



**ADNOC MARKETING INTERNATIONAL (INDIA) RSC LIMITED**

**GENERAL TERMS AND CONDITIONS**

**FOR THE SALE OF CRUDE OIL**

**JANUARY 2023 EDITION**

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## PART 1

### PROVISIONS APPLICABLE TO FOB AND FIP SALES

The provisions of this Part 1 shall apply to Contracts for the sale of Crude Oil between Seller and Buyer for which the Standard Contract Terms are specified as any of (i) FOB the Loading Port, (ii) FIP the Loading Port.

#### 1. DEFINITIONS AND INTERPRETATION

##### 1.1. Definitions

For all purposes of these GTCs, the following terms shall have the following meanings:

"**Abu Dhabi**" shall mean the Emirate of Abu Dhabi, United Arab Emirates.

"**Accepted Date**" shall mean, in the case of FOB deliveries, the expected date of arrival of each Vessel nominated in an Accepted Nomination.

"**Accepted Nomination**" shall have the meaning ascribed thereto in Article 28.2 (in respect of FOB deliveries) and Article 36.3 (in respect of FIP deliveries), as applicable.

"**ADNOC**" shall mean Abu Dhabi National Oil Company (ADNOC) P.J.S.C., a company existing under the laws of Abu Dhabi, UAE and whose principal postal address is P.O. Box 898, Abu Dhabi, UAE.

"**ADNOC Group**" shall mean ADNOC and each Person directly or indirectly Controlled by ADNOC.

"**Affiliate**" shall mean:

- (a) in relation to Seller or a member of the ADNOC Group, each other member of the ADNOC Group; and
- (b) in relation to Buyer, any other Person that, now or hereafter, directly or indirectly, Controls, is Controlled by, or is under common Control with, Buyer.

"**Aframax Vessels**" shall mean an oil tanker smaller than 120,000 metric tons deadweight and with a breadth above 32.31 meters designed, constructed, equipped and maintained to safely load and carry Crude Oil.

"**AMI India**" shall mean ADNOC Marketing International (India) RSC Limited, a company existing under the laws of Abu Dhabi Global Market, and whose registered address is Al Sila Tower 1, 24<sup>th</sup> floor, Abu Dhabi, United Arab Emirates.

"**API**" shall mean the American Petroleum Institute.

"**API Gravity**" shall mean the standardized measure of specific gravity developed by the American

Petroleum Institute.

"**Applicable Law(s)**" shall mean all applicable national and international laws, including governmental, local, port authority or terminal operator laws and regulations and any other laws and regulations or requirements in force of whatever nature and howsoever communicated.

"**ASTM**" shall mean ASTM International, formerly known as the American Society for Testing and Materials, a global society working to advance the development and delivery of international voluntary consensus standards.

"**Authorised Recipients**" has the meaning given to it in Article 20.4.

"**Barrel**" shall mean forty-two (42) United States standard gallons each of two hundred thirty-one (231) cubic inches at sixty degrees (60°) Fahrenheit.

"**BS&W**" shall mean basic sediment and water.

"**Buyer**" shall mean the party defined in the Sales Confirmation as the "**Buyer**".

"**Buyer Date Range Nomination Schedule**" shall have the meaning ascribed thereto in Article 4.2.

"**Certificates of Quantity and Quality**" shall mean the certificates of quantity and quality that document the quantity and quality of each Delivery of Crude Oil as determined by the processes set forth in this Contract.

"**Commercially Reasonable Endeavours**" shall mean the efforts that a prudent Person would use in similar circumstances to ensure that its obligations are fulfilled expeditiously without incurring additional costs beyond what it would have had to incur in the usual circumstances.

"**Confidential Information**" shall mean:

- (a) the existence and content of this Contract and any other documents relating to the sale and purchase of Crude Oil, including drafts of such documents, and the existence and contents of any negotiations prior to their execution;
- (b) all commercial, fiscal, financial, technical, operational or other information relating to the sale and purchase of Crude Oil, the Parties or their respective Affiliates and their respective business affairs (including information on assets, records, data, samples, business plans, production forecasts, actual production, budgets, financial statements, customers, clients, suppliers, plans, intentions and opportunities) which is obtained, whether before, on or after the date of this Contract, by a Party or any of its Authorised Recipients from the other Party, any of the other Party's Affiliates or any of their respective Personnel, professional advisers (including financial advisers, legal counsel, auditors and accountants) or Contractors, in any form (including orally, in writing, in electronic form or otherwise) and for whatever purpose (including for the purposes of the performance of this Contract or in connection with the negotiation of this Contract); and

- (c) any report, analysis, compilation, study or other document prepared by, on behalf of or for any Party or its Affiliates which contains, derives from or otherwise reflects any information described in sub-paragraphs (a) and (b) above, whether provided or obtained before, on or after the date of this Contract,

but excludes any information which:

- (i) at the time of its supply by (or on behalf of) a Party, is in, or subsequently comes into, the public domain, except by the breach of any of the undertakings set out in this Contract;
- (ii) subsequently comes lawfully into the possession of either Party or any of its Authorised Recipients from a Third Party who does not owe the Party to which the Confidential Information relates an obligation of confidence in relation to such Confidential Information;
- (iii) was independently developed by a Party or any of its Authorised Recipients without any reliance on any part of the Confidential Information; or
- (iv) the Parties agree in writing is not confidential.

"**Contract**" and references herein to this "**Contract**" shall mean these General Terms and Conditions together with the Sales Confirmation.

"**Contractors**" shall mean contractors, agents and representatives.

"**Control**" shall mean, in relation to a Person:

- (a) having, directly or indirectly, the power to vote fifty percent (50%) or more of the voting stock (other than directors' qualifying shares or other *de minimis* holdings required by Applicable Law to be held by other Person(s)) of such Person;
- (b) ownership, directly or indirectly, of fifty percent (50%) or more of the equity interests (other than directors' qualifying shares or other *de minimis* holdings required by Applicable Law to be held by other Person(s)) in such Person; or
- (c) having, directly or indirectly, the ability to direct or procure the direction of the management and policies of such Person, whether through the ownership of shares, by contract or otherwise,

and the terms "**Controlling**", "**Controlled by**" and "**common Control with**" shall be construed accordingly.

"**Crude Oil**" shall mean crude oil of such type and grade as set forth in the Sales Confirmation.

"**Day**" shall mean a period of time of twenty-four (24) consecutive hours beginning at 8:00 A.M. Indian Standard Time, and any Day of a Month shall begin at 8:00 A.M. Indian Standard Time.

**"Delivery"** shall mean a quantity of Crude Oil (i) in respect of FOB deliveries, in Full Cargo or Part Cargo, or (ii) in respect of FIP deliveries, in Full Cargo, to be delivered under this Contract, as applicable.

**"Delivery Period"** shall mean the period or each of the periods of time during which Crude Oil is to be delivered pursuant to this Contract and listed under the heading "Delivery Period(s) and Quantity" in the Sales Confirmation.

**"Delivery Point"** shall mean:

- (a) for quantities of Crude Oil to be delivered FOB, the junction point of the flange connecting the delivery hose of the loading installation with the receiving manifold of the Buyer's Vessel at the Loading Port;
- (b) for quantities of Crude Oil to be delivered FIP, the junction point of the flange connecting the pipeline from the Terminal with the Buyer's receiving pipeline system.

**"Dispute"** shall have the meaning ascribed thereto in Article 17.1.

**"DoS"** shall have the meaning ascribed thereto in Annex A of this Contract.

**"ETA"** shall mean the expected date and time of arrival (in local time) of the Vessel at the Loading Port.

**"Fax"** shall mean an electronic facsimile transmission, including **"E-Fax"**.

**"FIP"** shall mean free into pipeline.

**"Final Loading Date Range Schedule"** shall have the meaning ascribed thereto in Article 4.3.

**"FOB"** or **"Free on Board"** shall have the meaning ascribed thereto in the Incoterms, except as modified by this Contract.

**"Force Majeure Event"** shall have the meaning ascribed thereto in Article 14.

**"Full Cargo"** shall mean (i) in the case of FOB deliveries, a quantity of Crude Oil under the Contract which is loaded and transported on a Vessel without other cargo, or (ii) in the case of FIP deliveries, the quantity of Crude Oil under the Contract which is transferred through the pipeline, pursuant to the relevant Sales Confirmation, as applicable.

**"General Terms and Conditions"** and **"GTCs"** shall mean these general terms and conditions for the sale of Crude Oil, together with all Annexes thereto.

**"GOV"** shall mean the gross observed volume which shall be the total volume of all petroleum liquids and the BS&W but excluding free water at observed temperature and pressure.

**"Governmental Authority"** shall mean any governmental authority of Abu Dhabi, the UAE or any



jurisdiction in which Seller or Buyer operates or conducts business (including the SCFEA), and any political subdivision, agency, department, commission, board, bureau, court or other authority, or any quasi-governmental or private body exercising, or purporting to exercise, any executive, legislative, judicial, administrative, police, regulatory or taxing authority or power of any nature, or any company (other than a member of the ADNOC Group) or instrumentality owned or controlled by any governmental authority, in each case of one of the foregoing.

"**GSV**" shall mean the gross standard volume which shall be the total volume of all petroleum liquids and BS&W but excluding free water, corrected by the appropriate volume correction factor for the observed temperature and API Gravity, relative density, or density to a standard temperature such as 60°F or 15°C and also corrected by the applicable pressure correction factor and meter factor.

"**IMO**" shall mean the International Maritime Organisation.

"**Incoterms**" shall mean the international commercial terms for the sale of goods promulgated by the International Chamber of Commerce entitled Incoterms® 2010.

"**Inspector**" shall mean any independent inspector appointed by the parties from time to time.

"**ISGINTT**" shall mean the International Safety Guide for Inland Navigation Tank-Barges and Terminals, as current from time to time.

"**ISGOTT**" shall mean the International Safety Guide for Oil Tankers and Terminals (5th edition), as amended or supplemented from time to time.

"**ISPS**" shall mean the International Ship and Port Facility Security Code and the relevant amendments to Chapter XI of SOLAS (2003 edition), as amended or supplemented from time to time.

"**ITOPF**" shall have the meaning ascribed thereto in Annex A of this Contract.

"**Laytime**" shall mean the time allowed to Seller for the loading of each Delivery of Crude Oil on board a Vessel, as calculated in accordance with this Contract.

"**Lifting Month**" shall mean, in respect of a particular delivery of Crude Oil, the Month in which the first Day of the Set Range occurs.

