the absence of such rate;
  - b) The demurrage rate per day (or pro rata for part of a day) provided for in the charter party / fixture recap entered into for the carriage of the Product hereunder as specified in the Vessel's Nomination; or
  - c) For time chartered vessels and / or in case no charter party / fixture recap or no demurrage rate is available, the demurrage rate per day shall be mutually agreed by the Buyer and the Seller and specified in the Vessel's Nomination.
- 18.6 It is agreed that Buyer's obligation as to Laytime and liability as to demurrage shall be absolute and not be subject to qualification by the provisions of Section 43. However, notwithstanding Section 43 if demurrage shall be incurred at the Discharge Terminal by reason of fire, explosion, or by a strike, lockout, stoppage or restraint of labour or by breakdown of machinery or equipment in or about the receiving facilities of Buyer or its consignee, then, to the extent some provisions cover this situations in the charter party for the Vessel, such demurrage shall be calculated at one-half the rate stipulated above (but only to the extent such conditions were not caused by the fault or neglect of Buyer, its consignee or the receiving facilities).
- 18.7 STS transfer
- In the event a STS transfer at the Discharge Terminal has been agreed between Seller and Buyer, the time spent performing the STS cargo operations shall count as laytime or time on demurrage commencing when Seller's performing Vessel tenders Notice of Readiness ("N.O.R") on arrival at the designated STS position or when Vessel is all fast at Buyer's receiving vessel, whichever occurs first, and shall run continuously without interruptions due to weather or sea state conditions.
- Laytime shall cease counting upon both vessels' cast-off.
- Any Vessel pumping warranty is not applicable for STS transfer operations, as discharging rate is decided on the basis of safety precautions given by the masters.
- When not inconsistent with the above, Section 18 shall apply in full.
- 18.8 Discharge shall be deemed completed and time shall cease to run upon final disconnection of discharging hoses. However, time shall recommence two (2) hours after disconnection of hoses if the Vessel is delayed in its departure solely due to Buyer's or Buyer's receiver's purposes and shall continue until the termination of such delay.

## **Section 19 - QUANTITY AND QUALITY DETERMINATION**

### **19.1 In the case of CFR and CIF deliveries:**

- a) Unless otherwise agreed between the Parties in the Specific Terms, where the Loading Terminal is operated by Seller (or Seller's Affiliate), the measurement of the quantities and the taking of samples and analysis thereof shall be carried out by the Terminal Operator in accordance with the latest industry standards in use at the Loading Terminal at the time of loading, unless otherwise provided for in the Specific Terms. The Terminal Operator will issue a certificate of quality and quantity (or such other equivalent documents) which shall be final and binding on both parties, except in case of fraud or manifest error. Where the Specific Terms provide for the appointment of an independent inspector at the Loading Terminal, the quality and/or quantity of the Product as ascertained or witnessed by such independent inspector shall, except in case of fraud or manifest

error, be final and binding on both Parties and the provisions stipulated in sub-section 19.1(d) below shall apply.

- b) Where the Loading Terminal is not operated by Seller (or Seller's Affiliate):
  - i. The measurement of the quantities and the taking of samples and analysis thereof shall be ascertained or witnessed by an independent inspector jointly appointed by the Buyer and Seller in accordance with latest industry standards. Certificates of quantity and quality so issued shall be final and binding on both parties, except in case of fraud or manifest error; and
  - ii. Seller shall use all reasonable endeavours to enable the independent inspector so appointed to have full access to the facilities at the Loading Terminal necessary to perform his duties. The independent inspector's report shall be made available to both Parties and all charges in respect of such inspection shall be shared equally between the Parties, unless otherwise provided for in the Specific Terms.
- c) Notwithstanding the above, if no independent inspector is in attendance through no fault of the Seller, save fraud or manifest error, the quantity binding on both parties shall be determined through the measuring devices available at the Loading Terminal and the quality binding on both parties shall be based on the last certificate of quality made available by Seller for the Product to be loaded.
- d) The quantity of Product determined pursuant to this sub-sections 19.1(a) or 19.1(b), (or, where applicable, the Specific Terms) shall be inserted in the certificate of quantity for the Product and that quantity shall be used to calculate Seller's invoice.
- e) Where the Shipment is delivered as an unsegregated Part Cargo Lot, the quantity determined above shall be adjusted following completion of discharge of all relevant Part Cargo Lot in order that both Buyer and the receiver(s) of the other lot(s) are allocated a percentage of the total outturn quantity corresponding to the percentage of their respective percentage of the total quantity of Product originally loaded. The costs of such independent inspection shall be shared equally between the parties for their respective Discharge Terminals.

19.2 In the case of CFR Outturn and CIF Outturn deliveries, the provisions set out in sub-section 19.1 apply subject to the following additions:

- a) Buyer and Seller shall jointly appoint a mutually agreed, international independent inspector at Discharge Terminal. The independent inspector will ascertain or witness quantity at Discharge Terminal in accordance with standard measurement procedures at discharge terminal and his report shall, save fraud or manifest error, be final and binding upon both parties.
- b) The measurement of the quantity of Product to be discharged shall be carried out at the Discharge Terminal in accordance with the latest API standards in effect at the time of discharge. The outturn quantity shall be based on static shore tank measurements at the Discharge Terminal, with receiving shore tanks in conditions recommended in API chapter 3.1a for determining accurate measurement, and shall meet the criteria specified below:
  - i. A line verification shall be performed in accordance with API MPMS chapter 17.6 and must be witnessed by the independent inspector.
  - ii. All receiving shore tanks shall be static and clear of the critical zone by a minimum of twelve inches. All receiving shore tanks shall be calibrated for measurement as per latest API standards.
  - iii. If the shore tanks(s) are active, do not meet the criteria above, the independent inspector cannot verify the shore tank measurements prior to or after discharge, or the independent inspector determines that these shore tank measurements are inaccurate, then the Vessel's arrival figure, less ROB, adjusted by the Vessel's loadport experience factor (VEF), as calculated by the independent inspector in accordance with API MPMS chapter 17.9, shall be used to determine the outturn quantity.

- c) Unless otherwise provided for in the Specific Terms, the cost of services of the inspector shall be shared equally by both parties;
- d) The quantity of Product determined pursuant to sub-section 19.2 (or, where applicable, the Specific Terms) shall be inserted in the certificate of quantity for the Product and that quantity shall be used to calculate Seller's invoice. Seller's invoice shall subsequently be adjusted in accordance with the quantity reported by the independent inspector at the Discharge Terminal;
- e) Notwithstanding the provisions of sub-section 19.2 b) (i) and 19.2 b) (ii), Seller shall have the right to submit a claim to Buyer where there is a difference between the quantity loaded and discharged by the Vessel and where in Seller's reasonable opinion, the most likely cause of such difference is due to events occurred, or the nature of operations, at the Discharge Terminal during the discharge of the Product; and
- f) If the quantity discharged and determined in accordance with the provisions of this sub-section 19.2(b) is less than the quantity loaded, Buyer shall, at Seller's request forthwith (a) endorse the bills of lading to the order of Seller in respect of a quantity equal to the difference between the loaded quantity and the discharge quantity, and (b) assign to Seller the contract of insurance (or any similar insurance certificate) and their rights of action therein (in which case, the latter shall be in full discharge of Seller's obligation to provide the contract of insurance for payment or indemnity's purpose). If either of such documents has not at the time in question been provided to Buyer by Seller, Seller shall only be required to endorse such documents to Buyer in respect of the discharge quantity. Buyer hereby consents to the use by Seller, in any action brought by Seller against any third party, of Buyer's name as plaintiffs and will furnish all such information and execute all such further documents as are necessary for the conduct of any such action. Seller shall indemnify Buyer against all costs and liabilities incurred as a result of the exercise by Seller of those rights assigned to it. The provisions of this sub-section shall survive any termination of the Agreement for any reason whatsoever.
- g) In the event of a total loss of the cargo or if the quantity discharged and determined in accordance with the provisions of sub-section 19.2 b) is less than 99.5 percent of the bill of lading quantity, then the quantity invoiced by the Seller shall be 99.5 percent of the quantity specified on the certificate(s) of quantity issued at the Loading Terminal.

19.3 In the case of DAP deliveries:

- a) Buyer and Seller shall jointly appoint a mutually agreed, international independent inspector at Discharge Terminal Buyer shall ensure that the independent inspector shall have necessary access to the facilities at the Discharge Terminal to perform his duties. The independent inspector will ascertain or witness quantity at Discharge Terminal in accordance with latest industry measurement procedures used at Discharge Terminal and his report shall, save fraud or manifest error, be final and binding upon both parties.
- b) The measurement of the quantity of Product shall be carried out at the Discharge Terminal in accordance with the latest API standards in effect at the time of discharge. The outturn quantity shall be based on static shore tank measurements at the Discharge Terminal, with receiving shore tanks in conditions recommended in API MPMS chapter 3.1a for determining accurate measurement, and shall meet the criteria specified below:
  - i. A line verification shall be performed in accordance with API chapter 17.6 and must be witnessed by the independent inspector.
  - ii. All receiving shore tanks shall be static and clear of the critical zone by a minimum of twelve inches. All receiving shore tanks shall be calibrated for critical measurement as per latest API standards.
  - iii. If the shore tanks(s) are active, do not meet the criteria above, the independent inspector cannot verify the shore tank measurements prior to or after discharge, or the independent inspector determines that these shore tank measurements are inaccurate, then the Vessel's arrival figure, less ROB, adjusted by the Vessel's loadport experience factor (VEF), as

calculated by the independent inspector in accordance with chapter 17.9, shall be used to determine the outturn quantity.

- c) Unless otherwise provided for in the Specific Terms, the independent inspector's cost shall be shared equally by both parties.
- d) For the purpose of quality determination, the independent inspector will draw representative ship's composite samples prior to commencement of discharge. Notwithstanding any other term of the Agreement, no other sample taken at the Discharge Terminal shall be used for the purposes of determining the quality of the Product delivered; and
- e) Unless otherwise provided for in the Specific Terms, the quantity of Product reported by the independent inspector at the Discharge Terminal shall be used to calculate Seller's invoice.

19.4 In the case of STS transfer at the Loading Terminal for CFR and CIF deliveries:

- a) Save if otherwise provided for specifically in the Special Terms.
  - i. Quantity shall be determined in accordance with API MPMS 17.9, unless otherwise provided for in the Special Terms. The quantity so determined shall be inserted in the certificate of quantity and bill of lading for the cargo and that quantity shall be used to calculate Seller's invoice.
  - ii. Quality shall be determined based on a ship tank's composite sample drawn immediately upon completion of loading on board the daughter/performing Vessel and analysed ashore.
- b) A mutually agreed independent inspector will be appointed to ascertain or witness the determination of the quantity and the quality of the Product in accordance with the latest industry standards. His findings shall be final and binding on both parties save fraud or manifest error. Unless otherwise provided for in the Special Terms, the cost of services of the inspector shall be borne equally by both parties.

