



GENERAL TERMS AND CONDITIONS
FOR CFR/CIF/DELIVERED EX SHIP SALES OF
PETROLEUM
PRODUCTS/FEEDSTOCKS
AND
LIQUEFIED PETROLEUM GAS

TOTAL-PROD-CFR/CIF/DES
2007 edition

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These General Terms and Conditions may be referred to as TOTAL-PROD-CFR/CIF/DES.

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 or, if applicable, the Average Single Voyage Rate Assessment, as both 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 a CFR or CIF or CFR Outturn or CIF Outturn or DELIVERED EX SHIP contract of sale and the General Terms and Conditions being these General Terms and Conditions for CFR/CIF/DELIVERED EX SHIP Sales of Product, reference TOTAL-PROD-CFR/CIF/DES, as supplemented and amended: for deliveries on or from barges within the European Union, by the provisions set out in Appendix 3; and, for LPG deliveries, by the provisions set out in Appendix 4.
- **Barrel** : US Barrel of FORTY-TWO (42) United States standard gallons.
- **CFR and CIF** : 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.
- **CFR Outturn and CIF Outturn** : As ascribed to CFR and CIF respectively in this Section I, subject to the invoicing adjustment set out in sub-section IX.2(c).
- **Discharge Terminal** : The port or ports of discharge and/or the receiving facilities at which the Product is discharged or is to be discharged.
- **Ex Ship (DES)** : As ascribed to DES 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.
- **ICS** : The International Chamber of Shipping.
- **Loading Date(s)** : The day (or range of days) when the vessel is expected to load (as specified in the Special Terms and Conditions) or, if known, the bill of lading date.
- **Loading Terminal** : The loading port or ports and/or the loading facilities at which the Product is loaded or is to be loaded.

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- **Loading Terminal Operator** : Any legal entity which at the time of loading is the operator of the loading facilities at which the Product is loaded or is to be loaded.
- **L.O.I.** : Letter of Indemnity.
- **LPG** : Liquefied Petroleum Gas, which shall be Propane and/or Butane.
- **OCIMF** : The Oil Companies International Marine Forum.
- **N.O.R.** : Notice of Readiness.
- **Product** : Such petroleum product(s) and/or feedstock(s) and/or manufactured condensate and/or LPG 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 Product or services necessary to deliver the Product to Buyer.
- **Shipment** : Any specific quantity of Product 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 barge or other vessel which is adapted for the carriage of Product.
- **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 In the case of CFR and CIF deliveries (including CFR Outturn and CIF Outturn deliveries):

The Product shall be delivered by Seller to Buyer in bulk at the Loading Terminal and shipped by Seller CFR or CIF (as applicable) to the agreed destination.

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

If the Product is sold or nominated to be sold afloat, then risk in the Product and all liabilities with respect thereto shall pass to Buyer as from the time the Product passes the flange connection between the delivery hose and the permanent hose connection of the Vessel at the Loading Terminal, and property in the Product shall pass to Buyer upon acceptance of the nomination of the Vessel by Buyer.

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II.2 In the case of Ex Ship deliveries:

The Product shall be delivered by Seller to Buyer in bulk DES at the Discharge Terminal.

Risk and property in the Product and all liabilities with respect thereto shall pass to Buyer when the Product passes the permanent discharge manifold of the Vessel and the receiving hose at the Discharge Terminal.

Without limiting any other provision of this Agreement, any loss of, or damage to, the Product occurring before, during or after the discharge operations, which is caused by Buyer or the receiver of the Product or any of their respective contractors, agents or employees, or by the Discharge Terminal, shall be for the account of Buyer.

II.3 Buyer shall be the importer of record into the country in which the Discharge Terminal is situated and shall comply with all applicable laws and regulations governing said importation.

II.4 Notwithstanding anything elsewhere in the Agreement to the contrary, if Buyer fails to take delivery (in whole or in part) of any Shipment, such Shipment shall, at Seller's option, cease to be deliverable to Buyer under the Agreement and, in such event, such Shipment shall be deducted from the total quantity of Product 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 Shipment at its sole and absolute discretion. The provisions of this sub-section II.4 shall apply whether Buyer is to receive one, or more than one, Shipment hereunder.

II.5 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.

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 PRODUCT FOR ANY PURPOSE WHATSOEVER, OR OTHERWISE RELATING TO THE QUALITY OF THE PRODUCT, WHICH EXTEND BEYOND THE DESCRIPTION OF THE PRODUCT APPEARING IN THE AGREEMENT.

SECTION IV - INVOICING AND PAYMENT

IV.1 The price of the Product 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.

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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.

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 Product 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 "LIBORO1" and/or on 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 Loading Date (or the first day of the Loading Dates), 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;

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- (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:
 - (i) in the case of CFR/CIF deliveries, for shipment THREE (3) days before and SEVEN (7) days after the Loading Date(s);
 - (ii) in the case of DES deliveries, for delivery THREE (3) days before and SEVEN (7) days after the contractual delivery range or, in the absence of such contractual range, THREE (3) days before and SEVEN (7) days after the estimated date of completion of discharge in respect of the Vessel;
- (d) 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, 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 Product has been delivered to Buyer on board the Vessel, then, at Seller's option exercisable at any time by written notice of Seller to Buyer, title, but not risk, in the Product shall revert to and/or remain with 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 Product 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 Product 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.