"**Loading Port**" shall mean, unless otherwise stated in the relevant Sales Confirmation, the Mangalore Port or such other place as the Parties may agree from time to time.

"**Mangalore Port**" shall mean the New Mangalore Port located on the west coast of India, 170 miles south of Mormugao and 191 nautical miles north of Cochin Port.

"**Master**" shall mean the master, captain or commander of a Vessel.

"**Measurement and Testing Procedures**" shall mean the procedures relating to the measurement and testing of the Crude Oil, as set out in Annex D.

"**Month**" shall mean a period of time beginning on the first Day of a calendar month (Gregorian calendar) and ending on the last Day of such calendar month and "**Monthly**" shall be construed accordingly.

"**MRPL**" shall mean Mangalore Refineries and Petrochemical Limited, or such other group or organization which at any time assumes the responsibilities of the SPM at the Mangalore Port.

"**MT**" shall mean a metric tonne, being equal to 1,000 kilograms or 2,204.62 pounds.

"**NOR**" shall mean the written notice tendered by the Vessel giving notice of the Vessel's arrival at the place designated under this Contract.

"**NSV**" shall mean the net standard volume which shall be the total volume of all petroleum liquids, excluding BS&W and free water, corrected by the appropriate volume correction factor for observed temperature and API Gravity, relative density or density to a standard temperature such as 60°F or 15°C and also corrected by the applicable pressure correction factor and meter factor.

"**OPANRA**" shall mean the Office of Petroleum and Natural Resources Affairs.

"**Part Cargo**" shall mean a quantity of Crude Oil under the Contract which is loaded and transported on a Vessel together with other cargo which is bought or sold by Third Parties.

"**Party**" shall mean either Seller or Buyer, and together the "**Parties**".

"**Person**" shall mean an individual, partnership, corporation (including a business trust), company, trust, unincorporated association, joint venture or other entity, whether a body corporate or an unincorporated association of persons, or a government or any political subdivision or agency or instrumentality thereof and "**Persons**" shall be construed accordingly.

"**Personnel**" shall mean, in relation to a Person, the senior executives, directors, officers, employees or secondees of such Person.

"**Price**" shall mean the price agreed between the Parties in the Sales Confirmation.

"**Quantity**" shall mean the quantity, in Barrels or MTs, as applicable, of Crude Oil to be purchased for each Delivery Period, as set out under the heading "Delivery Period(s) and Quantity" in the Sales Confirmation.

"**Questionnaire 88**" shall mean the current version of Intertanko's "Standard Tanker Voyage Chartering Questionnaire 1988" as amended or supplemented from time-to-time.

"**Sales Confirmation**" shall mean the sales confirmation entered into between Seller and Buyer with respect to the sale of Crude Oil which forms a part of this Contract.

"**Sanctioned Territory**" shall have the meaning ascribed thereto in Article 12.2.

"**Sanctions**" shall have the meaning ascribed thereto in Article 12.2.

"**Sanctions Authority**" shall have the meaning ascribed thereto in Article 12.2.

"**SCFEA**" shall mean the Supreme Council for Financial and Economic Affairs or such other government representative as may be directed by the SCFEA.

"**Seller**" shall mean AMI India.

"**Seller Grade and Quantity Confirmation**" shall have the meaning ascribed thereto in Article 4.1.

"**Seller Request**" shall have the meaning ascribed thereto in Article 27.3.

"**Set Range**" shall mean the three (3) Day period commencing one Day prior to and terminating one Day after an Accepted Date.

"**SOLAS**" shall mean the International Convention for the Safety of Life at Sea of 1974 and the related Protocol of 1978, both as amended or supplemented from time to time.

"**SPM**" shall mean the single point mooring facility forming part of the MRPL facilities at the Mangalore Port.

"**Standard Contract Terms**" shall mean either (a) FOB the Loading Port or (b) FIP the Loading Port, as specified in the Sales Confirmation under the heading "Standard Contract Terms".

"**Storage Owner**" shall mean the owner of the Terminal.

"**T.B.N.**" shall mean "to be nominated".

"**Terminal**" shall mean, unless otherwise stated in the relevant Sales Confirmation, the crude oil handling, receiving, storing and vessel loading complex owned or operated by or on behalf of Indian Strategic Petroleum Reserves Ltd., Strategic Storage of Crude Oil Project, Chandrahas Nagar, Mangalore and all other property, facilities, pipelines and equipment provided there.

"**Third Party**" shall mean any Person other than Seller and Buyer.

"**TOV**" shall mean the total measured volume of all petroleum liquids, BS&W and free water at observed temperature and pressure.

"**Transfer Certificate**" shall have the meaning ascribed thereto in Article 38.

"**Transfer Month**" shall have the meaning ascribed thereto in the relevant Sales Confirmation.

"**US Dollars**" or "**US\$**" shall mean the lawful currency of the United States of America.

"**VAT**" shall have the meaning ascribed thereto in Article 9.3.

"**VEF**" shall mean the vessel experience factor.

"**Vessel**" shall mean the Aframax Vessels and the VLCC Vessels.

"**VLCC Vessels**" shall mean very large crude carrier vessels designed, constructed, equipped and maintained to safely load and carry Crude Oil.

"**Working Day**" shall mean any Day of the Year other than a Friday, Saturday, Sunday or a public holiday in Abu Dhabi, United Arab Emirates.

"**Year**" shall mean a period of time beginning on the first Day of a calendar year (Gregorian calendar) and ending on the last Day of such calendar year and "**Yearly**" shall be construed accordingly.

## 1.2. Interpretation

- (a) The Annexes attached are incorporated herein by reference and form a part of this Contract.
- (b) The headings in this Contract are for convenience only and shall not be interpreted in any way to limit or change the subject matter of this Contract.
- (c) As used in this Contract, the words "**include**" and "**including**" shall be read respectively as "include, without limitation" and "including, without limitation", unless expressly provided otherwise.
- (d) Unless otherwise expressly stated in this Contract, all references in this Contract to Articles, Schedules and Annexes shall be to the Articles, Schedules and Annexes of this Contract.
- (e) As used in this Contract, except where the context otherwise requires, the singular includes the plural and vice-versa.
- (f) As used in this Contract, references to this Contract or any other contract or document shall be construed as a reference to such agreement, contract or document as amended, novated, modified or supplemented and in effect from time to time and shall include a reference to any document which amends, novates, modifies or supplements it, or is entered into, made or given pursuant to or in accordance with its terms.
- (g) As used in this Contract, references to any statute, law or statutory instrument shall be construed as a reference to such statute, law or statutory instrument as the same may have been, or may from time to time be, amended or re-enacted and all instruments, orders, plans, regulations, by-laws, permissions and directions at any time made thereunder.
- (h) As used in this Contract, a reference to a Party or to a Person includes a reference to its successors, permitted transferees and assigns.
- (i) References to any legal term used in this Contract for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any other legal

concept or thing shall, in respect of any jurisdiction, be deemed to include what most nearly approximates such legal term in that jurisdiction.

- (j) Unless where otherwise stated, in the event of a conflict or inconsistency between the body of these GTCs and any of its Annexes, the body of these GTCs shall prevail, and in the event of a conflict or inconsistency between these GTCs and the Sales Confirmation, the Sales Confirmation shall prevail.

## 2. PURCHASE AND SALE

- 2.1. Subject to all of 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 Crude Oil of the types, in the quantities, during the Delivery Period(s), at the Price(s) and under the specified Standard Contract Terms set forth in the Contract.

## 3. WARRANTY OF TITLE

- 3.1. At the time property in the Crude Oil passes to Buyer under this Contract:
  - (a) Seller warrants that it is entitled to possession of the Crude Oil, has title to the Crude Oil which shall be free of any liens, charges and encumbrances of whatsoever kind unless disclosed or known to Buyer before this Contract was made, and has the right to sell the Crude Oil; and
  - (b) Buyer will have the benefit of the warranty as to enjoyment of quiet possession implied by law.

## 4. SCHEDULING

- 4.1. In the case of FOB deliveries, not later than the time period specified in the relevant Sales Confirmation, Seller shall provide written notice to Buyer of the following ("**Seller Grade and Quantity Confirmation**"):
  - (a) the required Lifting Month (M);
  - (b) the type(s) of Crude Oil to be lifted; and
  - (c) the quantity of each type of Crude Oil to be lifted in the Lifting Month (including notice of the exercise of any option granted to Seller herein or in the Sales Confirmation in respect of the Quantity).

The Seller Grade and Quantity Confirmation shall be final and binding on the Parties.

- 4.2. In the case of FOB deliveries, not later than the time period specified in the relevant Sales Confirmation, Buyer shall give written notice to Seller ("**Buyer Date Range Nomination Schedule**") which shall include the details specified in Article 27.2.

- 4.3. In the case of FOB deliveries, not later than the time period specified in the relevant Sales Confirmation, Seller shall give written notice to Buyer of the Set Range of the Lifting Month ("**Final Loading Date Range Schedule**").
- 4.4. In the case of FIP deliveries, the type and quantity of each Delivery shall be scheduled in accordance with the provisions specified in the Sales Confirmation.

## **5. RISK AND PROPERTY**

- 5.1 The property in the Crude Oil delivered under this Contract shall pass from Seller to Buyer as the Crude Oil passes the Delivery Point. Buyer shall assume all risk of, and full responsibility for, any loss, deterioration, evaporation and damage of whatsoever nature to or in respect of the Crude Oil howsoever caused arising after the Crude Oil has passed the Delivery Point.

## **6. QUANTITY AND QUALITY**

- 6.1. The quantity of any Delivery of Crude Oil may be decreased by up to ten percent (10%) at Seller's option and in its entire discretion, or increased by up to ten percent (10%) with Buyer's consent.
- 6.2. The quantity of each Delivery of Crude Oil shall be determined by Seller or its representative at the Loading Port based on measurements taken in accordance with the Measurement and Testing Procedures and Article 35 (in the case of FOB deliveries) or Article 37 (in the case of FIP deliveries). The quality of each Delivery of Crude Oil shall be determined by Seller or its representative at the Loading Port in accordance with the customary practices at the Loading Port. The results of such quantity and quality determination shall be recorded in Certificates of Quality and Quantity.
- 6.3. Buyer shall have the right to designate a representative at its own expense, subject to Seller's approval (such approval not to be unreasonably withheld), who shall have the right to witness the determination of quantity and quality at the time of loading or transfer, as applicable. All reasonable facilities shall be supplied, as necessary, to such representative of Buyer at the Loading Port to enable him to witness the measurements taken on shore and the taking of the samples to be turned over to Buyer.
- 6.4. Whether or not Buyer's representative witnesses the determination of quantity and quality at the time of loading or transfer, as applicable, provided that the determination(s) of quantity and quality made by Seller or its representative at the Loading Port are in accordance with Article 6.2 then the Certificates of Quantity and Quality shall be final and binding and conclusive on Buyer and Seller, except in case of fraud or manifest error.
- 6.5. The Certificates of Quality and Quantity shall be used for all references to quantity and quality in all documentation, including all invoicing and bill of lading purposes. Certificates of Quantity and Quality issued by Seller or its representative shall be accepted by Buyer and any Third Party (including a bank if a letter of credit is involved) for the purpose of payment of Crude Oil sold under this Contract.