## **Section 20 - DOCUMENTS**

- 20.1 For the avoidance of doubt, in the event the bill of lading format includes two differing dates, the "date shipped on board" will be the deemed bill of lading date for pricing, invoicing, payment and time-bar purposes.
- 20.1 In the case of CFR deliveries, Seller shall deliver to Buyer Original bills of lading and certificates of quantity, quality and a commercial invoice. Upon Buyer's request, Seller shall also provide a certificate of origin in accordance with sub-section 52.2 E, as well as any relevant tax document(s). The bills of lading shall be issued or endorsed to the order of Buyer and delivered by means of hand delivery, courier or by mutually agreed means of delivering electronic bills, and the other documents shall be provided by email or other electronic means (unless otherwise requested by the Buyer).
- 20.2 In the case of CIF deliveries, Seller shall deliver to Buyer the documents referred to in sub-section 20.1 and, if requested by Buyer, an Original certificate of insurance.
- 20.3 In the case of CFR Outturn or CIF Outturn deliveries and subject to sub-section 19.2(b), Seller shall deliver the documents as referred to in sub-section 20.1, and, in the case of CIF Outturn deliveries, the document referred to in sub-section 20.2, as well as a copy of the independent inspector's report at the Discharge Terminal.
- 20.4 In the case of DAP deliveries, Seller shall deliver a copy of the independent inspector's report at the Discharge Terminal and Seller's invoice, which may be by email (provisional invoice acceptable where the provisions of sub-section 39.11 apply).
- 20.5 Notwithstanding any other term of the Agreement, if the documents referred to in sub-section 20.1, 20.2, 20.3 are not available for presentation to the Buyer on or before the Due Date for payment, Buyer undertakes to pay Seller upon presentation, by means of courier or email, of an invoice and of Seller's L.O.I. in the form set out in Appendix 1.
- 20.6 In case of CFR or CIF deliveries of an unsegregated part cargo, in place of a full set of Original bills of lading, Seller may deliver to Buyer either split set of bills of lading or may surrender the set of bills

of lading first issued and deliver to Buyer replacement bills of lading endorsed to the order of each Buyer.

## **SUB-PART 2: IN RESPECT OF CIF, CFR AND DAP DELIVERIES BY BARGE**

### **Section 21 - APPLICABILITY**

Where the Agreement is to sell and deliver Product on CFR, CIF, CFR Outturn, CIF Outturn or DAP terms on board a Barge in North West Europe, the provisions of Sub-Part 1 of PART 2 of the General Terms and Conditions shall apply, where appropriate, subject to the additions and amendments set out in this Sub-Part 2.

For the purposes of this Sub-Part 2, all references to Vessel or Vessels in Sub-Part 1 shall refer to a Barge or Barges. All references in Sub-Part 1 to tendering or receiving N.O.R. shall mean making or receiving the Barge master's announcement of the Barge's arrival at the Discharge Terminal when the Barge is at the customary waiting area at the Discharge Terminal. All references to bill of lading shall mean the loading document issued by the master of the Barge.

### **Section 22 - NOMINATIONS**

22.1 Each Barge which is to deliver Product under the Agreement (including, for the avoidance of doubt, any substituted Barge) shall be nominated by Seller (the "Barge Nomination"). Barge Nomination shall be received by Buyer no later than:

- a) For CFR and CIF deliveries, five (5) Working Days prior to the ETA at the Loading Terminal;
- b) For DAP deliveries, five (5) Working Days prior to the ETA at the Discharge Terminal.

Notwithstanding the above, TBN nominations are acceptable provided Seller receives nominations in respect of sub-sections 22.3 (c), (d), (f), (h), (i) and (j) below no later than THREE (3) Working Days prior to the ETA.

For the purposes of calculating deadlines under this sub-section 22.1, Barge nominations must be received by Buyer before 15:00 hours CET on a local Working Day, before 14:00 hours CET on Fridays and on the day preceding any days which are not local Working Days. Barge Nominations in breach of the above shall be deemed to have been received at 09:00 CET time on the following Working Day.

22.2 Unless otherwise specified in the Specific Terms, Barge Nominations shall be sent by email to Buyer (when Totsa TotalEnergies Trading SA is the Buyer, nomination shall be sent to [opspetchems.gva@totsa.com](mailto:opspetchems.gva@totsa.com)). Barge Nominations made by phone or made by any other means of communication will be deemed not to have been received.

22.3 The Barge Nomination shall specify:

- a) The Agreement reference number of Buyer
- b) The Loading Terminal;
- c) The name of Barge and its registration number, deadweight/double or single hull;
- d) The name of the Barge's owner/operator and/or the name of the carrier (if different) and the name and address of the consignor (i.e. charterer of the barge) according to the ADN;
- e) The quantity and the grade of the Product to be discharged;
- f) The last three cargoes of the Barge;
- g) The origin and status of the Product;
- h) For CFR and CIF deliveries, the ETA at the Loading Terminal;
- i) For DAP deliveries, the ETA at the Discharge Terminal;
- j) The demurrage rate applicable for the performing Barge in accordance with sub-section 24.5. For the avoidance of doubt, the acceptance of the Barge Nomination shall not entail acceptance of the demurrage rate indicated by Buyer and shall be without prejudice to the provisions of Section 24.

22.4 Unless otherwise specified in the Specific Terms, upon receipt of Seller's Barge nomination, Buyer shall (on the same Working Day if Seller's nomination is made on or before 12:00 CET on a Working Day

and otherwise on the immediately following Working Day) promptly notify Seller in writing of the following documentary instructions:

- a) Discharge Terminal name and address;
- b) Name and reference number of customs office at the Discharge Terminal;
- c) Buyer's VAT number;
- d) Receiver's name and address and VAT number;
- e) Name of fiscal agent (if any);
- f) Name of surveyor (if any); and
- g) Full written instructions needed by Seller to issue documents in accordance with regulations, including any export regulations in force, including but not limited to, an Electronic Administrative Document ("e-AD") where relevant;
- h) The place of final destination of the Barge, including full details necessary to comply with the requirements of EMCS, and must include (without limitation) full details (name, address and excise licence number) of the relevant excise licence holder (authorised warehousekeeper) and the tax warehouse itself.

Any delay or costs (including, but not limited to, any demurrage incurred in respect of Seller's Barge and any demurrage incurred by Seller or Seller's Supplier in respect of other vessels or barges waiting at the Loading Terminal) arising out of any failure by Buyer to comply with the foregoing shall be for Buyer's account. Seller shall have the right to issue its own instructions if such instructions are not so provided by Buyer. No change to the Discharge Terminal shall be made without Seller's prior consent.

22.5 Each Barge which is to discharge product under the Agreement (including, for the avoidance of doubt, any substituted Barge) shall be subject to Buyer's and Discharge Terminal's acceptance (Buyer's acceptance not to be unreasonably withheld). Buyer shall notify Seller as soon as practicable after receipt of Seller's nomination whether Buyer accepts or rejects such nomination. In case of rejection, Seller shall promptly nominate to Buyer an alternative Barge for Buyer's acceptance or rejection. The acceptance of the Barge's nomination shall not entail acceptance of the demurrage rate indicated by Seller.

Notwithstanding any prior acceptance of such Barge, Buyer shall have the right to reject the Barge on any reasonable ground if such Barge is involved in any incident or if more recent information regarding such Barge becomes available to Buyer at any time after such prior acceptance.

22.6 Where the Seller's nomination has been made in accordance with this Section 22 but no confirmation has been received from the Buyer pursuant to sub-section 22.5, Laytime will commence from 00:01 hours CET on the ETA specified in Section 24 or expiry of the nomination period as specified in Section 23 whichever is later. The Buyer shall be liable for all costs and expenses resulting from any delays in loading the Product hereunder due to failure by the Buyer to supply its confirmation and relevant documents pursuant to sub-section 22.4 and this sub-section 22.6 in a timely manner. This is without prejudice to any claim for demurrage at the Discharge Terminal by the Seller.

22.7 Seller may, or if necessary to perform its obligations hereunder must, nominate as a substitute for the Barge previously nominated another Barge whose size and capacity are equivalent to those of the Barge originally nominated.

The quantity and the Delivery Date Range in respect of the Barge originally nominated shall apply to the substitute Barge.

22.8 Seller confirms that (for each Barge nominated to discharge a Shipment) it is familiar with the latest Barge size limitations/restrictions, including but not limited to, deadweight, draught, beam, overall length and any other Barge limitations/restrictions in force at the discharging terminal at the time of delivery, and Seller is solely responsible to ensure that the Barge will not exceed, or otherwise fail to comply with, such limitations/restrictions.

22.9 All applicable governmental, local and port authority regulations, Buyer's, Buyer's receiver's and/or Discharge Terminal operator's regulations, procedures and any other requirement of any nature



whatsoever in force at the Discharge Terminal at the time of delivery shall apply to Seller's Barge. In this respect, the Seller undertakes to bring about issuance of a transport document compliant with ADN requirements, wherever applicable ("ADN" meaning the latest applicable European Agreement on International Carriage of Dangerous Goods by Inland Waterway Navigation).

### **Section 23 - REQUIREMENTS FOR BARGES AND ADN DOCUMENT**

For each Barge specified in, or nominated under, the Agreement to carry a Shipment, Seller shall ensure that the Barge:

- a) 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) in a P and I Club which is a member of the International Group of P and I Clubs;
- b) has in place (throughout the entire period of the voyage to and from the Loading Terminal and up to discharge of the Product) insurance cover for Product pollution in an amount of no less than the highest standard Product pollution cover available under the rules of the International Group of P and I Clubs; shall have (where applicable) a valid ADN Original certificate of approval on board and has in place security procedures on board in compliance with ADN article 1. 10 and shall be equipped with an operational overfill protection system complying with ADN regulations
- c) has hull, machinery, boilers, tanks, equipment and facilities which are in good order and condition, in every way fit for the service required and fit to load and carry the Shipment;
- d) has on board fully qualified, experienced and efficient master, officers and crew;
- e) has the cargo tanks adequately clean and suitable prior to receiving the Shipment; and
- f) has on board an EBIS certificate not older than one year.

### **Section 24 - LAYTIME AND DEMURRAGE FOR BARGES**

24.1 Unless otherwise specified in the Specific Terms, allowed Laytime shall be one-half of the total free hours for loading and discharging according to the transport agreement. If not specified in the transport agreement, the TTB rules (latest edition) or its successor shall apply.

24.2 Laytime shall commence no earlier than expiry of the notice periods required for nominations set out in sub-section 22.1, or on commencement of discharge, whichever is earlier.

24.3 Notwithstanding the TTB Rules and without prejudice to sub-section 24.2, Laytime shall begin upon the Barge's arrival at Berth at the Discharge Terminal or at the Barge's master announcement of the Barge's arrival at the Discharge Terminal when the Barge is at the customary waiting area at the Discharge Terminal, whichever comes first.

24.4 Laytime or, if the Barge is on demurrage, time on demurrage shall end when the delivery hoses are disconnected after completion of discharge or, if the Barge's departure is delayed for Buyer's purposes, at the time in which such delay ends.

24.5 Buyer shall pay to Seller demurrage per running hour and pro rata for a part thereof for all time used in excess of the allowed Laytime as provided for in the Agreement. Partial hours shall be rounded up to full hours. Where not inconsistent with the Agreement, the provisions applicable to the calculation of demurrage shall be as per the TTB Rules. Unless a demurrage rate is specified in the Specific Terms, the applicable demurrage rate specified in the Barge nomination as provided by sub-section 22.3 (i) shall be the transportation agreement rate. In the event of time charter agreement or in the absence of transportation agreement, the demurrage rate shall be the Binnenschiffahrtsgesetz (latest edition) rate applicable to a Barge with the size and capacity equivalent to the loading document quantity.