SECTION V - DESTINATION

V.1 Buyer undertakes, and it is a condition of the Agreement, that the Product 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 Product 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 Product has been produced or loaded.

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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 Product, and Buyer undertakes to provide such documents upon request.

V.2 Buyer undertakes that the Product 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 Product 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 Contract of Carriage and Insurance

- (a) In the case of CFR, CIF, CFR Outturn or CIF Outturn deliveries:

Seller shall provide carriage of the Product under bills of lading, which may incorporate charter party conditions.

- (b) In the case of CFR or CFR Outturn deliveries:

The responsibility for securing cargo insurance on any Shipment, whether against marine, war or other risks, and the costs resulting therefrom shall rest wholly with Buyer.

- (c) In the case of CIF or CIF Outturn deliveries:

Seller shall procure and pay for cargo insurance against marine risks for ONE HUNDRED AND TEN (110) per cent of the CIF value of the cargo. Such insurance shall: (i) operate from shore tank at the Loading Terminal to shore tank at the Discharge Terminal; (ii) be contracted with an insurance company of good repute; (iii) be in accordance with the minimum cover of the Institute Cargo Clauses (A) and the Institute War Clauses (cargo) (Institute of London Underwriters); and (iv) cover leakage and shortage subject to a deductible of ZERO POINT FIFTY (0.50) per cent of the insured value.

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(d) For all deliveries (CFR, CIF, CFR Outturn, CIF Outturn, Ex Ship):

- (i) Any and all costs in respect of war risk insurance for the Vessel's hull and machinery or for cargo or both in respect of the voyages to any of the ports of loading or discharge or any seas through which the Vessel has to travel in the performance of the Agreement, in excess of those prevailing at the date the Agreement is entered into, including any additional insurance or war risk insurance premium, as well as crew war bonuses or any other bonuses relating to the Shipment, shall be solely for the account of Buyer.
- (ii) Seller reserves the right to refuse at any time:
 - 1. to direct any Vessel to undertake or to complete the voyage to the Loading Terminal or Discharge Terminal if such Vessel is required in the performance of the Agreement:
 - 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 Seller's opinion, to risk its safety; or
 - 1.2 to transit or to proceed or to remain in waters where there is war (de facto or de jure) or threat thereof; or
 - 2. prior to the commencement of loading, to direct any Vessel to undertake the voyage to the intended Loading Terminal or Discharge Terminal if such Vessel is required in the performance of the terms of the Agreement to transit in waters which, in Seller's reasonably held opinion, would involve abnormal delay; or
 - 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.
- (iii) If Seller agrees to direct a Vessel to undertake or to complete a voyage as referred to in paragraph (ii) of this sub-section VI.1(d), Buyer undertakes to reimburse Seller, in addition to other amounts payable under the Agreement, for costs incurred by Seller in respect of any additional insurance premium (including those referred to in paragraph (i) of this sub-section VI.1(d)) and any other sums that 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 owner's insurance and any other costs and/or expenses incurred by Seller.

VI.2 Nomination of Vessel

Unless otherwise specified in the Special Terms and Conditions, Seller shall notify Buyer in writing as far in advance as practically possible of the Vessel's name and the pertinent characteristics of the Vessel, the quantity and grade of the Product to be delivered and, for CFR or CIF deliveries, the Loading Date(s) and Loading Terminal. Seller may mention "TBN" in place of the Vessel's name; in such a case, unless otherwise agreed, the Vessel's name and pertinent characteristics and the information described in this sub-section VI.2 shall be given by Seller to Buyer as soon as practicable.

VI.3 Substitution of Vessel

Seller may, at any time prior to discharge, substitute for a Vessel previously nominated another Vessel whose size, capacity, loading quantity and, if the price of the Product is determined by the bill of lading date, the bill of lading date itself, are equivalent to those of the Vessel originally nominated.

VI.4 Acceptance of Vessel

Unless otherwise specified in the Special Terms and Conditions, Buyer shall notify Seller in writing within TWENTY-FOUR (24) hours of any Vessel's nomination whether Buyer accepts or refuses such nomination; Buyer's acceptance not to be unreasonably withheld.

VI.5 Nomination of Discharge Terminal

Unless otherwise specified in the Special Terms and Conditions, Buyer shall within TWENTY-FOUR (24) hours after receipt of Seller's Vessel nomination notify Seller in writing of the Discharge Terminal and (in the case of CFR or CIF deliveries) full documentary instructions, including any instructions needed by Seller to issue documents in accordance with the regulations in force at the Loading Terminal (including, but not limited to, any export regulations). Any delay or costs (including, but not limited to, any demurrage incurred in respect of Seller's Vessel and any demurrage incurred by Seller or Seller's Supplier in respect of other Vessels waiting at the Loading Terminal) arising out of any failure by Buyer to comply with the foregoing shall be for Buyer's account. Seller shall have the right to issue its own instructions if such instructions are not so provided by Buyer. No change to the Discharge Terminal shall be made without Seller's prior consent.

Where under the Special Terms and Conditions Buyer has discharge port options, Buyer shall exercise any such discharge port options in accordance with the Special Terms and Conditions and the terms of the relevant charter party available to Seller. Whenever Buyer exercises such options, the price stated in the Special Terms and Conditions shall be adjusted by the freight differential calculated in accordance with the terms of such charter party or as otherwise agreed between the parties. Buyer shall be liable for any additional costs incurred by Seller, including but not limited to, any deviation costs and costs in respect of any additional bunker consumption.