## **Quality and claims in respect of quality and quantity**

6.6. Buyer acknowledges and accepts that:

- (a) the quality of the Crude Oil delivered under this Contract shall be the quality of such Crude Oil as usually made available at the time and place of loading or transfer, as applicable;
- (b) the quality of the Crude Oil actually delivered by Seller will fluctuate from time to time; and
- (c) Seller does not guarantee any exact quality specifications in respect of the Crude Oil supplied under this Contract.

6.7. Any claim as to the deficiency of quantity or quality of the Crude Oil shall be only admissible upon the condition that it is notified in writing to Seller, (i) in the case of FOB deliveries, no later than sixty (60) Days from the relevant bill of lading date or forty-five (45) Days from the completion of lifting at the Loading Port, whichever is later, or (ii) in the case of FIP deliveries, forty-five (45) Days from the date of transfer by pipeline, and always provided that such a claim is accompanied by evidence fully supporting the complaint.

## **7. PRICES**

7.1. The Price(s) of the Crude Oil shall be as set out in the Sales Confirmation.

## **8. INVOICE AND PAYMENT**

8.1. Unless otherwise provided in the Sales Confirmation, the invoicing and payment terms shall be as set out in Annex B.

## **9. DUTIES AND TAX**

### **Buyer's Responsibilities**

9.1. 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 Crude Oil delivered, its export including the delivery, transportation, ownership, sale or use after the Delivery Point.

### **Seller's Responsibilities**

9.2. 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 Governmental Authority or port authority in relation to the Crude Oil at any stage before the Delivery Point.

### **Value Added Tax**

- 9.3. The consideration payable in respect of any supplies made under this Contract (the "**Consideration**") is exclusive of value added tax ("**VAT**").
- 9.4. 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.

## 10. FAILURE TO TAKE DELIVERY

- 10.1. If for any reason other than the fault of Seller or a Force Majeure Event affecting Buyer, Buyer is unable to or fails to accept or to take delivery of all or any part of the Crude Oil to be delivered to Buyer under this Contract (the "**Undelivered Quantity**"), Seller shall, at its sole discretion have the right, after serving notice on Buyer, to sell, at such time(s) and in such amount(s) as Seller deems commercially reasonable, the Undelivered Quantity to a Third Party and the price(s) thereof shall be deemed conclusively to be the best price(s) which Seller could obtain.
- 10.2. In the event of an Undelivered Quantity, Buyer shall pay compensation to Seller in an amount equal to, where such amount is greater than zero:

$$(CP * Undelivered Quantity) - (RP * Undelivered Quantity) + C$$

where:

"**CP**" = the Contract Price for the Undelivered Quantity;

"**RP**" = either (i) the realised price in US\$ actually obtained by Seller for the re-sale of the Undelivered Quantity in accordance with Article 10.1; or, in the absence of such a re-sale, (ii) the estimated value of the Undelivered Quantity at the time of Buyer's default; and

"**C**" = the sum of (i) the reasonable costs and expenses actually incurred by Seller as a result of Buyer's failure to take delivery of the Undelivered Quantity, including, to the extent applicable, any storage fees, deviation costs and demurrage payable by Seller and/or Seller's supplier in respect of a Vessel or other vessels waiting at the Loading Port, and (ii) an amount equal to five percent (5%) of the total Price which would have been paid by Buyer for such Undelivered Quantity.

- 10.3. Buyer shall settle any amount payable under Article 10.2 within ten (10) Days of Seller's invoice and in accordance with the payment terms set forth in the Sales Confirmation and Annex B.
- 10.4. The remedies set out in this Article 10 shall be Seller's sole and exclusive remedy for Buyer's failure to take the Undelivered Quantity, without prejudice however to Seller's rights under Article 15.

## 11. WARRANTIES



- 11.1. Whether set out in these General Terms and Conditions or in the Sales Confirmation, neither typicals nor any stipulation as to time of delivery shall form part of the Crude Oil's description, quality or fitness for purpose. Unless otherwise stated in the Sales Confirmation, all statutory or other conditions or warranties express or implied with respect to the description or satisfactory quality of the Crude Oil or its fitness for any particular purpose or otherwise are hereby excluded (save to the extent that exclusion thereof is not permitted or is ineffective under the governing law).

## 12. COMPLIANCE WITH LAWS

### **Destination**

- 12.1. 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 transfer of the Crude Oil from the United Arab Emirates under this Contract, and the Parties agree to comply with all Applicable Laws in their performance of this Contract.

- 12.2. For the purposes of this Article:

"**Sanctioned Territory**" shall mean any country, state, territory or region against which there are Sanctions that target, prohibit, restrict, penalize, or condition the Delivery through or thereto of the Crude Oil.

"**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**

- 12.3. It is a condition of this Contract that the Crude Oil 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 Delivery Period, it is informed of all such Applicable Laws and Sanctions.

12.4. 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.

12.5. Buyer undertakes that the Crude Oil deliverable hereunder shall not be:

- (a) exported or resold to any Sanctioned Territory;
- (b) sold or resold or supplied to any Person, loaded on board a Vessel (in the case of FOB deliveries) or transferred into a pipeline (in the case of FIP deliveries): (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, loaded on board a Vessel (in the case of FOB deliveries) or transferred into a pipeline (in the case of FIP deliveries) for the purposes of any commercial activity carried out in or from any such Sanctioned Territory;
- (d) otherwise dealt in, or with, in a manner which would be a violation of Sanctions.

12.6. Where requested by Seller, Buyer shall provide Seller with all appropriate documentation verifying the final destination of the Crude Oil purchased and delivered under this Contract within thirty (30) 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 Crude Oil 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 Crude Oil in question by Buyer.

- 12.7. Within ninety (90) Days of the date of the bill of lading or equivalent shipping document of each Delivery under this Contract, Buyer shall deliver to Seller and, if applicable, shall cause to be delivered to OPANRA, 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.
- 12.8. Within ninety (90) 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.
- 12.9. 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 Crude Oil 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 or transfer of any Delivery of the Crude Oil (if applicable).
- 12.10. The rights provided to Seller under this Article shall be without prejudice to Seller's common law rights and other rights under this Contract.

#### **Trade controls and boycotts**

- 12.11. Buyer agrees to comply with all relevant trade controls, export and re-export controls, embargoes, and Sanctions in a manner in which there is no breach of the aforementioned undertakings of this Article. Notwithstanding anything to the contrary in the Contract, nothing in the 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, ordinance, order, demand, request or rules or requirements relating to foreign trade controls, export controls, embargoes, international boycotts or sanctions of any type as applicable to such Party.
- 12.12. Nothing in this Article 12 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 the Contract).

### **13. ANTI-BRIBERY AND CORRUPTION**

13.1. 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.

13.2. 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 counter-party, 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.

13.3. 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 Crude Oil which is the subject of the Contract which would be inconsistent with or contravene any of the above-referenced legislation.

13.4. 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.

- 13.5. 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 13.

## 14. FORCE MAJEURE

### General

- 14.1. Neither Party shall be considered in default of the performance of its obligations under this Contract to the extent that such performance is prevented, hindered or delayed as a direct result of any event or combination of events which is beyond the reasonable control of such Party (such event being a "**Force Majeure Event**"), provided that the Party claiming relief from its obligations under this Contract as a result of a Force Majeure Event ("**Affected Party**") may only be so relieved if the Affected Party:

- (a) notifies the non-Affected Party of the Force Majeure Event in accordance with Articles 14.4 and 14.7; and
- (b) mitigates the effects of the Force Majeure Event in accordance with Article 14.8,

and such relief may only be to the extent permitted under Article 14.11.

### Inclusions

- 14.2. A Force Majeure Event shall include, subject to and without limiting the generality of Article 14.1:

- (a) natural disasters such as floods, lightning, storms, typhoons, tornados, earthquakes, tidal waves, landslides, soil erosion, subsidence, washouts, radioactive contamination or epidemics;
- (b) war (whether declared or undeclared), blockade, acts of piracy, terrorist acts, seizure or act of sabotage, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (c) revolution, rebellion, civil war, riot, civil disturbance, civil commotion, insurrection or military uprising;
- (d) trade or labour disputes, boycotts, strikes, lockouts, industrial disturbances, go-slows or occupation of premises;
- (e) failures, explosions, breakages, fires or destruction of tankage, pipelines, refineries, terminals or any kind of installation and, where Seller is the Affected Party, tankers, vessels or any other similar means of transportation of the Crude Oil;

- (f) any accidents at, closing of, or any sudden and unforeseeable capacity restrictions (outside of the ordinary course of business) of, mooring facilities, docks, ports, harbours or other similar navigational facilities and, where Seller is the Affected Party, navigational accidents or maritime peril;
- (g) any compliance with Applicable Law;
- (h) in case of Seller only, any curtailment, reduction in, interference with, failure or cessation of supplies of Crude Oil from any of Seller's or Seller's suppliers' sources of supply or by any refusal to supply, whether lawful or otherwise by Seller's suppliers (provided in fact the sources of supply are for the purposes of this Contract), including:
  - (i) a change in the production policies or sales policies of the Emirate of Abu Dhabi; and
  - (ii) any declared Force Majeure Event affecting any of Seller's suppliers under any applicable supply arrangements between Seller and such suppliers; and
- (i) in case of Seller only, a notice of force majeure is given by the Storage Owner to Seller and/or ADNOC.

