

**ABU DHABI NATIONAL OIL COMPANY (ADNOC) P.J.S.C.**  
**GENERAL TERMS AND CONDITIONS FOR THE SALE OF PRODUCT IN CONTAINERS JANUARY 2023 EDITION**

**1. INTERPRETATION**

1.1 References to “Contract” in these General Terms and Conditions shall mean these General Terms and Conditions together with the Sales Confirmation and its Annexes. Unless otherwise defined, capitalised words and expressions in these General Terms and Conditions shall have the same meanings as are assigned to them in the Sales Confirmation.

**2. SALE AND PURCHASE OF PRODUCT**

2.1 Subject to all the terms and conditions of this Contract, Buyer shall purchase from Seller, take delivery of, and pay for, and Seller shall sell and deliver to Buyer the Quantity of Product during the Shipment Period at the Price and under the specified terms set forth in this Contract.

**3. QUALITY AND QUANTITY**

3.1 Seller gives no warranty of merchantability, satisfactory quality or suitability of any Product for any particular purpose, even if the purpose is known to Seller or given in specific or general statements recommended by Seller such as the data sheet; any advice rendered by Seller is given to the best of Seller’s knowledge, but shall be non-binding and shall not relieve Buyer from undertaking its own investigations and tests in respect of suitability of the Product for the purpose intended by Buyer. Product images and samples are for illustrative purposes only. Buyer shall refer to product listings for specifications and tolerances.

3.2 All statutory or other conditions or warranties express or implied, with respect to the description or satisfactory quality of the Product or their fitness for any particular purpose or otherwise, including Sections 13, 14 and 15 of the Sale of Goods Act 1979 are excluded from this Contract to the extent permissible by law.

3.3 Any claim as to the deficiency of quantity or of variation of quality of the Product shall only be admissible if it is notified in writing to Seller within sixty (60) Business Days of the completion of discharge and if such a claim is accompanied by evidence fully supporting the complaint. Notwithstanding the foregoing, no claim shall be admitted in respect of any deficiency of quantity where the difference between the loaded and discharged quantity is 0.5% of the loaded quantity or less. For the purposes of the Contract, Business Days shall mean any Day of the year other than a Saturday, Sunday or a public or bank holiday in New York City, U.S.A.

3.4 Partial shipment or delivery shall be permitted.

**4. TITLE, RISK AND RETENTION OF TITLE**

4.1 Subject to Clause 4.24.2, title and risk in the Product shall pass from Seller to Buyer upon delivery and in accordance with the relevant Incoterms for the applicable Delivery Basis.

4.2 Title to the Product shall only pass from Seller to Buyer in accordance with Clause 4.1 following receipt by Seller of payment of the Price in full.

**5. PAYMENT**

5.1 No payment shall be deemed to have been received until Seller has received cleared funds, properly evidenced by the Buyer sending to Seller an official bank advice/swift transfer copy. Payments shall be made without any deduction for set-off, counterclaim, discount, abatement, bank charges withholding in respect of tax (if required by applicable law) or otherwise unless with the prior written agreement of Seller.

5.2 Failure to make any payment on its due date shall entitle Seller to late payment charges on any unpaid sums at the rate of 12% per annum from the payment due date until the date when full payment is received by Seller, notwithstanding the termination of this Contract for any cause whatsoever.

5.3 In the event that the parties have agreed for advance payment terms to apply, where the Buyer fails to make an advance payment, Seller shall be under no obligation to deliver the product to the Buyer.

5.4 Any down payment received by Seller is not refundable. In case Buyer fails to make payment of the remainder of the purchase price when due, Seller reserves the right to terminate this Contract and repossess the Product without refund. Buyer agrees that the down payment is a reasonable pre-estimate Seller would suffer in the event of termination of this Contract.

5.5 Whenever any payment to be made under the Contract shall occur on a non-Banking Day, other than a Sunday, such payment shall be made on the preceding Banking Day and such preceding Banking Day shall be the due date for such payment. Whenever any payment to be made under the Contract shall occur on a Sunday, such payment shall be made on the succeeding Banking Day and such succeeding Banking Day shall be the due date for such payment. Whenever any payment to be made under the Contract shall occur on a Sunday and the succeeding Monday shall also be a non-Banking Day, such payment shall be made on the preceding Banking Day and such preceding Banking Day shall be the due date for such payment.