### **Section 25 - DOCUMENTS**

Any document to be provided under Section 19 may be provided by email or other electronic means unless otherwise specifically requested by Buyer.

### **PART 3 - EX TANK, INTO TANK, IN SITU (STOCK TRANSFER), FIP AND EX-PIPELINE DELIVERIES**

All references to "bill of lading date" shall mean transfer date.

#### **Section 26 – DELIVERY TERMS AND PASSING OF RISK AND PROPERTY**

##### **26.1 Ex tank deliveries (or Ex work Incoterms® 2020)**

The Product shall be delivered to Buyer in bulk at the storage tank designated by Seller.

Risk and property in the Product and all liabilities with respect thereto shall pass to Buyer when the Product passes the outlet flange of Seller's designated storage tank, at which point any and all risks to Seller shall cease.

##### **26.2 Into Tank deliveries**

The Product shall be delivered to Buyer in bulk at the storage tank designated by Buyer.

Risk and property in the Product and all liabilities with respect thereto shall pass to Buyer when the Product passes the inlet flange of the Buyer's designated storage tank, at which point any and all risks to Seller shall cease.

##### **26.3 In Situ deliveries**

The Product shall be delivered to Buyer in bulk by way of stock transfer at the storage tank(s) specified in the Specific Terms.

Risk and property in the Product and all liabilities with respect thereto shall pass to Buyer in the designated tank(s) at such time and day specified in the Specific Terms or agreed between the parties prior to the transfer being made and/or, where applicable, confirmed by the owner/operator of such tank.

##### **26.4 FIP deliveries (or deliveries FCA Incoterms® 2020 by pipeline)**

The Product shall be delivered to Buyer in bulk at the place specified in the Specific Terms.

Risk and property in the Product and all liabilities with respect thereto shall pass to Buyer when the Product passes the inlet flange of Buyer's receiving pipeline at the designated place, at which point any and all risks to Seller shall cease.

##### **26.5 Ex-Pipeline deliveries (or deliveries DAP Incoterms® 2020 by pipeline)**

The Product shall be delivered to Buyer in bulk at the place specified in the Specific Terms.

Risk and property in the Product and all liabilities with respect thereto shall pass to Buyer when the Product passes the outlet flange of Seller's pipeline at the designated place, at which point any and all risks to Seller shall cease.

26.6 Unless otherwise specifically agreed, delivery of Product will be in one lot.

#### **Section 27 - NOMINATION**

In respect of deliveries Ex Tank, Into Tank or In situ, nominations shall, unless otherwise agreed between the parties, be made pursuant to the standard operating terms and procedures of the relevant storage company, in use at the time of delivery.

In respect of FIP deliveries (or deliveries FCA by pipeline) or Ex-Pipeline deliveries (or deliveries DAP by pipeline), nominations shall, unless otherwise agreed between the parties, be made pursuant to the standard operating terms and procedures of the relevant pipeline operating company, in use at the time and point of delivery

#### **Section 28 - QUANTITY AND QUALITY DETERMINATION**

28.1 The quantity and quality of the Product delivered under the Agreement shall be determined for each lot in accordance with the latest industry standards in use at the relevant storage company at the time and point of delivery, save if otherwise provided for specifically in the Special Terms..

28.2 The quantity of Product determined pursuant to sub-section 28.1 above (or, where applicable, the Special Terms) shall be used to calculate Seller's invoice.

28.3 Where the Special Terms provide for the appointment of an independent inspector, the cost of services of the inspector shall be borne equally by both parties (unless otherwise provided for in the Special Terms).

### **Section 29 - DOCUMENTS**

Seller shall deliver to Buyer with a copy of the certificates of quantity and quality (or equivalent documents), and upon Buyer's request, a certificate of origin in accordance with sub-section 52.2 E, as well as a commercial invoice. These documents may be delivered by email or other electronic means.

## **PART 4 - FCA ROAD TANKER AND RAIL TANK CARS DELIVERIES**

### **Section 30 - DELIVERY TERMS AND PASSING OF RISK AND PROPERTY**

30.1 The Product shall be delivered to Buyer FCA in bulk at the Loading Terminal designated by Seller onto Road Tank Car(s)/Rail Tank Car(s) to be provided by Buyer.

30.2 Risk and property in the Product and all liabilities with respect thereto shall pass to Buyer when the Product passes:

- a) the inlet manifold of the Road Tank Car(s)/Rail Tank Car(s), in the case of bottom loading, or
- b) the outlet of the Loading Terminal's flexible hose, in the case of gravity fed top loading.

30.3 Without limiting any other provisions of the Agreement, any loss of, or damage to, the Product occurring during or after the loading operations, which is caused by the Road Tankers, the Rail Tank Cars, the Road Tankers' Owner, or the Rail Tank Cars' owner or Buyer or any of their independent contractors, subcontractors, agents or employees, shall be for the sole account of Buyer.

30.4 Any claim made against Seller by Seller's Supplier or by the Loading Terminal Operator or by any third party in respect of damage to any property of Seller's Supplier or any facilities at the Loading Terminal or to any property of any third party which are caused by the Road Tankers, the Rail Tank Cars, the Road Tankers' Owner or the Rail Tank Cars' owners or Buyer or their independent contractors, subcontractors, agents or employees shall be borne exclusively by Buyer.

### **Section 31 - NOMINATIONS**

31.1 Nominations shall be made pursuant to the standard operating terms and procedures of the loading Terminal Operator.

31.2 The Buyer shall provide the following information to the Seller in writing no later than ten (10) Working Days prior to the first day of the Vessel Presentation Range:

- a) Date of arrival at the Loading Terminal;
- b) The number of Road Tankers or Rail Tank Cars and their identification numbers;
- c) The technical specifications of the Rail Tank Cars;
- d) The quantity/net weight of Product to be loaded in each Road Tanker or Rail Tank Car;
- e) Destination(s) of the Road Tankers or the Rail Tank Cars, including full details necessary to comply with the requirements of EMCS, and must include (without limitation) full details (name, address and excise licence number) of the relevant excise licence holder (authorised warehouse keeper) and the tax warehouse itself; and
- f) Where the Product has not been released for free circulation in the EU (i.e. has T1 status), the Buyer must provide sufficient information about the Product's destination(s) as to enable the Seller to comply with EU Transit rules, including the use of the NCTS.

31.3 Immediately following the completion of loading, the Seller shall place on-board each Road Tank Car(s) a consignment note (railway bills in case of Rail Tank Car(s)) and safety data sheet.

31.4 Where the Buyer's nomination is made in accordance with sub-section 31.2, the Seller will confirm the nomination and notify the Buyer in writing of the i) Loading Terminal (which shall be in accordance with the Specific Terms); ii) Loading Terminal code; and iii) load code.

31.5 For each Road Tanker, the Buyer shall provide a fully trained driver certified by the Loading Terminal as being qualified to drive Road Tankers within the Loading Terminal. Such driver(s) shall be made available to the Buyer's Road Tankers upon arrival of such Road Tankers at the Loading Terminal.

31.6 Immediately following the completion of loading, the Seller shall place on-board of each Road Tanker the respective carriage documents and SDS. For Rail Tank Cars, the relevant documentation will be provided electronically.

31.7 The Seller shall provide the Buyer as soon as reasonably practicable after the dispatch of the Road Tanker/Rail Tank Cars (as applicable) from the Loading Terminal with a copy of i) the certificate of quality and quantity, and ii) for Road Tanker deliveries, copies of all CMR consignment notes or other contract(s) of carriage issued.

31.8 Unless otherwise specifically agreed, any delivery of Product will be in one lot.

### **Section 32 - ACCEPTANCE OF ROAD TANKER(S)/RAIL TANK CARS**

32.1 The Buyer shall ensure that the Road Tankers/Rail Tank Cars (as applicable) and their driver(s) comply with the nominated Loading Terminal's safety health and environment standards, requirements and limitations in force at the Loading Terminal and Applicable Laws, in particular with those applicable to safety and authorized loading weight.

32.2 The Buyer warrants that all means of conveyance, including Road Tankers/Rail Tank Cars made available for the delivery of the Product, as well as their equipment and fittings, shall be:

- a) appropriate for the Products to be carried,
- b) clean, in operation and fit for the performance of the Agreement, taking all reasonable precautions to avoid risk of loss of Product, damages or pollution,
- c) equipped with all the means and equipment necessary for the performance of the Agreement so as to allow their access and their connection to the installations at the Loading Terminal, and in compliance with the Applicable Law(s) relating to the transport by road or rail, as applicable, of hazardous goods.

For deliveries in France, Buyer shall ensure the carrier is familiar with the provisions of the French décret n° 2017-757 of 3 mai 2017 « *portant insertion des articles R.114-7 à R. 114-10 au chapitre IV du titre Ier du livre Ier de la partie réglementaire du Code de la sécurité intérieure* » and/or any subsequent law or regulation. Buyer shall procure that i) carrier undertakes with regard to all personnel (including drivers) undertaking one of the activities listed in article R.114-7 of the French Interior security code ("*Code de la sécurité intérieure*"), at the time of any new recruitment or new assignment of such personnel, to have an administrative enquiry as per the terms of article R.114-8-I and R. 114-8-II of the French Interior security code carried out on such personnel. Buyer shall ensure that the carrier agrees and undertakes that i) no personnel having received an "*avis d'incompatibilité*" by the competent Authority shall be assigned to the performance of the services; ii) any Affiliate of carrier and its and their subcontractors involved in the performance of the services shall comply with obligations at least as stringent as those contained in the present clause; and iii) carrier shall apply mutatis mutandis the provisions of this clause to services carried out in any country of the European Union or in England where equivalent legislation is introduced. Upon request from Seller, Buyer undertakes to provide evidence of compliance with the above provisions to Seller.

32.3 Notwithstanding anything to the contrary expressed or implied in the Agreement, the Seller shall have the absolute right (which right may only be exercised prior to the passing of property hereunder) to refuse, on any reasonable grounds, to accept any Road Tankers/Rail Tank Cars nominated by the Buyer. The Seller shall not be liable for any loss or damage which the Buyer may suffer as a result of the Seller exercising such right.

Notwithstanding any prior acceptance of any Road Tankers/Rail Tank Cars, the Seller shall have the absolute right (which right may only be exercised prior to the passing of risk and property hereunder) to reject the Road Tankers/Rail Tank Cars in question on any reasonable ground if such Road Tankers/Rail Tank Cars are involved in any incident or more recent information regarding such Road Tankers/Rail Tank Cars becomes available to the Seller at any time after such prior acceptance. The Seller shall not be liable for any loss or damage which the Buyer may suffer as a result of the Seller exercising such right.

The Road Tankers must at all times have hazardous material documentation on-board. Road Tankers/Rail Tank Cars must clearly display hazardous material or dangerous goods plates or labelling in accordance with Applicable Law(s) and the Road Tanker/Rail Tank Car Requirements at the Loading Terminal.

32.4 All other conditions relating to the delivery of the Product in bulk into or by Road Tankers or Rail Tank Cars shall, unless otherwise specifically agreed between the parties, be in accordance with the standard operating terms and procedures of the loading Terminal Operator.

32.5 The Buyer shall hold Seller harmless from all claims and indemnify Seller for all costs arising from any breach of the above.

### **Section 33 - LOADING**

Loading of the Road Tankers/Rail Tank Cars must be carried out in a safe and compliant manner in accordance with Applicable Law(s) and Road Tankers/Rail Tank Cars Requirements at the Loading Terminal.

