

Neste Corporation

**General Terms & Conditions  
for Sales and Purchases of  
Crude Oil and Products**



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## PART I: GENERAL

### 1. Definitions

**"Affiliate"** means, in relation to a Party, a company or corporation: (i) that is directly or indirectly controlled by such Party; (ii) that directly or indirectly controls such Party; or (iii) that is directly or indirectly controlled by a company or corporation that also directly or indirectly controls such Party. For the purposes of this definition, "control" means the right to exercise or cause the exercise of the vote of fifty percent (50%) or more of all voting shares of such company or corporation;

**"Agreement"** means:

- (a) the General Terms and Conditions; and
- (b) the Commercial Terms;

**"API"** means: American Petroleum Institute and any successor organisation;

**"Banking Day"** means the same as Working Day;

**"Barge"** means a self-propelled vessel or towed/pushed craft for use in port areas and/or sheltered waterways;

**"Berth"** means any safe berth, dock, anchorage, sea Terminal, single point or other mooring facility, or other place including alongside lighters or other Vessels, at which the Product may be loaded or discharged (whichever is applicable);

**"Bill of Lading Date"** means the date on which Completion of Loading occurs in respect of any Product delivered in accordance with the Agreement;

**"Buyer"** means the person as specified as the buyer in the Commercial Terms;

**"Buyer Personal Data"** has the meaning specified in article 19.1 of Part I;

**"Certificate of Quality"** means the certificate issued by an inspector mutually agreed upon by the Parties or, as the case may be, by an institution such as, but not limited to, a laboratory at Load Port (in case of delivery by Vessel or Barge) or Delivery Point (in case of Delivery by another mode of transport) in accordance with the Agreement, which verifies the Quality of the Product loaded, discharged or delivered (whichever is applicable);

**"Certificate of Quantity"** means the certificate issued by an inspector mutually agreed upon by the Parties or, as the case may be, by an institution such as, but not limited to, a laboratory at Load Port (in case of delivery by Vessel or Barge) or Delivery Point (in case of Delivery by another mode of transport) in accordance with the Agreement which verifies the Quantity of the Product loaded, discharged or delivered (whichever is applicable);

**"CIF"** has the meaning ascribed thereto in Incoterms, except as modified by the Agreement;

**"CFR"** has the meaning ascribed thereto in Incoterms, except as modified by the Agreement;



**"Charter Party"** means a charter party with respect to the Vessel or, in case the Vessel is time chartered or bare boat chartered to or owned by Buyer or Seller (whichever is applicable) or any of their Affiliate (whichever is applicable) or similar arrangement which shall apply in lieu of the Charter Party;

**"Commercial Terms"** means the commercial terms and conditions as agreed upon between Buyer and Seller, including its appendices and in which the General Terms and Conditions are referenced and incorporated;

**"Completion of Discharge"** or **"COD"** means the time and date when discharging of the Product at the Discharge Port is completed and all hoses are disconnected at the outlet flange;

**"Completion of Loading"** means the time and date when loading of the Product at the Load Port is completed and all hoses are disconnected at the outlet flange;

**"DAP"** has the meaning ascribed thereto in Incoterms, except as modified by the Agreement;

**"DAT"** has the meaning ascribed thereto in Incoterms, except as modified by the Agreement;

**"Day"** (whether capitalized or not) means a full calendar day;

**"DDP"** has the meaning ascribed thereto in Incoterms, except as modified by the Agreement;

**"Delivery" / "Delivered"** (whether capitalized or not) means placing the Products at the disposal of Buyer at the time, place and Incoterms (or Ex Tank, Into Tank, In Situ or FIP pursuant to Part V or Barge deliveries pursuant to Part VI) agreed upon;

**"Delivery Period"** means the delivery period / Laydays agreed upon in the Commercial Terms;

**"Delivery Point"** means agreed place of delivery as set out in the Commercial Terms;

**"Discharge Port"** means the agreed port at which the Product is to be discharged;

**"EEA"** means the European Economic Area;

**"ETA"** means the estimated date and time of arrival;

**"Excise Duty"** means any excise duty as provided for in the European Community Council Directive 2003/96 (or any other legislation adopted or enacted in substitution therefore) and any other duty of a similar nature imposed in any part of the world;

**"EXW"** has the meaning ascribed thereto in Incoterms, except as modified by the Agreement;

**"FCA"** has the meaning ascribed thereto in Incoterms, except as modified by the Agreement;

**"FOB"** has the meaning ascribed thereto in Incoterms, except as modified by the Agreement;

**"Force Majeure Event"** has the meaning given to such term in article 5 of Part I;



"**General Terms and Conditions**" means these general terms and conditions dated 1 January 2017;

"**Incoterms**" means Incoterms® 2010, published by the International Chamber of Commerce;

"**ISM Code**" means International Safety Management Code and any subsequent revision thereof;

"**ISPS Code**" means the legislation at the Load Port or Discharge Port (whichever is applicable) which incorporates the International Ship and Port Facility Security Code and the relevant amendments to chapter XI of the International Convention for the Safety of Life at Sea 1974;

"**Laydays**" means the date range as specified in the Commercial Terms;

"**Laytime**" means the time allowed for loading or for discharge (whichever is applicable);

"**LIBOR Rate**" means the London interbank offered rate administered by ICE Benchmark Administration Limited (or any other person which takes over the administration of that rate) for the currency of the transaction in hand for the period of one (1) month displayed on pages LIBOR01 or LIBOR02 of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate) or on the appropriate page of such other information service which publishes that rate from time to time in place of Thomson Reuters, at 11:00am (London time) on the relevant Working Day or, if such day is not a Working Day, on the next Working Day;

"**LMAA**" means the London Maritime Arbitrators Association;

"**Load Port**" means the agreed port at which the Product is to be loaded;

"**MPMS**" means API's Manual of Petroleum Measurement Standards;

"**MTSA**" means the US Maritime Transportation Security Act 2002;

"**Neste Ship Vetting**" means the department of Neste Corporation corporate risk management, being responsible for any and all matters and things related to ship vetting activities of Neste Corporation and its Affiliates;

"**NOR**" means a valid notice of readiness to load or discharge (whichever is applicable) as given by the master of the Vessel to the port operator;

"**Parties**" means Buyer and Seller collectively and "**Party**" means each or either of them individually;

"**Person**" (whether capitalized or not) means a natural person, or a corporate or unincorporated body (whether or not having separate legal personality);

"**Petroleum Product**" means the wholly or partly refined petroleum product or renewable product of the grade specified in the Commercial Terms;

"**Port Regulations**" means without limitation all conditions, directions, guidelines or legislation controlling or regulating the anchorage, pilotage, navigation, berthing, mooring, loading, discharge or other operations or the provision of any goods or services at the Load Port, Discharge Port or Berth (whichever is applicable);



**"Product"** means the product(s) agreed upon in the Commercial Terms being either crude oil or Petroleum Products;

**"Quality"** means the Specifications of Product to be purchased and sold under the terms and conditions of the Agreement and as specified in the Commercial Terms;

**"Quantity"** means the quantity in metric tonnes, barrels or cubic meters of Product to be purchased and sold under the terms and conditions of the Agreement and as specified in the Commercial Terms;

**"REACH"** means the European Regulation (EC) no. 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorization and Restriction of Chemicals entered into force on 1 June 2007;

**"Regulations"** has the meaning specified in article 20.1 of Part I;

**"Sanctioned Person"** means a Person that is either: (a) designated, blocked, or otherwise identified under any Sanctions Laws; (b) owned fifty percent (50%) or more (whether individually or in the aggregate), controlled by, or acting on behalf of one or more Sanctioned Person(s); (c) any individual or entity that is in a country that is the target of a comprehensive trade embargo implemented under any Sanctions Law; or (d) the government of any country referred to in (c);

**"Sanctions Laws"** means any law, regulation, order or directive which imposes trade sanctions (including, without limitation, asset blocking/freezing, trade embargoes, and other financial restrictions) against countries, individuals or entities on grounds whether pursuant to United Nations Security Council Resolutions or on an autonomous national or regional basis, including, without limitation: (a) sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department or by the U.S. Department of State; (b) sanctions or restrictive measures imposed by the European Union or its Member States; (c) sanctions or restrictive measures imposed by Her Majesty's Treasury of the UK; or (d) similar laws, regulations, orders and directives of other jurisdictions, but only to the extent such other jurisdictions under this sub-article (d) are applicable;

**"SDS/e-SDS"** has the meaning specified in article 13.4 of Part I;

**"Seller"** means the person as specified as the seller in the Commercial Terms;

**"Specification"** means the specification of the Product described in the Commercial Terms. Specification may also be referred to as Quality throughout the Agreement;

**"Tax"** means any tax, levy, impost, duty or other charge or withholding of a similar nature;

**"Tax Authority"** means any governmental state, federal or other fiscal, revenue, customs or excise authority, department, agency, body or office having any authority or jurisdiction for any Tax purpose;

**"Terminal"** means terminal facilities comprised of the facilities for production and processing of the Product and the port, storage and other facilities from which or through which the Product is loaded onto the Vessel or other mode of transport or discharged (whichever is applicable), and where the context requires, also means the operator and owner of those terminal facilities;





"**TMSA**" has the meaning specified in article 3.4(b) of Part II;

"**VAT**" means value added tax as provided for in the European Union Council Directive 2006/112 (or any other legislation adopted or enacted in substitution therefore) and any other tax of a similar nature imposed in any part of the world;

"**Vessel**" means a sea carrying ship for the purpose of carriage of Product;

"**Working Day**" means a day, not being a holiday or weekend, on which banks are open for business in the country of Seller's address in the Commercial Terms;

"**Working Hours**" means normal working hours during a Working Day, including but not limited to, (a) Finland; 0800-1600, (b) Switzerland 0830-1700; and

"**Worldscale**" means the New Worldwide Tanker Nominal Freight Scale applying to the carriage of oil in bulk.

## 2. Applicability and Interpretation

- 2.1 Unless otherwise expressly agreed in writing the General Terms and Conditions shall apply to all Commercial Terms concluded by or on behalf of Neste Corporation and/or Affiliates into which they are incorporated by reference.
- 2.2 Incoterms shall apply as supplementary provisions to the Agreement. In case of conflict between the provisions of the Agreement and the Incoterms referred to herein, the provisions of the Agreement shall prevail.
- 2.3 The Agreement contains the entire Agreement between Seller and Buyer and supersedes all representations and warranties, prior agreements, oral or written related to the subject matter of the Agreement. Parties each warrant that it has in connection with the Agreement not relied upon any representations and warranties, written or oral, made by or on behalf of the other Party, except for those representations and warranties expressly set out in the Agreement, and have relied exclusively on its own knowledge and judgment.
- 2.4 References to an English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any other legal concept shall, in respect of any jurisdiction other than England, be deemed to include the legal concept which most nearly approximates in that legal jurisdiction to the English legal term.
- 2.5 The "liquidation", "winding up" or "administration" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business, including proceedings whereby liquidation, winding-up, reorganization, dissolution, administration, arrangement, adjustment, protection or debtor's relief is sought.
- 2.6 The appendices (including these General Terms and Conditions) form part of the Agreement and shall be construed and have the same force and effect as if expressly set out in the Commercial Terms, and any reference to the Agreement shall, unless otherwise stated (or unless the context otherwise implies), include the appendices. However, in the event of any ambiguity, inconsistency or conflict between the Commercial Terms and the appendices (including these General Terms and Conditions) the provisions of the Commercial Terms shall prevail.
- 2.7 Unless the context requires otherwise, a reference to an article, part or an appendix is a reference to an article of, part of, or an appendix to, the Agreement.
- 2.8 Reference to any statute or statutory provision shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified, replaced or re-enacted.



- 2.9 A reference to an agreement, document or instrument is a reference to such agreement, document or instrument as it may be amended, assigned, novated, supplemented or restated from time to time.
- 2.10 Subject to article 12 of Part I, a reference to "writing" or "written" includes email and faxes.
- 2.11 Where the words "include(s)", "including" or "in particular" are used in the Agreement, they are deemed to have the words "without limitation" following them.