### **Exclusions**

- 14.3. Notwithstanding anything to the contrary in Article 14.1, a Force Majeure Event shall not include or excuse:
- (a) failure to make any payment of monies due and payable in accordance with this Contract (other than as to any specified means, currency or place of payment);
  - (b) changes in market conditions, including changes that directly or indirectly affect the demand for or price of Crude Oil or other commodity produced from refined hydrocarbon products (such as loss of customers or loss of market share), changes to market prices or currency devaluation;
  - (c) financial hardship or the inability of the Affected Party to make a profit or achieve a satisfactory rate of return in relation to or in connection with any activities undertaken pursuant to this Contract; or
  - (d) the ability of either Party to obtain better economic terms from a Third Party.

### **Notification of a Force Majeure Event**

- 14.4. As soon as reasonably practicable after the occurrence of the Force Majeure Event becomes known to it, the Affected Party shall notify the other Party in writing of the date on which the Force Majeure Event started, the effects of the Force Majeure Event on its ability to perform its obligations and the likely duration of its delayed performance or non-performance as a result of the Force Majeure Event.

- 14.5. The Affected Party shall bear the burden of proving that a Force Majeure Event has occurred that has so affected it.
- 14.6. If an Affected Party fails to notify the other Party as soon as reasonably practicable in accordance with Article 14.4, such Affected Party may only be relieved from the date of such notification.
- 14.7. The Affected Party shall provide to the non-Affected Party:
- (a) updates on any material developments with respect to any Force Majeure Event, from time to time; and
  - (b) promptly after the end of the Force Majeure Event, written notice that the Force Majeure Event has ended, in which case, the Affected Party shall resume performance of its obligations as soon as reasonably practicable.

#### **Mitigation of the Effect of a Force Majeure Event**

- 14.8. The Affected Party shall use all reasonable endeavours to mitigate the effects of the Force Majeure Event on the performance of its obligations (including co-operating with the non-Affected Party to develop and implement a plan of remedial action and reasonable alternative measures to remedy the effects of the Force Majeure Event).

#### **Suspension of obligations after a Force Majeure Event**

- 14.9. If the period of suspension resulting from a declared Force Majeure Event would result in the lifting or transfer, as applicable, of the Crude Oil to be purchased hereunder during a Month other than the Month to which the Accepted Nomination relates, then this Contract shall automatically terminate and Seller shall have no further obligation to sell and deliver such Crude Oil to Buyer.

#### **Limitation**

- 14.10. A Force Majeure Event in respect of an obligation of a Party shall not excuse such Party from performing any other obligations of such Party. No Party shall be excused as a result of a Force Majeure Event with respect to such Party from making timely payment of any moneys due and payable under this Agreement unless all reasonable forms of payment are not available as a result of such Force Majeure Event.

#### **Force Majeure Relief**

- 14.11. Subject to the requirements for relief set out in Article 14.1, if a Force Majeure Event occurs in respect of a Delivery of Crude Oil:
- (a) if Seller is the non-Affected Party, Seller may immediately terminate the affected Delivery(ies) without liability for damages and other contractual remedies and shall be entitled to dispose of, in its sole discretion, such undelivered Delivery(ies); and

- (b) in all other circumstances, the Affected Party may only be relieved from its obligations under this Contract until the earlier of:
- (i) the end of the Force Majeure Event; or
  - (ii) the expiry of the Set Range (in the case of FOB deliveries) or the Transfer Month (in the case of FIP deliveries), as applicable,

and, if the Force Majeure Event continues beyond the Set Range or the Transfer Month, as applicable, the affected Delivery(ies) shall be deemed terminated without liability for damages and other contractual remedies.

### **Obligation of the Non-Affected Party to Co-operate**

- 14.12. The non-Affected Party shall use all reasonable endeavours to co-operate with the Affected Party in mitigating the effects of any Force Majeure Event (including co-operating to develop and implement a plan of remedial action and reasonable alternative measures to remedy the effects of such Force Majeure Event).

### **No Extension of Time**

- 14.13. Nothing in this Article 14 shall operate to extend the term of this Contract.
- 14.14. Nothing in this Article 14 shall be taken to limit or prevent the operation of the English common law doctrine of frustration (including frustration of the adventure, of purpose or of this Contract).

## **15. DEFAULT EVENTS**

- 15.1. The events and circumstances set out below with respect to a Party (the "**Defaulting Party**") shall constitute "**Default Events**":
- (a) the Defaulting Party or its immediate or ultimate parent or the party which has issued any credit support (including a letter of credit, performance guarantee or other financial instrument) pursuant to the terms of this Contract in favour of the Defaulting Party:
    - (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
    - (ii) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;
    - (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors;
    - (iv) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is



presented for its winding-up or liquidation and is not withdrawn, dismissed, discharged, stayed or restrained within fifteen (15) Days of the institution or presentation thereof;

- (v) has a resolution passed for its winding up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
  - (vi) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets;
  - (vii) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within fifteen (15) Days thereafter;
  - (viii) causes or is subject to any event which, under the Applicable Law(s) of any jurisdiction, has an analogous effect to any of the events specified in sub-Articles (i) to (vii) above; or
  - (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts;
- (b) the Defaulting Party commits a repudiatory or renunciatory breach of this Contract;
  - (c) Buyer, as the Defaulting Party, fails to deliver to Seller, as the Non-Defaulting Party, any credit support complying with Article 8 and Annex B of this Contract within the time set out in this Contract;
  - (d) without prejudice to the Non-Defaulting Party's rights under Article 15.1(c) above, the Defaulting Party fails to make a payment in full and by the due date of any amount due to the Non-Defaulting Party under this Contract and does not correct such failure within fourteen (14) Days' notice being given by the other Party of such breach;
  - (e) a change of Control of the Defaulting Party occurs; or
  - (f) the storage agreement between ADNOC and the Storage Owner is terminated for whatever reason, in which case for the purposes of this Article 15.1(f) Seller shall be deemed to be the Non-Defaulting Party, and Buyer shall be deemed to be the Defaulting Party. In the event of a Default Event occurring pursuant to this Article 15.1(f) only, Seller shall not be entitled to exercise the rights set out at Article 15.2(a) or (c) to (e) below.

15.2. In the event of a Default Event, the Party not subject to the Default Event (the "**Non-Defaulting Party**") may at its absolute discretion, without prejudice to its other statutory or

common law rights, by and upon notifying the Defaulting Party by notice in writing:

- (a) identifying the Default Event and requiring that the Default Event be cured to the Non-Default Party's satisfaction within seven (7) Days failing which the Non-Defaulting Party may terminate this Contract by notice under Article 15.2(b); and/or
- (b) terminate this Contract with immediate effect; and/or
- (c) in the case of the Non-Defaulting Party being Seller, suspend delivery of the Crude Oil under this Contract until the Default Event has been remedied in full; and/or
- (d) in the case of the delivery of multiple cargoes, terminate an individual cargo; and/or
- (e) set-off monies payable by the Non-Defaulting Party against the liabilities of the Defaulting Party pursuant to this Contract or any other contract between the Non-Defaulting and Defaulting Party.

Provided that where remedies under Articles 15.2(c)-(e) are exercised, should the Default Event continue for at least seven (7) Days, the Non-Defaulting Party may at any time terminate this Contract under Article 15.2(b).

- 15.3. So long as Buyer is in default of any of its obligations under this Contract (including any default for which a sum of money is payable by Buyer under this Contract), Seller, without relieving Buyer of any of its obligations, shall be fully relieved of any obligation to sell or deliver Crude Oil to Buyer under this Contract or under any other contract between the Parties.
- 15.4. Enforcement of any provisions of this Contract shall not be affected by any previous waiver or course of dealing, and election of any particular remedy shall not be exclusive of any other. The remedies provided in this Contract are in addition to and not by way of limitation upon any other rights and remedies Buyer or Seller has. All rights and remedies are cumulative.

## **16. GOVERNING LAW**

- 16.1. The construction, validity and performance of the Contract and any Dispute in relation thereto shall be governed by and construed in accordance with English law.

## **17. DISPUTE RESOLUTION**

- 17.1. 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**").
- 17.2. If the Dispute is not settled amicably within sixty (60) 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 International Court of Arbitration (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) 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 London, England.

- 17.3. The arbitration shall be conducted in the English language.
- 17.4. 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.
- 17.5. The arbitration proceedings, including all documents, submissions, written and oral evidence, transcripts and correspondence used therein or relating thereto, as well as any order or award issued in connection therewith shall be strictly confidential ("**Confidential Arbitration Information**"). Notwithstanding this provision, but without prejudice to any other confidentiality obligation which may otherwise be applicable, either Party may disclose to a domestic court, for the purposes of setting aside and/or enforcement proceedings pending before such domestic court, any Confidential Arbitration Information, which it deems necessary for the purposes of those proceedings, after seeking an appropriate confidentiality order from such court, if available under the applicable law.

#### **Small Claims**

- 17.6. Notwithstanding Article 17.2 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 London, England.

#### **Demurrage Claims**

- 17.7. Notwithstanding Articles 17.2 and 17.6 above, the Parties agree that where the Dispute between them is in relation to demurrage, including the commencement and computation of laytime, then the dispute shall be referred to arbitration to be conducted in accordance with the London Maritime Arbitrators Association ("**LMAA**") Terms current at the time when the claiming Party commences arbitration proceedings. The tribunal shall consist of three (3) arbitrators, each arbitrator shall be a full Member of the LMAA, and the timetable for constitution of the tribunal shall be in accordance with that laid out in the current LMAA Terms.

### **18. LIMITATION OF LIABILITIES**

- 18.1. 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 or expenses including if and to the extent that they might otherwise not constitute indirect or consequential losses or expenses, loss of anticipated profits, plant shut-down or reduced production, loss of power generation, blackouts or electrical shut-down or reduction, goodwill, use, market reputation, business receipts or contracts or commercial opportunities, whether or not foreseeable.

- 18.2. In addition to the foregoing, in respect of any claims relating to Seller's failure to supply the agreed quantity, as set out in the Seller Grade and Quantity Confirmation or with respect to any deficiency of quantity or variation in quality, Seller shall in no circumstances be liable for more than the difference between the market price and the Price for the Crude Oil deliverable under the Contract.
- 18.3. The provisions of this Article shall continue to apply notwithstanding the termination or expiry of this Contract for any reason whatsoever.

## **19. MISCELLANEOUS PROVISIONS**

### **Survival of Rights upon Termination**

- 19.1. The termination or expiration of this Contract shall not discharge or release any rights, duties, obligations or liabilities arising prior to such termination or expiration nor prejudice any right or remedy accruing before, at, or in consequence of such termination or expiration or any proceeding with respect to any such right or remedy including any proceeding by way of arbitration under this Contract.