The Road Tank Car(s)/Rail Tank Car(s), as applicable, provided by the Buyer are due to arrive at the Loading Terminal, and be clean and ready in all respects to load the contractual volume, within the agreed Vessel Presentation Range.

Loading of Road Tank Car(s)/Rail Tank Car(s) shall be done during working hours by the Terminal Operator, under the Loading Terminal's responsibility. The Buyer, or the Buyer's third party personnel, shall follow strictly the internal procedures and safety standards of the Loading Terminal.

### **Section 34 – INSURANCE AND RESPONSIBILITY**

34.1 The Buyer warrants that, from the time of nomination and until exit from the Loading Terminal, it has obtained and shall maintain:

- a) A comprehensive general liability insurance policy placed with reputable and known to be solvent insurance brokers and underwriters providing first class security and insurance cover in compliance with all Applicable Laws and regulations, for any claims for death, personal injury or property damage arising out of Buyer's general operations, use of and loading at the Loading Terminal.
- b) A comprehensive liability insurance policy placed with reputable and known to be solvent insurance brokers and underwriters providing first class security and insurance cover in compliance with all Applicable Laws and regulations, for any claims for property damage, arising out of Buyer's general operation of Road Tank Car(s)/Rail Tank Car(s).

Upon Seller's request, the Buyer agrees to provide a copy of each policy declaration page prior to entering the Loading Terminal.

34.2 Seller shall not undertake any responsibility for spillage, pollution, product contamination or any other accident due to the bad condition of the Road Tank Car(s)/Rail Tank Car(s) and equipment. Any operation due to the bad condition of said equipment shall be for the account of the Buyer.

### **Section 35 - QUANTITY AND QUALITY DETERMINATION**

35.1 The quantity and quality of the Product delivered under the Agreement shall be determined for each lot by Seller or Seller's supplier representative in accordance with the latest industry standards in use at the place of delivery, save if otherwise provided for in the Specific Terms.

35.2 The certificate of quality and quantity (or such other equivalent document so issued) shall be final and binding on both parties, except in case of fraud or manifest error.

35.3 The quantity of Product determined pursuant to sub-section 35.1 (or, where applicable, the Specific Terms) shall be used to calculate Seller's invoice.

35.4 If the Specific Terms provide for the appointment of an independent inspector, the cost of the inspector shall be shared equally by both parties (unless otherwise provided for in the Specific Terms).

### **Section 36 - DOCUMENTS**

Seller shall deliver to Buyer the transport document and certificates of quantity and quality and upon Buyer's request, a certificate of origin in accordance with sub-section 52.2 E, as well as any relevant tax

document(s) and an invoice, which may be by means of courier and/or email and/or other electronic means.

## **PART 5 - APPLICABLE TO ALL DELIVERIES**

### **Section 37 - GENERAL DELIVERY TERMS**

37.1 Notwithstanding anything in the Agreement to the contrary, if Buyer fails to take delivery of any quantity of Product made available for delivery, such undelivered quantity shall, at Seller's option and without prejudice to any other rights that Seller may have, cease to be deliverable to Buyer under the Agreement and, in such event, the undelivered quantity shall be deducted from the total quantity of Product to be delivered under the Agreement, without prejudice to any other rights or remedies which Seller may have against Buyer. In such case, Seller shall dispose freely of, and may sell or otherwise dispose of, such undelivered quantity of Product at its sole and absolute discretion. The provisions of this sub-section 37.1 shall apply whether Buyer is to receive one, or more than one, Shipment hereunder.

37.2 If, under the Agreement, Buyer is to receive more than one Shipment, then, unless otherwise provided for in the Agreement, such Shipments shall be evenly spread over the term of the Agreement.

37.3 Unless otherwise expressly provided for in the Specific Terms, no stipulation as to time of delivery shall form part of the description of the Product deliverable hereunder and any obligation to effect or complete Shipment by such time is excluded.

### **Section 38 - QUALITY**

There are no typicals, characteristics or qualities, representations, duties (whether in negligence or otherwise), conditions, guarantees, warranties or terms, express or implied, whether implied by statute or otherwise, as to the description or satisfactory quality, fitness or suitability of the product for any purpose whatsoever, or otherwise relating to the quality of the product, which extend beyond the description of the product appearing in the Agreement.

### **Section 39 - INVOICING AND PAYMENT**

39.1 The price of the Product, the means of payment and the due date for payment shall be as specified in the Specific Terms (the "Due Date").

Any correction by the pricing service(s) to a published quotation shall be taken into account and, once the revised price is known, the Seller shall send a revised invoice to the Buyer and the debtor party will have to pay the difference between the provisional amount and the revised amount within three (3) Banking Days after receipt of such revised invoice. No interest shall be due on the difference between the provisional and revised invoice.

39.2 Payment of the full amount of Seller's invoice shall be made without any discount, deduction, withholding, abatement, set-off or counterclaim in United States Dollars (unless otherwise specified in the Specific Terms) by wire transfer of immediately available funds ("same day funds") on or before the Due Date (subject to sub-sections 39.5 and 39.9) to the bank and account designated by Seller, against presentation to Buyer of the documents provided for in Sections 7, 12, 20, 25, 29 or 36, as applicable.

In any case, for CFR or CIF deliveries, notwithstanding the applicable Due Date, payment shall be made no later than forty five (45) calendar days after the bill of lading date.

39.3 Unless otherwise agreed, the payment of any other costs, expenses or charges which arise under the terms of the Agreement shall be made against presentation of Seller's invoice and shall be for immediate settlement by Buyer on or by the date advised thereon.

39.4 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 contractual costs, expenses and charges have not been credited in full into Seller's bank account.

39.5 When the Due Date falls on a Saturday or on a weekday, other than a Monday, which is not a Banking Day in New York, then any such payment shall be made on the nearest preceding Banking Day. When the Due Date falls on a Sunday or a Monday which is not a Banking Day in New York, then any such payment shall be made on the next following Banking Day.



39.6 Any delay in effecting any payment by the Due Date shall entitle Seller to receive payment of interest for each day of delay calculated at three (3) percentage points above the Late Payment Interest Rate (subject to sub-section 39.5). Such interest shall run from the due date until (and including) the date payment is received by Seller's bank. Interest shall continue to accrue under this sub-section 39.6 until such date notwithstanding the termination of the Agreement for any cause whatsoever. The amount of interest payable to Seller shall be grossed up for Withholding Tax, if any, such that the net amount received by Seller after the deduction of any such Withholding Tax shall be equal to the full amount of interest due.

The provisions of this sub-section 39.6 shall in no circumstances be construed as an agreement by Seller to provide extended credit, and shall be in addition and without prejudice to any other rights of Seller arising out of such delay.

39.7 In addition to any other rights of Seller, all expenses incurred by Seller, including but not limited to, legal fees and disbursements, each on an indemnity basis, court costs and collection agency fees, each of the above on a full indemnity basis, caused by delayed payment or non-payment by Buyer of the full amount of Seller's invoice for each Shipment shall be for the account of Buyer and payable upon demand with supporting documentation.

39.8 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 sub-section 39.9, where the pricing information available to Seller and/or the availability of delivered quantities does not allow for the preparation of a final invoice prior to the Due Date, Seller may issue a provisional invoice, against which Buyer shall make payment on or before the Due Date. The provisional price shall be based, at Seller's option, upon the pricing information available to Seller at the time it issues such provisional invoice or the quotation published on the bill of lading date or the immediately preceding published quotation if no quotation is published on the bill of lading date. If the final price becomes known after the provisional invoice has been issued, Buyer shall nevertheless make payment against such provisional invoice. Once the final price is known, the Seller shall send a final invoice to the Buyer and the debtor party will have to pay the difference between the provisional amount and the final amount within three (3) Banking Days after receipt of such final invoice. No interest shall be due on the difference between the provisional and final invoice.

39.9 For Deliveries where TOTSA TotalEnergies Trading SA is the Seller, if payment by means of provision of an irrevocable documentary letter of credit is not already provided for in the Special Terms, TOTSA TotalEnergies Trading SA shall be entitled at any time before the Due Date to demand payment to be effected by means of provision of an irrevocable documentary or standby letter of credit (in each case in a form acceptable to TOTSA TotalEnergies Trading SA), or by payment in advance, or to require the Buyer to provide a parent company guarantee or payment undertaking, notwithstanding the method of payment as described in the Special Terms. Nothing in this sub-section 39.9 shall relieve Buyer of its obligation to pay the total price of each Shipment as and when due under the Agreement. Any delay or expenses resulting from Seller's demand under this sub-section 39.9 shall be borne by Buyer (including but not limited to, any time lost or demurrage incurred).

#### 39.10 Letter of Credit

When, under the Agreement, or as a consequence of the provisions of sub-section 39.9, 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 referred to herein as "L/C"), the following provisions shall apply unless otherwise specified in the Special Terms:

- a) the L/C shall be issued, advised or confirmed by a first class bank and in a format both of which must be acceptable to Seller, not later than five (5) Working Days prior to the first day of the Vessel Presentation Range or in case of DAP sales the Discharge Dates, 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 (including but not limited to confirmation charges, if any) shall be borne by Buyer;

- c) the L/C shall cover the mean value of the Shipment at the contract price (including, if applicable, any Value Added Tax and/or excise duty) plus fifteen (15) per cent and shall at all times be valid for shipment:
  - i. Three (3) days before and seven (7) days after the Vessel Presentation Range or the Discharge Dates; In addition the L/C must at all times expire not earlier than 25 days after the Due Date;
  - ii. In case of CFR/CIF deliveries with Indicative Arrival Date Range defined under sub-section 16.1 (ii) and (iii), three (3) days before and seven (7) days after the Indicative Arrival Date Range.

In any event for CFR and CIF deliveries, the L/C shall enable payment even if N.O.R is not tendered at the Discharge Terminal for any reason.

- d) the amount of the L/C will automatically be adjusted for any decrease or increase according to the price clause mentioned in the L/C without any additional amendment from the issuing bank.
- e) 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;
- f) no 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.

Notwithstanding sub-sections 1.1, 13.1, 13.2, 26, 30.2 & 55.4, whenever this sub-section 39.10 applies, the passage of property in the Product shall be subject to the provision by Buyer of an irrevocable letter of credit in a format acceptable to TOTSA TotalEnergies Trading SA.

39.11 It is a condition of the Agreement that Buyer complies with its payment obligations under the Agreement (including any obligation to provide security or a payment undertaking in the form specified by Seller as well as any and all obligations under this Section 39) 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 entitling the Seller to terminate the Agreement and claim damages. Any delay in exercising such a right to terminate the Agreement shall not constitute a waiver of that right.

Without prejudice to the above, on the occurrence of such breach and for so long as such breach is continuing:

- a) If the Product has been delivered on board Buyer's Vessel, then, at Seller's option exercisable at any time by written notice from Seller to Buyer, title, but not risk, in the Product shall i) revert to Seller and/or ii) remain with Seller in which case Buyer undertakes at its own cost to order the discharge of the Vessel exclusively to a party notified to Buyer by Seller and to indemnify fully Seller against any consequences and/or liability howsoever arising, connected with having title to the Product; and
- b) in all cases, Seller may at any time by written 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 delivery of Product under the Agreement and/or release of shipping documents or L.O.I.
- c) In case of FOB deliveries only, allowed laytime shall not start running until commencement of loading.