### 3. Payment Terms

- 3.1 Unless expressly provided otherwise in the Commercial Terms, payment shall be made by Buyer to Seller in respect of each delivery of Product under the Agreement and in accordance with the Commercial Terms and against presentation of Seller's invoice (e-mail or fax invoice is acceptable) and the following documents:
- (a) In case of FOB or CFR delivery:
    - (i) 3/3 clean original bills of lading issued or endorsed to the order of Buyer or Buyer's bank (as the case may be); and
    - (ii) original Certificate(s) of Quantity and Quality.
  - (b) In case of CIF delivery:
    - (i) 3/3 clean original bills of lading issued or endorsed to the order of Buyer or Buyer's bank (as the case may be); and
    - (ii) original Certificate(s) of Quantity and Quality; and
    - (iii) original certificate of insurance.
  - (c) In case of EXW, FCA, DAT, DAP or DDP delivery, original Certificate(s) of Quantity and Quality (or other equivalent documents including waybills or consignment documents).
- 3.2 In case of Barge, Ex Tank, Into Tank, FIP or In Situ delivery, unless expressly provided else in the Commercial Terms, no additional shipping documents other than presentation to Buyer of Seller's invoice (email or fax invoice is acceptable) are required.
- 3.3 If payment terms have not been specified in the Commercial Terms, then payment shall be due ten (10) Days after the invoice date. Unless expressly provided otherwise in the Commercial Terms, in cases of CIF/CFR deliveries, in the event that the payment due date is based on either the NOR date at the Discharge Port 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 or does not complete discharge, then for payment purposes the NOR or 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 thirty (30) days after the Bill of Lading Date.
- 3.4 If the clean original bills of lading or other documents are not available for presentation to Buyer on or before the payment due date, Buyer agrees to pay Seller upon presentation of Seller's invoice (email/PDF or fax invoice is acceptable) and a letter of indemnity (email/PDF or fax letter of indemnity is acceptable) in the form set out in Part VII.
- 3.5 All sums payable by Buyer under the Agreement shall be made in US Dollars (\$) (unless expressly provided otherwise in the Commercial Terms) by wire transfer of same day value funds on or before the due date from the Buyer's bank account to such bank account as is notified in writing by Seller to Buyer. All sums payable by Buyer under the Agreement shall be paid without any setoff or counterclaim, and shall be paid free and clear of all charges, deductions or withholdings whatsoever, save only as may be required by law. If any deduction or withholding in respect of Tax is required by law to be made from any sums payable by Buyer to Seller under the Agreement, Buyer shall pay Seller such greater sum as will, after such deduction or withholding as is required to be made, leave Seller in receipt of the same amount it would have received had no such withholding or deduction been required.
- 3.6 Except in case of EXW, FCA, DAT, DAP, DDP or Barge delivery, Seller's invoice shall be prepared based on the quantities contained in the applicable bill of lading. In case of EXW, FCA, DAT, DAP, DDP or Barge



delivery, Seller's invoice shall be prepared based on the quantities contained in the certificate(s) of Quantity and Quality in accordance with article 2 of Part IV (or other equivalent document).

- 3.7 Where the price terms for the Product to be supplied hereunder are not yet available, and so do not allow a final invoice to be dispatched in time for payment by the due date, Seller may invoice Buyer on a provisional basis. The provisional invoice shall be based upon the price information available to Seller at the time it issues the provisional invoice multiplied by one hundred percent (100%) of the net Quantity stated in the bill of lading or (in case of EXW, FCA, DAT, DAP or DDP) the Certificate of Quantity. An adjustment invoice will be dispatched to Buyer by Seller as soon as practicable. Any resultant additional payment will be due by Buyer to Seller or refunded by Seller to Buyer within three (3) days of the date of the adjustment invoice.
- 3.8 If the payment due date falls on a day that is not a Working Day (other than a Sunday), payment shall be made on the last Working Day prior to such payment due date. If the payment due date falls on a Sunday, payment shall be made to Seller on the next Working Day after such payment due date.
- 3.9 Any amount payable (including any additional amounts payable in accordance with article 3.5 of Part I) by Buyer to Seller hereunder shall, if not paid when due and without prejudice to any rights and remedies which Seller may have under the Agreement or otherwise, bear interest from (and including) the due date until (and including) the date payment is received by Seller, at the LIBOR Rate plus five (5) percentage points.
- 3.10 If Seller and Buyer disagree on the correct amount owing under Seller's invoice, Buyer shall make provisional payment of the full amount of Seller's invoice. After agreement or final determination of the correct amount owing, any necessary correction payment shall be made as soon as practicable after agreement or determination of the correct amount.
- 3.11 Seller may in its reasonable discretion and by written notice require Buyer to provide payment security (at Buyer's cost and expense) in Seller's favor in the form of:
  - (a) an irrevocable documentary letter of credit or stand-by letter of credit in the form set out in Part VIII or Part IX for an amount specified by Seller and issued by a bank acceptable to Seller; or
  - (b) such other form (acceptable to Seller) of security reasonably required by Seller, including payment in advance.
- 3.12 Unless otherwise requested by Seller the security shall be provided no later than the end of a Working Day, ten (10) days before the first day of the agreed Laydays (or in case of EXW, FCA, DAT, DAP or DDP delivery, ten (10) days before the ETA). Buyer shall comply with any amendment requested by the issuing bank.
- 3.13 If for any reason the Agreement is varied or the loading is expected not to take place within any period specified in, or the term of, the payment security document, or Seller reasonably considers that the payment security document requires amendment, extension or reissue, then Buyer shall at its cost and expense immediately upon request from Seller procure the necessary amendments or extension to the payment security document to ensure its validity, or provide a new security document on terms acceptable to Seller.
- 3.14 If Buyer fails to provide to Seller the required payment security document in the form and within the time prescribed then upon the occurrence of such a breach and for as long as such breach is continuing, Seller may at any time by notice to Buyer terminate the Agreement and without prejudice to the right to terminate, suspend all or any of Seller's obligations, including for the supply of Product, under the Agreement and under any other agreement for the sale of Product by Seller to Buyer. Buyer shall be liable for all costs and expenses suffered by Seller as a result of Buyer's breach and the provisions of article 8 of Part I shall apply upon termination.
- 3.15 In accordance with the terms of the payment security documents, if applicable, Seller shall deliver to Buyer the commercial documents as set out under such payment security documents. In the event that any of the documents to be delivered to Buyer under the payment security documents are not available on the date that the payment security documents are presented for payment, such payment security documents shall provide for payment against presentation of Seller's invoice (email or fax invoice acceptable) and a letter of indemnity in the form set out in Part VII.



## 4. Taxes

- 4.1 All prices specified in the Agreement are exclusive of any VAT. Where Seller is required to account to any tax authorities for any such VAT, Buyer shall promptly pay such VAT to Seller in addition to the price specified in the Commercial Terms and in the same manner as is provided for all other payments.
- 4.2 Where required by and in accordance with applicable law, Seller shall issue a valid invoice to Buyer in respect of any VAT payable by Buyer in accordance with article 4.1 of Part I.
- 4.3 In circumstances where, in accordance with and subject to all applicable laws, a purchase of Product by Buyer may be either exempt from VAT, or subject to VAT at a reduced rate, Buyer will provide to Seller all information and documentation required by Seller or the appropriate Tax Authority which is necessary for such exemption or reduced rate to properly apply. Buyer shall provide all such information and documentation promptly and in accordance with all applicable time limits otherwise such exemption or reduced rate shall not be applied to such purchase of Product.
- 4.4 Buyer shall indemnify, on an after tax basis, and hold harmless Seller against all liabilities, costs, charges, expenses, interest or penalties incurred by Seller and arising from Seller's reliance upon any documentation and information provided by Buyer in accordance with article 4.3 of Part I.
- 4.5 All prices specified in the Agreement are exclusive of any Excise Duty. Subject to applicable rules and regulations, Excise Duty will be payable by Buyer in respect of Product on its leaving the bonded premises at the Load Port (in case of delivery by Vessel or Barge) or Delivery Point (in case of Delivery by another mode of transport) unless Buyer provides Seller within all applicable time limits with such documents and information as is required by the relevant Tax Authority to facilitate an exemption or suspension of such duties.
- 4.6 Buyer shall indemnify, on an after tax basis, and hold harmless Seller against any Excise Duty, or any other liabilities, obligations, charges, costs, interest or penalties arising in respect of or in connection with any Excise Duty, in each case arising in respect of any Product which is the subject of a purchase by Buyer under the Agreement.
- 4.7 For the avoidance of doubt and in respect of every type of sale, Buyer or a third party (nominated by Buyer) on Buyer's behalf shall be the importer of record in the destination country and all Taxes, fees, charges and dues of any description which are imposed or levied by any governmental, local or port authority on the Product supplied hereunder and which arise in respect of such importation or on its export, delivery, transportation, ownership, sale or use, in respect of any stage after risk in such Product has passed to Buyer shall be for Buyer's account except those defined by Worldscale as being for owner's account.
- 4.8 Seller shall be responsible for complying with any customs and excise entry procedures which are required with respect to Product the subject of a purchase by Buyer at the Load Port (in case of delivery by Vessel or Barge) or Delivery Point (in case of Delivery by another mode of transport). The amount of Taxes, fees, charges and dues of any 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 having passed to Buyer shall be for Seller's account, except those defined by Worldscale as being for owner's account and, for the avoidance of doubt, any amounts which in accordance with any other provision of the Agreement are for the account of Buyer.
- 4.9 If VAT, Excise Duty or similar Tax has been charged from Buyer and if the VAT, Excise Duty or similar Tax is later repaid to Seller, Seller shall without delay pay to Buyer an amount equal to the repaid Tax, less any costs, penalties, interest or Tax incurred by Seller in respect of such repayment or credit.
- 4.10 Either Party may request from the other such documentation that such Party reasonably considers necessary to satisfy any enquiry from a Tax Authority in connection with the supply of Product and each Party shall provide such documentation to the other Party promptly upon request. Neither Party shall be obliged to provide any documents pursuant to this article 4.10 of Part I which are not required by a relevant Tax Authority or which are in the possession of the other Party.
- 4.11 The Product can be export cleared only if the Buyer intends and has made preparations to export the Product outside of the European Union, and gives the Seller a written notice of such fact not less than two (2) Working Days (by noon at Seller's location) prior to commencement of loading.



If the Product to be delivered is loaded in an EU State and documented for an export destination outside of the EU free of Excise Duty, then the Product shall be exported outside of the EU. If the Product is returned to EU without being exported to a destination outside of the EU, the Buyer shall indemnify the Seller for all duties, costs and other consequences resulting from any breach hereof that were incurred by the Seller.

## 5. Force Majeure

5.1 Neither Party shall be in breach of the Agreement or otherwise be liable to the other Party for its failure to fulfil any term of the Agreement, other than the obligation to pay any sum when due, if and to the extent that such fulfilment has been delayed, hindered or prevented by a "Force Majeure Event", meaning any circumstance or event whatsoever outside the Party's reasonable control, which by reasonable diligence such Party was unable to overcome, including but not limited to any of the following:

- (a) any act of God, fire, explosion, landslide or earthquake; or
- (b) any storm, hurricane, flood, tidal wave or other adverse weather and/or sea state condition; or
- (c) any war (whether declared or not), revolution, act of civil or military authority, riot, blockade, embargo, trade sanction, terrorism, sabotage; or
- (d) any epidemic or quarantine restriction; or
- (e) any strike, lock-out or labour dispute from whatever cause; or
- (f) to the extent the same is enacted after the date of the Agreement, any compliance with any law, regulation or ordinance or with any order, demand or request of any international, national, local or other port, transportation or governmental authority or agency; or
- (g) any unforeseeable unavailability of or interference with the usual means of transporting Product; or
- (h) accidental damage to or other failure of one or more of Seller's facilities, regardless whether or not this facility was or these facilities were the intended production source for Product under the Agreement or Seller's suppliers' facilities, including production, processing, delivery, equipment, storage or transportation facilities; or
- (i) any unforeseeable shutdown affecting one or more of Seller's facilities, regardless whether or not this facility was or these facilities were the intended production source for Product under the Agreement, or Seller's suppliers' facilities, including production, processing, delivery, equipment, storage or transportation facilities; or
- (j) any inability of Seller to acquire from its usual supply source(s) for this Contract or on terms it deems reasonable Product or any material, labour, service, utility or facility necessary for manufacturing the Product.

In terms of the Agreement, a Force Majeure Event also refers to an operational shutdown of or break or cut in production at any of Seller's or Seller's suppliers' facilities, refineries, depots or supply points whether planned or unforeseen and having an effect on the availability of the Product; provided, that a lack of funds shall not in any event constitute a Force Majeure Event for the purposes of the Agreement.

5.2 As soon as reasonably practical after becoming aware of the occurrence of a Force Majeure Event, the Party affected shall give a written notice thereof to the other Party describing such event and the estimated period during which operations will be suspended or reduced. Delay or failure to comply with this article 5.2 of Part I shall not deprive the affected Party of the right to claim relief but may make the affected Party liable in damages to the other Party for loss which otherwise could reasonably have been avoided. The affected Party shall keep the other Party updated about the Force Majeure Event in regular intervals and the Parties shall forthwith discuss what action may be taken with a view to keeping to a minimum the adverse effects of Force Majeure Event.





- 5.3 The Party affected by the Force Majeure Event shall exercise reasonable endeavours to mitigate the effects of the Force Majeure Event. Notwithstanding the foregoing, the settlement of strikes, lockouts or labour disputes shall be entirely within the discretion of the Party experiencing such situations.
- 5.4 Notwithstanding anything else in this article 5 of Part I, Buyer cannot require Seller to deliver any cargo of the Product from any location/destination/facility (whether Seller's location/destination/facility or a third party's) affected by the Force Majeure Event to any other location/destination/facility (whether Seller's location/destination/facility or a third party's). If by reason of a Force Majeure Event Seller's availability of Product is insufficient to supply Buyer with the full Quantity of Product, then, notwithstanding article 5.3 of Part I, Seller may withhold, reduce or suspend the supply of Product to such an extent and on such a basis as Seller in its sole discretion thinks fit. Seller shall not be liable to Buyer in any way as a result of the shortage other than to reimburse Buyer any amount paid for any Quantity of the Product not supplied in the event that Buyer has paid the price for such Quantity not supplied. Notwithstanding anything to the contrary, Seller shall not be bound to acquire by purchase or otherwise additional quantities from other suppliers and/or its Affiliates.
- 5.5 If the Force Majeure Event continues or is reasonably anticipated to continue beyond a period of thirty (30) days from the date of the occurrence, either Party may, at any time by five (5) days prior notice in writing, terminate the Agreement. In such event, either Party shall be without any liability towards the other Party except that such termination shall be without prejudice to any rights and obligations already accrued at the time of termination. The notice of termination shall be effective even if the Parties are able to fully perform their obligations prior to the end of the termination notice period.
- 5.6 The affected Party shall give prompt notice to the non-affected Party of the end of the Force Majeure Event, and shall resume full performance under the Agreement as soon as reasonably practical. No Force Majeure Event shall have the effect of extending the term of the Agreement.

