



ECOPETROL S.A.

**GENERAL TERMS AND CONDITIONS
FOR FOB AND DAP SALES OF
CRUDE OIL AND REFINED PRODUCTS**

2018 EDITION

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These General Conditions are effective as of December 10, 2018.

PART I - APPLICABLE TO ALL SECTIONS

Section 1. DEFINITIONS

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

1.1.1 "Affiliate" means, with respect to any entity, any other entity that, directly or indirectly controls, or is controlled by, or is under common control with, such entity. For this purpose, "control" means the power, directly or indirectly, to cause the direction of the management and/or policies of an entity, whether through the ownership of voting securities, by contract, or otherwise.

1.1.2 "Agreement" means these General Conditions (including, where applicable, the Annexes attached hereto) together with the Special Provisions.

1.1.3 "All Fast" means that the Nominated Vessel is safely secured to the Berth and the gangway (or equivalent) is in place.

1.1.4 "Applicable Law" means any international, federal, state, regional, provincial or local law, statute, regulation, code, ordinance, license, permit, compliance requirement, decision, order, writ, injunction, directive, judgment, policy, decree, including any judicial or administrative interpretations thereof, and/or any coast guard, port authority or terminal regulation, in each case applicable to either Party or either Party's performance under the Agreement, and any amendments or modifications to the foregoing.

1.1.5 "Approved Industry Practice" means the measurement, sampling and analysis activities and methods of a standard no less than those published by the American Petroleum Institute ("API") in the Manual of Petroleum Measurement Standards ("MPMS") or as published by ASTM International, formerly known as the American Society for Testing and Materials ("ASTM"), in each case in effect at the time of the relevant measurement, sampling, or analysis.

1.1.6 "Arrival Date Range" shall have the meaning given to it in Section 36.

1.1.7 "ASBA" means the Association of Ship Brokers and Agents.

1.1.8 "Banking Day" means a day other than a Saturday or Sunday on which commercial banks are open for business in New York, New York U.S.A.

1.1.9 "Barrel" means a volume equal to 42 gallons of the United States of America, at a temperature of 60 degrees Fahrenheit, and a pressure of 14,696 pounds per square inch (PSI). Each gallon equals 3.7853 liters.

1.1.10 "Berth" means a berth, dock, anchorage, submarine line, single point or single berth mooring facility, offshore location, alongside vessels or



lighters or any other loading or discharge place as may be indicated by the Party in question.

- 1.1.11 "Business Day" means a day other than a Saturday or Sunday or public holiday in Colombia.
- 1.1.12 "Buyer" means the person or entity which purchases the Product from the Seller under the Agreement as identified in the Special Provisions.
- 1.1.13 "Cargo(es)" means those volumes of Crude Oil or Refined Product that are the subject of a transaction to which the Agreement applies.
- 1.1.14 "Charter Party" means the charter party or other contract: (i) in the case of FOB deliveries, between the Buyer and the owner or operator, as the case may be, of the Nominated Vessel; and (ii) in the case of DAP deliveries, between the Seller and the owner or operator, as the case may be, of the Nominated Vessel.
- 1.1.15 "Contract of Affreightment" means a contract for carriage of a specified quantity of goods in more than one (1) shipment during an agreed period.
- 1.1.16 "Crude Oil" means crude petroleum of the grade specified in the Agreement which has been stabilized and is suitable for loading into vessels or for delivery by such other method as is specified in the Agreement. If the Agreement is for the sale of condensate, references in the Agreement to crude oil shall be deemed to be references to condensate.
- 1.1.17 "day" means a calendar day;
- 1.1.18 "Deadweight" means total carrying capacity of the vessel including cargo, fuel, fresh water, stores, lubricant oil, ballast and surplus for sagging and hogging.
- 1.1.19 "Delivery Period" is the period of days in which the Seller shall deliver to the Buyer the Cargo.
- 1.1.20 "Demurrage" means the compensation in cash which: (i) in the case of FOB deliveries, the Seller pays to the Buyer for having exceeded the agreed upon Laytime, and (ii) in the case of DAP deliveries, the Buyer pays to the Seller for having exceeded the agreed upon Laytime, in each case subject to and in accordance with the terms of the Agreement.
- 1.1.21 "DIMAR" and "SGP" respectively mean "Dirección General Marítima", the Colombian Marine Authority; and "Superintendencia General de Puertos", the Colombian Port Authority.
- 1.1.22 "Discharge Terminal" means the port or terminal specified in the Special Provisions at which the Product to be delivered under the Agreement is or will be discharged or, where the context requires, the operator, authority or governing body of such port or terminal.



