



**GENERAL TERMS AND CONDITIONS**  
**FOR FOB SALES OF CRUDE OIL**

**TOTAL-CRUDE-FOB**  
**2007 edition**

**CONTENTS**

<b>SECTION TITLE</b>	<b>PAGE</b>	
<b>I</b>	<b>DEFINITIONS</b>	<b>2</b>
<b>II</b>	<b>DELIVERY TERMS AND PASSING OF RISK AND PROPERTY</b>	<b>3</b>
<b>III</b>	<b>QUALITY</b>	<b>4</b>
<b>IV</b>	<b>INVOICING AND PAYMENT</b>	<b>4</b>
<b>V</b>	<b>DESTINATION</b>	<b>6</b>
<b>VI</b>	<b>VESSEL</b>	<b>7</b>
<b>VII</b>	<b>ARRIVAL AND LOADING OF VESSEL AT THE LOADING TERMINAL</b>	<b>10</b>
<b>VIII</b>	<b>LAYTIME AND DEMURRAGE</b>	<b>11</b>
<b>IX</b>	<b>QUANTITY AND QUALITY DETERMINATION</b>	<b>14</b>
<b>X</b>	<b>DOCUMENTS</b>	<b>14</b>
<b>XI</b>	<b>GOVERNMENT TAKE, NEW OR CHANGED REGULATIONS</b>	<b>14</b>
<b>XII</b>	<b>EXCEPTIONS - FORCE MAJEURE</b>	<b>16</b>
<b>XIII</b>	<b>TERMINATION</b>	<b>17</b>
<b>XIV</b>	<b>ASSIGNMENT</b>	<b>18</b>
<b>XV</b>	<b>WAIVER</b>	<b>19</b>
<b>XVI</b>	<b>NOTICES</b>	<b>19</b>
<b>XVII</b>	<b>HEALTH, SAFETY AND ENVIRONMENTAL INFORMATION</b>	<b>20</b>
<b>XVIII</b>	<b>APPLICABLE LAW AND JURISDICTION</b>	<b>20</b>
<b>XIX</b>	<b>GENERAL</b>	<b>20</b>
 <b>APPENDIX 1</b>		
	<b>LETTER OF INDEMNITY</b>	<b>22</b>
 <b>APPENDIX 2</b>		
	<b>SUPPLEMENT IN RESPECT OF DELIVERIES EX TANK, INTO TANK, IN TANK AND FREE INTO PIPELINE</b>	<b>23</b>

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**TOTAL-CRUDE-FOB**

**These General Terms and Conditions may be referred to as TOTAL-CRUDE-FOB.**

## **SECTION I - DEFINITIONS**

In the Agreement (as hereinafter defined), the following terms shall have, unless the context otherwise requires, the following meanings:

- **Affiliate** : Any company or other legal entity directly or indirectly controlling or controlled by a party to the Agreement or controlled directly or indirectly by any company or other legal entity having direct or indirect control over that party.
- **AFRA** : The Average Freight Rate Assessment as published by the London Tanker Brokers' Panel Limited; the applicable rate shall be the rate published at the beginning of the month in which the Vessel loads, irrespective of the reference period mentioned in the publication.
- **Agreement** : The Special Terms and Conditions and the General Terms and Conditions together and any agreed amendment(s) thereto, the Special Terms and Conditions being that part of the Agreement other than the General Terms and Conditions, comprising the oral and written communications evidencing an agreement between Seller and Buyer to an FOB or, as applicable, Ex Tank, Into Tank, In Tank or Free into Pipeline contract of sale; and the General Terms and Conditions being these General Terms and Conditions for FOB Sales of Crude Oil, reference TOTAL-CRUDE-FOB, as supplemented and amended, for Ex Tank, Into Tank, In Tank or FIP deliveries, by the provisions set out in Appendix 2.
- **Barrel** : US Barrel of FORTY-TWO (42) United States standard gallons.
- **FIP** : Free into pipeline.
- **FOB** : As ascribed thereto in Incoterms 2000 (as amended from time to time), except as modified by the Agreement. If there is any inconsistency or conflict between said Incoterms and the Agreement, the Agreement shall prevail.
- **Loading Terminal** : The loading port or ports and/or the delivery facilities at which the Oil is loaded or is to be loaded.
- **Loading Terminal Operator** : Any legal entity which at the time of loading is the operator of the delivery facilities at which the Oil is loaded or is to be loaded.
- **L.O.I.** : Letter of Indemnity.
- **N.O.R.** : Notice of Readiness.
- **Oil** : Such crude oil(s), and/or condensate(s) as more particularly described in the Special Terms and Conditions and sold or nominated to be sold under the Agreement.
- **Seller's Supplier** : Any legal entity supplying or expected by Seller to supply to Seller directly or indirectly the Oil or services necessary to deliver the Oil to Buyer.

**TOTAL-CRUDE-FOB**

- **Shipment** : Any specific quantity of Oil delivered or to be delivered under the Agreement as one full or part cargo lot.
- **SOLAS** : The International Convention for the Safety of Life at Sea 1974 (as amended).
- **Ton** : Metric ton or tonne. ONE THOUSAND (1,000) kilograms.
- **Vessel** : A tankship or other vessel which is adapted for the carriage of Oil.
- **Vessel Presentation Range** : The day or range of days (or part thereof) as specified for delivery in the Special Terms and Conditions or established in accordance with the procedures set out, or referred to, in the Special Terms and Conditions or if not so specified or established, as notified by Seller to Buyer.
- **Working Day** : A day other than a Saturday or Sunday or a bank holiday in London.
- **Worldscale** : The New Worldwide Tanker Nominal Freight Scale as current on the day of commencement of loading the Vessel in question at the Loading Terminal.

## **SECTION II - DELIVERY TERMS AND PASSING OF RISK AND PROPERTY**

- II.1** The Oil shall be delivered to Buyer in bulk FOB at the Loading Terminal, onto Vessel(s) to be provided by Buyer.

Notwithstanding any right of Seller to retain the shipping documents until payment, risk and property in the Oil and all liabilities with respect thereto shall pass to Buyer when the Oil passes the flange connection between the delivery hose and the permanent hose connection of the Vessel at the Loading Terminal.

- II.2** Notwithstanding anything elsewhere in the Agreement to the contrary, if Buyer fails to take delivery of any quantity of Oil made available for delivery, such undelivered quantity shall, at Seller's option, cease to be deliverable to Buyer under the Agreement and, in such event, the undelivered quantity shall be deducted from the total quantity of Oil to be delivered under the Agreement, without prejudice to any other rights or remedies which Seller may have against Buyer. In such case, Seller shall dispose freely of, and may sell or otherwise dispose of, such undelivered quantity of Oil at its sole and absolute discretion. The provisions of this sub-section II.2 shall apply whether Buyer is to receive one, or more than one, Shipment hereunder.

- II.3** If, under the Agreement, Buyer is to receive more than one Shipment, then, unless otherwise provided for in the Agreement:

- (a) each Shipment shall constitute a separate contract; and
- (b) such Shipments shall be evenly spread.

- II.4** No stipulation as to time of delivery, whether specified in the Special Terms and Conditions or determined or established in accordance with the procedures set out, or referred to, in the Special Terms and Conditions, shall form part of the description of the Oil deliverable hereunder and any obligation to effect or complete shipment by such time is excluded.

Unless otherwise specifically agreed, any delivery of Oil will be in one full or part cargo lot.

**TOTAL-CRUDE-FOB**

**II.5** Without limiting any other provision of the Agreement, any loss of, or damage to, the Oil occurring before, during or after the loading operations, which is caused by the Vessel, the Vessel's Owner, or Buyer or any of their respective contractors, agents or employees, shall be for the account of Buyer.

Any claim made against Seller by Seller's Supplier or by the Loading Terminal Operator in respect of damage to any property of Seller's Supplier or any facilities at the Loading Terminal which are caused by the Vessel, the Vessel's Owner, or Buyer or their respective contractors, agents or employees shall be borne by Buyer.

