

**General terms & conditions  
for sales and purchases of**

# **Crude Oil**



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**2009 EDITION**



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**PART ONE**  
**In respect of FOB deliveries**

**Section 1 – Measurement and sampling, independent inspection and certification**

**1.1 Measurement and sampling**

Measurement of the quantities and the taking of samples and analysis thereof for the purposes of determining the compliance of the crude oil with the grade and quantity provisions of the Special Provisions shall be carried out in the following manner:

1.1.1 Where the Loading Terminal is operated by the Seller:

- (i) by the Loading Terminal's own qualified inspector(s) in accordance with good standard practice at the Loading Terminal at the time of shipment, or;
- (ii) if the Seller and Buyer agree, by an independent inspector in accordance with current Approved Industry Practice. All charges of the independent inspector shall be shared equally between the parties and the inspector's report shall be made available to both parties. The Seller shall enable the independent inspector so appointed to have full access to the facilities at the Loading Terminal necessary to perform his duties, or;
- (iii) if the parties do not agree on the appointment of an independent inspector, then if required by the Buyer the Seller shall allow the Buyer or its appointed representative to witness, but not to undertake, the drawing of any samples and the laboratory analysis of those samples. Full details of the Buyer's representative shall be notified in writing to the Seller in advance. All charges relating to the Buyer's representative shall be solely for the Buyer's account and shall be considered solely as a service to the Buyer.

1.1.2 Where the Loading Terminal is not operated by the Seller:

- (i) by an independent inspector jointly agreed upon by the Buyer and Seller in accordance with current Approved Industry Practice. All charges of the independent inspector shall be shared equally between the parties and the inspector's report shall be made available to both parties. The Seller shall use all reasonable endeavors to enable the independent inspector so appointed to have full access to the facilities at the Loading Terminal necessary to perform his duties, or;
- (ii) should the parties fail to agree upon an independent inspector, or should the Loading Terminal refuse access to any independent inspector appointed by the parties then by the Loading Terminal's own qualified inspector(s) in accordance with good standard practice at the Loading Terminal at the time of shipment.

**1.2 Certificates of Quantity and Quality**

1.2.1 Provided always the certificates of quantity and quality (or such other equivalent documents as may be issued at the Loading Terminal) of the crude oil comprising the shipment are issued in accordance with Sections 1.2.2 or 1.2.3 below then they shall, except in cases of manifest error or fraud, be conclusive and binding on both parties for invoicing purposes and the Buyer shall be obliged to make payment in full in accordance with Section 29.1 but without prejudice to the rights of either party to make any claim pursuant to Section 25.

1.2.2 Any certificate of quantity and quality (or such other equivalent documents as may be issued at the Loading Terminal) issued pursuant to Section 1.1.1(i) or Section 1.1.2(ii) shall always be in accordance with good standard practice at the Loading Terminal at the time of shipment.

1.2.3 Any certificate of quantity and quality issued by an independent inspector pursuant to Section 1.1.1(ii) or 1.1.2(i) shall record that the independent inspector did witness, or himself undertook, the taking of samples and that the independent inspector did witness, or himself undertook, the analysis of such samples. For the avoidance of doubt, the parties agree that a certificate of quantity and quality countersigned by an independent inspector confirming these matters shall be a certificate of quantity and quality for the purposes of Section 1.2.1 above.

1.2.4 In the event that the independent inspector did not undertake or did not witness the taking of samples or the analysis of such samples then the certificate of quantity and quality issued or countersigned by him must expressly reflect this and it will not, in these circumstances, be a certificate of quantity and quality for the purposes of Section 1.2.1 but merely evidence of those matters undertaken or witnessed by the inspector.

### 1.3. **Place of Certification**

Should it not be customary practice at the Loading Terminal at the time of shipment for measurement and sampling pursuant to Section 1.1 to take place at the Vessel's manifold immediately prior to loading, or should the parties agree otherwise, then it is a condition of the Agreement that the Seller shall be obliged to provide the same quantity and quality of crude oil at the Vessel's permanent hose connection as set out in the certificates of quantity and quality so issued.

## **Section 2 – Risk and property**

2.1 Notwithstanding any right of the Seller to retain the documents referred to in Section 29 until payment, the risk and property in the crude oil delivered under the Agreement shall pass to the Buyer as the crude oil passes the Vessel's permanent hose connection at the Loading Terminal. If the crude oil delivered hereunder forms an unascertained part of a larger bulk, payment for the crude oil delivered hereunder shall, solely for the purpose of enabling property in such crude oil to pass to the Buyer pursuant to Section 20(A) of the Sale of Goods Act 1979, be deemed to have been made as such crude oil passes the Vessel's permanent hose connection at the Loading Terminal.

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

## **Section 3 – Laydays**

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

3.1.1 as specified in the Special Provisions; or

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

3.1.3 where such Laydays cannot be ascertained by reference to Sections 3.1.1 or 3.1.2, or where the Agreement is for the delivery of more than one shipment, as notified by the Seller to the Buyer by not later than either:

3.1.3.1 the date 12 days prior to the first day of the Laydays so notified; or

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

- 3.2 The Laydays established in accordance with Sections 3.1.2 or 3.1.3 shall, unless otherwise specifically agreed between the parties, fall entirely within any delivery period specified in the Special Provisions.
- 3.3 Where the Laydays are to be established in accordance with Section 3.1.3, the Buyer may notify the Seller of its preferred Laydays at any time prior to the date of the Seller's notice given pursuant to such Section. The Seller shall notify its supplier of such preferred Laydays provided always that the Seller shall not be under any obligation whatsoever to provide such Laydays.

#### **Section 4 – Nomination of Vessels, etc.**

##### **4.1 Full and part cargo lots**

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

##### **4.2 Nomination of Vessel**

4.2.1 Each Vessel which is to load crude oil hereunder shall be nominated in writing by the Buyer to the Seller. Such notice ("the nomination") shall specify:

- (a) the name of the Vessel, date built, summer deadweight and cargo tank capacity excluding slop tanks and flag;
- (b) the grade and approximate quantity to be loaded;
- (c) the ETA of the Vessel;
- (d) the destination(s) of the Vessel;
- (e) the length of the Vessel and such other information as may be required by the Loading Terminal operator from time to time;
- (f) full written instructions regarding the particulars and destination of the bills of lading and such other customary Loading Terminal documentation which may be required (and, for the avoidance of doubt, (i) the Buyer shall be liable for all costs resulting from any delays in loading crude oil hereunder due to failure by the Buyer to supply such information in a timely manner, and (ii) any such delays shall not count as used Lay time or, if the Vessel is on demurrage, as time on demurrage);
- (g) details of any cargo on board or to be laden on board if loading a part cargo;
- (h) confirmation that the Vessel complies with the requirements of Schedule F hereto.

4.2.2 The nomination shall not be effective unless it is received by the Seller not later than 8 days prior to the first day of the Laydays. Notwithstanding the foregoing, if the nomination is received by the Seller after such 8th day and is accepted by the Seller, it shall be effective but, subject to the provisions of Sections 5.2.1 and 6.3, running hours allowed to the Seller for the loading of crude oil in accordance with Section 6.1 shall not commence until such time as the Vessel has actually commenced loading. In the event that the Agreement is entered into 8 days or less prior to the first day of the Laydays then the nomination must be received by the Seller no less than 2 days prior to the first day of the Laydays.

##### **4.3 Substitution of Vessels**

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

- 4.3.1 the size of the substitute Vessel and the quantity to be loaded shall not, without the prior written consent of the Seller, differ materially from the size of the Vessel previously named and the quantity specified in the nomination;
- 4.3.2 the Laydays which would have applied in respect of the Vessel originally nominated shall apply to the substitute Vessel; and
- 4.3.3 the Buyer shall give to the Seller notice in writing of the name and the destination(s) of the substitute Vessel within 24 hours of fixing such Vessel "sub details" but in any event not later than the ETA of the substitute Vessel or the ETA of the Vessel originally nominated, whichever is the earlier.

#### 4.4 **ETA**

The Buyer or its representative shall notify the Seller or its representative of any change or changes in the ETA notified pursuant to Sections 4.2 or 4.3, but the Laydays shall be revised only with the Seller's specific written agreement. The giving or withholding of such agreement shall be at the absolute discretion of the Seller.

#### 4.5 **Rejection of nominations and Vessels**

Notwithstanding anything to the contrary express or implied elsewhere herein, the Seller shall have the right:

- 4.5.1 to reject any nomination made by the Buyer pursuant to Sections 4.2 or 4.3 on any reasonable ground; and/or
- 4.5.2 to refuse, on any reasonable ground, to accept for loading any Vessel named pursuant to Sections 4.2 or 4.3; and/or
- 4.5.3 to reject the Vessel in question, notwithstanding any prior acceptance of such Vessel (whether named in the Special Provisions or nominated or substituted pursuant to Sections 4.2 or 4.3), on any reasonable ground if such Vessel is involved in any incident or more recent information regarding such Vessel becomes available to the Seller at any time after such prior acceptance; and/or
- 4.5.4 without derogating from any other reasonable grounds that may be available to the Seller, in those cases where MISCOL is the Seller it shall be a reasonable ground for MISCOL to reject or refuse a Vessel pursuant to this Section if the Vessel either at the time of nomination or subsequently at any time up to the time of loading is not approved by MISCOL Ship Vetting or alternatively is determined by MISCOL Ship Vetting to be unacceptable under the MISCOL Ship Vetting policy.

#### 4.6 **Regulations at the Loading Terminal**

All applicable governmental, local and port authority regulations, the Seller's or the Seller's suppliers' regulations and any other requirements of whatever nature and in force at the Loading Terminal shall apply to the Buyer's Vessel (including without limitation the requirements set out in Schedule F). Notwithstanding anything to the contrary express or implied in Sections 5 and 6 or in this Section 4, if any Vessel nominated by the Buyer does not comply with the foregoing provisions or any of them, the Seller or the Seller's supplier may refuse to Berth or load the Vessel in question.

#### 4.7 **Changes in procedures**

Without prejudice to the Buyer's obligations as set out in Section 5.3.1, this Section 4 shall be subject to modification, by written notice from the Seller to the Buyer, to take account of changes in the nomination and/or other procedures applicable from time to time at the Loading Terminal.



#### 4.8 **Prompt delivery**

If the date of the Agreement is later than any of the dates for notification specified in the Special Provisions or Section 3 or this Section 4, then both parties shall make best efforts to complete within 2 Banking Days of the date of the Agreement any outstanding time limited requirements, notifications, nominations and procedures which would have preceded the date of the Agreement aforesaid.

#### 4.9 **Liability**

The Seller shall not be liable for the consequences of rejection or delay (including but not limited to demurrage) of the Vessel or other restriction suffered in respect of the Vessel by virtue of the application of any regulations or other requirements of this Section 4 and/or of Schedule F, and the Buyer shall be liable for any costs or damages incurred by the Seller arising out of any such rejection of, delay to or restriction of the Vessel.

### **Section 5 – Arrival of Vessel, loading, Berth etc.**

#### 5.1 **Arrival of Vessel**

5.1.1 The Buyer shall arrange for its Vessel to report to the Seller or its representative at the Loading Terminal each of 72, 48 and 24 hours prior to its arrival and otherwise in accordance with the standard reporting procedure applicable from time to time at the Loading Terminal in question. If the Buyer's Vessel fails, for any reason, to give at least 24 hours' prior notice of arrival at the Loading Terminal, the time allowed to the Seller for loading pursuant to Section 6.1 shall be extended by a period equal to the delay in giving such 24 hours' notice, but in any case not exceeding an additional 24 hours.

5.1.2 The Buyer shall ensure that by no later than 2400 hours (local time) on the last day of the Laydays:

5.1.2.1 the Vessel nominated by the Buyer hereunder shall arrive at the Loading Terminal in question (or the usual waiting place), complete all formalities and in all respects be ready to commence loading the crude oil deliverable hereunder; and

5.1.2.2 NOR has been tendered.

5.1.3 Once NOR has been tendered pursuant to Section 5.1.2, the Buyer shall be obliged to receive delivery of the crude oil in accordance with Section 5.2.2.

#### 5.2 **Loading**

5.2.1 Unless otherwise agreed in writing by the Seller, making specific reference to this Section, the Seller shall not be under any obligation to commence loading hereunder prior to 0600 hours (local time) on the first day of the Laydays.

5.2.2 After receipt of the NOR pursuant to Section 5.1, the Seller, having regard to the requirements of the Loading Terminal, Loading Terminal procedures and the time when the Vessel has complied with the provisions of Section 5.1, shall commence loading as soon as reasonably practicable, even if this means that loading is effected or completed outside the Laydays or outside any other period specified in the Special Provisions.

#### 5.3 **Berth**

5.3.1 Subject to compliance by the Buyer and its nominated Vessel with all other requirements of the Loading Terminal at the time in question, the Seller shall provide or cause to be provided free of charge to the Buyer (subject to the provisions of Section 28) a Berth to be indicated by the Seller or its representative at which a Vessel having the characteristics of

length overall, draught and any other dimensions not exceeding the length, draught and any other dimensional restrictions then in force at the Loading Terminal at the time in question, can safely reach and leave and where it can always lie Safely Afloat. Notwithstanding the foregoing, if the Berth in question requires the Buyer's Vessel to be loaded from a floating storage facility, lighter or other Vessel by means of ship-to-ship transfer, such Berth shall be subject to the Buyer's ship or Loading Terminal vetting procedures and the Buyer may, on any reasonable ground and without liability, refuse the use of such facility for the purpose of loading its nominated Vessel.

5.3.2 If, while the Vessel nominated by the Buyer is approaching, entering or departing from the Loading Terminal, or is present in the Loading Terminal, the length, draught or other dimensions of such Vessel shall exceed the length, draught or other dimensions so ascertained for the Loading Terminal in question for whatever reason, the Seller shall not be liable for any loss or damage caused as a result thereof and the Seller shall not be obliged to commence or continue loading.

#### **5.4 Vacation of Berth**

The Buyer's Vessel shall vacate the Berth as soon as loading hoses have been disconnected, provided that such Vessel's departure is not delayed awaiting production of Loading Terminal documents unless such documents can be delivered to the Vessel at a suitable anchorage or where early departure procedure ("EDP") is applied. If the Vessel fails to vacate the Berth, unless for reasons attributable to the Seller, its supplier or the Loading Terminal operator, any loss or damage suffered by the Seller or its supplier resulting from such failure shall be paid by the Buyer to the Seller.

#### **5.5 Berth utilization**

Notwithstanding the provisions of Section 6, if at the Loading Terminal the Seller's supplier or any other agency (whether or not an Associated Company of the Seller) imposes on the Seller, in respect of the Buyer's Vessel, an excess Berth utilization charge in accordance with the Loading Terminal regulations or a contractually agreed or otherwise established scale for any hours of Berth utilization in excess of a specified period of hours (as such scale may be advised by the Seller to the Buyer from time to time), but does not impose such charge directly on the Buyer's Vessel itself, such charge shall be for the Buyer's account. For the avoidance of doubt, it is agreed that for the purposes of this Section any technical failure or breakdown on the part of the Vessel shall be a cause within the control of the Vessel and the Buyer.

#### **5.6 Shifting and Lightering**

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

5.6.2 The Seller shall have the option to load the Vessel from lighters subject always to the Buyer's rights under Section 5.3.1, when the cost of such lighter age (together with any additional expense reasonably incurred by the Vessel in respect thereof) shall be for the Seller's account. Any lightering operations shall be carried out in accordance with the procedures set out in the ICS/OCIMF Ship to- Ship transfer guides. The suitability of the lightering Vessel shall be the Seller's sole responsibility. The Seller shall be obliged to notify the place of lightering to the Vessel when NOR is tendered. The place of lightering so notified shall be deemed the Berth for the purposes of Sections 5 and 6 and all references therein to the Berth shall be construed accordingly.

#### **5.7 Dues on Vessels at the Loading Terminal**

All duties, fees, taxes, quay dues and other charges, whether similar to the foregoing or not and without limitation, due in respect of the Vessel as well as pilot age, mooring and towage expenses incurred at the Loading Terminal shall be borne by the Buyer.

