



**SHELL INTERNATIONAL TRADING  
AND SHIPPING COMPANY LIMITED**

General Terms & Conditions  
for Sales and Purchases of Products

2010 edition

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## **PART ONE**

### **In respect of FOB deliveries**

#### **Section 1. – Delivery**

The Product shall be delivered by the Seller to the Buyer, in bulk FOB at the Loading Terminal on to Vessel(s) provided or procured by the Buyer.

#### **Section 2. – Measurement and sampling, independent inspection and certification**

##### **2.1 Measurement and sampling**

The quantity and quality of the Product delivered under the Agreement shall be determined by measurement, sampling and testing in accordance with the standard practice at the Loading Terminal at the time of shipment. Notwithstanding the provisions of Section 2.2, the certificates of quantity and quality (or such other equivalent documents as may be issued at the Loading Terminal) for the Product comprising the shipment issued in accordance with such standard practice shall, except in cases of manifest error or fraud, be conclusive and binding on both parties for invoicing purposes but without prejudice to the rights of either party to make any claim pursuant to Section 31.

##### **2.2 Independent inspection**

2.2.1 Either party may appoint a mutually acceptable independent inspector at the Loading Terminal, subject to any necessary prior agreement of the Loading Terminal operator having been obtained. Such appointment shall be notified in writing to the other party. Unless otherwise provided for in the Special Provisions, all charges in respect thereof shall be shared equally between the parties and the inspector's report shall be made available to both parties.

2.2.2 In addition to the independent inspector appointed pursuant to Section 2.2.1 or should the parties fail to mutually agree upon an independent inspector, either party may, at its own expense, appoint a representative at the Loading Terminal, subject to any necessary prior agreement of the Loading Terminal operator.

##### **2.3 Place of Certification**

Should it not be customary practice at the Loading Terminal at the time of shipment for measurement and sampling pursuant to Section 2.1 to take place at the Vessel's manifold immediately prior to loading, or should the parties agree otherwise, then it is a condition of the Agreement that the Seller shall be obliged to provide the same quantity and quality of the Product at the Vessel's permanent hose connection as set out in the certificates of quantity and quality so issued.

#### **Section 3. – Risk and Property**

3.1 Notwithstanding any right of the Seller to retain the documents referred to in Section 35 until payment, the risk and property 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.

3.2 Any loss of or damage to the Product during loading, if caused by the Vessel or its officers or crew, shall be for the account of the Buyer. Any claim made by the Seller's supplier(s) against the Seller in respect of damage to any facilities at the Loading Terminal (or in the event the facilities are operated by the Seller any claim by the Seller or by an Affiliate of the Seller) caused by the Buyer's Vessel shall be borne by the Buyer.

#### **Section 4. – Laydays**

4.1 The Laydays shall be the day or range of days (issued in accordance with standard practice at the Loading Terminal) in which:

4.1.1 the Buyer's nominated Vessel must tender a valid NOR at the Loading Terminal pursuant to Section 6.1; and

4.1.2 the Seller shall have a sufficient quantity of the Product deliverable under the Agreement available at the Loading Terminal so as to enable loading to commence and continue on an uninterrupted basis pursuant to Section 6.2.

**4.2** The Laydays shall be either:

4.2.1 as specified in the Special Provisions; or

4.2.2 established in accordance with the procedure(s) specified in the Special Provisions; or

4.2.3 where such Laydays cannot be ascertained by reference to Sections 4.2.1 or 4.2.2, as notified by the Seller to the Buyer by not later than either:

(a) the date 12 days prior to the first day of the Laydays so notified; or

(b) the 20th day of the month preceding the first month in which the Laydays fall, whichever is the later.

**4.3** The Laydays established in accordance with Sections 4.2.2 or 4.2.3 shall, unless otherwise specifically agreed between the parties, fall entirely within any delivery period specified in the Special Provisions.

**Section 5. – Nomination of Vessels, etc.**

**5.1 Full and part cargo lots**

Unless otherwise provided in the Special Provisions, delivery hereunder shall be given and taken in one full cargo lot or a part cargo lot at the Buyer's option but subject always to the prior agreement of the Loading Terminal operator.

**5.2 Nomination of Vessel**

5.2.1 Each Vessel shall be nominated in writing by the Buyer to the Seller. Such nomination shall specify:

(a) the name of the Vessel, date built, summer deadweight, length and flag;

(b) the grade and approximate quantity to be loaded;

(c) the ETA of the Vessel;

(d) the destination(s) of the Vessel;

(e) such other information as may be required by the Loading Terminal operator from time to time;

(f) full written instructions regarding the particulars and destination of the bills of lading and such other customary Loading Terminal documentation which may be required by the Buyer;

(g) details of any cargo on board or to be laden on board if loading a part cargo; and

(h) confirmation that the Vessel complies with the requirements of Schedule E hereto.

5.2.2 The nomination shall not be effective unless it is received by the Seller not later than 5 days prior to the first day of the Laydays. Notwithstanding the foregoing, if the nomination is received by the Seller after such 5th day and is accepted by the Seller, it shall be effective but the Buyer shall be liable for all costs resulting from any delays in loading the Product under the Agreement that are due directly to the failure by the Buyer to nominate in a timely manner and any such delays shall not count as time allowed to the Seller for loading or if the Vessel is on demurrage, as demurrage. In the event that the Agreement is entered into 5 days or less prior to the first day of the Laydays then the nomination must be received, by the Seller, no less than 2 days prior to the first day of the Laydays.

**5.3 Substitution of Vessels**

In respect of any nominated Vessel, the Buyer may, or if necessary to perform its obligations under the Agreement must, substitute therefor another Vessel provided always that:



- 5.3.1 the size of the substitute Vessel and the quantity to be loaded shall not, without the prior written consent of the Seller, differ materially from the size of the Vessel previously named and the quantity specified in the nomination;
- 5.3.2 the Laydays which would have applied in respect of the Vessel originally nominated shall apply to the substitute Vessel; and
- 5.3.3 the Buyer shall give to the Seller notice in writing of the name and the destination(s) of the substitute Vessel as soon as practicably possible but in any event not later than the ETA of the substitute Vessel or the ETA of the Vessel originally nominated, whichever is the earlier.

#### **5.4 ETA**

The Buyer or its representative shall notify the Seller or its representative of any change(s) in the ETA notified pursuant to Sections 5.2 or 5.3, but the Laydays shall be revised only with the Seller's specific written agreement. The giving or withholding of such agreement shall be at the absolute discretion of the Seller.

#### **5.5 Rejection of nominations and Vessels**

- 5.5.1 The Seller shall give notice accepting or rejecting any Vessel nominated by the Buyer within 1 Business Day of receipt of the Buyer's nomination.
- 5.5.2 Notwithstanding anything to the contrary express or implied elsewhere herein, the Seller shall have the right:
  - (a) to reject any nomination made by the Buyer pursuant to Sections 5.2 or 5.3 on any reasonable ground; and/or
  - (b) to refuse, on any reasonable ground, to accept for loading any Vessel named pursuant to Sections 5.2 or 5.3; and/or
  - (c) to reject the Vessel in question, notwithstanding any prior acceptance of such Vessel (whether named in the Special Provisions or nominated or substituted pursuant to Sections 5.2 or 5.3), on any reasonable ground if such Vessel is involved in any incident or more recent information regarding such Vessel becomes available to the Seller which indicates that the information relied upon by the Seller in previously accepting the Vessel was materially incorrect or incomplete; and/or
  - (d) without derogating from any other reasonable grounds that may be available to the Seller it shall be a reasonable ground for the Seller to reject or refuse a Vessel pursuant to this Section if the Vessel, either at the time of nomination or subsequently at any time up to the time of commencement of loading, is not approved by any internal ship vetting system operated by the Seller or alternatively is determined by such internal ship vetting system to be unacceptable under the Seller's ship vetting policy.

#### **5.6 Regulations at the Loading Terminal**

- 5.6.1 All restrictions at the Loading Terminal with respect to maximum draft, length, deadweight, displacement, age, flag and the like, the procedures relevant to health, safety and Vessel operations and all applicable governmental, local and port authority regulations and any other applicable requirements of whatever nature in force at the Loading Terminal shall apply to the Buyer's Vessel (including without limitation the requirements set out in Schedule E). Notwithstanding Section 5.6.2, the Buyer shall be deemed to be fully familiar with such Loading Terminal requirements and shall nominate a Vessel that can comply with such requirements at all times.
- 5.6.2 The Seller shall provide all information regarding restrictions at the Loading Terminal and such other Loading Terminal requirements that are readily available to it, upon the Buyer's written request.
- 5.6.3 Notwithstanding anything to the contrary express or implied in this Section 5 or in Sections 6 and 7, if any Vessel nominated by the Buyer does not comply with the foregoing provisions or any of them, the Seller or the Seller's supplier may refuse to berth or load the Vessel in question.

## **5.7 Changes in procedures**

This Section 5 shall be subject to modification, by written notice from the Seller to the Buyer, to take account of changes in the nomination and/or other procedures applicable from time to time at the Loading Terminal.

## **5.8 Liability**

The Seller shall not be liable for the consequences of rejection or delay (including but not limited to demurrage) of the Vessel or other restriction suffered in respect of the Vessel by virtue of the application of any regulations or other requirements of this Section 5 and/or of Schedule E, and the Buyer shall be liable for any costs or damages incurred by the Seller arising out of any such rejection of, delay to or restriction of the Vessel.

## **Section 6. – Arrival of Vessel, loading, Berth etc.**

### **6.1 Arrival of Vessel**

- 6.1.1 The Buyer shall arrange for its Vessel to report its ETA to the Loading Terminal, with a copy to the Seller, at least 72, 48 and 24 hours prior to its arrival and otherwise in accordance with the standard reporting procedure applicable from time to time at the Loading Terminal in question. If the Buyer's Vessel fails, for any reason, to give at least 24 hours' prior notice of arrival at the Loading Terminal, the time allowed to the Seller for loading pursuant to Section 7.1 shall be extended by a period equal to the delay in giving such 24 hours' notice, but in any case not exceeding an additional 24 hours.
- 6.1.2 By no later than 2400 hours (local time) on the last day of the Laydays the Vessel must have:
  - (a) arrived at the Loading Terminal in question (or the usual waiting place), and be in all respects ready to commence loading the Product deliverable hereunder; and
  - (b) tendered a valid NOR.
- 6.1.3 Once a valid NOR has been tendered pursuant to Section 6.1.2, the Buyer shall be obliged to receive delivery of the Product in accordance with Section 6.2.2.

### **6.2 Loading**

- 6.2.1 Unless otherwise agreed in writing by the Seller, the Seller shall not be under any obligation to commence loading hereunder prior to 0600 hours (local time) on the first day of the Laydays.
- 6.2.2 After receipt of the NOR pursuant to Section 6.1.2, the Seller, having regard to the requirements of the Loading Terminal, Loading Terminal procedures and the time when the Vessel has complied with the provisions of Section 6.1, shall commence loading as soon as reasonably practicable, even if this means that loading is effected or completed outside the Laydays or outside any other period specified in the Special Provisions.

### **6.3 Berth**

- 6.3.1 Subject to compliance by the Buyer's nominated Vessel with all other requirements of the Loading Terminal at the time in question, the Seller shall provide or cause to be provided free of charge to the Buyer (subject to the provisions of Section 34) a Berth to be indicated by the Seller or its representative that the Vessel can safely reach and leave and where it can lie and load always safely afloat.
- 6.3.2 The Seller shall at all material times and at no expense to the Buyer provide and maintain or cause to be provided and maintained, in good working order, all necessary flexible hoses, connections, pipelines, tankage facilities necessary for the loading of the Buyer's Vessel.
- 6.3.3 The Seller shall not be deemed to warrant the safety of any channel, fairway or other waterway used in approaching or departing from the Berth designated by the Seller. The Seller shall not be liable for any loss, damage, injury or delay to the Buyer's Vessel resulting from the use of such waterways; or any damage to the Buyer's Vessel caused by other users of the waterway.

6.3.4 Notwithstanding Section 6.3.1 above, if the Berth in question requires the Buyer's Vessel to be loaded from a floating storage facility, lighter or other Vessel by means of ship-to-ship transfer, such Berth shall be subject to the Buyer's ship or Loading Terminal vetting procedures and the Buyer may, on any reasonable ground and without liability, refuse the use of such facility for the purpose of loading its nominated Vessel. Any ship-to-ship or lightering operations shall be carried out in accordance with the procedures set out in the ICS/OCIMF Ship-to-Ship transfer guides.

#### **6.4 Vacation of Berth**

The Buyer's Vessel shall vacate the Berth as soon as loading hoses have been disconnected, provided that such Vessel's departure is not delayed awaiting production of Loading Terminal documents unless such documents can be delivered to the Vessel at a suitable anchorage or where early departure procedure ("EDP") is applied. If the Vessel fails to vacate the Berth due to a cause within the control of the Vessel and/or the Buyer, any loss or damage suffered by the Seller, or its supplier, resulting from such failure shall be paid by the Buyer to the Seller. For the avoidance of doubt, it is agreed that for the purposes of this Section any technical failure or breakdown on the part of the Vessel shall be a cause within the control of the Vessel and the Buyer.

The Buyer's liability in such event shall be limited to no more than the excess Berth utilisation charge actually incurred by the Seller pursuant to Section 6.5 and/or any demurrage suffered by the next Vessel scheduled to load that had been delayed as a direct result of such failure and such demurrage having actually been incurred by the Seller. The Buyer's liability for such demurrage shall be limited to no more than the excess time taken by the Buyer's vessel to vacate the Berth.

#### **6.5 Berth utilisation**

Notwithstanding the provisions of Section 7, if at the Loading Terminal the Seller's supplier or any other agency (whether or not an Affiliate of the Seller) imposes on the Seller, in respect of the Buyer's Vessel, an excess Berth utilisation charge in accordance with the Loading Terminal regulations or a contractually agreed or otherwise established scale for any hours of Berth utilisation in excess of a specified period of hours (as such scale may be advised by the Seller to the Buyer from time to time), but does not impose such charge directly on the Buyer's Vessel itself, such charge shall be for the Buyer's account, except where such excess Berth utilisation is caused by the Loading Terminal, the Seller or the Seller's supplier.

#### **6.6 Shifting and Lightering**

- 6.6.1 The Seller shall have the right to shift the Vessel from one Berth to another. All costs, including but not limited to damages for delay, shall be for the Seller's account if such shifting is for the Seller's purposes and otherwise shall be for the Buyer's account.
- 6.6.2 The Seller shall have the option to load the Vessel from lighters subject always to the Buyer's rights under Section 6.3.4, when the cost of such lightering (together with any additional expense reasonably incurred by the Vessel in respect thereof) shall be for the Seller's account. The Seller shall be obliged to notify the place of lightering to the Vessel when NOR is tendered. The place of lightering so notified shall be deemed the Berth for the purposes of Sections 6 and 7 and all references therein to the Berth shall be construed accordingly.

### **Section 7. - Time allowed, delays and demurrage**

#### **7.1 Time allowed**

The time allowed to the Seller for the loading of the quantity of the Product deliverable hereunder to each Vessel shall be:

7.1.1 in the case of Vessels of 15,000 tons summer deadweight or less, 24 running hours; or

7.1.2 in all other cases, 36 running hours;

all days and holidays included unless loading on the day or holiday in question is prohibited by law or regulation at the Loading Terminal.



## 7.2 Running hours

- 7.2.1 Except as otherwise provided in the Special Provisions or in this Section 7.2, provided always that the Buyer has complied with Section 6.1, running hours shall commence Berth or no Berth either:
- (a) 6 hours after a valid NOR is tendered to the Seller or its representative by the master of the Vessel (or the master's representative) after its arrival at the Loading Terminal, or
  - (b) if the Vessel moved directly to the Berth, when the Vessel is securely moored at the Berth, whichever is the earlier.
- 7.2.2 If NOR is given for the Vessel before the first day of the Laydays, running hours shall commence at 0600 hours (local time) on the first day of the Laydays or on commencement of loading, whichever is the earlier. If NOR is given for the Vessel after the last day of the Laydays and is accepted for loading by the Seller in its sole and absolute discretion, then, without prejudice to any of the Seller's other rights, running hours shall commence only on commencement of loading.
- 7.2.3 Time shall cease to run upon final disconnection of loading hoses after completion of loading of the cargo. However, time shall recommence 2 hours after disconnection of hoses if the Vessel is delayed in its departure due to the Seller's or the Seller's supplier's purposes and shall continue until the termination of such delay.
- 7.2.4 Any delay arising out of or in connection with any of the following situations shall not be counted or included in calculating the time taken by the Seller to load the shipment or the time in respect of which the Seller is liable for demurrage (whether or not the Vessel is already on demurrage):
- (a) awaiting tide, tugs, pilot, daylight, ice, moderation of weather or sea state prior to berthing;
  - (b) awaiting immigration, customs or pratique;
  - (c) on an inward passage until the Vessel is securely moored at the Berth;
  - (d) preparing for and handling or shifting of ballast, bilges, slops or other substances or bunkering unless concurrent with cargo operations;
  - (e) restrictions imposed by the owner, charterer or master of the Vessel;
  - (f) any breakdown of the Vessel's equipment or failure to comply with the requirements of the Loading Terminal with respect to equipment aboard;
  - (g) cleaning and inspection of the Vessel's cargo tanks;
  - (h) time spent complying with any of the regulations and other requirements referred to in Section 5;
  - (i) any other delay attributable to the Vessel, the Buyer or agents of the Buyer; or
  - (j) any onboard strike, lockout, stoppage or restraint of labour by members of the crew.

## 7.3 Delays

In the event of any delay of any kind or from any cause whatsoever whether in connection with the scheduling of the Vessel's turn to load (including any change in such scheduling), provision of a Berth for the Vessel, berthing or loading of the Vessel or otherwise howsoever without limitation, and provided always that the Vessel is eventually loaded pursuant to Section 6.2.2, any rights of the Buyer against the Seller, however the same may arise and whether or not arising under the Agreement, shall be limited in all circumstances whatsoever to a claim for the payment of demurrage, and the Buyer shall not be entitled to complain directly or indirectly of any delay except for the purpose of founding a claim to such demurrage.