In exercising its discharge port options, Buyer must take account of the dimensions and characteristics of the Vessel nominated by Seller.

VI.6 Part Cargoes

The discharge of part cargoes of Product shall be deemed to be accepted by Buyer.

VI.7 Requirements in respect of Vessel and Discharge Terminal

- (a) For each Vessel specified in, or nominated under, the Agreement:
- (i) Seller warrants that the Vessel is owned or demise chartered throughout the entire period of the voyage to the Discharge Terminal by a member of the International Tanker Owners Pollution Federation Limited (ITOPF).
 - (ii) Seller shall exercise reasonable efforts to ensure that:
 1. 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;
 2. the Vessel is entered in and shall remain (throughout the entire period of the voyage to the Discharge Terminal and up to discharge of the Product) in a P and I Club which is a member of the International Group of P and I Clubs;
 3. the Vessel has in place (throughout the entire period of the voyage to the Discharge Terminal and up to discharge of the Product) 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

4. 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.

(iii) Seller shall procure that:

1. 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 the Discharge Terminal is located within the USA and US territories, with the US Maritime Transportation Security Act 2002 (“MTSA”) 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 as well as, if applicable, the MTSA; and
2. the Vessel shall when required submit a Declaration of Security to the appropriate authorities prior to arrival at the Discharge Terminal.

- (b) Notwithstanding any prior acceptance of the Vessel by Buyer, if at any time the Vessel fails to comply with any of the requirements set out in sub-section VI.7(a) above, then: (i) Buyer may at any time refuse to berth or discharge or continue to discharge 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, and (ii) Seller 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.
- (c) Buyer shall procure that the Discharge Terminal shall comply with the requirements of the ISPS Code and, if the Discharge Terminal is located within the USA and US territories, with the MTSA.

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 Terminal and actually incurred by Seller resulting directly from the failure of the Discharge Terminal to comply with the ISPS Code or, if the Discharge Terminal is located within the USA and US territories, with the MTSA, shall be for the account of 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 and, if applicable, the MTSA.

Save where the Vessel has failed to comply with the requirements of the ISPS Code or, within the USA and US territories or waters, with the MTSA, Buyer shall be responsible for any demurrage actually incurred by Seller arising from delay to the Vessel at the Discharge Terminal resulting directly from the Vessel being required by the Discharge 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.

Buyer’s liability to Seller 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 Discharge Terminal to comply with the ISPS Code or the MTSA (as applicable) shall be limited to the payment of demurrage and costs actually incurred by Seller in accordance with the provisions of this sub-section VI.7(c).

VI.8 Turkish Straits transit

Seller shall exercise reasonable efforts to ensure that the Vessel shall comply with all regulations and recommendations as set out in the Turkish Straits Maritime Traffic Scheme Regulations dated 6 November 1998, as amended from time to time.

SECTION VII - ARRIVAL AND DISCHARGE OF VESSEL AT THE DISCHARGE TERMINAL

VII.1 For CFR or CIF deliveries, as soon as practicable after receipt of such information by Seller after the loading has been completed, Seller shall notify Buyer of the loaded quantities of Product together with the expected date and time of arrival (“ETA”) of the Vessel at the Discharge Terminal (or port specified by Buyer as destination for orders), and thereafter Seller will keep Buyer updated of changes to the ETA at the Discharge Terminal or destination for orders as soon as practicable after Seller receives such information. For Ex Ship deliveries, Seller shall notify Buyer of the ETA of the Vessel at the Discharge Terminal, and thereafter Seller will keep Buyer updated of changes to the ETA at the Discharge Terminal as soon as practicable after Seller receives such information.

VII.2 For the discharge of each Vessel hereunder, Buyer shall provide to Seller, free of charge, a berth suitable for discharging the Product which the Vessel nominated can, when fully laden, safely: reach on arrival, lie thereat and leave.

Buyer may require Seller to shift a Vessel at the Discharge Terminal from one safe berth to another safe berth and shall assume all risks and payment of all costs in connection therewith. Time used for shifting berth shall count as used laytime and, if on demurrage, as demurrage.

It is agreed that the Vessel shall not be compelled to lighter for the purpose of discharging at the Discharge Terminal. However, should any lightering be undertaken at the request of Buyer, the expenses and risks thereof shall be for Buyer’s account and Buyer shall be liable to Seller in respect of any losses, costs, damages and proceedings arising therefrom and shall indemnify Seller in respect thereof. Any time spent or lost in such lightering, including additional steaming and/or any waiting time (weather or sea conditions permitting or not) shall count in full as used laytime or, if on demurrage, as demurrage, subject to sub-section VIII.4(b) but notwithstanding the other exceptions set out in sub-section VIII.4. Buyer shall ensure that any ship-to-ship cargo operations, including lightering, conform to standards not less than those set out in the latest ICS/OCIMF Ship-to-Ship transfer guides.

Buyer shall arrange for each Vessel to be discharged as expeditiously as possible. Buyer shall at all material times and at its own expense provide and maintain or cause to be provided and maintained in good working order all necessary flexible hoses, connections, pipelines, tankage facilities and other accommodation for discharging the Vessel.

VII.3 In case of CFR and CIF deliveries, 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 Terminal, other than those which are for the account of the Vessel’s owner according to Worldscale, shall be for the account of Buyer.

In case of Ex Ship deliveries, 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 Terminal shall be for the account of Seller.