## **Section 6 – Time allowed, delays and demurrage**

### **6.1 Delays**

In the event of any delay of any kind or from any cause whatsoever whether in connection with the scheduling of the Vessel's turn to load (including any change in such scheduling), provision of a Berth for the Vessel, berthing or loading of the Vessel or otherwise howsoever without limitation, and provided always that the Vessel is eventually loaded pursuant to Section 5.2.2, any rights of the Buyer against the Seller, however the same may arise and whether or not arising under the Agreement, shall be limited in all circumstances whatsoever to a claim for the payment of demurrage as specified below, and the Buyer shall not be entitled to complain directly or indirectly of any delay except for the purpose of founding a claim to such demurrage. Further, any such right to demurrage shall be subject always to the following conditions:

6.1.1 The Buyer shall only be entitled to such amount of demurrage as follows:

- (a) if the Seller's supplier operates the Loading Terminal, such demurrage as the Seller is able to recover and does recover under the Loading Terminal's usual terms for the supply of the crude oil, or
- (b) if the Seller has contracted with a supplier that is not the operator of the Loading Terminal, the lesser of such demurrage as the Seller is able to recover and does recover from that supplier and the amount of demurrage that would have been recovered under the Loading Terminal's usual terms for the supply of the crude oil, or
- (c) if the Loading Terminal has no laytime and demurrage terms applicable to the supply of the crude oil then the amount of demurrage the Seller shall pay to the Buyer shall be calculated pursuant to Sections 6.3, 6.4 and 6.5 below, irrespective of any recovery the Seller may make from its supplier.

6.1.2 In cases 6.1.1(a) and (b) above the Seller shall use reasonable efforts to recover from its supplier any demurrage for which the Buyer has submitted a claim in accordance with the provisions of this Section.

6.1.3 In all cases under 6.1.1 the Buyer must have complied with Section 6.1.4 below.

6.1.4 In no event shall the Seller be liable for demurrage unless the demurrage claim has been received by the Seller in writing within 45 days of the date of disconnection of loading hoses, stating in reasonable detail the specific facts upon which the claim is based, provided that any supporting documentation which is not at that time available to the Buyer shall be received by the Seller within 180 days of the date of disconnection of loading hoses. If the Buyer fails to give such notice or fails to provide such documentation within the aforesaid limits, then any liability of the Seller for demurrage shall be extinguished.

6.1.5 If the Seller is, due to an impediment reasonably beyond its control, prevented, delayed or hindered from or in obtaining or bringing to the Loading Terminal the crude oil required for the shipment hereunder or any part thereof, or from or in loading the same, then notwithstanding any terms that might otherwise be applicable to the supply of the crude oil by such Loading Terminal any time lost, whether in the commencement, carrying out or completion of the loading, shall not be counted or included in calculating the time taken by the Seller to load such shipment; and any time so lost after the time allowed for loading as hereinbefore provided shall have expired shall not be counted or included in calculating the time in respect of which the Seller is liable for demurrage. Any such impediment shall be an impediment for the purposes of Section 32 (force majeure).

### **6.2 Demurrage terms**

Save when the Loading Terminal has no laytime and demurrage terms applicable to the supply of the crude oil when Sections 6.3, 6.4 and 6.5 shall apply, any demurrage shall be recoverable only in accordance with the usual terms applicable to the supply of the crude oil from such Loading Terminal, whether the Seller is the Operator of the Loading Terminal or otherwise.

### 6.3 Time allowed

In those cases where the Loading Terminal has no laytime and demurrage terms applicable to the supply of crude oil the time allowed to the Seller for the loading of the quantity of crude oil deliverable hereunder to each Vessel shall be 36 running hours, all days and holidays included unless loading on the day or holiday in question is prohibited by law or regulation at the Loading Terminal.

### 6.4 Running hours

In those cases where the Loading Terminal has no laytime and demurrage terms applicable to the supply of the crude oil, then

6.4.1 Subject as otherwise provided in this Section 6.4 or elsewhere in the Special Provisions of the Agreement, running hours shall commence Berth or no Berth 6 hours after NOR is given to the Seller or its representative by the master of the Vessel (or his/her representative) after its arrival at the Loading Terminal, or on commencement of loading, whichever is the earlier, provided always that (a) the Buyer has complied with Section 5.1.1, and (b) such NOR is given in accordance with the provisions of Section 5.1.2.

6.4.2 If NOR is given for the Vessel before the first day of the Laydays, running hours shall commence at 0600 hours on the first day of the Laydays or on commencement of loading, whichever is the earlier. If NOR is given for the Vessel after the last day of the Laydays and is accepted for loading by the Seller in its sole and absolute discretion, then, without prejudice to any of the Seller's other rights, running hours shall commence only on commencement of loading.

6.4.3 For the purposes of calculating running hours, loading shall be deemed to be completed upon disconnection of loading hoses.

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

- (a) awaiting free pratique, tugs, tides, pilot or daylight;
- (b) on an inward passage until the Vessel is securely moored at the Berth and its gangway, if it is to be used, is in place;
- (c) adverse weather or sea state;
- (d) preparing for and handling or shifting of ballast, bilges, slops or other substances or bunkering unless concurrent with cargo operations;
- (e) restrictions imposed by the owner, charterer or master of the Vessel;
- (f) any breakdown of the Vessel's equipment or failure to comply with the requirements of the Loading Terminal with respect to equipment aboard or any other matter causing delay or restriction to loading operations;
- (g) cleaning and inspection of the Vessel's cargo tanks;

- (h) time spent complying with any of the regulations and other requirements referred to in Section 4;
- (i) any other delay attributable to the Vessel, the Buyer or agents of the Buyer;
- (j) any onboard strike by members of the crew.

## 6.5 Damages for delay

Should Section 6.2 not apply then:

6.5.1 if the shipment is not loaded within the time allowed in accordance with Section 6.3, the time so allowed shall be extended by the excess time but (subject always to Section 4.2.2) the Seller shall pay to the Buyer demurrage, in the same currency as is prescribed for payment for the crude oil delivered under the Agreement, in respect of the excess time at the appropriate rate per day (or pro rata for part of a day) as hereinafter specified. The Seller shall not be liable (other than for demurrage as aforesaid) for any loss or damage, direct or indirect, which the Buyer may suffer as a result of the shipment not being loaded within the time allowed in accordance with Section 6.3;

6.5.2 the appropriate rate of demurrage shall be either:

6.5.2.1 the rate, if any, specified in the Special Provisions; or

6.5.2.2 the applicable charter party rate; or

6.5.2.3 where there is no charter party rate or, in the Seller's sole opinion the charter party rate established pursuant to Section 6.5.2.2 is not representative of the market rate, the market rate current on the date running hours commence as aforesaid for a Vessel of the size and type used for a single voyage charter from the Loading Terminal to the Buyer's Discharge Port. If the parties fail to agree within 30 days upon such rate, then at the instance of either party, such rate shall be determined by The London Tanker Brokers Panel Ltd. (or its successors in title), whose decision thereon shall be final and binding and whose costs shall be paid for by the applicant;

## 6.6 Part cargo lots

6.6.1 If delivery is given and taken as other than a full cargo lot, the provisions of Section 6.2 shall apply. If the Loading Terminal has no laytime and demurrage terms applicable to the supply of the crude oil then Sections 6.3, 6.4 and 6.5 shall apply, but for the purposes of ascertaining the appropriate rate of demurrage under Section 6.5 a Vessel of a summer deadweight equal to the shipment plus 5 percent shall be deemed to have been used.

6.6.2 If the delivery hereunder is co-loaded with the crude oil being delivered to the Buyer by another supplier at the same Berth, the Seller shall only be liable for that proportion of the demurrage equal to the ratio of the volume delivered by the Seller to the total volume loaded onto the Vessel at that Berth.

**PART TWO**  
In respect of CFR, CIF and Ex Ship deliveries

**Section 7 – Measurement and sampling, independent inspection and certification**

**7.1 CFR and CIF deliveries, including CFR and CIF Indicative Discharge Rate**

7.1.1 Measurement of the quantities and the taking of samples and analysis thereof for the purposes of determining the compliance of the crude oil with the grade and quantity provisions of the Special Provisions shall be carried out in the following manner:

7.1.1.1 Where the Loading Terminal is operated by the Seller:

- (i) by the Loading Terminal's own qualified inspector(s) in accordance with good standard practice at the Loading Terminal at the time of shipment, or;
- (ii) if the Seller and Buyer agree, by an independent inspector in accordance with current Approved Industry Practice. All charges of the independent inspector shall be shared equally between the parties and the inspector's report shall be made available to both parties. The Seller shall enable the independent inspector so appointed to have full access to the facilities at the Loading Terminal necessary to perform his duties, or;
- (iii) if the parties do not agree on the appointment of an independent inspector, then if required by the Buyer the Seller shall allow the Buyer or its appointed representative to witness, but not to undertake, the measurement of quantity and the drawing of any samples and the laboratory analysis of those samples. Full details of the Buyer's representative shall be notified in writing to the Seller in advance. All charges relating to the Buyer's representative shall be solely for the Buyer's account and shall be considered solely as a service to the Buyer.

7.1.1.2 Where the Loading Terminal is not operated by the Seller:

- (i) in accordance with current Approved Industry Practice by an independent inspector jointly agreed upon by the Buyer and Seller. All charges of the independent inspector shall be shared equally between the parties and the inspector's report shall be made available to both parties. The Seller shall use all reasonable endeavors to enable the independent inspector so appointed to have full access to the facilities at the Loading Terminal necessary to perform his duties, or;
- (ii) should the parties fail to agree upon an independent inspector, or should the Loading Terminal refuse access to any independent inspector appointed by the parties then by the Loading Terminal's own qualified inspector(s) in accordance with good standard practice at the Loading Terminal at the time of shipment.

7.1.1.3 Notwithstanding the provisions of Sections 7.1.1.1(ii) and 7.1.1.2 (i), if an independent inspector has already been appointed by the Seller or any third party in respect of the shipment prior to the nomination of such shipment by the Seller to the Buyer pursuant to Section 11 or if such inspection has already been carried out, then both parties shall be bound by the results of

such measurement of quantity, sampling and analysis thereof as carried out by such independent inspector to the extent set out in Section 7.1.2.1 below, provided always the certificates of quantity and quality (or such other equivalent documents as may be issued at the Loading Terminal) of the crude oil comprising the shipment are issued in accordance with Section 7.1.2.3 below.

## **7.1.2 Certificates of Quantity and Quality**

- 7.1.2.1 Provided always the certificates of quantity and quality (or such other equivalent documents as may be issued at the Loading Terminal) of the crude oil comprising the shipment are issued in accordance with Sections 7.1.2.2 or 7.1.2.3 below then they shall, except in cases of manifest error or fraud, be conclusive and binding on both parties for invoicing purposes and the Buyer shall be obliged to make payment in full in accordance with Section 29.1 but without prejudice to the rights of either party to make any claim pursuant to Section 25.
- 7.1.2.2 Any certificate of quantity and quality (or such other equivalent documents as may be issued at the Loading Terminal) issued pursuant to Section 7.1.1.1(i) or Section 7.1.1.2(ii) shall always be in accordance with good standard practice at the Loading Terminal at the time of shipment.
- 7.1.2.3 Any certificate of quantity and quality issued by an independent inspector pursuant to Section 7.1.1.1(ii) or 7.1.1.2(i) shall record that the independent inspector did witness, or himself undertook, the taking of samples and that the independent inspector did witness, or himself undertook the measurement of quantity and the analysis of such samples. For the avoidance of doubt, the parties agree that a certificate of quantity and quality countersigned by an independent inspector confirming these matters shall be a certificate of quantity and quality for the purposes of Section 7.1.2.1 above.
- 7.1.2.4 In the event that the independent inspector did not undertake or did not witness the measurement of quantity or the taking of samples or the analysis of such samples then the certificate of quantity and quality issued or countersigned by him must expressly reflect this and it will not, in these circumstances, be a certificate of quantity and quality for the purposes of Section 7.1.2.1 but merely evidence of those matters undertaken or witnessed by the inspector.

## **7.2 Ex Ship deliveries**

- 7.2.1. Measurement of the quantities and the taking of samples for the purposes of determining the compliance of the crude oil with the quality and quantity provisions of the Special Provisions shall be carried out at the Discharge Port at the time of discharge by an independent inspector jointly agreed upon by the Buyer and Seller. All charges of the independent inspector shall be shared equally between the parties and the inspector's certificates of quality and quantity shall be made available to both parties. The Buyer shall ensure that the independent inspector shall have full access to the facilities at the Discharge Port necessary to enable him to perform his duties.
- 7.2.2 The independent inspector shall for the purpose of determining the quality of the crude oil carry out or witness tests on a composite sample of the crude oil taken by him or in his presence from the Vessel's tanks at the Discharge Port immediately prior to commencement of discharge and in accordance with the test method(s) referred to in the specification of the crude oil set out in the Special Provisions, or, where no test method is set out, in accordance with current Approved Industry Practice.

7.2.3 The independent inspector shall for the purpose of determining the quantity of the crude oil proceed as follows:

7.2.3.1 where the crude oil is delivered from the Seller's Vessel directly into static shore tanks (that is shore tanks to or from which no crude oil is being pumped other than the crude oil being delivered hereunder) the gross quantity of the crude oil so delivered shall be determined by the independent inspector by reference to Discharge Port meter measurements taken or witnessed by the independent inspector in accordance with API MPMS Chapter 5. Meters shall be proved prior to discharge by or in the presence of the independent inspector in accordance with API MPMS Chapter 4. Where metering facilities are not available, or where in the opinion of the independent inspector the meters did not perform in accordance with API MPMS Chapter 5, or where the meters were not proven prior to discharge in accordance with API MPMS Chapter 4, the gross quantity of the crude oil delivered hereunder shall be determined by reference to shore tank gauging taken or witnessed by the independent inspector in accordance with API MPMS Chapter 3;

7.2.3.2 where the crude oil is delivered from the Seller's Vessel directly into active shore tanks (that is shore tanks where crude oil is being pumped out of the tank during the discharge of the crude oil hereunder) and where no correctly functioning or proven Discharge Port meters are available in accordance with Section 7.2.3.1, the gross quantity of the crude oil delivered hereunder shall be determined by the independent inspector by reference to the Vessel's discharged figures as adjusted by its Vessel Experience Factor at discharge ("VEFD") in accordance with VEF Addendum to API MPMS Chapter 17.1;

7.2.3.3 the certificates of quantity and quality issued by the independent inspector shall record that the independent inspector did witness, or himself undertook, the taking of samples and that the independent inspector did witness, or himself undertook the measurement of quantity and the analysis of such samples. For the avoidance of doubt, the parties agree that a certificate of quantity or quality countersigned by an independent inspector confirming these matters shall be a certificate of quantity or quality for the purposes of Section 7.2.1;

7.2.3.4 in the event that the independent inspector did not undertake or did not witness the measurement of quantity or the taking of samples or the analysis of such samples then the certificates of quantity and quality issued or countersigned by him must expressly reflect this and it will not, in these circumstances, be a certificate of quantity and quality for the purposes of Section 7.2.1 but merely evidence of those matters undertaken or witnessed by the inspector.

### 7.3 CFR and CIF Indicative Discharge Date

Where the Seller expressly or impliedly provides the Buyer with a date or range of dates within which a nominated Vessel shall arrive at the Discharge Port these shall be indicative only, made by the Seller as an honest assessment without guarantee. The Seller shall not assume any responsibility for the delivery of the crude oil at the Discharge Port and save as regards the calculation of laytime and demurrage as set out in Section 13 below the rights and obligations of the parties including the provisions of Section 7.1 shall be the same in all respects as for CFR and CIF deliveries.



#### 7.4 **Place of Certification**

Should it not be customary practice at the Loading Terminal at the time of shipment for measurement and sampling pursuant to Section 7.1 to take place at the Vessel's manifold immediately prior to loading, or should the parties agree otherwise, then it is a condition of the Agreement that the Seller shall be obliged to provide the same quantity and quality of crude oil at the Vessel's permanent hose connection as set out in the certificates of quantity and quality so issued.