**II.6** In circumstances where the Vessel is loaded prior to the Vessel Presentation Range:

- (a) Buyer shall waive any right Buyer may otherwise have as a result of such early loading; and
- (b) if the Vessel Presentation Range falls on the first day(s) of a month, then, notwithstanding any request of the Loading Terminal Operator, in circumstances where such early loading occurs without Seller's prior written agreement, Buyer shall indemnify Seller for any market loss incurred as a result.

**II.7** Should the Loading Terminal Operator or Seller's Supplier notify Seller of any change in the scheduled lifting program as originally notified to Seller, which change would result in a change in the Vessel Presentation Range and/or cargo size in respect of any Shipment, then Seller shall promptly pass on such information to Buyer and the contractual cargo size/Vessel Presentation Range shall be deemed amended accordingly.

### **SECTION III - QUALITY**

THERE ARE NO REPRESENTATIONS, DUTIES (WHETHER IN NEGLIGENCE OR OTHERWISE), CONDITIONS, GUARANTEES, WARRANTIES OR TERMS, EXPRESS OR IMPLIED, WHETHER IMPLIED BY STATUTE OR OTHERWISE, AS TO THE DESCRIPTION OR SATISFACTORY QUALITY, FITNESS OR SUITABILITY OF THE OIL FOR ANY PURPOSE WHATSOEVER, OR OTHERWISE RELATING TO THE QUALITY OF THE OIL, WHICH EXTEND BEYOND THE DESCRIPTION OF THE OIL APPEARING IN THE AGREEMENT.

### **SECTION IV - INVOICING AND PAYMENT**

**IV.1** The price of the Oil and the due date for payment shall be as specified in the Special Terms and Conditions.

Payment of the full amount of Seller's invoice shall be made without any discount, deduction, withholding, abatement, set-off or counterclaim in United States Dollars (unless otherwise specified in the Special Terms and Conditions) by wire transfer of immediately available funds ("same day funds") on or before the due date (subject to sub-sections IV.3 and IV.6) to the bank and account designated by Seller, against presentation to Buyer by means of courier, facsimile transmission and/or electronic messaging system, of an invoice and either the original bills of lading and other contractual documents or a letter of indemnity, as provided for in Section X.

**IV.2** 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 Seller's invoice and shall be for immediate settlement by Buyer on or by the date advised thereon.

**TOTAL-CRUDE-FOB**

Buyer's obligation to pay shall survive the term of the Agreement and shall not be deemed fulfilled for so long as the price of the Oil and any other costs, expenses and charges have not been credited in full into Seller's bank account.

**IV.3** When the due date falls on a Saturday or on a weekday, other than a Monday, which is not a banking day in New York or at such other place as may be designated by Seller for payment, then any such payment shall be made on the nearest preceding banking day. When the due date falls on a Sunday or a Monday which is not a banking day in New York or at such other place so designated, then any such payment shall be made on the next following banking day.

**IV.4** Any delay in effecting any payment by the due date shall entitle Seller to receive payment of interest for each day of delay calculated as per the USD rate for ONE (1) month of BRITISH BANKERS ASSOCIATION LIBOR RATES ("BBALR") as published on the due date (subject to sub-section IV.3) on Reuters page "LIBOR01" and/or on [www.bba.org.uk/public/libor](http://www.bba.org.uk/public/libor) (or successor thereto), plus TWO (2) percentage points per annum, such interest being in no circumstances to be construed as an agreement by Seller to provide extended credit, and is in addition to any other rights of Seller arising out of such delay.

In addition to any other rights of Seller, all expenses incurred by Seller, including but not limited to, reasonable legal fees, court costs and collection agency fees, caused by delayed payment or non-payment by Buyer of the full amount of Seller's invoice for each Shipment shall be for the account of Buyer and payable upon demand with supporting documentation.

**IV.5** Where the pricing information available to Seller does not allow for the preparation of a final invoice, Seller may issue a provisional invoice, against which Buyer shall make payment. The provisional price shall, unless otherwise agreed between the parties, be based upon the pricing information available to Seller at the time it issues such provisional invoice. Payment of any balance due by either party shall be made immediately upon receipt of Seller's final invoice, which shall be prepared as soon as practicable after all the relevant information becomes available to Seller.

**IV.6** If payment by means of provision of an irrevocable documentary letter of credit is not already provided for in the Special Terms and Conditions, Seller shall be entitled at any time before the due date to demand payment to be effected by means of provision of an irrevocable letter of credit or by payment in advance notwithstanding the method of payment as described in the Special Terms and Conditions. Nothing in this sub-section IV.6 shall relieve Buyer of its obligation to pay the total price of each Shipment as and when due under the Agreement.

**IV.7** When, under the Agreement, or as a consequence of the provisions of sub-section IV.6, payment is to be made by means of an irrevocable letter of credit (referred to herein as "**L/C**"), the following provisions shall apply unless otherwise specified in the Special Terms and Conditions:

- (a) the L/C shall be issued or confirmed by a bank and in a format both of which must be acceptable to Seller, not later than TEN (10) calendar days prior to the first day of the Vessel Presentation Range, or on such other date and at such time as Seller may in writing require;
- (b) all fees, commissions, costs and expenses incurred with respect to such payment or L/C shall be borne by Buyer;
- (c) the L/C shall cover the mean value of the Shipment at the contract price (including, if applicable, any Value Added Tax and/or excise duty) plus TEN (10) per cent and shall at all times be valid for shipment THREE (3) days before and SEVEN (7) days after the Vessel Presentation Range;

- (d) if for any reason the loading will not take place within the period for such loading referred to in the L/C, Buyer shall either obtain an extension of such period or provide a new L/C in terms acceptable to Seller;
- (e) no term of the L/C (nor any agreed amendment thereto) shall amend, alter, add to, or in any way affect the terms of the Agreement (or any of them) unless Seller and Buyer expressly agree in writing to amend the Agreement accordingly.

**IV.8** It is a condition of the Agreement that Buyer complies with its payment obligations under the Agreement (including any obligation to provide security or a payment undertaking in the form specified by Seller as well as any and all obligations under this Section IV) within the time prescribed by Seller and/or by the Agreement. Any failure either in whole or in part by Buyer to comply with any such obligation shall be a breach of condition.

On the occurrence of such breach and for so long as such breach is continuing:

- (a) if the Oil has been delivered on board Buyer's Vessel, then, at Seller's option exercisable at any time by written notice of Seller to Buyer, title, but not risk, in the Oil shall revert to and/or remain with Seller and Buyer undertakes at its own cost to order the discharge of the Vessel exclusively to a party notified to Buyer by Seller; and
- (b) in all cases, Seller may at any time by notice to Buyer, without prejudice to any other legal remedies Seller may have and without any liability whatsoever for any cost, loss or damage (including liabilities to third parties) incurred by Buyer, forthwith:
  - (i) cancel delivery of all or any Shipments; or
  - (ii) without prejudice to any other rights of Seller, withhold delivery of Oil under the Agreement and/or release of shipping documents or letter of indemnity.

Seller may exercise the rights set out above whether or not nominations have been made or accepted and, if Seller exercises any such right, Seller shall be entitled to dispose freely of any resulting quantity of Oil and Buyer shall be liable for, and indemnify Seller and/or Seller's Supplier for, any costs, losses and damages incurred by Seller and/or Seller's Supplier as a result of Buyer's breach, including but not limited to, any demurrage payable by Seller and/or Seller's Supplier in respect of the Vessel or other vessels waiting at the Loading Terminal.

## **SECTION V - DESTINATION**

**V.1** Buyer undertakes, and it is a condition of the Agreement, that the Oil shall not:

- (a) be shipped directly or indirectly through, or
- (b) be disposed of, directly or indirectly and irrespective of means, by way of resale, exchange, loan or other arrangement for the supply of the Oil to any buyer and/or receiver in,

any country which is subject to a prohibition by the governmental authorities of the country in which the Oil has been produced or loaded.

If Buyer is, or is likely to be, prevented by any law, policy, demand or request to which Buyer is subject or any governmental policy, demand or request by which Buyer is bound, from complying with the above, Seller and Buyer shall meet and discuss the implications for Buyer and Seller and, pending resolution of any difficulty which such event causes or is likely to cause, Seller may at its discretion suspend in whole or in part supplies hereunder.