5.6 Notwithstanding any agreed payment term, if Seller has reasonable grounds to doubt Buyer’s ability to make payment when due, Seller may, in its sole and absolute discretion, require from Buyer advance payment or the provision of security to assure payment, in each case, in a form and in the amount as reasonably required by Seller (“**Performance Assurance**”). Seller’s shipment or delivery of Product prior to Buyer providing Seller advance payment or security under this Clause 5.6 shall not operate as a waiver of Seller’s rights under this Clause 5.6 immediately or any time prior to payment.

**6. DUTIES AND TAX**

6.1 **Buyers Responsibilities:** Buyer shall be liable for all duties, taxes, imposts, levies, wharfage, landing fees and other port and marine service charges imposts, fees, and dues of every description imposed or levied by any Governmental Authority or port authority in relation to the Product delivered, its export including the delivery, transportation, ownership, sale or use after the delivery point.

6.2 **Seller's Responsibilities:** Seller shall be liable for all duties, taxes, imposts, levies, wharfage, landing fees and other port and marine service charges imposts, fees, and dues of every description imposed or levied by any Government Authority or port authority in relation to the Product at any stage before the delivery point.

**Value Added Tax**

6.3 The consideration payable in respect of any supplies made under this Contract (the "Consideration") is exclusive of value added tax ("VAT").

6.4 Where VAT is or becomes applicable to any supplies made or provided by Seller under this Contract, Seller shall be entitled to charge VAT in addition to the Consideration. The VAT for such supply will be calculated as follows:

$$A \times R$$

Where: A is the Consideration payable for the supply; and R is the applicable rate of VAT under the VAT Law

6.5 If Seller charges VAT pursuant to Article 6.4 above, Seller shall:

- (a) include the VAT amount as an additional line item in the applicable invoice for the payment of the supply (or, if such invoice was issued without VAT, in a separate tax invoice in accordance with the VAT Law);
- (b) provide to Buyer information that may be reasonably required to establish Seller's liability for VAT under the relevant VAT Law; and
- (c) do such things and provide such information and documents as may reasonably be required by Buyer to enable Buyer to claim an input tax credit under the VAT Law.

**7. SHIPMENT NOTICE**

7.1 Without any undue delay Seller shall provide the Buyer with written notice of: (a) the shipping marks and numbers (if applicable); (b) the name of the vessel upon which the Product was shipped (if applicable or known); (c) the estimated time of arrival of the Product at the destination port (if applicable or known); (d) the date and number of any bill(s) of lading, waybill(s), cargo receipt(s) or any document(s) similar to any of the foregoing (if applicable); (e) the port of loading; (f) the port of discharge (if applicable); (g) details of when and where the empty containers have to be returned and details of the amount of free time and the applicable container demurrage and/or detention rate(s) (where applicable and if known); (h) details of any applicable tariffs, charges, surcharges, customs duties and other charges assess or levied on the Product or the containers including any terminal handling charges or storage charges at the destination port (if applicable); (i) signed certificates of quality, quantity, and, if requested by Buyer, certificates of origin; (j) in respect to CIF and CFR sales only, details of the insurance procured for the shipment; and (k) in respect of FCA sales only, the estimated date that the stuffed and sealed containers will be ready for collection from the port of loading.

**8. LIMITATION OF LIABILITY**

8.1 Except as specifically provided in this Contract, in no event, including the negligent act or omission on its part, shall either Party be liable to the other, whether under this Contract or otherwise in connection with it, in contract, tort, breach of statutory duty or otherwise, in respect of any indirect or consequential losses, expenses, loss of anticipated profits, or commercial opportunities, whether or not foreseeable.