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

Where delivery is made as an unsegregated part cargo lot to the Buyer and a third party, the quantity determined in accordance with the foregoing shall be adjusted so that, following completion of discharge of the relevant part cargo lots, the Buyer and such third party shall each be allocated a percentage of the total loaded quantity equal to that percentage of the total outturn quantity (determined at each Discharge Port in accordance with the provisions of Section 7.1.3 above) which was discharged at its Discharge Port. The costs of such independent inspection shall be shared equally between the parties for their respective Discharge Ports and the inspector's report shall be made available to all parties.

### **Section 8 – Risk and property**

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

8.1.1 Notwithstanding any right of the Seller to retain the documents referred to in Section 29 until payment, the risk in the crude oil delivered under the Agreement shall pass to the Buyer as the crude oil passes the Vessel's permanent hose connection at the Loading Terminal and property in the crude oil shall pass:

8.1.1.1 in the case of delivery as a full cargo lot or, in the case of a part cargo lot, where the grade and/or quantity is separately ascertainable, as the crude oil passes the Vessel's permanent hose connection at the Loading Terminal; or

8.1.1.2 in the case of delivery as a part cargo lot where the crude oil deliverable hereunder is not identifiable and ascertainable on board the Seller's Vessel separately from crude oil which is destined for receivers other than the Buyer:

(a) as the crude oil passes the Vessel's permanent hose connection at the Discharge Port, if such part cargo is not the last part cargo to be discharged, or

(b) immediately upon completion of discharge of all other crude oil at the previous place(s) of discharge, if such part cargo is the last cargo to be discharged as the case may be.

8.1.2 If the Vessel has commenced or completed loading prior to being nominated to the Buyer pursuant to Section 11, then, subject to the provisions of Section 8.1.1.2, notwithstanding any right of the Seller to retain the documents referred to in Section 29 until payment, the risk in the crude oil delivered under the Agreement shall be deemed to have passed to the Buyer as the crude oil passed the Vessel's permanent hose connection at the Loading Terminal and property in the crude oil shall pass immediately upon receipt by the Seller of the Buyer's acceptance of such nomination.

#### 8.2 **Ex Ship deliveries**

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

## **Section 9 – Insurance**

### **9.1 CFR deliveries**

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

### **9.2 CIF deliveries**

9.2.1 The Seller undertakes to procure and pay for insurance against marine risks to the full value of the shipment hereunder plus 10%. Such insurance, which shall operate from shore tank at the Loading Terminal to shore tank at the Discharge Port, shall be in accordance with the provisions of a Marine Cargo Insurance Policy subject to Bulk Oil Clauses SP 13C, or, at the Seller's option, Institute Cargo Clauses (A), and the benefit thereof shall accrue to the Buyer upon the passing of risk in the shipment as provided for in the Agreement.

9.2.2 The Seller does not undertake to procure insurance against war, strikes, riots and civil commotions risks in respect of the delivery of crude oil hereunder save where the Seller shall, by written notice actually received by it at least 2 banking days in London prior to the commencement of loading, have been requested by the Buyer to procure such insurance. Where, upon request as aforesaid, the Seller procures such insurance, it shall be subject to Institute War Clauses (Cargo) and Institute Strikes Clauses (Cargo) current on the date of sailing of the Vessel and the actual premium payable at the current London Market rate for the voyage to be performed ruling on the said date shall be charged to and be recoverable from the Buyer by the Seller as an addition to the purchase price and such addition shall then form part of such purchase price.

### **9.3 Ex Ship deliveries**

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

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

9.4.1 In all cases, if and for so long as the voyage to the Discharge Port, or any seas through which the Vessel has to travel in performance of the Agreement, the Seller shall pursuant to the terms of the relevant charter party incur additional insurance or war risk insurance premia whether at the date of the Agreement or subsequently for the Vessel's hull and machinery, protection and indemnity or cargo insurances or any or all of them, the cost of such additional insurance and/or additional premia shall be paid by the Buyer to the Seller in addition to the price payable pursuant to the Agreement.

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

9.4.2.1 to direct any Vessel to undertake or to complete the voyage to the Discharge Port if such Vessel is required in the performance of the Agreement:

9.4.2.1.1 to transit or to proceed to or to remain in waters so that the Vessel concerned would be involved in a breach of any Institute Warranties (if applicable) or, in the Seller's opinion, to risk its safety or to risk ice damage; or page 18

9.4.2.1.2 to transit or to proceed to or to remain in waters where there is war (de facto or de jure) or threat thereof;

9.4.2.2 prior to the commencement of loading to direct any Vessel to undertake the voyage to the intended Discharge Port if such Vessel is required in the performance of the terms of the Agreement to transit waters which, in the Seller's reasonably held opinion, would involve abnormal delay; or

9.4.2.3 to undertake any activity in furtherance of the voyage which in the opinion of the Vessel's master could place the Vessel, its cargo or crew at risk.

9.4.3 If the Seller agrees to direct a Vessel to undertake or to complete the voyage as referred to in Section 9.4.2, the Buyer undertakes to reimburse the Seller, in addition to the price payable under the Agreement, for costs incurred by the Seller in respect of any additional insurance premia (including those referred to in Section 9.2) and any other sums that the Seller may be required to pay to the Vessel's owner including but not limited to any sums in respect of any amounts deductible under such owners' insurance and any other costs and/or expenses incurred by the Seller.

## **Section 10 – Charter party conditions**

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

10.2 Subject always to any provisions for payment and documents pursuant to Sections 29.1, 29.7 and/or Section 29.8, the Seller may arrange shipment under bills of lading which incorporate charter party conditions normally in use for Vessels. Without prejudice to the generality of the foregoing, such conditions shall be deemed to include:

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

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

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

10.2.2.2 the country, state, territory or region at which discharge was to have taken place becomes a restricted jurisdiction (as defined in Section 27.2); the shipment shall be discharged at an alternative safe port nominated by the Buyer which is not subject to any such prohibition and which is acceptable to the Seller (which acceptance shall not be unreasonably withheld).

10.3 If any prohibition referred to in Section 10.2.2 becomes applicable, such alternative port shall be deemed to be the Discharge Port stipulated under the Agreement for the shipment in question and all extra expenses (if any) involved in the Vessel's reaching such alternative Discharge Port and/or in the discharge of the shipment thereat shall be for the Buyer's account.

10.4 Without prejudice to the Buyer's obligations under Section 13, the Seller undertakes in all cases to settle freight and demurrage due to the ship-owners.

## **Section 11 – Nomination of Vessels, etc.**

### **11.1 Full and part cargo lots**

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

### **11.2 Nomination of Vessels**

The Seller shall give to the Buyer a notice of nomination ("the nomination") either (1) on or about the time the Agreement is entered into between the parties, or (2) at least 8 days prior to the first day of the Loading Terminal Laydays of the Vessel so nominated, whichever is the later. Such nomination shall specify:

- (a) the name of the Vessel, date built, summer deadweight and cargo tank capacity excluding slop tanks and flag;
- (b) the grade and approximate quantity to be loaded (or the bill of lading quantity, if known);
- (c) the Loading Terminal Laydays (or the bill of lading date, if known) and the ETA at the Discharge Port;
- (d) the length of the Vessel and its estimated (or actual, if known) sailing draught on completion of loading;
- (e) the Vessel/chatterer's agent at the Discharge Port;
- (f) details of any other cargo on board or to be laden on board if delivery is of a part cargo;
- (g) in the case of any sales afloat, Ex Ship or any variation thereof whereby the crude oil has been or will be laden onboard (which shall include storage, and any intervening transshipment as well as by way of carriage) more than one Vessel the Seller shall provide the name of each such Vessel, date built and flag;
- (h) confirmation that the Vessel complies with the requirements of Schedule F hereto. The Seller undertakes to inform the Buyer of any changes to the ETA advised pursuant to Section 11.2(c) as soon as practicable after receipt thereof from its supplier or the Vessels' owner or agent and, where applicable, such information as shall be necessary so as to establish the time and place of the passing of property pursuant to Section 8.1.

### 11.3 Buyer's nomination

The Buyer shall, within one Banking Day or such other period as may be specified in the Special Provisions after receipt of the Seller's nomination made pursuant to Section 11.2, notify the Seller of:

- 11.3.1 the final Discharge Port, if not already specified in the Special Provisions, when the Seller's approval thereto shall be required in writing within one Banking Day thereafter, such approval not to be unreasonably withheld. No change to the final Discharge Port so nominated or specified shall be made without the Seller's prior written acceptance which shall not be unreasonably withheld and subject always to the provisions of Section 11.8; and
- 11.3.2 if the Special Provisions provide a range within which a Discharge Port or ports may be nominated, the Seller's approval to each port shall be required in writing within one Banking Day after any valid nomination, such approval not to be unreasonably withheld.
- 11.3.3 in the case of delivery CFR or CIF, full written instructions regarding the particulars and destination of the bills of lading and such other customary Loading Terminal documentation which may be required (and, for the avoidance of doubt, the Buyer shall be liable for all costs resulting from any delays in loading crude oil hereunder due to failure by the Buyer to supply such information in a timely manner). The Seller shall have the right to issue its own instructions if such instructions are not so provided by the Buyer. All costs (including but not limited to demurrage) arising out of any failure by the Buyer to comply with the foregoing shall be for the Buyer's account.

### 11.4 Substitution of Vessels

In respect of any Vessel named in the nomination, the Seller shall be entitled to substitute therefore another Vessel provided always that:

- 11.4.1 the size of the substitute Vessel and the quantity to be loaded shall not, without the prior written consent of the Buyer, differ materially from the size of the Vessel previously named and the quantity specified in the nomination; and
- 11.4.2 the Seller shall give to the Buyer notice in writing of the name of the substitute Vessel not less than 3 clear days before:
- 11.4.2.1 in the case of delivery CFR or CIF, the last day of the Loading Terminal Laydays of the substitute Vessel or the last day of the Loading Terminal Laydays of the Vessel originally nominated, whichever is the earlier, provided always that such substitution shall not be allowed after commencement of loading of the Vessel originally nominated unless otherwise specifically agreed between the parties; or 11.4.2.2 in the case of delivery Ex Ship, the ETA of the substitute Vessel or the ETA of the Vessel originally nominated, whichever is the earlier.

## 11.5 **Acceptance of Vessels**

- 11.5.1 Notwithstanding anything to the contrary express or implied elsewhere, the Buyer shall have the right (which right may only be exercised prior to the passing of risk and property hereunder) to refuse, on any reasonable ground, to accept any Vessel named pursuant to Sections 11.2 including any Vessel referred to in Section 11.2.(g) even though such Vessel is not the performing Vessel under the Agreement, or 11.4. The Buyer shall not be liable for any loss or damage, direct or indirect, which the Seller may suffer as a result of the Buyer exercising such right.
- 11.5.2 Notwithstanding any prior acceptance of a Vessel (whether named in the Special Provisions or nominated or substituted pursuant to Sections 11.2 or 11.4), the Buyer shall have the right (which right may only be exercised prior to the passing of risk and property hereunder) to reject the Vessel in question on any reasonable ground if such Vessel is involved in any incident or more recent information regarding such Vessel becomes available to the Buyer at any time after such prior acceptance.
- 11.5.3 If the facilities at the Loading Terminal in question require the Seller's Vessel to be loaded from a floating storage facility, lighter or other Vessel by means of shipto- ship transfer, such Berth shall be subject to the Buyer's ship or Loading Terminal vetting procedures and the Buyer may, on any reasonable ground and without liability, refuse the use of such facility for the purpose of loading thenominated Vessel.
- 11.5.4 Without derogating from any other reasonable grounds that may be available to the Buyer, in those cases where MISCOL is the Buyer it shall be a reasonable ground for MISCOL to reject or refuse a Vessel pursuant to this Section if the Vessel either at the time of nomination or subsequently at any time up to the time of loading is not approved by MISCOL Ship Vetting or alternatively is determined by MISCOL Ship Vetting to be unacceptable under the MISCOL Ship Vetting policy and/or does not comply withMISCOL Port Clearance requirements.

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

All applicable governmental, local and port authority regulations, the Seller's or the Seller's suppliers' regulations, and any other requirements of whatever nature and howsoever communicated in force at the Loading Terminal and all applicable governmental, local and port authority regulations, the Buyer's regulations (if appropriate)and any other requirements of whatsoever nature and howsoever communicated in force at the Discharge Port (including without limitation the requirements set out in Schedule F) shall apply to the Seller's Vessel. Notwithstanding anything to the contrary express or implied in Sections 12 and 13 or in this Section 11:

11.6.1 if the Vessel nominated by the Seller does not comply with the foregoing provisions or any of them, the Buyer or the Buyer's customer may refuse to Berth or discharge the Vessel in question; and

11.6.2 the Buyer shall not be liable for the consequences of rejection or delay of the Vessel or other restriction suffered in respect of the Vessel by virtue of the application of such regulations or other requirements and the Seller shall be liable for any costs or damages incurred by the Buyer arising out of and such rejection of or delay to the Vessel at the Loading Terminal.

#### **11.7 Pumping**

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

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

Where the Buyer exercises any Discharge Port options in accordance with the Special Provisions or Section 11.3.1 and available to the Seller under the terms of the relevant charter party:

11.8.1 the price stated in the Special Provisions shall be adjusted by the freight differential calculated in accordance with such charter party terms or, if the Vessel has not been voyage chartered, such rate as shall be mutually agreed between the parties in respect of such Discharge Port, provided always that any delays arising out of such failure to agree shall be for the Buyer's account; and 11.8.2 the Buyer shall be liable for any additional costs incurred by the Seller, including but not limited to deviation costs and costs in respect of any additional bunker consumption.

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

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

#### **11.10 Liability**

Without prejudice to any other right or remedy available to the Buyer, the Buyer shall not be liable for the consequences of rejection or delay (including but not limited to demurrage) of the Vessel or other restriction suffered in respect of the Vessel by virtue of the application of any regulations or other requirements of this Section 11 and/or of Schedule F, and the Seller shall be liable for any costs or damages incurred by the Buyer arising out of any such rejection of, delay to or restriction of the Vessel.

### **Section 12 – Arrival of Vessel, Berth, discharge, etc.**

#### **12.1 Arrival of Vessel**

The Seller shall arrange for its Vessel to report to the Buyer or its representative at the Discharge Port in accordance with the standard reporting procedure applicable from time to time at the Discharge Port.

#### **12.2 Berth**

12.2.1 For the discharge of each shipment the Buyer shall provide or cause to be provided free of charge to the Seller (subject to the provisions of Section 28) a Berth to be indicated by the Buyer or its representative at which the Vessel can when fully laden safely reach and leave and where it can always lie Safely Afloat.

12.2.2 Notwithstanding the Buyer's obligations under 12.2.1, where the Buyer has purchased the crude oil on board a named Vessel, the Seller represents to the Buyer and warrants that the named Vessel can safely Berth and discharge the contractual quantity of crude oil at the Discharge Port regardless of whether the contractual quantity is a whole or part cargo and irrespective of the port scheduling of the Vessel. Failure to comply with this term shall entitle the Buyer to refuse to Berth the named Vessel. Any costs incurred by the Seller in providing a substitute Vessel, or lightering and/or transshipping the crude oil at the Discharge Port including demurrage shall be for the account of the Seller.

### 12.3 **Shifting**

Save as provided in Section 28, the Buyer shall have the right to shift the Vessel from one Berth to another. Subject to Section 13.3.1.1. all costs, including but not limited to damages for delay, shall be for the Seller's account if such shifting is due to reasons within the control of the Seller and/or the Vessel and shall otherwise be for the Buyer's account.

### 12.4 **Lightering and Transshipment**

12.4.1 Vessels shall not be compelled to lighter at the Discharge Port, but if any lightering shall be undertaken at the request of the Buyer the expense thereof shall be for the Buyer's account and all time expended in connection with such lightering shall count as running hours for the purposes of calculating the liability for demurrage under the provisions of Section 13.