Seller may exercise the rights set out above whether or not nominations have been made or accepted and, if Seller exercises any such right, Seller shall be entitled to dispose freely of any resulting quantity of Product and Buyer shall be liable for, and indemnify Seller and/or Seller's Supplier for, any costs, losses and damages, whatsoever, whether foreseeable or not, incurred by Seller and/or Seller's Supplier as a result of Buyer's breach,

including but not limited to, any demurrage payable by Seller and/or Seller's Supplier in respect of the Vessel or other vessels waiting at the Loading Terminal.

#### **39.12 Provisional invoice**

39.12.1 Where the pricing information available to Seller does not allow for the preparation of a final invoice at the time of invoicing or, as a consequence of the provisions of sub-section 39.9, the price is to be paid by means of cash in advance, Seller may issue a provisional invoice, against which Buyer shall make payment on or before the Due Date. The provisional price shall be based, at Seller's option, upon the pricing information available to Seller at the time it issues such provisional invoice or the quotation published on the bill of lading date or the immediately preceding published quotation if no quotation is published on the bill of lading date.

39.12.2 Where the availability of the delivered quantities does not allow for the preparation of a final invoice at the time of invoicing, Seller may issue a provisional invoice against which Buyer shall make payment on or before the Due Date. The provisional price shall be based on the mean of any minimum or maximum contractual quantity specified in the Special Terms.

In case of payment in advance as a consequence of the provisions of sub-section 39.9, the provisional invoice shall, unless otherwise agreed between the Parties, be based upon 120% of the maximum contractual quantity specified in the Special Terms.

39.12.3 If the final price becomes known after the provisional invoice has been issued, Buyer shall nevertheless make payment against such provisional invoice. Once the final price is known, the Seller shall send a final invoice to the Buyer and the debtor party will have to pay the difference between the provisional amount and the final amount within three (3) Banking Days after receipt of such final invoice. No interest shall be due on the difference between the provisional and final invoice.

#### **39.13 Price disruption**

In the event that the pricing refers to any publication which ceases to publish or materially changes the formula for or the method of calculating the quotation, or the composition or specifications of the commodity referred to in the quotation referred to in the Agreement, either party shall give written notice to the other party that it seeks a new pricing and the parties shall use reasonable endeavours to agree in good faith on a new pricing. If the parties fail to reach an agreement on an alternative pricing on or before the tenth Working Day following the written notice, either party shall have the right to terminate the Agreement by written notice to the other party without any liability save in respect of previously accrued rights.

### **Section 40 - WARRANTY OF TITLE**

The Seller hereby warrants to the Buyer that at the time title in the Product passes to the Buyer as provided in the Agreement, the Seller has marketable title to the Product, free and clear of any lien, charges or encumbrance and has the right to sell the Product to the Buyer.

Buyer shall enjoy quiet possession of the Product to the extent implied by the Applicable Law.

### **Section 41 - CLAIMS**

#### **41.1 Quality or quantity claims**

In no event shall Seller be liable for any claim regarding the quantity and/or quality of any Shipment, unless such claim has been made by Buyer against Seller in writing, with full details of the specific facts on which the claim is based and supporting documentation. Such notice of claim will only be validly made if it is received by the Seller within:

- a) Forty five (45) Days of the date of the relevant bill of lading for Vessels for FOB, CFR and CIF deliveries;
- b) Twenty one (21) Days of the date of the relevant bill of lading (or equivalent transport document) for Barges for FOB, CFR and CIF deliveries;
- c) Thirty (30) Days of the date of completion of discharge for DAP deliveries;
- d) Thirty (30) Days from the relevant delivery for any other delivery term.

Notwithstanding the above, in no event shall Seller be liable for the first zero point five (0.5) percent short delivery of the invoiced quantity. However, nothing in this Section 41 is intended to undermine the provisions of the relevant sections of this Agreement in relation to certain documents or findings or equivalent being final and binding save for fraud or manifest error.

Should Buyer fail to submit such claim or provide such details and/or any supporting documentation within the above time limit, then all such claims shall be deemed to have been waived and any liability on the part of Seller shall be forever extinguished.

#### 41.2 Demurrage claims

41.2.1 For Vessels, any claim for demurrage under the Agreement must be notified by the claiming party to the receiving party in writing as follows:

- a) for FOB Vessel transactions, within forty five (45) days (or such period as specified in the Specific Terms) from the completion of loading;
- b) for CFR/CIF/DAP Vessel transactions, within ninety (90) days (or such period as specified in the Specific Terms) from the completion of discharge;
- c) or such shorter period as specified in the Special Terms.

Such claim shall be accompanied with full supporting documentation and shall be submitted by the claiming party within ninety (90) days from the completion of loading or discharge, as applicable, including, but not limited to, invoice and time computation, N.O.R., Vessel's port log, statement of facts, evidence of nomination and charter party rate/fixture recap together with any other documentation that the receiving party may reasonably require.

41.2.2 For Barges, any claim for demurrage under the Agreement shall be submitted by the claiming party to the receiving party in writing as follows:

- a) For FOB Barges transactions, within thirty (30) days from the loading document date;
- b) For CFR/CIF/DAP Barges transactions, within thirty (30) days from the completion of discharge date,
- c) or such shorter period as specified in the Special Terms.

Such claim shall be accompanied with full supporting documentation including, but not limited to claiming party's demurrage calculation, copy of the Barge owner's demurrage invoice, laytime statement and demurrage calculation (which statement and calculation shall include Discharge Terminal information) or, where the Barge is time-chartered, written confirmation from the Barge owner that the Barge was on time-charter and the Barge owner's running time computation, copy of the nomination including verifiable evidence of the relevant time and date of its transmission, and signed or stamped timesheets from the Loading Terminal and Discharge Terminal (or if not available, a timesheet signed or stamped by a terminal and Barge representative), together with any other documentation that the receiving party may reasonably require.

41.2.3 Should the claiming party fail to submit such demurrage claim and all such documentation within the time stated above, the claiming party's claim shall be deemed to have been waived and any liability of the receiving party for demurrage will be forever extinguished.

41.2.4 The right of the claiming party to demurrage, in accordance with the provisions of the Agreement, shall constitute that party's sole remedy in respect of any delay of any kind arising from any cause whatsoever, whether arising out of or in connection with any failure of the receiving party to provide a Berth or otherwise, howsoever and without limitation. The receiving party shall not be liable for any other direct or indirect costs, damages and/or losses whatsoever arising out of any such delay, whether arising out of the Agreement or otherwise.

41.2.5 In no event shall the receiving party pay any amount in respect of demurrage in excess of the demurrage actually paid by the claiming party in respect of the Vessel's voyage and which relates to the Product delivered by the claiming party.

41.2.6 Where claims with respect to demurrage under the Agreement are to be sent to Totsa TotalEnergies Trading SA, those must be sent by email to the following email addresses with subject line to read: demurrage claim - Barge/loading document date/name of product/name of port. Claims sent to another email address or by any other means shall be deemed not to have been received.

Claim and Invoice shall be sent in PDF format to :	
Deliveries by vessel	dem.newclaim@totsa.com
Deliveries by Barge	dem.bargespetchem@totsa.com

#### 41.3 Tax and duties claims

There shall be no time limit on claims solely for taxes and duties pursuant to Section 52.

41.4 Without prejudice to the provisions of sub-sections 41.1 and 41.2, any claim other than quality, quantity or demurrage claims shall be waived and any liability shall be forever extinguished unless a claim accompanied with fully supporting evidence is received within THREE HUNDRED AND SIXTY (360) calendar days from the date of the occurrence giving rise to the claim.

#### Section 42 - DESTINATION

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

- a) be shipped or be intended to be shipped or transported by any means directly or indirectly to or through, or
- b) be disposed of or be intended to 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 interim and final destinations of the Product, and Buyer undertakes to provide such documents upon request.

42.2 Buyer undertakes 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 European Union, any European Union 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 to the risk of being in violation of the Trade Restrictions.

42.3 Should the Seller have reasonable grounds for suspecting that the Buyer is in breach of any provisions of this Section 42, whether prospectively or otherwise, Seller may at any time thereafter immediately terminate the Agreement, without any liability to Buyer.

Moreover, Buyer agrees to hold Seller harmless from, and indemnify Seller for, any losses, costs, damages, fines and/or penalties incurred by Seller resulting from any such breach.

### **Section 43 - EXCEPTIONS - FORCE MAJEURE**

43.1 Neither party shall be deemed in breach of the Agreement as a result of, or be liable to the other for, any failure, omission or delay in its performance in whole or in part of any of the terms or conditions of the Agreement if such failure, omission or delay arises or results from any impediment reasonably beyond, or to be treated as reasonably beyond, the control of that party (any such event being hereinafter referred to as "Force Majeure").

43.2 For the purposes of this Section 43, and without limitation to the generality of sub-section 43.1, an impediment shall be treated as being reasonably beyond the control of Seller if it arises or results from, or in connection with:

- a) compliance, voluntary or mandatory, with a direction or request or reliance upon any authorisation, representation or statement of any international, national, port, transportation, local government or other authority or agency (including the International Energy Agency ("IEA")) or person purporting to act with such authority; or
- b) any natural calamity, earthquake, violent storm, flood, fire, explosion or other Act of God; or
- c) any war, , civil war, hostilities declared or undeclared, embargo, blockade, riots, revolution, terrorism, civil unrest, acts of sabotage, acts of piracy, and any consequence thereof; or
- d) any strike, lockout, stoppage, restraint of work or other labour difficulty from whatever cause arising, even in the event that the same could be settled by acceding to the demands of a labour group; or
- e) any curtailment of, hindrance to, or delay to the availability, delivery or transportation of, or interference with the manufacturing, receiving, handling or delivery of feedstock of Product as well as the inability to obtain or the curtailment of electric power, water, or fuel.

For the purposes of this sub-section 43.2, the availability to Seller on the spot market of any quantity of Product, whether or not of the grade deliverable under the Agreement, shall not be taken into account in determining whether or not a Force Majeure event has occurred.

For the purposes of this sub-section 43.2, any impediment 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.

The mere shortage of labour, materials, equipment or supplies shall not constitute force majeure unless caused by events or circumstances which are themselves force majeure. For the avoidance of doubt, force majeure affecting the Seller's plant or Seller supplier's plant producing the Product shall be deemed to affect Seller.

43.3 If either party is prevented from or delayed in performing any of its obligations under this Agreement by an event of 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 an event of force majeure shall use every reasonable effort to minimise the effects of the event upon the performance of this Agreement and shall promptly resume performance as soon as reasonably possible after cessation of the circumstances of the event.

43.4 If a force majeure event occurs, then, at any time thereafter and for so long as the effect of that event continues, Seller shall be entitled 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 event of 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 an event of force majeure.

43.5 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.

43.6 If the event of force majeure continues for a period of more than thirty (30) Days, either party shall be entitled to terminate the affected delivery 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.

43.7 Where, under the Agreement, Buyer is to receive more than one Shipment, no withholding, suspension, delay, reduction or cancellation of delivery shall operate to extend the duration of the Agreement; and any quantities of Product deliverable under the Agreement that would, but for any reduction or cancellation pursuant to this Section 43, have been delivered during the period of the Agreement, shall cease to be deliverable by Seller.

#### **Section 44 - INSOLVENCY**

44.1 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.