At any time, Seller may require Buyer to provide any relevant documents for the purpose of verifying the final destination of the Oil, and Buyer undertakes to provide such documents upon request.

- V.2** Buyer undertakes that the Oil deliverable hereunder shall not:
- (a) be exported to any Restricted Jurisdiction (as defined below); or
  - (b) be sold or supplied to any natural or legal person in any Restricted Jurisdiction; or
  - (c) be sold or supplied to any natural or legal person or entity for the purpose of any commercial activity carried out in or from any such Restricted Jurisdiction.

For the purposes of this sub-section V.2, "**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 Terms and Conditions which prohibit the export of Oil thereto.

- V.3** Should Buyer be in breach of any provisions of this Section V, Seller may at any time thereafter immediately terminate the Agreement, without being liable for any indemnity to Buyer.

Moreover, Buyer agrees to hold Seller harmless from, and indemnify Seller for, any losses, costs, damages, fines and/or penalties incurred by Seller resulting from any such breach.

## **SECTION VI - VESSEL**

- VI.1** Unless otherwise specified in the Special Terms and Conditions, for each Vessel, Buyer shall notify Seller in writing no later than TEN (10) days prior to the first day of the Vessel Presentation Range (or such earlier date as may be prescribed in the procedure in force at the Loading Terminal) of the following (the "**Loading Information**"):

- (a) the expected date of Vessel's arrival at the Loading Terminal;
- (b) the quantity and grade of the Oil to be loaded and details of the cargo on board or to be co-loaded if the Vessel is to load a part cargo;
- (c) the Vessel's name and pertinent characteristics in compliance with sub-section VI.3 below; when notifying under this sub-section VI.1, Buyer may mention "TBN" in place of the Vessel's name; in such a case, unless otherwise agreed, the Vessel's name and pertinent characteristics shall be given by Buyer to Seller no later than:
  - (i) the date specified in the Special Terms and Conditions; or
  - (ii) the date specified in the procedure in force at the Loading Terminal or the local regulations;
 whichever is the earlier;
- (d) the port(s) of discharge and country(ies) of destination;
- (e) the instructions needed by Seller to issue documents in accordance with regulations, including but not limited to, any export regulations in force; and
- (f) the charter party demurrage rate of the performing Vessel, unless the Loading Information mentions "TBN", in which case such rate shall be notified to Seller upon Buyer making the Vessel's nomination.

If Buyer fails to notify the Loading Information in compliance with the notice period as specified above, Seller shall use reasonable efforts to obtain acceptance of such late notification (and of Vessel's nomination referred to in sub-section VI.3 below) by the Loading Terminal or Seller's Supplier. Notwithstanding the above, Buyer shall be liable for all costs resulting from any delays in loading the Oil under the Agreement due to failure by Buyer to supply the Loading Information in a timely manner, and any such delays shall not count as used laytime, or if the Vessel is on demurrage, as demurrage.

**VI.2** Buyer may, or if necessary to perform its obligations hereunder must, nominate as a substitute for the Vessel previously nominated and/or agreed, another Vessel whose size and capacity are equivalent to those of the Vessel originally nominated or agreed.

The loading quantity and the Vessel Presentation Range in respect of the Vessel originally nominated or agreed shall apply to the substitute Vessel.

**VI.3** Each Vessel which is to load Oil under the Agreement (including, for the avoidance of doubt, any substituted Vessel) shall be nominated in writing by Buyer to Seller (the "**Vessel's Nomination**"), such nomination to include the Vessel's name and pertinent characteristics, including but not limited to, the Vessel's flag, date built, length overall, beam, draught and summer deadweight. Each Vessel's Nomination shall be subject to Seller's acceptance. Unless otherwise specified in the Special Terms and Conditions, Seller shall notify Buyer no later than TWO (2) Working Days after receipt of the Vessel's Nomination whether Seller accepts or refuses such nomination; Seller's acceptance not to be unreasonably withheld. In case of rejection, Buyer shall promptly nominate to Seller an alternative Vessel for Seller's prompt acceptance or rejection. The acceptance of the Vessel's Nomination shall not entail acceptance of the demurrage rate indicated by Buyer and shall be without prejudice to the provisions of sub-sections VI.4 and VI.5.

Notwithstanding any prior acceptance of the Vessel, Seller shall have the right to reject the Vessel (i) if the Loading Terminal rejects the Vessel; or (ii) on any reasonable ground if the Vessel is involved in any incident or more recent information regarding the Vessel becomes available to Seller at any time after such prior acceptance.

If required, Buyer shall promptly answer or cause the Vessel's owner to answer any questionnaire for the nominated Vessel as submitted by Seller. If any response as provided by, or on behalf of, Buyer proves to be incorrect, Seller shall be entitled at any time to reject forthwith a previously accepted Vessel and Buyer shall indemnify Seller and/or Seller's Supplier against any losses and costs incurred by Seller and/or Seller's Supplier so arising from such rejection, including but not limited to, any demurrage payable in respect of other Vessels waiting at the Loading Terminal.

**VI.4** Buyer confirms that (for each Vessel nominated to load a Shipment) it is familiar with the latest vessel size limitations/restrictions, including but not limited to, deadweight, draught, beam, overall length and any other vessel limitations/restrictions in force at the Loading Terminal at the time of delivery, and Buyer is solely responsible to ensure that the Vessel will not exceed, or otherwise fail to comply with, such limitations/restrictions.

**VI.5** All applicable governmental, local and port authority regulations, Seller's, Seller Supplier's and/or Loading Terminal Operator's regulations, procedures and any other requirement of any nature whatsoever in force at the Loading Terminal at the time of delivery shall apply to Buyer's Vessel (including for determining at what time and date any N.O.R. tendered by the Master or his representative is effective).

**TOTAL-CRUDE-FOB**

**VI.6** For each Vessel specified in, or nominated under, the Agreement:

- (a) Buyer warrants that the Vessel is owned or demise chartered (throughout the entire period of the voyage to and from the Loading Terminal and up to discharge of the Oil at the discharge port(s)) by a member of the International Tanker Owners Pollution Federation Limited (ITOPF).
- (b) Buyer shall exercise reasonable efforts to ensure that:
  - (i) the Vessel carries on board a valid certificate of insurance as described in the International Convention on Civil Liability for Oil Pollution Damage (CLC), 1969 or, if in force, the 1992 Protocol thereto, as amended;
  - (ii) the Vessel is entered in and shall remain throughout the entire period of the voyage to and from the Loading Terminal and up to discharge of the Oil at the discharge port(s), in a P and I Club which is a member of the International Group of P and I Clubs;
  - (iii) the Vessel has in place (throughout the entire period of the voyage to and from the Loading Terminal and up to discharge of the Oil at the discharge port(s)) insurance cover for oil pollution in an amount of no less than the highest standard oil pollution cover available under the rules of the International Group of P and I Clubs; and
  - (iv) the Vessel shall comply with the requirements of the International Safety Management (“ISM”) Code and has on board a valid ISM Code Safety Management Certificate for the Vessel and a copy of the Vessel Manager’s Document of Compliance as required by the ISM Code and SOLAS.
- (c) Buyer shall procure that:
  - (i) 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 shall have on board a valid International Ship Security Certificate as well as any other required valid certificates and documents, issued pursuant to the ISPS Code; and
  - (ii) the Vessel shall when required submit a Declaration of Security to the appropriate authorities prior to arrival at the Loading Terminal.

**VI.7** Notwithstanding any prior acceptance of the Vessel by Seller and notwithstanding anything to the contrary express or implied in this Section VI or in Sections VII and VIII, if at any time the Vessel fails to comply with any of the requirements set out in sub-sections VI.5 and VI.6 above, then: (i) Seller or Seller’s Supplier may at any time refuse to berth or load or continue to load the Vessel and all time lost or spent as a result thereof shall not count as used laytime, or if the Vessel is on demurrage, as demurrage; (ii) Buyer shall be deemed not to have complied with sub-section VII.2 below; and (iii) Buyer shall be obliged to substitute the Vessel with a Vessel whose size and capacity are equivalent to those of the Vessel originally nominated and complying with such requirements. Any resulting delay or expenses shall be for Buyer’s account (including but not limited to, any time lost or demurrage incurred in respect of Buyer’s Vessel and any demurrage incurred by Seller or Seller’s Supplier in respect of other Vessels waiting at the Loading Terminal).