12.4.2.1 Any lightering operations shall be carried out in accordance with the procedures set out in the ICS/OCIMF Ship-to-Ship transfer guides. The lightering Vessel shall be subject to the Seller's prior acceptance.

12.4.2.2 Any ship-to-ship transfer (transshipment) operations shall be carried out in accordance with the procedures set out in the ICS/OCIMF Ship-to-Ship transfer guides. The receiving Vessel shall be subject to the Seller's prior acceptance.

12.4.2.3 Except in relation to any ship-to-ship transfer carried out at the request of and for the purposes of the Seller, any ship-to-ship transfer operation shall only be carried out with the Seller's express consent and shall only be carried out outside port limits and at the Buyer's sole risk and the Buyer shall be liable to the Seller in respect of all time spent in excess of permitted running hours calculated at the relevant demurrage rate notwithstanding the Vessel is outside port limits, and for all and any losses, costs, damages and proceedings arising there from and shall indemnify the Seller in respect thereof. This Section shall not be included in the scope of Section 32.1.

12.4.3 All time used for any lightering operation (excluding any time consumed for the purposes set out in Section 13.2.2) shall be counted or included in calculating the time taken by the Buyer to discharge the Vessel or the time in respect of which the Buyer is liable for demurrage. Any additional steaming and/or waiting time used solely for the purposes of any lightering operation shall count as Laytime or, if the Vessel is on demurrage, as demurrage.

12.4.4 Except in relation to any lightering carried out at the request of and for the purposes of the Seller, any lightering operation carried out shall be at the Buyer's risk and the Buyer shall be liable to the Seller in respect of any losses, costs, damages and proceedings arising there from and shall indemnify the Seller in respect thereof. This Section shall not be included in the scope of Section 32.1.

12.4.5 In relation to any dispute as to quantity when lightering or ship-to-ship transfers have been undertaken the first laden Vessel's figures (not being a lightering Vessel or a receiving Vessel) shall prevail subject always to the provisions of Section 25.2.

### 12.5 **Dues on Vessels at the Discharge Port**

All dues and other charges on the Seller's Vessel at the Discharge Port, other than those defined by World scale as being for the Vessel owners' account, shall be borne by the Buyer.

### **Section 13 – Time allowed, delays and demurrage**

#### **13.1 Time allowed**

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

13.1.1 in the case of discharge of a full cargo lot, 36 running hours; and

13.1.2 in the case of discharge of a part cargo lot, that proportion of 36 running hours which the quantity of crude oil in the shipment, plus 5 percent, bears to the total quantity of crude oil loaded on the Vessel at the Loading Terminal(s), all days and holidays included unless discharging on the day or holiday in question is prohibited by law or regulation at the Discharge Port.

#### **13.2 Running hours**

13.2.1 Running hours shall commence Berth or no Berth 6 hours after NOR is tendered or on commencement of discharge, whichever is the earlier. For the purposes of calculating running hours, discharge shall be deemed to be completed upon disconnection of discharging hoses.

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

- (a) awaiting free pratique, tugs, tides, pilot or daylight;
- (b) inward passage until the Vessel is securely moored at the Berth and its gangway, if it is to be used, is in place;
- (c) preparing for and handling or shifting of ballast, bilges, slops or other substances or bunkering unless concurrent with cargo operations;
- (d) restrictions imposed by the owner, charterer or master of the Vessel;
- (e) any breakdown of the Vessel's equipment or failure to comply with the requirements of the Discharge Port with respect to equipment aboard or any other matter causing delay or restriction to discharge operations;
- (f) time spent complying with any of the regulations and other requirements referred to in Section 11.6;
- (g) any other delay attributable to the Vessel, the Seller or agents of the Seller;
- (h) any onboard strike by members of the crew.

13.2.3 Any delay in discharge of the shipment by reason of a strike, labour dispute or lock out of any shore side workmen essential to the discharge shall count as one half laytime or, if the Vessel is on demurrage, at one half of the demurrage rate provided always that the cause of the delay was not within the reasonable control of the Buyer.

13.2.4 In no event shall the Buyer be liable for demurrage unless the fully documented demurrage claim has been received by the Buyer in writing within 180 days of the date of



disconnection of discharging hoses. If the Seller fails to provide such documented claim within the aforesaid limit, then any liability of the Buyer for demurrage shall be extinguished.

### 13.3 Delays

13.3.1 If the shipment is not discharged within the time allowed in accordance with Section 13.1, the Buyer shall pay to the Seller demurrage, in the same currency as is prescribed for payment of crude oil delivered under the Agreement, in respect of the excess time at the appropriate rate per day (or pro rata for part of a day) as hereinafter specified, always provided that, if by reason of her own deficiencies the Vessel cannot maintain an average pumping rate as specified in Section 11.7 from the time of commencing pumping, any additional time used solely by reason of such deficiencies shall be deducted in calculating the time (if any) in respect of which the Buyer is liable for demurrage as herein provided. The Buyer's liability as to Laytime and demurrage shall be absolute and not subject to qualification by the provisions of Section 31 but in the event of delay directly attributable to:

13.3.1.1 adverse weather or sea state conditions; or

13.3.1.2 the breakdown or failure of equipment, plant or machinery at the Discharge Port (not resulting from want of due diligence by the Buyer and always provided that the Vessel is not already on demurrage); the rate of demurrage shall be reduced by one half for the period of such delay.

13.3.2 The appropriate rate of demurrage shall be either:

13.3.2.1 the rate, if any, specified in the Special Provisions; or

13.3.2.2 the applicable charterparty rate; or

13.3.2.3 where there is no charterparty rate or, in the Buyer's sole opinion the charterparty rate established pursuant to Section 13.3.2.2 is not representative of the market rate, the market rate current on the date running hours commence as aforesaid for a Vessel of the size and type used for a single voyage charter from the Loading Terminal to the Discharge Port. If the parties fail to agree within 30 days upon such rate, then at the instance of either party the question shall be referred to and determined by The London Tanker Brokers Panel Ltd. (or its successors in title), whose decision thereon shall be final and binding and whose costs shall be paid for by the applicant.

### 13.4 Crude oil washing

Cargo stripping up to a maximum of 3 (three) hours and any discharging time used for crude oil washing in excess of any time used to comply with MARPOL regulations:

13.4.1 shall count against Laytime, or if the Vessel is on demurrage, for demurrage, in the case of delivery CFR or CIF; and

13.4.2 shall not count against Laytime, or if the Vessel is on demurrage, for demurrage, in the case of delivery Ex Ship.

### 13.5 Time allowed and damages for delay under CFR and CIF Indicative Discharge Date Contracts

13.5.1 Should the Vessel arrive at the Discharge Port such that running hours pursuant to Section 13.2.1 above would commence at a time within the Indicative Discharge Date given by the Seller then the time allowed and damages for delay shall be computed in all respects in accordance with Section 13.

13.5.2 Should the Vessel arrive at the Discharge Port such that running hours pursuant to Section 13.2.1 above would commence at a time prior to the Indicative Discharge Date given by the Seller, then notwithstanding Section 13.3 time shall not count against the Buyer whether as laytime or demurrage until 00.01 on the earliest Indicative Discharge Date.

13.5.3 Should the Vessel arrive at the Discharge Port such that running hours pursuant to Section 13.2.1 above would commence at a time after the Indicative Discharge Date given by the Seller, then Section 13.2.1 shall be modified to the extent that running hours shall commence Berth or no Berth 36 (thirty six) hours after NOR is given or on commencement of discharge, whichever is the earlier. Save as aforesaid, Section 13 shall apply in full.

## **Section 14 – Additional provisions for offshore-loaded North Sea/Atlantic crude oil**

### **14.1 Applicability**

This Section 14 shall apply only in the case of deliveries of crude oil originating from oil fields in the United Kingdom and/or Norwegian Continental Shelf and being shipped by a Vessel dedicated to or chartered for the transportation of crude oil from the facilities thereat.

### **14.2 Changes to nominations**

The Seller will promptly advise the Buyer of any changes in the nomination arising from production changes, weather, operational reasons or any matter beyond the Seller's reasonable influence. Any modifications in the quantity of crude oil, date ranges or final loading date due to changed nominations shall be deemed to be accepted by the Buyer and any modified quantity, date ranges or final loading date shall replace the quantity and/or date ranges and/or final loading date respectively as nominated.

### **14.3 Priority of Vessels**

14.3.1 The Seller may, by written notice to the Buyer, require that the Vessel shall have priority to discharge at the Discharge Port ahead of other Vessels whether or not they have commenced discharging, except for Vessels carrying crude oil which has been loaded at a facility at or adjacent to a crude oil production platform serving an oil field on or partly on the United Kingdom and/or Norwegian Continental Shelf. If such requirement arises, the Buyer shall procure that the Vessel may proceed without waiting directly to a Berth provided by the Buyer in accordance with Section 12 and commence discharging immediately on arrival thereat.

14.3.2 The Seller shall indemnify the Buyer against its liability for substantiated unavoidable extra port dues and demurrage incurred as a direct result of such priority being given to the Seller's Vessel by Vessels which have given valid notices of readiness to discharge, provided that the indemnity against liability for demurrage shall in each case be limited to the equivalent of the amount of time actually used by the Seller's Vessel to discharge the cargo.

14.3.3 If the time allowed to the Buyer in accordance with Section 13.1 has expired, whether the cargo has been fully discharged or not, the Seller may, at its sole discretion, forthwith order the Vessel to cease discharging and leave the Discharge Port. In the case of delivery CIF, if the Seller exercises such option, the Seller's invoice shall be based on the net outturn quantity discharged ascertained either in accordance with good standard practice at such Discharge Port or, if such discharge was attended by an independent inspector, as determined by such independent inspector, whose determinations shall, except in cases of fraud or manifest error, be conclusive and binding on both parties for invoicing purposes but without prejudice to the rights of either party to make any claim. In such event, notwithstanding the provisions of Section 7, all charges in respect of such independent inspection shall be shared equally between the parties and the inspector's report shall be

made available to both parties. The risk and property in the crude oil remaining on board shall pass to the Seller immediately upon completion of discharge.

#### 14.4 **Deadfreight**

Any deadfreight incurred by the Seller as a direct result of meeting the requirements of the Discharge Port nominated by the Buyer shall be for the Buyer's account. Any deadfreight incurred solely for the Seller's purposes shall be for the Seller's account.

#### 14.5 **Demurrage rate**

Notwithstanding the provisions of Section 13.3, the applicable rate of demurrage shall be the daily hire rate specified in the contract of affreightment current from time to time in respect of transportation of the grade of crude oil in question.

## **PART THREE**

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

Except in the case of deliveries via the Druzbha and connected pipelines as provided for in Schedule E:

#### **Section 15 – Nominations**

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

#### **Section 16 – Measurement and sampling; independent inspection**

- 16.1 Measurement of the quantities and the taking of samples for the purposes of determining the compliance of the crude oil with the grade and quantity provisions of the Special Provisions shall be carried out in accordance with good standard practice at the Loading Terminal at the time of delivery.
- 16.1.1 In the case of deliveries ex-tank sampling shall be undertaken at the tank manifold exit point.
- 16.1.2 In the case of delivery into tank sampling shall be undertaken.
- 16.1.3 Subject always to Section 16.2 below should the parties specifically agree then in the case of delivery FIP sampling shall be undertaken.
- 16.2 In the case of delivery FIP, unless otherwise specifically agreed between the parties and set out in the Special Provisions, no independent inspection shall be required.
- 16.3 In the case of delivery Ex Tank or Into Tank, the Buyer shall have the right to appoint an independent inspector at the storage facility(ies), subject to the prior agreement of the relevant storage company(ies) having been obtained. Such appointment shall be notified in writing to the Seller. However, except with the specific prior written agreement of the Seller, all charges in respect thereof shall be for the Buyer's account and the duties of such inspector shall be considered solely as a service to the Buyer.

#### **Section 17 – Risk and property**

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

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

**PART FOUR**  
**In respect of delivered at Frontier (“DAF”) deliveries**

For Delivered at Frontier (“DAF”) free in the Druzhba or connected pipeline the provisions of Schedule E hereto shall apply to the exclusion of this Part Four. In all other cases of DAF sales the following provisions shall apply:

**Section 18 – Nominations**

**18.1 For delivery in pipeline**

All nominations relating to the delivery of crude oil into or by pipeline shall, unless otherwise specifically agreed between the parties, be made in accordance with the standard operating procedures of the relevant pipeline operating company(ies).

**18.2 For delivery by rail tank car**

Subject always to any Special Provisions, the Seller shall notify the Buyer in writing of those matters set out at (a) and (b) below and shall provide the Buyer with those documents set out at (c) and (d) below within 48 hours of the date of despatch of the rail tank car(s) from the Loading Terminal as follows:

- (a) Date of despatch;
- (b) Number and net weight of crude oil contained in each rail tank car;
- (c) Copies of all railway bills issued, certified by the Seller as true copies;
- (d) Copy of the certificate of quality issued by the Loading Terminal, certified by the Seller as a true copy.

**18.3 For delivery by road tanker**

Subject always to any Special Provisions, the Seller shall notify the Buyer in writing of those matters set out at (a) and (b) below and shall provide the Buyer with those documents set out at (c) – (e) below within 48 hours of the date of despatch of the road tanker(s) from the Loading Terminal as follows:

- (a) Date of despatch;
- (b) Number and net weight of crude oil contained in each road tanker;
- (c) Copies of all CMR notes or other contract(s) of carriage issued, certified by the Seller as true copies;
- (d) Copy of the certificate of quality issued by the Loading Terminal, certified as a true copy by the Seller;
- (e) Copy of the certificate of quantity issued by the Loading Terminal, certified as a true copy by the Seller;

## **Section 19 – Delivery**

### **19.1 For deliveries in pipeline**

The delivery shall be given and taken in the named pipeline at such frontier border station and on the date or within the agreed period (“the delivery period”) as shall be specified in the Special Provisions.

### **19.2 For delivery by road or rail tank car**

- (a) The delivery shall be given and taken on road tanker(s) or on rail tank car(s), not unloaded, at the named place of delivery at the frontier and within the delivery period as set out in the Special Provisions. The road tanker(s) or rail tank car(s) shall be available to the Buyer throughout the delivery period to enable the Buyer to collect such road tanker(s) or rail tank car(s) at the frontier, transfer them to its receiving Terminal, unload them and return them to the relevant frontier point. Any charges incurred by the Seller for the delay (including but not limited to demurrage) in returning such road tanker(s) or rail tank car(s) to the frontier after the delivery period shall be for the Buyer’s account. The Buyer must take delivery of the crude oil when it has been placed at the Buyer’s disposal in accordance with the terms of the Agreement. The date of delivery shall be the date of the stamp of the border crossing railway station on the Railway Bill or on the CMR note/road haulage contract as appropriate.
- (b) The Seller may, at its sole discretion, agree to contract on usual terms at the Buyer’s risk and expense for the on-carriage of the crude oil beyond the named place of delivery at the frontier to such final destination or place as the Buyer may nominate. However, such nomination shall be made by the Buyer prior to the date of dispatch of the road tanker(s) or rail tank car(s) from the Loading Terminal and the Seller may decline the request without giving any reason.

## **Section 20 – Risk and Property**

Notwithstanding any right of the Seller to retain the documents referred to in Section 29 until payment, the risk and property in the crude oil shall pass to the Buyer:

- 20.1 In the case of delivery in pipeline as the crude oil passes the point of delivery at the frontier border station within the delivery period specified in Section 19.1 above; or
- 20.2 In the case of delivery in rail tank car(s) on arrival of the rail tank car(s) at the named place of delivery at the frontier within the delivery period specified in Section 19.2 above;
- 20.3 In the case of delivery in road tanker on arrival of the road tanker(s) at the named place of delivery at the frontier within the delivery period specified in Section 19.2 above.