### **Severability**

- 19.2. If any provision of the Contract is declared to be illegal, invalid or otherwise unenforceable by a court of competent jurisdiction, the remainder of the Contract (and of such provision) shall not be affected except to the extent necessary to delete such illegal, invalid or unenforceable provision (or part thereof).

### **Agency**

- 19.3. Buyer represents that:
- (a) this Contract is entered into without the assistance or intervention, direct or indirect, of any broker, intermediary, commission agent or any similar person, firm or corporation (each hereinafter referred to as an "**Agent**");
  - (b) neither Buyer nor any of its Affiliates, directors, officers, employees, agents, representatives and consultants have engaged the services of any such Agent for the purposes of exercising or obtaining improper influence in connection with this Contract; and

- (c) no Contractors fee or other compensation has been paid or is payable by Buyer or any of its Affiliates, directors, officers, employees, agents, representatives and consultants to any Agent in connection with this Contract.

### **No Partnership**

- 19.4. The relationship between Seller and Buyer shall be that of independent contractors and nothing in this Contract is intended to, nor shall it, establish any relationship of partnership, joint venture, employment, franchise, agency or other form of legal association between Seller and Buyer or their respective Personnel. Neither Seller nor Buyer shall have, nor represent to any Third Party that it does have, any power or authority to bind the other Party or incur any obligations on the other Party's behalf.

### **Further Assurance**

- 19.5. Each Party shall, from time to time, execute such documents and perform such acts and things as either Party may reasonably consider necessary for the performance of this Contract and to give each of them the full benefit of this Contract.

### **Costs**

- 19.6. Except as otherwise stated in this Contract, each Party shall pay its own costs and expenses in relation to the negotiation, preparation, execution and carrying into effect of this Contract.

### **No Third Party Rights**

- 19.7. This Contract shall be binding upon and inure solely to the benefit of the Parties and their respective successors and permitted assignees and nothing in this Contract, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever.
- 19.8. Except where expressly stated to the contrary, the Parties do not intend that any term of this Contract may be relied upon or enforced solely by virtue of the Contracts (Rights of Third Parties) Act 1999 by any Person who is not party to it.

## **20. CONFIDENTIALITY**

- 20.1. For the purpose of this Contract, a Party who discloses Confidential Information shall be a "**Disclosing Party**" and a Party who receives Confidential Information shall be a "**Receiving Party**".
- 20.2. Subject to Article 20.4, the Receiving Party shall not, without the prior written approval of the Disclosing Party (such approval not to be unreasonably withheld):
  - (a) disclose any Confidential Information to any Person; and
  - (b) use the Confidential Information for any purpose other than for the performance of its

obligations under this Contract.

20.3. The Receiving Party shall use the same degree of care, but no less than reasonable efforts, to safeguard the confidentiality of any Confidential Information that it would use to safeguard the confidentiality of its own Confidential Information of like kind.

20.4. The Receiving Party may disclose Confidential Information:

- (a) to a Third Party only to the extent such disclosure is limited to operational information and is required to discharge the Disclosing Party's contractual obligations under this Contract, any related charterparty, or any sales agreement related to the Crude Oil;
- (b) to its Personnel who are required to have access to the Confidential Information in order to discharge their functions and contractual obligations under this Contract, provided that such Personnel agrees to abide by the obligations of such Party with respect to the Confidential Information;
- (c) to an Affiliate, provided that the Affiliate agrees to abide by the obligations of such Party with respect to the Confidential Information;
- (d) to a Contractor engaged by or on behalf of such Party or its Affiliates, provided that such Contractor agrees in writing to an undertaking of confidentiality no less onerous than that set out in Articles 20.2 and 20.3, except that under no circumstances shall the Receiving Party disclose any Confidential Information to a Contractor that is a competitor, or Personnel of a competitor, of the Disclosing Party;
- (e) to any professional advisers (including financial advisers, legal counsel, auditors and accountants) of such Party subject to such adviser providing a written undertaking of confidentiality no less onerous than that set out in Articles 20.2 and 20.3, except where such adviser is subject to a professional obligation of confidentiality under its applicable code of practice;
- (f) to the extent required by Applicable Law, by any Governmental Authority with jurisdiction over the subject matter or in connection with any court, judicial or other similar proceedings, provided that the Receiving Party uses its Commercially Reasonable Endeavours to, and only to the extent permitted by Applicable Law:
  - (i) provide the Disclosing Party with prompt notice of such requirement to disclose Confidential Information so as to enable the Disclosing Party to:
    - a. seek an appropriate protective order or other remedy in respect of such disclosure; and/or
    - b. consult with the Receiving Party on taking steps to resist or narrow the scope of such disclosure; and
  - (ii) use Commercially Reasonable Endeavours to disclose only that part of the

Confidential Information required to be disclosed and not otherwise subject to a protective order or other remedy,

(the recipients in this Article 20.4 being the "**Authorised Recipients**").

- 20.5. Each Party shall be responsible for any breach of the terms of this Article 20 by its Personnel or Affiliates to whom it discloses Confidential Information pursuant to Articles 20.4(b) and 20.4(c), respectively.
- 20.6. Notwithstanding anything to the contrary in this Contract, Seller may disclose the terms of these GTCs, including to other potential buyers, without the consent of Buyer.

## **21. ASSIGNMENT OF CONTRACT**

- 21.1. Buyer may not assign nor transfer its rights and obligations under this Contract directly or indirectly whether by way of merger, consolidation, acquisition or sale of assets to any Third Party or a receiver or trustee in bankruptcy or otherwise without the prior written consent of Seller.
- 21.2. Any assignment in contravention of this Article 21 shall be void and unenforceable as against Seller and shall give Seller the right to terminate this Contract.
- 21.3. Seller shall have the right to assign or transfer its rights and obligations under this Contract directly or indirectly to any Affiliate of Seller without the prior consent of Buyer.

## **22. ENTIRE AGREEMENT, MODIFICATION AND WAIVER**

- 22.1. This Contract constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements between the Parties, whether oral or written, with respect to such subject matter.
- 22.2. No amendment, modification or alteration of this Contract or any term or provision herein shall be valid unless reduced to writing and signed by and on behalf of Seller and Buyer.
- 22.3. No waiver by either Seller or Buyer of any term or provision including any condition or warranty or innominate term or waiver of any breach of such shall be effective unless made in writing and no such waiver shall be construed as waiver of or apply to another term or provision.

## **23. NOTICES**

- 23.1. Unless otherwise provided elsewhere in this Contract any communication by either Party to the other in connection with this Contract shall be in writing and in the English language. Such communication (other than routine communication for the performance of this Contract) shall be in letter format on the headed paper of the notifying Party and served by receipted hand delivery, Fax transmission, email or registered post or courier to the address of the other Party specified for this purpose in the Sale Confirmation and shall, unless otherwise provided herein,

be deemed to have been received as follows:

- (a) in case of hand delivery, at the moment it was received at the correct address (for administration purposes only with a copy of the notice to be sent by email transmission);
- (b) in case of Fax transmission, if it was transmitted on a Business Day before 1600 hours, on that day; in any other case, on the following Business Day, and always provided that:
  - (i) a transmission record is retained by the sender to show that the transmission was correctly completed and that all pages were transmitted; and
  - (ii) a hard copy of the notice or other communication is forwarded by the sender to the recipient on the same day as the Fax transmission by receipted hand delivery or registered post;
- (c) in case of registered post or courier, if delivered on a Business Day before 1600 hours, on that day; in any other case, on the following Business Day (in all cases for administration purposes only with a copy of the notice to be sent by email transmission); and
- (d) in case of email transmission, at the time it was received by the receiving Party, save that if received on a non-Business Day it shall be deemed received on the following Business Day; and the notifying Party bears the risk of a failure in transmission.

23.2. For the purpose of this Article, "**Business Day**" means a day (a period of twenty-four (24) hours starting at 00.00 hours and finishing at 24.00 hours on the same day) on which the office of the Party receiving the relevant communication is ordinarily open for business.

23.3. Any alterations to the contacts or addresses specified in the Sales Confirmation. shall be notified immediately to the other Party in accordance with Article 23.1.

23.4. Notices may not be given by instant messaging.

## **24. TIME BAR**

24.1. Without derogating from the specific time limits set out in Article 6.7 (*complaint of deficiency of quantity or quality*) and Article 17.7 (*Demurrage Claims*) and any other provisions requiring compliance within a given period, all of which shall remain in full force and effect, arbitration proceedings in respect of any claim or Dispute arising under this Contract shall be commenced in accordance with Article 17 within one (1) year of the date on which the Crude Oil was delivered or, in the case of a total loss, the date upon which the Crude Oil should have been delivered, failing which the claim shall be time barred and any liability or alleged liability of the other Party shall be finally extinguished.



## **PART 2**

### **PROVISIONS APPLICABLE TO FOB SALES ONLY**

#### **25. VESSEL(S) AT THE LOADING PORT**

- 25.1. While any Vessel tendered in accordance with this Contract is awaiting berth, proceeding to berth, berthing, unberthing, or proceeding from berth at the Loading Port, each Party shall be responsible for and shall indemnify the other Party in respect of any proven loss, damage or injury whatsoever of or to (a) the Crude Oil, (b) the Vessel, (c) the Loading Port or (d) otherwise, (excluding all indirect or consequential damages except as specifically provided in Article 25.2), which may be caused by its act or omission or those of its agents, employees, Contractors or suppliers of services and provided that the Master, crew and agents of the Vessel shall be considered to be the agents of Buyer. In the event of any such damage caused to the Loading Port, Buyer shall cooperate and comply fully with Seller's and the MRPL's accident procedures then in effect at the Loading Port.
- 25.2. Without limiting the foregoing, in the event that berthing, loading or unberthing of any such Vessel is delayed or causes delay as a result of an act or omission of the Buyer, its agents (where the Master, crew and agents of the Vessel shall be considered to be the agents of Buyer), employees, Contractors or suppliers of services, Buyer shall indemnify and hold harmless Seller against all losses, claims, damages, expenses or liabilities (including liability for demurrage payable to Third Parties) which Seller may suffer or to which Seller may become subject in consequence thereof, and will reimburse Seller in respect of any legal, administrative or other expenses whatsoever incurred by Seller in connection with the investigation or defence of any claims, whether or not resulting in liability, arising out of any such delay.