## **7.4 Demurrage**

- 7.4.1 If the shipment is not loaded within the time allowed in accordance with Section 7.1, the time so allowed shall be extended by the excess time but (subject always to Section 5.2.2 and 6.1.1) the Seller shall pay to the Buyer demurrage, in the same currency as is prescribed for payment for the Product delivered under the Agreement, in respect of the excess time at the appropriate rate per day (or pro rata for part of a day) as hereinafter specified. The Seller's liability for demurrage shall be absolute and not be subject to the provisions of Section 37, but in the event of delay directly attributable to fire or explosion or the breakdown or failure of equipment, plant or machinery at the Loading Terminal (not resulting from want of due diligence by the Seller), act of war, civil commotion, or arrest or restraint of princes, rulers or peoples, the rate of demurrage shall be reduced by one half for the period of such delay.
- 7.4.2 The appropriate rate of demurrage shall be either:
- (a) the rate, if any, specified in the Special Provisions; or
  - (b) the applicable single voyage charterparty rate; or
  - (c) where there is no single voyage charterparty rate or, in the Seller's sole opinion the single voyage charterparty rate is not representative of the market rate, the market rate current on the date running hours commence as aforesaid for a Vessel of the size and type used for a single voyage charter from the Loading Terminal to the Discharge Port. If the parties fail to agree within 30 days upon such rate, then at the request of either party, such rate shall be determined by The London Tanker Brokers Panel Ltd. (or its successors in title), whose decision thereon shall be final and binding and whose costs shall be paid for by the applicant;
- 7.4.3 Any demurrage claim must be notified to the Seller in writing within 45 days of the date of disconnection of loading hoses, with full supporting documentation (including, but not exclusively, the time computation, NOR, Vessel's port log, statement of facts and, where applicable, evidence of the charterparty rate), together with any other documentation that the Seller may reasonably require. Any such documentation not then available shall be provided to the Seller within 180 days of the disconnection of loading hoses. If the Buyer fails to give such notice or provide such documentation within the above respective time limits, then the Buyer's claim shall be deemed to have been waived and any liability of the Seller for demurrage shall be extinguished.
- 7.4.4 Notwithstanding the provisions of this Section 7 or the charterparty (where the Special Provisions specify that laytime and demurrage shall be determined in accordance with the charterparty terms and conditions), the Buyer shall not be entitled to recover demurrage from the Seller except to the extent that the Seller is able to recover and does recover such demurrage from the Seller's supplier and the Seller shall not be obliged to pay any amounts in excess thereof.
- 7.4.5 The Seller may only rely on Section 7.4.4 if, and to the extent that:
- (a) the Seller's acquisition terms with Seller's supplier include laytime and demurrage provisions so as to allow the recovery of demurrage on terms that are no worse than the Loading Terminal's usual terms; and
  - (b) the Seller has exercised reasonable endeavours to recover from the Seller's supplier any demurrage for which the Buyer has presented a claim.

## **7.5 Part cargo lots**

If the delivery hereunder is co-loaded with the 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.

## **PART TWO**

### **In respect of CFR, CIF and DES deliveries**

#### **Section 8. – Delivery**

##### **8.1 For CFR and CIF deliveries**

The Product shall be delivered by the Seller to the Buyer, in bulk at the Loading Terminal and shipped by the Seller CFR or CIF (as applicable) to the agreed Discharge Port(s).

##### **8.2 For DES deliveries**

The Product shall be delivered by the Seller to the Buyer, in bulk DES at the Discharge Port(s).

#### **Section 9. – Measurement and sampling, independent inspection and certification**

##### **9.1 CFR and CIF deliveries**

###### **9.1.1 Measurement and sampling**

The quantity and quality of the Product delivered under the Agreement shall be determined by measurement, sampling and testing in accordance with the standard practice at the Loading Terminal at the time of shipment. Notwithstanding the provisions of Section 9.1.2, the certificates of quantity and quality (or such other equivalent documents as may be issued at the Loading Terminal) for the Product comprising the shipment issued in accordance with such standard practice shall, except in cases of manifest error or fraud, be conclusive and binding on both parties for invoicing purposes but without prejudice to the rights of either party to make any claim pursuant to Section 31.

###### **9.1.2 Independent inspection**

- (a) Either party may appoint a mutually acceptable independent inspector at the Loading Terminal, subject to any necessary prior agreement of the Loading Terminal operator having been obtained. Such appointment shall be notified in writing to the other party. Unless otherwise provided for in the Special Provisions, all charges in respect thereof shall be shared equally between the parties and the inspector's report shall be made available to both parties.
- (b) In addition to the independent inspector appointed pursuant to Section 9.1.2(a) or should the parties fail to mutually agree upon an independent inspector, either party may, at its own expense, appoint a representative at the Loading Terminal, subject to any necessary prior agreement of the Loading Terminal operator.
- (c) Notwithstanding the provisions of Sections 9.1.2(a) and 9.1.2(b), if an independent inspector has already been appointed by the Seller or any third party in respect of the shipment prior to the nomination of such shipment by the Seller to the Buyer pursuant to Section 14 or if such inspection has already been carried out, then both parties shall be bound by the results of such measurement of quantity, sampling and analysis thereof as carried out by such independent inspector, provided always the certificates of quantity and quality (or such other equivalent documents as may be issued at the Loading Terminal) of the Product comprising the shipment are issued in accordance with Section 9.1.1 above.

###### **9.1.3 Place of Certification**

Should it not be customary practice at the Loading Terminal at the time of shipment for measurement and sampling pursuant to Section 9.1.1 to take place at the Vessel's manifold immediately prior to loading, or should the parties agree otherwise, then it is a condition of the Agreement that the Seller shall be obliged to provide the same quantity and quality of the Product at the Vessel's permanent hose connection as set out in the certificates of quantity and quality so issued.

## **9.2 DES deliveries**

- 9.2.1. The quantity and quality of the Product delivered under the Agreement shall be determined by measurement, sampling and testing carried out at the Discharge Port at the time of discharge by an independent inspector jointly agreed upon by the Buyer and Seller. All charges of the independent inspector shall be shared equally between the parties and the inspector's certificates of quality and quantity shall be made available to both parties. The Buyer shall ensure that the independent inspector shall have full access to the facilities at the Discharge Port necessary to enable the inspector to perform his duties.
- 9.2.2. The independent inspector shall for the purpose of determining the quality of the Product carry out or witness tests on a composite sample of the Product taken by the inspector or in his presence from the Vessel's tanks at the Discharge Port immediately prior to commencement of discharge and in accordance with the test method(s) referred to in the specification of the Product set out in the Special Provisions, or, where no test method is set out, in accordance with the most current API and ASTM Measurement Standards at the time of delivery.
- 9.2.3. The independent inspector shall for the purpose of determining the quantity of the Product proceed as follows:
  - (a) where the Product is delivered from the Seller's Vessel directly into static shore tanks (that is shore tanks to or from which no Product is being pumped other than the Product being delivered hereunder) the gross quantity of the Product so delivered shall be determined by the independent inspector by reference to Discharge Port meter measurements taken or witnessed by the independent inspector in accordance with API MPMS Chapter 5. Meters shall be proved prior to discharge by or in the presence of the independent inspector in accordance with API MPMS Chapter 4. Where metering facilities are not available, or where in the opinion of the independent inspector the meters did not perform in accordance with API MPMS Chapter 5, or where the meters were not proven prior to discharge in accordance with API MPMS Chapter 4, the gross quantity of the Product delivered hereunder shall be determined by reference to shore tank gaugings taken or witnessed by the independent inspector in accordance with API MPMS Chapter 3; or
  - (b) where the Product is delivered from the Seller's Vessel directly into active shore tanks (that is shore tanks where Product is being pumped out of the tank during the discharge of the Product hereunder) and where no correctly functioning or proven Discharge Port meters are available in accordance with Section 9.2.3(a), the gross quantity of the Product delivered hereunder shall be determined by the independent inspector by reference to the Vessel's discharged figures as adjusted by its Vessel Experience Factor ("VEF") in accordance with VEF Addendum to API MPMS Chapter 17.1.

## **9.3 CFR Outturn and CIF Outturn deliveries**

For the purpose of determining the compliance of the Product with the quantity and quality provisions of the Special Provisions, quality shall be determined at the Loading Terminal pursuant to Section 9.1, and quantity measurement shall be carried out at the Discharge Port pursuant to Section 9.2.

## **9.4 Part cargo lots delivered CFR or CIF**

Where delivery is made as an unsegregated part cargo lot to the Buyer and a third party, the quantity determined in accordance with the foregoing shall be adjusted so that, following completion of discharge of the relevant part cargo lots, the Buyer and such third party shall each be allocated a percentage of the total loaded quantity equal to that percentage of the total outturn quantity (determined at each Discharge Port in accordance with the provisions of Section 9.2.3 above) which was discharged at its Discharge Port. The costs of such independent inspection shall be shared equally between the parties for their respective Discharge Ports and the inspector's report shall be made available to all parties.

## **Section 10. – Risk and Property**

### **10.1 CFR and CIF deliveries**

- 10.1.1 Notwithstanding any right of the Seller to retain the documents referred to in Section 35 until payment, the risk and property 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.
- 10.1.2 In the case of delivery as a part cargo lot where the Product deliverable hereunder is not identifiable or ascertainable on board the Seller's Vessel separately from Product destined for receivers other than the Buyer, risk and property in the Product shall pass in accordance with Section 10.1.1 and the Buyer shall be an owner in common of the bulk with the other receivers, each owning a proportion of the bulk represented by their respective bills of lading to the total quantity recorded on all the bills of lading issued in respect of the bulk.
- 10.1.3 If the Vessel has commenced or completed loading prior to being nominated to the Buyer pursuant to Section 14, then notwithstanding any right of the Seller to retain the documents referred to in Section 35 until payment, the risk in the Product delivered under the Agreement shall be deemed to have passed to the Buyer as the Product passed the Vessel's permanent hose connection at the Loading Terminal and property in the Product shall pass immediately upon receipt by the Seller of the Buyer's acceptance of such nomination.

### **10.2 DES deliveries**

The risk and property in the Product delivered under the Agreement shall pass to the Buyer as the Product passes the Vessel's permanent hose connection at the Discharge Port.

## **Section 11. – Laydays and Indicative Discharge Dates**

- 11.1 Where Laydays are specified in the Special Provisions, they shall be the day or range of days in which Seller's nominated Vessel must tender a valid NOR at the Loading Terminal and loading shall commence as soon as reasonably practicable, even if this means loading is effected or completed outside the Laydays or outside any other period specified in the Special Provisions.
- 11.2 Where Laydays are specified in the Special Provisions pursuant to Section 11.1, 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 Port these shall be indicative only, made by the Seller as an honest assessment without guarantee. The Seller shall not assume any responsibility for the delivery of the Product at the Discharge Port within such arrival date range. The commencement of laytime shall be as set out in Section 16.2.1 below, except where it is specified in the Special Provisions that the arrival date range is to be used for demurrage purposes in which case, Section 16.4 shall apply.
- 11.3 Where there are no Laydays specified in the Special Provisions and the Seller expressly or implicitly provides the Buyer with a date or range of dates within which a nominated Vessel shall arrive at the Discharge Port, 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 Port, on the agreed date or range of dates, safe navigation and weather permitting. The commencement of laytime shall be as set out in Section 16.4 below.

## **Section 12. – Insurance**

### **12.1 CFR deliveries**

The responsibility for securing insurance, whether against marine or other risks, shall rest wholly with the Buyer.

### **12.2 CIF deliveries**

- 12.2.1 The Seller undertakes to procure and pay for insurance against marine risks to the full value of the shipment hereunder plus 10%. Such insurance, which shall operate from the time risk passes pursuant to Section 10.1.1 at the Loading Terminal until the Product passes the Vessel's permanent hose connection at the Discharge Port, shall be in accordance with the

provisions of a Marine Cargo Insurance Policy subject to Institute Cargo Clauses (A), and the benefit thereof shall accrue to the Buyer upon the passing of risk in the shipment as provided for in the Agreement.

12.2.2 The Seller undertakes to procure insurance against war, strikes, riots and civil commotions risks in respect of the delivery of the Product hereunder. Such insurance shall be subject to Institute War Clauses (Cargo) and Institute Strikes Clauses (Cargo) current on the date of sailing of the Vessel and the actual premium payable at the current London Market rate for the voyage to be performed ruling on the said date shall be charged to and be recoverable from the Buyer by the Seller as an addition to the purchase price and such addition shall then form part of such purchase price.

12.2.3 If requested by the Buyer, the Seller shall provide Buyer with the original certificate of insurance or insurance company's cover note.

### **12.3 DES deliveries**

The responsibility for securing insurance, whether against marine or other risks, shall rest wholly with the Seller.

### **12.4 Additional Vessel insurance, etc.**

12.4.1 In all cases, if and for so long as the voyage to the Discharge Port, or any seas through which the Vessel has to travel in performance of the Agreement incurs, for the Seller pursuant to the terms of the relevant charterparty, additional costs or charges including insurance or war risk insurance premia for the Vessel's hull and machinery, protection and indemnity or cargo insurances; crew bonuses and the provision of security services for the Vessel, or any or all of them, then any and all costs of such additional insurance and/or additional premia and/or other expenses shall be paid by the Buyer to the Seller in addition to the price payable pursuant to the Agreement.

12.4.2 The Seller reserves the right to refuse at any time:

- (a) to direct any Vessel to undertake or to complete the voyage to the Discharge Port if such Vessel is required in the performance of the Agreement:
  - (i) 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 the Seller's opinion, to risk its safety or to risk ice damage; or
  - (ii) to transit or to proceed to or to remain in waters where there is war (de facto or de jure) or threat thereof;
- (b) prior to the commencement of loading to direct any Vessel to undertake the voyage to the intended Discharge Port if such Vessel is required in the performance of the terms of the Agreement to transit waters which, in the Seller's reasonably held opinion, would involve abnormal delay; or
- (c) 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.

12.4.3 If the Seller agrees to direct a Vessel to undertake or to complete the voyage as referred to in Section 12.4.2, the Buyer undertakes to reimburse the Seller, in addition to the price payable under the Agreement, for costs incurred by the Seller in respect of any additional insurance premia (including those referred to in Section 12.2) and any other sums that the 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 owners' insurance and any other costs and/or expenses incurred by the Seller.



### **Section 13. – Charter Party conditions**

**13.1** This Section shall only apply in the case of delivery CFR or CIF.

**13.2** Subject always to any provisions for payment and documents pursuant to Sections 35, the Seller may arrange shipment under bills of lading, which incorporate charterparty conditions normally in use for Vessels. Without prejudice to the generality of the foregoing, such conditions shall be deemed to include:

13.2.1 the provision that the shipment shall be pumped out of the Vessel at the Vessel's expense;

13.2.2 the provision that if, at any time after loading but before commencement of discharge:

(a) importation of the Product comprising the shipment at the port at which discharge was to have taken place is prohibited under the laws of the country in which such Product was produced, or by regulations, rules, directives or guidelines applied by the government of that country or any relevant agency thereof; and/or

(b) the country, state, territory or region at which discharge was to have taken place becomes a Restricted Jurisdiction (as defined in Section 33.2);

the shipment shall be discharged at an alternative safe port nominated by the Buyer which is not subject to any such prohibition and which is acceptable to the Seller (which acceptance shall not be unreasonably withheld).

**13.3** If any prohibition referred to in Section 13.2.2 becomes applicable, such alternative port shall be deemed to be the Discharge Port stipulated under the Agreement for the shipment in question and all extra expenses (if any) involved in the Vessel's reaching such alternative Discharge Port and/or in the discharge of the shipment thereat shall be for the Buyer's account.

**13.4** 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 Port and/or

(b) at a Discharge Port other than that named in the bill of lading and/or

(c) that is different from the bill of lading quantity

and the Seller discharges the Product in accordance with such Buyer's written instructions, then the Buyer shall indemnify and hold the Seller harmless against any liability, loss or damage (including legal costs as between attorney or solicitor and client as associated expenses) which the Seller may sustain by reason of delivering the Product in accordance with the Buyer's instructions. This Section shall not be included in the scope of Section 38.1.

**13.5** Where the Buyer, by written instruction to the Seller, requests that the Vessel:

(a) co-mingle different grades of cargo belonging to the Buyer;

(b) otherwise breach the Vessel's natural segregation;

(c) dope the cargo by introducing additives after loading;

(d) add dye to the cargo after loading;

(e) perform on board blending of the cargo;

(f) carry additives/dye in drums on deck;

(g) carry out such other cargo operation as the Buyer may reasonably require.

and always providing the Vessel is capable of performing such operations and that such operations are within the scope of the charterparty conditions, then the Buyer shall indemnify and hold the Seller harmless against any liability, loss, damage, delay or expense which the Seller may sustain by reason of complying with the Buyer's request. The indemnity given by the Buyer to the Seller shall be no less in scope than the indemnity required by the Vessel owner to comply with the Buyer's request. This Section shall not be included in the scope of Section 38.1.

**13.6** Without prejudice to the Buyer's obligations under Section 16, the Seller undertakes in all cases to settle freight and demurrage due to the shipowners.

## **Section 14. – Nomination of Vessels, etc.**

### **14.1 Full and part cargo lots**

Unless otherwise provided in the Special Provisions, delivery hereunder shall be given and taken in one full cargo lot or a part cargo lot at the Seller's option.

### **14.2 Nomination of Vessels**

The Vessel shall be nominated in writing by the Seller to the Buyer either (1) on or about the time the Agreement is entered into between the parties, or (2) at least 5 days prior to the first day of the Loading Terminal Laydays, whichever is the later. Such nomination shall specify:

- (a) the name of the Vessel, date built, summer deadweight, length and flag;
- (b) the grade and approximate quantity to be loaded (or the bill of lading quantity, if known);
- (c) the Loading Terminal Laydays (or the bill of lading date, if known) and the ETA at the Discharge Port;
- (d) such other information as maybe required by the Discharge Port operator from time to time;
- (e) details of any other cargo on board or to be laden on board if delivery is of a part cargo;
- (f) in the case of any sales afloat, DES or any variation thereof whereby the Product has been or will be laden onboard (which shall include storage, and any intervening transshipment as well as by way of carriage) more than one Vessel the Seller shall provide the name of each such Vessel, date built and flag; and
- (g) confirmation that the Vessel complies with the requirements of Schedule E hereto.

The Seller undertakes to inform the Buyer of any changes to the ETA advised pursuant to Section 14.2(c) as soon as practicable after receipt thereof from its supplier or the Vessels' owner or agent and, where applicable, such information as shall be necessary so as to establish the time and place of the passing of property pursuant to Section 10.1.

### **14.3 Buyer's nomination**

The Buyer shall, within 1 Business Day or such other period as may be specified in the Special Provisions after receipt of the Seller's nomination made pursuant to Section 14.2, notify the Seller of:

- 14.3.1 the final Discharge Port, if not already specified in the Special Provisions, when the Seller's approval thereto shall be required in writing within 1 Business Day thereafter, such approval not to be unreasonably withheld. No change to the final Discharge Port so nominated or specified shall be made without the Seller's prior written acceptance which shall not be unreasonably withheld and subject always to the provisions of Section 14.8;
- 14.3.2 if the Special Provisions provide a range within which a Discharge Port or ports may be nominated, the Seller's approval to each port shall be required in writing within 1 Business Day after any valid nomination, such approval not to be unreasonably withheld; and
- 14.3.3 in the case of CFR or CIF delivery, full written instructions regarding the particulars and destination of the bills of lading and such other customary Loading Terminal documentation which may be required by the Buyer (and, for the avoidance of doubt, the Buyer shall be liable for all costs resulting from any delays in loading the Product hereunder due to failure by the Buyer to supply such information in a timely manner). The Seller shall have the right to issue its own instructions if such instructions are not so provided by the Buyer.