## **Section 21 – Measurement and Sampling, independent inspection and certification**

- 21.1 The taking of samples and analysis thereof for the purposes of determining the compliance of the crude oil with the grade and quality provisions of the Special Provisions shall be carried out in accordance with customary practice at the Loading Terminal at the time of shipment. The Loading Terminal certificate of quality of the crude oil comprising the shipment issued in accordance with such customary practice shall, except in case of manifest error or fraud, be conclusive and binding on both parties for invoicing purposes and the Buyer shall be obliged to make payment in full in accordance with Section 29.1 but without prejudice to the rights of either party to make any claim pursuant to Section 25.2.
- 21.2 In the case of delivery in pipeline the measurement of the quantity of the crude oil delivered shall be determined in accordance with customary practice at the relevant frontier border station specified in the Special Provisions. The certificate of quantity so issued by the relevant frontier border station shall, except in cases of manifest error or fraud, be conclusive and binding on both

parties for invoicing purposes and the Buyer shall be obliged to make payment in full in accordance with Section 29.1 but without prejudice to the rights of either party to make any claim pursuant to Section 25.2.

- 21.3 In the case of delivery in pipeline where the relevant frontier border station specified in the parties agree that the certificate of quantity issued by the Loading Terminal shall, except in cases of manifest error or fraud, be conclusive and binding on both of them for invoicing purposes and the Buyer shall be obliged to make payment in full in accordance with Section 29.1 but without prejudice to the rights of either party to make any claim pursuant to Section 25.2.
- 21.4 In the case of delivery in rail tank car(s) the quantity of crude oil set out in the Railway Bills comprising the shipment shall be conclusive and binding on both parties for invoicing purposes and the Buyer shall be obliged to make payment in full in accordance with Section 29.1 but without prejudice to the rights of either party to make any claim pursuant to Section 25.2.
- 21.5 In the case of delivery in road tanker(s) the certificate of quantity issued by the Loading Terminal shall be conclusive and binding on both parties for invoicing purposes and the Buyer shall be obliged to make payment in full in accordance with Section 29.1 but without prejudice to the rights of either party to make any claim pursuant to Section 25.2.

## **Section 22 – Independent Inspection**

- 22.1 Where the Loading Terminal is not operated by the Seller or an Associated Company of the Seller, either party shall have the right to appoint a mutually acceptable independent inspector at the Loading Terminal. Such appointment shall be notified in writing to the other party. All charges in respect thereof shall be shared equally between the parties and the inspector's report shall be made available to both parties. The Seller shall use all reasonable endeavors to enable the independent inspector so appointed to have full access to the facilities at the Loading Terminal necessary to perform his duties.
- 22.2 In the case of delivery in pipeline the Buyer shall have the right to appoint an independent inspector acceptable to the Seller at the relevant frontier border station when, except with the specific prior written agreement of the Seller, all charges in respect of such inspector shall be for the Buyer's account and the duties of such inspector shall be considered solely as a service to the Buyer.

## **Section 23 – Other Terms and Conditions**

- 23.1 The Buyer shall be solely responsible for the cost of all customs formalities, duties, taxes and other charges payable upon import of the crude oil and for its subsequent transport (if any).
- 23.2 The Buyer must provide the Seller, at the Seller's request but at the Buyer's risk and expense, with proof of exchange control authorization, copies of permits certified by the Buyer as true copies and with details of the final destination of the crude oil in the country of import should the Seller agree to contract on the Buyer's behalf for the on-carriage of the crude oil pursuant to Section 19.2(b) above.
- 23.3 The Buyer must pay all costs relating to the crude oil from the time it has been placed at the Buyer's disposal pursuant to the delivery provisions of Section 19 above.

**PART FIVE**  
**Applicable to each of Parts One, Two, Three and Four**

**Section 24 – Definitions, etc.**

**24.1 Definitions**

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

- 24.1.1 “the Agreement” means these General Terms and Conditions (including, where applicable, the Schedules attached hereto) together with the Special Provisions;
- 24.1.2 “API” means the American Petroleum Institute and “MPMS” means the API Manual of Petroleum Measurement Standards as amended from time to time;
- 24.1.3 “Approved Industry Practice” means the measurement, sampling and analysis activities and methods of a standard no less than those laid down in the MISCOL Measurement Standards Manual and MISCOL’s Requirements for Independent Inspection Companies current at the time of the Agreement;
- 24.1.4 “Associated Company” shall, in relation to a party hereto, mean any company which is a subsidiary of such party, or a company of which such party is a subsidiary, or a company which is another subsidiary of a company of which such party is a subsidiary (“subsidiary” having the meaning ascribed to it in Section 736 of the Companies Act, 1985);
- 24.1.5 “MISCOL” means MISCOL plc and all associated and subsidiary companies;
- 24.1.6 “MISCOL Ship Vetting” means the MISCOL Group Ship Vetting Service, including the MISCOL Ship Vetting Team, which administers and maintains the database concerning the MISCOL Group Ship Vetting policy, whereby no Vessel shall be used unless it has first been vetted by the MISCOL Ship Vetting Service and approved for use by it;
- 24.1.7 “Banking Day” unless the Agreement expressly provides to the contrary means a day other than a Saturday when clearing banks are open for business in London;
- 24.1.8 “barrel” means a barrel of 42 US gallons at 600 Fahrenheit;
- 24.1.9 “Berth” means a berth, dock, anchorage, submarine line, single point or single berth mooring facility, offshore location, alongside Vessels or lighters or any other loading or discharge place as may be indicated by the party in question;
- 24.1.10 “CFR” and “CIF” shall each have the meaning ascribed thereto in Incoterms 2000 (as amended from time to time), except as modified by the Agreement; further, if there is any inconsistency or conflict between Incoterms and the Agreement, the Agreement shall prevail;
- 24.1.11 “CFR Indicative Date Range” and “CIF Indicative Date Range” shall have the meanings ascribed to each respectively in Section 7.3;
- 24.1.12 “crude oil” means crude petroleum of the grade specified in the Special Provisions which has been stabilised and is suitable for loading into Vessels or for delivery by such other method as is specified in the Agreement. If the Agreement is for the sale of condensate, references in the Agreement to crude oil shall be deemed to be references to condensate;
- 24.1.13 “... days’ notice” shall be construed according to the convention that 5 days’ notice means that a notice given on the 1st day of the month shall be effective on the 6th day of the



month. For the avoidance of doubt, where the last day for any notice to be given under the Agreement falls on a day which is not a banking day in London, such notice shall be given (by not later than the specified time, where applicable) on the last preceding banking day in London;

- 24.1.14 “delivery” means placing or procuring to place the crude oil at the disposal of the Buyer at the time and place agreed upon. “deliver” includes “procure to be delivered” and the term “delivery” shall be construed accordingly, and “deliverable” and “delivered” shall be similarly construed;
- 24.1.15 “Discharge Port” means the Berth at which the crude oil to be delivered hereunder is to be discharged;
- 24.1.16 “ETA”, in the case of FOB deliveries, means the estimated time and/or date or range of days of arrival of the Vessel at the Loading Terminal and, in the case of CFR, CIF and Ex Ship deliveries means the estimated time and/or date or range of days of arrival of the Vessel at the Discharge Port. Any ETA at the Discharge Port given hereunder shall not place the Seller under any obligation to meet such date (other than to use its reasonable endeavors to ensure that the contract of carriage can facilitate the meeting of such date) and, for the avoidance of doubt, in the case of a CFR or CIF Agreement, shall not be construed as changing the nature of the Agreement;
- 24.1.17 “Ex Ship” shall have the meaning ascribed to the term DES in Incoterms 2000 (as amended from time to time), except as modified by the Agreement; further, if there is any inconsistency or conflict between Incoterms and the Agreement, the Agreement shall prevail;
- 24.1.18 “Ex Tank” shall have the meaning ascribed to it in Part Three;
- 24.1.19 “FIP” shall have the meaning ascribed to it in Part Three;
- 24.1.20 “FOB” shall have the meaning ascribed thereto in Incoterms 2000 (as amended from time to time), except as modified by the Agreement; further, if there is any inconsistency or conflict between Incoterms and the Agreement, the Agreement shall prevail;
- 24.1.21 “In Situ” and “Into Tank” shall have the meanings ascribed thereto in Part Three;
- 24.1.22 “Laydays” in the case of FOB deliveries shall have the meaning ascribed to it in Section 3, and in the case of CFR, CIF or Ex Ship deliveries shall mean the date range accepted by the Loading Terminal operator for the presentation of the Vessel for loading at such Loading Terminal;
- 24.1.23 “Laytime” means the time allowed to the Seller for loading (determined pursuant to Section 6) or the time allowed to the Buyer for discharge (determined pursuant to Section 13), as the case may be;
- 24.1.24 “Loading Terminal” means the Berth at which the crude oil to be delivered hereunder is or will be loaded;
- 24.1.25 “MPMS” means the API Manual of Petroleum Measurement Standards as amended from time to time;
- 24.1.26 “MSDS” or “Material Safety Data Sheet” means the Safety Data Sheet containing the information set out in Article 3 and the Annex to Commission Directive 2001/58/EC of the European Community concerning the system of specific information relating to dangerous preparations and substances;
- 24.1.27 “MARPOL” means the International Convention for the Prevention of Pollution from Ships, as amended from time to time;

- 24.1.28 “month” means a month of the Gregorian calendar;
- 24.1.29 “NOR” means the valid notice of readiness to load or discharge, as the case may be, as given by the master of the Vessel (or his/her representative) to the Seller (or its representative) at the Loading Terminal or to the Buyer (or its representative) at the Discharge Port respectively;
- 24.1.30 “OCIMF” means the Oil Companies International Marine Forum;
- 24.1.31 “safely afloat” means that the Vessel shall at all times be water-borne in compliance with MISCOL Port Clearance requirements (including but not limited to under keel clearance) and shall be able to remain at the Berth without risk of loss or damage from wind, weather or other craft which are being properly navigated;
- 24.1.32 “Special Provisions” means the contract telex or other form of agreement in which, by reference, these General Terms and Conditions are incorporated to form the Agreement;
- 24.1.33 “ton” means a metric ton or tone;
- 24.1.34 “typical” means a quality or characteristic often attributable to crude oil from a particular source, given without guarantee and not amounting to a representation or warranty that such typical quality or attribute will be present in the crude oil supplied;
- 24.1.35 “Vessel” means a tank ship or other Vessel which is wholly or mainly constructed or is adapted for the carriage of crude oil;
- 24.1.36 “World scale” means the New Worldwide Tanker Nominal Freight Scale as current on the day of commencement of loading of the Vessel in question.

## 24.2 **Time of the essence**

Time is of the essence for the Agreement and every provision hereof in which time of performance is expressed to be a factor.

## 24.3 **Interpretation**

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

## **Section 25 – Quality and claims in respect of quality and quantity**

### 25.1 **Quality**

25.1.1 The quality of the crude oil delivered hereunder shall be the quality of such crude oil as usually made available at the time and place of loading in the case of FOB, CIF and CFR deliveries and at the place of discharge in the case of Ex Ship deliveries. Whether set out in these General Terms and Conditions or in the Special Provisions neither typicals nor any stipulation as to time of delivery shall form part of the crude oil's description, quality or fitness. THIS SUB-SECTION CONSTITUTES THE WHOLE OF THE SELLER'S OBLIGATIONS WITH RESPECT TO THE DESCRIPTION, QUALITY AND FITNESS FOR PURPOSE OF THE CRUDE OIL TO BE DELIVERED AND (SAVE TO THE EXTENT

THAT EXCLUSION THEREOF IS NOT PERMITTED OR IS INEFFECTIVE BY OPERATION OF LAW) ALL STATUTORY OR OTHER CONDITIONS OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE DESCRIPTION OR SATISFACTORY QUALITY OF THE CRUDE OIL OR ITS FITNESS FOR ANY PARTICULAR PURPOSE OR OTHERWISE ARE HEREBY EXCLUDED.

25.1.2 Any individual listed quality or characteristic of the crude oil delivered expressed numerically must (save if the Special Provisions provide otherwise) be correct to two significant figures.

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

25.2.1 Any complaint of deficiency of quantity or of variation of grade shall be admissible only if notified in writing to the Seller within 45 days of the completion of discharge date and accompanied by evidence fully supporting the complaint. Any term as to quantity in an Agreement, including in the Special Provisions, shall be an in nominate term. Notwithstanding the foregoing, no claim shall be admitted in respect of any deficiency of quantity where the difference between the loaded and discharged quantity is 0.5% of the loaded quantity or less.

25.2.2 In the case of delivery Ex Ship, notwithstanding the provisions of Section 7, the Seller shall have the right to submit a claim to the Buyer where there is a difference between the quantity loaded and discharged by the Seller's Vessel and where, in the Seller's reasonable opinion, the most likely cause of such difference is due to events at, or the nature of, or operations at the Discharge Port during the discharge of the crude oil. If the Buyer disagrees with the Seller's claim and if the claim is not settled within 60 days of the date of the Seller's claim, then the claim shall be referred to a referee in accordance with the provisions of Section 38.1.

## **Section 26 – Health, safety and environment**

26.1 The Buyer shall provide its employees, agents, contractors, customers and other persons to whom it supplies the crude oil delivered hereunder with either:

- a) a copy of a current Material Safety Data Sheet (“MSDS”) and any other information relating to health, safety and environmental data in connection with the crude oil delivered hereunder; or
- b) comparable other information relating to health, safety and environmental data in connection with the crude oil delivered hereunder where performance of the obligations under the Special Provisions is outside the European Union (“Other Information”).

The Buyer shall be responsible for any consequences that result from the use of a MSDS or Other Information. For the purposes of this Section 26.1, “supplies” shall have the same meaning as “supply” set out in Section 46 of the Consumer Protection Act, 1987.

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

26.3 The Buyer shall provide its employees with appropriate information and training to enable them to handle and use the crude oil delivered hereunder in a manner which does not endanger their health or safety.

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

## **Section 27 – Destination**

- 27.1 It is a condition of the Agreement, that the crude oil delivered under the Agreement shall not be imported (by the Buyer or others), directly or indirectly and irrespective of means, to any destination which is at the time of such import either prohibited under the laws of the country in which such crude oil was produced or contrary to any regulation, rule, directive or guideline applied by the government of that country or any relevant agency thereof. The Buyer shall keep itself informed as to such laws, regulations, rules, directives or guidelines and shall ensure that they are complied with. Without diminution of such obligation on the Buyer, the Seller undertakes to inform the Buyer as soon as practicable of any changes in such laws, regulations, rules, directives or guidelines which become known to the Seller. The Buyer acknowledges that at the date hereof it is informed of all such laws, regulations, rules, directives and guidelines relevant to its undertakings under this Section.
- 27.2 The Buyer undertakes that the crude oil deliverable hereunder shall not:
- 27.2.1 be exported to any Restricted Jurisdiction; or
  - 27.2.2 be sold or supplied to any natural or legal person in any Restricted Jurisdiction; or
  - 27.2.3 be sold or supplied to any natural or legal person for the purposes of any commercial activity carried out in or from any such Restricted Jurisdiction.

For the purposes of this Section, “Restricted Jurisdiction” shall mean any country, state, territory or region against which there are sanctions imposed by the United Nations or any other sanctions specified in the Special Provisions which prohibit the shipment thereto of crude oil and/or petroleum products.

- 27.3 The Buyer shall, if the Seller so requires, provide the Seller with appropriate documentation for the purposes of verifying the final destination of any delivery hereunder. Such documentation shall be so provided within 30 days of the date of discharge of the shipment or within such lesser period as will enable the Seller or its supplier to comply with any requirement or request of the government or authority in question and shall include the name of the port(s) of discharge, the date(s) of discharge and the grade and quantity discharged. The obligations of the Buyer to comply with such requirement shall not be affected by any sale or disposal of the crude oil in question by the Buyer.
- 27.4 Without prejudice to the foregoing provisions of this Section 27, in the event of any failure to comply with such undertakings or if the Seller has reasonable grounds for believing that such undertakings will not be complied with the Seller may (without prejudice to its other rights) at its sole discretion terminate the Agreement forthwith or forthwith suspend delivery under the Agreement until further notice or decline to commence or complete loading hereunder on notifying the Buyer either in writing or orally (with written confirmation to follow).