8.2 Seller shall not be liable to Buyer for any loss because Buyer failed to follow Seller's written or oral instructions as to storage and use of the Product, or good trade practice regarding the same;

8.3 Seller's accumulated liability for each delivery for whatever reason, including, but not limited to, delays, defect, non-conformance with descriptions and shortfall shall, at the option of Seller, be limited to, at Seller's absolute discretion, either an exchange of the Product or a refund of the invoiced amount; and

8.4 Seller shall not be liable to Buyer for any indirect or consequential loss, damage, costs or expenses; loss of profit, loss of business, loss of goodwill; loss of production, loss of use; or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with this Contract.

**9. FORCE MAJEURE**

9.1 Seller reserves the right to defer the Shipment Period, terminate this Contract or reduce the Quantity of the Product ordered, if performance of this Contract by Seller is prevented or made unreasonably burdensome due to circumstances beyond the reasonable control of Seller, or due to natural disaster, act of God, war or national emergency, embargo, acts of terrorism, protests, riot, fire, explosion, accidents, break-down of plant or machinery, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either Party's workforce), energy or transport restrictions, restraints or delays, affecting Seller or carriers for or suppliers to Seller ("**Force Majeure Event**").

9.2 Neither Party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from a Force Majeure Event. If the period of delay or non-performance continues for six months, the Party not affected may terminate this Contract by giving fifteen Business Days' written notice to the affected Party. Nothing in this clause shall excuse Buyer from its obligation to pay any sums due under this contract including but not limited to the Price. In particular, any sums accrued due or payable prior to the termination of this contract shall remain payable in accordance with the contract.

**10. DEFAULT**

10.1 A Party shall have the right to terminate this Contract with immediate effect upon written notice to the other Party in the event:

- (a) Buyer fails to (i) make any payment due in full and punctually by the due date; (ii) if payment is by letter of credit, open the letter of credit in accordance with the deadline; or (iii) provide such Performance Assurance in accordance with Clause 5.6, and in each case, does not correct such failure within five Business Days of notice being given by Seller of such breach;

- (b) the other Party is declared insolvent or bankrupt by any court of competent jurisdiction, suspends its payments, makes voluntary petition of bankruptcy, or the equivalent thereof is filed in any court of competent jurisdiction against such other Party; or
- (c) the other Party makes or executes an assignment for the benefit of creditors or the equivalent;
- (d) a material breach is made by the other Party in the due observance or performance of any covenant, agreement or condition of that Party hereunder and such material breach has not been rectified within five Business Days after notice thereof to the defaulting Party; or
- (e) a change of Control of the other Party occurs, save where it is a transfer of Control to an entity which is itself subject to the direct or indirect Control of an entity that currently has direct or indirect Control of the Defaulting Party. For the purposes of this paragraph (e), "**control**" means the ability to direct the activity of a corporation or an entity, excluding an ability deriving merely from holding an office of director or another office in the corporate or entity, and a person shall be presumed to control a corporation or entity if that person holds half or more of a certain type of means of control of that corporation or entity.

10.2 Seller may (without prejudice to its other rights) at its sole discretion suspend deliveries hereunder until further notice if Buyer fails to (a) make any payment due to Seller under this Contract in full and punctually; or (b) if payment is by letter of credit, open the letter of credit in accordance with the deadline.

10.3 Seller may terminate this Contract by written notice at its sole discretion in the event Buyer is in breach of its confidentiality obligation under Clause 1111.8.

10.4 Any termination of this Contract in accordance with this Clause 10 shall be without prejudice to any rights, obligations or liabilities of either Party.

## 11. MISCELLANEOUS

11.1 **Interpretation:** A reference to a Party or to any other person includes a reference to its successors, permitted transferees and assigns.

11.2 **Entire Agreement:** This Contract constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements between the Parties with respect to such subject matter.

11.3 **No Waiver:** Failure or delay by Seller in enforcing or partially enforcing any provision of this Contract will not be construed as a waiver of any of its rights under this Contract. Any waiver by Seller of any breach of, or any default under, any provision of this Contract by Buyer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of this Contract or prevent any further or exercise of any other right or remedy.

11.4 **Variation:** Any variation to this Contract shall have no effect unless expressly agreed in writing and signed by an authorised representative of the Parties.