**VI.8** Seller shall procure that the Loading Terminal shall comply with the requirements of the ISPS Code.

Any costs or expenses in respect of the Vessel including demurrage or any additional charge, fee or duty levied on the Vessel at the Loading Terminal and actually incurred by Buyer resulting directly from the failure of the Loading Terminal to comply with the ISPS Code shall be for the account of Seller, including but not limited to, the time required or costs incurred by the Vessel in taking any action or any special or additional security measures required by the ISPS Code.

**TOTAL-CRUDE-FOB**

Save where the Vessel has failed to comply with the requirements of the ISPS Code, Seller shall be responsible for any demurrage actually incurred by Buyer arising from delay to the Vessel at the Loading Terminal resulting directly from the Vessel being required by the Loading Terminal Operator, the port authority or any relevant authority to take any action or any special or additional security measures or undergo additional inspections by virtue of the Vessel's previous ports of call.

Seller's liability to Buyer under the Agreement for any costs, losses or expenses incurred by the Vessel, the charterers or the Vessel owners resulting from the failure of the Loading Terminal to comply with the ISPS Code shall be limited to the payment of demurrage and costs actually incurred by Buyer in accordance with the provisions of this sub-section VI.8.

- VI.9** If the date of the Agreement is later than any of the dates for notification specified in the Special Terms and Conditions or this Section VI, then both parties shall make best efforts to complete within ONE (1) Working Day of the date of the Agreement all procedures which would have preceded the date of the Agreement aforesaid.

## **SECTION VII - ARRIVAL AND LOADING OF VESSEL AT THE LOADING TERMINAL**

- VII.1** Buyer shall cause the Loading Terminal Operator (with a copy to Seller) to be advised of the estimated date and time of arrival ("ETA") of the Vessel at the Loading Terminal at least SEVENTY-TWO (72), FORTY-EIGHT (48), and TWENTY-FOUR (24) hours before arrival, or as otherwise required by the rules and regulations applicable at the Loading Terminal.

Failure to give each or any one of the above ETAs shall increase the laytime allowed to Seller under the Agreement by the number of hours by which the actual notice is less than the required notice, but the total increase in laytime shall not exceed TWENTY-FOUR (24) hours.

- VII.2** Buyer shall ensure that the Vessel shall, within the Vessel Presentation Range and within any time limit prescribed in the regulations, procedures and requirements referred to in sub-section VI.5 above: (i) arrive at the Loading Terminal, complete formalities and in all respects be ready to load the Shipment and (ii) tender an effective N.O.R.

- VII.3** Subject to compliance by Buyer and its nominated Vessel with all requirements (including but not limited to characteristics, dimensions and draught) of the Loading Terminal at the time in question, the loading berth indicated by Seller or its representative shall enable that Vessel to proceed thereto, lie thereat, load the Oil and depart therefrom, always safely afloat.

Seller may require the Vessel to shift berth, in which case the costs of shifting berth shall be for the account of Seller and the shifting time shall be counted as used laytime or as demurrage if the Vessel is on demurrage. Otherwise, any shifting costs and/or time shall be for the account of Buyer.

- VII.4** 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 account of Buyer.

Buyer shall likewise assume and be responsible for payment of any taxes, duties, imposts, fees, charges and dues of every description imposed or levied by any governmental, local or port authority on, or applicable, attributable or related to, the Oil or its export, delivery, transportation, ownership, sale or use, in respect of any stage after the risk in such Oil has passed to Buyer and the amount of the same shall be for the account of Buyer.

**VII.5** Subject to Buyer complying with the provisions of sub-section VII.2 above, Seller, having regard to the regulations, procedures and requirements referred to in sub-section VI.5 above and the time when Buyer complied with the provisions of sub-sections VII.1 and VII.2 above, shall commence loading as soon as reasonably practicable, even if this means that loading is effected or completed outside the Vessel Presentation Range or outside any other period specified in the Special Terms & Conditions.

**VII.6** Notwithstanding anything elsewhere in the Agreement to the contrary and in addition to any other rights of Seller, in the event of:

- (a) any breach by Buyer of the obligations set out in sub-section VII.2 above; or
- (b) any withdrawal of a Vessel already scheduled and accepted; or
- (c) Seller's availability of the Oil being lost or curtailed due to any breach of Buyer's contractual obligations;

then Seller shall be indemnified by Buyer for all costs, losses, damages and/or expenses (including those to be paid by Seller to Seller's Supplier and Loading Terminal Operator) incurred by Seller and/or Seller's Supplier as a result thereof and Seller shall be under no obligation to supply any undelivered quantity of Oil. Upon Seller's option, the undelivered quantity of Oil shall be deducted from the total quantity of Oil deliverable under the Agreement.

#### **SECTION VIII - LAYTIME AND DEMURRAGE**

**VIII.1** Seller shall be allowed as laytime at each Loading Terminal THIRTY-SIX (36) running hours Sundays, holidays and nights included, unless loading on Sundays, holidays or during the night is prohibited by the laws, regulations or procedures in force at the Loading Terminal.

Allowed laytime shall be increased:

- (a) in accordance with the provisions of sub-section VII.1; and
- (b) by an additional FOUR (4) hours for each additional grade of Oil loaded by Seller on the Vessel at the same berth, subject to other conditions in force at the Loading Terminal.

**VIII.2** Subject to the regulations, procedures and requirements referred to in sub-section VI.5 above and strict compliance by Buyer and Vessel with all provisions of the Agreement, laytime shall start running:

- (a) If the N.O.R. is tendered within the Vessel Presentation Range:
  - (i) SIX (6) hours after N.O.R. is tendered; or
  - (ii) upon commencement of loading if loading has commenced before the expiration of the SIX (6) hour period.
- (b) If the N.O.R. is tendered before the beginning of the Vessel Presentation Range:
  - (i) at 6:00 a.m. local time on the first day of the Vessel Presentation Range; or
  - (ii) upon commencement of loading;

whichever occurs first.

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Without prejudice to any other rights of Seller under the Agreement, if the N.O.R. is tendered or is effective (by application of the regulations, procedures and requirements referred to in sub-section VI.5 above) after the last day of the Vessel Presentation Range, then Seller shall be under no obligation to supply the Oil which would have been loaded on Buyer's Vessel unless Seller specifically agrees to do so, in which case laytime shall begin upon commencement of loading.

**VIII.3** Laytime or time on demurrage shall end on disconnection of loading hoses after completion of loading.

The Vessel shall vacate her loading berth as soon as loading hoses have been disconnected after completion of loading. In the event of failure to do so, Buyer shall pay Seller for any resultant demurrage, losses, damages, costs and/or expenses which Seller may incur including, without limitation, any demurrage as may be incurred by Seller or Seller's Supplier due to resulting delay to other Vessels awaiting their turn to load.

**VIII.4** Any time spent and/or lost due to any of the following events shall not count as used laytime or, if on demurrage, as demurrage:

- (a) the inward passage to the loading berth;
- (b) any delay in the Vessel reaching or clearing her berth which is caused by reasons beyond Seller's control;
- (c) awaiting tide, tugboats, pilot or daylight;
- (d) delay caused by the Vessel, including without limitation, delay due to the inability of the Vessel to load the Shipment within the time allowed;
- (e) Buyer, owner, charterer or Master of the Vessel or any government, local or port authorities at the Loading Terminal prohibiting loading at any time;
- (f) delay on account of weather or sea conditions or strike;
- (g) discharging of ballast or slops or bunkering if not carried out concurrently with loading operations;
- (h) awaiting customs, immigration clearance, pratique or other local administrative requirements;
- (i) cleaning, inerting or inspecting the Vessel's cargo tanks, pumps or pipelines;
- (j) delay due to the priority given to another Vessel loading at the Loading Terminal for local market requirements.