- 1.1.23 "ETA" means the estimated time and/or date or range of days of arrival of the Nominated Vessel at the Loading Terminal or the Discharge Terminal as applicable.
- 1.1.24 "Event of Force Majeure" shall have the meaning ascribed to it in Section 8.2.
- 1.1.25 "FOB" and "DAP" shall each have the meaning given to it in Incoterms 2010 (as amended from time to time), except as modified by the Agreement; further, if there is any inconsistency or conflict between Incoterms 2010 and the Agreement, the Agreement shall prevail.
- 1.1.26 "Governmental Authority" means any foreign or Colombian, state, regional, local or municipal governmental body, agency, instrumentality, authority or entity established or controlled by a government or subdivision thereof, including any legislative, administrative or judicial body, or any person acting on behalf thereof, that has jurisdiction or legal power upon the transactions hereby agreed.
- 1.1.27 "Gross Standard Volume" means the total volume of all petroleum liquids and sediment and water, excluding free water, corrected by the appropriate volume correction factor (CTL) for the observed temperature and API gravity, relative density, or density to a standard temperature such as 60 degrees Fahrenheit or 15 degrees Celsius and also corrected by the applicable pressure correction factor (CPL) and meter factor.
- 1.1.28 "Independent Inspector" means the Independent Inspector appointed in accordance with Section 22.1 or Section 34.1 as applicable.
- 1.1.29 "Intertanko Questionnaire" means Intertanko's Standard Chartering Questionnaire 88 as updated from time to time.
- 1.1.30 "Laytime" means the time allowed to the Seller for loading (determined pursuant to Section 30) or the time allowed to the Buyer for discharge (determined pursuant to Section 42).
- 1.1.31 "Loading Period" means, in the case of FOB deliveries, the Loading Period established in accordance with Section 24.1.
- 1.1.32 "Loading Terminal" means the offshore and onshore facilities of the port or terminal specified in the Special Provisions at which the Cargo to be loaded under the Agreement is or will be loaded or, where the context requires, the operator, authority or governing body of such port or terminal.
- 1.1.33 "MARPOL" means the International Convention for the Prevention of Pollution from Ships, issued in London in 1973/1978 and approved by the Colombian Congress through Laws 12 of 1981 and 257 of January 15, 1996.
- 1.1.34 "Nominated Vessel" means: (i) in the case of FOB deliveries, the vessel or substitute vessel nominated by the Buyer and approved by the Seller in accordance with Section 25; and (ii) in the case of DAP deliveries,



the vessel or substitute vessel nominated by the Seller and approved by the Buyer in accordance with Section 38.

- 1.1.35 "Notice of Readiness" or "NOR", means the valid notice of readiness to load or discharge, as the case may be, as given by the master of the Nominated Vessel (or his/her representative) to the Seller (or its representative) at the Loading Terminal or to the Buyer (or its representative) at the Discharge Terminal respectively.
- 1.1.36 "Parent Company Guaranty" means the parent company guaranty to be procured by the Buyer pursuant to Section 6.1.2.
- 1.1.37 "Party" means the Seller or the Buyer as applicable, and "Parties" means both of them.
- 1.1.38 "Port Regulations" means: (i) all restrictions at the Loading Terminal or Discharge Terminal, as applicable, with respect of maximum draft, length, Deadweight, displacement, flag and the like; (ii) the procedures relevant to health, safety and vessel operations; and (iii) the laws, decrees, resolutions, and any other decision(s) having the force of law, which govern all aspects of public and private port activities in any Loading Terminal or Discharge Terminal as applicable.
- 1.1.39 "Product" means Crude Oil or Refined Products as applicable.
- 1.1.40 "Refined Products" means any hydrocarbon substance obtained through the refining of Crude Oil.
- 1.1.41 "Restricted Jurisdiction" means any country, state, territory or region: (i) against which there are country-wide sanctions imposed by the United Nations, the United States of America, the United Kingdom and/or by any other jurisdiction or authority specified in the Special Provisions; and/or (ii) to which supplies of the Product are prohibited or restricted under the laws of the country in which such Product was produced, the United Nations, the United States of America or the United Kingdom pursuant to Section 11.1.
- 1.1.42 "Seller" means Ecopetrol S.A. or its Affiliates as specified in the Special Provisions.
- 1.1.43 "Special Provisions" means the contract, written agreement or other form of agreement in which, by reference, these General Terms and Conditions are incorporated to form the Agreement.
- 1.1.44 "Terminal Operator" means: (i) in respect of FOB deliveries, the person or entity handling the operations at the Loading Terminal; and (ii) in respect to DAP deliveries, the person or entity handling the operations at the Discharge Terminal.
- 1.1.45 "typicals" mean a quality or characteristic often attributable to Crude Oil from a particular source, given without guarantee and not amounting to a representation or warranty that such typical quality or attribute will be present in the Crude Oil supplied.



- 1.1.46 "United States Dollars" or "U.S. Dollars" means the lawful currency of the United States of America.
 - 1.1.47 "Vessel Experience Factor" or "VEF" means a factor based on the compilation of the history of the total calculated volume vessel measurements, adjusted for on-board quantity or remaining on board, compared with the total calculated volume shore measurements.
 - 1.1.48 "Working Day", as used exclusively in Section 17, shall mean a day on which the office of the Party receiving a relevant communication is ordinarily open for business.
- 1.2 In the Agreement (as hereinafter defined) unless the context otherwise requires:
- 1.2.1 Section headings are for convenience only and shall not affect the interpretation thereof;
 - 1.2.2 references to a Part or Section shall mean a part or section of these General Conditions;
 - 1.2.3 words denoting the singular include the plural and vice versa; words denoting any gender include all genders; and words denoting persons include firms and corporations and vice versa;
 - 1.2.4 reference to a particular Applicable Law, form, or contract, shall be construed to refer to such Applicable Law, form, or contract as the same may be amended, supplemented, restated, or superseded from time to time; and
 - 1.2.5 references to the terms "including" and "include" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

Section 2. ACCEPTANCE OF OFFER

When the Buyer's offer is received and accepted in writing or by any other form of communication by the Seller, the terms and conditions negotiated and stipulated in the Special Provisions and these General Conditions shall constitute the Agreement, which shall be final and binding on the Parties.