#### **26. SHIPPING TERMS**

- 26.1. Buyer shall pay for and arrange for the lifting of the Crude Oil to be delivered under this Contract at the Loading Port and for its carriage to the destination port.
- 26.2. Upon completion of loading Buyer shall ensure the Master of the Vessel, or the Vessel's agent on the Master's behalf, signs as presented by or on behalf of Seller a full set of original negotiable bills of lading and returns the same to Seller. When loading commences in one Month and is completed in the following Month, Seller may at its option separately list the quantity of Crude Oil loaded in each Month on one set of such bills of lading or may use separate bills of lading with respect to each such quantity.
- 26.3. Each Vessel tendered by Buyer for the carriage of Crude Oil under this Contract shall be designed, constructed, equipped and maintained to safely load and carry Crude Oil.
- 26.4. Subject to the provisions of this Contract, at the time of loading, Buyer may increase or decrease, for trim purposes only and by a maximum of five percent (5%) in either direction, the quantity of Crude Oil specified in the Accepted Nomination (as defined below) in respect

of any Vessel, if Seller, in its sole discretion, determines that Seller's tanker programme will not thereby be adversely affected. If the Parties have agreed in the Sales Confirmation to a term contract, any such increase or decrease shall be offset, if Seller so requires, by appropriate adjustment in subsequent liftings of the same type of Crude Oil. If the Parties have agreed in the Sales Confirmation to a spot contract, the quantity to be purchased and sold pursuant to this Contract shall be deemed modified accordingly.

## 27. SCHEDULING AND VESSEL NOMINATION

- 27.1. Each Delivery of Crude Oil shall be delivered at the Loading Port to a Vessel nominated by Buyer and accepted by Seller as provided in this Article 27.
- 27.2. Not later than the time period specified in the relevant Sales Confirmation, Buyer shall give, within the Buyer Date Range Nomination Schedule, written notice to Seller of (i) whether the quantities set out in the Seller Grade and Quantity Confirmation will be lifted in one or more parcels during such Lifting Month, (ii) the proposed Set Range of the Vessel(s); and (iii) the Buyer's Vessel nomination specifying the following as to each such Vessel:
- (a) the name and flag of the Vessel, or T.B.N., together with Questionnaire 88;
  - (b) the Vessel's summer deadweight tonnage, draft, overall length, net registered weight (NRT) and date of construction;
  - (c) the quantity of each type of Crude Oil to be loaded;
  - (d) when only a Part Cargo is to be loaded at the Loading Port, the quantity of the cargo on board and the name of the immediately prior Terminal;
  - (e) the destination of the Crude Oil and documentation schedule, if known;
  - (f) the nature of the product(s) contained in the tanks of the Vessel during her current voyage and during her preceding two voyages; and
  - (g) the quantity of dirty and clean ballast expected to be on board the Vessel on arrival and the time required to discharge each.
- 27.3. Promptly after receipt of Buyer Date Range Nomination Schedule, Seller, if necessary, shall give Buyer written notice of any amendment to the proposed Set Range ("**Seller Request**").
- 27.4. Within two (2) Days of receipt of Seller Request Buyer shall, after using all endeavours to agree to the amendments set out in Seller Request, submit to Seller an amended Buyer Date Range Nomination Schedule.
- 27.5. At least fifteen (15) Days prior to the first Day of each Lifting Month of each Delivery Period, Seller shall confirm, in its sole discretion, the Set Range of the Vessel(s) and shall give written notice thereof to Buyer. Such confirmation shall form part of the Final Loading Date Range Schedule.

- 27.6. In the case of a T.B.N. nomination, the name and flag of the Vessel and details of her characteristics as specified in this Article 27 shall be particularised in writing and written notice provided to Seller at least five (5) Days prior to the first Day of the Set Range for that Crude Oil lifting for which the T.B.N. was nominated.
- 27.7. It is understood that Buyer is familiar with the vessel restrictions regarding overall length, loaded draft, displacement, deadweight tonnage and other relevant limitations currently in effect at the Loading Port. Buyer shall keep itself familiar with all changes, which may occur from time to time in the vessel restrictions in force at the Loading Port and shall not tender any vessel with specifications not in compliance with the said restrictions.
- 27.8. Buyer shall indemnify Seller against all direct loss, damage, injury or liability of whatsoever nature caused to Seller by or arising out of the fault or negligence of the Vessel while at or off the Loading Port.

## **28. VESSEL COMPLIANCE AND APPROVAL**

28.1. The Vessel shall:

- (a) comply with all Applicable Laws(s) at the Loading Port (including in relation to draft limitations and/or other restrictions); and
- (b) comply with the applicable requirements set out in Annex A.

28.2. Seller shall give written notice accepting or rejecting any Vessel nominated by Buyer within two (2) Days of receipt of Buyer's nomination. A Buyer's nomination accepted by Seller shall be known as an "**Accepted Nomination**".

## **29. REJECTION OF NOMINATIONS AND VESSELS**

29.1. Notwithstanding anything to the contrary express or implied elsewhere herein, Seller shall have the right (which right may only be exercised prior to the passing of property hereunder):

- (a) to reject any nomination made by Buyer pursuant to Article 27 on any reasonable grounds;
- (b) to refuse, on any reasonable grounds, to accept for berthing and/or loading any Vessel named pursuant to Article 27; and
- (c) to reject the Vessel in question, notwithstanding any prior acceptance of such Vessel on any reasonable grounds if such Vessel is involved in any incident or more recent information regarding such Vessel becomes available to Seller at any time after such prior acceptance.

29.2. Without derogating from any other reasonable grounds that may be available to Seller, reasonable grounds shall include if the Vessel is determined by Seller to be unacceptable under Seller's documented marine insurance requirements.

### **30. CONSEQUENCES OF REJECTION**

- 30.1. In the event of a rejection or a delay of the Vessel or other restriction suffered in respect of the Vessel by virtue of the application of any regulations or other applicable requirements of Article 27 and/or 28:
- (a) Seller shall not be liable for the consequences of rejection, delay, or restriction of the Vessel, including demurrage;
  - (b) Buyer shall be liable for any costs or damages incurred by Seller arising out of any such rejection of, delay to or restriction of the Vessel, including demurrage; and
  - (c) without prejudice to Seller's rights under this Contract to treat the failure to give a valid nomination as a failure to take delivery under Article 10 and/or as a repudiatory breach of this Contract, Buyer's obligations under this Contract to nominate a suitable Vessel and to ensure that it tenders NOR at the Loading Port in accordance with Article 32.1 shall be unaffected.

### **31. VESSEL ARRIVAL AND LOADING**

- 31.1. Buyer shall give and anticipated five (5) calendar day arrival date range for lifting of Crude Oil at the Delivery Port together with Vessel nomination, accompanied by Questionnaire 88, at least fifteen (15) calendar days prior to the first (1st) calendar day of such five (5) calendar day date range.
- 31.2. Buyer shall give an anticipated three (3) calendar day arrival date range for lifting of Crude Oil from the Loading Port at least ten (10) calendar days prior to the first (1st) calendar day of the three (3) calendar day arrival date range. This three (3) day arrival date range shall be the accepted date range applicable for laytime and demurrage calculation.
- 31.3. Buyer or his agent shall instruct arriving Vessels to send immediate ETA notices at noon to Seller and the Loading Port prior to expected arrival at the Loading Port in accordance with the following timeline:
- (a) Fourteen (14)/ seven (7) /five (5) calendar day(s) before its ETA at the Loading Port as the case may be;
  - (b) Forty-eight (48)/twenty-four (24)/twelve hours (12) before such ETA;
  - (c) in the event of any variation of more than one (1) hour after forty-eight (48) hours before such ETA, Seller or Buyer shall instruct each arriving Vessel to immediately advise the Loading Port of its ETA; and
  - (d) in the event a Vessel arrives following the expiry of the Set Range, the Vessel shall be permitted to berth at the earliest possible date.
- 31.4. The Master of each Vessel shall give Seller and the Loading Port a written notice of readiness

to load at the Loading Port, such notice to be given only after such Vessel has arrived at the anchorage area of the Loading Port.

- 31.5. In the event a Vessel and one or more other vessels have arrived at the Terminal and tendered notices of readiness to load, and are awaiting a suitable berth which becomes available, the priority for use of such berth shall be determined in accordance with the procedures established by the company operating the facilities at the Terminal, as such procedures may be modified from time to time, and Seller may without liability to Buyer alter the order of berthing or loading in its sole discretion in order to avoid losses of production or for safety reasons.
- 31.6. Subject to MRPL's prior approval, (i) clean ballast, that is, ballast free from oil, chemicals and other harmful materials, shall be discharged overboard and (ii) dirty ballast, that is, ballast containing any oil, chemicals or other harmful materials, shall be discharged into the shore facilities provided by MRPL for this purpose, if any. In its discretion, the MRPL may require a chemical analysis prior to any discharge. Only clean ballast shall be discharged overboard and Buyer shall be fully and solely responsible for any consequences, penalties or liabilities arising out of any discharge overboard of any dirty ballast.
- 31.7. Before the commencement of loading of any Vessel at the Loading Port, Seller shall have the right to inspect and test the same and the tanks therein, and to reject the Vessel if Seller determines in its absolute discretion that such Vessel's condition is such as to give rise to risk of loss, damage or injury ashore or afloat. Buyer shall indemnify Seller on demand against any loss or damage whatsoever arising to Seller from such condition or from such rejection or either of them, and Seller shall be under no liability of any nature whatsoever arising from Seller's inspection of or failure to inspect any Vessel and any subsequent acceptance or rejection thereof.
- 31.8. Vessels which have arrived at the Loading Port and have tendered a notice of readiness to load and other vessels which have been accepted for loading at the Loading Port under other arrangements with Seller or other parties may be loaded on a "first come-first served" basis, subject to the provisions of Article 31.5. Seller may without liability to Buyer decline to load any Vessel that does not arrive and tender a NOR to load within the appropriate Set Range. Seller will nevertheless endeavour to load such Vessel as soon as it is convenient to do so, consistent with the tanker programme for the Month.
- 31.9. Seller shall cause Crude Oil to be delivered and Buyer shall receive such Crude Oil with due regard for appropriate safety and quality precautions.
- 31.10. While any Vessel tendered by or on behalf of Buyer hereunder is awaiting berth, proceeding to berth, berthing, unberthing, or proceeding from berth at the Loading Port, each Party shall be responsible for and shall indemnify the other Party in respect of any proven loss, damage or injury whatsoever of or to Crude Oil lifted or the Vessel or the Loading Port or otherwise (excluding all indirect or consequential damages except as specifically provided below in Article 31.11), which may be caused by its act or omission or those of its agents, employees, contractors or suppliers of services and for this purpose the Master, crew and agents of the Vessel shall be considered to be the agents of Buyer. In the event of any such damage caused

to the Loading Port, Buyer shall cooperate and comply fully with Seller's and the Loading Port's accident procedures and regulations then in effect at the Loading Port.