**VIII.5** Seller shall pay to Buyer demurrage per running hour and prorata for a part thereof for all time used in excess of the allowed laytime as provided for in the Agreement.

Unless a demurrage rate is specified in the Special Terms and Conditions, the applicable demurrage rate shall be determined as follows:

- (a) Where the Shipment actually loaded on board the Vessel constitutes a full cargo for the loading Vessel, demurrage shall be calculated at the lesser of:
  - (i) the demurrage rate per day provided for in the charter party entered into for the loading Vessel; or
  - (ii) the demurrage rate per day, as published in Worldscale and corrected by AFRA, which applies for a Vessel of the same type, size and capacity.

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The demurrage rate referred to in the above paragraph (ii) of this sub-section VIII.5(a) shall be used when the Vessel is owned, demise chartered or time chartered by Buyer.

- (b) Where the Shipment actually loaded on board the Vessel does not constitute a full cargo for the loading Vessel, demurrage shall be calculated at the lesser of:
  - (i) the demurrage rate per day provided for in the charter party entered into for the loading Vessel; or
  - (ii) the demurrage rate per day, as published in Worldscale and corrected by AFRA, which applies for a Vessel of the same type with a size and capacity equivalent to a summer deadweight equal to the weight of the Shipment plus FIVE (5) per cent.

The demurrage rate referred to in the above paragraph (ii) of this sub-section VIII.5(b) shall be used when the Vessel is owned, demise chartered or time chartered by Buyer.

If the Shipment is co-loaded with crude oil being delivered to Buyer by another supplier at the same berth or berths, Seller shall only be liable for that proportion of the demurrage equal to the ratio of the volume delivered by Seller to the total volume loaded onto the Vessel at the concerned berth(s).

- VIII. 6** (a) The right of Buyer to demurrage in accordance with the provisions of the Agreement shall constitute Buyer's sole remedy in respect of any failure of Seller to provide a berth, as provided for under the Agreement, and/or complete the loading within the allowed laytime, and Seller shall not be liable for any other direct or indirect costs, damages and/or losses whatsoever.

Notwithstanding any other provision of this Section VIII, time shall not count as used laytime, or if the Vessel is on demurrage, as demurrage, in the following events:

- (i) if Seller is prevented from, or delayed in, delivering all or part of the Oil by any reason as provided for in Section XII;
  - (ii) if delay in loading is occasioned by Buyer's failure to timely comply with the provisions of Section IV and all other requirements regarding payment under the Agreement;
  - (iii) if Seller has the right or option under any other provisions of the Agreement not to load or to cease or suspend loading the Vessel.
- (b) Any demurrage claim must be notified to Seller in writing within FORTY-FIVE (45) days (or such shorter period as specified in the Special Terms and Conditions) from the date of the bill of lading, with full supporting documentation (including, but not exclusively, invoice and time computation, N.O.R., Vessel's port log, statement of facts, evidence of nomination and charter party rate), together with any other documentation that Seller may reasonably require. Any such documentation not then available shall be provided to Seller within NINETY (90) days (or such shorter period as specified in the Special Terms and Conditions) from the bill of lading date. Should Buyer fail to give such notice or provide such documentation within the above respective time limits, then Buyer's claim shall be deemed to have been waived and any liability of Seller for demurrage shall be extinguished.
  - (c) Buyer shall not be entitled to recover demurrage from Seller except to the extent that Seller is able to recover, and does recover, such demurrage from Seller's Supplier, and Seller shall not be obligated to pay any amount in excess thereof. Seller shall use reasonable endeavours to recover demurrage from Seller's Supplier for which Buyer has presented a claim in accordance with the Agreement.

- (d) In no event shall Seller pay any amount in respect of demurrage in excess of that amount actually paid by Buyer in respect of the Vessel's voyage and which relates to the Oil delivered by Seller.

## **SECTION IX - QUANTITY AND QUALITY DETERMINATION**

- IX.1** The quantity and quality of the Oil delivered under the Agreement shall be determined for each Shipment in accordance with the standard practice in use at the Loading Terminal at the time of loading save if otherwise provided for specifically in the Special Terms and Conditions.
- IX.2** The quantity of Oil determined pursuant to sub-section IX.1 above (or, where applicable, the Special Terms and Conditions) shall be inserted in the certificate of quantity and bill of lading for the cargo as per the standard practice in use at the Loading Terminal at the time of loading and that quantity shall be used to calculate Seller's invoice.
- IX.3** Where the Special Terms and Conditions provide for the appointment of an independent inspector at the Loading Terminal, the cost of services of the inspector shall be borne equally by both parties (unless otherwise provided for in the Special Terms and Conditions).
- IX.4** In no event shall Seller be liable (i) for the first ZERO point FIVE (0.5) per cent short delivery of the invoice quantity and/or (ii) for any claim regarding the quantity and/or quality of any Shipment, unless such claim has been submitted by Buyer to Seller in writing, with full details of the specific facts on which the claim is based and supporting documentation, within SIXTY (60) days of the date of the relevant bill of lading or such lesser number of days as imposed by Seller's Supplier.

Should Buyer fail to submit such claim or provide such details and/or any supporting documentation within the above time limit, then such claim shall be deemed to have been waived and any liability on the part of Seller shall be extinguished.

Any claims in respect of quantity and/or quality costs, losses or damages shall be recoverable only in accordance with the usual terms applicable for the purchase of the Oil at the Loading Terminal. Whenever Buyer is entitled to recover quantity and/or quality costs, losses or damages from Seller, Buyer shall only be entitled to recover such costs, losses or damages from Seller to the extent that Seller is able to recover, and does recover, such costs, losses or damages from Seller's Supplier, and Seller shall not be obliged to pay any amount to Buyer in excess thereof. Seller shall however use reasonable endeavours to recover from Seller's Supplier such costs, losses or damages for which Buyer has presented a claim in accordance herewith.

## **SECTION X - DOCUMENTS**

Seller shall deliver to Buyer original bills of lading and certificates of quantity, quality, origin and an invoice, which may be by means of courier, facsimile transmission and/or electronic messaging system. In the event that the original bills of lading or other contractual shipping documents are not delivered to Buyer on or before the due date for payment, Buyer undertakes to pay Seller upon presentation, by means of courier, facsimile transmission or electronic messaging system, of an invoice and of Seller's letter of indemnity ("L.O.I.") substantially in the form set out in Appendix 1.

## **SECTION XI - GOVERNMENT TAKE, NEW OR CHANGED REGULATIONS**

### **XI.1 Government Take**

This sub-section XI.1 applies solely if Buyer is to receive more than one Shipment under the Agreement.

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- (a) For the purpose of this Section XI, "**Government Take**" shall mean the total of monetary payments and value of other benefits accruing to, or received by, the government(s) of any country(ies) arising or attributable, directly or indirectly, out of or to the production, storage, transportation, delivery, sale or export of the Oil or by any agency, instrumentality, authority or entity established or controlled by government(s) or any person purporting to act therefor, and shall include (but without limitation) all costs and expenses incurred directly or indirectly in purchasing the Oil, royalties, rentals, duties, income and other taxes, participation payments or benefits, whether in the form of dividends, crude oil payments or other rights.
- (b) Any amount equal to any and all new or increased Government Take (as defined below) directly or indirectly imposed on the price of, or attributable to, the Oil, which occurs, whether prospectively or retrospectively, after the date of Seller's offer or from time to time during the term of the Agreement, shall be added to the price of the Oil pursuant to sub-section XI.1(c).
- (c) Seller shall give Buyer written notice of any and all new or increased Government Take and of its effective date (whether retroactive or not) and shall be entitled to add the amount thereof to the price per barrel of the Oil from such effective date, and Buyer shall pay the new adjusted price.