Section 3. QUALITY AND CLAIMS IN RESPECT OF QUALITY/QUANTITY

- 3.1 Unless otherwise stated in the Special Provisions, the quality of: (i) the Crude Oil delivered hereunder shall be the quality of such Crude Oil as usually made available at the time and delivery point as specified in the Special Provisions; and (ii) the Refined Product delivered hereunder shall be not inferior to the specification (if any) set out in the Special Provisions. Whether set out in these General Conditions or in the Special Provisions neither typicals nor any stipulation as to the time of delivery shall form part of the Crude Oil or Refined Product's description, quality or fitness for purpose.
- 3.2 Section 3.1 constitutes the whole of the Seller's obligations with respect to the description, quality and fitness for purpose of the Product and (*unless the following exclusions are not permitted by, or are excluded by, law*) all statutory or other conditions, warranties or representations, express or implied, regarding any



Product (including any implied warranty of merchantability or fitness for a particular purpose and implied warranties arising from the course of dealing or course of performance) are hereby excluded.

- 3.3 Any claim in respect of deficiency of quantity or quality shall be in writing, with notice provided to the Seller by the Buyer within twenty eight (28) days after title and risk transfer to the Buyer, and full documentation provided to the Seller by the Buyer within eighty (80) days after the title and risk transfer to the Buyer.
- 3.4 The following provisions shall apply to any such claim pursuant to Section 3.3:
- 3.4.1 Any claim with respect to quantity shall be considered only when the alleged discrepancy between the loaded and the discharged quantity is greater than zero point five percent (0.5%) of the loaded quantity in Gross Standard Volume figures after applying the Nominated Vessel's VEF, if available. If such difference is lower than or equal to zero point five percent (0.5%) The difference shall be waived and have no effect under this Section 3.
- 3.4.2 The Buyer shall provide the Seller with all such documentation supporting any claim brought under this Section 3 as may be requested by the Seller.
- 3.4.3 Presentation of a claim pursuant to this Section 3 shall in no way alter or affect the validity of the certificates of quantity and/or quality issued by the Independent Inspector. Additionally, such a claim shall not release the Buyer from its obligation to pay the full amount of the invoice that the Seller issues to the Buyer in respect of any Cargo.
- 3.4.4 Where the Parties agree to settle a claim made pursuant to this Section 3 the terms of such settlement shall be in written form. Any payment made as a result of such settlement shall be covered by a credit/debit note that shall not affect, delay or hinder the full and timely payment of the invoice tendered by the Seller to the Buyer, or affect the performance of any other obligations of the Parties under the Agreement.
- 3.4.5 Any claim failing to meet the requirements set out in this Section 3 shall be deemed waived, and any liability on the part of the Seller shall be extinguished.
- 3.4.6 In the case of FOB deliveries, any claims in respect of deficiency of quantity or defect in quality of the Product shall be recoverable only in accordance with the usual terms applicable for the purchase of Product at the Loading Terminal and the Buyer shall not be entitled to recover any costs, losses or damages incurred arising out of any deficiency in quantity or defect in the quality of the Product from the Seller under the Agreement unless the Seller is able to recover and does recover such shortage or compensation for defect in quality from Seller's supplier or other relevant third party, and then only to the extent of such recovery. The Seller shall, however, use all reasonable efforts to recover from Seller's supplier or other relevant third party any such costs, losses or damages for which the Buyer has submitted a claim in accordance with the provisions of this Section 3.



- 3.4.7 In the case of DAP deliveries, despite anything to the contrary in the provisions of Section 34, the Seller shall have the right to submit a claim to the Buyer where there is a difference between the quantity of Product loaded and the quantity of Product discharged by the Nominated Vessel and where, in the Seller's reasonable opinion, the most likely cause of such difference is due to events at, or the nature of, or operations at, the Discharge Terminal during the discharge of the Product.

Section 4. PAYMENT

- 4.1 The Seller's invoice shall be prepared on the basis of: (a) in the case of FOB deliveries, the certificate(s) of quantity and, where applicable, quality issued at the Loading Terminal in accordance with Section 22.4; and (b) in the case of DAP deliveries, the certificate(s) of quantity and, where applicable, quality issued at the Discharge Terminal in accordance with Section 34.4.
- 4.2 Where the applicable pricing mechanism and/or, in the case of DAP deliveries, the availability of discharge quantities does not allow for the preparation of a final invoice prior to the payment due date, the Seller may issue and the Buyer shall make payment against a provisional invoice. The provisional invoice shall, unless otherwise agreed between the Parties, be based upon: (a) the pricing information available to the Seller at the time it issues such provisional invoice; and/or (b) in the case of DAP deliveries, the quantity specified in the bill(s) of lading. Payment of any balance due by either Party to the other shall be made within five (5) Banking Days following receipt of the Seller's final invoice or debit/credit note which shall be prepared as soon as practicable after all the relevant pricing and/or quantity information becomes available to the Seller. Unless otherwise agreed in the Special Provisions, no interest shall be due on the difference between the provisional and final invoice.
- 4.3 If the bank account that is registered with Ecopetrol S.A. is different from the account for payment, the Buyer shall notify, at least 15 Banking Days before payment due date of such change, sending the following documents: a format request in letterhead and signed by a legal representative to add or replace the registered account number and a bank reference letter including account number and complete routing information (intermediary bank information, intermediary account number, beneficiary bank information and beneficiary account number, SWIFT, ABA or IBAN code). The Seller will not be responsible for any interest that might arise for a late payment due to the Buyer's non-compliance with (or time spent by the Buyer in order to comply with) the above requirement.
- 4.4 Except as expressly provided elsewhere in the Agreement:
- 4.4.1 the total amount of all sums due to the Seller under the Agreement shall be paid in full by Buyer in U.S. Dollars without offset, discounts, deductions (whether for withholding taxes or otherwise) or counterclaims, through direct transfer of funds to the Seller's nominated bank account on or before the payment due date; and
- 4.4.2 such payment shall be made against presentation of: (a) the Seller's invoice (provisional invoice acceptable where the provisions of Section 4.2 apply); and (b) the Payment Documents.