## **6. Warranties**

- 6.1 The Product delivered under the Agreement shall meet the Specifications at the time of Delivery. This article 6 of Part I constitutes the whole of Seller's obligations with respect to the Quality of Product to be supplied. To the extent permissible by law all conditions, warranties, representations, assurances, covenants or undertakings, express or implied, statutory or otherwise, with respect to the description, merchantability, quality or fitness of the Product for any particular purpose are hereby excluded. All warranties and conditions implied by law are hereby waived.
- 6.2 All intellectual property rights of Seller, including any rights in trade secrets and know-how (whether registered or not and including applications) relating to production and processing of and to the Product and parts thereof, now existing or in the future, shall be the exclusive property of Seller. Nothing in the Agreement or otherwise shall be construed as conferring any license or other rights to Buyer. The Product is sold only for consumption.

## **7. Liability**

- 7.1 In no event shall either Party be liable to the other Party, in contract (including breach of warranty), tort, negligence, strict liability, breach of statutory duty or otherwise, for any: (a) loss of profits or anticipated profits; (b) loss of sales or business; (c) loss of agreements or contracts; (d) loss of savings or anticipated savings; (e) loss of use or corruption of software, data or information; (f) loss or damage to goodwill or reputation; (g) plant shut-down; (h) loss of production; (i) loss of power generation; (j) indirect, remote, speculative or consequential loss; or (k) special, punitive or exemplary damages.
- 7.2 Buyer represents and warrants that it will exercise all care under the circumstances to prevent the spillage or loss of the Product into the environment on and from receiving delivery from Seller. Buyer shall be liable for and shall to the fullest extent permitted by applicable law indemnify and hold Seller harmless against any and all claims, actions, proceedings, applications, losses, damages, costs and expenses relating to, or arising in connection with the Product, on and from receipt at the Delivery Point.
- 7.3 Notwithstanding any other provision of the Agreement, as to any claim or claims of any nature whatsoever, the total liability of Seller to Buyer under or in connection with the Agreement shall in no event exceed an



amount equal to the price paid or agreed to be paid by Buyer for the Product under the Agreement as to which the claim is made. In the event of any defective Product, Buyer shall give notice to Seller of such claim and give Seller a reasonable opportunity to replace any such defective Product, and such replacement of Product shall be Buyer's exclusive remedy in respect of any claims other than demurrage.

- 7.4 To the extent permissible by law, Seller shall not be responsible in any matter whatsoever for any loss, damage or injury resulting from any hazards inherent in the nature of the Product delivered hereunder.
- 7.5 The rights, powers and remedies provided in the Agreement are the sole rights, powers and remedies of the Parties, and the Parties hereby waive any and all rights, powers, and remedies available at law or in equity.
- 7.6 Nothing in this article 7 of Part I, applies to a claim that arises or is delayed as a result of dishonesty, fraud or wilful concealment by Seller or Buyer.

## 8. Termination

- 8.1 Notwithstanding any other provisions of the Agreement, either Party may terminate the Agreement forthwith on notice in writing to the other Party, in either one of the following cases:
  - (a) If either Party is in material default of any of the terms of the Agreement and such default is not corrected (in case such default is capable of correction) within 30 days after receipt of written notification thereof by the non-defaulting Party, said non-defaulting Party, in addition to other rights and remedies it may have under law, may terminate the Agreement with immediate effect by written notification thereof; or
  - (b) Each Party shall have the right to terminate the Agreement with immediate effect by written notice to the other Party in any of the following events:
    - (i) if a receiver, administrator, or liquidator has been appointed for the other Party;
    - (ii) if the other Party becomes insolvent or applies for judicial or extrajudicial settlement to its creditors or files a petition for bankruptcy or liquidation; or
    - (iii) the other Party is in material breach of any law, regulation, governmental order or degree affecting the performance of the Agreement and fails to remedy the breach within thirty (30) days after receipt of a written notice thereof.
- 8.2 The Seller shall in addition have the right to terminate the Agreement with immediate effect by notice to Buyer if any of the following events occurs:
  - (a) without prejudice to Seller's rights under article 8.1 of Part I, if Buyer fails to make a payment due in full and punctually by the due date and does not correct such failure within five (5) days of notice being given by Seller of such breach; or
  - (b) there is a majority change in the ownership or control of Buyer, or a major change in the management of the Buyer.
- 8.3 In the event of a material default or failure of performance by a Party of any terms or conditions of the Agreement which is not caused by a Force Majeure Event, in addition to the right of termination as specified in articles 8.1 or 8.2 of Part I, the non-defaulting Party shall be entitled to unilaterally suspend the performance of its obligations under the Agreement until such default or failure is corrected or the Agreement is terminated, whichever occurs first.
- 8.4 Any termination or suspension of the Agreement shall operate without prejudice to the rights of the Parties already accrued at the time of termination or suspension and without prejudice to any other right or remedy of the non-defaulting Party in respect of a breach of the Agreement, if any, including the right to claim for direct damages arising from such breach, to the extent allowed under the terms and conditions of the Agreement.
- 8.5 Any terms which by their nature extend beyond termination of the Agreement shall remain in full effect until fulfilled.



## 9. Assignment

- 9.1 Neither Party may assign any of its rights or novate its obligations under the Agreement, without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed. Notwithstanding any assignment or transfer, the assignor or transferor, as the case may be, shall in all instances remain liable for the proper performance of the Agreement.
- 9.2 Notwithstanding article 9.1 of Part I, Seller may subcontract certain of its obligations under the Agreement to its Affiliates, provided that Seller remains solely responsible to Buyer in respect of such obligations.

## 10. Applicable law and arbitration

- 10.1 The Agreement and any non-contractual obligations arising out of or in connection with it, including any question regarding its existence, validity or termination, shall in all respects be governed by and construed in accordance with the laws of England, to the exclusion of its conflict of law rules. The Sale of Goods Act 1979 shall not apply to the Agreement.
- 10.2 Except as provided in article 10.3 of Part I, any dispute arising out of or related to the Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration which rules are deemed to be incorporated by reference into this article. The number of arbitrators shall be three (3) with one (1) arbitrator to be appointed by the claimant and a second arbitrator to be appointed by the defendant. The third arbitrator, who shall act as chairman of the arbitration, shall be appointed by agreement between the two (2) arbitrators nominated respectively by the claimant and the defendant. If the two (2) arbitrators fail to agree on such appointment, the President of the London Court of International Arbitration shall make such appointment in accordance with the Rules of the London Court of International Arbitration. The legal place of arbitration shall be London. The language to be used in the arbitral proceedings shall be English.
- 10.3 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 in London. The arbitration shall be conducted in accordance with one of the following LMAA procedures:
- (a) where the amount claimed by the claimants is less than US\$250,000, excluding interest, the reference shall be to a sole arbitrator and the arbitration shall be conducted in accordance with the LMAA FALCA Rules;
  - (b) where the amount claimed by the claimants is less than US\$50,000, excluding interest, the reference shall be to a sole arbitrator and the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure;
  - (c) in any case where the LMAA procedures referred to above do not apply the reference shall be to three arbitrators (one to be appointed by each of the Parties and the third by the arbitrators so chosen) in accordance with the LMAA Terms in force at the relevant time.
- 10.4 Nothing in this article 10 of Part I shall be construed to prevent any competent court having jurisdiction from issuing injunctions, attachment orders or orders of similar relief in aid of any arbitration commenced (or to be commenced) pursuant to this article 10 of Part I.

## 11. Claims

- 11.1 Any claim, other than a claim relating to Quality or Quantity, demurrage or Tax, must be submitted in writing to the other Party within one (1) year of the date of the alleged occurrence and, failing such notice, any liability of the other Party shall be deemed to be waived and absolutely barred and extinguished.
- 11.2 Unless expressly provided else in the Commercial Terms, any claim in respect of deficiency of Quantity or of variation of Quality must be notified in writing to Seller within sixty (60) days of the date of Delivery of the Product (such date to count as day zero (0)) and accompanied by complete evidence fully supporting the claim. 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 a half percent (0.5%) or less of the loaded Quantity.





- 11.3 Claims relating to demurrage must be submitted in writing by email or hard copy within the time periods specified in Parts II, III, IV and VI, respectively.
- 11.4 Claims relating to Tax must be submitted in writing to the other Party within four (4) years from the date of Delivery (counted as day zero (0)) failing which the claim shall be deemed waived and time-barred.

## **12. Notices**

- 12.1 All notices (including claim notices) shall be in writing and in the English language, to the other Party's address as indicated in the Commercial Terms. Either Party may send any notice by first class mail, personal delivery, expedited or overnight courier, messenger service or fax. Any such notice shall be deemed to have been received by the intended recipient Party:
  - (a) if sent by first class mail, ten (10) Banking Days after posting;
  - (b) if sent by personal delivery, when actually received;
  - (c) if sent by expedited or overnight courier or messenger service, three (3) Banking Days after dispatch; or
  - (d) if sent by fax, if it is transmitted on a Working Day before 4:00 p.m. at the addressee's time zone, then on that day; in any other case on the Working Day after the day on which it is transmitted; provided that in each case transmission is evidenced by the sending Party's transmission report confirming uninterrupted transmission to the recipient Party.
- 12.2 Any Party may change the address to which notices, requests, demands, claims and other communications hereunder are to be delivered by giving the other Parties notice in the manner herein set forth.
- 12.3 The usage of telex for incoming and outgoing correspondence for all communications is explicitly excluded.
- 12.4 In addition to the methods of delivery referred to in article 12.1 of Part I, communications in respect of day to day business between the Parties related to the Agreement (including delivery of statements and invoices and notices of Force Majeure Events) may be done by e-mail and/or instant messaging. Any such communication shall be deemed to have been received by the intended recipient Party if it is transmitted on a Working Day before 4:00 p.m. at the addressee's time zone, then on that day; in any other case on the Working Day after the day on which it is transmitted. For the avoidance of doubt, any communication in respect of claims (excluding demurrage claims) and termination may not be given by email or by instant messaging.
- 12.5 In addition to the methods of delivery referred to in article 12.1 of Part I, communication in respect of demurrage claims may be done by e-mail.

## **13. Health, Safety and Environment**

- 13.1 General
  - 13.1.1 Seller shall provide substance identifier(s) for the Product or any substance contained in the Product latest at the time of discharge to Buyer. This can be in the form of a Chemical Abstracts Service registry number, a European Community number, a European Inventory of Existing Commercial Chemical Substances number, an EC List number, a REACH registration number and/or any other appropriate identifier as defined in REACH.
  - 13.1.2 Seller shall not be permitted to substitute the Product(s) with petroleum product(s) of a different identification as described in article 13.1.1 of Part I without the prior written permission of Buyer.
- 13.2 The provisions of this article 13.2 of Part I shall apply in respect of deliveries of Product under the Agreement where the Load Port or the Discharge Port or both (in case of Delivery by Vessel or Barge) or the Delivery Point (in case of Delivery by another mode of transport) are located within the EEA.
  - 13.2.1 Both Seller and Buyer shall comply with their obligations under REACH.
  - 13.2.2 Where Seller is the manufacturer of the Product or it has imported the Product into the EEA, Seller warrants that it has complied with the obligations under REACH, including but not limited



to the registration of the Product or substances contained in the Product with the European Chemicals Agency, where relevant.

- 13.2.3 If Buyer identifies new use(s) and requests Seller to add the newly identified use(s) to a Product's substance REACH registration and consequently to the SDS/e-SDS, Seller may, in its sole discretion, decide whether or not to add such newly identified use(s). If Seller agrees to include such newly identified use(s) to the SDS/e-SDS, this may be subject to a separate mutual agreement between Seller and Buyer. In this case, Seller shall provide Buyer with a copy of the new SDS/e-SDS without undue delay after the new use(s) have been registered with the European Chemicals Agency.

- 13.3 The provisions of this article 13.3 of Part I shall apply in respect of Product(s) originating outside the EEA and imported into the EEA:

13.3.1 Where Seller has imported the Product into the EEA, Seller warrants that it has complied with the obligations under REACH, including but not limited to the registration of the Product or substances contained in the Product with the European Chemicals Agency, where relevant.

13.3.2 Where Buyer is the importer, Seller shall provide Buyer with the information necessary for Buyer to ascertain the identity of the Product or substances contained in the Product. This information shall be given in writing to Buyer in reasonable time for Buyer to ensure REACH compliance.

13.3.3 Where a REACH only representative has been appointed for the Product or any substance contained in the Product, Seller shall inform Buyer of the only representative and provide its contact details to Buyer.

#### 13.4 Safety

13.4.1 Seller shall provide Buyer with a copy of the current Safety Data Sheet ("SDS/e-SDS") for the Product (or if it is not required by legislation, written information that the Product is not classified) and information on risk management measures and/or safe use of the Product, latest at the time of discharge to Buyer. The SDS/e-SDS provided by Seller will include the identified uses as defined in REACH.

13.4.2 Buyer shall provide its employees, agents, contractors and entities to whom it supplies the Product any relevant information relating to health, safety and the environment in connection with the Product.

13.4.3 Buyer must ensure that all installations and equipment used with Products are set up, maintained and operated in such manner to avoid accidents, which could have reasonably been anticipated and shall do everything necessary to prevent Products, used or unused, entering drainage, sewage systems, watercourses or soil. Buyer is required to co-operate in all reasonable respects with Seller in implementing measures designed to improve health, safety and environmental performance.