## **Section 28 – Taxes, duties etc.**

### **28.1 The Buyer’s responsibilities**

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

In the case of FOB sales, all taxes, duties, imposts, fees, charges (including, without limitation, pilotage, mooring and towage expenses) and dues (including, without limitation, quay dues) in respect of the Vessel incurred at the Loading Terminal shall be for the Buyer’s account.

In the case of CFR and CIF sales, all taxes, duties, imposts, fees, charges (including, without limitation, pilotage, mooring and towage expenses) and dues (including, without limitation, quay

dues) in respect of the Vessel incurred at the Discharge Port shall be for the Buyer's account, except for those specified in World scale as being for the owners' account.

For the avoidance of doubt and in respect of every type of sale, the Seller shall not be the importer of record but shall be responsible for complying with customs and excise entry procedures at the Discharge Port and all duties and taxes that arise in respect of such customs and excise entry shall be for the Buyer's account.

## **28.2 The Seller's responsibilities**

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

In the case of CFR and CIF sales, all taxes, duties, imposts, fees, charges (including, without limitation, pilotage, mooring and towage expenses) and dues (including, without limitation, quay dues) in respect of the Vessel incurred at the Loading Terminal shall be for the Seller's account, except for those specified in World scale as being for the owners' account.

In the case of Ex Ship sales, all taxes, duties, imposts, fees, charges (including, without limitation, pilotage, mooring and towage expenses) and dues (including, without limitation, quay dues) in respect of the Vessel incurred at the Discharge Port shall be for the Seller's account.

## **Section 29 – Payment**

### **29.1 Payment documents**

Except as expressly provided elsewhere in the Agreement, payment shall be made by the Buyer to the Seller against presentation to the Buyer of:

29.1.1 in the case of delivery FOB or CFR:

- (a) the Seller's telex or fax commercial invoice (provisional invoice acceptable where the provisions of Section 29.3.2 apply); and
- (b) 3/3 original bills of lading issued or endorsed to the order of the Buyer; and
- (c) original certificate(s) of quantity, quality and origin (or equivalent documents issued at the Loading Terminal);

29.1.2 in the case of delivery CIF:

- (a) the Seller's telex or fax commercial invoice (provisional invoice acceptable where the provisions of Section 29.3.2 apply); and
- (b) 3/3 original bills of lading issued or endorsed to the order of the Buyer; and
- (c) original certificate(s) of quantity, quality and origin (or equivalent documents issued at the Loading Terminal); and
- (d) original certificate of insurance or insurance company's cover note.

29.1.3 in the case of delivery Ex Ship:

- (a) the Seller's telex or fax commercial invoice (provisional invoice acceptable where the provisions of Section 29.3.2 apply); and

- (b) a copy of the report of the independent inspector appointed pursuant to Section 7.2.1.

29.1.4 in the case of delivery Ex Tank, Into Tank, In Situ or FIP, against presentation to the Buyer of the Seller's telex or fax commercial invoice (provisional invoice acceptable where the provisions of Section 29.3.2 apply).

29.1.5 in the case of delivery DAF:

- (a) The Seller's telex or fax commercial invoice (provisional invoice acceptable where the provisions of Section 29.3.2 apply); and
- (b) For delivery by rail tank car: a copy of the relevant Railway Bill(s) date stamped at the border crossing railway station being the place of delivery provided in the Special Provisions and/or under Section 19.2 and certified as a true copy by the Seller;
- (c) For delivery by road: a copy of the relevant CMR note(s) or other contract evidencing the carriage of the crude oil, date stamped at the border crossing being the place of delivery provided in the Special Provisions and/or under Section 19.2 and certified as a true copy by the Seller.

## 29.2 Seller's indemnity in lieu of shipping documents

If the documents referred to in Section 29.1 are not available for presentation to the Buyer on or before the payment due date, the Buyer agrees to pay the Seller upon presentation to the Buyer of:

- (a) the Seller's telex or fax commercial invoice (provisional invoice acceptable where the provisions of Section 29.3.2 apply); plus
- (b) the Seller's telex or fax indemnity counter-signed, if so requested by the Buyer, by the Seller's bank, in the format set out in Schedule A.

## 29.3 Seller's invoice

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

- 29.3.1.1 in the case of delivery FOB, CFR, CIF, Ex Tank, Into Tank, In Situ, FIP or DAF the certificate(s) of quantity (or equivalent document(s) issued at the Loading Terminal) issued in accordance with Section 1.1 or 7.1.1, as the case may be; or
- 29.3.1.2 in the case of delivery Ex Ship, the report of the independent inspector at the Discharge Port issued in accordance with Section 7.2.1.

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

- 29.3.2.1 the pricing information available to the Seller at the time it issues such provisional invoice; and/or
- 29.3.2.2 in the case of delivery Ex Ship, 99.7 percent of the quantity specified in the bill(s) of lading.

Payment of any balance due by either party to the other shall be made immediately upon receipt of the Seller's final invoice which shall be prepared as soon as practicable after all the relevant pricing and/or quantity information becomes available to the Seller.

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

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

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

#### **29.5 Interest**

29.5.1 Without limitation to the provisions of this Section or the Seller's other rights under the Agreement or otherwise, the Seller shall have the right to require, in respect of any payment not made in full by the due date, the payment by the Buyer to the Seller of interest on any unpaid amount at 2 percentage points above the Average London Interbank Offered Rate ("LIBOR") for one month Eurodollars as published on Reuters page "LIBO" (or any successor thereto), such interest to run from the due date until the date payment is received by the Seller's bank. Such interest shall be payable to the Seller on demand therefore being made by the Seller. Interest shall continue to accrue under this Section 29.5 until payment notwithstanding the termination of the Agreement for any cause whatsoever. The amount of interest payable to the Seller shall be engrossed for withholding tax, if any, such that the net amount received by the Seller after the deduction of any such withholding tax shall be equal to the full amount of interest due.

29.5.2 The provisions of this Section 29.5 shall not be construed as an indication of any willingness on the part of the Seller to provide extended credit as a matter of course, and shall be without prejudice to any rights and remedies which the Seller may have under the Agreement or otherwise. Any expenses incurred by the Seller, including but not limited to reasonable legal fees, court costs and collection agency fees, caused by delayed or non-payment by the Buyer of the amount(s) due shall be for the account of the Buyer and payable upon demand with supporting documentation.

#### **29.6 Payment account**

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

#### **29.7 Method of payment**

If payment by means of an irrevocable letter of credit is not already provided for in the Special Provisions, the Seller shall have the right, on giving the Buyer notice of not less than 2 banking days in London to that effect, to require that payment be made:

29.7.1 by means of an irrevocable documentary letter of credit; or

29.7.2 by the method prescribed in the Special Provisions together with a standby letter of credit;

29.7.3 by payment of cash in advance; at the Seller's option, in accordance with the provisions of Section 29.10 and by the time specified in the Seller's notice aforesaid.

#### **29.8 Netting of Invoices**

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

## 29.9 Parental Guarantee

If the Seller agrees that payment shall not be by means of an irrevocable Letter of Credit or supported by a standby Letter of Credit in favour of the Seller, the Buyer shall provide at the Seller's option and on notice by the Seller of not less than 2 banking days a Parental Guarantee in the form appearing in Schedule B hereto.

## 29.10 Letter of credit

29.10.1 Where under the Agreement or by virtue of the provisions of Section 29.7 the price is to be paid by means of an irrevocable documentary letter of credit or supported by a standby letter of credit in favour of the Seller (both herein referred to as an "L/C"), the Buyer shall cause such L/C to be opened with or confirmed by a first-class international bank acceptable to the Seller ("the Bank") in terms specified in this Section 29.10.

29.10.2 The provisions hereof for such payment by L/C are not to be construed as excluding the Buyer's basic responsibility for paying within the credit period specified in the Agreement or as varied pursuant to this Section 29 for crude oil delivered hereunder.

29.10.3 The L/C shall be sufficient to cover the contractual mean value of the crude oil at the price specified in the Special Provisions plus 15 percent and a further amount to cover escalation in duties including VAT if appropriate and the Buyer shall cause it to be advised or confirmed in writing by the Bank to the Seller, in a form substantially as set out in Schedule C or D (whichever is applicable) and in all respects acceptable to the Seller.

29.10.4 The L/C shall be so advised or confirmed by not later than 1600 hours (London time) on:

- (i) the 10th day prior to the first day of the Laydays, or
- (ii) in the case of delivery Ex Ship, 10 days before the first day of the ETA range, or such later date and/or time as the Seller may in writing require. Pursuant to such L/C the Seller shall present the documents referred to in Section 29.1 or 29.2 at the counter of the Bank, or its correspondent bank in London.

29.10.5 All charges in respect of the L/C shall be for the Buyer's account.

29.10.6 The L/C shall take effect in accordance with its terms (including any agreed amendment(s) thereto) but such terms (including any agreed amendment(s) thereto) shall not alter, add to, or in any way affect, the provisions of the Agreement (or any of them) unless the Seller and the Buyer expressly agree in writing that any such term shall so alter, add to, or in any way affect, the provisions of the Agreement.

29.10.7 If for any reason the loading or discharge, as the case may be, of the Vessel will not take place within the period for such loading or discharge referred to in the L/C, the Buyer shall either obtain an extension of such period for loading or provide a new L/C in terms acceptable to the Seller.

29.10.8 Failure by the Buyer to comply with the requirements of this Section 29.10 shall be a breach by the Buyer of the Agreement entitling the Seller to terminate the Agreement and



claim damages. In any event, whether the Seller has exercised that right to terminate or not, the Seller shall be under no obligation to commence discharge of the crude oil in question (in the case of delivery Ex Ship) or loading the crude oil in question (in all other cases) and shall be entitled to claim damages (including demurrage, if any).

#### **29.11 Other charges**

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

#### **Section 30 – New and changed regulations, etc.**

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

#### **Section 31 – Force majeure, etc.**

- 31.1 Neither the Seller nor the Buyer shall be liable for a failure to perform any of its obligations under the Agreement insofar as that party proves that the failure was due to an impediment beyond its control;
- 31.1.1 An impediment within Section 31.1 above shall include delay, hindrance, reduction in, interference with, curtailment or prevention of a party's performance of its obligations hereunder resulting from events such as the following, this enumeration not being exhaustive:
- (i) War, whether declared or not, civil war, riots and revolutions, acts of piracy, acts of sabotage;
  - (ii) Natural disasters such as violent storms, cyclones, earthquakes, tidal waves, floods, destruction by lightening;
  - (iii) Explosions, fires, destruction of tankage, pipelines, of refineries or terminals and any of kind of installations;
  - (iv) Boycotts, strikes, lock-outs, labour disputes of all kinds, go-slows, occupation of factories and premises, excluding the factories and premises of the Relying Party;

- (v) Any curtailment, reduction in, interference with, failure or cessation of supplies of crude oil from any of the Seller's or the Seller's suppliers' sources of supply or by any refusal to supply crude oil whether lawful or otherwise by the Seller's suppliers (provided in fact the sources of supply are for the purposes of the Agreement);
- (vi) Any compliance with any law, regulation or ordinance, or with any order, demand or request of an international, national, port, transportation, local or other authority or agency or of any body or person purporting to be or to act for such authority or agency or any corporation directly or indirectly controlled by any of them.

31.1.2 An impediment within Section 31.1 above shall not include delay, hindrance, interference with, curtailment or prevention of a party's accrued obligation to make payment under the Agreement whether in respect of price, despatch, demurrage or any other financial obligation whatsoever.

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

31.4 The appropriate relief under this section shall be as follows:

- (i) in respect of an impediment that renders impossible the Relying Party's performance of its obligations, immediate termination of the affected delivery obligation(s) without liability for damages, penalties and other contractual sanctions.
- (ii) in respect of an impediment that delays, hinders, reduces or interferes with the performance of the delivery obligation(s), immediate postponement of those obligations without liability for damages, penalties and other contractual sanctions for a period until midnight local time on the last date of the Laydays, or until such time as the impediment is removed, whichever is the earlier. The impediment shall not, however, operate to extend the term of the Agreement or to abrogate the provisions of Section 24.2. Further, should the impediment continue beyond midnight local time on the last day of the Laydays then it shall be deemed to render the Relying Party's obligations impossible and Section 31.4(i) above shall apply thenceforth.
- (iii) the Relying Party, if the Seller, shall not be obliged to purchase afloat or otherwise from other suppliers to make good shortages or deficiency of delivery resulting from an impediment.

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

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

## **Section 32 – Limitation of liabilities**

32.1 Except as specifically provided in the Special Provisions or in Section 12.4, in no event, including the negligent act or omission on its part, shall either party be liable to the other, whether under the Agreement 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 (without

limitation) 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 shutdown or reduction, hedging or other derivative losses, goodwill, use, market reputation, business receipts or contracts or commercial opportunities, whether or not foreseeable.

- 32.2 The provisions of this Section 32 shall continue to apply notwithstanding the termination or expiry of the Agreement for any reason whatsoever.
- 32.3 Without derogating from the specific time limits set out at Section 6.1.4 and 13.2.4 (submission of demurrage claims) and 25.2.1 (complaint of deficiency of quantity or variation of grade) and any other provisions requiring compliance within a given period, all of which shall remain in full force and effect, any claim arising under the Agreement and any dispute under Section 38 shall be commenced within 2 years 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.

### **Section 33 – Termination or suspension in the event of liquidation, etc.**

- 33.1 Notwithstanding anything to the contrary express or implied elsewhere herein, either party (without prejudice to its other rights) may at its sole discretion either terminate the Agreement forthwith or forthwith suspend delivery under the Agreement until further notice, on notifying the other party either orally (confirming such notification in writing) or by notice in writing, if a liquidator (other than for the purpose of amalgamation or reconstruction), trustee in bankruptcy, receiver or receiver and manager is appointed in respect of the assets and/or undertaking of the other party, or the other party enters into an arrangement or composition with its creditors, or any similar appointment, arrangement or composition is made under any applicable law, or if the party in question has reason to anticipate any such occurrence, appointment, arrangement or composition.
- 33.2 In the case of multiple shipments under the Agreement, notwithstanding anything to the contrary express or implied elsewhere herein:
- 33.2.1 the Seller (without prejudice to its other rights) may at its sole discretion either terminate the Agreement forthwith or forthwith suspend delivery under the Agreement until further notice, on notifying the other party either orally (confirming such notification in writing) or by notice in writing, if the Buyer:
- 33.2.1.1 fails to make any payment due to the Seller under the Agreement in full and punctually by the due date; or
- 33.2.1.2 fails to take delivery in accordance with the quantity or delivery provisions of the Agreement; and
- 33.2.2 the Buyer (without prejudice to its other rights) may at its sole discretion either terminate the Agreement forthwith or forthwith suspend the taking of delivery under the Agreement until further notice, on notifying the other party either orally (confirming such notification in writing) or by notice in writing, if the Seller fails to make delivery in accordance with the quantity or delivery provisions of the Agreement.

### **Section 34 – Limitation on assignment**

Neither of the parties to the Agreement shall without the previous consent in writing of the other party (which shall not be unreasonably withheld or delayed) assign the Agreement or any rights or obligations hereunder. In the event of an assignment in accordance with the terms of this Section, the assignor shall nevertheless remain responsible for the proper performance of the Agreement. Any assignment not made in accordance with the terms of this Section shall be void.

## **Section 35 – Notices**

35.1 Unless otherwise provided elsewhere in the Agreement, any communication by either party to the other shall be sufficiently made if sent by first class post (by airmail where airmail is possible), postage paid, or by telex or facsimile transmission or by courier to the address of the other party specified for this purpose in the Special Provisions and shall, unless otherwise provided herein, be deemed to have been received as follows:

In the case of a communication sent by first class post within the C.E.E., on the second day after it was posted.

In the case of a communication sent by airmail, on the fifth day after it was posted.

In the case of a communication by telex or by facsimile transmission: if it is transmitted on a business day before 4.00 pm, then on that day: in any other case, on the business day after the day on which it is transmitted.

In the case of a communication by courier: if delivered before 4.00 pm, then on that day: in any other case, it will be treated as being received on the next business day.