VII.4 Buyer shall 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 Product or its export, delivery, transportation, ownership, sale or use, in respect of any stage after the risk in such Product has passed to Buyer and/or arising in the country of importation, and the amount of the same shall be for the account of Buyer.

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- VII.5** The Vessel shall vacate her berth as soon as discharging of Shipment and ballasting have been completed, provided the Vessel can safely do so.

SECTION VIII - LAYTIME AND DEMURRAGE

- VIII.1** Upon arrival at the Discharge Terminal, the Master or his representative shall tender N.O.R. to Buyer or Buyer's representative, berth or no berth.

- VIII.2** The time allowed to Buyer for discharging each Vessel shall be THIRTY-SIX (36) running hours or, if different, the time set out in the Special Terms and Conditions, prorata for part cargoes (i.e. based on that proportion of such time which the Shipment bears to the total quantity of cargo loaded on the Vessel at the loading port or ports), Sundays, holidays and nights included.

- VIII.3** Running hours shall commence:

- (a) berth or no berth, SIX (6) hours after N.O.R. is tendered at the Discharge Terminal by Vessel to Buyer or its representative; or
- (b) upon the completion of berthing of the Vessel when Vessel is all fast, if this occurs less than SIX (6) hours after tendering N.O.R. at the Discharge Terminal.

Laytime or, if on demurrage, demurrage shall end when the delivery hoses are disconnected after completion of discharging or, if the Vessel's departure is delayed for Buyer's purposes, until the termination of such delay.

- 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 discharge berth;
- (b) any delay due to fault, failure or inefficiency of the Vessel;
- (c) handling of ballast or slops or bunkering when not concurrent with discharge operations.

- VIII.5** Seller warrants that the Vessel shall be capable of discharging her full cargo within TWENTY-FOUR (24) hours from commencement of pumping, prorata for part cargo, or that the Vessel shall maintain an average of discharge pressure at each Vessel's manifold in use of ONE HUNDRED (100) p.s.i. (7 bar), provided that reception facilities are capable of the same and the reception facilities' instructions so permit.

The above warranty excludes time associated with internal draining/stripping (for which maximum TWO (2) hours per grade of Product are allowed).

Any delay due to the inability of the Vessel to fulfil the above warranty shall not count against laytime or, if the Vessel is on demurrage, as demurrage.

- VIII.6** If the Shipment is not discharged within the allowed laytime in the Agreement, Buyer shall pay to Seller demurrage in US dollars per running hour and prorata for a part thereof for all time used in excess of the allowed laytime.

The applicable demurrage rate shall be (in order of priority):

- (a) the demurrage rate specified in the Special Terms and Conditions; or, in the absence of such rate,

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- (b) the demurrage rate per day (or prorata for part of a day) provided for in the charter party entered into regarding the carriage of the Product hereunder; or, in the absence of such rate,
- (c) 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.

VIII.7 It is agreed that Buyer's obligation as to laytime and liability as to demurrage shall be absolute and not be subject to qualification by the provisions of Section XII. However, if demurrage shall be incurred at the Discharge Terminal by reason of fire, explosion, or by a strike, lockout, stoppage or restraint of labour or by breakdown of machinery or equipment in or about the receiving facilities of Buyer or its consignee, then, to the extent a similar provision is in force in the charter party for the Vessel, such demurrage shall be calculated at one-half the rate stipulated above (but only to the extent such conditions were not caused by the fault or neglect of Buyer, its consignee or the receiving facilities).

SECTION IX - QUANTITY AND QUALITY DETERMINATION

IX.1 In the case of CFR and CIF deliveries:

- (a) The quantity and quality of the Product delivered at the Loading Terminal 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.
- (b) The quantity of Product determined pursuant to sub-section IX.1(a) 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.
- (c) Where the Special Terms and Conditions provide for the appointment of an independent inspector at the Loading Terminal, the quantity and/or the quality of the Product as ascertained or witnessed by such independent inspector shall, except in case of fraud or manifest error, be final and binding on both parties. Unless otherwise provided for in the Special Terms and Conditions, the cost of services of the inspector shall be borne equally by both parties.
- (d) Where the Shipment is delivered as an unsegregated part cargo lot, the quantity determined above shall be adjusted following completion of discharge of all relevant part cargo lots in order that each of Buyer and the receiver(s) of the other lot(s) shall be allocated a percentage of the total quantity loaded equal to that percentage of the total outturn quantity corresponding to its outturn quantity of Product.

IX.2 In the case of CFR Outturn and CIF Outturn deliveries:

- (a) The quantity and quality of the Product delivered at the Loading Terminal 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.
- (b) The quantity of the Product delivered at the Discharge Terminal shall be determined for each Shipment in accordance with the standard practice in use at the Discharge Terminal at the time of discharge save if otherwise provided for specifically in the Special Terms and Conditions. A mutually agreed independent inspector will be appointed at the Discharge Terminal to ascertain or witness such quantity determination. Buyer shall ensure that the independent inspector shall have full access to the facilities at the Discharge Terminal to perform his duties. Unless otherwise provided for in the Special Terms and Conditions, the cost of services of the inspector shall be borne equally by both parties.