- 31.11. Without limiting the foregoing, in the event that berthing, loading or unberthing of any such Vessel is delayed by reason of congestion or the giving of priority to another vessel or vessels or any causes whatsoever not solely attributable to the fault of Seller, Buyer shall have no claim against Seller in respect of such delay or the consequences thereof and shall indemnify and hold harmless Seller against all losses, claims, damages, expenses or liabilities (including, but not limited to, liability for demurrage payable to third parties) which Seller may suffer or to which Seller may become subject in consequence thereof, and will reimburse Seller in respect of any legal, administrative or other expenses whatsoever incurred by Seller in connection with the investigation or defence of any claims, whether or not resulting in liability, arising out of any such delay.

## **32. LAYTIME AND DEMURRAGE**

- 32.1. Laytime allowed for the loading of each Delivery of Crude Oil shall be as specified in the Sales Confirmation or, if the laytime allowed is not specified in the Sales Confirmation:

- (a) thirty-six (36) hours for Aframax Vessels;
- (b) forty-eight (48) hours for VLCC Vessels,

with adjustment on a pro-rata basis for any Part Cargo.

- 32.2. Laytime shall commence upon the expiration of six (6) hours after tender of notice of readiness ("**NOR**"), or upon the Vessel's arrival in berth, whichever occurs first. If, however, the Vessel is moored, ready to load before the first (1st) calendar day of the three (3) calendar day arrival date range stipulated in Article 31.2, fifty percent (50%) laytime to count from the commencement of delivery / lifting until the first (1st) calendar day of the Set Range. Thereafter, full laytime shall count. Laytime shall cease on disconnection of shore hoses.

- 32.3. Any time described below shall as per international industrial practice, not be regarded as being comprised in such laytime:

- (c) lost time caused by unexpected trouble, including breakdown or technical difficulties with the Vessel arranged by Seller or the Buyer;
- (d) time spent for shifting from anchorage to berth at the Terminal;
- (e) lost time due to strike, lockout, ceasing or interference of operation caused by the Vessel captain or crew or pilot;
- (f) delays due to adverse weather conditions shall be as per charter-party (wherein delays in berthing for loading or discharging, and any delays after berthing due to weather conditions shall count as one half laytime or, if on demurrage, at one half demurrage rate); and

- (g) time lost on account of port closure or due to any action by the government authorities or regulations and interventions by the port authorities, other than weather related closures or actions which are addressed in sub-paragraph (f) above.

- 32.4. In the event that laytime exceeds the sum of allowable laytime and additional allowable laytime, Buyer may claim demurrage from Seller for such excess at the demurrage rate, provided that such claim is made in writing and the written claim is received by Seller within ninety (90) calendar days from the date of completion of lifting.
- 32.5. Notwithstanding anything to the contrary in these GTCs, Buyer shall only be entitled to such amount of demurrage as the Seller is able to recover and does recover from the Storage Owner. Seller shall use reasonable endeavours to recover from the Storage Owner any demurrage for which Buyer has submitted a claim in accordance with the provisions of this Article 32.
- 32.6. Buyer undertakes that each Vessel furnished by Buyer shall vacate the berth as soon as loading has been completed and hoses disconnected.
- 32.7. If the Vessel fails to vacate the berth, unless for reasons attributable to Seller or the Storage Owner, any loss or damage suffered by Seller or the Storage Owner resulting from such failure shall be paid by Buyer to Seller.

### **33. ALLOCATION OF COSTS**

- 33.1. All taxes, fees, imposts, wharfage and duties in respect of the Vessel (not the Crude Oil) incurred at the Loading Port shall be for Buyer's account.

### **34. BUYER INDEMNITY**

- 34.1. Buyer shall indemnify Seller against all direct loss, damage, injury or liability of whatsoever nature caused to Seller by or arising out of:

- (a) the fault or negligence of the Vessel while at or off each Loading Port; and
- (b) the failure of Buyer to provide timely notifications or to follow the other procedures set forth in this Part 2.

- 34.2. Except where otherwise provided, any amount due by Buyer to Seller pursuant to this Part 2 shall be settled within thirty (30) Days of Seller's invoice and in accordance with the terms set forth in the Sales Confirmation.

### **35. DETERMINATION OF QUALITY AND QUANTITY**

- 35.1. Three (3) representative samples of such Delivery of Crude Oil shall be taken, in accordance with the customary practices at the Loading Port, from the loading lines through which Crude Oil is lifted. The samples shall be sealed and signed by Seller or its representative. Two samples shall be placed on board the Vessel (one for the consignee and one for the Master) and one sample shall be given to Seller or its representative. Seller's sample shall be retained

by Seller as a reference sample and properly kept for ninety (90) Days.

35.2. The Crude Oil will be measured and tested applying the following:

- (a) ASTM D - 1250 Table 6 to be used for the Correction of Volume to 60°F Against API Gravity.
- (b) Test method to be used to determine the BS&W-ASTM D4007.
- (c) The sample of Crude Oil in the Seller relevant storage cavern shall be tested for API & BS&W by the appointed Inspector before operation which the Inspector's result shall be final. The result shall be used to compute the GSV to NSV. The SPM result shall be used to compute the GSV to NSV.
- (d) The TOV (with the application of VEF) less free water (if any) shall determine the GOV. The API and BS&W tested by the Inspector shall determine the Bills of Lading quantities for GSV and NSV.



## **PART 3**

### **PROVISIONS APPLICABLE TO FIP DELIVERIES ONLY**

#### **36. NOMINATION**

- 36.1. Not later than the time period specified in the relevant Sales Confirmation, Buyer shall cause to be delivered to Seller written nomination of the aggregate volumes of Crude Oil to be delivered by Seller during such Month together with an estimate of the transfer schedule during the two (2) next succeeding Months (or for the next anticipated transfer where deliveries are to be made less frequently than Monthly).
- 36.2. The nominations shall be made in accordance with the standard operating procedures of the Terminal and relevant pipeline operating company(ies), as applicable.
- 36.3. Not later than 15 (fifteen) Days prior to the first Day of the same Month, Seller shall confirm the quantities of Crude Oil (subject to a tolerance of no more than +/- five (5) percent) nominated by Buyer that Seller shall make available to Buyer and Buyer shall take and pay for, at the Delivery Point during that Month (such confirmation being the “**Accepted Nomination**”).

#### **37. DETERMINATION OF QUALITY AND QUANTITY**

- 37.1. Three (3) representative samples of such delivery of Crude Oil shall be taken in accordance with the customary practices at the Terminal and following the procedures ASTM D-4177 & ASTM D-4057, as applicable. The samples shall be sealed and signed by Seller or its representative.
- 37.2. The Crude Oil will be measured and tested applying the following:
  - (a) ASTM D - 1250 Table 6 to be used for the Correction of Volume to 60°F Against API Gravity.
  - (b) Test method to be used to determine the BS&W-ASTM D4007.
  - (c) The sample of Crude Oil in the Seller relevant storage cavern shall be tested for API & BS&W by the appointed Inspector before operation which the Inspector's result shall be final. The result shall be used to compute the GSV to NSV.
  - (d) The TOV (with the application of VEF) less free water (if any) shall determine the GOV. The API and BS&W tested by the Inspector shall determine the Bills of Lading quantities for GSV and NSV.
  - (e) Any other measurement or testing determination set out in the applicable storage agreement entered into between the Seller and the Storage Owner.

**38. TRANSFER CERTIFICATE**

- 38.1. Upon completion of transfer, Seller shall present Buyer with a certificate of transfer, which, for the avoidance of doubt, includes any certificate of quantity and/or quality certifying the volumes lifted from the Terminal issued by an independent inspector pursuant to any relevant storage agreement (“**Transfer Certificate**”).

## ANNEX A

### VESSEL REQUIREMENTS

If any Vessel does not meet any of the requirements of this Annex A at the Loading Port, Seller may refuse to berth, load or continue loading such Vessel.

#### 1. **ITOPF**

Each Vessel shall be owned by or demise chartered to a member or associate member e.g. for non-tankers of the International Tanker Owners Pollution Federation Ltd. ("**ITOPF**").

#### 2. **ISPS CODE**

(i) Buyer shall procure that the Vessel 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).

(ii) The Vessel shall when required submit a Declaration of Security ("**DoS**") to the appropriate authorities prior to arrival at the Loading Port.

(iii) 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:

(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.

(iv)

(a) Seller shall procure that the terminal/installation at the Loading Port 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).

(b) Subject always to sub-paragraph (vi) below any costs or expenses in respect of the Vessel including demurrage or any additional charge, fee or duty levied on the Vessel at the loading port and actually incurred by Buyer resulting directly from the failure of the Loading Port to comply with the ISPS Code shall be for the account of Seller, 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.

(v) 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 International Code for the Security of Ships and of Port Facilities and the relevant amendments to Chapter XI of SOLAS (ISPS Code), Seller shall be responsible for any demurrage actually incurred by Buyer arising from delay to the Vessel at the Loading 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.

- (vi) If the Loading Port is not operated by Seller or an Affiliate of 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 terminal/installation at the Loading Port to comply with the ISPS Code 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 reasonable endeavours so to recover from its supplier or other relevant Third Party.

3. **CLC**

The Vessel shall:

- (a) carry on board certificate(s) as required pursuant to the 1992 Civil Liability Convention for Oil Pollution Damage or any Protocols thereto ("**CLC**"); and
- (b) have in place insurance cover for oil pollution no less in scope and amounts than available at that time under the rules of P&I Clubs entered into the International Group of P&I Clubs (currently standard oil pollution cover of US\$ 1,000 million),

provided always the Vessel constitutes a "Ship" for the purpose of CLC.

4. **ISM Certificates**

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

5. **ISGOTT, etc.**

The Vessel shall be manned, operated and maintained so as to fully comply with (i) the standards set out in ISGOTT or ISGINTT as applicable, (ii) appropriate IMO recommendations, and (iii) the OCIMF Guidelines for the Control of Drugs and Alcohol Onboard Ship (1990), each as amended from time to time.