All costs (including but not limited to demurrage) arising directly out of any failure by the Buyer to comply with the foregoing shall be for the Buyer's account.

### **14.4 Substitution of Vessels**

In respect of any nominated Vessel, the Seller may, or if necessary to perform its obligations under the Agreement must, substitute therefor another Vessel provided always that:

- 14.4.1 the size of the substitute Vessel and the quantity to be loaded shall not, without the prior written consent of the Buyer, differ materially from the size of the Vessel previously named and the quantity specified in the nomination; and

14.4.2 the Seller shall give to the Buyer notice in writing of the name of the substitute Vessel not less than 3 clear days before:

- (a) in the case of CFR or CIF delivery, the last day of the Loading Terminal Laydays of the substitute Vessel or the last day of the Loading Terminal Laydays of the Vessel originally nominated, whichever is the earlier, provided always that such substitution shall not be allowed after commencement of loading of the Vessel originally nominated unless otherwise specifically agreed between the parties; or
- (b) in the case of DES delivery, the ETA of the substitute Vessel or the ETA of the Vessel originally nominated, whichever is the earlier.

#### **14.5 Acceptance of Vessels**

- 14.5.1 The Buyer shall give notice accepting or rejecting any Vessel nominated by the Seller within 1 Business Day of receipt of the Seller's nomination.
- 14.5.2 Notwithstanding anything to the contrary express or implied elsewhere, the Buyer shall have the right (which right may only be exercised prior to the passing of risk and property hereunder) to refuse, on any reasonable ground, to accept any Vessel named pursuant to Sections 14.2 or 14.4. The Buyer shall not be liable for any loss or damage, direct or indirect, which the Seller may suffer as a result of the Buyer exercising such right.
- 14.5.3 Notwithstanding any prior acceptance of a Vessel (whether named in the Special Provisions or nominated or substituted pursuant to Sections 14.2 or 14.4), the Buyer shall have the right (which right may only be exercised prior to the passing of risk and property hereunder) to reject the Vessel in question on any reasonable ground if such Vessel is involved in any incident or more recent information regarding such Vessel becomes available to the Buyer which indicates that the information relied upon by the Buyer in previously accepting the Vessel was materially incorrect or incomplete.
- 14.5.4 In the case of CFR or CIF delivery, if the facilities at the Loading Terminal in question require the Seller's Vessel to be loaded from a floating storage facility, lighter or other Vessel by means of ship-to-ship transfer, such Berth shall be subject to the Buyer's ship or Loading Terminal vetting procedures and the Buyer may, on any reasonable ground and without liability, refuse the use of such facility for the purpose of loading the nominated Vessel.
- 14.5.5 Without derogating from any other reasonable grounds that may be available to the Buyer, it shall be a reasonable ground for the Buyer to reject or refuse a Vessel pursuant to this Section if the Vessel either at the time of nomination or subsequently at any time up to the time of loading is not approved by any internal ship vetting system operated by the Buyer or alternatively is determined by such internal ship vetting system to be unacceptable under the Buyer's ship vetting policy and/or does not comply with the Buyer's port clearance requirements.

#### **14.6 Regulations at the Loading Terminal and/or Discharge Port**

- 14.6.1 All restrictions at the Loading Terminal and at the Discharge Port with respect to maximum draft, length, deadweight, displacement, age, flag and the like, the procedures relevant to health, safety and Vessel operations and all applicable governmental, local and port authority regulations, and any other applicable requirements of whatever nature and howsoever communicated in force at the Loading Terminal and at the Discharge Port (including without limitation the requirements set out in Schedule E) shall apply to the Seller's Vessel.
- 14.6.2 The Buyer shall provide all information regarding restrictions at the Discharge Port and such other Discharge Port requirements that are readily available to it, upon the Seller's written request.
- 14.6.3 Notwithstanding anything to the contrary express or implied in this Section 14 or in Sections 15 and 16, if the Vessel nominated by the Seller does not comply with the foregoing provisions or any of them, the Buyer or the Buyer's customer may refuse to berth or discharge the Vessel in question.

#### **14.7 Pumping**

The Seller warrants that the Vessel will discharge its full cargo within 24 hours (or pro-rata in the case of a part cargo) or will maintain 100 PSI at the ship's rail, provided shore facilities permit discharge within such time or at such pressure. Time lost as a result of the Vessel being unable to discharge the cargo as stated above shall not count as Laytime or time on demurrage.

#### **14.8 Alternative or Range of Discharge Port(s)**

Where the Buyer exercises any Discharge Port options in accordance with the Special Provisions or Section 14.3.1 and available to the Seller under the terms of the relevant charterparty:

14.8.1 unless otherwise provided for in the Special Provisions, the price stated in the Special Provisions shall be adjusted by the freight differential calculated in accordance with such charterparty terms or, if the Vessel has not been voyage chartered, such rate as shall be mutually agreed between the parties in respect of such Discharge Port, provided always that any delays arising out of such failure to agree shall be for the Buyer's account; and

14.8.2 the Buyer shall be liable for any additional costs incurred by the Seller, including but not limited to deviation costs and costs in respect of any additional bunker consumption.

#### **14.9 Loaded details (CFR and CIF deliveries)**

As soon as possible after the loading has been completed, the Seller shall notify the Buyer of the actual quantity(ies) loaded and the latest ETA of the Vessel at the Discharge Port.

### **Section 15. – Arrival of Vessel, Berth, discharge, etc.**

#### **15.1 Arrival of Vessel**

The Seller shall arrange for its Vessel to report its ETA to the Discharge Port, with a copy to the Buyer, at least 72, 48 and 24 hours prior to its arrival and otherwise in accordance with the standard reporting procedure applicable from time to time at the Discharge Port in question.

#### **15.2 Berth**

15.2.1 Subject to compliance by the Seller's nominated Vessel with all other requirements of the Discharge Terminal at the time in question, the Buyer shall provide or cause to be provided free of charge to the Seller (subject to the provisions of Section 34) a Berth to be indicated by the Buyer or its representative at which the Vessel can when fully laden safely reach and leave and where it can lie and discharge always safely afloat.

15.2.2 The Buyer shall at all material times and at no expense to the Seller provide and maintain or cause to be provided and maintained, in good working order, all necessary flexible hoses, connections, pipelines, tankage facilities necessary for the discharging of the Seller's Vessel.

15.2.3 The Buyer shall not be deemed to warrant the safety of any channel, fairway or other waterway used in approaching or departing from the Berth designated by the Buyer. The Buyer shall not be liable for any loss, damage, injury or delay to Seller's Vessel resulting from the use of such waterways; or any damage to the Seller's Vessel caused by other users of the waterway.

15.2.4 Notwithstanding the Buyer's obligations under 15.2.1, where the Buyer has purchased the Product on board a named Vessel, the Seller represents to the Buyer and warrants that the named Vessel can berth and discharge the contractual quantity of Product at the Discharge Port regardless of whether the contractual quantity is a whole or part cargo and irrespective of the port scheduling of the Vessel. Failure to comply with this term shall entitle the Buyer to refuse to berth the named Vessel. Any costs incurred by the Seller in providing a substitute Vessel, or lightering and/or transhipping the Product at the Discharge Port including demurrage shall be for the account of the Seller.

#### **15.3 Discharge**

The Buyer shall arrange for each Vessel to be discharged as expeditiously as possible.

## **15.4 Shifting**

The Buyer shall have the right to shift the Vessel from one Berth to another. All costs, including but not limited to damages for delay, shall be for the Buyer's account if such shifting is for the Buyer's purposes and otherwise shall be for the Seller's account.

## **15.5 Lightering and Transhipment**

15.5.1 Vessels shall not be compelled to lighter at the Discharge Port, but if any lightering shall be undertaken at the request of the Buyer the expense thereof shall be for the Buyer's account and all time expended in connection with such lightering shall count as running hours for the purposes of calculating the liability for demurrage under the provisions of Section 16.

- (a) Any lightering operations shall be carried out in accordance with the procedures set out in the ICS/OCIMF Ship-to-Ship transfer guides. The lightering Vessel shall be subject to the Seller's prior acceptance, which shall not be unreasonably withheld.
- (b) Any ship-to-ship transfer (transhipment) operations shall be carried out in accordance with the procedures set out in the ICS/OCIMF Ship-to-Ship transfer guides. The receiving Vessel shall be subject to the Seller's prior acceptance, which shall not be unreasonably withheld.
- (c) Except in relation to any ship-to-ship transfer carried out at the request of and for the purposes of the Seller, any ship-to-ship transfer operation shall only be carried out with the Seller's express consent and shall only be carried out outside port limits and at the Buyer's sole risk and the Buyer shall be liable to the Seller in respect of all time spent in excess of permitted running hours calculated at the relevant demurrage rate notwithstanding the Vessel is outside port limits, and for all and any losses, costs, damages and proceedings arising therefrom and shall indemnify the Seller in respect thereof. This Section shall not be included in the scope of Section 38.1.

15.5.2 All time used for any lightering operation (excluding any time consumed for the purposes set out in Section 16.2.4) shall be counted or included in calculating the time taken by the Buyer to discharge the Vessel or the time in respect of which the Buyer is liable for demurrage. Any additional steaming and/or waiting time used solely for the purposes of any lightering operation shall count as Laytime or, if the Vessel is on demurrage, as demurrage.

15.5.3 Except in relation to any lightering carried out at the request of and for the purposes of the Seller, any lightering operation carried out shall be at the Buyer's risk and the Buyer shall be liable to the Seller in respect of any losses, costs, damages and proceedings arising therefrom and shall indemnify the Seller in respect thereof. This Section shall not be included in the scope of Section 38.1.

15.5.4 In relation to any dispute as to quantity when lightering or ship-to-ship transfers have been undertaken the first laden Vessel's figures (not being a lightering Vessel or a receiving Vessel) shall prevail, subject always to the provisions of Section 31.2.

## **Section 16. – Time allowed, delays and demurrage**

### **16.1 Time allowed**

The time allowed to the Buyer for the discharge of the quantity of the Product deliverable by each Vessel hereunder shall be:

16.1.1 in the case of discharge of a full cargo lot:

- (a) in the case of Vessels of 15,000 tons summer deadweight or less, 24 running hours; or
- (b) in all other cases, 36 running hours; and

16.1.2 in the case of discharge of a part cargo lot, that proportion of 24 or 36 running hours, as the case may be, which the quantity of the Product in the shipment, plus 5 percent, bears to the total quantity of Product loaded on the Vessel at the Loading Terminal(s);

all days and holidays included unless discharging on the day or holiday in question is prohibited by law or regulation at the Discharge Port.

## 16.2 Running hours

16.2.1 Running hours shall commence Berth or no Berth either:

- (a) 6 hours after a valid NOR is tendered to the Buyer or their representative by the master of the Vessel (or the master's representative) after its arrival at the Discharge Port or
- (b) if the Vessel moves directly to the Berth, when the Vessel is securely moored at the Berth, whichever is the earlier.

16.2.2 Time shall cease to run upon final disconnection of discharging hoses after completion of discharge of the cargo. However, time shall recommence 2 hours after disconnection of hoses if the Vessel is delayed in its departure due to the Buyer's or the Buyer's receiver's purposes and shall continue until the termination of such delay.

16.2.3 Such valid NOR may be tendered at any time after the vessel has arrived within the customary anchorage or waiting place of the Discharge Port or, if the Vessel moves directly to the Berth, when the Vessel is securely moored at the Berth.

16.2.4 Any delay arising out of or in connection with any of the following situations shall not be counted or included in calculating the time taken by the Buyer to discharge the shipment or the time in respect of which the Buyer is liable for demurrage (whether or not the Vessel is already on demurrage):

- a) awaiting tide, tugs, pilot, daylight, ice, moderation of weather or sea state prior to berthing;
- b) awaiting immigration, customs or pratique;
- c) on an inward passage until the Vessel is securely moored at the Berth;
- d) preparing for and handling or shifting of ballast, bilges, slops or other substances or bunkering unless concurrent with cargo operations;
- e) restrictions imposed by the 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 Port with respect to equipment aboard;
- g) time spent complying with any of the regulations and other requirements referred to in Section 14.6;
- h) any other delay attributable to the Vessel, the Seller or agents of the Seller; or
- i) any onboard strike, lockout, stoppage or restraint of labour by members of the crew.

## 16.3 Demurrage

16.3.1 If the shipment is not discharged within the time allowed in accordance with Section 16.1, the Buyer shall pay to the Seller demurrage, in the same currency as is prescribed for payment of the Product delivered under the Agreement, in respect of the excess time at the appropriate rate per day (or pro rata for part of a day) as hereinafter specified, always provided that, if by reason of her own deficiencies the Vessel cannot maintain an average pumping rate as specified in Section 14.7 from the time of commencing pumping, any additional time used solely by reason of such deficiencies shall be deducted in calculating the time (if any) in respect of which the Buyer is liable for demurrage as herein provided. The Buyer's liability for demurrage shall be absolute and not subject to the provisions of Section 37, but in the event of delay directly attributable to fire or explosion or the breakdown or failure of equipment, plant or machinery at the Discharge Port (not resulting from want of due diligence by the Buyer), act of war, civil commotion, or arrest or restraint of princes, rulers or peoples, the rate of demurrage shall be reduced by one half for the period of such delay.

16.3.2 The appropriate rate of demurrage shall be either:

- (a) the rate, if any, specified in the Special Provisions; or
- (b) the applicable single voyage charterparty rate; or



- (c) where there is no single voyage charterparty rate or, in the Buyer's sole opinion the single voyage charterparty rate established is not representative of the market rate, the market rate current on the date running hours commence as aforesaid for a Vessel of the size and type used for a single voyage charter from the Loading Terminal to the Discharge Port. If the parties fail to agree within 30 days upon such rate, then at the request of either party, such rate shall be determined by The London Tanker Brokers Panel Ltd. (or its successors in title), whose decision thereon shall be final and binding and whose costs shall be paid for by the applicant.

16.3.3 Any demurrage claim must be notified to the Buyer in writing within 90 days of the date of disconnection of discharging hoses, with full supporting documentation (including, but not exclusively, the time computation, NOR, Vessel's port log, statement of facts and, where applicable, evidence of charterparty rate), together with any other documentation that the Buyer may reasonably require. Any such documentation not then available shall be provided to the Buyer within 180 days of the disconnection of discharging hoses. If the Seller fails to give such notice or provide such documentation within the above respective time limits, then the Seller's claim shall be deemed to have been waived and any liability of the Buyer for demurrage shall be extinguished.

#### **16.4 Time allowed and damages for delay under Indicative Discharge Date Contracts**

- 16.4.1 Should the Vessel arrive at the Discharge Port such that running hours pursuant to Section 16.2.1 above commences at a time within the Indicative Discharge Date range given by the Seller then the time allowed and damages for delay shall be computed in all respects in accordance with Section 16.
- 16.4.2 Should the Vessel arrive at the Discharge Port such that running hours pursuant to Section 16.2.1 above would commence at a time prior to the Indicative Discharge Date range given by the Seller, then notwithstanding Section 16.3, time shall not count against the Buyer whether as time allowed for discharge or as demurrage until 00.01 hours (local time) on the first day of the Indicative Discharge Date range or on commencement of discharge, whichever is earlier.
- 16.4.3 Should the Vessel arrive at the Discharge Port after the last day of the Indicative Discharge Date range given by the Seller, then Section 16.2.1 shall be modified to the extent that running hours shall commence Berth or no Berth 36 hours after NOR is tendered or on commencement of discharge, whichever is the earlier. Save as aforesaid, Section 16 shall apply in full.

## **PART THREE**

### **In respect of Barge (FOB, CFR, CIF) deliveries**

#### **Section 17. – Applicability**

The provisions of Part One and Part Two shall apply, where appropriate, except as specified elsewhere in this Part Three.

#### **Section 18. – Nominations in respect of FOB deliveries**

**18.1** The Buyer shall give 48 hours notice of Barge ETA. Such nomination shall include:

- (a) Barge name and registration number;
- (b) previous cargo;
- (c) quantity;
- (d) Product;
- (e) Barge chartering company's name and address;
- (f) the Buyer's VAT registration number and country of such VAT registration;
- (g) consignee's name, address, valid EU VAT registration and MOT number and fiscal agent (if applicable);
- (h) fiscal and end destination (if it differs from the consignee); and
- (i) full documentation instructions.

**18.2** Nominations received after 1300 hours London time will be deemed received at 0900 hours London time on the following Business Day in London. Any alteration to a nomination will be treated as a new nomination.

#### **Section 19. – Nominations in respect of CFR and CIF deliveries**

##### **19.1 The Seller's nomination**

The Seller shall give 2 Business Days notice of Barge loading at the Loading Terminal. Such nomination shall include:

- (a) Barge name and registration number;
- (b) previous cargo;
- (c) approximate quantity to be loaded;
- (d) Product and approximate/actual quality(ies);
- (e) Barge chartering company's name and address;
- (f) the Seller's VAT registration number and country of such VAT registration which the Seller intends to use on the Sales Tax Invoice to be issued.

##### **19.2 The Buyer's nomination**

The Buyer shall, within 1 Business Day in London after receipt of the Seller's nomination, notify the Seller of:

###### **19.2.1**

- (a) the Buyer's VAT registration number and country of such VAT registration;
- (b) consignee's name, address, valid EU VAT registration and MOT number and fiscal agent (if applicable); and
- (c) fiscal and end destination (if it differs from the consignee); and

19.2.2 the Discharge Port, if not already specified in the Special Provisions. No change to the Discharge Port so nominated or specified shall be made without the Seller's prior written acceptance which shall not be unreasonably withheld and provided always that:

- (a) such alternative discharge port is allowable pursuant to the charterparty; and
- (b) the provisions of Section 14.8 shall apply; and

19.2.3 full written instructions regarding the particulars and destination of any bills of lading and/or such other customary Loading Terminal documentation which may be required (and, for the avoidance of doubt, the Buyer shall be liable for all costs resulting from any delays in loading Product hereunder due to failure by the Buyer to supply such information in a timely manner). The Seller shall have the right to issue its own instructions if such instructions are not so provided by the Buyer.

## **Section 20. - Laytime**

The time allowed for loading (FOB) or discharging (CFR or CIF) shall be one half of the total free hours for loading and discharging specified in the Barge charterparty for the performing Barge or, where there is no Barge charterparty, according to Tankschiff Transport Bedingungen (TTB) rules. Laytime shall commence no earlier than expiry of notice period or on commencement of loading (FOB) or discharge (CFR or CIF), as the case may be, whichever is earlier.