### 14. Amendments and Waivers

14.1 No waiver of any right or remedy for any breach of or default under any provision of the Agreement shall constitute a waiver of the same or of any other right or remedy for any breach of or default under the same or any other provision of the Agreement.

14.2 Any amendment or waiver of any provision of the Agreement shall only be effective by a written agreement executed by the Parties.

### 15. Severability

15.1 If any provision of the Agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, this will not affect the validity of all other provisions of the Agreement. An invalid or unenforceable provision will be regarded as replaced by a valid and enforceable provision that as closely as possible reflects the economic purpose the Parties had pursued with the invalid or unenforceable provision.



## 16. Third Party Rights

- 16.1 The Contracts (Rights of Third Parties) Act 1999 shall not apply to the Agreement and no person other than the Parties shall have any rights to enforce its terms.

## 17. Headings

- 17.1 The headings used herein are for purposes of convenient reference only and are not indicative of contractual content.

## 18. Conversation recordings

- 18.1 Buyer acknowledges and consents that Seller and its Affiliates may, from time to time, and without further notice, electronically record conversations between the Parties' representatives in connection with the Agreement or related matters or future cooperation between the Parties.

## 19. Data Protection

- 19.1 The Parties acknowledge and agree that in order for Seller to perform its obligations under the Agreement:
- (a) Buyer shall provide data to Seller that identifies Persons and is considered as 'personal data' (the "Buyer Personal Data") whether under the Data Protection Act 1998 or other applicable personal data legislation; and
  - (b) Seller may use the Buyer Personal Data for any purpose necessary in connection with the performance of its obligations under the Agreement, including transferring or processing Buyer Personal Data to third parties, including third parties outside the EEA, and including shipping companies and service providers; provided that Seller shall do so only to the extent reasonably necessary to perform its obligations under the Agreement.
- 19.2 Buyer must notify, to the extent required, its relevant Persons of the use of Buyer Personal Data as stated above and obtain relevant consents, when necessary, for their personal data to be processed as stated above. Buyer must enter into sufficient contractual arrangements with its relevant Persons to ensure the data privacy compliance of Seller's data processing activities above.

## 20. Change in Regulations

- 20.1 Parties are entering into the Agreement in reliance on the laws, rules, regulations and agreements ("Regulations") in effect on the date hereof with governments or public authorities affecting the Product sold, manufactured, transported, stored, traded or delivered hereunder.
- 20.2 If during the term of the Agreement, any Regulations are modified or new Regulations have or will become effective, and if such changed or new Regulations are not covered by any other provision of the Agreement, and will have a material adverse economic effect on one or both Parties, an affected Party shall have the option to request renegotiation of the affected terms of the Agreement without undue delay after the mentioned material adverse economic effect has become evident.
- 20.3 The request to renegotiate affected terms must contain the new terms desired by the requesting Party. If the Parties do not agree upon new terms satisfactory to both Parties within fifteen (15) days after the date of the requesting Party's notice, either Party shall have the right to terminate the Agreement immediately. Any Product agreed to be delivered before termination shall be sold and purchased at the terms applying under the Agreement without any adjustment in respect of the new or changed Regulations.

## 21. Destination and Sanctions

- 21.1 Where not in conflict with the provisions of articles 21.3 or 21.4 of Part I, it is a condition of the Agreement that the Buyer shall neither, whether directly or indirectly, import, sell, transfer, transport or otherwise provide the Product to any Person in any destination, which is at the time of such action prohibited either



under applicable Sanctions Laws or the laws of the country in which such Product was produced or contrary to any regulation, directive or guideline applied by the government of that country or any relevant agency thereof. Buyer shall keep itself informed of all laws (including Sanction Laws), regulations, rules, directives or guidelines.

- 21.2 Buyer represents that neither it nor any of its Affiliates or its or their respective officers or directors is a Sanctioned Person.
- 21.3 Notwithstanding anything to the contrary elsewhere in the Agreement nothing in the Agreement is intended, and nothing herein should be interpreted or construed, to induce or require either Party hereto to act in any manner (including failing to take any actions in connection with a transaction) that is inconsistent with, penalised or prohibited under Sanctions Laws.
- 21.4 Notwithstanding anything to the contrary elsewhere in the Agreement nothing in the Agreement is intended, and nothing herein should be interpreted or construed, to induce or require either Party hereto to comply with any international boycott, if compliance or agreement to comply therewith could violate anti-boycott laws or regulations applicable to a Party or its Affiliates.
- 21.5 In the event of any breach or failure to comply with any of the representations and undertakings set forth in this article 21 of Part I, Seller may, by notice to Buyer and without prejudice to Seller's other rights and at Seller's sole discretion, terminate the Agreement or suspend delivery under the Agreement until further notice, or decline to commence or complete loading hereunder.

## **22. Facilitation Payments and Anti-Corruption**

- 22.1 Neither Party nor any of its Affiliates nor any of their respective directors, officers or employees have made, offered, or authorized and will not make, offer or authorize any payment, gift, promise or other advantage, in connection with the matters which are the subject of the Agreement, whether directly or indirectly through any other person, to or for the use or benefit of any public official (i.e., any person holding a legislative, administrative or judicial office, including any person employed by or acting on behalf of a public agency, a public enterprise or a public international organization) or any political party or political party official or candidate for office, where such payment, gift or promise would violate: (a) the laws of the country of formation of the Party or such Party's ultimate parent company (or its principal place of business); (b) the principles described in the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, signed in Paris on December 17, 1997, which entered into force on February 15, 1999, and the Convention's Commentaries; (c) the United Kingdom Bribery Act 2010; or (d) the United States Foreign Corrupt Practices Act of 1977, as amended.
- 22.2 A Party may terminate the Agreement forthwith upon written notice to the other at any time, if in their reasonable opinion the other is in breach of any of the representations, warranties or undertakings set forth in this article 22 of Part I.

## **23. Confidentiality**

- 23.1 The Parties agree that the terms of the Agreement and all information disclosed under the Agreement, except for information in the public domain, shall be considered confidential and shall not be disclosed to any other person without the prior written consent of the Party which owns such confidential information. This obligation of confidentiality shall remain in force during the term of the Agreement and for a period of five (5) years thereafter.
- 23.2 Notwithstanding the foregoing, confidential information may be disclosed without consent and without violating the obligations contained in this article 23 of Part I in the following circumstances:
  - (a) to an Affiliate which is bound by these confidentiality provisions;
  - (b) to a governmental agency or other entity when required;
  - (c) to the extent that such information is required to be furnished in compliance with applicable laws and regulations or pursuant to any legal proceedings or because of any order of any court binding upon a Party;



- (d) to attorneys engaged or proposed to be engaged by either Party where disclosure of such information is essential to such attorneys' work for such Party and such attorneys are bound by an obligation of confidentiality;
- (e) to contractors or consultants engaged, or proposed to be engaged, by either Party where disclosure of such information is essential to such contractors' or consultants' work for such Party; or
- (f) to the extent such information must be disclosed pursuant to any rules or requirements of any applicable government stock exchange.

## 24. Counterparts

- 24.1 The Agreement may be executed in any number of counterparts and by the Parties to it on separate counterparts, each of which shall be deemed an original but all of which taken together shall constitute one and the same agreement with the same effect as if the signatures on the counterparts were on a single engrossment of the Agreement, provided that the Agreement shall not be effective until all such counterparts have been executed and duly exchanged or delivered by each of the Parties.
- 24.2 A facsimile or portable document format (PDF) attachment to an email or other reproduction of the Agreement may be executed by one (1) or more Parties, and an executed copy of the Agreement may be delivered by one (1) or more Parties by facsimile or similar electronic transmission device pursuant to which the signature of or on behalf of such Party can be seen, and such execution and delivery shall be considered valid, binding and effective for all purposes. At the request of either Party, both Parties agree to execute an original of the Agreement as well as any facsimile or portable document format (PDF) attachment to an email or other reproduction hereof.



## PART II: FOB

### Applicability

If a transaction is designated as "FOB" in the Commercial Terms, the terms of the transaction shall be FOB subject to this Part.

### 1. Title and Risk

- 1.1 Notwithstanding any right of Seller to retain documents until payment, the risk and property in the Product delivered under the Agreement shall pass to Buyer as the Product passes the Vessel's permanent hose connection at the Load Port.
- 1.2 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 Buyer. Any claim made by a third party against Seller in respect of damage to any facilities at the Load Port caused by Buyer and/or Vessel shall be borne by Buyer.

### 2. Inspection and measurement

- 2.1 Product to be supplied under the Agreement shall be of the Quantity and Specifications as agreed upon in the Commercial Terms. Determination of the Product's Quantity and Quality shall be carried out or witnessed by an inspector mutually agreed upon by the Parties in accordance with the industry practice at the time of shipment at the Load Port. The results of such inspection shall be documented by the inspector for Quantity in a Certificate of Quantity and for Quality in a Certificate of Quality. The Certificate of Quantity and Certificate of Quality shall be final and binding for both Parties, save fraud or manifest error. Costs and expenses in respect of the inspector shall be shared equally between the Parties.
- 2.2 If mutually agreed upon in writing by Parties, determination of the Product's Quantity and Quality may be carried out by an institution such as, but not limited to, a laboratory at Load Port, in accordance with the terms and conditions of the Agreement. The results of such inspection shall be documented by appointed institution for Quantity in a Certificate of Quantity and for Quality in a Certificate of Quality.
- 2.3 Unless otherwise agreed, the Quality of the Product shall be determined from a composite sample taken at the Load Port in accordance with industry practice at the time of shipment at the Load Port. The sample will be retained in three (3) sealed containers, two (2) of which shall be kept at the Load Port, the third one being placed on board the receiving Vessel.

### 3. Nomination

- 3.1 Buyer shall advise Seller, during Working Hours, of the Vessel nomination no later than eight (8) Working Days for purchases of crude oil, five (5) Working Days for purchases of Petroleum Products, prior to the first day of the agreed Laydays.
- 3.2 Notice of nomination shall be given in writing and shall include the following:
  - (a) Name of the Vessel, date built, flag, deadweight, length, draught and such other information as may be required by the Load Port operator from time to time;
  - (b) Destination of the Vessel;
  - (c) The Specification and Quantity of Product to be loaded; in no event will Buyer declare final Quantity to be loaded later than the fourth day prior to the first day of the Laydays;
  - (d) The ETA of the Vessel at the Load Port;
  - (e) Details of any cargo on board if loading a part cargo; if Buyer fails to declare sufficient specifics of any part cargo on board and/or if the Vessel arrives at the Load Port carrying different cargoes than those declared, Seller shall have the right to refuse to Berth the Vessel or to make it anchor





if it has already berthed, and Buyer will be liable for all the costs, expenses and consequences arising from any action required under this article;

(f) Demurrage rate for the voyage; and

(g) Any additional information as Seller may reasonably require and notified beforehand to Buyer.

3.3 Seller shall accept or reject any nomination made by Buyer, within twenty-four (24) hours of the receipt of the nomination, including a substitute nomination. Seller shall not have the obligation to give Buyer the reasons for having refused any Vessel. Seller bears no liability in the event of refusal of a nomination. Seller's acceptance of any Vessel for loading shall not constitute a continuing acceptance of such Vessel for any subsequent loading.

3.4 Notwithstanding the above, in the event Neste Corporation or any of its Affiliates is Seller under the Agreement, the following is applicable:

(a) all Vessels which are nominated or substituted are subject to acceptance by Neste Ship Vetting, which may include an onboard Vessel inspection. Neste Ship Vetting will accept or reject any vessel within twenty-four (24) hours after receipt of all information asked for in the ship questionnaire filled out by the Vessel management company in [www.SIS3ng.com](http://www.SIS3ng.com) and as may be additionally required by Neste Ship Vetting to complete Vessel clearance. Acceptance of a Vessel for a particular voyage shall not constitute continual acceptance or acceptance for any other voyage. Charterer nor Seller shall be under any liability for rejecting any Vessel for whatsoever reason.

(b) Seller, through Neste Ship Vetting, reserves the right to have any Vessel management company (document of compliance holder as defined in ISM Code) which is managing a nominated or substituted Vessel, to be audited against Tanker Management and Self Assessment ("TMSA") 2, best practice guidance, before or during the term of the Agreement.

3.5 If the Vessel is rejected, or Buyer fails to nominate a Vessel or send the required information prior to the first day of the agreed Laydays, Buyer shall be responsible for any delay and all the costs and consequences arising from such delay.

3.6 Buyer shall have the right, with prior written notice to Seller in writing, to substitute, at least three (3) full Working Days prior to the first day of the agreed Laydays, the nominated Vessel by another Vessel of similar class, type, size, capacity and position, provided that the substitute Vessel tenders NOR to load before or within the agreed Laydays and that Buyer shall provide in the substitute nomination notice the same details as required under article 3.2 of Part II.

3.7 Buyer must ensure that it is familiar with all restrictions and regulations of the Load Port and shall nominate a Vessel in conformity with such restrictions and regulations. Buyer furthermore must ensure that nominated Vessel shall be in compliance with all applicable laws, regulations and other requirements of the country of the Vessel's registry and countries and Load Ports at which Vessel may be loading.

3.8 Buyer warrants that the Vessel is owned by or demise chartered to a member of ITOPF (International Tanker Owners Pollution Federation Limited), and that the Vessel has in place insurance cover for oil pollution no less in scope and amounts than available under the rules of the P & I Club into which the Vessel is entered, and that such P & I Club shall be a member of the International Group of P & I Clubs. The Vessel shall carry on board insurance certificate as set out in the Civil Liability Convention for Oil Pollution Damage. Furthermore, Buyer warrants that the Vessel complies with the ISM Code. The Vessel shall have on board at all times a valid ISM certificate.