- 4.5 If the Payment Documents are not available for presentation to the Buyer on the payment due date, the Buyer agrees to pay the Seller upon presentation of:
- 4.5.1 the Seller's invoice (provisional invoice acceptable where the provisions of Section 4.2 apply); and
 - 4.5.2 a Letter of Indemnity (by a PDF file e-mail attachment) from the Seller in the format set out in Annex A.
- 4.6 In this Section 4, "Payment Documents" shall mean:
- 4.6.1 in the case of FOB deliveries, 3/3 original bills of lading issued or endorsed to the order of the Buyer; and
 - 4.6.2 in the case of DAP deliveries, a copy of the certificate(s) of the quantity and quality issued by the Independent Inspector.
- Ecopetrol does not accept to issue or endorse the bills of lading to any third party.
- 4.7 The payment due date shall be as specified in the Special Provisions. If the payment due date is not specified in the Special Provisions, the payment due date shall be:
- 4.7.1 if the destination of the relevant Cargo is in Asia, 30 days following the bill of lading date (bill of lading date = 0); or
 - 4.7.2 if the destination of the relevant Cargo is not in Asia, 15 days following the bill of lading date (bill of lading date = 0).
- If the payment due date falls on a Saturday or public holiday in New York other than a public holiday falling on a Monday, payment shall be made on the last preceding Banking Day. If the payment due date falls on a Sunday or a public holiday in New York falling on a Monday, payment shall be made on the next succeeding Banking Day.
- 4.8 Under no circumstances shall the Buyer be entitled to reduce or delay payment of any portion of the Seller's invoice on grounds that a dispute exists concerning the quantity and/or quality of the Product where the invoice has been prepared on the basis of the certificates of quantity and/or quality issued by the Independent Inspector. Such disputes shall be resolved as claims under Section 3 and shall not entitle the Buyer to reduce or delay payment of the total amount set forth in the Seller's invoice.
- 4.9 Without prejudice to any of the Seller's other rights, and subject to the final sentence of Section 4.2, if the Buyer fails to pay in full any invoiced amount on the relevant payment due date, the Seller shall have the right to require the payment by the Buyer of interest on any unpaid amount from the payment due date until the Seller receives funds in the full amount outstanding into the Seller's nominated bank account at a rate per annum equal to the Prime Rate as published by JP Morgan Chase Bank plus two point six five percent (2.65%). The provisions of this Section 4.9 shall not be construed as an indication of any willingness on the part of the Seller to provide extended credit as a matter of course.



Section 5. PRICE CALCULATION AND TOTAL AMOUNT

The price for each Cargo delivered under the Agreement shall be the U.S. Dollar price per net Barrel (calculated in accordance with the price formula set forth in the Special Provisions but, in the case of DAP deliveries, subject to Section 38.9) multiplied by the volume set out in the relevant certificate of quantity issued by the Independent Inspector. The final price per net Barrel shall be rounded to four (4) decimal places.

Section 6. PAYMENT SECURITY

6.1 Notwithstanding any provision regarding payment security in the Agreement, the Seller shall be entitled upon written notice to require the Buyer to provide payment security or additional payment security for the Product sold under the Agreement, in the form of any of the following:

6.1.1 Prepayment for the relevant Cargo(es), in whole or in part, which shall be received by the Seller no later than two (2) Business Days after such demand and in any event before the first day of the Loading Period. Such prepayment shall be made upon presentation of the Seller's provisional invoice based on:

- (a) the pricing information available to the Seller at the time it issues such provisional invoice;
- (b) the maximum contractual quantity specified in the Special Provisions; and
- (c) the estimated value of the Cargo, in accordance with (a) and (b) above, plus 5%.

6.1.2 A Parent Company Guaranty in the form set out in Annex B, and from an Affiliate of the Buyer acceptable to the Seller, which shall be received by the Seller no later than ten (10) Business Days after such demand and in any event prior to: (a) in the case of FOB deliveries, ten (10) days before the first day of the Loading Period; or (b) in the case of DAP deliveries, ten (10) days before the first day of the ETA range, in an amount equal to, or greater than, the Seller's good faith estimate of the value of the relevant Cargo(es).

6.1.3 An irrevocable Standby Letter of Credit / Performance Bond in the form set out in Annex C, opened with or confirmed by a first-class international bank acceptable to the Seller no later than five (5) Banking Days after such demand. The Standby Letter of Credit / Performance Bond will be in an amount equal to the Seller's good faith estimate of the value of the relevant Cargo(es) plus 10%.

6.1.4 A Payment Undertaking in the form set out in Annex D, and from an Affiliate of the Buyer acceptable to the Seller, which shall be received by the Seller no later than ten (10) Business Days after such demand and in any event prior to: (a) in the case of FOB deliveries, ten (10) days before the first day of the Loading Period; or (b) in the case of DAP deliveries, ten (10) days before the first day of the ETA range, in an amount equal to, or greater than, the Seller's good faith estimate of the value of the relevant Cargo(es).