## **XI.2 New or Changed Regulations**

- (a) For the purpose of this sub-section XI.2, the term "**Regulations**" shall mean the laws, rules, regulations, decrees of, and the agreements, concessions and arrangements with, government(s), or any agency, instrumentality, authority or entity established or controlled by government(s), or any person purporting to act therefor, in effect on the date the Agreement is entered into, in respect of, or directly or indirectly affecting, the Oil, including, but without limitation, the production, acquisition, gathering, selling, transportation, supply and delivery thereof insofar as such Regulations affect Seller or Seller's Supplier.
- (b) If, at any time after the date of Seller's offer or from time to time during the term of the Agreement, any of such Regulations are changed or new Regulations become effective whether by law, decree or regulation or in response to the insistence or request of any government or any agency, instrumentality, authority or entity established or controlled by government(s) or any person purporting to act therefor and the effect of such new or changed Regulations:
  - (i) is not covered by any other provision of the Agreement; and
  - (ii) has an adverse economic effect upon Seller and/or Seller's Supplier,

then Seller shall have the option to request renegotiation of the terms and conditions provided for in the Agreement. Such option may be exercised by written notice from Seller to Buyer at any time after such new or changed Regulations are published.

Such notice shall contain the effective date of such new or changed Regulations and the terms and conditions under which Seller is prepared to continue delivering the Oil under the Agreement.

If the parties do not reach agreement within FIFTEEN (15) days after the date of Seller's renegotiation request, Seller shall have the right to terminate the Agreement, without any liability whatsoever, by giving to Buyer at least FIFTEEN (15) days' prior written notice thereof.

Any Oil which is loaded after receipt of Seller's renegotiation request or after the effective date of the new or changed Regulations (whichever is the later) and prior to termination as provided for herein shall be sold and purchased under the terms and conditions specified by Seller in its renegotiation request to Buyer. However, in such event, Buyer has the right by written notice to Seller to refuse the loading of any Shipment.

**SECTION XII - EXCEPTIONS - FORCE MAJEURE**

**XII.1** Neither party shall be deemed in breach of the Agreement as a result of, or be liable to the other for, any failure, omission or delay in its performance in whole or in part of any of the terms or conditions of the Agreement (except in relation to obligations to make payments or provide security for payment under the Agreement) if such failure, omission or delay arises or results from any cause reasonably beyond, or to be treated as reasonably beyond, the control of that party (any such event being hereinafter referred to as “**Force Majeure**”).

**XII.2** For the purposes of this Section XII, and without limitation to the generality of sub-section XII.1, a cause shall be treated as being reasonably beyond the control of Seller if it arises or results from, or in connection with:

- (a) compliance, voluntary or involuntary, with a direction or request (including any obligation arising out of the exercise of a requirement to deliver crude oil of the grade deliverable hereunder by way of royalty-in-kind) of any international, national, port, transportation, local government or other authority or person purporting to act with such authority; or
- (b) any natural calamity, earthquake, storm, flood, fire, explosion or other Act of God; or
- (c) any war, hostilities declared or undeclared, embargo, blockade, riots, terrorism, civil unrest and any consequence thereof; or
- (d) any strike, lockout, stoppage, restraint of work or other labour difficulty from whatever cause arising, even in the event that the same could be settled by acceding to the demands of a labour group; or
- (e) any curtailment of, hindrance to, interference with, or delay to the availability, delivery or transportation of:
  - (i) the Oil or the grade of crude oil deliverable under the Agreement; or
  - (ii) any crude oil, whether or not of the grade to be delivered under the Agreement, if this results in insufficient crude oil being available to Seller on a regular and reliable basis to enable it, or renders it clearly uneconomic for Seller, to supply its Affiliates with both their reasonable and notified requirements for crude oil and to supply fully its other purchasers of crude oil; or
  - (iii) any crude oil, whether or not of the grade to be delivered under the Agreement, as a result of Seller’s actions based on, or arising in connection with, compliance with a request to, or requirement of, a relevant government, made by, or through, the International Energy Agency;

from any one or part of Seller’s sources or its anticipated sources of supply in whatever country situated (whether or not such source is a source or anticipated source for the purposes of the Agreement or such country is referred to in the Agreement).

For the purposes of this sub-section XII.2, the availability to Seller on the spot market of any quantity of crude oil, whether or not of the grade deliverable under the Agreement, shall not be taken into account in determining whether or not a Force Majeure event has occurred.

**XII.3** If any Force Majeure event occurs, then at any time thereafter and for so long as the effect of that event continues, Seller shall be entitled to withhold, suspend, reduce or cancel delivery hereunder to such extent as Seller shall in its absolute discretion determine. For the avoidance of doubt, in a Force Majeure event, Seller has absolute discretion to determine which of the demands for crude oil on Seller, including from its Affiliates, it meets first, and the extent to which it meets each such demand.

In such event, Seller shall not be bound to acquire by purchase or otherwise additional quantities of crude oil from any sources or anticipated sources of supply or other suppliers to satisfy Buyer's requirements hereunder. However, should Seller purchase or otherwise acquire additional crude oil, Seller shall not be required to allocate any to Buyer.

**XII.4** Prompt written notice of any event of Force Majeure and, so far as possible, of its extent and anticipated duration shall be given by the party so affected. That party shall also give prompt written notice when the effects of the Force Majeure event come to an end.

**XII.5** If any failure, omission or delay in performance of the Agreement under this Section XII continues for more than THIRTY (30) consecutive days after the day the notice of Force Majeure has been sent, then either party shall be entitled after said duration to cancel delivery of the Shipment(s) affected by the event of Force Majeure by written notice to the other party, without any liability on either side save that such cancellation shall be without prejudice to any other accrued rights and (if applicable) to other deliveries under the Agreement. Performance under the Agreement shall resume to the extent made possible by the end of the effects of the Force Majeure event pursuant to this Section XII.

**XII.6** Where, under the Agreement, Buyer is to receive more than one Shipment:

- (a) no withholding, suspension, delay, reduction or cancellation of delivery shall operate to extend the duration of the Agreement; and
- (b) any quantities of Oil deliverable under the Agreement that would, but for any reduction or cancellation pursuant to this Section XII, have been delivered during the period of the Agreement shall cease to be deliverable by Seller.

### **SECTION XIII - TERMINATION**

**XIII.1** Notwithstanding anything elsewhere in the Agreement to the contrary, Seller (without prejudice to any other rights or remedies available to Seller) shall have the right, without being liable for any indemnity to Buyer, to suspend deliveries under the Agreement or to terminate the Agreement immediately upon written notice to Buyer in the event that:

- (a) Buyer does not perform any material provision of the Agreement, including but not limited to:
  - (i) the failure by Buyer to pay any amounts owing in full when due or the breach by Buyer of any of its obligations under Section IV; and
  - (ii) the failure by Buyer to take receipt, during a period or at an agreed date, of any quantity of Oil as provided for in the Agreement; or
- (b) Buyer or any Affiliate of Buyer is generally not paying its debts as they become due, files or consents by answer or otherwise to the filing against it of any petition or case seeking relief under any bankruptcy, liquidation, insolvency or similar law (collectively "**Insolvency Laws**"), becomes bankrupt or insolvent, has any petition or proceedings under Insolvency Laws commenced against it which are not dismissed within THIRTY (30) days after the commencement thereof, makes a general assignment for the benefit of its creditors, applies for, or consents to, the appointment of a custodian, receiver, trustee, conservator or other officer(s) with similar powers over it or over any substantial part of its property; or

- (c) Buyer is merged with or becomes the subsidiary of a third party other than its existing parent company or ultimate parent company (if any) or Buyer sells, leases or otherwise disposes of all or any substantial portion of its assets, or there is a change of control of Buyer (it being understood that the term “change of control” means, for the purposes of this sub-section XIII.1, the acquisition (in aggregate) by any individual or entity of beneficial ownership of TEN (10) per cent or more of the outstanding voting shares of Buyer (or the equivalent thereof if Buyer is a non-corporate entity)).

Buyer shall immediately provide written notice to Seller of the occurrence or expected occurrence of any of such events as per sub-section XIII.1(b) and (c). If Seller exercises its right to terminate the Agreement, Buyer shall immediately pay Seller any and all amounts (whether or not then due) owing under the Agreement.