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

35.3 Notices may not be given by e-mail or by instant messaging and shall be invalid save in those circumstances where the parties to the Agreement have concluded an electronic protocol within the meaning of Section 39.8.1 or the provisions of Section 39.8.2 pertain.

## **Section 36 – Trade controls and boycotts**

Notwithstanding anything to the contrary herein, nothing in the Agreement is intended, and nothing herein should be interpreted or construed, to induce or require either party hereto to act in any manner (including failing to take any actions in connection with a transaction) which is inconsistent with, penalized or prohibited under any laws, regulations, decrees or other official C.E.E. government rules or requirements applicable to such party which relate to anti-money laundering, foreign trade controls, export controls, embargoes or international boycotts of any type.

## **Section 37 – Facilitation Payments and Anti-Corruption**

37.1 The Buyer and the Seller each agree and undertake to the other that in connection with this Agreement, they will each respectively comply with all applicable laws, rules, regulations, decrees and/or official government orders of the C.E.E. relating to anti-bribery and anti-money laundering.

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

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

- (a) a government official or an officer or employee of a government or any department, agency or instrumentality of any government;
- (b) an officer or employee of a public international organization;
- (c) any person acting in an official capacity for or on behalf of any government or department, agency, or instrumentality of such government or of any public international organization;
- (d) any political party or official thereof, or any candidate for political office;

- (e) or any other person, individual or entity at the suggestion, request or direction or for the benefit of any of the above-described persons and entities, or

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

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

37.4 The Buyer or the Seller may terminate the Agreement forthwith upon written notice to the other at any time, if in their reasonable judgment the other is in breach of any of the above representations, warranties or undertakings.

## **Section 38 – Referee, High Court, Arbitration and Small Claims**

### **38.1 Appointment of a referee**

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

### **38.2 High Court**

Subject to Sections 38.1, 38.3, 38.4, 38.5 and 40.1, any dispute arising out of or in connection with the Agreement, including any question regarding its existence, validity or termination (“the Dispute”), shall be referred to the Commercial Court of the High Court in London. Each party agrees to appoint a solicitor to accept service of proceedings relating to the Dispute within 14 days of a written request from the other so to do.

### **38.3 Arbitration**

Notwithstanding Section 38.2 above, the Seller may, by giving written notice of election to the Buyer, elect to have the dispute referred to arbitration before a panel of 3 arbitrators pursuant to the terms of the Arbitration Act 1996, or any statutory modification thereof. If the Buyer is the claiming party in the Dispute then the Seller must give written notice of election to arbitrate by no later than the fourteenth day of the Buyer’s written request to accept service of High Court proceedings at Section 38.2 above. The Seller shall give written notice of election whether as the claiming or defending party by appointing an arbitrator and sending notice of such appointment to the Buyer requiring the Buyer to appoint its own arbitrator within 14 calendar days of that notice and stating that the Seller will appoint its arbitrator as sole arbitrator in the reference unless the Buyer appoints its own arbitrator and gives notice that it has done so within the 14 days specified. If the Buyer does not appoint its own arbitrator within the 14 days specified, then the Seller may,

without the requirement of any further notice to the Buyer, appoint its arbitrator as sole arbitrator in the reference and shall advise the Buyer accordingly. The award of the sole arbitrator shall be binding on both parties as if he had been appointed by agreement. In the event the Buyer is the claiming party in the Dispute then it shall be the claimant in the reference.

#### **38.4 Small Claims**

Notwithstanding Section 38.2 and 38.3 above, the parties agree that where the amount in dispute between them is US\$100,000 or less (excluding interest and costs) then the Dispute shall be referred to a sole arbitrator and the arbitration shall be conducted in accordance with the London Maritime Arbitrators' Association ("LMAA") Small Claims Procedure current at the time when the claiming party commences arbitration proceedings.

#### **38.5 Demurrage Claims**

Notwithstanding Section 38.2 and 38.3 above, the parties agree that where the Dispute between them is in relation to demurrage, including the commencement and computation of lay time, then the dispute shall be referred to arbitration to be conducted in accordance with the LMAA Terms current at the time when the claiming party commences arbitration proceedings. The tribunal shall consist of 3 arbitrators, each arbitrator shall be a full Member of the LMAA, and the timetable for constitution of the tribunal shall be in accordance with that laid out in the current LMAA Terms.

### **Section 39 – Miscellaneous**

#### **39.1 Severability**

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

#### **39.2 Survivability**

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

#### **39.3 Consents, etc.**

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

#### **39.4 Conflict**

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

#### **39.5 Modification**

The Agreement shall not be modified unless mutually agreed by the parties, which agreement must be evidenced in writing.

#### **39.6 Waiver**

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

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

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

- (a) record and retain electronic transmissions (including telephone conversations, e-mail and instant messaging between the parties' respective representatives in connection with the Agreement or other commercial matters between the parties) on central and local databases for their respective legitimate purposes; and
- (b) monitor electronic transmissions through their internal and external networks for purposes of security and compliance with applicable laws, regulations and internal policies for their other legitimate business purposes.

### **39.8 E-mails and Instant Messaging**

In the event that:

39.8.1 The Buyer and the Seller enter into a specific arrangement to an Agreement in relation to commercial communications and the conclusion of contracts by electronic means ("an electronic protocol"), which electronic protocol shall comply with the Electronic Commerce (EC Directive) Regulations 2002 (SI2002/2013) or any subsequent enactment and Statutory Instrument, including in particular the provisions of Regulations 7 and 9, or

39.8.2 any subsequent Act of Parliament or Statutory Instrument codifies all matters relating to the exchange of electronic communications and the conclusion of commercial contracts of the kind envisaged by these General Terms and Conditions in an electronic medium into the laws of Community Economic European C.E.E. such that no electronic protocol or any additional agreement is required by the parties in respect of all matters, including but not limited to time of offer and acceptance, hard copies, validity and proof of agreement as to terms, then

39.8.3 Any notices, advices, confirmatory or other communications (including the conclusion of the Agreement) may be conducted by e-mail or instant messaging between the parties, but not otherwise.

### **39.9 Entire Agreement**

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

### **39.10 Warranties**

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

### **39.11 Third party rights**

No term of the Agreement is intended to, or does, confer a benefit or remedy on any third party. A person, company or other legal entity who is not a party to the Agreement shall not have nor acquire whether by virtue of the Contracts (Rights of Third Parties) Act 1999 or otherwise any rights in relation to the Agreement. Further, the parties hereto may rescind or vary the Agreement, whether in whole or in part, without the consent of any third party.

### **39.12 Trade marks**

Nothing in the Agreement whether express or implied shall be deemed to confer any right upon the Buyer to apply any trade mark owned by the Seller or any of its Associated Companies to any crude oil supplied under the Agreement nor to use such trade marks in relation to such crude oil nor vice versa in respect of any trade mark owned by the Buyer.

## **Section 40 – Applicable law**

### **40.1 Governing law**

The construction, validity and performance of the Agreement shall be governed by Community Economic European C.E.E. law to the exclusion of any other law which may be imputed in accordance with choice of law rules applicable in any jurisdiction. However, neither party shall be precluded from pursuing arrest, attachment and/or other conservatory, interlocutory or interim actions in any court or exercising any contractual rights in relation to the crude oil or Vessel provided for elsewhere in the Agreement.

### **40.2 The UN Convention**

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

### **40.3 Sovereign immunity**

Each party hereto warrants that it has entered into the Agreement in a commercial capacity and that with respect to the Agreement it is in all respects subject to civil and commercial law. Each party hereby consents generally in respect of any legal action, arbitration or other proceedings arising out of or in connection with the Agreement to the giving of any relief, or to the issue of any process in connection with such action or proceedings irrespective of the jurisdiction in question. Each party hereby irrevocably and unconditionally and to the fullest extent permitted by law waives any rights of sovereign immunity which it may have now or which it may subsequently acquire in respect of its position or any property and/or assets (present or subsequently acquired and wherever located) belonging to it.



**PART SIX  
Schedules**

**SCHEDULE A**

**Seller's Indemnity format**

The indemnity referred to in Section 30 shall be in the following format:

quote

We refer to our Agreement dated the ..... day of [month], [year] in respect of your purchase from us of ..... tons of ..... crude oil FOB/CFR/CIF ("the Agreement") on Vessel "..... ", bill of lading date .....

In consideration of your making payment of US dollars ..... for ..... tons of the said crude oil in accordance with the Agreement and having agreed to accept delivery of the cargo without having been provided with [here insert the relevant documents as set out in Section 30] ("the documents"), we hereby represent and warrant all of the following:

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

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

- (a) our failure to present the documents to you in accordance with the Agreement the documents; and/or including but not limited to
- (b) any action or proceeding brought or threatened against you by reason of our said failure and any breach of our above express representations and warranties in connection with questions of title to or the right to possession of the documents or the cargo or the proceeds of either; or any liens, charges or encumbrances asserted on the documents or the cargo or any other claims arising out of or in connection with the documents.

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

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

This indemnity shall be governed by and construed in accordance with Community Economic European C.E.E. law, shall be subject to the exclusive jurisdiction of the Community Economic European C.E.E. Courts and shall cease to have effect upon the documents being provided to you.

Signed by: ..... Title: .....

of: ..... [company name] .....

unquote

Quote

In consideration of your agreeing as aforesaid we the undersigned ..... Bank of ..... whose customer is [Full Name of Seller] hereby jointly and severally agree to be bound by the terms of the above Letter of Indemnity.

By: .....  
Bank Authorised Signatory

Unquote

## **Schedule B**

### **Seller's Parental Guarantee**

(ON GUARANTOR'S LETTER HEAD)

### **DEED OF GUARANTEE**

Dated this [ ] day of [ ] 200[ ]

#### **PARTIES:**

1. [ ] whose registered office is at [ ] (the "Guarantor"); and
2. MISCOL [ ] whose registered office is at [ ] (the "Beneficiary")

#### **RECITALS:**

At the request of the Guarantor's subsidiary company [ ], whose registered office is at [ ] (the "Debtor"), and in consideration of the Beneficiary's entering into the Trading Arrangements (as defined in Clause 1) with the Debtor, the Guarantor has agreed to guarantee the due and punctual payment of all sums due from time to time by the Debtor to the Beneficiary pursuant to the Trading Arrangements in the manner appearing below.

#### **OPERATIVE PROVISIONS:**

1. The Guarantor hereby irrevocably COVENANTS AND GUARANTEES to the Beneficiary and its successors and assigns, the due and punctual payment of all sums due from time to time by the Debtor to the Beneficiary pursuant to the Trading Arrangements (collectively "the Obligations"). "Trading Arrangement" for the purposes of this Deed of Guarantee means (a) the buying and selling or exchanging of crude oil and/or petroleum products (including but not limited to liquefied petroleum gas) between the Beneficiary and the Debtor; (b) the Beneficiary's entering into book-outs or cancellation agreements with the Debtor or, where applicable, with any other party/ies in relation to any such sales, purchases or exchanges; (c) the provision by the Debtor of letters of indemnity instead of the provision of the requisite bills of lading and other shipping documents in connection with such sales, purchases or exchanges; and (d) the entering into contracts of differences, including swap or option transactions.
2. If, at any time, any default, for whatever reason, is made by the Debtor in the performance of any of the Obligations, the Debtor shall on demand pay any sum or sums that may be payable in consequence of any default made by the Debtor in the performance of any of the Obligations.
3. As between the Guarantor and the Beneficiary (but without affecting the Obligations), the Guarantor shall remain liable under this Deed of Guarantee as if it were the sole principal obligor and not merely a guarantor. The Guarantor shall not be discharged nor shall its liability be affected by anything which would not discharge it or affect its liability if it were the sole principal obligor including, but not limited to:
  - 3.1 any amendment, modification, waiver, consent or variation, express or implied to the Trading Arrangements or any related documentation;
  - 3.2 the granting of any extensions of time or forbearance, forgiveness or indulgences in relation to time to the Debtor;
  - 3.3 the enforcement, absence of enforcement or release of any of the Trading Arrangements or of any security, right of action or other guarantee or indemnity;
  - 3.4 the dissolution, amalgamation, reconstruction, re-organization of the Debtor or any other person;

- 3.5 the illegality, invalidity or unenforceability of, or any defect in, any provisions of any of the Obligations;
  - 3.6 any indulgence or additional or advanced payment, forbearance, payment or concession to the Debtor;
  - 3.7 any compromise of any dispute with the Debtor;
  - 3.8 any failure of supervision to detect or prevent any fault of the Debtor; or
  - 3.9 any assignment of the benefit of any of the Trading Arrangements.
4. If any payment received by the Beneficiary pursuant to the provisions of any of the Trading Arrangements shall, on the subsequent bankruptcy, insolvency, corporate reorganization or other similar event of the Debtor, be avoided or set aside under any laws relating to bankruptcy, insolvency, corporate reorganization or other such similar events, such payment shall not be considered as discharging or diminishing the liability of the Guarantor and this Deed of Guarantee shall continue to apply as if such payment had at all times remained owing by the Debtor. The Guarantor shall on demand indemnify the Beneficiary against any funding or other cost, expense or liability (including loss of margin) sustained or incurred by the Beneficiary as a result of its being required for any reason (including any bankruptcy, insolvency, winding-up or similar law of any jurisdiction) to refund all or any part of any amount received or recovered by it in respect of any sum payable by the Debtor under the Trading Arrangements and shall in any event pay to the Beneficiary on demand the amount so refunded by it.
  5. Notwithstanding any performance or payments made by the Guarantor hereunder, the Guarantor hereby irrevocably waives any and all rights of subrogation to the rights of the Beneficiary against the Debtor and any and all rights of reimbursement, or indemnification against the Debtor or against any other guarantor of all or any part of the Obligations until such time as the Obligations have been performed and paid in full. If, notwithstanding the foregoing, any amount shall be paid to the Guarantor on account of such subrogation rights at any time when all of the Obligations shall not have been performed and paid in full, such amount shall be held by the Guarantor in trust for the Beneficiary and shall, forthwith upon receipt by the Guarantor, be paid to the Beneficiary, to be applied against the Obligations in such order as the Beneficiary may determine.
  6. The Guarantor will pay all monies due from it under this Deed of Guarantee free and clear of, and without deduction of, or on account of, either any set-off or counterclaim or any and all present or future taxes, levies, posts, charges, fees, deductions or withholdings except as required by applicable law. If any sums payable hereunder shall be or become subject to any such deductions or withholding, the amount of such payments shall be increased so that the net amount received by the Beneficiary shall equal the amount which, but for such deduction or withholding, would have been received by the Beneficiary hereunder.
  7. This Deed of Guarantee shall be in addition to and not in substitution for any other rights, remedy, security or guarantees which the Beneficiary may now or hereafter hold from or on account of the Debtor in respect of the Obligations and may be enforced without first having recourse to the same.
  8. This Deed of Guarantee shall continue to be in effect and be binding on the Guarantor notwithstanding absorption, amalgamation or any other changes in its constitution.
  9. This Deed of Guarantee shall remain valid for such time as the Obligations exists in relation to the Trading Arrangements.
  10. This Deed of Guarantee and the benefit conferred by it may be assigned by the Beneficiary to any party to whom it assigns its interest under any Trading Arrangement, at any time. Save as aforesaid, this Deed of Guarantee and the benefit conferred by it may not be assigned by either party.

- 11. The construction, validity and performance of this Deed of Guarantee is subject to Community Economic European C.E.E. law and the Community Economic European C.E.E. courts shall have exclusive jurisdiction over any dispute or difference arising out of or in connection herewith.
- 12. The Guarantor irrevocably appoints [\*insert name of C.E.E. process agent] to receive, for it and on its behalf, service of process in any proceedings. If for any reason [\*insert name of C.E.E. process agent] is unable to act as such, the Guarantor will promptly notify the Beneficiary and within 30 days appoint a substitute process agent acceptable to the Beneficiary.

In witness whereof this Deed of Guarantee has been executed as a Deed on the date at the head of this document.