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- (c) The quantity of Product determined pursuant to sub-section IX.2(a) 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. Seller's invoice shall subsequently be adjusted in accordance with the quantity reported by the independent inspector at the Discharge Terminal.
- (d) Where the Special Terms and Conditions provide for the appointment of an independent inspector at the Loading Terminal, the quantity and quality of the Product as ascertained or witnessed by such independent inspector shall, except in case of fraud or manifest error, be final and binding on both parties. Unless otherwise provided for in the Special Terms and Conditions, the cost of services of the inspector shall be borne equally by both parties.
- (e) Notwithstanding the provisions of this sub-section IX.2, Seller shall have the right to submit a claim to Buyer where there is a difference between the quantity loaded and discharged by Seller's Vessel and where in Seller's reasonable opinion, the most likely cause of such difference is due to events or the nature of operations at the Discharge Terminal during the discharge of the Product.
- (f) If the quantity discharged and determined in accordance with the provisions of sub-section IX.2(b) is less than the bill of lading quantity, Seller shall be entitled to retain the bills of lading and (in the case of a CIF sale) the certificate of insurance. In circumstances where the bills of lading and/or the certificate of insurance have already been passed on to Buyer, Buyer shall forthwith upon Seller's request endorse the bills of lading to the order of Seller and pass the above documents back to Seller. In the event that, as a result of the shortage, any proceedings are brought by Seller against the carrier under the bills of lading, Seller will, at the request of Buyer, join into such action any claim against the carrier relating to quality of the cargo (a "**Quality Claim**"), provided that Buyer shall indemnify Seller and, if requested, provide security to Seller, against all costs and liabilities incurred as a result of, or in connection with, the Quality Claim. If, for whatever reason, Seller resolves not to commence any proceedings against the carrier, Seller shall then be obliged to pass the bills of lading on to Buyer.

IX.3 In the case of Ex Ship deliveries:

- (a) The quantity and quality of the Product delivered at the Discharge Terminal under the Agreement shall be determined for each Shipment in accordance with the standard practice in use at the Discharge Terminal at the time of discharge save if otherwise provided for specifically in the Special Terms and Conditions.
- (b) A mutually agreed independent inspector will be appointed at the Discharge Terminal to ascertain or witness the determination of the quantity and the quality of the Product. Unless otherwise provided for in the Special Terms and Conditions, the cost of services of the inspector shall be borne equally by both parties.
- (c) For the purpose of quality determination, the independent inspector will draw representative ship's composite samples prior to commencement of discharge of the Vessel. Notwithstanding any other term of the Agreement, no other sample taken at the Discharge Terminal shall be used for the purposes of determining the quality of the Product delivered.
- (d) Unless otherwise provided for in the Special Terms and Conditions, the quantity of Product reported by the independent inspector at the Discharge Terminal shall be used to calculate Seller's invoice.

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IX.4 In no event shall Seller be liable 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 THIRTY (30) days of the date of completion of discharge or SIXTY (60) days of the date of the relevant bill of lading, whichever the earliest, or within 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.

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.

SECTION X - DOCUMENTS

X.1 In the case of CFR deliveries:

Seller shall deliver to Buyer:

- (a) an invoice, which may be by facsimile transmission or electronic messaging system (provisional invoice acceptable where the provisions of sub-section IV.5 apply);
- (b) original bills of lading issued or endorsed to the order of Buyer; and
- (c) original certificates of quantity, quality and origin (or equivalent documents issued at the Loading Terminal).

X.2 In the case of CIF deliveries:

Seller shall deliver to Buyer the documents referred to in sub-section X.1 and an original certificate of insurance.

X.3 In the case of CFR Outturn or CIF Outturn deliveries:

Seller shall deliver the documents as referred to in sub-section X.1, and, in the case of CIF Outturn deliveries, the document referred to in sub-section X.2, as well as a copy of the independent inspector's report at the Discharge Terminal.

X.4 In the case of Ex Ship deliveries:

Seller shall deliver a copy of the independent inspector's report at the Discharge Terminal and Seller's invoice, which may be by facsimile transmission or electronic messaging system (provisional invoice acceptable where the provisions of sub-section IV.5 apply).

X.5 Notwithstanding any other term of the Agreement, 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.

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SECTION XI - VALUE ADDED TAX AND EXCISE DUTY, EU DOCUMENTATION

XI.1 Value Added Tax (VAT)

- (a) Where Value Added Tax or similar tax (“VAT”) becomes payable under the rules applicable at the Loading Terminal or Discharge Terminal, Seller shall issue an invoice setting out such VAT and the date for its payment. Payment of such VAT shall be made by Buyer to Seller in addition to the contractual price of the Product. Seller's invoice can be presented either in the invoicing currency of the Product, converted at the exchange rate prevailing on the date of the tax point under the relevant tax rules or, in Seller's option, in the local currency of the country in which said VAT is payable. Any invoiced VAT amount shall be paid by Buyer to Seller’s designated account in full on the date specified by Seller without any discount, deduction, withholding, abatement, set-off or counterclaim.
- (b) The provisions of this sub-section XI.1(b) shall apply where the Loading Terminal is located within the European Union (EU).
 - (i) Where the rules applicable at the Loading Terminal allow it, the sale of the relevant Product may be zero rated provided that:
 - 1. if the destination of the Product is within the EU,
 - 1.1 Buyer provides to Seller, prior to commencement of delivery (or transfer of property if the product is sold or nominated to be sold afloat), evidence satisfactory to VAT authorities at the Loading Terminal that Buyer is entitled to zero rating for the Product, including but not limited to a written declaration stating:
 - 1.1.1 a valid VAT registration number of Buyer in an EU member state other than the EU member state in which the Loading Terminal is located; and
 - 1.1.2 that an Intra Community Acquisition of the Product will be reported in the country of destination; and
 - 1.1.3 that the Product delivered under the Agreement will be transported from the Loading Terminal to the country of destination by the transporter on behalf of Buyer, or the nominated delivery has already been on-sold to a third party to whom the Product must be supplied in another EU member state and that accordingly, the obligation to transport the Product to another EU member state has been transferred to such third party (as applicable); and
 - 1.2 Buyer provides to Seller upon demand, evidence satisfactory to the relevant authorities in the EU member states in which the Loading Terminal and discharge port are located that the transportation arrangements for the Product qualify for zero rating; and
 - 1.3 Buyer provides to Seller, within THIRTY (30) days of loading the Shipment, satisfactory evidence to the relevant authorities of the EU member state in which the Loading Terminal is located (“**Loadport Authorities**”) that the Product has been received by Buyer, or some other party acting on Buyer’s behalf, within another EU member state, or such other evidence as is satisfactory to the Loadport Authorities to allow zero rating of the sale of the Product;