- 6.2 If at any time the payment security previously provided is considered insufficient by the Seller, or does not meet the requirements of this Section 5 or becomes insufficient, then the Seller may require the provision of additional or substitute payment security on the second Business Day after written request by the Seller.
- 6.3 The Buyer shall pay for all expenses related to the payment process, including (but not limited to) the opening of any letter of credit, draft commissions, advising fees, amendment costs and discrepancy fees, if any, among other costs and commissions.

Section 7. TAXES AND COSTS

7.1 The Buyer's responsibilities

The amount of any taxes, duties, imposts, fees, charges and dues of every description imposed or levied by any Governmental Authority or port authority on the Product supplied hereunder, or on its export, purchase, delivery, transportation, ownership, sale or use, in respect of any stage after risk in such Product has passed to the Buyer in accordance with Section 23 or Section 35 as applicable, shall be for the Buyer's account.

In the case of FOB sales, all taxes, duties, imposts, fees, charges (including, without limitation, pilotage, mooring and towage expenses) and dues (including, without limitation, quay dues) in respect of the Nominated Vessel (not the Product) incurred at the Loading Terminal shall be for the Buyer's account.

7.2 The Seller's responsibilities

The amount of any taxes, duties, imposts, fees, charges and dues of every description imposed or levied by any Governmental Authority or port authority on the Product supplied hereunder, or on its export, delivery, transportation, ownership, sale or use, in respect of any stage prior to risk in such Product passing to the Buyer in accordance with Section 23 or Section 35 as applicable, shall be for the Seller's account.

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

7.3 Importer of Record

For the avoidance of doubt and in respect of every type of sale, the Seller shall not be the importer of record but shall be responsible for ensuring that the Buyer is provided with necessary documentation and/or information in the Seller's possession, direction or control required to comply with customs and excise entry procedures at the Discharge Terminal and all duties and taxes that arise in respect of such customs and excise entry shall be for the Buyer's account.

Section 8. FORCE MAJEURE

- 8.1 Except as otherwise provided in the Agreement, neither the Seller nor the Buyer shall be liable for failure to perform any of their respective obligations under the Agreement, or for any delay in complying with such obligations, during the time and to the extent that such performance has been materially delayed, hindered



or prevented by an Event of Force Majeure. Notwithstanding the foregoing, in no event shall an Event of Force Majeure excuse the Buyer from its obligation to make payments for any Product delivered under the Agreement or any other payment.

- 8.2 An "Event of Force Majeure" shall mean an event beyond the reasonable control of and unforeseeable by the Party obliged to perform the relevant obligation, or if foreseeable, could not be avoided in whole or in part by the exercise of due diligence, including but not limited to acts of God or public enemies, wars, sabotage, boycott, blockade, revolutions, insurrections, riots or commotions; destruction of the Product or damage to any port installations or other installations; any curtailment, reduction in, interference with, failure of or cessation of supplies of Product from any of the Seller's sources of supply; rationing or allocation of the Cargo, whether imposed by law, decree or regulation, or by order or instructions of a Governmental Authority (including: (a) a different destination or allocation given to the Product in the specific case of a domestic shortage in order to cope with internal needs; (b) interference, restrictions or onerous regulations imposed on any one of the Parties by any Governmental Authority to whose jurisdiction any of the Parties is subject, whether civil or military, legal or de facto, or which purports to act under any constitution, decree, act or otherwise); strikes, union assemblies, lockouts or other labor disturbances; explosions, fires, accidents, and breakdowns; storms, earthquakes, tidal waves, floods or other natural disasters; closing of ports, docks, dams or maritime or navigational aids; and operational problems with the facilities at the Loading Terminal or Discharge Terminal.
- 8.3 A Party affected by an Event of Force Majeure shall notify the other Party in writing as soon as practicable of the occurrence of such Event of Force Majeure and shall exercise due diligence to overcome the effects of such Event of Force Majeure, where it is possible to do so, and shall resume performance at the earliest possible date. As soon as a Party affected by an Event Force Majeure ceases to be affected and is able to perform any obligation hereunder, such Party shall promptly resume the performance of such obligation and notify the other Party accordingly.
- 8.4 Without prejudice to the foregoing if, as a result of any Event of Force Majeure, the Seller is deprived, in whole or in part, of any of its actual or anticipated sources of supply of the Product, then the Seller shall be entitled to withhold, suspend or reduce deliveries under the Agreement to such extent as the Seller may, in its sole discretion, determine. In such event, the Seller shall not be required to purchase or otherwise acquire additional quantities of Product from other sources to satisfy the Buyer's requirements under the Agreement. Further, should the Seller thereafter purchase or otherwise acquire additional Product, the Seller shall not be obliged to allocate any to the Buyer.
- 8.5 No reduction or suspension in the deliveries or receipt of Product as a result of an Event of Force Majeure shall serve to extend the term of the Agreement and/or terminate the Agreement. However, either Party may terminate the Agreement by written notice to the other, if any of the aforementioned circumstances persist for thirty (30) consecutive days, without any liability whatsoever for the terminating Party.