11.5 **Notices:** All notices and communications between the Parties in respect of this Contract must be in writing. Such notices and communications may be serviced by hand delivery, mail or courier to the address set out in this Contract or as notified in advance by a Party to the other. Such notices shall be deemed to have been made as follows: (a) if by mail, the fifth day after it was posted; (b) if by courier or hand delivery, if delivered before 1600 hours in the city of the recipient, on that day, otherwise the next day; and (c) if by email or fax, if delivered before 1600 hours in the city of the recipient, on that day, otherwise the next day provided that in each case, the sender does not receive a message delivery failure.

11.6 **Third Party Rights:** A person who is not a party to this Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract.

11.7 **Assignment:** Buyer may not assign, transfer, charge or deal in any other manner with this Contract or any of its rights under it, nor purport to do any of the same, without having obtained the prior written consent of Seller. Seller may assign or subcontract all rights and obligations under this Contract without the consent of Buyer.

11.8 **Confidentiality:** Buyer shall keep any information regarding this Contract, including the price, technical information of the Product, and any other information which is designated as confidential by Seller, confidential and shall use it only for the purpose of this Contract. This provision shall survive the termination of this Contract.

11.9 **Partial Invalidity:** If any of the provisions of this Contract is or becomes invalid, illegal or unenforceable, the validity of the remaining provisions shall not be in any way affected or impacted.

11.10 **Compliance with laws:** The laws, rules and regulations issued and revised from time to time by the Government of the United Arab Emirates and Abu Dhabi shall apply to the shipment or delivery of the Product from the United Arab Emirates under this Contract, and the Parties agree to comply with all Applicable Laws in their performance of this Contract.

11.11 For the purposes of these Articles:

"**Sanctioned Territory**" shall mean any country, state, territory or region against which there are Sanctions that target, prohibit, restrict, penalize, or condition the shipment or delivery, as applicable, through or thereto of the Product.

"**Sanctions**" shall mean economic or financial sanctions together with any other law, regulation, order, directive, prohibition or guidance (with the effect of law) imposed by a Sanctions Authority that imposes trade or economic restrictive measures against countries, territories, individuals or entities.

"**Sanctions Authority**" shall mean the Cabinet of the United Arab Emirates Federal Government, the United Arab Emirates Committee for Goods & Materials Subjected to Import & Export Control, the United Nations Security Council (the Council as a whole and not its individual members), the U.S. Department of State, the U.S. Department of Commerce Bureau of Industry and Security, the U.S. Department of the Treasury Office of Foreign Assets Control, the European Union Council and/or Commission (including any present or future member state of the European Union), His Majesty's Treasury of the United Kingdom, and any other applicable government or regulatory body, institution

or agency having similar jurisdiction.