## **Section 21. - Demurrage**

Demurrage will be payable in accordance with the Barge charterparty for the performing Barge or, where there is no Barge charterparty, in accordance with Tankschiff Transport Bedingungen (TTB) rules, provided always that, if delivery is FOB:

- 21.1** the Barge validly tendered NOR prior to 24.00 hours on the nominated loading date;
- 21.2** if the Barge tenders NOR prior to commencement of the nominated ETA then such NOR shall, for the purposes of demurrage, be deemed to have been accepted at 00.01 hours on the nominated loading date or on commencement of loading, whichever is the earlier;
- 21.3** if the Barge tenders NOR after the nominated ETA, but within the Laydays specified in the Agreement, the Seller will try to arrange to berth such Barge as soon as possible upon its arrival and the Seller's demurrage liability shall not commence until commencement of loading;
- 21.4** demurrage will only be due if and to the extent demurrage is due to the owner of the Barge and based on the reversible laytime principal; and
- 21.5** the demurrage claim has been submitted to the Seller in writing within 30 days of the alleged occurrence, stating in reasonable detail the specific facts upon which the claim is based.

## **PART FOUR**

### **In respect of Ex Tank, Into Tank, In Situ (stock transfer) and Free Into Pipeline ("FIP") deliveries**

#### **Section 22. - Nominations**

- 22.1** In the case of Ex Tank, Into Tank or In Situ deliveries, nominations shall be made in accordance with the standard operating procedures of the relevant storage company(ies).
- 22.2** In the case of a Free In Pipeline ("FIP") delivery, nominations shall be made in accordance with the standard operating procedures of the relevant pipeline operating company(ies).

#### **Section 23. - Measurement and sampling; independent inspection**

- 23.1** The quantity and quality of the Product delivered under the Agreement shall be determined by measurement, sampling and testing in accordance with the most current API and ASTM Measurement Standards at the time of delivery.
- 23.2** Except as specifically provided in the Special Provisions or unless otherwise agreed, the quantity shall be determined in accordance with the following procedures:
- 23.2.1 In the case of an Ex Tank delivery, the quantity shall be determined by using proven meters (if available) at the Seller's tank(s) manifold exit point. If proven meters are unavailable, measurement shall be taken by manual measurement of the Seller's tank(s). Where the Seller's tank(s) are active or are unable to be measured manually, then the quantity shall be determined pursuant to Section 23.2.2 below.
- 23.2.2 In the case of an Into Tank delivery, the quantity shall be determined by using proven meters (if available) at the Buyer's tank(s) manifold entry point. If proven meters are unavailable, measurement shall be taken by manual measurement of the Buyer's tank(s). Where the Buyer's tank(s) are active or are unable to be measured manually, then the quantity shall be determined pursuant to Section 23.2.1 above.
- 23.2.3 In the case of an In Situ (by way of stock transfer) delivery, the quantity shall be as specified in the Special Provisions.
- 23.2.4 In the case of an FIP delivery, the quantity shall be determined by using the pipeline company's proven meters (if available). If proven meters are unavailable, the quantity shall be determined pursuant to Section 23.2.1 above.
- 23.3** Except as specifically provided in the Special Provisions or unless otherwise agreed, the quality shall be determined in accordance with the following procedures:
- 23.3.1 In the case of Ex Tank and Into Tank deliveries, the quality shall be determined in accordance with test results run on a volumetrically correct composite of samples drawn from the Seller's tank(s). If the Seller's tank(s) are active, the quality shall be determined in accordance with test results run on a volumetrically correct composite of samples drawn from the Buyer's tank(s).
- For the avoidance of doubt, where delivery is made from more than one tank, then the quality shall be determined in accordance with test results run on a blend of volumetrically correct composite samples drawn from each of the Seller's tanks and then blended according to the proportions from each tank. If any of the Seller's tanks are active, the quality shall be determined on volumetrically correct composite samples drawn from the Buyer's tank(s).
- 23.3.2 In the case of an In Situ (by way of stock transfer) delivery, if the quality has already been determined by an independent inspection or by the storage company, then both parties shall be bound by the results of such measurement, sampling and analysis thereof. Otherwise, the quality shall be determined in accordance with test results run on a volumetrically correct composite of samples drawn from such tank(s).

23.3.3 In the case of an FIP delivery, where automatic samplers are available, the quality shall be determined in accordance with test results run from flow proportional in line samples taken in accordance with the standard practice in force at the pipeline facility. Where properly functioning automatic samplers are not available, the quality shall be determined pursuant to Section 23.3.1 above.

**23.4** In the case of Ex Tank and Into Tank deliveries, if both the Seller's and the Buyer's tank(s) are active or unable to measure manually, then the quantity and/or quality shall be determined by a mutually acceptable independent inspector appointed pursuant to Section 23.6.

**23.5 Certificates of Quantity and Quality**

Notwithstanding the provisions of Section 23.6, the certificates of quantity and quality (or such other equivalent documents as may be issued at the terminal/pipeline company) shall, except in cases of manifest error or fraud, be conclusive and binding on both parties for invoicing purposes but without prejudice to the rights of either party to make any claim pursuant to Section 31.

**23.6 Independent Inspection**

Either party may appoint an independent inspector at the storage facility(ies) or pipeline facility(ies), subject to the prior agreement of the storage / pipeline company having been obtained where necessary. Such appointment shall be notified in writing to the other party. All charges in respect thereof shall be for the account of the party requiring the independent inspection and the duties of such inspector shall be considered solely as a service to the party requiring the inspection. Where both parties require an independent inspection, then Buyer and Seller shall jointly agree upon and appoint an independent inspector. All charges in respect thereof shall be shared between the parties and the inspector's report shall be made available to both parties.

**Section 24. - Risk and Property**

The risk and property in the Product delivered under the Agreement shall pass to the Buyer:

- 24.1** in the case of a FIP delivery, as the Product passes the inlet flange of the Buyer's receiving pipeline system; or
- 24.2** in the case of an Ex Tank delivery, as the Product passes the outlet flange of the Seller's storage tank from which the Product is being delivered; or
- 24.3** in the case of an Into Tank delivery, as the Product passes the inlet flange of the Buyer's receiving storage tank; or
- 24.4** where delivery is effected In Situ (by way of stock transfer), at such time and day and in such tank(s) as shall either be specified in the Special Provisions or as agreed between the parties prior to such transfer being effected and, where applicable, confirmed by the owner/operator of such tank(s).

## **PART FIVE**

### **In respect of deliveries in bulk to/by Road Tanker/Rail Tank Cars FCA, CPT, CIP, DDU, DDP or DAF**

#### **Section 25. – Nominations**

All nominations and other conditions relating to the delivery of Product in bulk into or by road and/or rail tank cars shall, unless otherwise specifically agreed between the parties, be in accordance with the standard operating terms and procedures applied by the operator of the Loading Terminal.

#### **Section 26. – Risk and Property**

##### **26.1 For FCA, CPT or CIP deliveries**

The risk and property in the Product delivered under the Agreement shall pass to the Buyer as the Product passes (a) the inlet manifold of the road tanker or rail tank car in question, as the case may be, 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.

##### **26.2 For DDU, DDP or DAF deliveries**

The risk and property in the Product delivered under the Agreement shall pass from the Seller to the Buyer:

26.2.1 on arrival of the road tanker at the agreed delivery point; or

26.2.2 at the moment that the locomotive used to transfer the rail tank cars from the Loading Terminal to the agreed delivery point/frontier is uncoupled from such rail tank cars at the agreed delivery point/frontier sidings.

#### **Section 27. – Acceptance of road or rail tank cars**

##### **27.1 For FCA deliveries**

Notwithstanding anything to the contrary express or implied elsewhere, the Seller shall have the right to refuse, on any reasonable ground, to accept any road or rail tank cars nominated by the Buyer. The Seller shall not be liable for any loss or damage, direct or indirect, which the Buyer may suffer as a result of the Seller exercising such right.

Without derogating from any other reasonable grounds that may be available to the Seller, it shall be a reasonable ground for the Seller to reject or refuse any road or rail tank cars pursuant to this Section if the road or rail tank cars either at the time of nomination or subsequently at any time up to the time of loading are not approved by any internal vetting system operated by the Seller.

##### **27.2 For CPT, CIP, DDU, DDP and DAF deliveries**

Notwithstanding anything to the contrary express or implied elsewhere, the Buyer shall have the right (which right may only be exercised prior to the passing of risk and property hereunder) to refuse, on any reasonable ground, to accept any road or rail tank cars nominated by the Seller. The Buyer shall not be liable for any loss or damage, direct or indirect, which the Seller may suffer as a result of the Buyer exercising such right.

Without derogating from any other reasonable grounds that may be available to the Buyer, it shall be a reasonable ground for the Buyer to reject or refuse any road or rail tank cars pursuant to this Section if the road or rail tank cars either at the time of nomination or subsequently at any time up to the time of loading are not approved by any internal vetting system operated by the Buyer.

#### **Section 28. – Insurance**

##### **28.1 For FCA or CPT deliveries**

The responsibility for securing insurance shall rest wholly with the Buyer.



## **28.2 For CIP deliveries**

28.2.1 The Seller undertakes to procure and pay for insurance to the full value of the Product shipped hereunder plus 10%. Such insurance, which shall operate from the time risk passes pursuant to Section 26.1 at the Loading Terminal until the Product reaches the agreed delivery point and is placed at the disposal of the Buyer, shall be in accordance with the provisions of a Cargo Insurance Policy subject to Institute Cargo Clauses (A), and the benefit thereof shall accrue to the Buyer upon the passing of risk in the shipment as provided for in the Agreement.

28.2.2 If requested by the Buyer, the Seller shall provide Buyer with the original certificate of insurance or insurance company's cover note.

## **28.3 For DDU, DDP or DAF deliveries**

The responsibility for securing insurance shall rest wholly with the Seller until the Product reaches the agreed delivery point and is placed at the disposal of the Buyer.

## **Section 29. - Other terms and conditions applicable to delivery by rail tank car**

### **29.1 For FCA deliveries**

The rail tank cars shall be available to the Seller for a maximum of 72 hours between:

29.1.1 the time at which the empty rail tank cars are made available to the Seller at the Loading Terminal for loading; and

29.1.2 the time at which all loaded rail tank cars are made available at the Loading Terminal for collection by or on behalf of the Buyer. Any time in excess thereof shall be charged at a rate per day per rail tank car (pro-rata for part of a day) either as specified in the Special Provisions or as charged to the Buyer by the rail tank car owner.

### **29.2 For CPT, CIP, DDU or DDP deliveries**

The rail tank cars shall be available to the Buyer for a maximum of 72 hours between:

29.2.1 the time that the locomotive used to transfer the rail tank cars from the Loading Terminal to the agreed delivery point/frontier is uncoupled from such rail tank cars at the agreed delivery point/frontier; and

29.2.2 the time at which the empty rail tank cars are made available at the relevant delivery point/frontier for collection by or on behalf of the Seller. All rail tank cars despatched by the Seller in one delivery shall be returned together. Any time in excess thereof shall be charged at a rate per day per rail tank car (pro-rata for part of a day) either as specified in the Special Provisions or as charged to the Seller by the rail tank car owner.

### **29.3 For DAF deliveries**

The rail tank cars shall be available to the Buyer for such reasonable period of time as shall be needed to enable the Buyer to collect such rail tank cars at the frontier, transfer them to its receiving terminal, unload them and return them to the relevant frontier point. Any charges incurred by the Seller for the delay in returning such rail tank cars to the frontier shall be for the Buyer's account.

## PART SIX

### Applicable to each of Parts One, Two, Three, Four and Five

#### **Section 30. – Definitions, etc.**

##### **30.1 Definitions**

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

- 30.1.1 *"Affiliate"* means 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;
- 30.1.2 *"Agreement"* means these General Terms and Conditions (including, where applicable, the Schedules attached hereto) together with the Special Provisions;
- 30.1.3 *"API"* means the American Petroleum Institute;
- 30.1.4 *"ASTM"* means the American Society for Testing and Materials;
- 30.1.5 *"Barge"* means
  - (a) a self propelled vessel or towed/pushed dumb craft employed in port areas and sheltered waterways which is not classified as a sea-going vessel (inland barge), and/or
  - (b) a towed/pushed dumb craft classified for sea-going trade (sea-going barge);
- 30.1.6 *"barrel"* means a barrel of 42 U.S. gallons at 60° Fahrenheit;
- 30.1.7 *"Berth"* means a berth, dock, anchorage, submarine line, single point or single berth mooring facility, offshore location, alongside vessels or lighters or any other loading or discharge place as may be indicated by the party in question;
- 30.1.8 *"Business Day"* unless the Agreement expressly provides to the contrary means a day other than a Saturday or Sunday or a bank holiday in London. Where the last day for any notice to be given under the Agreement falls on a day which is not a Business Day, such notice shall be given (by not later than the specified time, where applicable) on the last preceding Business Day;
- 30.1.9 *"CFR"* and *"CIF"* shall each have the meaning ascribed thereto in Incoterms 2000 (as amended from time to time), except as modified by the Agreement; further, if there is any inconsistency or conflict between Incoterms and the Agreement, the Agreement shall prevail;
- 30.1.10 *"CFR Outturn"* and *"CIF Outturn"* shall each have the meaning ascribed to CFR and CIF respectively in sub-section 30.1.9, except as modified by the Agreement;
- 30.1.11 *"CMR note"* is an international consignment note which is specified under the Convention for the Contract of the International Carriage of Goods by Road 1956 (the CMR Convention).
- 30.1.12 *"COD"* means completion of discharge and is when pumping ceases at the Discharge Port for the quantity of the Product deliverable to the Buyer by each Vessel under the Agreement;
- 30.1.13 *"CPT", "CIP", "DAF", "DDP", "DDU"* and *"FCA"* shall each have the meaning ascribed thereto in Incoterms 2000 (as amended from time to time), except as modified by the Agreement; further, if there is any inconsistency or conflict between Incoterms and the Agreement, the Agreement shall prevail;
- 30.1.14 *"Day"* means a calendar day;
- 30.1.15 *"delivery"* means placing or procuring to place the Product at the disposal of the Buyer at the time and place agreed upon. *"deliver"* includes *"procure to be delivered"* and the term *"delivery"* shall be construed accordingly, and *"deliverable"* and *"delivered"* shall be similarly construed;

- 30.1.16 *"DES"* shall have the meaning ascribed thereto in Incoterms 2000 (as amended from time to time), except as modified by the Agreement; further, if there is any inconsistency or conflict between Incoterms and the Agreement, the Agreement shall prevail;
- 30.1.17 *"Discharge Port"* means the port or terminal at which the Product to be delivered hereunder is or will be discharged or, where the context requires, the operator, authority or governing body of such port or terminal;
- 30.1.18 *"EEA"* means European Economic Area;
- 30.1.19 *"ETA"*, in the case of FOB deliveries, means the estimated time and/or date or range of days of arrival of the Vessel at the Loading Terminal and, in the case of CFR, CIF and DES deliveries means the estimated time and/or date or range of days of arrival of the Vessel at the Discharge Port. Any ETA at the Discharge Port given hereunder shall not place the Seller under any obligation to meet such date (other than to use its reasonable endeavours to ensure that the contract of carriage is consistent with the meeting of such date) and, for the avoidance of doubt, in the case of a CFR or CIF Agreement, shall not be construed as changing the nature of the Agreement;
- 30.1.20 *"EU"* means European Union;
- 30.1.21 *"EU qualified"* means that 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;
- 30.1.22 *"Ex Tank"* shall each have the meaning ascribed thereto in Part Four;
- 30.1.23 *"FIP"* shall each have the meaning ascribed thereto in Part Four;
- 30.1.24 *"FOB"* shall have the meaning ascribed thereto in Incoterms 2000 (as amended from time to time), except as modified by the Agreement; further, if there is any inconsistency or conflict between Incoterms and the Agreement, the Agreement shall prevail;
- 30.1.25 *"ICS"* means the International Chamber of Shipping;
- 30.1.26 *"Indicative Discharge Date(s)"* and *"Indicative Discharge Date Range"* shall have the meaning ascribed thereto in Section 11;
- 30.1.27 *"In Situ"* and *"Into Tank"* shall each have the meaning ascribed thereto in Part Four;
- 30.1.28 *"Laydays"* in the case of FOB deliveries shall have the meaning ascribed to it in Section 4, and in the case of CFR, CIF or DES deliveries shall have the meaning ascribed to it in Section 11;
- 30.1.29 *"Laytime"* means the time allowed to the Seller for loading (determined pursuant to Section 7) or the time allowed to the Buyer for discharge (determined pursuant to Section 16), as the case may be;
- 30.1.30 *"Loading Terminal"* means the port or terminal at which the Product to be delivered hereunder is or will be loaded or, where the context requires, the operator, authority or governing body of such port or terminal;
- 30.1.31 *"LPG"* means *"Butane"* and/or *"Propane"* and for the purposes hereof:
- (a) *"Butane"* means:
    - (i) liquified butane gas which reaches a liquid state at or near a temperature of minus 4° Celsius when at a pressure of one atmosphere absolute in a saturated state, or
    - (ii) the Product defined as Butane by the operator of the Loading Terminal at the time and place of delivery; and
  - (b) *"Propane"* means:
    - (i) liquified propane gas which reaches a liquid state at or near a temperature of minus 44° Celsius when at a pressure of one atmosphere absolute in a saturated state, or

- (iii) the Product defined as Propane by the operator of the Loading Terminal at the time and place of delivery;
- 30.1.32 "*MARPOL*" means the International Convention for the Prevention of Pollution from Ships, as amended from time to time;
- 30.1.33 "*MPMS*" means the API Manual of Petroleum Measurement Standards as amended from time to time;
- 30.1.34 "*MSDS*" or "*Material Safety Data Sheet*" means the Safety Data Sheet containing the information which is in compliance with the applicable laws and regulations of the country in which the Loading Terminal and/or Discharge Port are located. Where the Loading Terminal and/or Discharge Port are located in the EEA, the Safety Data Sheet shall contain information set out in Annex II of REACH, (as amended from time to time);
- 30.1.35 "*month*" means a month of the Gregorian calendar;
- 30.1.36 "*NOR*" means the valid notice of readiness to load or discharge, as the case may be, as given by the master of the Vessel (or his representative) to the Seller (or its representative) at the Loading Terminal or to the Buyer (or its representative) at the Discharge Port respectively;
- 30.1.37 "*OCIMF*" means the Oil Companies International Marine Forum;
- 30.1.38 "*party*" means either the Buyer or the Seller and collectively the "*parties*";
- 30.1.39 "*Payment Security*" means support for the Buyer's payment obligation as described in 35.10 or as provided for in the Special Provisions;
- 30.1.40 "*Persistent Oil*" means all persistent hydrocarbon mineral oils other than those falling within the definition of "*non-persistent oil*". For the purposes hereof, "*non-persistent oil*" means oil which consists of hydrocarbon fractions:
- (a) at least 50% of which, by volume, distils at a temperature of 340° C, and
  - (b) at least 95% of which distils at a temperature of 370° C when tested by the ASTM method D86/78 or any subsequent revision thereof;
- 30.1.41 "*Product*" means the grade or commodity specified in the Special Provisions;
- 30.1.42 "*REACH*" means Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Regulation, Evaluation, Authorisation and Restriction of Chemical substances (REACH);
- 30.1.43 "*safely afloat*" means that the Vessel shall at all times be water-borne in compliance with the port clearance requirements of the Vessel nominating party (including but not limited to underkeel clearance) and shall be able to remain at the Berth without risk of loss or damage from wind, weather or other craft which are being properly navigated;
- 30.1.44 "*Shell*" means Royal Dutch Shell plc and all Affiliated and subsidiary companies;
- 30.1.45 "*Special Provisions*" means the contract fax or other form of agreement in which, by reference, these General Terms and Conditions are incorporated to form the Agreement;
- 30.1.46 "*ton*" means a metric ton or tonne;
- 30.1.47 "*typicals*" mean a quality or characteristic often attributable to Product from a particular source, given without guarantee and not amounting to a representation or warranty that such typical quality or attribute will be present in the Product supplied;
- 30.1.48 "*Vessel*" means a tankship or other Vessel which is wholly or mainly constructed or is adapted for the carriage of Product and shall, except where otherwise provided, be deemed to include Barges;
- 30.1.49 "*Worldscale*" means the "New Worldwide Tanker Nominal Freight Scale" as current on the day of commencement of loading of the Vessel in question.