Section 9. DEFAULT EVENTS

- 9.1 The events and circumstances set out below with respect to any Party (the "Defaulting Party") shall constitute "Default Events":
- 9.1.1 a liquidator (other than for the purpose of amalgamation or reconstruction), administrator, trustee in bankruptcy, receiver or receiver and manager is appointed in respect of the assets and/or undertaking of the Defaulting Party (or the entity which has issued any payment security in respect of the Defaulting Party), or the Defaulting Party (or the entity which has issued any payment security in respect of the Defaulting Party) enters into an arrangement or composition with its creditors, or any similar appointment, arrangement or composition is made under any Applicable Law, or if the Non-Defaulting Party has reason to anticipate any such occurrence, appointment, arrangement or composition;
 - 9.1.2 the Defaulting Party commits a material breach of the Agreement;
 - 9.1.3 the Defaulting Party fails to deliver to the Non-Defaulting Party any payment security complying with the requirements of the Agreement within the time set out in the Agreement;
 - 9.1.4 without prejudice to the Non-Defaulting Party's rights under Section 9.1.3, the Defaulting Party fails to make a payment (other than a pre-payment) due in full by the payment due date and does not correct such failure within five (5) Business Days of notice being given by the Non-Defaulting Party of such breach;
 - 9.1.5 in the case of the Buyer, the Defaulting Party fails to take delivery in accordance with the quantity or delivery provisions of the Agreement; or
 - 9.1.6 a change of control of the Defaulting Party occurs, save where it is a transfer of control to an entity which is itself subject to the direct or indirect control of an entity that currently has direct or indirect control of the Defaulting Party (where control has the meaning given in Section 1.1.1).
- 9.2 If a Default Event occurs, the Party not subject to the Default Event (the "Non-Defaulting Party") may at its sole discretion, without prejudice to its other rights, by and upon notifying the Defaulting Party either orally (confirming such notification in writing) or by notice in writing:
- 9.2.1 terminate the Agreement;
 - 9.2.2 in the case of the Non-Defaulting Party being the Seller, suspend delivery under the Agreement until further notice; or
 - 9.2.3 in the case of an Agreement for the delivery of multiple Cargoes, terminate an individual Cargo.



Section 10. HEALTH, SAFETY AND ENVIRONMENT

- 10.1 The Parties agree that they shall comply with each and every Applicable Law in respect of health, safety and the environment in force from time to time and applicable to the sale of the Product under the Agreement.
- 10.2 The Buyer shall be responsible for ensuring that any obligation, requirement or recommendation in respect of health, safety and the environment relating to the Product delivered hereunder are complied with under the laws, statutes, regulations or directives in force in or applying to territories, states or other jurisdictions in or to which the Buyer sells or otherwise disposes of or uses the Product delivered hereunder.
- 10.3 The Buyer shall indemnify and keep the Seller harmless against any liability, claim or proceeding whatsoever arising out of or in connection with any failure whatsoever to comply with the obligations set out in this Section 10. The Seller shall not be responsible in any respect whatsoever for any loss, damage or injury resulting from hazards inherent in the nature of the Product delivered hereunder.
- 10.4 The Buyer hereby acknowledges that it is fully familiar with the characteristics of the Product and that in entering into the Agreement it has relied exclusively on its own knowledge, judgement and expertise.

Section 11. DESTINATION

- 11.1 It is a condition of the Agreement that the Product delivered under the Agreement shall not be imported (*by the Buyer or other subsequent purchasers of the Product*), directly or indirectly and irrespective of means, to any destination which is at the time of such import either prohibited under the laws of the country in which such Product was produced, the United Nations, the United States of America or the United Kingdom or contrary to any regulation, rule, directive or guideline applied by the government of these countries or any relevant agency thereof. The Buyer shall keep itself informed as to such laws, regulations, rules, directives and guidelines and shall ensure that they are complied with.
- 11.2 The Buyer undertakes that the Product deliverable under the Agreement shall not:
 - 11.2.1 be exported to any Restricted Jurisdiction; or
 - 11.2.2 be sold or supplied to any natural or legal person in any Restricted Jurisdiction; or
 - 11.2.3 be sold or supplied to any natural or legal person for the purposes of any commercial activity carried out in any Restricted Jurisdiction.
- 11.3 The Buyer shall, if the Seller so requires, provide the Seller with appropriate documentation for the purposes of verifying the final destination of any delivery hereunder. Such documentation shall be so provided within forty five (45) days of request or within such lesser period as will enable the Seller and/or the Seller's supplier to comply with any requirement or request of a Governmental Authority and shall include the name of the port(s) of discharge, the date(s) of discharge and the grade and quantity discharged. The obligations of the Buyer to comply with such requirement shall not be affected by any sale or disposal of the Product



in question by the Buyer whether before the Product arrives at the final destination or otherwise.

- 11.4 The Buyer shall defend, indemnify, and hold the Seller harmless for any losses, costs (including legal fees), damages, fines and/or penalties incurred by or imposed upon the Seller or any of its Affiliates as a result of any breach of this Section 11. Such indemnity obligation shall survive termination or expiration of the Agreement.
- 11.5 Without prejudice to the foregoing provisions of this Section 11 and to any of the Seller's other rights, the Seller may immediately terminate the Agreement or suspend performance of any of its obligations under the Agreement if the Buyer fails, or if the Seller has reasonable grounds to believe that the Buyer has failed or will fail, to comply with its obligations and undertakings in this Section 11.