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or

2. if the destination of the Product is outside the EU, Buyer provides to Seller, within THIRTY (30) days of loading the Shipment, satisfactory evidence to the Loadport Authorities that the Product has been received by Buyer, or some other person on Buyer's behalf, at a destination outside the EU.
 - (ii) Where Seller has issued a ZERO (0) rated invoice in respect of the Product, if Buyer fails to comply with the above provisions, Seller shall be entitled to issue a further invoice for the amount of any VAT payable together with interest either in the invoicing currency of the Product, converted at the exchange rate prevailing on the date of the tax point under the relevant tax rules or, in Seller's option, in the local currency of the country in which said VAT is payable. Such further invoice shall be paid by Buyer to Seller's designated account in full within TWO (2) banking days of presentation of such invoice, without any discount, deduction, withholding, abatement, set-off or counterclaim. For the purposes of the above, "banking day" shall mean a banking day in the country where Seller's designated account is located.
- (c) Buyer shall indemnify Seller in respect of any costs or penalties incurred by Seller as a result of Buyer's failure to pay any VAT in accordance with the Agreement.
- (d) If Seller is subsequently able to obtain a credit or repayment from the authorities for any such VAT which has been paid by Buyer, Seller shall within FIVE (5) Working Days reimburse Buyer with the net amount so credited or repaid less any costs, penalties and interest, and Seller shall use all reasonable efforts to obtain such credit or repayment, it being understood that any costs incurred by Seller in doing so shall be borne by Buyer.

XI.2 Excise duty

Buyer shall indemnify Seller and hold Seller harmless from any and all liability in respect of excise duty or similar tax incurred by Seller, Seller's Supplier or the owner of the bonded premises from which the Product is dispatched, including any interest, penalties or costs arising on such excise duty or similar tax, where the Product is delivered from any bonded premises in the EU, unless, before the FIFTEENTH (15th) day of the month following the month of dispatch of the Product from bonded premises:

- (a) Buyer provides to Seller a properly completed Copy 3 of the Accompanying Administrative Document ("AAD") together with proof of discharge of the Product; or
- (b) Buyer provides to Seller satisfactory evidence to the EU member state where the Product was taken out of bonded premises, that the Product was delivered to a non EU member state; or
- (c) Buyer provides to Seller satisfactory evidence to the EU member state from which the Product was taken out from bonded premises without an AAD, that the Product was delivered into bonded premises within the EU in circumstances where such delivery allows for suspension of the excise duty or similar tax.

XI.3 Notwithstanding the above, Buyer shall, except in the case of CFR Outturn, CIF Outturn or Ex Ship deliveries, indemnify Seller and hold Seller harmless from any and all liability for any excise duty or similar tax claimed by a relevant EU member state in respect of discrepancies between the loaded and discharged quantities.

Where VAT and/or excise duty is payable, Seller reserves the right to request, and Buyer undertakes to immediately issue upon such a request, a letter of guarantee from a bank acceptable to Seller to cover the full estimated amount of such VAT and/or excise duty, such letter of guarantee to be in a format acceptable to Seller.

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Any delay in effecting any payment by the due date under this Section XI shall entitle Seller to receive payment of interest for each day of delay calculated as per the invoiced currency rate for ONE (1) month of BBALR (or successor thereto or equivalent published rate for the currency concerned), plus TWO (2) percentage points per annum. Such interest shall in no circumstances be construed as an agreement by Seller to provide extended credit, and is in addition to any other rights of Seller arising out of Buyer's delay in effecting payment.

XI.4 EU Documentation

Where the Loading Terminal is located outside the European Union (EU) and the Special Terms and Conditions provide that the Product shall be EU qualified, or where the Loading Terminal and the Discharge Terminal are located inside the EU, the provisions of Appendix 2 shall apply.

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 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 Product or the grade of petroleum product deliverable under the Agreement; or
 - (ii) any crude oil or petroleum product, whether or not of the grade to be delivered under the Agreement, if this results in insufficient petroleum product 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 petroleum product and to supply fully its other purchasers of petroleum product; or
 - (iii) any petroleum product, 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 or petroleum product, 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 or petroleum product 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 petroleum products 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 petroleum products, 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 Product 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 Product as provided for in the Agreement; or

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- (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.

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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.