44.2 Notwithstanding the other provisions of the Agreement, termination of the Agreement as per Section 45 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 44 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 45 - TERMINATION**

45.1 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 44; 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 sub-section 45.1 (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.

45.2 If Buyer does not pay any amounts owing in full when due under the Agreement, or if any events described in Section 44 occur in respect of Buyer, then notwithstanding any other provision to the contrary including any provision of Section 46 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.

45.3 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 44 or sub-section 45.1 occur in respect of Buyer or if Buyer fails to comply with any request made under sub-section 39.10 within the time prescribed by Seller or by the Agreement; then in any such event (hereinafter referred to as 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 sub-section 45.3 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 sub-section 45.3 shall be effective to create a charge or other security interest.

#### **Section 46 - ASSIGNMENT**

Save as herein provided, neither party shall assign its rights and obligations under the Agreement, in whole or in part, without the prior written consent of the other party, save, however, that Totsa TotalEnergies Trading SA shall be free to assign its rights and obligations under the Agreement to any of its Affiliates.

If such written consent is given and wherever the assignment is made, the assigning party shall remain jointly and severally liable with the assignee for the full performance of its obligations under the Agreement. Any purported assignment in contravention of this Section 46 shall be void and prohibited.

Notwithstanding the above, Totsa TotalEnergies Trading SA may, without the Buyer's consent, assign all or a portion of its rights to receive and obtain payment under the Agreement in connection with any finance, securitisation or bank funding arrangements, always providing such assignment does not contravene any applicable law, regulation or decree binding upon the Buyer. Any payment made by the Buyer to the payee specified in Totsa TotalEnergies Trading SA's invoice in respect of the Product deliverable under the Agreement shall be in full discharge of the Buyer's payment obligations to the Seller under the Agreement. Any such assignment will not detract from Totsa TotalEnergies Trading SA's obligations under this Agreement, save for any obligation of confidentiality.



## **Section 47 - NOTICES**

47.1 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 address details provided in the Specific Terms or otherwise previously communicated by the other party and will be deemed effective as indicated below:

- i. 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 contact details, if addressed to that department or officer;
- ii. If sent by electronic messaging system (which term for the avoidance of doubt includes e-mail), on the date of the transmission is sent in legible form (it being agreed that the burden of proving lack of receipt will be on the receiver) at the email address provided in the Specific Terms or otherwise previously communicated by the other party; or
- iii. If sent by certified or registered mail 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.
- iv. Notices may not be given by instant messaging, by telephone, nor by ordinary (e.g. First & Second Class UK) post.

47.2 Either party, by giving not less than fifteen (15) days' notice as per the provisions of this Section 47 to the other party, may from time to time change its contact details.

## **Section 48 - HEALTH, SAFETY AND ENVIRONMENTAL INFORMATION**

### **48.1 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 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, Buyer may contact Seller's usual operational contact.

### **48.2 The Buyer's responsibilities**

The Buyer shall pass on to its employees, agents, contractors, customers and other persons to whom it supplies the Product delivered hereunder with a copy of a current SDS and any other information relating to health, safety and environmental data in connection with the Product delivered hereunder. It is a condition of the Agreement that the Buyer complies with any recommendation and/or conditions of use mentioned in the SDS or any information relating to health, safety and environmental data in connection with the Product delivered hereunder.

In case the Product supplied is an intermediate:

The Buyer confirms its understanding of the definition of "transported isolated intermediate" (Chapter 2 Article 3 (15) of Regulation No. 1907/2006) and that its application of the product as intermediate for synthesis falls within the meaning of this definition. As a condition of the Contract, the Buyer guarantees

that the product purchased hereunder, is/will be used only "in strictly controlled conditions" as defined in Chapter 3, Article 18(4) of Regulation 1907/2006.

The Buyer shall obtain the same guarantee from its own buyer in case the product is being sold to third parties.

The Buyer shall provide the Seller with any necessary internal documentation fulfilling the requirements according to Article 18 (4) of Regulation No. 1907/2006, upon request. The Buyer confirms that he is aware of and complies with the following guidance on intermediates: <https://echa.europa.eu/guidance-documents/guidance-on-reach>).

The Buyer shall inform the Seller of any changes in the application of the product without delay.

The Buyer shall be responsible for any consequences that result from the use of an SDS or other information. The Buyer shall provide persons responsible for the management of health, safety and environment matters within its own organisation with a copy of the SDS or 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.

#### 48.3 Substance identification

If applicable, the provisions of this sub-section 48.3 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, in which case both Seller and Buyer shall comply with their obligations under REACH.

(a) Subject to sub-clause 48.3 (c), Seller shall provide Buyer with a Chemical Abstract Services ("CAS") registry number and/or the 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") 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"). The Seller shall provide the Substance Identifier(s) to the Buyer no later than the time when title and risk pass from the Seller to the Buyer but in respect of sales afloat, as soon as practically possible in order for the Buyer to comply with REACH.

(b) If the Seller is unable to provide the Buyer with any of the information described in 48.3 (a) above, then the Seller shall provide the Buyer with the information necessary for the Buyer to ascertain the identity of the Product or substances contained in the Product (CAS or EC number). This information shall be given in writing to Buyer in reasonable time for Buyer to ensure REACH compliance.

(c) 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 sub-clause 48.3 (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 European Economic Area ('EEA').

#### 48.4 REACH obligations

Where applicable, the Buyer hereby confirms that it complies with Regulation (EC) No. 1907/2006 (REACH-Regulation), which outlines the framework for chemicals management in the European Union.

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 that 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 sub-clause 48.4 (a) or 48.4 (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.

#### 48.5 Liability

To the extent permissible by law, the Seller shall not be responsible in any respect whatsoever for any loss, damage or injury resulting from any hazards inherent in the nature of the Product delivered hereunder.

The Buyer shall indemnify the Seller in full for any costs, damages, expenses and/or fines incurred by the Seller as a result of the Buyer's breach of this Section 48.

### **Section 49 - APPLICABLE LAW AND JURISDICTION**

- 49.1 The Agreement (and Seller's offer) is made under, and shall be governed by, and be construed in all respects in accordance with, the laws of England but without reference to any conflict of law rules.

Moreover, the parties hereto expressly agree that the application of the "United Nations Convention on Contracts for the International Sale of Goods 1980" is hereby excluded pursuant to article 6 of the Convention.

- 49.2 The parties expressly agree that all disputes and claims arising out of or relating to the Agreement or the alleged breach thereof shall be submitted to the exclusive jurisdiction of the High Court sitting in London and to service of process by registered mail and any other methods of service agreed by each party.

However, any decision of the High Court may be enforced in the courts of any country and furthermore, neither party shall be precluded from pursuing arrest, attachment, security, preservation and/or other conservatory actions in the courts of any other country, or exercising any contractual rights in relation to the Vessel or the Product as provided for elsewhere in the Agreement.

- 49.3 Each party undertakes to appoint an agent for service of process in the English jurisdiction promptly upon request of the other party.

- 49.4 Each party hereby warrants that it has entered into the Agreement in a commercial capacity and each party hereby warrants that it is, in all respects relevant to the Agreement, subject to civil and commercial law. Each party hereby irrevocably waives any immunity from suit, execution, attachment in respect of itself or its assets to the fullest extent permitted by law.

#### 49.5 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 50 - PRECURSOR GOODS FOR DRUGS**

Some Products sold hereunder, in particular toluene, are considered as “precursor goods for drugs” as further defined and regulated by EU/EC legislation. In such case, Buyer undertakes to supply to the Seller an import license for the country of destination. If Buyer is unable to provide such licence, Seller shall be entitled to cancel the Agreement without any liability towards the Buyer.

## **Section 51 - ETHICS AND BUSINESS PRINCIPLES**

The Seller and the Buyer represent and warrant that they shall perform this Agreement in full compliance with the applicable rules and principles set out in their respective Code of Conduct (a copy of which is available on their respective website or on request). In the absence of such Code of Conduct for one of the party, the Agreement shall comply with the principles of the Code of Conduct of the other party.

## **Section 52 - VALUE ADDED TAX, EXCISE DUTY, CUSTOMS AND OTHER TAXES AND DUTIES**

### **52.1 Value Added Tax**

Where VAT becomes payable under the rules applicable at the Loading 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 contractual 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.

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) Banking Days of presentation of such invoice, without any discount, deduction, withholding, abatement, set-off or counterclaim.

Any delay in effecting any payment by the due date shall entitle Seller to receive payment of interest for each day of delay, calculated in accordance with the interest provisions at paragraph 39.6 hereof. 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.

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.

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.

#### **52.1.1 European Union**

(a) Where the Loading Terminal is located within the European Union (EU).

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 another EU Member State:

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

- 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

- that an Intra Community Acquisition of the Product will be reported in the country of destination; and

- 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 (0) rating; and

1.3 Buyer provides to Seller, within thirty (30) days of loading the Shipment, satisfactory evidence to the relevant Loading Terminal 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 Loading Terminal Authorities to allow zero rating of the sale of the Product;

2. If the Loading Terminal and destination are located in the same EU Member State: In accordance with applicable rules at the Loading Terminal, the sale of the relevant Product may be zero rated provided that the Buyer provides to Seller, prior to commencement of loading/transfer, evidence satisfactory to Loading Terminal Authorities that Buyer is entitled to zero rating for the Product, including but not limited to a written declaration stating 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

3. 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 Loading Terminal Authorities that the Product has been received by Buyer, or some other person on Buyer's behalf, at a destination outside the EU.

b) Where the Loading Terminal and destination are both located outside the EU:

In accordance with applicable rules at the Loading Terminal, the sale of the relevant Product may be zero rated provided that Buyer provides to Seller, within thirty (30) days of loading the Shipment, satisfactory evidence to the Loading Terminal Authorities that the Product has been received by Buyer, or some other person on Buyer's behalf, at destination.

52.1.2 Where the Loading Terminal and the Discharge Terminal are located in Singapore:

- i. Where the Product is transferred between ZERO (0) rated-VAT warehouses in Singapore, the Buyer is entitled to exempt the transaction from VAT provided Buyer provides evidence satisfactory to the relevant customs authorities, including but not limited to the certificate of discharge.
- ii. Where Buyer's tank is located within not or no-longer ZERO (0) rated-VAT warehouses in Singapore, Buyer undertakes to inform Seller accordingly, in reasonable time before the first day of the contractual delivery dates.

Seller shall issue an invoice setting out such VAT in Singapore Dollars and the date for its payment. Payment of such VAT shall be made by Buyer to Seller in addition to the contractual price of the Product.

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, 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) Banking Days of presentation of such invoice, without any discount, deduction, withholding, abatement, set-off or counterclaim.

52.1.3 Where the Loading Terminal or Discharge Terminal is located within Australia, all price/charges contemplated in this Agreement are exclusive of any VAT. To the extent that payments to be made under this Agreement are subject to VAT, the Seller may, in addition to the amount payable under the Agreement, recover from the Buyer an additional amount to account for VAT and issue valid VAT invoices in respect of such payments. Where the relevant legislation makes provision for VAT or similar tax exemptions or reliefs, then these shall be applied accordingly provided Buyer provides evidence satisfactory to the relevant customs authorities, including but not limited to the certificate of discharge.

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 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) Banking Days of presentation of such invoice, without any discount, deduction, withholding, abatement, set-off or counterclaim.