## 4. ETA

4.1 Buyer shall arrange for the Vessel to give to Seller or to such person nominated by Seller its ETA at the Load Port at least seventy- two (72) hours before arrival, again at least forty-eight (48) hours before arrival and again at least twenty-four (24) hours prior to arrival, thereafter advising any variation of more than two (2) hours. If the Buyer's Vessel fails, for any reason, to give at least twenty-four (24) hours prior notice of arrival at the Load Port, laytime shall be extended by a period equal to the delay in giving such twenty-four (24) hours notice, but in any case not exceeding an additional twenty-four (24) hours.



## 5. Load Port

- 5.1 All expenses ashore pertaining to the pumping of the Product from shore tanks to the Vessel shall be borne by Seller. All other expenses pertaining to the Vessel, including all duties, fees, taxes, quay dues and all charges relating to the berthing and un-berthing of the Vessel including pilotage, mooring and towage expenses incurred at the Load Port, shall be borne by Buyer.
- 5.2 Unless otherwise explicitly agreed in writing by Seller, Seller shall not be under any obligation to commence loading hereunder prior to 0600 hours (local time) on the first day of the Laydays.
- 5.3 Vessel shall vacate the Berth as soon as loading hoses have been disconnected. If the Vessel fails to vacate the Berth, unless for reasons attributable to Seller, its supplier or the Load Port operator, any cost or damage suffered by Seller, its supplier, the Load Port operator and/or a third person, resulting from such failure shall be borne by Buyer.
- 5.4 Notwithstanding article 5.2 of Part II, if at the Load Port Seller's supplier or any agency imposes on Seller, in respect of Buyer's Vessel, an excess Berth utilisation charge in accordance with the Port Regulations or a contractually agreed or otherwise established scale for any hours of Berth utilisation in excess of a specified period of hours, but does not impose such charge directly on Buyer's Vessel itself, such charge shall be for Buyer's account.
- 5.5 Seller may shift the Vessel from one Berth to another. Incurred costs shall be for Seller's account if such shifting is for Seller's purposes, otherwise shifting costs, including those due to bad weather conditions, shall be for Buyer's account.
- 5.6 Seller shall provide, free of charge, a Berth or Berths at Load Port of sufficient depth at which the Vessel can safely reach and leave and at which the Vessel can lie safely afloat. Seller or its appointed agent or representative shall notify Buyer or its appointed agent or representative as soon as possible of such Berth at which the Vessel shall load the Product.

## 6. Laytime and Demurrage

- 6.1 The nominated Vessel shall arrive at the Load Port or area, tender NOR, complete formalities and shall be in all respects ready for loading within the agreed Laydays range. In the event that nominated Vessel does not arrive within the agreed Laydays, Seller shall not be obligated to load the Vessel. In the event Seller loads the Vessel, it shall be without prejudice to the rights and remedies of Seller, and the running hours under article 6.3 of Part II shall not commence counting until the Vessel has actually started loading.
- 6.2 The Laytime allowance shall be the allowance as specified in the Commercial Terms, prorated in case of part cargo. In the event no allowance is agreed upon in the Commercial Terms, the Laytime allowance shall be fifty percent (50%) of the Laytime provided in the governing Charter Party, prorated in case of part cargo.
- 6.3 Time allowed for loading shall commence, Berth or no Berth, six (6) hours after NOR to load is tendered to Seller or its representative by the master of the Vessel, or his representative, or when the Vessel is securely moored at the Berth or other loading place, whichever occurs first.
- 6.4 In the event that nominated Vessel is to load Product purchased by Buyer from Seller in addition to other cargoes at the same Load Port, but in different Berths, then, in addition to the time counted under article 6.6 of Part II, time allowed for loading such part cargo shall count:
  - a) if Seller's Terminal or Berth be the first Terminal or Berth at which the Vessel commences loading, upon the Vessel being made all fast at Seller's Terminal or Berth; or
  - b) if Seller's Terminal not be the first Terminal or Berth for which the Vessel commences the loading, when hoses disconnected and the Vessel is ready to leave, except for those provisions set out in article 6.6 of Part II.
- 6.5 In case nominated Vessel loads Product purchased by Buyer from Seller in addition to other cargoes at the same Berth, the time allowed for loading Seller's part cargo, in addition to the time counted under article 6.6 of Part II, shall start counting when loading of Seller's part cargo has actually commenced, unless the Vessel is prevented from commencing loading due to reasons directly attributable to Seller and/or Seller's





Terminal, in which case such delay shall count as Laytime. Time consumed between the Vessel being made fast at the Berth and the commencement of loading of the first parcel shall be prorated proportionately to the percentage of cargo due to Seller against the total cargo on board.

- 6.6 Time consumed by the Vessel awaiting first Berth, except for the first six (6) hours, shall be prorated proportionately to the percentage of cargo due to Seller against the total cargo on board.
- 6.7 In the event NOR is given by the Vessel before the agreed Laydays, insofar Laydays have been agreed upon in the Commercial Terms, the time allowed shall commence at 0600 hours of the first day of such Laydays, or upon commencement of loading, whichever occurs first.
- 6.8 The time period for loading the Product shall cease upon disconnection of the loading hoses immediately after loading is completed; provided always that if the Vessel is detained for more than two (2) hours beyond the final disconnection of hoses by the shore Terminal solely for the completion of cargo documentation and the presentation of such documents on board the Vessel, Laytime or, if the Vessel is on demurrage, demurrage shall re-commence after such period of two (2) hours and terminate upon the completion of cargo documentation.
- 6.9 Time shall not count against Laytime or, if the Vessel is on demurrage, for demurrage when spent or lost:
  - (a) on an inward passage, including awaiting daylight, tide, opening of locks, pilot, or tugs and moving from anchorage, even if lightering has taken place at the anchorage, until the Vessel is securely moored at the Berth or other loading or discharging place specified by charterers;
  - (b) due, whether directly or indirectly, to breakdown, inefficiency or other cause attributable to the Vessel and/or owners;
  - (c) as a result of a labour dispute, or strike, involving master, officers or crew of the Vessel or tugs or pilot;
  - (d) in, or in connection with, the handling of ballast unless this is carried out concurrently with loading or discharging such that no loss of time is involved; or
  - (e) in cleaning tanks, pumps and pipelines.
- 6.10 Any delay(s) arising from a Force Majeure Event, shall, provided always that the cause of the delay(s) was not within the reasonable control of charterers or Vessel owners or their respective servants or agents, count as one half (1/2) Laytime or, if the Vessel is on demurrage, at one half (1/2) of the demurrage rate.
- 6.11 If the total time for loading the Product exceeds the time allowed under this article 6 of Part II, demurrage will be as per Charter Party rate. Demurrage rate per day will be according to the market rate prevailing at the date of loading relative to the Quantity as stipulated in the Agreement.
- 6.12 The fully documented demurrage claim to be received in writing within ninety (90) days from the date of the bill of lading (counted as day zero (0)) failing which the claim shall be deemed waived by Seller and time-barred.



## PART III: CIF, CFR

### Applicability

If a transaction is designated as "CIF" or "CFR" in the Commercial Terms, the terms of the transaction shall be CIF or CFR, subject to this Part.

### 1. Title and Risk

- 1.1 Notwithstanding any right of Seller to retain documents until payment, the risk and property in the Product delivered under the Agreement shall pass to Buyer as the Product passes the Vessel's permanent hose connection at the Load Port.
- 1.2 In the event of part cargo delivery where deliverable Product is not identifiable and ascertainable on board the Vessel separately from the Product destined for receivers other than Buyer, then risk and title in the Product pass to Buyer in such percentage of the total Quantity of Product as is represented in the bill of lading issued to Buyer in relation to the total Quantity in all bills of lading issues in respect of the Product.
- 1.3 If the Vessel has commenced or completed loading prior to being nominated to Buyer pursuant to article 4 of Part III, then, notwithstanding any right of Seller to retain the documents referred to in article 1.1 of Part III until payment, the risk in the Product delivered under the Agreement shall be deemed to have passed to Buyer as the Product passes the Vessel's permanent hose connection at the Load Port and property in the Product shall pass immediately upon receipt by Seller of Buyer's acceptance of such nomination.

### 2. Inspection and measurement

- 2.1 Product to be supplied under the Agreement shall be of the Quantity and Specifications as agreed upon in the Commercial Terms. Determination of the Product's Quantity and Quality shall be carried out or witnessed by an inspector mutually agreed upon by the Parties in accordance with the industry practice at the time of shipment at the Load Port. The results of such inspection shall be documented by the inspector for Quantity in a Certificate of Quantity and for Quality in a Certificate of Quality. The Certificate of Quantity and Certificate of Quality shall be final and binding for both Parties, save fraud or manifest error. Costs and expenses in respect of the inspector shall be shared equally between the Parties.
- 2.2 Unless otherwise agreed, the Quality of the Product shall be stated from a composite sample taken at the Load Port in accordance with industry practice at the time of shipment at the Load Port. The sample will be retained in three (3) sealed containers, two (2) of which shall be kept at the Load Port, the third one being placed on board the receiving Vessel.
- 2.3 If mutually agreed upon in writing between Parties, determination of the Product's Quantity and Quality may be carried out by an institution such as a laboratory at Load Port or Discharge Port, in accordance with the terms and conditions of the Agreement. The results of such inspection shall be documented by appointed institution for Quantity in a Certificate of Quantity and for Quality in a Certificate of Quality.

### 3. Insurance

- 3.1 CIF
  - 3.1.1 Seller shall procure and pay for insurance against ordinary marine risks (excluding insurance against war, strikes, riots, civil commotions, blocking and trapping) to the full value of the Product under the Agreement plus ten percent (10%). Such insurance shall cover the Product from passing the manifold flange connection of the Vessel's delivery hose at the Load Port to passing the permanent connection of the Vessel's delivery hose at Discharge Port and shall be in accordance with the provisions of the Institute Cargo Claims (A) or ILU Bulk Oil articles. The benefit of the insurance shall pass to Buyer upon the passing of title and risk of the Product to Buyer as described in the Agreement.



3.1.2 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 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 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.

3.1.3 If Seller agrees to direct a Vessel to undertake or to complete the voyage as referred to in article 3.1.2 of Part III, Buyer undertakes to reimburse Seller, in addition to the price payable under the Agreement, for costs and expenses incurred by Seller in respect of any additional insurance premiums and any other sums that Seller may be required to pay to the Vessel's owner including any sums in respect of any amounts deductible under such owner's insurance and any other costs and/or expenses incurred by Seller.

3.2 CFR

3.2.1 It is Buyer's responsibility for securing insurance, whether against marine or other risks.

## 4. Nomination

4.1 Seller shall give to Buyer during normal Working Hours a notice of nomination no later than five (5) Working Days for purchases of crude oil, three (3) Working Days for purchases of Petroleum Product, prior to the first day of the agreed Laydays.

4.2 Notice of nomination shall be given in writing and shall include the following:

- (a) Name of the Vessel, date built, flag and any other information as may be reasonably required by the Discharge Port operator from time to time;
- (b) Product, Product Quality and total Quantity to be loaded (or the bill of lading Quantity, if known);
- (c) Load Port Laydays (or the Bill of Lading Date, if known) and the ETA at the Discharge Port;
- (d) Vessel/charterer's agent at the Discharge Port;
- (e) Details of any other cargo on board or to be laden on board if delivery is of a part cargo; and
- (f) Demurrage rate for the voyage.

4.3 Buyer shall give notice accepting or rejecting any Vessel nomination within twenty-four (24) hours after receipt of such nomination, but shall not reject any nomination unreasonably.

4.4 Notwithstanding the above, in the event Neste Corporation or any of its Affiliates is Buyer under the Agreement, the following is applicable:

- (a) all Vessels which are nominated or substituted are subject to acceptance by Neste Ship Vetting, which may include an onboard Vessel inspection. Neste Ship Vetting will accept or reject any Vessel within twenty-four (24) hours after receipt of all information asked for in the ship questionnaire filled out by the Vessel management company in [www.SIS3ng.com](http://www.SIS3ng.com) and as may be additionally required by Neste Ship Vetting to complete Vessel clearance. Acceptance of a Vessel for a particular voyage shall not constitute continual acceptance or acceptance for any other



voyage. Charterer nor Buyer shall be under any liability for rejecting any Vessel for whatsoever reason.

- (b) Buyer, through Neste Ship Vetting, reserves the right to have any Vessel management company (document of compliance holder as defined in ISM Code) which is managing a nominated or substituted Vessel, to be audited against TMSA 2, best practice guidance, before or during the term of the Agreement.

- 4.5 In case of rejection, Seller shall as soon as possible nominate to Buyer an alternative Vessel for Buyer's acceptance or rejection, and, in the case of the latter, Parties shall negotiate a mutually acceptable nomination.
- 4.6 In respect of any Vessel named in the nomination, Seller shall have the right, with prior notification in writing to Buyer, to substitute prior to the first day of the agreed Laydays, the nominated Vessel by another Vessel of similar type, size, and capacity, provided that the substitute Vessel tenders NOR before or within the agreed Laydays and that Seller shall provide in the substitution advice the same details as in a nomination notice as provided in this article 4 of Part III.

## 5. ETA

- 5.1 Seller shall arrange for the Vessel to give to Buyer or its representatives the ETA at the Discharge Port at least seventy-two (72) hours before arrival, again at least forty-eight (48) hours before arrival and again at least twenty-four (24) hours prior to arrival, thereafter advising any variation of more than two (2) hours, if possible and practicable.