**Destination**

- 11.12 It is a condition of this Contract that the Product purchased and delivered under this Contract shall not be (or not be permitted to be):
- (a) discharged or imported (whether by Buyer or others) directly or indirectly and irrespective of the means of carriage into any destination; or
  - (b) delivered to any person or entity,
- if such discharge, import or delivery is prohibited under the Applicable Laws or Sanctions. Buyer shall keep itself informed as to such Applicable Laws and Sanctions and acknowledges that, at the time of entering into this Contract and during the Shipment Period, it is informed of all such Applicable Laws and Sanctions.
- 11.13 Buyer represents and warrants that none of Buyer, any of Buyer's affiliates, any individual or entity ("**Relevant Person**") acting directly or indirectly for or on behalf of Buyer in connection with this Contract, or any other Relevant Person with a direct or indirect interest or participation in, or direct or indirect control over, any Contract, whether as principal, agent, shipper, ultimate consignee, intermediate consignee, end-user, insurer, source of funding, or otherwise, is:
- (a) subject to or otherwise the target of any Sanctions;
  - (b) directly or indirectly owned or controlled by (in whole or in part), or acting for or on behalf of, any person that is subject to or otherwise the target of any Sanctions.
- 11.14 Buyer undertakes that the Product deliverable hereunder shall not be:
- (a) exported or resold to any Sanctioned Territory;
  - (b) sold or resold or supplied to any person or loaded on board a vessel: (i) organized under the laws of, resident in or operating from any Sanctioned Territory; or (ii) otherwise targeted by Sanctions;
  - (c) sold or resold or supplied to any person or loaded on board a vessel for the purposes of any commercial activity carried out in or from any such Sanctioned Territory; or
  - (d) otherwise dealt in, or with, in a manner which would be a violation of Sanctions.
- 11.15 Where requested by Seller, Buyer shall provide Seller with all appropriate documentation verifying the final destination of the Product purchased and delivered under this Contract within thirty (30) calendar days of the request or within such lesser period as will enable Seller to comply with any requirement or request of any government or authority and shall identify the port(s) of discharge (if applicable), the date(s) of discharge, and the grade and quantity discharged and whether or not the Product delivered has been otherwise sold or disposed of. The obligations of Buyer to comply with the requirements of this Article shall not be affected by any sale or disposal of the Product in question by Buyer.
- 11.16 Within ninety (90) calendar days of the date of the bill of lading or equivalent shipping document of each shipment under this Contract, Buyer shall deliver to Seller a duly certified copy of the official discharge certificate for such cargo in the form required by and acceptable to the Government of the United Arab Emirates and Abu Dhabi.
- 11.17 Within ninety (90) calendar days of confirmation of delivery for each other delivery made hereunder, Buyer shall forward to Seller a duly certified copy of the official discharge certificate for such delivery in the form required by and acceptable to the Government of the United Arab Emirates and Abu Dhabi.
- 11.18 Where, in Seller's sole and absolute discretion, Seller reasonably believes that Buyer has not or may not have complied with this Article, Seller may at its sole discretion and without incurring further liability under this Contract, by written notice to Buyer or orally (with written confirmation to follow):
- (a) terminate this Contract immediately;
  - (b) suspend this Contract or any further delivery of the Product under this Contract until further notice as determined by Seller in its sole and absolute discretion; and / or
  - (c) decline to commence or complete loading of any shipment or delivery of the Product (if applicable).
- 11.19 Where the Seller incurs any losses, liability or expenses arising out of or in connection with the carriage of the Product, as a consequence of the Buyer's failure to comply with this Article or pursuant to Article 11.18:
- (a) the Buyer shall indemnify the Seller for any such losses, liabilities or expenses; and
  - (b) exercise its best endeavours to make any payments due under this Contract, notwithstanding any hindrances to payment; and
  - (c) where the Product has not been delivered to the Buyer, the Seller shall be entitled to exercise a lien on the Product, in respect of any such losses, liabilities or expenses; and
  - (d) if the Buyer does not pay any sums due under sub-clause (a) for any reason (including because payments from the Buyer to the Seller are restricted or otherwise hindered due to Sanctions), the Seller may sell part or all of any Product over which it exercises a lien under sub-clause (c).

This Article 11.19 applies to sales on CFR and CIF terms only.

- 11.20 The rights provided to Seller under this Article shall be without prejudice to Seller's common law rights and other rights under this Contract.