## 52.2 Customs Duty and Excise duty

Buyer shall indemnify Seller and hold Seller harmless from any and all liability in respect of customs duty, VAT, excise duty or similar tax 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, VAT, excise duty or similar tax, where the Product is delivered from any bonded premises in the EU, unless, following information is provided.

### A. Where the Product is Union Goods, either;

- a) Moving to another Member State under EMCS with an e-AD:
  - i. Buyer undertakes to provides to Seller nomination including full details to comply with EMCS requirements, and
  - ii. Undertakes to comply with the applicable European legislation and to provide promptly the Seller with a Report of Receipt (ROR) no later than five (5) Working Days after the end of the movement of the Product; or
- b) Taken out of bonded premises without an e-AD:
  - i. Buyer provides to Seller satisfactory evidence to the EU member state from which the Product was shipped, 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
- c) Transiting between two countries using NCTS system and delivered from any bonded premise:
  - i. Buyer undertakes to provide any information requested by law in order to draw up the transit document under NCTS. And
  - ii. Undertakes to provides to Seller satisfactory evidence that the Product was delivered to the country of destination and that the Product and the accompanying documents (T2) have been properly presented to the customs office of destination; or
- d) Exported from the European Union:
  - i. Where the Product was taken out of bonded premises, Buyer provides to Seller satisfactory evidence to the EU member state 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 42 hereof, a certificate of discharge of the Product.

### B. Where the Product is non-Union Goods, either

- a) transiting between two countries using NCTS system and delivered from any bonded premise:
  - i. Buyer undertakes to provide any information requested by law in order to draw up the transit document under NCTS. And

- ii. 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
- b) Exported from the European Union: 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.

Notwithstanding the above, Buyer shall indemnify Seller and hold Seller harmless from any and all liability for any excise duty, customs duty, VAT or similar tax or duty claimed by a relevant EU member state in respect of discrepancies between the loaded and discharged quantities.

C. Where the Product has been released for free circulation or when the Product is Union Goods, and Loading Terminal is located in Spain, Buyer undertakes and warrants that the Product will be discharged outside Spanish fiscal territory. In that prospect, Buyer will provide Seller sufficient proof of discharge as soon as practicable.

D. Where the Specials Terms and Conditions provide that the Product shall be EU qualified, Seller will use best endeavours to provide Buyer with necessary documents

E. Upon Buyer's request, Seller shall provide to Buyer the relevant qualifying document(s) related to the origin of the Product allowing Buyer or final importer to comply with Importation customs clearance requirements at disport.

If the Product originates from a country with which the country of Importation benefits from a preferential trade arrangement ("PTA") or has a free trade agreement ("FTA") in force at time of delivery, Seller will reasonably cooperate with Buyer's efforts to minimize tariffs and duties owed for Importation. Upon Buyer's request, in addition to the above and if applicable, Seller shall provide Buyer with such relevant qualifying document(s) related to the origin of the Products in the form set out in the referred PTA or FTA ("Origin Declaration").

Seller represents that, to the best of its knowledge, the information/documents provided to Buyer shall be true and accurate and Seller shall immediately inform Buyer of any changes, modification or amendment to such information/documents, if any. If necessary, Buyer is entitled to request Seller to supplement the information contained in any of the documents transmitted to comply with the requirements under the pertinent regulations at disport. Seller will make commercially reasonable efforts to procure from its suppliers relevant information/documents and transmit them to Buyer in a timely fashion.

Buyer shall be responsible for providing such Original qualifying document to the relevant local customs authorities, at disport.

If Seller is unable to provide the relevant Origin Declaration 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 Origin Declaration is subsequently delivered to Buyer, Buyer shall exercise all reasonable efforts to have it accepted by the relevant customs authorities, whereupon Buyer shall promptly re-pay to Seller the amount previously paid by Seller in respect of the duty.

"Importation" is being defined, for the purpose of this sub-section 52.2 E, as the action of discharging Product into a customs territory and of undertaking customs clearance procedure.

52.3 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 L/C 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 L/C to be in a format acceptable to Seller.

Any delay in effecting any payment by the Due Date under this Section 52 shall entitle Seller to receive payment of any associated penalties incurred and interest for each day of delay calculated at three (3) percentage points above the Late Payment Interest Rate. Such interest shall in no circumstances be construed as an agreement by Seller to provide extended credit, and shall be without prejudice to any rights and remedies which the Seller may have under the Agreement or otherwise.

52.4 There shall be no time limit on claims solely for taxes and duties pursuant to this Section 52.

52.5 The party that is the Importer of Record of the Product agrees to fulfil all requirements applicable to the Importer of Record and shall pay any applicable import duty or other applicable fees and fines, penalties and costs. For the avoidance of doubt and in respect of every type of sale, the Seller shall not be the Importer of Record.

### **Section 53 – TRADE RESTRICTIONS**

53.1 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:

53.2 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).

53.3 Nothing in this sub-section 53.2 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 54 – ANTI-CORRUPTION**

54.1 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

54.2 Buyer and Seller each represent, warrant and undertake to the other that in connection with the Agreement they have not and shall not, directly or indirectly: pay, 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.

54.3 Buyer or Seller may terminate the Agreement forthwith 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 55 - GENERAL**

55.1 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 co-operate 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.

### **55.2 Waiver**

No delay or omission by either party to exercise any right or privilege herein conferred or to enforce any of the terms and conditions of the Agreement shall be construed as a waiver of any such right, privilege, terms or conditions.

No waiver or omission by either party to require performance by the other party of any of the terms and conditions of the Agreement and no forbearance or indulgence granted or shown by either party to the other shall release, discharge or in any manner affect or prejudice the right of a party at any time to require strict and full performance by the other of any or all of the terms and conditions of the Agreement to be performed subsequent to any such waiver, omission, forbearance or indulgence.

### **55.3 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 twenty four (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.

#### 55.4 US Waters Clause

Notwithstanding Section 1 and Section herein, 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 from the Seller to Buyer on the earliest 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.

Notwithstanding sub-section 13.2, where the Discharge 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 from Seller to the Buyer on the latest immediately before the Vessel carrying the Product enters 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.

- 55.5 Buyer and Seller shall be respectively responsible for obtaining all consents, authorisations, licences, permits, approvals and assurances of whatsoever nature to give effect to the provisions of the Agreement.

#### 55.6 Limitation of Liability

Except as expressly provided for in the Agreement, neither Seller nor Buyer shall in any event, including but not limited to, any negligent act or omission on its part, be liable in contract, tort, breach of statutory duty or otherwise, in respect of any consequential, indirect or special losses, expenses or damages of any kind, 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, nor be liable for any loss of profit or anticipated profit, use, goodwill, business receipts, contracts or commercial opportunities, market reputation, cost of overheads thrown away or loss resulting from shut-down of any plant of Buyer or of the receiver of the Product, whether or not foreseeable.

Without prejudice to the provisions of Section 41, any claim of Buyer shall be deemed to be waived and any liability of Seller shall be extinguished unless a claim accompanied with evidence fully supporting the claim is received by Seller within three hundred and sixty five (365) calendar days of the date of the occurrence giving rise to the claim.

- 55.7 Buyer agrees to indemnify, defend and hold Seller and its Affiliates harmless from liability for any and all demands or claims arising from injuries sustained or damages suffered following the passage of risk and property in the Product as hereinabove provided, 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.
- 55.8 For the avoidance of doubt, any repetition in the Special Terms of any section or sub-section of the General Terms and Conditions or any part of the same shall be for emphasis only and shall not, by reason of such repetition, exclude or override any other provision of these General Terms and Conditions.

#### 55.9 Entire Agreement

The Special Terms and the General Terms and Conditions together form the entire agreement between the parties, and no additional terms, conditions, representations or warranties shall be incorporated in the Agreement in the absence of express incorporation or written consent of each party.

55.10 Where not used to identify the provisions applicable to each type of delivery (e.g. FOB, Ex Tank, etc.), the section headings are for convenience only and shall not be interpreted in any way to limit or change the subject matter of the Agreement.

Buyer and Seller shall be respectively responsible for obtaining all consents, authorisations, licences, permits, approvals and assurances of whatsoever nature to give effect to the provisions of the Agreement.

55.11 The General Terms and Conditions shall apply from the date of Seller's offer.

#### 55.12 Electronic documents

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

- 55.12.1 Any bill of lading, loading/lading ticket, cognossement, transport document, 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 a secure system agreed by the Parties (the "eDoc System") in accordance with the terms and conditions of the eDoc System as amended from time to time in accordance with its terms, (the "Terms of Use") 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 Terms of Use.
- 55.12.2 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.
- 55.12.3 Any applicable requirement of law, contract, custom or practice that any bill of lading, loading/lading ticket, cognossement, transport document, 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 clause 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.
- 55.12.4 The parties hereto agree that eDocs which are converted to paper in accordance with the terms and conditions of the Terms of Use ("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 Terms of Use, 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 Terms of Use.
- 55.12.5 Any L/C 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.

#### 55.13 Recording

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.

#### 55.14 Third Party Rights

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.

#### 55.15 Severability

If any provision of the Agreement is declared to be illegal, invalid or otherwise unenforceable by a court of competent jurisdiction or either party's compliance with any ruling or resolution of the United Nations or the European Union has a like or similar effect, the remainder of the Agreement (and of such provision) shall not be affected except to the extent necessary to delete such illegal, invalid or unenforceable provision (or part thereof).

#### 55.16 Survivability

If for any reason the Agreement shall be terminated then such termination shall be without prejudice to any rights, obligations, or liabilities of either party which have accrued at the date of termination but have not been performed or discharged, and any parts of the Agreement having any relevance thereto or any bearing thereon shall, notwithstanding the termination of the Agreement for any reason, continue in force and effect.

#### 55.17 Conflict

In the event of conflict or inconsistency between these General Terms and Conditions and the Special Provisions, the Special Provisions shall prevail over these General Terms and Conditions.

#### 55.18 Confidentiality

If it is specified in the Special Provisions 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 (c) such disclosure is to an Affiliated company of the Disclosing Party, legal advisor, auditor or accountant, agent, financing bank, insurance company / broker or in connection with any dispute, legal or arbitration proceedings, and the Disclosing Party shall use reasonable endeavours to 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 the Agreement to a price index publication in which case the Product description, volume, price, delivery point and delivery date may be disclosed but the identity of the counterparty shall remain confidential.

#### 55.19 Trade Marks

Nothing in the Agreement whether express or implied shall be deemed to confer any right upon the Buyer to apply any trade mark owned by the Seller (or any other company Affiliated with the Total S.A. group of companies) to any Product supplied under the Agreement nor to use such trade marks in relation to such Product, nor vice versa in respect of any trade mark owned by the Buyer.

#### 55.20 Respecting Human Rights at work

In performing their obligations under this Agreement, the Parties shall act consistently with fundamental principles defined and protected by the Universal Declaration of Human Rights, by the fundamental principles of the International Labor Organization, and in particular with rules relating to the prohibition of forced labor, child labor and human trafficking; In any event, where national legislation is less protective, internationally recognized human rights instruments shall prevail.

Each Party represents and warrants that, at the date of the Agreement, neither it nor any of its officers or employees, in the course of their duties with their company:

- a) has been convicted of any offence involving child labor, forced labor and human trafficking; and
- b) is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of, or in connection with, child labor, forced labor and human trafficking.

Each Party may terminate this Agreement with immediate effect by giving written notice to the other Party if, in its reasonable judgement supported by credible evidence, any of the above representations are false or the other Party is in breach of any of the above warranties or undertakings.