## 6. Discharge Port

- 6.1 Buyer shall, within one (1) Working Day after receipt of Seller's nomination, notify Seller of the final Discharge Port. No change to the final Discharge Port so nominated or specified shall be made without Seller's prior written acceptance which shall not be unreasonably withheld or delayed.
- 6.2 If the Commercial Terms provide a range within which a Discharge Port or ports may be nominated, Seller's approval to each port shall be required in writing within one (1) Working Day after any such valid nomination, such approval not to be unreasonably withheld or delayed.
- 6.3 Buyer must send to Seller full written instructions regarding the particulars and destination of the bills of lading and such other customary Load Port documentation which may be required.
- 6.4 Buyer shall be liable for all costs resulting from any delays in loading the Product hereunder due to failure by Buyer to supply such information in a timely manner.
- 6.5 Seller shall have the right to issue its own instructions if such instructions are not so provided by Buyer.
- 6.6 All costs and expenses (including but not limited to demurrage) arising out of any failure by Buyer to comply with the foregoing shall be borne by Buyer.
- 6.7 Where Buyer exercises any Discharge Port options in accordance with the Commercial Terms and available to Seller under the terms of the relevant Charter Party, Buyer shall be liable for any additional costs and expenses incurred by Seller as a result of alternative Discharge Port nomination.
- 6.8 Buyer shall have the right to shift the Vessel from one safe Berth to another within the Discharge Port. All costs and expenses, including damages for delay, shall be borne by Seller if such shifting is due to reasons attributable to Seller and/or the Vessel and shall otherwise be borne by Buyer.
- 6.9 Vessel may be lightered at the Discharge Port, but if any lightering shall be undertaken at the request of Buyer the costs and expenses thereof shall be borne by Buyer and all time expended in connection with such lightering shall count as running hours for the purposes of calculating demurrage under the applicable provisions of the Agreement.
- 6.10 Any lightering operations shall be carried out in accordance with the procedures set out in the International Chamber of Shipping / Oil Companies International Maritime Forum Ship-to-Ship Transfer Guides. The lightering Vessel is subject to Seller's prior acceptance.



- 6.11 Except in the event as described in article 6.9 of Part III, all time used for lightering shall be counted or included in calculating the time taken by Buyer to discharge the Vessel or the time in respect of which 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.
- 6.12 Except in relation to any lightering carried out at the request of and for the purposes of Seller, any lightering operation carried out shall be at Buyer's risk and Buyer shall be liable to Seller in respect of any losses, costs, damages and proceedings arising there from and shall indemnify Seller in respect thereof. This article 6.12 of Part III shall not be included in respect of shifting as stated in article 6.8 of Part III.
- 6.13 Vessel to be used must comply with all restrictions and governmental, local and port authority regulations in force at, related to and/or in respect of port in question. Vessel shall be clean and dry for the cargo to be loaded.
- 6.14 Buyer shall not be liable for the consequences of rejection and delay of the Vessel or other restrictions suffered in respect of the Vessel by virtue of the application of any regulations or other requirements and Seller shall be liable for any damages incurred by Buyer arising out of such rejection of, delay to or restriction of the Vessel.
- 6.15 All dues and other charges on Seller's Vessel at the Discharge Port, other than those defined by Worldscale as being for the Vessel owners' account, shall be borne by Buyer.

## **7. Laytime and Demurrage**

- 7.1 The nominated Vessel shall arrive at the Discharge Port or area, tender NOR and complete all formalities and shall be in all respects ready for discharging.
- 7.2 For the discharge of each shipment Buyer shall provide free of charge to Seller a Berth to be indicated by Buyer or its representative at which the Vessel can when fully laden safely reach and leave and where she can always lie safely afloat. Buyer shall indemnify and hold Seller harmless in respect of any damages or losses suffered by Seller or in respect of any claim to which Seller is exposed by reason of any breach of this article 7.2 of Part III.
- 7.3 Any time taken during the discharge used for oil washing and/or stripping of cargo tanks and lines (except for that used to comply with Marpol Regulations) shall count against Laytime, or if already on demurrage, for demurrage
- 7.4 The Laytime allowance shall be the allowance as specified in the Commercial Terms, prorated in case of part cargo. In the event no allowance is agreed upon in the Commercial Terms, the Laytime allowance shall be fifty percent (50%) of the Laytime provided in the governing Charter Party.
- 7.5 Time allowed shall commence Berth or no Berth, six (6) hours after NOR to discharge is tendered to Buyer or its representative by the master of the Vessel or his representative or when the Vessel is securely moored at the Berth or other discharging place, whichever occurs first.
- 7.6 In the event that nominated Vessel is to discharge Product purchased by Buyer from Seller in addition to other cargoes at the same Discharge Port, but in different Berths, then, in addition to the time counted under article 7.8 of Part III, time allowed for discharging such part cargo shall count:
  - (a) if Buyer's Terminal or Berth be the first Terminal or Berth at which the Vessel commences discharge, upon the Vessel being made all fast at Buyer's Terminal or Berth; or
  - (b) if Buyer's Terminal not be the first Terminal or Berth for which the Vessel commences the discharge, when hoses disconnected and the Vessel is ready to leave, except for those provisions set out in article 7.8 of Part III.
- 7.7 In case nominated Vessel discharges Product purchased by Buyer from Seller in addition to other cargoes at the same Berth, the time allowed for discharging Buyer's part cargo, in addition to the time counted under article 7.8 of Part III, shall start counting when discharge of Buyer's part cargo has actually commenced, unless the Vessel is prevented from commencing discharge due to reasons directly attributable to Buyer and/or Buyer's Terminal, in which case such delay shall count as Laytime. Time consumed between the Vessel being made fast at the Berth and the commencement of discharge of the



first parcel shall be prorated proportionately to the percentage of cargo due to Buyer against the total cargo on board.

- 7.8 Time consumed by the Vessel awaiting first Berth, except for the first six (6) hours, shall be prorated proportionately to the percentage of cargo due to Buyer against the total cargo on board.
- 7.9 In the event that NOR is given by Vessel before the agreed Laydays, insofar Laydays have been agreed in the Commercial Terms, time allowed shall commence at 0600 hours of the first day of such Laydays, or upon berthing, whichever occurs first.
- 7.10 Period of time for discharging the cargo shall cease upon disconnection of the discharging hoses.
- 7.11 Time shall not count against Laytime or, if the Vessel is on demurrage, for demurrage when spent or lost:
- (a) on an inward passage, including awaiting daylight, tide, opening of locks, pilot, or tugs and moving from anchorage, even if lightering has taken place at the anchorage, until the Vessel is securely moored at the Berth or other loading or discharging place specified by charterers;
  - (b) due, whether directly or indirectly, to breakdown, inefficiency or other cause attributable to the Vessel and/or owners;
  - (c) as a result of a labor dispute, or strike, involving master, officers or crew of the Vessel or tugs or pilot;
  - (d) in, or in connection with, the handling of ballast unless this is carried out concurrently with loading or discharging such that no loss of time is involved; or
  - (e) in cleaning tanks, pumps and pipelines.
- 7.12 Any delay(s) arising from a Force Majeure Event shall, provided always that the cause of the delay(s) was not within the reasonable control of charterers or Vessel owners or their respective servants or agents, count as one half (1/2) Laytime or, if the Vessel is on demurrage, at one half (1/2) of the demurrage rate.
- 7.13 Seller warrants that Vessel shall be capable of discharging a full cargo within twenty-four (24) hours or maintaining an average pressure of one hundred (100) P.S.I. (or seven (7) bar) at the Vessel's rail, receiving facilities permitting. Any claim for demurrage which can be attributed to any failure by Seller according to this article shall be calculated according to pumping performance formula as indicated below.

PUMPING PERFORMANCE FORMULA:

$$Q2 = Q1 \times \sqrt{(H2 / H1)}$$

Where:

Q1 = average discharge rate achieved by the Vessel during bulk discharge.

H1 = the average pumping pressure achieved by the Vessel during bulk discharge as measured.

H2 = the pumping pressure warranted in the Charter Party or lower maximum pressure required by the Terminal.

Q2 = the discharge rate that would be achieved at the pumping pressure, H2.

- 7.14 In the event that cargo is not discharged within the time allowed, Buyer shall pay demurrage to Seller for the time in excess at the appropriate rate per day or pro rata. The rate shall be that specified in the applicable Charter Party. Seller shall present any demurrage claim to Buyer within ninety (90) days from the date of Completion of Discharge (counted as day zero (0)) failing which the claim shall be deemed waived by Seller and time-barred.
- 7.15 In absence of a Charter Party, Seller will inform Buyer of the applicable demurrage rate for this single voyage.





## PART IV: EXW, FCA, DAT, DAP and DDP

### Applicability

If a transaction is designated as "EXW", "FCA", "DAT", "DAP" or "DDP" in the Commercial Terms, the terms of the transaction shall be EXW, FCA, DAT, DAP or DDP, respectively, subject to this Part. EXW and FCA can be used for deliveries by road tankers and rail tank cars and DAT, DAP and DDP can be used for any modes of transport. The provisions of this Part regarding Vessels shall only apply where the mode of transport selected by the Parties is by Vessel.

### 1. Title and Risk

#### EXW and FCA

- 1.1 Notwithstanding any right of Seller to retain documents until payment, the risk and property in the Product delivered under the Agreement shall pass to Buyer as the Product passes:
  - (a) the inlet manifold of the road tanker or the rail tank car in question in the case of bottom loading, or
  - (b) the outlet of the Terminal's flexible hose at the Delivery Point, in the case of gravity fed top loading.
- 1.2 Loading is carried out by Buyer and at Buyer's risk.

#### DAP and DDP

- 1.3 In respect of deliveries by road tanker, notwithstanding any right of Seller to retain documents until payment, the risk and property in the Product delivered under the Agreement shall pass to Buyer as the Product passes the inlet manifold of the receiving installation at the Delivery Point.
- 1.4 In respect of deliveries by rail tank car, notwithstanding any right of Seller to retain documents until payment, the risk and property in Product delivered under the Agreement shall pass to the Buyer at the moment that the locomotive used to haul the rail tank cars from the loading Terminal to the discharge Terminal is uncoupled from such rail tank cars at the discharge Terminal or, in respect of DAP at frontier deliveries, the frontier sidings.
- 1.5 For delivery by Vessel only, notwithstanding any right of Seller to retain documents until payment, the risk and property in the Product delivered under the Agreement shall pass to Buyer as the Product passes the Vessel's permanent hose connection at the Discharge Port.

#### DAT

- 1.6 Notwithstanding any right of Seller to retain documents until payment, the risk and property in the Product delivered under the Agreement shall pass to Buyer upon the Product being placed at Buyer's disposal at the Delivery Point.
- 1.7 For delivery by Vessel only, notwithstanding any right of Seller to retain documents until payment, the risk and property in the Product delivered under the Agreement shall pass to Buyer as the Product passes the Vessel's permanent hose connection at the Discharge Port.

### 2. Inspection and measurement

- 2.1 Product to be supplied under the Agreement shall be of the Quantity and Specifications as agreed upon in the Commercial Terms. Determination of the Product's Quantity and Quality shall be carried out by an inspector mutually agreed upon by Parties in accordance with the industry practice at the time of delivery at the Delivery Point. The results of such inspection shall be documented by the inspector for Quantity in a Certificate of Quantity and for Quality in a Certificate of Quality. The Certificate of Quantity and Certificate of Quality shall be final and binding upon Parties, save fraud or manifest error. Costs and expenses in respect of the inspector shall be shared equally between the Parties.



- 2.2 If mutually agreed upon in writing between Parties, determination of the Product's Quantity and Quality may be carried out by an institution such as, but not limited to a laboratory at Discharge Port, in accordance with the terms and conditions of the Agreement. The results of such inspection shall be documented by appointed institution for Quantity in a Certificate of Quantity and for Quality in a Certificate of Quality.
- 2.3 Unless otherwise agreed, the Quality of the Product shall be stated from a composite sample taken at the Delivery Point in accordance with industry practice at the time of delivery at the Delivery Point. The sample will be retained in three (3) sealed containers, two (2) of which shall be kept at the Delivery Point, the third one being placed on board the receiving Vessel.

### 3. Nomination

- 3.1 In respect of deliveries by road tankers and rail tank cars, unless otherwise explicitly agreed upon in writing by Parties, nominations and other conditions relating to the delivery of the Product shall be in accordance with the standard operating terms and procedures at Delivery Point.
- 3.2 In case of delivery by Vessel, the Seller shall give to Buyer during normal Working Hours a notice of nomination no later than five (5) Working Days for purchases of crude oil, three (3) Working Days for purchases of Petroleum Product, prior to the first day of the agreed Laydays.
- 3.3 Notice of nomination shall be given in writing and shall include the following:
- (a) Name of the Vessel, date built, flag and any other information as may be reasonably required by the Discharge Port operator from time to time;
  - (b) Product, Quality and total Quantity to be loaded (or the bill of lading Quantity, if known);
  - (c) the ETA at the Discharge Port;
  - (d) Vessel/charterer's agent at the Discharge Port; and
  - (e) Demurrage rate for the voyage.
- 3.4 Buyer shall give notice accepting or rejecting any Vessel nomination within twenty four (24) hours after receipt of such nomination, but shall not reject any nomination unreasonably.
- 3.5 Notwithstanding the above, in the event Neste Corporation or any of its Affiliates is Buyer under the Agreement, the following is applicable:
- (a) all Vessels which are nominated or substituted are subject to acceptance by Neste Ship Vetting, which may include an onboard Vessel inspection. Neste Ship Vetting will accept or reject any vessel within twenty four (24) hours after receipt of all information asked for in the ship questionnaire filled out by the Vessel management company in [www.SIS3ng.com](http://www.SIS3ng.com) and as may be additionally required by Neste Ship Vetting to complete Vessel clearance. Acceptance of a Vessel for a particular voyage shall not constitute continual acceptance or acceptance for any other voyage. Charterer nor Buyer shall be under any liability for rejecting any Vessel for whatsoever reason.
  - (b) Buyer, through Neste Ship Vetting, reserves the right to have any Vessel management company (document of compliance holder as defined in ISM Code) which is managing a nominated or substituted Vessel, to be audited against TMSA 2, best practice guidance, before or during the term of the Agreement.
- 3.6 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 Seller's opinion, to risk its safety or to risk ice damage;
    - (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 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 and/or crew at risk.