Section 12. SANCTIONS AND BOYCOTTS

Despite anything to the contrary elsewhere in the Agreement:

- 12.1 Neither Party shall be obliged to perform any obligation otherwise required by the Agreement (including without limitation an obligation to (a) perform, deliver, accept, sell, purchase, pay or receive monies to, from, or through a person or entity, or (b) engage in any other acts) if this would be in violation of, inconsistent with, or expose such Party to punitive measures under, any laws, regulations, decrees, ordinances, orders, demands, requests, rules or requirements of the United States of America, the United Nations, the European Union ("EU"), or any EU member state applicable to the Parties relating to trade sanctions, foreign trade controls, export controls, non-proliferation, anti-terrorism and similar laws (the "Trade Restrictions").
- 12.2 Where any performance by a Party would be in violation of, inconsistent with, or expose such Party to punitive measures under, the Trade Restrictions, such Party (the "Affected Party") shall, as soon as reasonably practicable give written notice to the other Party of its inability to perform. Once such notice has been given the Affected Party shall be entitled:
- 12.2.1 to immediately suspend the affected obligation (whether payment or performance) until such time as the Affected Party may lawfully discharge such obligation; and/or
- 12.2.2 where the inability to discharge the obligation continues (or is reasonably expected to continue) until the end of the contractual time for discharge thereof, to a full release from the affected obligation, provided that where the relevant obligation relates to payment for goods which have already been delivered, the affected payment obligation shall remain suspended (without prejudice to the accrual of any interest on an outstanding payment amount, or the obligation of the Buyer's parent company to make such payment pursuant to the Parent Company Guaranty to the extent permitted under applicable law including Trade Restrictions), until such time as the Affected Party may lawfully resume payment or such outstanding amount has been paid pursuant to the Parent Company Guaranty, or the Parties agree to discuss in good faith alternative methods to make such payments which are not prohibited or restricted; and/or



12.2.3 where the obligation affected is acceptance of the vessel, to require the Buyer to nominate an alternative vessel,

in each case without any liability whatsoever (including but not limited to any damages for breach of contract, penalties, costs, fees and expenses).

12.3 Nothing in the Agreement is intended, and nothing herein should be interpreted or construed, to induce or require either Party to act in any manner (including failing to take any actions in connection with the Agreement) which is inconsistent with, penalized or prohibited under any laws, regulations, decrees, ordinance, order, demand, request, rules or requirements of the United States applicable to such Party which relate to international boycotts of any type, including but not limited to the antiboycott laws and regulations of the United States as applicable.

Section 13. ANTI-CORRUPTION

13.1 The Buyer and the Seller each agree and undertake to the other that in connection with the Agreement, they will each comply with all applicable laws, rules, regulations, decrees and/or official government orders of the United States of America, United Kingdom, European Union and Colombia relating to anti-bribery, anti-corruption, anti-money laundering and anti-terrorism, including without limitation, to the extent applicable, the U.S. Foreign Corrupt Practices Act, the U.K. Bribery Act 2010, the U.K. Anti-Terrorism, Crime and Security Act 2001, the Money Laundering Regulation 2007 and the Proceeds of Crime Act 2002 and the applicable country legislation implementing the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

13.2 Each Party represents, warrants and undertakes to the other that they shall not, directly or indirectly:

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

- (a) a government official or an officer or employee of a government or any department, agency or instrumentality of any government;
- (b) an officer or employee of a public international organization;
- (c) any person acting in an official capacity for or on behalf of any government or department, agency, or instrumentality of such government or of any public international organization;
- (d) any political party or official thereof, or any candidate for political office;
- (e) any other person, individual or entity at the suggestion, request or direction or for the benefit of any of the above-described persons and entities, or

13.2.2 engage in other acts or transactions, in each case if such acts or transactions are or would be in violation of, or inconsistent with, the applicable anti-bribery, anti-corruption, anti-money laundering or anti-terrorism legislation of any government, including without limitation the legislation referred to in Section 13.1.



- 13.3 In particular, the Seller represents and warrants to the Buyer that it has not made any payments or given anything of value to officials, officers or employees of the government of the country in which the Product originated or any agency, department or instrumentality of such government in connection with the crude oil which is the subject of the Agreement which would be inconsistent with or contravene any of the legislation referred to in Section 13.1.
- 13.4 Either Party may terminate the Agreement immediately upon written notice to the other Party at any time, if in its reasonable judgment, supported by credible evidence, the other Party is in breach of any of the above representations, warranties or undertakings of this Section 13.

Section 14. BUSINESS ETHICS

- 14.1 Each Party represents, warrants and undertakes to the other that they shall not, directly or indirectly:
- 14.1.1 be involved in any unlawful or irregular circumstances that restrict the entry into and/or performance of the Agreement;
 - 14.1.2 have any conflict of interest with respect to entry into and/or performance of the Agreement;
 - 14.1.3 have been involved in any form of agreement or understanding with competitors to fix prices, rig bids, allocate customers and/or restrict supply;
 - 14.1.4 have received or provided payments, salaries, commissions or fees, from or to the employees or officers of the other Party;
 - 14.1.5 have accepted or provided gifts, favors, services or goods to, or entered into business arrangements with, employees or officers of the other Party; and/or
 - 14.1.6 have accepted or provided confidential information from or to the employees or officers of the other Party, unless such employees or officers were acting as representatives of the other Party.
- 14.2 Each Party represents, warrants and undertakes to:
- 14.2.1 apply business ethics and transparency principles which include international standards for the control of fraud, corruption, money laundering, financing of terrorism, bribery and conflict of interest; and
 - 14.2.2 maintain an internal compliance and control system which seeks to guarantee ethical behavior.
- 14.3 Without prejudice to the above, each Party undertakes to comply with the Seller's Code of Ethics, Anti-fraud and Corruption Manual, and all of the Seller's policies and procedures, as well as Applicable Law, relating to transparency, conflict of interest and compliance that are in effect at the time the Buyer's bid is submitted and the Agreement is entered into. All of abovementioned documentation of the Seller is available on the Seller's website.