SECTION XVII - HEALTH, SAFETY AND ENVIRONMENTAL INFORMATION

Health, safety and environmental information on petroleum products issued by TOTAL Group Companies is available on 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 Product 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 Product 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 Product 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 Product 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 Product, 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 Product, whether or not foreseeable.

Without prejudice to the provisions of sub-section 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 Product as hereinabove provided, and which may arise in connection with the transportation, use or handling of any Product 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. CFR, CIF, 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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TOTAL-PROD-CFR/CIF/DES

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/cubic metres 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**EU Documentation****A - IMPORTS INTO THE EU FROM NON-EU MEMBER STATES**

The following provisions apply where the Loading Terminal or, where the Product has been declared under the External Community Transit Procedure (T1) or similar procedure in the EU member state where the Loading Terminal is located, the country of origin of the Product, is located outside the European Union (EU) and the Special Terms and Conditions provide that the Product shall be EU qualified.

- A1** - If the Loading Terminal (or, if applicable, the country of origin of the Product) is located in a country with which the EU has a Preferential Agreement whereby the Product enjoys a Generalised Tariff Preference, Seller shall provide to Buyer the relevant original qualifying document (e.g. GSP Form A, EUR 1) allowing Buyer to benefit from such Tariff Preference.
- A2** - Buyer shall be responsible for providing such original qualifying document to the relevant local customs authorities, at disport.
- A3** - If Seller is unable to provide the relevant original qualifying document and in consequence Buyer is compelled by the relevant customs authorities to make payment of the corresponding duty, Seller shall reimburse such duty to Buyer against supporting documents, but as soon as the relevant qualifying document is subsequently delivered to Buyer, Buyer shall exercise all reasonable efforts to have it accepted by the relevant customs authorities, whereupon Buyer shall promptly pay to Seller the amount previously paid by Seller in respect of the duty.

B - MOVEMENTS BETWEEN EU MEMBER STATES

The following provisions apply where the Loading Terminal and the Discharge Terminal are located inside the EU (except where the Product has been declared under the External Community Transit Procedure (T1) or similar procedure in the EU member state where the Loading Terminal is located).

- B1** - Seller shall provide to Buyer the relevant original document (e.g. an INF3 or an AAD) showing that the Product is EU qualified and therefore in free circulation within the EU and import duty is therefore not payable with respect to such Product.
- B2** - Buyer shall be responsible for providing such original qualifying document to the relevant local customs authorities, at disport.
- B3** - If Seller is unable to provide the relevant original qualifying document and in consequence Buyer is compelled by the relevant customs authorities to make payment of the corresponding duty, Seller shall reimburse such duty to Buyer against supporting documents, but as soon as the relevant qualifying document is subsequently delivered to Buyer, Buyer shall exercise all reasonable efforts to have it accepted by the relevant customs authorities, whereupon Buyer shall promptly pay to Seller the amount previously paid by Seller in respect of the duty.

TOTAL-PROD-CFR/CIF/DES

C – PRODUCT IN TRANSIT UNDER THE EXTERNAL COMMUNITY TRANSIT PROCEDURE (T1)

The following provisions apply where the Loading Terminal is located in an EU member state where the Product has been declared under the External Community Transit Procedure or similar procedure and the Discharge Terminal is located inside the EU.

- C1** - Seller shall provide to Buyer an original copy of the transit declaration (T1).
- C2** - Buyer shall be responsible for providing such original declaration to the relevant local customs authorities, at disport.
- C3** - Buyer shall ensure that a copy of the transit declaration, receipt of which is officially acknowledged, is timely returned by the customs authorities in the member state where the discharge port is located to the customs authorities in the country of the Loading Terminal in a form acceptable to the latter, failing which Buyer shall indemnify Seller and hold Seller harmless from any and all liability in respect of any customs duty, excise duty, VAT or other tax or duty incurred by Seller, Seller's Supplier or the owner of the premises from which the Product is dispatched, including any interest, penalties or costs arising on such duties or taxes.

APPENDIX 3

Supplement in respect of Deliveries on Barges within the European Union

Where the Agreement is to sell and deliver Product on CFR or CIF or CFR Outturn or CIF Outturn or DELIVERED EX SHIP terms on or from a barge or barges within the European Union, the provisions of the General Terms and Conditions shall apply, subject to the additions and amendments set out below.

All references to Vessel or Vessels shall mean any seagoing or inland barge or barges (each a "**Barge**") and all references to "**Local Working Day**" shall mean a day other than a Saturday or Sunday or a public holiday in the jurisdiction of the Loading Terminal.

A - 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 Product 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.”

B - BARGE

Sub-sections VI.2 to VI.8 shall not apply and shall be replaced by the provisions set out below:

“VI.2 Nomination of Barge

Unless otherwise specified in the Special Terms and Conditions, for each Barge, Seller shall notify Buyer ONE (1) Local Working Day before the date of Barge's loading at the Loading Terminal by means of courier, facsimile transmission and/or electronic messaging system of the following (the "**Nomination Information**”):

- (a) the Barge's name and registration number and the name of the Barge's owner/operator; and
- (b) the quantity and grade of the Product to be loaded.

VI.3 Substitution of Barge

Seller may nominate a substitute for the Barge previously nominated.

TOTAL-PROD-CFR/CIF/DES

VI.4 Acceptance of Barge

Each Barge which is to deliver Product under the Agreement (including, for the avoidance of doubt, any substituted Barge under sub-section VI.3) shall be subject to Buyer's acceptance. Unless otherwise specified, Buyer shall notify Seller in writing immediately upon receipt of Seller's Nomination Information whether Buyer accepts or refuses such nomination; Buyer's acceptance not to be unreasonably withheld.