3.7 If Seller agrees to direct a Vessel to undertake or to complete the voyage as referred to in this article 3 of Part IV, Buyer undertakes to reimburse Seller, in addition to the price payable under the Agreement, for all costs incurred by Seller in respect of any additional insurance premiums and any other sums that Seller may be required to pay to the Vessel's owner including any sums in respect of any amounts deductible under such owners' insurance and any other costs and/or expenses incurred by Seller.

#### **4. ETA**

4.1 Seller shall arrange for the Vessel to give to Buyer or its representatives the ETA at the Discharge Port at least seventy-two (72) hours before arrival, again at least forty-eight (48) hours before arrival and again at least twenty-four (24) hours prior to arrival, thereafter advising any variation of more than two (2) hours, if possible and practicable.

#### **5. Delivery Point**

5.1 If the Commercial Terms provide a range within which a Delivery Point or Points may be nominated, Seller's approval to each port or Terminal shall be required in writing within one Working Day after any such valid nomination, such approval not to be unreasonably withheld and/or delayed.

5.2 In case of DAT, DAP or DDP delivery, Buyer must send to Seller full written instructions regarding the particulars of the individual Delivery Point or Points which may be required. Buyer shall be liable for all costs and expenses resulting from any delays in unloading the Product hereunder due to failure by Buyer to supply such information in a timely manner.

5.3 Where Buyer exercises any Delivery Point options in accordance with the Commercial Terms and available to Seller under the terms of the relevant Charter Party, Buyer shall be liable for any additional costs and expenses incurred by Seller as a result of alternative Delivery Point nomination.

5.4 Buyer shall have the right to shift the Vessel from one safe Berth to another within the Delivery Point. All costs and expenses, including damages for delay, shall be borne by Seller if such shifting is due to reasons attributable to Seller and/or the Vessel and shall otherwise be borne by Buyer.

5.5 The Vessel shall not be obligated to lighter at the Delivery Point, but if any lightering shall be undertaken at the request of Buyer the costs and expenses thereof shall be borne by Buyer and all time expended in connection with such lightering shall count as running hours for the purposes of calculating demurrage under the applicable provisions of the Agreement.

5.6 Any lightering operations shall be carried out in accordance with the procedures set out in the International Chamber of Shipping / Oil Companies International Maritime Forum Ship-to-Ship Transfer Guides. The lightering Vessel is subject to Seller's prior written acceptance.

5.7 Except in the event as described in article 5.5 of Part IV, all time used for lightering shall be counted or included in calculating the time taken by Buyer to discharge the Vessel or the time in respect of which 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.

5.8 Except in relation to any lightering carried out at the request of and for the purposes of Seller, any lightering operation carried out shall be at Buyer's risk and Buyer shall be liable to Seller in respect of any losses, costs, damages and proceedings arising there from and shall indemnify Seller in respect thereof. This Section shall not be included in respect of shifting as stated in article 5.4 of Part IV.

5.9 All dues and other charges on Seller's Vessel at the Delivery Point, other than those defined by Worldscale as being for the Vessel owners' account, shall be borne by Buyer.



## 6. Laytime and Demurrage

- 6.1 The nominated Vessel shall arrive at the Discharge Port or area, tender NOR and complete all formalities and shall be in all respects ready for discharging.
- 6.2 For the discharge of each shipment Buyer shall provide free of charge to Seller a Berth to be indicated by Buyer or its representative at which the Vessel can when fully laden safely reach and leave and where she can always lie safely afloat. Buyer shall indemnify and hold Seller harmless in respect of any damages or losses suffered by Seller or in respect of any claim to which Seller is exposed by reason of any breach of this article 6.2 of Part IV.
- 6.3 Any time taken during the discharge used for oil washing and/or stripping of cargo tanks and lines (except for that used to comply with Marpol Regulations) shall count against Laytime, or if already on demurrage, for demurrage.
- 6.4 The Laytime allowance shall be the allowance as specified in the Commercial Terms, prorated in case of part cargo. In the event no allowance is agreed upon in the Commercial Terms, the Laytime allowance shall be fifty percent (50%) of the Laytime time provided in the governing Charter Party.
- 6.5 Time allowed shall commence Berth or no Berth, six (6) hours after NOR to discharge is tendered in writing to Buyer or its representative by the master of the Vessel or his representative or when the Vessel is securely moored at the Berth or other discharging place, whichever occurs first.
- 6.6 In the event that nominated Vessel is to discharge Product purchased by Buyer from Seller in addition to other cargoes at the same Discharge Port, but in different Berths, then, in addition to the time counted under article 6.8 of Part IV, time allowed for discharging such part cargo shall count:
  - (a) if Buyer's Terminal or Berth be the first Terminal or Berth at which the Vessel commences discharge, upon the Vessel being made all fast at Buyer's Terminal or Berth; or
  - (b) if Buyer's Terminal not be the first Terminal or Berth for which the Vessel commences the discharge, when hoses disconnected and vessel is ready to leave, except for those provisions set out in article 6.8 of Part IV.
- 6.7 In case nominated Vessel discharges Product purchased by Buyer from Seller in addition to other cargoes at the same Berth, the time allowed for discharging Buyer's part cargo, in addition to the time counted under article 6.8 of Part IV, shall start counting when discharge of Buyer's part cargo has actually commenced, unless the Vessel is prevented from commencing discharge due to reasons directly attributable to Buyer and/or Buyer's Terminal, in which case such delay shall count as Laytime. Time consumed between the Vessel being made fast at the Berth and the commencement of discharge of the first parcel shall be prorated proportionately to the percentage of cargo due to Buyer against the total cargo on board.
- 6.8 Time consumed by the Vessel awaiting first Berth, except for the first six (6) hours, shall be prorated proportionately to the percentage of cargo due to Buyer against the total cargo on board.
- 6.9 In the event that NOR is given by Vessel before the agreed Laydays, insofar Laydays have been agreed in the Commercial Terms, time allowed shall commence at 0600 hours of the first day of such Laydays, or upon berthing, whichever occurs first.
- 6.10 Period of time for discharging the cargo shall cease upon disconnection of the discharging hoses.
- 6.11 Time shall not count against Laytime or, if the Vessel is on demurrage, for demurrage when spent or lost:
  - (a) on an inward passage, including awaiting daylight, tide, opening of locks, pilot, or tugs and moving from anchorage, even if lightering has taken place at the anchorage, until the Vessel is securely moored at the Berth or other loading or discharging place specified by charterers;
  - (b) due, whether directly or indirectly, to breakdown, inefficiency or other cause attributable to the Vessel and/or owners;
  - (c) as a result of a labor dispute, or strike, involving master, officers or crew of the Vessel or tugs or pilot;



- (d) in, or in connection with, the handling of ballast unless this is carried out concurrently with loading or discharging such that no loss of time is involved; or
- (e) in cleaning tanks, pumps and pipelines.

- 6.12 Any delay(s) arising from a Force Majeure Event shall, provided always that the cause of the delay(s) was not within the reasonable control of charterers or Vessel owners or their respective servants or agents, count as one half (1/2) Laytime or, if the Vessel is on demurrage, at one half (1/2) of the demurrage rate.
- 6.13 Seller warrants that Vessel shall be capable of discharging a full cargo within twenty-four (24) hours or maintaining an average pressure of one hundred (100) P.S.I. (or seven (7) bar) at the Vessel's rail, receiving facilities permitting. Any claim for demurrage which can be attributed to any failure by Seller according to this article shall be calculated according to pumping performance formula as indicated below.

PUMPING PERFORMANCE FORMULA:

$$Q2 = Q1 \times \sqrt{H2 / H1}$$

Where:

Q1 = average discharge rate achieved by the Vessel during bulk discharge.

H1 = the average pumping pressure achieved by the Vessel during bulk discharge as measured.

H2 = the pumping pressure warranted in the Charter Party or lower maximum pressure required by the Terminal.

Q2 = the discharge rate that would be achieved at the pumping pressure, H2.

- 6.14 In the event that cargo is not discharged within the time allowed, Buyer shall pay demurrage to Seller for the time in excess at the appropriate rate per day or pro rata. The rate shall be that specified in the applicable Charter Party. Seller shall present any demurrage claim to Buyer within ninety (90) days from the date of Completion of Discharge (counted as day zero (0)) failing which the claim shall be deemed waived by Seller and time-barred.
- 6.15 In absence of a Charter Party, Seller will inform Buyer of the applicable demurrage rate for this single voyage.



## PART V: EX TANK, INTO TANK, IN SITU, FIP

### Applicability

If a transaction is designated as "Ex Tank", "Into Tank", "In Situ" or "FIP" in the Commercial Terms, the terms of the transaction shall be Ex Tank, Into Tank, In Situ or FIP respectively, subject to this Part.

### 1. Nominations

- 1.1 In case of delivery Ex Tank or Into Tank, nominations shall be made in accordance with the standard operating procedures of the relevant storage company (ies).
- 1.2 In case of delivery free into pipeline ("FIP"), nominations shall be made in accordance with the standard operating procedures of the relevant pipeline operating company (ies).

### 2. Inspection and measurement

- 2.1 Product to be supplied under the Agreement shall be of the Quantity and Specifications as agreed upon in the Commercial Terms. Determination of the Product's Quantity and Quality shall be carried out in accordance with the industry practice at the time of delivery at the Load Port (in case of delivery by Vessel) or Delivery Point (in case of delivery by another mode of transport).
- 2.2 In case of deliveries Ex Tank sampling shall be undertaken at the tank manifold exit point.
- 2.3 In case of delivery Into Tank sampling shall be undertaken at the tank inlet valve.
- 2.4 In case of delivery FIP, unless otherwise specifically agreed between the parties and set out in the Commercial Terms, no independent inspection is required.
- 2.5 In case of delivery Ex Tank or Into Tank, Buyer may appoint an independent inspector at the storage facility(ies), subject to the prior agreement of the relevant storage company(ies) having been obtained. Such appointment shall be notified in writing to Seller. However, except with the specific prior written agreement of Seller, all charges in respect thereof shall be for Buyer's account and the duties of such inspector shall be considered solely as a service to Buyer.

### 3. Title and Risk

- 3.1 Risk and property in the Product delivered under the Agreement shall pass to Buyer in case of delivery:
  - (a) FIP, as Product passes the inlet flange of Buyer's receiving pipeline system; or
  - (b) Ex Tank, as Product passes the outlet flange of Seller's storage tank from which the Product is being delivered; or
  - (c) Into Tank, as Product passes the inlet flange of Buyer's receiving storage tank; or
  - (d) In Situ, at such time and day and in such tank(s) as specified in the Commercial Terms.



## PART VI: BARGE DELIVERIES

### Applicability

The terms and conditions of Part I, Part II and Part III shall apply, where appropriate, except as specified elsewhere in this Part VI. In case such terms and conditions of Part I, Part II and Part III shall apply, where appropriate, the term Vessel should be interpreted as Barge where applicable.

### 1. Nominations in respect of FOB deliveries

- 1.1 Buyer must give two (2) Rotterdam business days pre-notice (day of reception of nomination is counted as day zero (0)) (and to be renewed for each substitution and/or amendment) by e-mail or fax.
- 1.2 Nominations to be given during working hours which for this article shall be deemed to be on Central European Time (CET) from Monday through Thursday between 9:00 a.m. and 3:00 p.m., and on Friday between 9:00 a.m. and 2:00 p.m. Nominations received after the above deadline shall be deemed to have arrived on the following Rotterdam business day at 9:00 a.m. Any substitution or any change in the nomination will be treated as a new nomination. For purposes of this Part VI, a "Rotterdam business day" is any working day, not being a holiday in Rotterdam, the Netherlands.
- 1.3 Nomination of Barge to be received by Seller which must contain full details of:
  - (a) Barge's name and registration number;
  - (b) ETA;
  - (c) Quantity and Quality of Product;
  - (d) Destination;
  - (e) Barge chartering company's name; and
  - (f) Previous cargo.
- 1.4 The Barge, or the Barge substitution, shall at all times be subject to acceptance by Seller whose acceptance shall not be unreasonably withheld or delayed.
- 1.5 Failure to comply with above-mentioned requirements may result in waiting time. Seller shall not be held responsible for any cost/consequences resulting from any such delays, unless the reason is solely attributable to Seller.