EXECUTED AND SIGNED as a Deed by [ ..... ] }

in the presence of: }

Witnesses ..... } .....  
[ ]

..... }

**Schedule C**

**Letter of Credit format**

Format of Irrevocable Documentary Letter of Credit as required pursuant to Section 29:

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

- 1. original signed commercial invoice;
- 2.\* (a) in the case of delivery FOB/CFR/CIF: full set of 3/3 original clean on board ocean bills of lading issued or endorsed to the order of ..... ;  
  
(b) in the case of delivery Ex Ship: one copy independent inspector's report.
- 3.\* in the case of delivery FOB/CFR/CIF:  
any other shipping document:  
cargo manifest  
quality/quantity report  
certificate of origin  
insurance certificate  
[\* Amend as required]

evidencing shipment of ..... US barrels +/- 15% (plus a further margin of X% in respect of escalation of duty including VAT if appropriate) of ..... FOB/CFR/CIF/Ex Ship ..... between ..... and ..... (both dates inclusive).

Price Clause [Here insert text of Price Clause as set out in the Special Provisions]

This Credit expires on .....

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

Quote

To:

[here insert text of Indemnity as per Schedule A]

Unquote

Special Conditions:

- 1. This Letter of Credit shall take effect in accordance with its terms but such terms shall not alter, add to or in any way affect the provisions of the Agreement between [Seller] and [Buyer] to which this Letter of Credit relates.
- 2. [In the case of delivery FOB/CFR/CIF only] Charter party bills of lading/Vessel bills of lading and/or bills of lading signed by the master or agent and not indicating that they have been issued by a named carrier are acceptable.
- 3. Documents presented later than 21 days after the bill of lading date but within the validity of this Credit are acceptable.

4. Transshipments [allowed/prohibited]
5. Partial shipments [allowed/prohibited].
6. Photocopies in lieu of copy documents acceptable.
7. [If the payment due date falls on a Saturday or a New York Bank Holiday other than a Monday, payment will be effected on the last New York banking day prior. If the payment due date falls on a Sunday or a New York Bank Holiday Monday, payment will be effected on the first following New York banking day].
8. Telex invoice and indemnity acceptable.
9. All bank charges are for the account of the applicant.
10. The construction, validity and performance of this Letter of Credit shall be governed by and construed in accordance with Community Economic European C.E.E. law.
11. Typographical and spelling errors shall not constitute a discrepancy unless with regard to quantity or amount.

Except as otherwise expressly stated herein, this Letter of Credit is subject to Uniform Customs and Practice for Documentary Credits Revision 1993, (ICC Publication No. 500).

12. The amount of this Credit may escalate/de-escalate in accordance with the above Price Clause without any further amendment on our part. The margin as to the quantity shipped as set out above as + or – 15% plus a further margin to cover escalation of duties including VAT if appropriate shall apply to the terms of this Credit, notwithstanding that these margins may be greater than that applicable in the Agreement itself.

**Schedule D**

**Standby Letter of Credit format**

Format of Standby Letter of credit as required pursuant to Section 29:

Irrevocable Standby Letter of Credit No. ....

BENEFICIARY

APPLICANT

[name and address]

[name and address]

At the request of the above applicant, and for its account, we [name and address of Bank] hereby open in your favour our Irrevocable Standby Letter of Credit No .....

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

1. Copy of unpaid invoice.
2. Beneficiary's certificate purporting to be signed by an official of the Beneficiary certifying that "the amount demanded represents a payment which has not been made to [name of Beneficiary] by [name of Applicant] within the terms of the contract in respect of invoice number ..... which is legally and properly past due".

Covering: [Details of the Agreement]

Multiple drawings are permitted.

The expiration of this Letter of Credit is .....

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

Special Conditions:

1. All bank charges are for the account of the Applicant.
2. Above documents presented in telex form acceptable.
3. This Letter of Credit shall take effect in accordance with its terms but such terms shall not alter, add to or in any way affect the Agreement between [Seller] and [Buyer] to which this Letter of Credit relates.
4. The construction, validity and performance of this Letter of Credit shall be governed by and construed in accordance with Community Economic European C.E.E. law.

Except as otherwise expressly provided herein, this Standby Letter of Credit is subject to the [Uniform Customs and Practices for Documentary Credits 1993 Revision (ICC Publication No. 500)] [International Standby Practices 1998 (ISP98)].

For floating price Agreements, add to the Special Conditions:

5. The value of this Letter of Credit may escalate/de-escalate in accordance with the above Price Clause without any further amendment on our part.



## **Schedule E**

### **Additional Provisions in respect of deliveries via the Druzhba and connected pipelines**

#### **1. Delivery**

Delivery shall be given and taken Delivered at Frontier (“DAF”) free in the Druzhba or connected pipeline at such frontier border station as shall be specified in the Special Provisions.

By not later than the day 10 days prior to the first day of the scheduled month of delivery, the Seller shall endeavour to notify the Buyer of the approximate quantity and dates of each delivery during the month in question, the actual delivery dates being at the Seller’s option conditional upon the relevant Pipeline Operator’s performance. Within 3 banking days in London of receipt thereof, the Buyer shall confirm to the Seller its readiness to accept each such delivery.

The date of the last Delivery Acceptance Act (“DAA”) of each separate lot delivered within any month shall be the delivery date for the total quantity so delivered. Any quantities delivered up to and on the 5th day of the month following the scheduled delivery month shall be deemed to have been delivered during the scheduled delivery month (except for the purposes of determining the price and payment due date, for which purpose the actual date of the DAA shall be used).

#### **2. Quality, quantity, measurement and sampling**

2.1 Save as provided in Section 2.2 below, the quality of the crude oil delivered shall be determined in accordance with the testing and measuring methods used at the relevant frontier border station specified in the Special Provisions and as stated in the DAA. The certificate of quality so issued shall, except in cases of manifest error or fraud, be conclusive and binding on both parties.

2.2 Where there is no relevant frontier border station issuing DAAs (in which event the DAA will be issued by the relevant authorities at the receiving refinery). The quality shall be determined at the receiving refinery in accordance with good industry practice and the certificate of quality so issued shall, except in case of manifest error or fraud, be conclusive and binding on both parties.

2.3 Save as provided in Section 2.4 below, the quantity of the crude oil delivered shall be determined in accordance with the measuring methods used at the relevant frontier border station specified in the Special Provisions and as stated in the DAA. The certificate of quantity so issued shall, except in cases of manifest error or fraud, be conclusive and binding on both parties for invoicing purposes but without prejudice to the rights of either party to make any claim pursuant to Section 25.2.

2.4 Where there is no relevant frontier border station issuing DAAs (in which event the DAA will be issued by the relevant authorities at the receiving refinery) the quantity shall be as specified in the Route Telegram (“RT”) issued by the relevant Pipeline Operator for the frontier border station. The certificate of quantity so issued shall, except in cases of manifest error or fraud, be conclusive and binding on both parties for invoicing purposes but without prejudice to the rights of either party to make any claim pursuant to Section 25.2.

2.5 The Buyer shall have the right to appoint its own representative at the relevant frontier border station and/or the receiving refinery and, except with the specific prior written agreement of the Seller, all charges in respect thereof shall be for the Buyer’s account and the duties of such representative shall be considered solely as a service to the Buyer.

**3. Risk and property**

Notwithstanding any right of the Seller to retain documents until payment, the risk and property in the crude oil delivered under the Agreement shall pass to the Buyer as the crude oil passes the point of delivery specified in Clause 1 of this Schedule.

**4. Payment documents**

For the purposes of Section 29.1, payment shall be made by the Buyer to the Seller against presentation to the Buyer of:

- (a) the Seller's telex or fax commercial invoice (provisional invoice acceptable where the provisions of Section 29.3.2 apply); and
- (b) a copy of the DAA certified by the Seller as a true copy and, where relevant pursuant to Clause 2.2 of this Schedule, the RT or, in lieu thereof, the Seller's indemnity.

## **Schedule F**

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

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

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

- (a) at the Loading Terminal, the Seller or the Seller's supplier may refuse to Berth, load or continue loading such Vessel; and/or
- (b) at the Discharge Port, the Buyer or the Buyer's receiver may refuse to Berth, discharge or continue discharging such Vessel.

#### **1.2 ISPS CODE**

##### **A. FOB Provisions**

- i) The 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) and where the loading port is within the USA and US territories or waters, with the US Maritime Transportation Security Act 2002 (MTSA),
- 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 the Seller, if at any time prior to the passing of risk and title the Vessel ceases to comply with the requirements of the ISPS code or MTSA:
  - a) The Seller shall have the right not to Berth such nominated Vessel and any demurrage resulting shall not be for the account of the Seller.
  - b) The Buyer shall be obliged to substitute such nominated Vessel with a Vessel complying with the requirements of the ISPS Code and MTSA and with Sections 4.3 and 4.5 above.
- iv)
  - a) The Seller shall procure that the loading port/terminal/installation shall comply with the requirements of the International Code for the Security of Ships and of Port Facilities and the relevant amendments to Chapter XI of SOLAS (ISPS Code) and if located within the USA and US territories, with the US Maritime Transportation Security Act 2002 (MTSA)
  - 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 the Buyer resulting directly from the failure of the loading port/terminal/installation to comply with the ISPS Code and if located within the USA and US territories, with the MTSA, shall be for the account of the Seller, including but not limited to the time required or costs incurred by the Vessel in taking any action or any special or additional security measures required by the ISPS code or MTSA

- 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 relevant amendments to Chapter XI of SOLAS (ISPS Code) and within the USA and US territories or waters, with the US Maritime Transportation Security Act 2002 (MTSA), the Seller shall be responsible for any demurrage actually incurred by the 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 Terminal is not operated by the Seller or an Associated Company of the Seller, the Seller's liability to the 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 loading port/terminal/installation to comply with the ISPS Code or MTSA shall be limited to the payment of demurrage, costs, losses or expenses that the Seller is able to recover and does recover from its supplier or other relevant third party, and then only to the extent of such recovery. The Seller shall, however, use reasonable efforts so to recover from its supplier or other relevant third party.

**B. CIF/CFR/DES Provisions**

- i) The Seller 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) and if located within the USA and US territories or waters, with the US Maritime Transportation Security Act 2002 (MTSA).
- ii) The Vessel shall when required submit a Declaration of Security (DoS) to the appropriate authorities prior to arrival at the Discharge Port.
- iii) Notwithstanding any prior acceptance of the Vessel by the Buyer, if at any time prior to; the arrival of the Vessel at the Discharge Port the Vessel ceases to comply with the requirements of the ISPS code or MTSA:
  - a) The Buyer shall have the right not to Berth such nominated Vessel at the Discharge Port and any demurrage resulting shall not be for the account of the Buyer;
  - b) The Seller shall be obliged to substitute such nominated Vessel with a Vessel complying with the requirements of the ISPS Code and MTSA and with Sections 11.4 and 11.5 above. If title and risk to the cargo on board the Vessel subsequently substituted pursuant to iii) b) has already passed to the Buyer, such title and risk shall be deemed to have reverted to the Seller.
- iv)
  - a) The Buyer shall procure that the Discharge Port/terminal/installation shall comply with the requirements of the International Code for the Security of Ships and of Port Facilities and the relevant amendments to Chapter XI of SOLAS (ISPS Code) and if located within the USA and US territories, with the US Maritime Transportation Security Act 2002 (MTSA);
  - 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 Discharge Port and actually

incurred by the Seller resulting directly from the failure of the Discharge Port/terminal/installation to comply with the ISPS Code and if located within the USA and US territories, with the MTSA shall be for the account of the Buyer, including but not limited to the time required or costs incurred by the Vessel in taking any action or any special or additional security measures required by the ISPS code or MTSA.

- 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 relevant amendments to Chapter XI of SOLAS (ISPS Code) and within the USA and US territories or waters, with the US Maritime Transportation Security Act 2002 (MTSA), the Buyer shall be responsible for any demurrage actually incurred by the Seller arising from delay to the Vessel at the Discharge Port resulting directly from the Vessel being required by the port facility or any relevant authority to take any action or any special or additional security measures or undergo additional inspections.
- vi) If the Discharging Terminal is not operated by the Buyer or an Associated Company of the Buyer, the Buyer's liability to the Seller under this agreement for any costs, losses or expenses incurred by the Vessel, the charterers or the Vessel owners resulting from the failure of the Discharge Port/terminal/installation to comply with the ISPS Code or MTSA shall be limited to the payment of demurrage, costs, losses or expenses that the Buyer is able to recover and does recover from its supplier or other relevant third party, and then only to the extent of such recovery. The Buyer shall, however, use reasonable efforts so to recover from its supplier or other relevant third party.

### 1.3 **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 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)

### 1.4 **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 Agreement, "ISM" means the International Management Code for the Safe Operations of Ships and for Pollution Prevention.)

### 1.5 **ISGOTT, etc.**

The Vessel shall be manned, operated and maintained so as to fully comply with (i) the standards set out in ISGOTT, (ii) appropriate IMO recommendations, and (iii) the OCIMF Guidelines for the Control of Drugs and Alcohol On-board Ship (1990), each as amended from time to time. (For the purposes hereof, "ISGOTT" means the International Safety Guide for Oil Tankers and Terminals, as current from time to time; and "IMO" means the International Maritime Organization.)

### 1.6 **IGS**

Any Vessel fitted with an inert gas system (“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 effective, and Laytime shall not commence until commencement of loading or discharge, as the case may be.

#### **1.7 Closed loading**

Vessels 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.

#### **1.8 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 Terminal or the Discharge Port.

#### **1.9 Port Regulations**

The Vessel shall comply with the Buyer’s Receivers’ regulations at the Discharge Port and with MISCOL Port Clearance regulations at the Loading Terminal and at the Discharge Port.

### **2. Loading or discharge at ports in the Europe**

Where the Loading Terminal or the Discharge Port is located within the Europe, the Vessel shall observe the Code of Practice relating, inter alia, to recommendations as to routes to be taken by Vessels in certain sensitive locations in Europe waters as drawn up by European Chamber of Shipping.

### **3. 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 Agreement and in particular and as appropriate the Vessel shall comply with the “Turkish Straits Maritime Traffic Scheme Regulations” dated 6th November 1998, as amended or re-issued from time to time.

### **4. Incorporation of Schedule G**

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

## **Schedule G**

### **MISCOL Casualty Procedure**

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

#### **MISCOL CASUALTY EMERGENCY INSTRUCTION**

These instructions are to be followed in the case of an emergency such as collision, grounding, fire, pollution or other incident where immediate assistance is required or adverse media coverage is expected. The aim of the procedure is to speed up the response to an emergency, with benefit to all concerned.

Notification depends on the Vessel's geographical location:

Americas: If West of 30° West to 180°, notification by telephone to +34-91-5060853 followed by a fax to MISCOL SHIPPING (fax number +34-91-506893); or

For rest of the world, notification by telephone to MISCOL SHIPPING +34-91-5060850, followed by a fax MISCOL SHIPPING (fax number +34-91-506893);

containing the words "MISCOL CASUALTY". The words "MISCOL CASUALTY" should appear at the beginning of the first line of text, immediately following the address. The words "MISCOL CASUALTY" must have no spaces, stops or commas between 'B' and 'P' and may be in upper or lower case.

The MISCOL CASUALTY telex should contain the following information:

- Name of Vessel;
- Nature of emergency (collision, grounding, etc.);
- Position of Vessel (latitude, longitude, port);
- Nature and extent of damage;
- Fatalities and/or personal injuries, if any;
- State of sea and weather;
- Name, nationality and type of other Vessel(s) involved;
- In the event of an oil spill, the message should also include the local time, date and location of the spill;
- Name of the owner of the installation (if in port) and whether at a jetty, CBM, SBM, etc.;
- Type of oil (e.g. crude, black, white, lubricants, etc.);
- Cause if known (e.g. overflow, hose burst, defective shore pipeline, hull defect, leaking ship valve(s));
- Estimated quantity spilled;
- Estimate of rate of spill if continuing;
- Whether clean up has been attempted either by the Vessel or a third party;

- Whether towage is required;
- Any other relevant comments;
- Time and origin of each report.

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

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



## USER's NOTES