## **30.2 Interpretation**

Clause, Section and sub-section headings contained in the Agreement are for convenience of reference only and shall not affect the interpretation thereof. Any reference to any Act of Parliament or to legislation of any sovereign state shall be deemed to include any amendment, replacement or re-enactment thereof for the time being in force and to include any bylaws, licences, statutory instruments, rules, regulations, orders, notices, directions, consents or permissions made thereunder and any condition attaching thereto. Except where the context otherwise requires, words denoting the singular include the plural and vice versa; words denoting any gender include all genders; and words denoting persons include firms and corporations and vice versa.

## **Section 31. – Quality and Claims in respect of quality/quantity**

### **31.1 Quality**

- 31.1.1 Unless otherwise stated in the Special Provisions, the quality of the Product delivered hereunder shall be not inferior to the specification set out in the Special Provisions.
- 31.1.2 Whether set out in these General Terms and Conditions or in the Special Provisions neither typicals nor any stipulation as to time of delivery shall form part of the Product's description, quality or fitness. This sub-section constitutes the whole of the Seller's obligations with respect to the description, quality and fitness for purpose of the Product to be delivered and (save to the extent that exclusion thereof is not permitted or is ineffective by operation of law) all statutory or other conditions or warranties, express or implied, with respect to the description or satisfactory quality of the Product or its fitness for any particular purpose or otherwise are hereby excluded.
- 31.1.3 Any individual listed quality or characteristic of the Product delivered expressed numerically must (save if the Special Provisions provide otherwise) be correct to two significant figures.

### **31.2 Claims in respect of quality and/or quantity**

- 31.2.1 Any complaint in respect of deficiency of quantity or of variation of quality must be notified in writing by the claiming party within:
  - (a) In the case of FOB, CFR, CIF and DES deliveries: 60 days of the completion of discharge date.
  - (b) In the case of all other delivery types: 60 days of completion of delivery.Following such notification, the claiming party shall provide a fully documented claim within 90 days of the completion of discharge/delivery date. If the claiming party fails to give such notice or submit a fully documented claim within the aforesaid time limits, the claim shall be deemed to have been waived, and any liability on the part of the non-claiming party shall be extinguished.
- 31.2.2 Notwithstanding the foregoing, no claim shall be admitted in respect of any deficiency of quantity where the difference between the loaded and discharged quantity is 0.2% of the loaded quantity or less.
- 31.2.3 In the case of CFR Outturn, CIF Outturn and DES deliveries, notwithstanding the provisions of Section 9, the Seller shall have the right to submit a claim to the Buyer where there is a difference between the quantity loaded and discharged by the Seller's Vessel and where, in the Seller's reasonable opinion, the most likely cause of such difference is due to events at, or the nature of, or operations at the Discharge Port during the discharge of the Product.

## **Section 32. – Health, Safety and Environment**

### **32.1 REACH**

The provisions of this Section 32.1 shall apply only in respect of deliveries of the Product under the Agreement where either the Loading Terminal or Discharge Port is located within the EEA.

- 32.1.1 The Seller and the Buyer each agree and undertake to the other that they will comply with those obligations under REACH which are applicable to the sale of the Product under the Agreement and its physical introduction into the EEA.
- 32.1.2 The Seller shall provide the following information ("Substance Identifier") to the Buyer for each chemical substance contained in or comprising the Product at the relevant time:
- (a) a Chemical Abstracts Service ("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 number as defined by REACH; or
  - (b) if the Seller is unable to provide the Buyer with any of the information described in 31.1.2 (a) above, then the Seller shall provide the Buyer with the information necessary for the Buyer to ascertain the CAS or EC number.
- 32.1.3 The Seller shall provide the Substance Identifier to the Buyer:
- (a) at the time of loading for FOB, CFR, CIF, CPT, CIP and FCA deliveries;
  - (b) at the time of transfer for Ex Tank, Into Tank, In Situ and FIP deliveries;
  - (c) by the time of discharge for DES deliveries; or
  - (d) by the time the Product reaches the agreed delivery point in the case of DDU, DDP and DAF deliveries.
- 32.1.4 Where the Seller is not an Importer (as defined by REACH), nor an EEA manufacturer, and is not subject to obligations under REACH in respect of the Product sold under this Agreement, the following shall apply:
- (a) in providing the Buyer with Substance Identifiers pursuant to its obligations under Section 32.1.2, regardless of their source, it provides no warranty or representation as to the accuracy or completeness of such Substance Identifiers, and
  - (b) notwithstanding any other provision to the contrary in this Agreement, it accepts no liability for loss, damage, delay or expense incurred by the Buyer for whatever reason arising from its reliance on the accuracy of the Substance Identifiers provided and the existence of a valid (pre) registration of the Substances to be imported into the European Economic Area ('EEA').

## **32.2 Material Safety Data Sheet ("MSDS")**

The Seller shall provide the Buyer with a copy of the current MSDS for the Product and any other information relating to health safety and environmental data in connection with the Product in compliance with the requirements of any applicable laws, rules or regulations.

## **32.3 The Buyer's responsibilities**

- 32.3.1 The Buyer shall provide its employees, agents, contractors, customers and other persons to whom it supplies the Product delivered hereunder with either:
- (a) a copy of the Seller's current MSDS or a comparable MSDS and any other information relating to health, safety and environmental data in connection with the Product delivered hereunder; or
  - (b) comparable other information relating to health, safety and environmental data in connection with the Product delivered hereunder where performance of the obligations under the Special Provisions is outside the EEA ("Other Information").

The Buyer shall be responsible for any consequences that result from the use of a MSDS or Other Information. For the purposes of this Section 32.3.1, "supplies" shall have the same meaning as "supply" set out in Section 46 of the Consumer Protection Act, 1987.

- 32.3.2 The Buyer shall provide persons responsible for the management of health, safety and environment matters within its own organisation with a copy of the MSDS or Other Information.



32.3.3 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, which does not endanger their health or safety.

#### **32.4 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.

### **Section 33. – Destination**

**33.1** It is a condition of the Agreement, that the Product delivered under the Agreement shall not be imported (by the Buyer or others), directly or indirectly and irrespective of means, to any destination which is at the time of such import either prohibited under the laws of the country in which such Product was produced or contrary to any regulation, rule, directive or guideline applied by the government of that country or any relevant agency thereof. The Buyer shall keep itself informed as to such laws, regulations, rules, directives or guidelines and shall ensure that they are complied with.

Without diminution of such obligation on the Buyer, the Seller undertakes to inform the Buyer as soon as practicable of any changes in such laws, regulations, rules, directives or guidelines which become known to the Seller. The Buyer acknowledges that at the date hereof it is informed of all such laws, regulations, rules, directives and guidelines relevant to its undertakings under this Section.

**33.2** The Buyer undertakes that the Product deliverable hereunder shall not:

33.2.1 be exported to any Restricted Jurisdiction; or

33.2.2 be sold or supplied to any natural or legal person in any Restricted Jurisdiction; or

33.2.3 be sold or supplied to any natural or legal person for the purposes of any commercial activity carried out in or from any such Restricted Jurisdiction.

For the purposes of this sub-section, "Restricted Jurisdiction" shall mean any country, state, territory or region against which there are sanctions imposed by the United Nations and/or to which supplies of the Product are prohibited or restricted under the laws of the country in which such Product was produced pursuant to Section 33.1 above.

**33.3** The Buyer shall, if the Seller requires, provide the Seller with appropriate documentation for the purposes of verifying the final destination of any delivery hereunder. Such documentation shall be provided within 30 days of the date of discharge of the shipment or within such lesser period as will enable the Seller or its supplier to comply with any requirement or request of the government or authority in question and shall include the name of the port(s) of discharge, the date(s) of discharge and the grade and quantity discharged. The obligations of the Buyer to comply with such requirement shall not be affected by any sale or disposal of the Product in question by the Buyer.

**33.4** Without prejudice to the foregoing provisions of this Section 33, in the event of any failure to comply with such undertakings or if the Seller has reasonable grounds for believing that such undertakings will not be complied with the Seller may (without prejudice to its other rights) at its sole discretion terminate the Agreement forthwith or forthwith suspend delivery under the Agreement until further notice or decline to commence or complete loading hereunder on notifying the Buyer either in writing or orally (with written confirmation to follow).

### **Section 34. – VAT, GST, MOT and other taxes, duties etc.**

#### **34.1 VAT/GST**

34.1.1 Where Value Added Tax ("VAT") or a Goods and Services Tax ("GST") or a similar tax becomes payable under the rules applicable at the Loading Terminal or Discharge Port, the Seller shall issue a valid tax invoice setting out such VAT, GST or similar tax and the date for its payment. Payment of such tax shall be made to the Seller in addition to the price specified in the Special Provisions and any duty payable and in the same manner as provided for payment of such price. Such invoice may be rendered in either local currency of the country in which such tax is payable or, at the Seller's option, in the invoicing currency for the Product,

converted at the appropriate exchange rate prevailing at the date of the tax point under the relevant VAT or GST rules.

34.1.2 A sale of Product may be zero rated for VAT or GST provided that:

- (a) if the destination of the Product is within the EU, the Buyer provides to the Seller:
  - (i) within 30 days of the date of completion of loading:
    - (A) evidence satisfactory to the EU states in which the Loading Terminal and Discharge Port are located that the Product has been received by the Buyer, or on the Buyer's behalf, or by some other party acting on its own behalf, within another EU state, and
    - (B) such other evidence as is satisfactory to the relevant authorities in the above EU states to allow zero rating of the supply of the Product; and
  - (ii) before transfer of property in the Product to the Buyer, a valid VAT registration number issued by an EU state other than the EU state in which the Loading Terminal is situated; and
  - (iii) evidence satisfactory to the EU states in which the Loading Terminal and Discharge Port are located that the transport arrangements for the Product qualify for zero rating; or
- (b) if the destination of the Product is outside the EU or outside the country in which the Loading Terminal is located and if required by the applicable VAT/GST regime in which the Loading Terminal is located, the Buyer provides to the Seller, within 30 days of completion of loading of the Product, evidence satisfactory to the EU state or the applicable VAT/GST regime in which the Loading Terminal is located that the Product has been received by the Buyer, or on the Buyer's behalf, or by some other party acting on its own behalf, at such destination.

34.1.3 In circumstances where Section 34.1.2 above may apply, the Seller will issue a valid tax invoice in respect of the Product which is zero rated for VAT or GST. However, if the Buyer fails to comply with the requirements set out in Section 34.1.2 above within the allotted time frame or in the event of any fraud or misappropriation in respect of the Product and/or the documents/information referred to in Section 34.1.2 above, the Seller shall be entitled to issue a further tax invoice for the amount of any VAT or GST payable on the Product (inclusive of duty if appropriate) together with any penalties and/or interest at the rate stipulated under the VAT/GST rules applicable. Such invoice may be rendered either in local currency of the country in which such tax is payable or, at the Seller's option, in the invoicing currency for the Product, converted at the appropriate exchange rate prevailing at the date of the tax point under the relevant VAT/GST rules. Any such invoice shall be paid in full within one banking day in New York of presentation of such tax invoice or, if later, the date of payment for the Product, in each case without set-off, withholding, deduction or counterclaim, to the Seller's bank account. Any outstanding amount shall bear interest in accordance with the provisions of Section 35.8 hereof.

34.1.4 The Buyer shall indemnify the Seller in respect of any costs, penalties and interest incurred by the Seller as a result of the Buyer's failure to pay, or delay in paying, any VAT, GST or similar tax in accordance with the Agreement.

34.1.5 If the Seller is subsequently able to obtain a credit or repayment from the authorities of any such VAT, GST or similar tax which has been paid by the Buyer, the Seller shall within 5 banking days in New York from the time the Seller received the credit or repayment, reimburse the Buyer with the net amount so credited or repaid less any costs, penalties and interest. The Seller shall use all reasonable efforts, at the cost of the Buyer, to obtain such credit or repayment.

## **34.2 Excise Duty or Mineral Oil Tax**

34.2.1 The provisions of this Section 34.2 shall apply only in respect of deliveries of the Product under this Agreement where either the Loading Terminal or Discharge Port is located within the EU.

34.2.2 Excise Duty or Mineral Oil Tax may be payable in respect of the Product on its leaving bonded premises at the loading terminal unless:

- (a) by the 15th day of the month following the month in which loading of the Product hereunder from bonded premises is completed with an Accompanying Administrative Document ("AAD"), a properly completed Copy 3 thereof, together (except in the case of delivery DES) with proof of discharge of the shipment, is returned to the Seller; or
- (b) the movement of the Product is under cover of a properly verified Electronic Administrative Document ("e-AD") processed in accordance with the procedures set out in Council Directive 2008/118/EC concerning the general arrangements for excise duty using the computerised system EMCS (Excise Movement and Control System), or
- (c) the Buyer has provided to the Seller evidence satisfactory to the EU state where the Product was taken out of bonded premises, that the Product was delivered to a non-EU state either duty paid or into bonded premises; or
- (d) the Buyer can provide evidence satisfactory to the EU state where the Product was taken out of bonded premises without an AAD as a result of the Buyer's nomination that the Product was delivered into bonded premises within the EU in circumstances where such deliveries allow for suppression of Mineral Oil Tax.

34.2.3 If none of the exceptions set out in Section 34.2.2 above are complied with, or in the event of any fraud or misappropriation in respect of the Product and/or the documents referred to in 34.2.2 above, the Buyer shall indemnify, and hold indemnified, the Seller against all liability in respect of Excise Duty or Mineral Oil Tax incurred by the Seller and/or reimbursements of amounts equivalent to such Duty or Tax by the Seller directly or indirectly to its supplier or the owner of the bonded premises from which the Product was despatched, including any interest, penalties and costs in respect thereof. In addition, notwithstanding compliance with Section 34.2.2 above, the Buyer shall, except in the case of CFR Outturn, CIF Outturn or DES delivery, remain liable under the above indemnity for any Excise Duty or Mineral Oil Tax claimed by any relevant EU state in respect of discrepancies between the loaded and discharged quantities.

**34.3** For the purposes of this Section:

34.3.1 "evidence satisfactory" to an EU state shall, as a minimum and without prejudice to the provisions of Section 33 hereof, require a certificate of discharge of the Product. For the avoidance of doubt, the Buyer shall not be obliged to provide any documents pursuant to this Section which are not required by the relevant authorities in the EU state in question; and

34.3.2 references to "completion of loading" (or like expressions) shall be deemed to refer to:

- (a) the date on which risk and property in the Product passes to the Buyer in the case of FIP, Ex Tank, In Situ, FCA, CPT, CIP, DDU, DDP or DAF delivery; or
- (b) the date on which the Product passes the outlet flange of the Seller's storage tank in the case of Into Tank delivery;

as the case may be.

**34.4 Other taxes, duties, etc.**

**34.4.1 The Buyer's responsibilities**

The amount of any taxes, duties, imposts, fees, charges and dues of every description imposed or levied by any governmental, local or port authority on the Product supplied hereunder, or on its export, delivery, transportation, ownership, sale or use, in respect of any stage after risk in such Product has passed to the Buyer, shall be for the Buyer's account.

In the case of FOB sales, all taxes, duties, imposts, 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 Loading Terminal shall be for the Buyer's account.

In the case of CFR and CIF sales, all taxes, duties, imposts, 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 Port shall be for the Buyer's account, except for those specified in Worldscale as being for the owners' account.

For the avoidance of doubt and in respect of every type of sale (except DDP), the Seller shall not be the importer of record but shall be responsible for ensuring that the Buyer is provided with all necessary documentation required to comply with customs and excise entry procedures at the Discharge Port and all duties and taxes that arise in respect of such customs and excise entry shall be for the Buyer's account.

#### **34.4.2 The Seller's responsibilities**

The amount of any taxes, duties, imposts, fees, charges and dues of every description imposed or levied by any governmental, local or port authority on the Product supplied hereunder, or on its export, delivery, transportation, ownership, sale or use, in respect of any stage prior to risk in such Product passing to the Buyer, shall be for the Seller's account.

In the case of CFR and CIF sales, all taxes, duties, imposts, 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 Loading Terminal shall be for the Seller's account, except for those specified in Worldscale as being for the owners' account.

In the case of DES sales, all taxes, duties, imposts, 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 Port shall be for the Seller's account.

### **Section 35. - Payment**

**35.1** Except as expressly provided elsewhere in the Agreement, payment of the full amount of all sums due under the Agreement shall be made without any discount, deduction, withholding, offset or counterclaim in United States Dollars by wire transfer of same day funds on or before the due date specified in the Special Provisions to the bank account designated by the Seller.

#### **35.2 Payment documents**

Except as expressly provided elsewhere in the Agreement, payment shall be made by the Buyer against presentation of the Seller's invoice (provisional invoice acceptable where the provisions of Section 35.4.3 apply), and:

- 35.2.1 in the case of FOB, CFR or CIF deliveries, 3/3 clean original bills of lading issued or endorsed to the order of the Buyer;
- 35.2.2 in the case of CFR Outturn or CIF Outturn deliveries, the documents referred to in Sections 35.2.1 and a copy of the report of the independent inspector appointed pursuant to Section 9.2;
- 35.2.3 in the case of DES delivery, a copy of the certificates of the independent inspector appointed pursuant to Section 9.2;
- 35.2.4 in the case of Barge delivery, or Ex Tank, Into Tank, In Situ, FIP, FCA, CPT, CIP, DDU, DDP deliveries, a copy of the certificate or certificate(s) of quantity and quality (or equivalent documents) issued at the terminal/pipeline facility;
- 35.2.5 in the case of DAF delivery:
  - (a) For delivery by rail tank car: a copy of the relevant railway bill(s) date stamped at the border crossing railway station being the place of delivery provided in the Special Provisions and certified as a true copy by the Seller; or
  - (b) For delivery by road: a copy of the relevant CMR note(s) or other contract evidencing the carriage of the Product, date stamped at the border crossing being the place of delivery provided in the Special Provisions and certified as a true copy by the Seller.