### 2. Nominations in respect of CFR and CIF deliveries

- 2.1 Seller must give two (2) Rotterdam business days pre-notice (day of reception of nomination is counted as day zero (0)) (and to be renewed for each substitution and/or amendment) by email or fax.
- 2.2 Nominations to be given during working hours which for this article shall be deemed to be on Central European Time (CET) from Monday through Thursday between 9:00 a.m. and 3:00 p.m., and on Friday between 9:00 a.m. and 2:00 p.m. Nominations received after the above deadline shall be deemed to have arrived on the following Rotterdam business day at 9:00 a.m. Any substitution or any change in the nomination will be treated as a new nomination.
- 2.3 Nomination of Barge to be received by Buyer which must contain full details of:
  - (a) Barge's name and registration number;
  - (b) ETA;
  - (c) Quantity and Quality of Product;
  - (d) Load Port/destination;
  - (e) Barge chartering company's name; and



(f) Previous cargo.

- 2.4 The Barge, or Barge substitution, shall at all times be subject to acceptance by Buyer whose acceptance shall not be unreasonably withheld or delayed.
- 2.5 Failure to comply with above-mentioned requirements may result in waiting time. Buyer shall not be held responsible for any cost/consequences resulting from any such delays, unless the reason is solely attributable to Buyer.

### **3. Laytime for loading, prorated in case of part cargo**

- 3.1 According to Tankschiff Transport Bedingungen rules. Demurrage rate will be according Barge owner's rate but not to exceed market rate.

### **4. Laytime seagoing Barge**

- 4.1 Laytime for seagoing Barges is six (6) hours' notice time unless sooner berthed.
- 4.2 Laytime for loading shall be as follows:
- (a) 01 - 3000 metric ton = 150 metric ton per hour, with always a minimum of 12 hours.
  - (b) 3001 - 6000 metric ton = 250 metric ton per hour, with always a minimum of 20 hours.
  - (c) 6001 - 10000 metric ton = 300 metric ton per hour, with always a minimum of 24 hours.
- 4.3 Demurrage rate shall in any case always be limited to a maximum of eighteen thousand US Dollars (US\$ 18,000) per day prorated.

### **5. Demurrage**

- 5.1 Demurrage will be payable in accordance with Tankschiff Transport Bedingungen rules.
- 5.2 Specific demurrage rules in respect of FOB Deliveries:
- 5.2.1 The Barge validity tendered NOR prior to 24.00 hours on the nominated loading date.
  - 5.2.2 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 earlier.
  - 5.2.3 If the Barge tenders NOR after the nominated ETA, but within the Laydays specified in the Commercial Terms, Seller will try to arrange to berth such Barge as soon as possible upon its arrival and Seller's demurrage liability shall not commence until commencement of loading; and the demurrage claim has been submitted to Seller in writing within thirty (30) days of the alleged occurrence (counted as day zero (0)), stating in reasonable detail specific facts upon which the claim is based. Owner's calculation and owner's invoice shall be attached together with supporting documents.



## PART VII: LETTER OF INDEMNITY

[date]

Dear Sirs,

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

In consideration of your making payment of US dollars [US DOLLAR AMOUNT] for the Product in accordance with the Agreement and having agreed to accept delivery of the cargo without having been provided with [HERE INSERT THE RELEVANT DOCUMENTS AS SET OUT IN THE AGREEMENT] ("the Documents"), we hereby represent and warrant all of the following:

- (i) the existence and validity of the Documents;
- (ii) that we are entitled to possession of the Documents;
- (iii) that we were entitled to possession of the Cargo;
- (iv) that we had good title to the Cargo; and
- (v) that title in the Cargo has been passed as provided in the Agreement to you free of all liens, charges or encumbrances of whatever kind.

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

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

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

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

Signed by: ..... Title: ..... of: [COMPANY NAME]





## PART VIII: DOCUMENTARY LETTER OF CREDIT

### Format of Irrevocable Documentary Letter of Credit

Please urgently advise [Seller] / [Seller's details] that we hereby issue our Irrevocable Documentary Letter of Credit number ..... in their favour for account of ..... for an amount of [US Dollars] [in words] ..... plus or minus 10% available at our counters ..... days [from/after] the [bill of lading] [Completion of Discharge] date ([bill of lading] [Completion of Discharge] date to count as day [one/zero]) against presentation of the following documents in one original and ..... copies unless otherwise stated:

1. Commercial invoice including VAT amount (if any);
2. In case of FOB/CFR delivery:
  - (a) 3/3 clean original bills of lading issued or endorsed to the order of Buyer or Buyer's bank (as the case may be); and
  - (b) original Certificate(s) of Quantity and Quality.
3. In case of CIF delivery:
  - (a) 3/3 clean original bills of lading issued or endorsed to the order of Buyer or Buyer's bank (as the case may be); and
  - (b) original Certificate(s) of Quantity and Quality; and
  - (c) original certificate of insurance.
4. In case of EXW, FCA, DAT, DAP or DDP delivery, original certificate(s) of Quantity and Quality.

Evidencing shipment of ..... tons +/- 10 % of ..... FOB/CFR/CIF/EXW/FCA/DAT/DAP/DDP ..... between ..... and ..... (both dates inclusive).

Price Clause [insert text of pricing article as set out in the Commercial Terms]

This credit expires on .....

[In the case of delivery FOB/CFR/CIF only:] In the event that the above documents are unavailable on the payment due date, payment will be made against document number 1 above and an indemnity issued by beneficiary/Seller in the following format:-

QUOTE

To:

[Insert text of letter of indemnity as per Part VII]

UNQUOTE

We hereby undertake that payment, by the method specified by this letter of credit, will be duly made against documents presented in conformity with this letter of credit.

### 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. [In the case of delivery FOB/CFR/CIF only] Charter Party 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.
3. Documents presented later than twenty-one (21) days after the Bill of Lading Date but within the validity of this credit are acceptable.
4. Transshipments [allowed/prohibited].
5. Partial shipments [allowed/prohibited].
6. Photocopies in lieu of copy documents acceptable.
7. If the payment due date falls on a Saturday, or on a day that is not a Working Day, payment shall be made on the last Working Day prior to such payment due date. If the payment due date falls on a Sunday, payment shall be made to Seller on the next Working Day after such payment due date.
8. Commercial invoice based on preliminary price is acceptable. Any adjustment between the preliminary and final price can be claimed separately against copy of final invoice only.
9. E-mail and fax invoice and indemnity acceptable.
10. All bank charges are for the account of the applicant.
11. This letter of credit and any non-contractual obligations arising out of or in connection with it, including any question regarding its existence, validity or termination, shall in all respects be governed by and construed in accordance with the laws of England, to the exclusion of its conflict of law rules. The parties irrevocably agree that this letter of credit shall be subject to the exclusive jurisdiction of the English courts.
12. Typographical and spelling errors shall not constitute a discrepancy unless with regard to quantity or amount.
13. Except as otherwise expressly stated herein, this letter of credit is subject to Uniform Customs and Practice for Documentary Credits Revision 2007, (ICC Publication No. 600).
14. Unpaid portion of VAT can be claimed separately against copy of invoice only.
15. [For floating price agreements only:] The amount of this credit may escalate/de-escalate in accordance with the above mentioned price clause and/or VAT amount charged (if any) without any further amendment on our part.



## PART IX: STANDBY LETTER OF CREDIT

### Format of Standby Letter of credit

Irrevocable Standby Letter of Credit No .....

Applicant [name(s) and address (es)]

Beneficiary [name(s) and address (es)]

At the request of the above applicant, and for its account, we [name and address of bank] hereby open in your favor our irrevocable standby letter of credit No .....

This stand-by letter of credit is for an amount of [amount in figures/words] and is available for payment at our counters at sight against the following documents:

1. Copy of unpaid invoice including VAT amount if any.
2. Beneficiary's written demand certifying that "the [name of Applicant] has failed to perform its obligation to pay to [name of Beneficiary] an amount of [the amount of claim] in accordance with the terms of the Agreement in respect of invoice number ..... which is legally and properly past due".

Covering: [Details of the Agreement] (the "Agreement")

Multiple drawings are permitted.

The expiration of this letter of credit is .....

We hereby agree with you that presentation of the documents in compliance with the terms of this standby letter of credit will be duly honored on presentation to us no later than the expiry date of this credit.

### Special Conditions:

1. All bank charges are for the account of the Applicant.
2. Above mentioned documents presented by fax acceptable.
3. 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.
4. The construction, validity and performance of this letter of credit shall be governed by and construed in accordance with English law.
5. 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)]
6. Photocopies in lieu of copy documents acceptable.
7. Transshipments [allowed/prohibited].
8. Partial shipments [allowed/prohibited].
9. Commercial invoice based on preliminary price is acceptable. Any adjustment between the preliminary and final price can be claimed separately against copy of final invoice only.
10. Typographical and spelling errors shall not constitute a discrepancy unless with regard to quantity or amount.



11. [In the case of delivery FOB/CFR/CIF only:] Charter Party 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.
12. [For floating price agreements only:] The amount of this credit may escalate/de-escalate in accordance with the above mentioned price clause and/or VAT amount charged (if any) without any further amendment on our part.



## PART X: ISPS CODE

### 1. Applicability

Where applicable, the ISPS Code shall apply.

### 2. FOB Provisions

- 2.1 Buyer shall procure that Buyer, Vessel and Vessel's owner shall comply with the requirements of ISPS Code and where the Load Port is within the USA and USA territories or waters or voyage is passing through USA waters, with the MTSA.
- 2.2 The Vessel shall when required submit a Declaration of Security (DoS) to the appropriate authorities prior to arrival at the Load Port.
- 2.3 Notwithstanding any prior acceptance of the Vessel by 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 MTSA:
  - (a) Seller shall have the right not to berth such nominated Vessel and any demurrage resulting shall not be for the account of Seller.
  - (b) Buyer shall be obliged to substitute such nominated Vessel with a Vessel complying with the requirements of the ISPS Code and MTSA and with the articles above.
- 2.4 Seller shall procure that the Load Port/Terminal/installation shall comply with the requirements of the International Code for the Security of Ships and of Port Facilities and the relevant amendments to Chapter XI of SOLAS (ISPS Code) and if located within the USA and USA territories, with the MTSA.
- 2.5 Subject always to article 2.6 of Part X, any direct costs or expenses in respect of the Vessel including reasonable demurrage at market rate or any additional charge, fee or duty levied on the Vessel at the Load Port and actually incurred by Buyer resulting directly from the failure of the Load Port/Terminal/installation to comply with the ISPS Code and if located within the USA and USA territories, with the MTSA, shall be for the account of 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 MTSA.
- 2.6 Save where the Vessel has failed to comply with the requirements of the International Code for the Security of Ships and of Port Facilities and the relevant amendments to Chapter XI of SOLAS (ISPS Code) and within the USA and USA territories or waters, with the MTSA, Seller shall be responsible for any reasonable demurrage at market rate actually incurred by Buyer arising from delay to the Vessel at the Load Port 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.
- 2.7 If the Load Port is not operated by Seller, Seller's liability to Buyer hereunder for any demurrage, costs, losses or expenses incurred by the Vessel, the charterers or the Vessel owners resulting from the failure of the Load Port/Terminal/installation to comply with the ISPS Code or MTSA shall be limited to the payment of demurrage, costs, losses or expenses that 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. Seller shall, however, use commercial efforts so to recover from its supplier or other relevant third party.

### 3. CIF/CFR/EXW/FCA/DAT/DAP/DDP Provisions

- 3.1 Seller shall procure that Seller, Vessel and Vessel owner shall comply with the requirements of the ISPS Code and if the Discharge Port is located within the USA and US territories or waters or voyage is passing through USA waters, with the MTSA.
- 3.2 The Vessel shall when required submit a Declaration of Security (DoS) to the appropriate authorities prior to arrival at the Discharge Port.



- 3.3 Notwithstanding any prior acceptance of the Vessel by Buyer, if at any time prior to; the arrival of the Vessel at the Discharge Port the Vessel ceases to comply with the requirements of the ISPS code or MTSA:
- 3.3.1 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 Buyer.
- 3.3.2 Seller shall be obliged to substitute such nominated Vessel with a Vessel complying with the requirements of the ISPS Code and MTSA and with the articles above. If title and risk to the cargo on board the Vessel subsequently substituted pursuant to article 3.3.1 of Part X has already passed to Buyer, such title and risk shall be deemed to have reverted to Seller.
- 3.4 Buyer shall procure that the Discharge Port/Terminal/installation shall comply with the requirements of the International Code for the Security of Ships and of Port Facilities and the relevant amendments to Chapter XI of SOLAS (ISPS Code) and if located within the USA and US territories, with the MTSA.
- 3.5 Subject always to article 3.6 of Part X, any direct costs and expenses in respect of the Vessel including reasonable demurrage at market rate or any additional charge, fee or duty levied on the Vessel at the Discharge Port and actually incurred by Seller resulting directly from the failure of the Discharge Port/Terminal/installation to comply with the ISPS Code and if located within the USA and US territories, with the MTSA shall be for the account of Buyer, including 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 MTSA.
- 3.6 Save where the Vessel has failed to comply with the requirements of the International Code for the Security of Ships and of Port Facilities and the relevant amendments to Chapter XI of SOLAS (ISPS Code) and within the USA and US territories or waters, with the MTSA, Buyer shall be responsible for any reasonable demurrage at market rate actually incurred by Seller arising from delay to the Vessel at the Discharge Port 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.
- 3.7 If the Discharging Terminal is not operated by Buyer or an Affiliate of Buyer, Buyer's liability to Seller under the Agreement for any costs, losses or expenses incurred by the Vessel, the charterers or the Vessel's owner resulting from the failure of the Discharge Port/Terminal/installation to comply with the ISPS Code or MTSA shall be limited to the payment of demurrage, costs, losses or expenses that 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. Buyer shall, however, use commercial efforts so to recover from its supplier or other relevant third party.