VI.5 Discharge Instructions

Unless otherwise specified in the Special Terms and Conditions, upon receipt of Seller's Barge nomination, Buyer shall (on the same Local Working Day if Seller's nomination is made on or before 3:00 p.m. local time on a Local Working Day and otherwise on the immediately following Local Working Day) promptly notify Seller in writing of the following documentary instructions:

- Discharge Terminal name and address;
- Name and reference number of customs office at the Discharge Terminal;
- Buyer's VAT number;
- Receiver's name and address and VAT number;
- Name of fiscal agent (if any);
- Name of surveyor (if any);
- Accompanying Administrative Document (AAD) details.

Any delay or costs (including, but not limited to, any demurrage incurred in respect of Seller's Vessel and any demurrage incurred by Seller or Seller's Supplier in respect of other Vessels waiting at the Loading Terminal) arising out of any failure by Buyer to comply with the foregoing shall be for Buyer's account. Seller shall have the right to issue its own instructions if such instructions are not so provided by Buyer. No change to the Discharge Terminal shall be made without Seller's prior consent.

VI.6 Requirements in respect of Barge

- (a) For each Barge specified in, or nominated under, the Agreement, Seller shall exercise reasonable efforts to ensure that the Barge:
 - (i) is entered in and shall remain (throughout the entire period of the voyage to the Discharge Terminal and up to discharge of the Product) in a P and I Club which is a member of the International Group of P and I Clubs;
 - (ii) has in place (throughout the entire period of the voyage to the Discharge Terminal and up to discharge of the Product) 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
 - (iii) shall have (where applicable) a valid ADNR (European Agreement Concerning the International Carriage of Dangerous Goods by Inland Waterways – River Rhine) original certificate of approval on board and has in place security procedures on board in compliance with ADNR article 1.10 and shall be equipped with an operational overfill protection system complying with ADNR regulations.
- (b) Notwithstanding any prior acceptance of the Barge by Buyer and notwithstanding anything to the contrary express or implied in this Section VI, if at any time the Barge fails to comply with any of the requirements set out in sub-section VI.6(a) above, Buyer or Buyer's receiver may at any time refuse to berth or discharge or continue to discharge the Barge and all time lost or spent as a result thereof shall not count as used laytime, or if the Barge is on demurrage, as demurrage."

TOTAL-PROD-CFR/CIF/DES

C - LAYTIME AND DEMURRAGE

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

“SECTION VIII - LAYTIME AND DEMURRAGE

VIII.1 Unless otherwise specified in the Special Terms and Conditions, allowed laytime shall be as per the Tankschiff-Transportbedingungen Terms and Conditions (latest edition) or its successor (“**TTB Rules**”).

VIII.2 Notwithstanding the TTB Rules, laytime shall begin upon the Barge’s arrival (all fast at the berth) or upon its arrival at the Discharge Terminal being announced by the Barge’s Master (provided the Barge is at the customary waiting area at the Discharge Terminal).

Laytime or, if on demurrage, time on demurrage shall end when the delivery hoses are disconnected after completion of discharge or, if the Barge’s departure is delayed for Buyer’s purposes, until the termination of such delay.

VIII.3 Buyer shall pay to Seller 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. Where not inconsistent with the Agreement, the provisions applicable to the calculation of demurrage shall be as per the TTB Rules.

Unless a demurrage rate is specified in the Special Terms and Conditions, the applicable demurrage rate shall be the rate set out in the Barge's transportation agreement.”

D – MISCELLANEOUS

Section X is not applicable.

APPENDIX 4**Supplement in respect of Liquefied Petroleum Gas Deliveries**

Where the Agreement is to sell and deliver LPG on CFR or CIF or CFR Outturn or CIF Outturn or DELIVERED EX SHIP terms, the provisions of the General Terms and Conditions shall apply, subject to the additions and amendments set out below.

A - VESSEL

A1 - Sub-section VI.4 is amended as follows: "TWENTY-FOUR (24) hours" is replaced with "SIX (6) working hours".

A2 - Sub-section VI.7(a)(ii)1 is not applicable.

B - LAYTIME AND DEMURRAGE

B1 - Sub-section VIII.2 is amended as follows: "THIRTY-SIX (36)" is replaced with "TWENTY-FOUR (24)".

B2 - Sub-section VIII.5 shall be replaced by the wording set out below such that it reads as follows:

"VIII.5 Seller warrants that Vessel is physically capable of discharging the contractual quantity of cargo within the agreed laytime, provided that the shore facilities are capable of the same and the shore facilities' instructions so permit. Any delay due to inability of the Vessel to fulfil the above warranty shall not count as laytime or, if the vessel is on demurrage, as demurrage."

B3 - Sub-section VIII.6 shall be replaced by the wording set out below such that it reads as follows:

"VIII.6 Buyer shall pay to Seller demurrage in US dollars 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.

The applicable demurrage rate shall be:

- (a) the demurrage rate specified in the Special Terms and Conditions; or, in the absence of such rate,
- (b) the demurrage rate per day provided for in the charter party entered into for the Vessel; or, in the absence of such rate,
- (c) the demurrage rate per day prorata based on the Braefoot Bay assessment, or, if unavailable, then Sullom Voe assessment shall apply."