- 11.21 **Trade controls and boycotts:** Buyer agrees to comply with all relevant trade controls, export and re-export controls, embargoes, and applicable laws in a manner in which there is no breach of the aforementioned undertakings of this Article. Notwithstanding anything to the contrary elsewhere in this Contract, nothing in this Contract is intended, and nothing herein should be interpreted or construed, to induce or otherwise require either Party hereto to act or refrain from acting (or agreeing to act or refrain from acting) in any manner which is penalised or prohibited under any laws, regulations, decisions, decrees, ordinances, orders, demands, requests, rules, requirements or other legally binding measures relating to foreign trade controls, export controls, embargoes, or international boycotts of any type, as applicable to such Party.
- 11.22 Nothing in these Articles 11.10 to 11.21 shall be taken to limit or prevent the operation of the English common law doctrine of frustration (including frustration of the adventure or purpose of this Contract).
- 11.23 **Anti-Corruption and Bribery:** Buyer and Seller agree and undertake to each other that in connection with this Contract, they will each respectively comply with all applicable law(s) relating to anti-bribery and anti-money laundering and that they shall each respectively take no action which would subject the other to fines, or penalties under such laws, regulations, rules or requirements.
- Buyer and Seller each represent, warrant and undertake to the other that they shall not, directly or indirectly; (a) pay, offer, give or promise to pay or authorise the payment of any monies or the transfer of any financial or other advantage or other things of value to; (i) a government official or an officer or employee of a government or any department, agency or instrumentality of any government; (ii) an officer or employee of a public international organisation; (iii) any person acting in an official capacity for or on behalf of any government or department, agency or instrumentality of such government or of any public international organisation; (iv) any political party or official thereof, or any candidate for political office; (v) any director, officer, employee or agent/representative of an actual or prospective counterparty, supplier or customer of Buyer or Seller; (vi) any other person, individual or entity at the suggestion, request or direction of or for the benefit of any of the above-described persons and entities; or (b) engage in other acts or transactions; in each case if this is in violation of or inconsistent with the anti-bribery or anti-money laundering law, rule or regulation of any government including without limitation the US Foreign Corrupt Practices Act, the UK Bribery Act 2010, the UK Anti-Terrorism, Crime and Security Act 2001, the Money Laundering Regulation 2007 and the Proceeds of Crime Act 2002 and the applicable country legislation implementing the Organisation for Economic Cooperation and Development ("**OECD**") Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.
- In particular, each Party represents and warrants to the other that it has not made any payments or given anything of value to officials, officers or employees of the Government of the United Arab Emirates or any agency, department or instrumentality of such government in connection with the Product which is the subject of the Contract which would be inconsistent with or contravene any of the above-referenced legislation.
- Buyer warrants that it has not made or given, and shall not make or give, directly or indirectly, any payment or anything of significant value to any representative of Seller or any other person or entity, to secure or influence the award of the Contract or its terms, performance, administration, extension or termination.
- Buyer or Seller may terminate the Contract forthwith upon written notice to the other at any time, if in its reasonable judgment (supported by credible evidence) the other is in breach of any of the above representations, warranties or undertakings in this Article 11.12.
- 11.24 **Governing Law:** This Contract shall be governed by and construed in accordance with English law without recourse to its conflict of law principles. The U.N. Convention of the International Sale of Goods shall not apply to this Contract.
- 11.25 **Dispute Resolution:**
- (a) The Parties shall attempt in good faith to amicably settle any dispute, controversy or claim arising out of or in connection with the conclusion, validity, effect, interpretation, performance, termination or dissolution of this Contract and/or any non-contractual obligations arising out of or in connection with this Contract ("**Dispute**").
  - (b) If the Dispute is not settled amicably within sixty (60) calendar days from the date the Dispute is first notified in writing to the other Party or Parties, such Dispute shall be referred by any Party and finally resolved by arbitration in accordance with the rules of arbitration of the International Chamber of Commerce applicable at the time of conclusion of this Contract (the "**ICC Rules**") by three (3) arbitrators. Each Party shall nominate an arbitrator for confirmation by the ICC (the "**Court**") under the ICC Rules. The two arbitrators nominated by the Parties shall nominate the third arbitrator who will act as president of the arbitral tribunal (the "**President**") within thirty (30) calendar days from their confirmation by the Court. Failing nomination by the arbitrators of the President within the time limit provided for in this clause or any other time limit agreed by the Parties, the President shall be appointed by the Court. The seat of the arbitration shall be at the option of Seller, in London, England.
  - (c) The arbitration shall be conducted in the English language.
  - (d) Either Party may apply to any competent judicial authority for interim or conservatory relief. The application for such measures or the enforcement of such measures ordered by such judicial authority shall not be deemed an infringement or waiver of this agreement to arbitrate and shall not affect the powers of the arbitrator.
- 11.26 **Small Claims:** Notwithstanding Article 11.25(b) above, the Parties agree, pursuant to Article 30(2)(b) of the ICC Rules, that the Expedited Procedure Rules shall apply, provided the amount in dispute does not exceed US\$ 500,000 at the time of the communication referred to in Article 1(3) of the Expedited Procedure Rules. The seat of the arbitration shall be at the option of Seller, in London, England; Paris, France; or Geneva, Switzerland.