6. **Closed loading and/or discharge**

Vessels which are loading/discharging a volatile, toxic or noxious cargo must operate at all times in the Closed Operations mode. Closed Operations refers to the procedures whereby

Vessels conduct cargo transfer and ballasting operations into cargo tanks, with tank apertures closed and with vapours being emitted only by means of the dedicated venting system which is designed to disperse vapour clear of working areas and possible ignition sources. For the purposes of this sub-paragraph:

"volatile" shall mean a liquid from which gas evaporates rapidly and shall be taken to include any naturally volatile Crude Oil or any Crude Oil being carried at a temperature which is higher than the flash point of the Crude Oil minus 10 degrees Celsius; "toxic" shall mean a poison which can affect personnel following inhalation, absorption or ingestion and shall be taken to include any products which give off vapours containing substances for which exposure limits are recommended as they may be hazardous to the health of personnel exposed to them; and "noxious" shall mean harmful to personnel or the environment.

7. **IGS**

If the Crude Oil is required to be carried in a Vessel which is both fitted with and actually uses an inert gas system ("IGS"), the following shall apply.

Any Vessel fitted with an IGS will not be permitted to berth or to load or discharge Crude Oil unless the IGS is in good order, operative and the cargo tanks inerted.

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

8. **Ballast**

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

9. **Port Regulations**

The Vessel shall comply with Buyer's regulations (or Buyer's receivers' regulations, as applicable) at the destination port.

10. **Maritime Traffic Schemes**

The Vessel shall comply with all regulations and recommendations contained in any Maritime Traffic Schemes applicable to the voyage the subject matter of the Contract and in particular and as appropriate the Vessel shall comply with the "Turkish Straits Maritime Traffic Scheme Regulations" dated 6th November 1998, as amended or re-issued from time to time.

11. **Vessel Age**

Buyer shall ensure that all Vessels tendered for loading hereunder shall be no more than

sixteen (16) years old or, if in excess of sixteen (16) years old, shall have been suitably modified to ensure compliance with all Loading Port requirements and regulations, but in no event shall any Vessel exceed twenty-five (25) years in age and always subject to the Loading Port's acceptance.

**ANNEX B**

**INVOICE AND PAYMENT TERMS**

*(INTENTIONALLY LEFT BLANK)*

## ANNEX C

### SELLER'S INDEMNITY FORMAT

The indemnity referred to in Annex C (or any equivalent provision in the Sales Confirmation) shall be in the following format:

#### QUOTE

We refer to our Contract dated [DATE] (the “**Contract**”) in respect of your purchase from us of [QUANTITY] (BBL or MT) of [CRUDE OIL](the “**Product**”).

In consideration of your making payment of US dollars [USD AMOUNT] for [QUANTITY] BBL or MT of Product in accordance with the Contract and accepting delivery of the Product without having been provided with a full set(s) of clean original negotiable bills of lading [HERE INSERT ANY OTHER CONTRACTUALLY REQUIRED ORIGINAL DOCUMENTS], (the “**Documents**”), we hereby represent and warrant that:

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

Without prejudice to your rights under the Contract 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 Contract, except to the extent that such liability could have been avoided or minimised by the exercise of due diligence by you, your servants or agents.
- (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 obligation to indemnify you is subject to the conditions that you give us prompt notice if the assertion of any claim and full opportunity to conduct the defense thereof and that you do not settle any such claim without our approval.

Our liability hereunder shall cease one year from the date of issue of this letter or on the date that we provide you with the Documents whichever is earlier. We agree to provide the Documents to you after they 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 you 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 and any dispute, controversy or claim arising out of or in connection with this indemnity shall be subject to, and finally resolved by, arbitration in accordance with the rules of arbitration of the International Chamber of Commerce (ICC) applicable at the time of conclusion of the Contract and shall cease to have effect upon the Documents being provided to you. The arbitration shall be conducted in the English language and the seat of the arbitration shall be in London, England.

Signed by: .....

Title: .....

of: [COMPANY NAME]

UNQUOTE

## ANNEX D

### MEASUREMENT AND TESTING STANDARDS

1. **Gauging, Taking temperature, Sampling**  
Gauging Method: API Manual for Petroleum Measurement Standard (MPMS) Chapter 17, Section 1, 17.1.12.2.2 Tank Gauges  
Taking Temperature Method: API (MPMS) Chapter 17, Section 1, 17.1.12.3 Shore Tank Temperatures  
Sampling Method: API (MPMS) Chapter 17, Section 1, 17.1.12.4 Sampling and 17.1.12.4.1 Tank Sampling
2. **Total Observed Volume (kls@observed temp.)**  
Read figure prescribed in the shore tank calibration table which is based on kls
3. **Free Water Volume (kls@observed temp.)**  
Read figure prescribed in the shore tank calibration table which is based on kls
4. **Gross Observed Volume (kls@observed temp.) GOV**  
Total Observed Volume minus Free Water Volume
5. **Density @15C**  
Analyzed result of Custody Tank composite sample  
Test Method: ASTM D1298
6. **Total Calculated Volume (before Roof Displacement) (kls@15C) TCV**  
Correction: GOV kls => kls @15C  
Correction factor: ASTM D1250 **Table 54** and ASTM D1250-80 **Table 54A**  
Table 54A is to be used for custom clearance purpose
7. **Roof Displacement (kls@15C)**  
Read figure prescribed in the shore tank calibration table
8. **Total Calculated Volume after Roof Displacement deduction (kls@15C) TCV**  
TCV (before Roof Displacement) minus Roof Displacement
9. **API Gravity @60F**  
Conversion: Density @15C => API Gravity @60F  
Conversion factor: ASTM D1250-80 Table 51
10. **Total Calculated Volume (bbls@60F) TCV**  
Conversion: TCV kls@15C => TCV bbls@60F

Calculation:  $TCV \text{ kls@15C} \times \text{conversion factor} = TCV \text{ bbls@60F}$

Conversion factor: ASTM D1250-80 Table 52

11. **Total Calculated Volume (Weight in MT) TCV**

Conversion:  $TCV \text{ kls@15C} \Rightarrow TCV \text{ MT}$

Calculation:  $TCV \text{ kls@15C} \times \text{conversion factor} = TCV \text{ MT}$

Conversion factor: ASTM D1250-80 Table 56

12. **Gross Standard Volume (kls@15C) GSV**

Total Calculated Volume minus ship's arrival Free Water Volume (kls@15C)

Free Water Volume (kls@15C) = Free Water Volume (bbls@60F)  $\times 0.158987$

0.158987: prescribed in ASTM D1250-80 Table 1

13. **Gross Standard Volume (bbls@60F) GSV**

Total Calculated Volume minus ship's arrival Free Water Volume (bbls@60F)

14. **Gross Standard Volume (Weight in MT) GSV**

Conversion:  $GSV \text{ kls@15C} \Rightarrow GSV \text{ MT}$

Calculation:  $GSV \text{ kls@15C} \times \text{conversion factor} = GSV \text{ MT}$

Conversion factor: ASTM D1250-80 Table 56

15. **Gross Standard Volume (Weight in LT) GSV**

Conversion:  $GSV \text{ kls@15C} \Rightarrow GSV \text{ LT}$

Calculation:  $GSV \text{ kls@15C} \times \text{conversion factor} = GSV \text{ LT}$

Conversion factor: ASTM D1250-80 Table 57

16. **Sediment and Water (Vol. %)**

For Delivery & Lifting: Analyzed result of **Ship tank composite sample taken by Surveyor**

For Dead Stock: Analyzed result of Custody Tank composite sample (sampling method is referred in "1. Gauging, Taking temperature, Sampling")

Test Method: ASTM D4007

17. **Net Standard Volume (bbls@60F, kls@15C) NSV**

Conversion:  $G \text{ SV} \Rightarrow 4 \text{ NSV}$

Calculation:  $GSV(\text{bbls@60F}) - \{GSV(\text{bbls@60F}) \times W \ \& \ S(\text{Vol.}\%)\} = NSV(\text{bbls@60F})$

$GSV(\text{kls@15C}) - \{GSV(\text{kls@15C}) \times W \ \& \ S(\text{Vol.}\%)\} = NSV(\text{kls@15C})$

18. **Net Standard Volume (Weight in MT) NSV**  
Conversion: NSV (kls@15C) => NSV MT  
Calculation: NSV (kls@15C) x conversion factor = NSV MT  
Conversion factor: ASTM D1250-80 Table 56

## VOLUMES AT THE SHIP(S)

Parties determine volumes at ships for reference by applying the Measurement and Testing prescribed below:

1. **Gauging, Taking temperature, Sampling**  
Gauging method: API Manual for Petroleum Measurement Standard (MPMS) Chapter 17, Section 2, 17.2.4 General Measurement, 17.2.4.2.1 Manual gauging and 17.2.4.3.1 Gauging  
Taking temperature method: API (MPMS) Chapter 17, Section 2, 17.2.4.2.3 Manual Temperature Measurement and 17.2.4.3.3 Temperature Measurement
2. **Total Observed Volume (bbls@observed temp.)**  
Read figure prescribed in the ship tank table which is based on bbls
3. **Free Water Volume (bbls@observed temp.)**  
Read figure prescribed in the ship tank table which is based on bbls
4. **Gross Observed Volume (bbls@observed temp.) GOV**  
Total Observed Volume minus Free Water Volume
5. **API Gravity @60F**  
When delivery: from B/L  
When lifting: Analysis Custody tank composite by Surveyor with test method ASTM D1298
6. **Gross Standard Volume (bbls@60F) GSV**  
Correction: GOV bbls => GSV bbl@60F  
Correction factor: ASTM D1250 Table 6
7. **Gross Standard Volume (kls@15C) GSV**  
Conversion: GSV bbls@60F => GSV kls@15C  
Calculation: GSV bbls@60F x conversion factor = GSV kls@15C  
Conversion factor: ASTM D1250-80 Table 4
8. **Gross Standard Volume (Weight in MT) GSV**  
Conversion: GSV bbls@60F => GSV MT  
Calculation: GSV bbls@60F x conversion factor = GSV MT  
Conversion factor: ASTM D1250-80 Table 13
9. **Gross Standard Volume (Weight in LT) GSV**

Conversion: GSV bbls@60F => GSV LT

Calculation: GSV bbls@60F x conversion factor = GSV LT

Conversion factor: ASTM D1250-80 Table 11