### **35.3 Seller's indemnity in lieu of shipping documents**

If the documents referred to in Section 35.2.1 or 35.2.2 are not available for presentation to the Buyer on or before the payment due date, the Buyer agrees to pay the Seller upon presentation to the Buyer of:

- 35.3.1 the Seller's invoice (provisional invoice acceptable where the provisions of Section 35.4.3 apply); plus
- 35.3.2 the Seller's letter of indemnity counter-signed, if so requested by the Buyer, by a first-class international bank acceptable to the Buyer, in the format set out in Schedule A. The Seller's indemnity presented in the form of a fax or a PDF file e-mail attachment is acceptable.

### **35.4 Seller's invoice**

35.4.1 The Seller's invoice shall:

- (a) with respect to deliveries of the Product under the Agreement where the Loading Terminal or Discharge Port is located within the EU, be a valid tax invoice prepared in accordance with the provisions of Sections 34.1 and 34.2 and presented in the form of either:
  - (i) a fax sent from a standalone facsimile machine; or
  - (ii) a hard copy sent by post, airmail or courier.
- (b) with respect to non-EU deliveries, be in full compliance with any tax requirements of the relevant VAT/GST regime of the country where either the Loading Terminal or Discharge Port are located and presented in the form of a fax or in such other form providing that the method of delivery complies with any such tax requirements.

35.4.2 The Seller's invoice shall be prepared on the basis of:

- (a) in the case of FOB, CFR or CIF deliveries, the certificate(s) of quantity and, where applicable, quality issued at the Loading Terminal in accordance with Section 2.1 or 9.1.1 (as applicable); or
- (b) in the case of CFR Outturn or CIF Outturn deliveries, the certificate(s) of quantity issued at the Loading Terminal in accordance with Section 9.1.1 and subsequently adjusted in accordance with the report of the independent inspector at the Discharge Port issued in accordance with Section 9.2; or
- (c) in the case of DES delivery, the report of the independent inspector at the Discharge Port issued in accordance with Section 9.2; or
- (d) in the case of Ex Tank, Into Tank, In Situ, FIP, FCA, CPT, CIP, DDU, DDP or DAF deliveries the certificate(s) of quantity and, where applicable, quality (or equivalent documents) issued at the terminal/pipeline company, as the case may be.

#### **35.4.3 Provisional Invoice**

Where the applicable pricing mechanism and/or, in the case of DES, CFR Outturn or CIF Outturn deliveries, the availability of discharge quantities does not allow for the preparation of a final invoice prior to the payment due date, the Seller may issue and the Buyer shall make payment against a provisional invoice. The provisional invoice shall, unless otherwise agreed between the parties, be based upon:

- (a) the pricing information available to the Seller at the time it issues such provisional invoice; and/or
- (b) in the case of DES, CFR Outturn or CIF Outturn deliveries, the quantity specified in the bill(s) of lading.

Payment of any balance due by either party to the other shall be made immediately upon receipt of the Seller's final invoice which shall be prepared as soon as practicable after all the relevant pricing and/or quantity information becomes available to the Seller. In this context, the word "immediately" shall mean within 5 New York banking days. Unless

otherwise agreed in the Special Provisions, no interest shall be due on the difference between the provisional and final invoice.

#### **35.4.4 CFR Outturn and CIF Outturn**

In the event of a total loss of the cargo or if the discharge quantity determined by the independent inspector in accordance with Section 9.2.3 is less than 99.5 percent of the loaded quantity determined in accordance with Section 9.1.1, 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.

### **35.5 Netting of Invoices**

Notwithstanding Section 35.1 above, the parties may net invoices for amounts that are due to each other on the same date. In that case, prior to the due date the parties shall confirm in writing the invoice amounts and the balance due, if any, after netting (being the excess of the larger aggregate amount owed over the smaller aggregate amount owed). When the balance due has been confirmed, each party's obligation to make payments to the other will be automatically satisfied and discharged and replaced by an obligation upon the party by whom the larger aggregate amount would have been payable to pay to the other party on the date due, the agreed balance. Notwithstanding the above, payments for any demurrage, quantity, quality or other claims shall not be included in such netting of invoices.

### **35.6 Payment Due Date**

35.6.1 The payment due date shall be as specified in the Special Provisions.

35.6.2 Unless it is specified in the Special Provisions or by virtue of the provisions of Section 35.10 that payment shall be cash in advance, if property in the Product has not passed to the Buyer by the payment due date specified in the Special Provisions, then payment for the Product shall be due 3 New York banking days after the date property in the Product passes to the Buyer.

35.6.3 In the case of CFR or CIF deliveries, if the payment due date specified in the Special Provisions is based on either the NOR date at the Discharge Port and/or the COD date, and providing property in the Product has passed to the Buyer, in the event that the Vessel, for whatever reason, does not tender NOR at the Discharge Port and/or has no COD date, then for payment purposes the NOR / COD date shall be deemed to be the last day of the Indicative Discharge Date range or, if there is no Indicative Discharge Date range, then payment shall be due on or before the 30<sup>th</sup> day after the bill of lading date (bill of lading date equals day zero).

### **35.7 Payments due at weekends or on bank holidays**

If any payment falls due on a Sunday or bank holiday Monday in New York, such payment shall be made on the first New York banking day following and if any payment falls due on a Saturday or any other bank holiday in New York such payment shall be made on the last preceding banking day in New York.

### **35.8 Interest**

35.8.1 Without limitation to the provisions of this Section or the Seller's other rights under the Agreement or otherwise, the Seller shall have the right to require, in respect of any payment not made in full by the due date, the payment by the Buyer to the Seller of interest on any unpaid amount calculated at an annual rate (360 day per year basis) of 3 percentage points above the average British Bankers Association London Interbank Offered Rate ("bbalibor") for one month U.S. Dollar as published on the due date by Thomson Reuters (or any official successor thereto), such interest to run from the day immediately after the due date until the date payment is received by the Seller's bank. Such interest shall be payable to the Seller on demand therefore being made by the Seller. Interest shall continue to accrue under this Section 35.8 until payment notwithstanding the termination of the Agreement for any cause whatsoever. The amount of interest payable to the Seller shall be engrossed for withholding tax, if any, such that the net amount received by the Seller after the deduction of any such withholding tax shall be equal to the full amount of interest due.

35.8.2 The provisions of this Section 35.8 shall not be construed as an indication of any willingness on the part of the Seller to provide extended credit as a matter of course, and shall be without prejudice to any rights and remedies which the Seller may have under the Agreement or otherwise. Any expenses incurred by the Seller, including but not limited to reasonable legal fees, court costs and collection agency fees, caused by delayed or non-payment by the Buyer of the amount(s) due shall be for the account of the Buyer and payable upon demand with supporting documentation.

### **35.9 Payment account**

Payment(s) shall be made by the Buyer, quoting the Seller's invoice number and the Buyer's name, to the Seller's bank, account name and account number as specified in the Special Provisions or as otherwise notified by the Seller in writing.

### **35.10 Payment Security**

If Payment Security is not already provided for in the Special Provisions, the Seller shall be entitled at any time before the payment due date, on giving the Buyer notice of not less than 2 London banking days, to demand that payment be made:

- 35.10.1 by means of an irrevocable documentary letter of credit, in accordance with the provisions of Section 35.11; or
- 35.10.2 by the method prescribed in the Special Provisions together with a standby letter of credit, in accordance with the provisions of Section 35.11; or
- 35.10.3 by payment of cash in advance, in accordance with the provisions of Section 35.12.

### **35.11 Letter of credit**

- 35.11.1 Where, under the Agreement or by virtue of the provisions of Section 35.10, the price is to be paid by means of an irrevocable documentary letter of credit or supported by a standby letter of credit in favour of the Seller (both herein referred to as an "L/C"), the Buyer shall cause such L/C to be opened with or confirmed by a first-class international bank acceptable to the Seller (the "Bank") in terms specified in this Section 35.11.
- 35.11.2 The provisions hereof for such payment by L/C are not to be construed as altering, varying or qualifying the Buyer's obligation to pay for the Product delivered hereunder by the payment due date.
- 35.11.3 The L/C shall be sufficient to cover the contractual mean value of the Product at the price specified in the Special Provisions plus 15 percent and a further amount to cover escalation in duties including VAT if appropriate, and the Buyer shall cause it to be advised or confirmed in writing by the Bank to the Seller, in a form substantially as set out in Schedule B or C (whichever is applicable) and in all respects acceptable to the Seller.
- 35.11.4 The L/C shall be so advised or confirmed by not later than the date/time:
  - (a) as specified in the Special Provisions; or
  - (b) as specified in the Seller's notice pursuant to Section 35.10; or
  - (c) where the date/time is not specified in the Special Provisions or in the Seller's notice, by not later than:
    - (i) 1600 hours (London time) on the 10th day prior to the first day of the Laydays, or
    - (ii) in the case of a DES delivery, 1600 hours (London time) 10 days before the first day of the ETA range, or such later date and/or time as the Seller may in writing require.
- 35.11.5 If the date of the Agreement is later than any of the dates for opening and/or confirming the L/C specified in the Special Provisions or in this Section 35, then the Buyer shall make best efforts to open or confirm the L/C as soon as practicably possible but in any case never later than 1200 hours (London time) on the day immediately prior to the first day of the Laydays or the ETA range, as applicable.



- 35.11.6 Pursuant to such L/C, the Seller shall present the documents referred to in Section 35.2 or 35.3 at the counter of the Bank, or its correspondent bank in London.
- 35.11.7 All charges in respect of the L/C shall be for the Buyer's account.
- 35.11.8 The L/C shall take effect in accordance with its terms (including any agreed amendment(s) thereto) but such terms shall not alter, add to, or in any way affect, the provisions of the Agreement (or any of them) unless the Seller and the Buyer expressly agree in writing that any such term shall so alter, add to, or in any way affect, the provisions of the Agreement.
- 35.11.9 If for any reason the loading or discharge, as the case may be, of the Vessel will not take place within the period for such loading or discharge referred to in the L/C, the Buyer shall either obtain an extension of such period for loading or discharge or provide a new L/C in terms acceptable to the Seller.

### **35.12 Cash in advance**

- 35.12.1 Where, under the Agreement or by virtue of the provisions of Section 35.10, the price is to be paid by means of cash in advance, the Seller shall issue and the Buyer shall make payment against a provisional invoice. The provisional invoice shall, unless otherwise agreed between the parties, be based upon:
- (a) the pricing information available to the Seller at the time it issues such provisional invoice; and
  - (b) the maximum contractual quantity specified in the Special Provisions
- 35.12.2 The provisional payment shall be made:
- (a) by the date specified in the Special Provisions; or
  - (b) by the date specified in the Seller's notice pursuant to Section 35.10

Payment of any balance due by either party to the other shall be made on the due date specified in the Special Provisions or, where there is no final due date specified in the Special Provisions, immediately upon receipt of the Seller's final invoice which shall be prepared as soon as practicable after all the relevant pricing and/or quantity information becomes available to the Seller. In this context, the word "immediately" shall mean within 5 New York banking days. Unless otherwise agreed in the Special Provisions, no interest shall be due on the difference between the provisional and final invoice.

### **35.13 Non-compliance with payment obligations**

- 35.13.1 It is a condition of the Agreement that the Buyer complies with its payment obligations including, if required, the obligation to provide Payment Security in the form specified in the Special Provisions or in the form specified by the Seller pursuant to Section 35.10, within the time prescribed in the Special Provisions or in Section 35.11 or 35.12 (as applicable). Any failure either in whole or in part by the Buyer to comply with any such obligations shall be a breach of condition.
- 35.13.2 On the occurrence of such breach, and for so long as such breach is continuing, the Seller may at any time by notice to the Buyer, and without any liability whatsoever for any cost, loss or damage (including liabilities to third parties) incurred by the Buyer, forthwith:
- (a) terminate the Agreement and claim damages; or
  - (b) without prejudice to the right to terminate the Agreement, suspend or cancel delivery of all or any supplies of the Product.
- 35.13.3 The Buyer shall be liable for any and all costs, losses and damages incurred by the Seller as a result of the Buyer's breach, including but not limited to, any demurrage payable by the Seller in respect of the Vessel or other vessels waiting at the Loading Terminal or Discharge Port.
- 35.13.4 Termination hereunder shall be without prejudice to any right of action or claim accrued on or before the date of termination.

### **35.14 Other charges**

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 the Seller's invoice therefor and shall be for immediate settlement by the Buyer on or before the date specified therein.

### **Section 36. - New and changed regulations, etc.**

- 36.1** It is understood by the parties that the Seller is entering into the Agreement in reliance on the laws, rules, regulations, decrees, agreements, concessions and arrangements ("Regulations") in effect on the date hereof with governments, government instrumentalities or public authorities affecting the Product sold hereunder including, but without limitation to the generality of the foregoing, those relating to the production, acquisition, gathering, manufacturing, transportation, storage, trading or delivery thereof, insofar as such Regulations affect the Seller or the Seller's supplier(s).
- 36.2** If at any time and from time to time during the currency of the Agreement any Regulations are changed or new Regulations become or are due to become effective, whether by law, decree or regulation or by response to the insistence or request of any governmental or public authority or any person purporting to act therefor, and the material effect of such changed or new Regulations (a) is not covered by any other provision of the Agreement, and (b) has or will have a material adverse economic effect on the Seller, the Seller shall have the option to request renegotiation of the price(s) or other pertinent terms of the Agreement. Such option may be exercised by the Seller at any time after such changed or new Regulations are promulgated by written notice to the Buyer, such notice to contain the new price(s) or terms desired by the Seller. If the parties do not agree upon new price(s) or terms satisfactory to both parties within 15 days after the date of the Seller's notice, either party shall have the right to terminate the Agreement immediately at the end of such 15-day period. Any Product delivered during such 15-day period shall be sold and purchased at the price(s) and on the terms applying under the Agreement without any adjustment in respect of the new or changed regulations.

### **Section 37. - Force majeure, etc.**

- 37.1** Neither the Seller nor the Buyer shall be liable for a failure to perform any of its obligations under the Agreement insofar as that party proves that the failure was due to an impediment beyond its control;
- 37.2** An impediment within Section 37.1 above shall:
- 37.2.1 include delay, hindrance, reduction in, interference with, curtailment or prevention of a party's performance of its obligations hereunder resulting from events such as the following, this list not being exhaustive:
- (a) war, whether declared or not, civil war, riots and revolutions, acts of piracy, acts of sabotage;
  - (b) natural disasters such as violent storms, cyclones, earthquakes, tidal waves, floods, destruction by lightning;
  - (c) explosions, fires, destruction of tankage, pipelines, refineries or terminals and any kind of installations;
  - (d) boycotts, strikes, lock-outs, labour disputes of all kinds, go-slows, occupation of factories and premises;
  - (e) any curtailment, reduction in, interference with, failure or cessation of, supplies of Product from any of the Seller's or the Seller's suppliers' sources of supply or by any refusal to supply Product whether lawful or otherwise by the Seller's suppliers (provided in fact the sources of supply are for the purposes of the Agreement);
  - (f) any compliance with any law, regulation or ordinance, or with any order, demand or request (including any obligation arising out of the exercise of a requirement to deliver Product of the quality deliverable hereunder by way of royalty-in-kind) of an international, national, port, transportation, local or other authority or agency or of any body or person purporting to be or to act for such authority or agency or any corporation directly or indirectly controlled by any of them; and

37.2.2 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, despatch, demurrage or any other financial obligation whatsoever.

**37.3** The party seeking relief (the "Relying Party") shall as soon as possible after the impediment becomes known to it give notice in writing to the other party of such impediment and the effects, or the reasonably anticipated effects, on its ability to perform in as much detail as possible and the appropriate relief sought. The appropriate relief takes effect from the time the other party receives the notice. Failure to give notice as soon as possible may make the Relying Party liable to damages to the other party for loss which otherwise could reasonably have been avoided.

**37.4** The appropriate relief under this section shall be as follows:

37.4.1 in respect of an impediment that renders impossible the Relying Party's performance of its obligations, immediate termination of the affected delivery obligation(s) without liability for damages, penalties and other contractual sanctions;

37.4.2 in respect of an impediment that delays, hinders, reduces or interferes with the performance of the delivery obligation(s), immediate postponement of those obligations without liability for damages, penalties and other contractual sanctions for a period until midnight local time on the last date of the Laydays, or until such time as the impediment is removed, whichever is the earlier. The impediment shall not, however, operate to extend the term of the Agreement. Further, should the impediment continue beyond midnight local time on the last day of the Laydays then it shall be deemed to render the Relying Party's obligations impossible and Section 37.4.1) above shall apply thenceforth;

37.4.3 the Relying Party, if the Seller, shall not be obliged to purchase afloat or otherwise from other suppliers to make good shortages or deficiency of delivery resulting from an impediment.

37.5 Without prejudice to the foregoing provisions of this Section, if at any time the Seller's availability of the Product of the quality deliverable hereunder is curtailed or interfered with as a result of the Seller's actions being based on compliance with a request or requirement of or made by or through the International Energy Agency ("IEA") then, for so long as such curtailment or interference continues, the Seller shall be entitled to withhold, reduce or suspend delivery hereunder to such extent as the Seller shall in its absolute discretion determine, and the Seller shall not be bound to acquire by purchase or otherwise additional quantities from other suppliers.

37.6 Nothing in this Section shall be taken to limit or prevent the operation of the Common Law doctrine of frustration (including frustration of the adventure, of purpose or of the Agreement).

## **Section 38. – Limitation of liabilities**

**38.1** Except as specifically provided for in the Special Provisions or in Sections 13.4 and 13.5 and in Section 15.5, neither party shall in any event, including any negligent act or omission on its part, be liable to the other, whether under the Agreement or otherwise in connection with it, in contract, tort, breach of statutory duty or otherwise, for any consequential, indirect or special losses, expenses or damages of any kind including (without limitation) loss of anticipated profits, plant shut-down or reduced production, loss of power generation, blackouts or electrical shut-down or reduction, goodwill, use, market reputation, business receipts or contracts or commercial opportunities, whether or not foreseeable.

**38.2** In addition to the foregoing, in respect of any claims relating to the Seller's failure to supply the agreed quantity or with respect to any deficiency of quantity or variation in quality, the Seller shall in no circumstances be liable for more than the difference between the market price and the agreed selling price for the Product deliverable under the Agreement.

**38.3** The provisions of this Section 38 shall continue to apply notwithstanding the termination or expiry of the Agreement for any reason whatsoever.

**38.4** Without derogating from the specific time limits set out in Section 7.4.3 and Section 16.3.3 (submission of demurrage claims) and Section 31.2.1 (complaint of deficiency of quantity or of variation of quality), and any other provisions requiring compliance within a given period, all of which

shall remain in full force and effect, any claim arising under the Agreement and any dispute under Section 44 shall be commenced within 1 year of the date on which the Product was delivered or, in the case of a total loss, of the date upon which the Product should have been delivered, failing which the claim shall be time barred and any liability or alleged liability of the other party shall be extinguished.