**XIII.2** If any event described in sub-section XIII.1(a), (b) or (c) occurs in respect of Buyer, then, notwithstanding any other provision of the Agreement to the contrary, including any provision of Section XIV below, Seller shall be free to assign to any third party any and all of Seller's rights under the Agreement, whether present or future, actual or contingent, including, without limitation:

- (a) any and all rights to require the due and punctual observance, discharge and performance by Buyer of all its obligations and liabilities under the Agreement;
- (b) all rights to moneys received or receivable by Seller from Buyer under the Agreement, whether as a payment, compensation, damages or an indemnity;
- (c) the right to claim for any sums payable or which become payable under the Agreement.

**XIII.3** Notwithstanding anything elsewhere in the Agreement or in any other agreement to the contrary, if any event described in sub-section XIII.1(a), (b) or (c) above occurs in respect of Buyer, then Seller shall have the right, exercisable in its sole discretion and at any time, to set off any or all amounts which Buyer owes to Seller (whether under the Agreement or otherwise and whether or not then due) against any or all amounts which Seller or any Affiliate of Seller owes to Buyer (whether under the Agreement or otherwise and whether or not then due), provided that any amount not then due which is included in such set-off shall be discounted to present value as at the time of set-off (to take account of the period between the date of set-off and the date on which such amount would have otherwise been due). For this purpose, any amounts may be converted by Seller into the currency in which the other is denominated at the rate of exchange at which Seller would be able, acting in a reasonable manner and in good faith, to purchase the relevant amount of such currency. If an obligation is unascertained, Seller may, in good faith, estimate that obligation and set off in respect of the estimate, subject to the relevant party accounting to the other when the obligation is ascertained.

Seller's rights under this sub-section XIII.3 are in addition to, and not in limitation or exclusion of, any other rights which Seller may have (whether by agreement, operation of law, in equity or otherwise).

Nothing in this sub-section XIII.3 shall be effective to create a charge or other security interest.

#### **SECTION XIV - ASSIGNMENT**

Neither party shall assign its rights and obligations under the Agreement, in whole or in part, without the prior written consent of the other party, provided, however, that Seller shall be free to assign its rights and obligations under the Agreement to any of its Affiliates.

If such written consent is given and wherever the assignment is made, the assigning party shall remain jointly and severally liable with the assignee for the full performance of its obligations under the Agreement.

#### **SECTION XV - WAIVER**

No delay or omission by either party to exercise any right or privilege herein conferred or to enforce any of the terms and conditions of the Agreement shall be construed as a waiver of any such right, privilege, terms or conditions.

No waiver or omission by either party to require performance by the other party of any of the terms and conditions of the Agreement and no forbearance or indulgence granted or shown by either party to the other shall release, discharge or in any manner affect or prejudice the right of a party at any time to require strict and full performance by the other of any or all of the terms and conditions of the Agreement to be performed subsequent to any such waiver, omission, forbearance or indulgence.

#### **SECTION XVI - NOTICES**

**XVI.1** Any notice or other communication or document in respect of the Agreement may be given in any manner set forth below (except for the N.O.R. in respect of any Vessel) to the address details provided in the Special Terms and Conditions or otherwise previously communicated by the other party and will be deemed effective as indicated below:

- (a) if in writing and delivered in person or by courier, on the date it is delivered and, if a particular department or officer is specified as part of its address details, if addressed to that department or officer;
- (b) if sent by telex or other messaging system where an answerback is provided and can be certified (including its timing) on demand by an independent third party, when the recipient's answerback is received and, if a particular department or officer is specified as part of its address details, if addressed to that department or officer;
- (c) if sent by facsimile transmission, on the date that transmission is received by the recipient in legible form (it being agreed that the burden of proving receipt will be on the sender) and, if a particular department or officer is specified as part of its address details, if addressed to that department or officer;
- (d) if sent by electronic messaging system, on the date that transmission is received by the recipient in legible form (it being agreed that the burden of proving receipt will be on the sender) at the electronic address specified by the recipient and, if a particular department or officer is specified as part of its address details, if addressed to that department or officer;
- (e) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date that mail is delivered or its delivery is attempted and, if a particular department or officer is specified as part of its address details, if addressed to that department or officer.

**XVI.2** Either party, by giving not less than FIFTEEN (15) days' notice as per the provisions of this Section XVI to the other party, may from time to time change its address.

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## **SECTION XVII – HEALTH, SAFETY AND ENVIRONMENTAL INFORMATION**

Health, safety and environmental information on crude oil issued by TOTAL Group Companies is available on [www.quickfds.com](http://www.quickfds.com) (or such other website as notified by Seller from time to time). Should Buyer experience any difficulties in retrieving such information from the website, please contact Seller's usual operational contact.

It is strongly recommended that Buyer passes on to its employees, agents, contractors, customers and other persons to whom it supplies the Oil delivered hereunder substantially the same information.

Nothing herein nor contained on the above website shall relieve Buyer of its duties in relation to the safe and proper evaluation, storage, use, transportation and disposal of the Oil sold under the Agreement.

## **SECTION XVIII - APPLICABLE LAW AND JURISDICTION**

**XVIII.1** The Agreement (and Seller's offer) is made under, and shall be governed by, and be construed in all respects in accordance with, the laws of England but without reference to any conflict of law rules.

Moreover, the parties hereto expressly agree that the application of the "United Nations Convention on Contracts for the International Sale of Goods 1980" is hereby excluded pursuant to article 6 of the Convention.

**XVIII.2** The parties expressly agree that all disputes and claims arising out of or relating to the Agreement or the alleged breach thereof shall be submitted to the exclusive jurisdiction of the High Court sitting in London and to service of process by registered mail.

However, any decision of the High Court may be enforced in the courts of any country and furthermore, neither party shall be precluded from pursuing arrest, attachment and/or other conservatory actions in the courts of any other country, or exercising any contractual rights in relation to the Vessel or the Oil as provided for elsewhere in the Agreement.

**XVIII.3** Each party undertakes to appoint an agent for service of process in London promptly upon request of the other party.

**XVIII.4** Each party hereby warrants that it has entered into the Agreement in a commercial capacity and each party hereby warrants that it is, in all respects relevant to the Agreement, subject to civil and commercial law. Each party hereby irrevocably waives any immunity from suit, execution, attachment in respect of itself or its assets to the fullest extent permitted by law.

## **SECTION XIX - GENERAL**

**XIX.1** Buyer undertakes to comply with all applicable laws and regulations insofar as these affect the implementation of the Agreement.

However, neither Buyer nor Seller shall be required, as a result of the Agreement, to participate in, or co-operate with, any boycott, or to take any related action which would violate the provisions of any applicable law or result in penalties of any kind under such law.

Buyer represents and warrants that as of the date of the Agreement, there is no prohibition on purchasing the Oil pursuant to the terms of the Agreement in the laws and regulations applicable to Buyer.

- XIX.2** Buyer shall be responsible for obtaining all consents, authorisations, approvals and assurances of whatsoever nature to give effect to the provisions of the Agreement.
- XIX.3** Except as expressly provided for in the Agreement, neither Seller nor Buyer shall in any event, including but not limited to, any negligent act or omission on its part, be liable in contract, tort, breach of statutory duty or otherwise, in respect of any consequential, indirect or special losses, expenses or damages of any kind, arising out of, or in any way connected with, the conclusion, the performance, the failure to perform or the termination of the Agreement. In addition, Seller shall in no circumstances be liable for more than the difference between the market price and the contract price with respect to the relevant quantity of Oil, nor be liable for any loss of profit or anticipated profit, use, goodwill, business receipts, contracts or commercial opportunities, market reputation, cost of overheads thrown away or loss resulting from shut-down of any plant of Buyer or of the receiver of the Oil, whether or not foreseeable.
- Without prejudice to the provisions of sub-sections VIII.6 and IX.4, any claim of Buyer shall be deemed to be waived and any liability of Seller shall be extinguished unless a claim accompanied with evidence fully supporting the claim is received by Seller within ONE (1) year after the date of the occurrence giving rise to the claim.
- XIX.4** Buyer agrees to indemnify, defend and hold Seller and its Affiliates harmless from liability for any and all demands or claims arising from injuries sustained or damages suffered following the passage of risk and property in the Oil as hereinabove provided, and which may arise in connection with the transportation, use or handling of any Oil or admixture thereof, whether delivery is made to Buyer, its assigns, or nominees.
- XIX.5** For the avoidance of doubt, any repetition in the Special Terms and Conditions of any section or sub-section of the General Terms and Conditions or any part of the same shall be for emphasis only and shall not, by reason of such repetition, exclude any other provision of these General Terms and Conditions.
- XIX.6** The Special Terms and Conditions and the General Terms and Conditions together form the entire agreement between the parties, and no additional terms, conditions, representations or warranties shall be incorporated in the Agreement in the absence of express written consent of each party.
- XIX.7** Where not used to identify the provisions applicable to each type of delivery (e.g. FOB, Ex Tank, etc.), the section headings are for convenience only and shall not be interpreted in any way to limit or change the subject matter of the Agreement.
- XIX.8** The General Terms and Conditions shall apply from the date of Seller's offer.
- XIX.9** Each party consents to the monitoring or recording, at any time and from time to time, by the other party of any and all communications between officers or employees of the parties, waives any further notice of such monitoring or recording, and agrees to notify its officers and employees of such monitoring or recording.
- XIX.10** Nothing in the Agreement shall be considered or construed as conferring any right or benefit on a person not a party to the Agreement and the parties do not intend that any term of the Agreement should be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999, by any person who is not a party to the Agreement.