## **APPENDIX 1 - Letter of Indemnity format**

The "Agreement" shall mean the General Terms and Conditions agreed between the parties (including, where applicable, the schedules thereto) together with the special provisions agreed by the parties.

We refer to our Agreement dated [DATE] (the "Agreement") in respect of your purchase from us of [QUANTITY] tons of [GRADE] Product (the "Cargo") FOB/CFR/CIF on Vessel "[VESSEL NAME]", bill of lading date [B/L DATE].

In consideration of your making payment of the full invoiced amount, as detailed in Seller's valid tax commercial invoice (provisional invoice acceptable where expressly provided for in the terms of the Agreement), of US dollars [US DOLLAR AMOUNT] (and making payment when due of any subsequent shortfall as set out on any final invoice) for the Product in accordance with the Agreement and having agreed to accept delivery of the Cargo without having been provided with the 3/3 clean Original bills of lading and the Original certificate of origin issued at the loading terminal ("the Documents"), we hereby represent and warrant all of the following:

- (i) the existence and validity of the Documents;
- (ii) that we are entitled to possession of the Documents;
- (iii) that we were entitled to possession of the Cargo;
- (iv) that we had good and marketable title to the Cargo;
- (v) that title in the Cargo has been passed as provided in the Agreement to you free of all liens, charges or encumbrances of whatever kind;
- (vi) that you will have the benefit of the warranty as to enjoyment of quiet possession implied by law in the Agreement but without prejudice to any other warranty so implied.

Without prejudice to your rights under the Agreement we hereby agree to protect, indemnify and hold you harmless from and against any and all damages, losses, liabilities, costs, claims and reasonable expenses and legal costs which you may suffer by reason of:

- (a) our failure to present the Documents to you in accordance with the Agreement; and/or
- (b) any action or proceeding brought or threatened against you by reason of our said failure and any breach of our above express representations and warranties in connection with questions of title to or the right to possession of the Documents or the Cargo or the proceeds of either; or any liens, charges or encumbrances asserted on the documents or the Cargo or any other claims arising out of or in connection with the Documents.

Our liability hereunder shall remain in full force and effect unless and until we provide you with the Documents, which we irrevocably agree to provide to you promptly after the same have come into our possession.

No term of this indemnity is intended to, or does, confer a benefit or remedy on any party other than the named Buyer under the Agreement whether by virtue of the Contracts (Rights of Third Parties) Act 1999 or howsoever.

This indemnity shall be governed by and construed in accordance with English law, shall be subject to the exclusive jurisdiction of the English Courts and shall cease to have effect upon the Documents being provided to you.

Signed by: [NAME OF THE AUTHORISED SIGNATORY]

Title: [PROFESSIONAL TITLE]

Authorised Signatory

of: [COMPANY NAME]

[THE BELOW SECTION TO BE COMPLETED AND SIGNED WHERE BUYER EXERCISES ITS RIGHT TO REQUIRE A BANK TO COUNTER-SIGN THE LETTER OF INDEMNITY]

In consideration of your agreeing as aforesaid we, the undersigned [BANK NAME], whose customer is [FULL NAME OF SELLER], hereby jointly and severally agree to be bound by the terms of the above letter of indemnity.

Signed by: [NAME OF THE BANK AUTHORISED SIGNATORY]

Title: [PROFESSIONAL TITLE]

Bank Authorised Signatory

Of [BANK NAME]

## **APPENDIX 2 - REQUIREMENTS IN RESPECT OF VESSELS AT THE LOADING OR DISCHARGE TERMINAL**

### **1. REQUIREMENTS IN RESPECT OF VESSELS**

**1.1** If any Vessel does not meet any of the following requirements of this Appendix 2, the Party which is not arranging carriage (hereinafter the "Other Party") may refuse to berth, load/discharge or continue loading/discharging such Vessel.

Notwithstanding any prior acceptance of the Vessel by the Other party and notwithstanding anything to the contrary expressed in this Section 1, if at any time the Vessel fails to comply with any of the requirements of this Appendix 2, then:

- a) the Other 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 as used laytime, or if the Vessel is on demurrage, as demurrage;
- b) the party which is arranging carriage (hereinafter the "Arranging Party") shall be deemed not to have complied with sub-section 3.2 of Part 1 of this Agreement; and
- c) the Arranging Party shall be obliged to substitute the Vessel with a Vessel whose size and capacity are equivalent to those of the Vessel originally nominated and complying with such requirements.

Any resulting delay or expenses shall be for the Arranging Party's account (including but not limited to, any time lost or demurrage incurred in respect of the Arranging Party's Vessel and any demurrage incurred by the Other Party or the Other Party's Supplier in respect of other Vessels waiting at the Loading Terminal/Discharge Terminal).

### **1.2 ITOPF**

The Arranging Party warrants that the Vessel is owned or demise chartered throughout the entire period of the voyage by a member of the International Tanker Owners Pollution Federation Limited (ITOPF).

### **1.3 P & I CLUBS**

For each Barge specified in, or nominated under, the Agreement, the Arranging Party shall exercise reasonable efforts to ensure that the Barge:

- a) is entered in and shall remain throughout the entire period of the voyage in a P & I Club which is a member of the International Group of P & I Clubs;
- b) has in place throughout the entire period of the voyage insurance cover for pollution in an amount of no less than the highest standard pollution cover available under the rules of the International Group of P & I Clubs; and

### **1.4 CLC, P & I CLUBS FOR VESSELS**

For each Vessel specified in, or nominated under, the Agreement, the Arranging Party shall exercise reasonable efforts to ensure that the Vessel:

- a) 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 Oil Pollution Damage ("CLC");
- b) is entered in and shall remain throughout the entire period of the voyage at the Discharge Terminal (s), in a P & I Club which is a member of the International Group of P & I Clubs; and
- c) has in place throughout the entire period of the voyage insurance cover for pollution in an amount of no less than the highest standard pollution cover available under the rules of the International Group of P & I Clubs, provided always that the Vessel constitutes a "Ship" for the purpose of CLC.

### **1.5 ISM, SOLAS AND IMO FOR VESSELS**



The Vessel shall comply with the requirements of the International Safety Management ("ISM") Code and has on board a valid ISM Code Safety Management Certificate for the Vessel and a copy of the Vessel Manager's Document of Compliance as required by the ISM Code and SOLAS.

The Vessel shall be manned, operated and maintained so as to comply fully with (i) the standards set out in the International Safety Guide for Product Tankers and Terminals ("ISGOTT") or the International Safety Guide for Inland Navigation Tank-Barges and Terminals ("ISGINTT") as applicable, (ii) appropriate International Maritime Organisation ("IMO") recommendations, and (iii) the OCIMF guidelines for the Control of Drugs and Alcohol On-board Ship (1990), each as amended from time to time.

Unless not required by SOLAS, for each Vessel specified in, or nominated under the Agreement, the Arranging Party shall exercise reasonable efforts to ensure that the Vessel is fitted with an Inert Gas System, which is operative and will be used.

## **1.6 ISPS**

(a) The Arranging Party shall procure that the Vessel:

- i. complies with the requirements of the International Code for the Security of Ships and of Port Facilities and the relevant amendments to Chapter XI of SOLAS ("**ISPS Code**") , or where the Loading Terminal is within the U.S.A. and / or U.S. Territories or Waters with the U.S. Maritime Transportation Security Act 2002 ("**MTSA**") or elsewhere such other equivalent Code as may be required, and has on board a valid International Ship Security Certificate as well as any other required valid certificates and documents, issued pursuant to the ISPS Code (or MTSA or such other equivalent Code), and
- ii. submits, when required, a Declaration of Security to the appropriate authorities prior to arrival at the Loading Terminal.

(b) The Other Party shall procure that the Loading Terminal/Discharge Terminal shall comply with the requirements of the ISPS Code.

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 Terminal/Discharge Terminal and actually incurred by the Arranging Party resulting directly from the failure of the Loading Terminal/Discharge Terminal to comply with the ISPS Code shall be for the account of the Other 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.

Save where the Vessel has failed to comply with the requirements of the ISPS Code, the Other Party shall be responsible for any demurrage actually incurred by the Arranging Party arising from delay to the Vessel at the Loading Terminal/Discharge Terminal resulting directly from the Vessel being required by the Loading Terminal/Discharge 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 parts of call.

The Other Party's liability to the Arranging 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/Discharge Terminal to comply with the ISPS Code shall be limited to the payment of demurrage and costs actually incurred by the Arranging Party in accordance with the provisions of this sub-section 1.6.

## **1.7 ISGOTT, etc.**

The Vessel shall be manned, operated and maintained so as to fully comply with (i) the standards set out in ISGOTT or ISGINTT as applicable, (ii) appropriate IMO recommendations, and (iii) the OCIMF Guidelines for the Control of Drugs and Alcohol Onboard Ship (June 1995), each as amended from time to time. (For the purposes hereof, "ISGOTT" means the International Safety Guide for Oil Tankers and Terminals, "ISGINTT" means International Safety Guide for Inland Navigation Tank-Barges and Terminals, as current from time to time, and "IMO" means the International Maritime Organisation).

## **1.8 CLOSED LOADING AND/OR DISCHARGE**

Vessels which are loading a volatile, toxic or noxious cargo must operate at all times in Closed Operations mode. Closed Operations refers to the procedures whereby Vessels conduct cargo transfer and ballasting operations into cargo tanks, with tank apertures closed and with vapours being emitted only by means of the dedicated venting system which is designed to disperse vapour clear of working areas and possible ignition sources. For the purposes of this sub-section:

**"volatile"** shall mean a liquid from which gas evaporates rapidly and shall be taken to include any naturally volatile Product or any Product being carried at a temperature which is higher than the flash point of the Product minus 10 degrees Celsius;

**"toxic"** shall mean a poison which can affect personnel following inhalation, absorption or ingestion and shall be taken to include all Products which give off vapours containing substances for which exposure limits are recommended as they may be hazardous to the health of personnel exposed to them;

**"noxious"** shall mean harmful to personnel or the environment.

## **1.9 BALLAST**

Discharge of dirty ballast, bilges, slops or other substances into water shall be in accordance with MARPOL 73/78, as amended from time to time, and is in any event totally prohibited within the confines of the Loading Terminal/Discharge Terminal.

## **1.10 REGULATIONS**

The Vessel nominated under the Agreement shall comply with all applicable governmental, local and port authority regulations, the Other Party's, the Other Party's Supplier's and/or Loading Terminal/Discharge Terminal Operator's regulations, procedures and any other requirement of any nature whatsoever in force at the Loading Terminal/Discharge Terminal at the time of delivery.

## **2. LOADING OR DISCHARGING AT PORTS IN THE UNITED KINGDOM**

Where the Loading Terminal/Discharge Terminal is located within the United Kingdom, the Vessel shall observe the Code of Practice relating, inter alia, to recommendations as to routes to be taken by Vessels in certain sensitive locations in UK waters as drawn up by the British Chamber of Shipping in March 1993 and as amended from time to time.

## **3. MARITIME TRAFFIC SCHEMES**

The Vessel shall comply with all regulations and recommendations contained in any Maritime Traffic Schemes applicable to the relevant voyage and in particular to those set out in the "Turkish Straits Maritime Traffic Scheme Regulations" dated 1<sup>st</sup> September 2018, as amended or re-issued from time to time.