### **Section 39. – Termination or suspension, etc.**

Notwithstanding anything to the contrary express or implied elsewhere in this Agreement and without prejudice to its other rights, either party may at its sole discretion either immediately terminate the Agreement or forthwith suspend delivery under the Agreement until further notice, on notifying the other party either orally (confirming such notification in writing) or by notice in writing, if a liquidator (other than for the purpose of amalgamation or reconstruction), administrator, trustee in bankruptcy, receiver or receiver and manager is appointed in respect of the assets and/or undertaking of the other party, or the other party enters into an arrangement or composition with its creditors, or any similar appointment, arrangement or composition is made under any applicable law, or if the party in question has reason to anticipate any such occurrence, appointment, arrangement or composition.

### **Section 40. – Limitation on assignment**

- 40.1** Neither party may assign any rights or obligations under the Agreement without the prior written consent of the other party (which shall not be unreasonably withheld or delayed). In the event of an assignment in accordance with the terms of this Section, the assignor shall nevertheless remain responsible for the proper performance of the Agreement. Any assignment not made in accordance with the terms of this Section shall be void.
- 40.2** Notwithstanding Section 40.1 above, the Seller 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 the Seller's invoice in respect of 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 the Seller's obligations under the Agreement.

### **Section 41. – Notices**

- 41.1** Unless otherwise provided elsewhere in the Agreement, any communication by either party to the other shall be sufficiently made if sent by first class post (by airmail where airmail is possible), postage paid, or by facsimile transmission or by courier to the address of the other party specified for this purpose in the Special Provisions and shall, unless otherwise provided herein, be deemed to have been received as follows:
- 41.1.1 in the case of a communication sent by first class post within the United Kingdom, on the second Business Day after it was posted.
  - 41.1.2 in the case of a communication sent by airmail, on the fifth day after it was posted.
  - 41.1.3 in the case of a communication by facsimile transmission where an answerback is provided and can be certified, if the recipient's answerback is received on a Business Day before 1700 hours, then on that day; in any other case, on the Business Day after the day on which the recipients answerback is received.
  - 41.1.4 in the case of a communication by courier, if delivered on a Business Day before 1700 hours, then on that day; in any other case it will be treated as being received on the next Business Day.
- 41.2** Except for notices for assignment, termination and legal or arbitration proceedings, parties may exchange messages with respect to the performance of the Agreement by e-mail. Any message sent by e-mail shall be sent to the address of the other party specified for this purpose in the Special Provisions and shall be deemed to have been received, if sent on a Business Day before 1700 hours, then on

that day; in any other case, on the Business Day after the date it was sent. Notwithstanding the foregoing, e-mail messages are only valid if actually received and the sender bears the risk of a failure in transmission.

41.3 Any alterations to the contacts or addresses specified in the Special Provisions shall be notified immediately by letter or facsimile to the other party.

41.4 Notices may not be given by instant messaging.

## **Section 42. – Trade controls and boycotts**

Notwithstanding anything to the contrary herein, nothing in the Agreement is intended, and nothing herein should be interpreted or construed, to induce or require either party hereto to act or refrain from acting (or agreeing to act or refrain) in any manner which is inconsistent with, penalised or prohibited under any laws, regulations or decrees of the United Kingdom or the United States of America or other official government rules or requirements applicable to such party which relate to foreign trade controls, export controls, embargoes or international boycotts of any type.

## **Section 43. – Facilitation Payments and Anti-Corruption**

**43.1** The Buyer and the Seller each agree and undertake to the other that in connection with the Agreement, they will each respectively comply with all applicable laws, rules, regulations, decrees and/or official government orders of the United Kingdom and the United States of America relating to anti-bribery and anti-money laundering.

**43.2** The Buyer and the Seller each represent, warrant and undertake to the other that they shall not, directly or indirectly,

43.2.1 pay, offer, give or promise to pay or authorise the payment of, any monies or other things of value to:

- (a) a government official or an officer or employee of a government or any department, agency or instrumentality of any government;
- (b) an officer or employee of a public international organisation;
- (c) 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 organisation;
- (d) any political party or official thereof, or any candidate for political office;
- (e) 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, or

43.2.2 engage in other acts or transactions, in each case if this is in violation of or inconsistent with the anti-bribery or anti-money laundering legislation of any government, including the U.S. Foreign Corrupt Practices Act, the U.K. Anti-Terrorism, Crime and Security Act 2001, the Money Laundering Regulation 1993 and the Proceeds of Crime Act 2002 and the applicable country legislation implementing the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

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

**43.4** Either party may terminate the Agreement forthwith upon written notice to the other party at any time, if in its reasonable judgement, supported by credible evidence, the other party is in breach of any of the above representations, warranties or undertakings.

## **Section 44. – Referee, High Court, Arbitration and Small Claims**

### **44.1 Appointment of a referee**

Where any matter under the Agreement is to be determined by a referee or the parties agree that any particular matter be so determined, the referee shall be a person having expert knowledge relevant to the matter in question. Unless otherwise specifically provided in the Agreement, he shall be nominated by agreement between the parties or, in default of such agreement, within 21 days of the date of the first nomination by either party to the other, by the President for the time being of the Energy Institute of the United Kingdom at the request of either party. The parties shall furnish the referee with all information, written or oral, and other evidence, which he may reasonably require for his determination. The referee shall act as an expert not as an arbitrator and his decision shall be final and binding on the parties. The costs of such referee shall be shared equally between the parties.

### **44.2 High Court**

Subject to Sections 44.1, 44.3, 44.4, 44.5 and 46.1, any dispute arising out of or in connection with the Agreement, including any question regarding its existence, validity or termination ("the Dispute"), shall be referred to the Commercial Court of the High Court in London. Each party agrees to appoint a solicitor to accept service of proceedings relating to the Dispute within 14 days of a written request from the other side so to do.

### **44.3 Arbitration**

Notwithstanding Section 44.2 above, either party shall have the right by giving written notice of election to the other party, to elect to have the dispute referred to arbitration pursuant to the rules of the London Court of International Arbitration ("LCIA"), which rules are deemed to be incorporated herein. The electing party must give written notice of election to arbitrate by no later than the fourteenth day of the written request to accept service of High Court proceedings pursuant to Section 44.2 above. The arbitration shall, unless the parties agree upon the appointment of a sole arbitrator, be held before a panel of 3 arbitrators. Each party shall nominate an arbitrator and the two arbitrators nominated by or on behalf of the parties shall nominate the third arbitrator, who shall act as Chairman of the panel. If the two arbitrators nominated by or on behalf of the parties have not nominated the third arbitrator within 30 days, the third arbitrator shall be chosen by the LCIA. The Chairman shall be a lawyer unless the first two arbitrators appointed are both lawyers. The place of arbitration shall be London. The language of the arbitration shall be English. The arbitration award shall be final without appeal to the Courts.

### **44.4 Small Claims**

Notwithstanding Section 44.2 and 44.3 above, the parties agree that where the amount in dispute between them is US\$100,000 or less (excluding interest and costs) then the Dispute shall be referred to a sole arbitrator and the arbitration shall be conducted in accordance with the London Maritime Arbitrators' Association ("LMAA") Small Claims Procedure current at the time when the claiming party commences arbitration proceedings.

### **44.5 Demurrage Claims**

Notwithstanding Section 44.2 and 44.3 above, the parties agree that where the Dispute between them is in relation to demurrage, including the commencement and computation of laytime, then the dispute shall be referred to arbitration to be conducted in accordance with the LMAA Terms current at the time when the claiming party commences arbitration proceedings. The tribunal shall consist of 3 arbitrators, each arbitrator shall be a full Member of the LMAA, and the timetable for constitution of the tribunal shall be in accordance with that laid out in the current LMAA Terms.

### **44.6 Enforcement, Interlocutory and Interim Action**

Any decision of the High Court or any arbitration may be enforced in the courts of any country and, furthermore, neither party shall be precluded from pursuing arrest, attachment and/or other conservatory, interlocutory or interim actions in any court in relation to the Product or the Vessel.

## **Section 45. – Miscellaneous**

### **45.1 Severability**

If any provision (or part thereof) 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).

### **45.2 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.

### **45.3 Consents, etc.**

Each party shall be responsible for obtaining all consents, authorisations, approvals and assurances of whatsoever nature necessary to enable it to comply with its obligations under the Agreement.

### **45.4 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.

### **45.5 Modification**

The Agreement shall not be modified unless mutually agreed by the parties, which agreement must be evidenced in writing, except where the parties agree or can show that an oral agreement was reached but has not yet been confirmed in writing.

### **45.6 Waiver**

Any waiver shall relate only to the matter, non-compliance or breach it expressly relates to and shall not apply to any subsequent or other matter, non-compliance or breach.

### **45.7 Recording, Retention and Monitoring of Communications**

Each party hereby acknowledges to the other party and consents that such other party may from time to time and without further notice and to the extent permitted by law:

45.7.1 record and retain electronic transmissions (including telephone conversations, e-mail and instant messaging between the parties' respective representatives in connection with the Agreement or other commercial matters between the parties) on central and local databases for their respective legitimate purposes; and

45.7.2 monitor electronic transmissions through their internal and external networks for purposes of security and compliance with applicable laws, regulations and internal policies for their other legitimate business purposes.

### **45.8 eDocs**

Where it is specified in the Special Provisions that any bill of lading, waybill, delivery order, certificate, receipt or other document issued pursuant to, or in connection with, the Agreement may be issued, signed and transmitted electronically (each, an "eDoc") then it is hereby expressly agreed that any applicable requirement of law, contract, custom or practice that any transaction, document or communication shall be made or evidenced in writing, signed or sealed shall be satisfied by an eDoc and the parties hereto agree not to contend in any dispute arising out of or in connection with any eDoc or any eDoc which is converted to paper that it is not in writing or that it is not equivalent to an original paper document signed by hand, or, as the case may be, sealed.

### **45.9 Entire Agreement**

The Agreement contains the entire agreement between the Seller and the Buyer with respect to the matters set forth in the Special Provisions and supersedes all prior agreements, whether oral or written, in connection therewith.



#### **45.10 Confidentiality**

45.10.1 If it is specified in the Special Provisions that the Agreement shall be held strictly 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.

45.10.2 Notwithstanding the provisions of Section 45.10.1, 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, and whether or not the requirement has the force of law; or
- (b) the confidential information is or was already in the public domain other than through the fault or action of the Disclosing Party; or
- (c) such disclosure is to an Affiliate or in connection with any dispute, legal or arbitration proceedings or pursuant to Section 44.1, and the Disclosing Party shall cause all parties in receipt of such information to be bound by the same obligations of confidentiality as contained in the Agreement.

#### **45.11 Warranties**

The Buyer and the Seller each warrant that it has not in connection with the Agreement relied upon any representations, whether written or oral, made by or on behalf of the other party, but has relied exclusively on its own knowledge, judgement and expertise.

#### **45.12 Warranty of Title**

The Seller hereby warrants to the Buyer that at the time property in the Product passed to the Buyer as provided in the Agreement, the Seller had unencumbered title to the Product and had the right to sell the Product to the Buyer.

#### **45.13 Third party rights**

No term of the Agreement is intended to, or does, confer a benefit or remedy on any third party. A person, company or other legal entity who is not a party to the Agreement shall not have or acquire whether by virtue of the Contracts (Rights of Third Parties) Act 1999 or otherwise any rights in relation to the Agreement. Further, the parties hereto may rescind or vary the Agreement, whether in whole or in part, without the consent of any third party.

#### **45.14 Trade marks**

Nothing in the Agreement whether express or implied shall be deemed to confer any right upon either party to apply any trade mark owned by the other party or any of its Affiliates to any Product supplied under the Agreement nor to use such trade marks in relation to such Product.

### **Section 46. – Applicable law**

#### **46.1 Governing law**

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

#### **46.2 The UN Convention**

The United Nations Convention on Contracts for the International Sale of Goods of Vienna, 11th April 1980, shall not apply to the Agreement.

#### **46.3 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.

## PART SEVEN

### Schedules

#### Schedule A

##### Seller's Indemnity format

The indemnity referred to in Section 35 shall be in the following format:

*Quote*

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

In consideration of your making payment of US dollars [U.S. DOLLAR AMOUNT] for [QUANTITY] tons of the said Product in accordance with the Agreement and having agreed to accept delivery of the cargo without having been provided with [insert the relevant documents as set out in Section 35] ("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 Product;
- (iv) that we had good title to such Product;
- (v) that title in the Product 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 which you may suffer by reason of:

- (a) our failure to present the Documents to you in accordance with the Agreement; and/or including but not limited to
- (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 as soon as 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: ..... Title: .....

of: [COMPANY NAME]

*Unquote*

*Quote*

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.

By: .....

Bank Authorised Signatory

*Unquote*

## Schedule B

### Letter of Credit format

Format of irrevocable documentary letter of credit as required pursuant to Section 35:

#### *Quote*

With reference to the sale/purchase contract number *[INSERT CONTRACT NO.]* dated *[INSERT CONTRACT DATE]* between *[SELLER]* (the "Beneficiary") and *[BUYER]* (the "Applicant") we, *[ISSUING BANK]* hereby issue our irrevocable documentary letter of credit number *[INSERT L/C NO.]* in favour of the Beneficiary for an amount of US Dollars *[US DOLLAR AMOUNT]* (say *[INSERT US DOLLAR AMOUNT IN WORDS]*) plus or minus 10% available at the counters of *[BANK NAME]* *[BANK ADDRESS]* at *[INSERT THE PAYMENT DUE DATE SPECIFIED IN THE SPECIAL CONDITIONS]* against presentation of the following documents:

1. original signed invoice; plus
2. (a) in the case of a FOB/CFR/CIF delivery: full set of 3/3 clean original bills of lading issued or endorsed to the order of ..... ; or  
(b) in the case of a DES delivery: one copy independent inspector's report, evidencing shipment of *[QUANTITY]* tons +/- 10% (+ a further margin of X% in respect of escalation of duty including VAT if appropriate) of *[PRODUCT]* *[FOB/CFR/CIF/DES]* *[INSERT LOADING TERMINAL/DISCHARGE PORT]* between ..... and ..... (both dates inclusive).

Price Clause *[INSERT TEXT OF PRICE CLAUSE AS SET OUT IN THE SPECIAL PROVISIONS]*

This letter of credit expires on *[INSERT A DATE WHICH SHALL NOT BE LESS THAN 30 DAYS AFTER THE DUE DATE AS SET OUT IN THE SPECIAL PROVISIONS]*

[In the case of delivery FOB/CFR/CIF only] In the event that a full set of 3/3 original clean bills of lading are unavailable on the payment due date, payment will be made against document number 1 above and a Letter of Indemnity issued by the Beneficiary in the following format:

#### *Quote*

To:

*[insert text of Letter of Indemnity as per Schedule A]*

#### *Unquote*

#### Special Conditions:

1. This letter of credit shall take effect in accordance with its terms but such terms shall not alter, add to or in any way affect the provisions of the Agreement between [Seller] and [Buyer] to which this letter of credit relates.
2. Provisional and/or final invoices allowed.
3. [In the case of delivery FOB/CFR/CIF only] Charterparty bills of lading/Vessel bills of lading and/or bills of lading signed by the master or agent and not indicating that they have been issued by a named carrier are acceptable.
4. Documents presented later than 21 days after the bill of lading date but within the validity of this letter of credit are acceptable.
5. Transshipments [allowed/prohibited]
6. Partial shipments [allowed/prohibited].
7. Photocopies in lieu of copy documents acceptable.
8. [If the payment due date falls on a Saturday or a New York Bank Holiday other than a Monday, payment will be effected on the last New York banking day prior. If the payment due date falls on a Sunday or a New York Bank Holiday Monday, payment will be effected on the first following New York banking day].

9. Facsimile invoice and Letter of Indemnity acceptable.
10. All bank charges are for the account of the Applicant.
11. Typographical and spelling errors shall not constitute a discrepancy unless with regard to quantity or amount.
12. The amount of this letter of credit will automatically escalate/de-escalate in accordance with the loaded quantity and the above Price Clause, even above or below the stated limits, without any further amendment.

The construction, validity and performance of this letter of credit shall be governed by and construed in accordance with English law. Any dispute or claim arising out of or in connection with this letter of credit shall be subject to the exclusive jurisdiction of the English courts.

Except as otherwise expressly stated herein, this letter of credit is subject to Uniform Customs and Practice for Documentary Credits (2007 Revision ICC Publication No. 600) except that Article 20 a(i) has deleted from it *"to indicate the name of the carrier and"*.

This telex/facsimile/PDF or e-mail message is the operative instrument and no mail confirmation will follow.

*Unquote*

## Schedule C

### **Standby Letter of Credit format**

Format of standby letter of credit as required pursuant to Section 35:

#### *Quote*

With reference to the sale/purchase contract number *[INSERT CONTRACT NO.]* dated *[INSERT CONTRACT DATE]* between *[SELLER]* (the "Beneficiary") and *[BUYER]* (the "Applicant") we, *[ISSUING BANK]* hereby issue our irrevocable standby letter of credit number *[INSERT L/C NO.]* in favour of the Beneficiary for an amount of US Dollars *[US DOLLAR AMOUNT]* (say *[INSERT US DOLLAR AMOUNT IN WORDS]*).

This irrevocable standby letter of credit shall be available at the counters of *[BANK NAME]* *[BANK ADDRESS]* at sight against presentation of the following documents:

1. a copy of the Beneficiary's unpaid invoice; and
2. a statement for and on behalf of the Beneficiary reading as follows:

"We certify that the amount of U.S. Dollars *[INSERT US DOLLAR AMOUNT]* has remained unpaid and is now overdue to us under the terms of the contract with *[BUYER]* for the sale of *[QUANTITY]* Tons of *[PRODUCT]* and which is legally and properly due."

This standby letter of credit expires on the *[INSERT A DATE WHICH SHALL NOT BE LESS THAN 30 DAYS AFTER THE DUE DATE AS SET OUT IN THE SPECIAL PROVISIONS]*

#### Special Conditions:

1. All bank charges are for the account of the Applicant.
2. Provisional and/or final invoices allowed.
3. Multiple drawings permitted.
4. Documents presented later than 21 days after the bill of lading date but within the validity of this standby letter of credit are acceptable.
5. Above documents presented in facsimile form acceptable.
6. This letter of credit shall take effect in accordance with its terms but such terms shall not alter, add to or in any way affect the Agreement between *[Seller]* and *[Buyer]* to which this letter of credit relates.
7. The value of this letter of credit will automatically escalate/de-escalate in accordance with the loaded quantity and the above Price Clause, even above or below the stated limits, without any further amendment.

The construction, validity and performance of this letter of credit shall be governed by and construed in accordance with English law. Any dispute or claim arising out of or in connection with this letter of credit shall be subject to the exclusive jurisdiction of the English courts.

Except as otherwise expressly provided herein, this Standby Letter of Credit is subject to the *[Uniform Customs and Practices for Documentary Credits (2007 Revision - ICC Publication No. 600)]* *[International Standby Practices 1998 (ISP98)]*.