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**APPENDIX 1**

**Letter of Indemnity**

From: (Seller)

To: (Consignee or Buyer of Shipment)

We refer to our contract dated ..... in respect of our sale to (Buyer) of a Shipment of ..... net US barrels/metric tons of (grade) shipped on board the Vessel ..... at the port of ..... with bills of lading dated .....

To date we are unable to provide you with the requisite shipping documents in relation to the said sale, which consist of:

In consideration of your making payment of the full invoiced price of USD ..... for the Shipment at the due date for payment under the terms of the above contract without having been provided with the above documents, we hereby expressly warrant that at the time property passed under the above contract we had marketable title to such Shipment, free and clear of any lien or encumbrance, and that we had full right and authority to transfer such title to you, and that we are entitled to receive these documents from our supplier and transfer them to you.

We further agree to protect, indemnify and save you harmless from and against any and all damages, costs and expenses (including reasonable legal fees) which you may suffer or incur by reason of the original bills of lading and other documents remaining outstanding or breach of warranties given above including, but without prejudice to the generality of the foregoing, any claims and demands which may be made by a holder or transferee of the original bills of lading, or by any third party claiming an interest in or lien on the Shipment or the proceeds thereof.

This Letter of Indemnity shall be governed by and be construed in all respects in accordance with the laws of England, but without reference to any conflict of law rules. Each party expressly submits to the exclusive jurisdiction of the High Court sitting in London and to service of process by registered mail.

The validity of this Letter of Indemnity shall expire upon our presentation to you of the aforesaid shipping documents.

For and on behalf of (Seller)

Name

Title

Authorised signature

## APPENDIX 2

### Supplement in respect of Deliveries Ex Tank, Into Tank, In Tank and Free Into Pipeline

Where the Agreement is to sell and deliver Product on Ex Tank, Into Tank, In Tank or FIP terms, the provisions of the General Terms and Conditions shall apply, subject to the additions and amendments set out below.

#### A - DELIVERY TERMS AND PASSING OF RISK AND PROPERTY

**A1** - Sub-section II.1 shall be replaced by the wording set out below such that it reads as follows:

**“II.1** (a) In the case of Ex Tank deliveries:

The Oil shall be delivered to Buyer in bulk at the storage tank designated by Seller.

Risk and property in the Oil and all liabilities with respect thereto shall pass to Buyer when the Oil passes the outlet flange of the above storage tank.

(b) In the case of Into Tank deliveries:

The Oil shall be delivered to Buyer in bulk at the storage tank designated by Buyer.

Risk and property in the Oil and all liabilities with respect thereto shall pass to Buyer when the Oil passes the inlet flange of the above storage tank.

(c) In the case of In Tank deliveries:

The Oil shall be delivered to Buyer in bulk by way of stock transfer at the storage tank(s) specified in the Special Terms and Conditions.

Risk and property in the Oil and all liabilities with respect thereto shall pass to Buyer in the above tank(s) at such time and day as shall be specified in the Special Terms and Conditions.

(d) In the case of FIP deliveries:

The Oil shall be delivered to Buyer in bulk at the place specified in the Special Terms and Conditions.

Risk and property in the Oil and all liabilities with respect thereto shall pass to Buyer when the Oil passes the inlet flange of the receiving pipeline at the above place.”

**A2** - The second sentence of sub-section II.4 shall be replaced by the wording set out below such that it reads as follows:

“Unless otherwise specifically agreed, any delivery of Oil will be in one lot.”

**B - INVOICING AND PAYMENT**

Sub-section IV.1 shall be replaced by the wording set out below such that it reads as follows:

**“IV.1** The price of the Oil and the due date for payment shall be as specified in the Special Terms and Conditions.

Payment of the full amount of Seller’s invoice shall be made without any discount, deduction, withholding, abatement, set-off or counterclaim in United States Dollars (unless otherwise specified in the Special Terms and Conditions) by wire transfer of immediately available funds ("same day funds") on or before the due date (subject to sub-sections IV.3 and IV.6) to the bank and account designated by Seller, against presentation to Buyer by means of courier, facsimile transmission and/or electronic messaging system, of an invoice and any supporting documents specified in the Special Terms and Conditions.”

**C - NOMINATIONS**

Section VI shall be replaced by the wording set out below such that it reads as follows:

**“SECTION VI - NOMINATIONS**

**VI.1** In respect of deliveries Ex Tank, Into Tank or In Tank, nominations shall be made pursuant to the standard operating procedures of the relevant storage company, in use at the time of delivery.

**VI.2** In respect of FIP deliveries, nominations shall be made pursuant to the standard operating procedures of the relevant pipeline operating company, in use at the time and point of delivery.”

**D - QUANTITY AND QUALITY DETERMINATION**

Section IX shall be replaced by the wording set out below such that it reads as follows:

**“SECTION IX - QUANTITY AND QUALITY DETERMINATION**

**IX.1** The quantity and quality of the Oil delivered under the Agreement shall be determined for each lot in accordance with the standard practice in use at the relevant storage company (for deliveries Ex Tank, Into Tank or In Tank) or the relevant pipeline operating company (for FIP deliveries) at the time and point of delivery, save if otherwise provided for specifically in the Special Terms and Conditions.

**IX.2** The quantity of Oil determined pursuant to sub-section IX.1 above (or, where applicable, the Special Terms and Conditions) shall be used to calculate Seller’s invoice.

**IX.3** Where the Special Terms and Conditions provide for the appointment of an independent inspector, the cost of services of the inspector shall be borne equally by both parties (unless otherwise provided for in the Special Terms and Conditions).

**IX.4** In no event shall Seller be liable for any claim regarding the quantity and/or quality of any lot unless such claim has been submitted by Buyer to Seller in writing, with full details of the specific facts on which the claim is based and supporting documentation, within THIRTY (30) days of the date of completion of discharge of the Vessel from which the Oil is delivered (where applicable) or FORTY-FIVE (45) days of the date of the relevant delivery, whichever the earliest, or within such lesser number of days as imposed by Seller’s Supplier.

**TOTAL-CRUDE-FOB**

Should Buyer fail to submit such claim or provide such details and/or any supporting documentation within the above time limit, then such claim shall be deemed to have been waived and any liability on the part of Seller shall be extinguished.

Buyer shall only be entitled to recover quantity and/or quality costs, losses or damages from Seller to the extent that Seller is able to recover, and does recover, such costs, losses or damages from Seller's Supplier, and Seller shall not be obliged to pay any amount to Buyer in excess thereof. Seller shall however use reasonable endeavours to recover from Seller's Supplier such costs, losses or damages for which Buyer has presented a claim in accordance herewith."

**E – MISCELLANEOUS**

**E1** - Sub-sections II.5, II.6 and II.7 and Sections VII, VIII and X are not applicable.

**E2** - "**Shipment**" shall mean the quantity of Oil agreed to be delivered as one lot.