This telex/facsimile/PDF or e-mail message is the operative instrument and no mail confirmation will follow.

#### *Unquote*

## **Schedule D**

### **Supplement in respect of EU documentation, etc.**

#### **1. Imports into the EU under “Preference” from non-EU States**

- 1.1 If the loading terminal is located outside the EU and in a State with which there is a preferential agreement between such State and the EU whereby the Product enjoys a generalised tariff preference, the Seller shall provide the Buyer with such relevant original qualifying document(s) specifically requested by the Buyer in their voyage nomination documentation instructions (e.g. EUR1, GSP Form A).
- 1.2 The Buyer or the Buyer’s agent or such other party acting on its own behalf shall submit such original qualifying document(s) to the relevant and local customs authorities, and only if such customs authorities accept such qualifying document(s) (thereby agreeing that a Generalised Tariff Preference is valid and import duty is therefore not due on the Product) shall such Product be deemed to be EU-qualified.
- 1.3 If the relevant qualifying document(s) is/are not available for presentation to the Buyer or its representative by 1200 hours (London time) on the banking day in New York prior to the payment due date, or if the customs authorities have not accepted and/or verified such qualifying document(s) by that time, the Buyer shall pay the Seller’s invoice in full, without any deduction or withholding for duty. However, if the relevant qualifying document(s) requested by the Buyer pursuant to paragraph 1.1 of this Schedule are not presented to the Buyer or its representative at the Discharge Port at the time of discharge, the Seller shall indemnify the Buyer in respect of any duty which is incurred by the Buyer (directly or indirectly under a cost recovery mechanism from the end receiver) as a direct result of the Seller’s failure, provided that any amount requested by the Buyer is accompanied by a copy of the customs duty assessment at Discharge Port.

#### **2. Movements to, from and within EU States**

##### **2.1 Exports from EU States**

If the Product to be delivered is loaded in an EU State and documented for an export destination free of Excise Duty, then the Product shall be exported and shall not re-enter the EU State unless full Excise Duty and VAT is paid by the Buyer or the Product is placed in a bonded warehouse that exempts it from import taxes and excise duty (if applicable). The Buyer shall indemnify the Seller for all duties, costs and other consequences resulting from any breach hereof that was incurred by the Seller (directly or indirectly under a cost recovery mechanism from the originating consignor at load port).

##### **2.2 Movements within EU States, excise duty**

- 2.2.1 If the Product is to be moved within an EU State, as unfinished goods (e.g. feedstock, finished goods for further processing), the Seller will ensure that the Product will move Excise Duty suspended provided that the Buyer confirms in writing that the destination is an excise warehouse and the status of the goods as “unfinished goods” under the applicable Excise Duty law.
- 2.2.2 If an internal movement is made on a “Duty Paid” basis, the Buyer may defer its Excise Duty liability under any applicable deferment scheme operated by the EU state providing the Buyer has either notified the Seller in writing of its Excise Duty deferment account number and/or obtained permission to use the end receiver’s Excise Duty deferment account number. However, if the Buyer and/or end receiver fails to make payment within the deferment period directly, and the tax obligation on the Excise Duty payable reverts to the Supplier, the Seller will be able to invoke the cost recovery mechanism under Clause 2.2.3.

In addition, the Buyer is obliged to pay the Seller an amount equivalent to the applicable VAT rate based upon the Excise Duty amount deferred, upon receipt of a valid Tax Invoice for this additional amount.



- 2.2.3 If an internal movement is made on a "Duty Paid" basis, any and all taxes levied on the Product shall be for the Buyer's account payable in full either the local currency of the country in which the tax is payable or, at Seller's option, in the invoicing currency for the Product, converted at the appropriate exchange rate prevailing at the date if the tax point under the applicable Excise Duty law. Any amount due shall be payable at the same time as payment of the price plus the applicable VAT rate.

### **3. Movements between EU States**

- 3.1 Notwithstanding the provisions of Section 34:
- 3.1.1 the Seller, the Seller's agent or some other party acting on its own behalf shall provide the Buyer, the Buyer's agent or some other party acting on its own behalf with the relevant original document(s) (e.g. an AAD or a T2L) showing that the Product is EU qualified and therefore in free circulation within the EU and import duty is therefore not due on such Product;
- 3.1.2 the Buyer, the Buyer's agent or some other party acting on its own behalf shall submit such original document(s) to the relevant and local customs authorities and only if such customs authorities accept such document(s) shall the Product be deemed as free from import duty and excise duty (if applicable);
- 3.1.3 if the relevant document(s) is/are not available for presentation to the Buyer, the Buyer's agent or some other party acting on its own behalf by 1200 hours (London time) on the banking day in New York prior to the payment due date, or if the customs authorities have not accepted and/or verified such document(s) by that time, the provisions of paragraph 1.3 of this Schedule shall apply mutatis mutandis.
- 3.2 Without prejudice to the provisions of Section 34, in order for any delivery of Product hereunder for transfer/transportation within the EU to be zero Intra Community Dispatch rated for VAT, the Buyer is required to provide the Seller, prior to commencement of loading/transfer, with a written declaration stating "(a) a valid VAT registration number of the Buyer in an EU state other than the EU state in which the loading terminal is located, and that (b) an Intra Community Acquisition of the Product will be reported in the country of destination".

### **4. For exports from Italy**

- 4.1 Notwithstanding the provisions of Section 34 or paragraph 3.2 of this Schedule, where the Loading Terminal is in Italy and the destination of the cargo is an EU state other than Italy, the Buyer shall provide the Seller, prior to transfer of property, with a valid VAT registration number issued by the EU state in which Discharge Port is located.
- 4.2 Where the Buyer is not VAT registered in the EU state in which the Discharge Port is located or cannot provide the Seller with a valid VAT registration number issued by the EU state in which the Discharge Port is located, the Buyer shall provide the Seller with a valid VAT registration number issued by another EU state, other than Italy. However, where the Buyer does not provide a valid VAT registration number for the EU state in which the Discharge Port is located, and notwithstanding that the Buyer has provided the Seller with a valid VAT number issued by another EU state other than Italy, the Seller shall be entitled to invoice the Buyer for Italian VAT.
- 4.3 Payment of such VAT shall be made by the Buyer to the Seller in addition to the price specified in the Special Provisions and on the payment due date specified in the Special Provisions or, if later, within one banking day in New York of presentation of Seller's tax invoice, in each case without set-off, withholding, deduction or counterclaim, to the Seller's bank account. Any outstanding amount shall bear interest in accordance with the provisions of Section 35.8.

### **5. Compulsory storage**

All and any compulsory stock obligations arising out of the delivery to or by Barge by the Seller to the Buyer of Product from a Loading Terminal under the Agreement shall be for the Buyer's account.

**6. Other fiscal documentary requirements**

The parties will each comply with any applicable documentary requirement for fiscal purposes as now exists or comes into effect in the future. A party (a “defaulting party”) that fails to comply with this obligation shall indemnify the other in respect of any costs or expenses incurred by that party which would not have been incurred but for the failure of the defaulting party.

## Schedule E

### **Requirements in respect of Vessels at the Loading Terminal or Discharge Port and, where applicable, during the voyage**

#### **1. Requirements in respect of Vessels at the Loading Terminal or Discharge Port**

1.1 If any Vessel does not meet any of the following requirements of this Part 1 of this Schedule E:

- 1.1.1 at the Loading Terminal, the Seller or the Seller's supplier may refuse to berth, load or continue loading such Vessel; and/or
- 1.1.2 at the Discharge Port, the Buyer or the Buyer's receiver may refuse to berth, discharge or continue discharging such Vessel.

#### **1.2 ITOPF**

Except in the case of LPG, each Vessel shall be owned by or demise chartered to a member of the International Tanker Owners Pollution Federation Ltd ("ITOPF").

#### **1.3 ISPS CODE**

##### **1.3.1 FOB Provisions**

- (a) The Buyer shall procure that the Vessel shall comply with the requirements of the International Ship and Port Facility Security Code and the relevant amendments to Chapter XI of SOLAS ("ISPS Code") and where the Loading Terminal is within the U.S.A. and U.S. territories or waters, with the U.S. Maritime Transportation Security Act 2002 ("MTSA").
- (b) The Vessel shall when required submit a Declaration of Security ("DoS") to the appropriate authorities prior to arrival at the Loading Terminal.
- (c) Notwithstanding any prior acceptance of the Vessel by the Seller, if at any time prior to the passing of risk and title the Vessel ceases to comply with the requirements of the ISPS Code or the MTSA:
  - (i) the Seller shall have the right not to berth such nominated Vessel and any demurrage resulting shall not be for the account of the Seller.
  - (ii) the Buyer shall be obliged to substitute such nominated Vessel with a Vessel complying with the requirements of the ISPS Code and the MTSA.
- (d)
  - (i) The Seller shall procure that the Loading Terminal/port/installation shall comply with the requirements of the ISPS Code and where the Loading Terminal is within the U.S.A. and U.S. territories or waters, with the MTSA.
  - (ii) 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 and actually incurred by the Buyer resulting directly from the failure of the Loading Terminal/port/installation to comply with the ISPS Code or the MTSA shall be for the account of the Seller, including but not limited to the time required or costs incurred by the Vessel in taking any action or any special or additional security measures required by the ISPS Code or the MTSA.
- (e) Save where the Vessel has failed to comply with the requirements of the ISPS Code or the MTSA, the Seller shall be responsible for any demurrage actually incurred by the Buyer arising from delay to the Vessel at the Loading Terminal/port/installation resulting directly from the Vessel being required by the port facility or any relevant authority to take any action or any special or additional security measures or undergo additional inspections.
- (f) If the Loading Terminal is not operated by the Seller or an Affiliate of the Seller, the Seller's liability to the Buyer under the Agreement for any demurrage, costs, losses or expenses incurred by the Vessel, the charterers or the Vessel owners resulting from the failure of the Loading Terminal/port/installation to comply with the ISPS

Code or the MTSA shall be limited to the payment of demurrage, costs, losses or expenses that the Seller is able to recover and does recover from its supplier or other relevant third party, and then only to the extent of such recovery. The Seller shall, however, use reasonable efforts to so recover from its supplier or other relevant third party.

### 1.3.2 **CIF/CFR/DES Provisions**

- (a) The Seller shall procure that the Vessel shall comply with the requirements of the International Ship and Port Facility Security Code and the relevant amendments to Chapter XI of SOLAS ("ISPS Code") and where the Discharge Port is located within the U.S.A. and U.S. territories or waters, with the U.S. Maritime Transportation Security Act 2002 ("MTSA").
- (b) The Vessel shall when required submit a Declaration of Security ("DoS") to the appropriate authorities prior to arrival at the Discharge Port.
- (c) Notwithstanding any prior acceptance of the Vessel by the Buyer, if on arrival of the Vessel at the Discharge Port the Vessel ceases to comply with the requirements of the ISPS Code or the MTSA:
  - (i) the Buyer shall have the right not to berth such nominated Vessel at the Discharge Port and any demurrage resulting shall not be for the account of the Buyer; and
  - (ii) the Seller shall be obliged to substitute such nominated Vessel with a Vessel complying with the requirements of the ISPS Code and the MTSA. If title and risk to the cargo on board the Vessel subsequently substituted pursuant to iii) b) has already passed to the Buyer, such title and risk shall be deemed to have reverted to the Seller.
- (d)
  - (i) The Buyer shall procure that the Discharge Port/terminal/installation shall comply with the requirements of the ISPS Code and, if located within the U.S.A. and U.S. territories or waters, with the MTSA.
  - (ii) Any costs or expenses in respect of the Vessel including demurrage or any additional charge, fee or duty levied on the Vessel at the Discharge Port and actually incurred by the Seller resulting directly from the failure of the Discharge Port/terminal/installation to comply with the ISPS Code or the MTSA shall be for the account of the Buyer, including but not limited to the time required or costs incurred by the Vessel in taking any action or any special or additional security measures required by the ISPS Code or the MTSA.
- (e) Save where the Vessel has failed to comply with the requirements of the ISPS Code or the MTSA, the Buyer shall be responsible for any demurrage actually incurred by the Seller arising from delay to the Vessel at the Discharge Port/terminal/installation resulting directly from the Vessel being required by the port facility or any relevant authority to take any action or any special or additional security measures or undergo additional inspections.
- (f) If the Discharge Port is not operated by the Buyer or an Affiliate of the Buyer, the Buyer's liability to the Seller 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 Discharge Port/terminal/installation to comply with the ISPS Code or the MTSA shall be limited to the payment of demurrage, costs, losses or expenses that the Buyer is able to recover and does recover from its supplier or other relevant third party, and then only to the extent of such recovery. The Buyer shall, however, use reasonable efforts to so recover from its supplier or other relevant third party.

#### 1.4 CLC

The Vessel shall:

- (a) carry on board certificate(s) as required pursuant to the 1992 Civil Liability Convention for Oil Pollution Damage or any Protocols thereto ("CLC"); and
- (b) if the Product constitutes Persistent Oil, have in place insurance cover for oil pollution no less in scope and amounts than the highest available under the rules of P. & I. Clubs entered into the International Group of P. & I. Clubs.

#### 1.5 ISM Certificates

The Vessel shall have on board at all times a valid ISM certificate and the owners, before and during the voyage, shall comply with the requirements of the ISM. For the purposes of the Agreement, "ISM" means the International Management Code for the Safe Operations of Ships and for Pollution Prevention.

#### 1.6 ISGOTT, etc.

The Vessel shall be manned, operated and maintained so as to fully comply with (i) the standards set out in ISGOTT, (ii) appropriate 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. For the purposes hereof, "ISGOTT" means the International Safety Guide for Oil Tankers and Terminals, as current from time to time, and "IMO" means the International Maritime Organisation.

#### 1.7 Closed loading and/or discharge

Vessels which are loading/discharging a volatile, toxic or noxious cargo must operate at all times in the 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-clause:

"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; and "noxious" shall mean harmful to personnel or the environment.

#### 1.8 IGS

Any Vessel fitted with an inert gas system ("IGS") will not be permitted to berth or to load or discharge Product unless the IGS is in good order, operative and the cargo tanks inerted.

If an IGS-equipped Vessel arrives with the IGS inoperative, the Vessel will not be berthed until the IGS is operative and the cargo tanks inerted and until that time NOR shall not be given, or if given shall not be effective, and Laytime shall not commence until commencement of loading or discharge, as the case may be.

#### 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 or the Discharge Port.

### 2. Loading or Discharge at ports in the United Kingdom

Where the Loading Terminal or the Discharge Port 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 voyage relating to the subject matter of the Agreement and in particular and as appropriate the Vessel shall comply with the "Turkish Straits Maritime Traffic Scheme Regulations" dated 6th November 1998, as amended or re-issued from time to time.

**4. Incorporation of Schedule F**

Where applicable, the requirements set out in Schedule F shall apply.

## Schedule F

### Shell Casualty Procedure

In the event of any incident relating to a Vessel carrying Product the risk in which has passed from the Seller to a member of the Shell group of companies, the Seller shall use its best efforts to ensure that the master of the Vessel implements the following instructions:

#### SHELL CASUALTY EMERGENCY INSTRUCTIONS

These instructions are to be followed in the case of an emergency such as collision, grounding, fire or other incident that may or has put at risk the lives of persons and/or the safety of the Vessel and/or the environment and where immediate assistance is required or adverse media coverage is expected.

Notification shall be by telephone in the first instance to SHELL CASUALTY in London +44 (0)20 7934 7777 (24 hours) followed by written notification to:

By e-mail to: **CasualtyTelex@shell.com**

By telex to: SHELLCASUALTY LONDON (telex number 8814807)

containing the words "CASUALTY DISTRIBUTION". The words "CASUALTY DISTRIBUTION" should appear as the first 2 words at the beginning of the first line of text, immediately following the address.

The notification telex or e-mail **must** contain the following information:

- the name of the Vessel;
- nature of emergency or incident (collision, grounding, etc);
- position of Vessel (latitude, longitude, port) and location of incident;
- fatalities and/or personal injuries (if any);
- nature and extent of damage;
- name, nationality and type of other Vessel(s) involved;
- whether or not the Vessel is able to continue the voyage;
- in the event of an oil spill, the message must also include the local time, date and location of spill;
- name of the owner of the installation (if in port) and whether at a jetty, CBM, SBM etc.;
- type of oil (e.g. crude, black, white, lubes, bitumen, chemicals, gas, etc.);
- cause if known (e.g. overflow, hose burst, defective shore pipeline, hull defect, leaking ship valve(s));
- estimated quantity spilled;
- estimate of rate of spill if continuing;
- whether clean-up has been attempted, either by the Vessel or a third party;
- any other relevant comments; and
- time of origin of each report.

If the incident occurs within port limits, the agent must also be copied on all messages sent to SHELL CASUALTY.

Finally, the foregoing requirements are in addition to any casualty reporting procedure system the Vessel's owners/managers may have, particularly with respect to its reporting requirements.

Where the Seller is a member of the Shell group of companies and where risk has passed from the Seller to the Buyer in accordance with the provisions covering CFR or CIF deliveries, the Seller shall use its best efforts to implement any similar instructions, if any, provided by the Buyer.

Except where loss, damage and expense are incurred or suffered as a result of the Seller's failure to use the aforesaid best efforts, the Seller shall bear no liability or responsibility for the failure of the master of the Vessel or such Vessel's owners to implement such instructions.



## **Schedule G**

### **Supplement in respect of LPG**

#### **1. Applicability**

The provisions of Part One and Part Two shall apply to deliveries of LPG except as modified by this Schedule G.

#### **2. FOB deliveries**

##### **2.1 Nominations**

The provisions of Section 5 shall apply, but the following shall be added to sub Section 5.2.1:

“(i) the loading temperature of the Vessel’s cargo tanks; and

(j) the Vessels’ three previous cargoes.”

##### **2.2 Time allowed, running hours and damages for delay**

The provisions of Section 7 shall apply except that for the purposes of this Schedule G, “36 running hours” in Section 7.1.2 shall be deleted and replaced by “24 running hours”.

#### **3. CFR and CIF deliveries**

##### **3.1 Nominations**

The provisions of Section 14 shall apply, except that the following shall be added to sub-Section 14.2:

“(i) the loading temperature of the Vessel’s cargo tanks”.

## **Schedule H**

### **Supplement in respect of CFR and CIF deliveries with Shell group companies where the Loading Terminal is located in the U.S.A. or U.S. Territories**

#### **1. Applicability**

The provisions of this Schedule H shall apply only in respect of CFR and CIF deliveries with Shell group companies where the Loading Terminal is located in the United States of America (the "U.S.A") or within territories of the U.S.A. ("U.S. Territories").

#### **2. Risk and Property**

The provisions of Section 10 shall apply except that if the Vessel is loaded within the U.S.A. or U.S. Territories, property in the product delivered under the Agreement shall pass to the Buyer immediately after the Vessel carrying the Product leaves the waters comprising the exclusive economic zone of the U.S.A. or U.S. territories.