- 14.4 Either Party may terminate the Agreement immediately upon written notice to the other Party at any time, if in its reasonable judgment, supported by credible evidence, the other Party is in breach of any of the above representations, warranties or undertakings of this Section 14.
- 14.5 Any breach of a representation, warranty, undertaking or obligation under Section 12, Section 13 or Section 14 shall be deemed a material breach of the Agreement. Each Party agrees to indemnify and hold harmless the other for any fines, penalties, claims, losses, direct damages, expenses, and liabilities (including legal fees) that may arise as a result of the indemnifying Party's breach of its representations, warranties, undertakings or obligations under those Sections. Such indemnity obligation shall survive termination or expiration of the Agreement.

Section 15. LIMITATION OF LIABILITY AND/OR REMEDIES

- 15.1 Except as specifically provided for in Sections 41.4.3 and 41.6, neither the Seller nor the Buyer shall be liable for specific performance, for lost profits or other business interruption damages, or for special, consequential, incidental, punitive, exemplary or indirect damages, in tort, contract or otherwise, of any kind, arising out of or in any way connected with the performance, the suspension of performance, the failure to perform, or the termination of the Agreement including (without limitation) loss of anticipated profits or revenues, increased expense of operation of any equipment, impairment of cargo, plant shut-down or reduced production, loss of power generation, blackouts or electrical shutdown or reduction, downtime costs, claims of the Buyer's customers, or loss of goodwill, use, market reputation, business receipts, contracts or commercial opportunities, whether or not foreseeable.
- 15.2 In addition to the foregoing, in respect of any claim relating to the Seller's failure to supply the agreed quantity or with respect to any deficiency in quantity or variation in quality, the Seller shall not be liable for more than the difference between the prevailing market price and the contract price of the Product to be delivered under the Agreement.
- 15.3 Without derogating from the specific time limits set out at Sections 32.2 (submission of Demurrage claims) and 3.3 (complaint of deficiency of quantity or variation of grade) and any other provisions requiring compliance within a given period, all of which shall remain in full force and effect, any claim arising under the Agreement and any dispute under Section 19 (arbitration) shall be commenced within one year of the date on which the relevant Cargo was delivered or, in the case of a total loss, of the date upon which the Cargo should have been delivered, failing which the claim shall be time barred and any liability or alleged liability of the other Party shall be extinguished.
- 15.4 The provisions of this Section 15 shall continue to apply notwithstanding the termination or expiry of the Agreement for any reason whatsoever.

Section 16. ASSIGNMENT

- 16.1 Neither Party may assign its rights and obligations under the Agreement, in whole or in part, without the prior written consent of the other Party (which shall not be unreasonably withheld or delayed), provided, however, that the Seller shall be free to assign its rights and obligations under the Agreement to any of its Affiliates



without such consent. Any purported assignment not made in accordance with the terms of this Section 16 shall be null and void.

- 16.2 Notwithstanding Section 16.1, the Seller may without the Buyer's consent assign all or a portion of its rights to receive and obtain payment under the Agreement in connection with any finance, securitization or bank funding arrangement. Any payment made by the Buyer to the payee specified in the Seller's invoice in respect of Cargoes deliverable under the Agreement shall be in full discharge of the Buyer's payment obligations to the Seller under the Agreement. Any such assignment shall not affect the Seller's obligations under the Agreement.

Section 17. NOTICE

- 17.1 Except as otherwise provided in the Agreement, all notices, statements and any other communications to be given under the Agreement by one Party to the other shall be deemed to have been sufficiently given if delivered by hand or sent by registered post, courier or e-mail to the address of the other Party specified for this purpose in the Special Provisions and shall, unless otherwise provided in the Agreement, be deemed to have been received as follows:
- 17.1.1 in the case of a communication delivered by hand or sent by registered post or courier, if received on a Working Day before 17:00 hours (local time at the place of the recipient), then on that day; in any other case, on the Working Day after the date it was received; and
 - 17.1.2 in the case of a communication sent by e-mail, if sent on a Working Day before 17:00 hours (local time at the place of the recipient), then on that day; in any other case, on the Working Day after the date it was sent.
- 17.2 Any change of address shall be notified immediately to the other Party by a notice given in accordance with this Section 17
- 17.3 Notices of assignment, termination and legal or arbitration proceedings shall not be given by e-mail.
- 17.4 Notices shall not be given by instant messaging.

Section 18. GOVERNING LAW

- 18.1 The Agreement and the rights and obligations of the Parties under the Agreement shall be governed by, construed and interpreted in accordance with the laws of the State of New York, without reference to any conflicts of laws rules (whether of the State of New York or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the State of New York (other than New York General Obligations Law sections 5-1401 and 5-1402).
- 18.2 The United Nations Convention on Contracts for the International Sale of Goods of Vienna, 11th April 1980, shall not apply to the Agreement.



Section 19. ARBITRATION

- 19.1 This arbitration agreement and any arbitration hereunder shall be governed by the United States Federal Arbitration Act to the exclusion of state law inconsistent therewith.
- 19.2 Any dispute, controversy or claim arising out of or in connection with the Agreement or its subject matter, existence, negotiation, interpretation, validity, termination or enforceability (including any non-contractual dispute or claim) (a "Dispute") shall be referred to arbitration and finally settled under the Rules of Arbitration of the International Chamber of Commerce (the "ICC Rules").
- 19.3 The number of arbitrators shall be three.
- 19.4 The two arbitrators nominated by the Parties shall, within 15 days of the appointment of the second arbitrator, jointly nominate a third arbitrator who, subject to confirmation by the ICC Court, shall act as President of the arbitral tribunal. In agreeing upon the third arbitrator, the two arbitrators may communicate directly with each other and with their respective nominating parties without sending a copy to the Secretariat.
- 19.5 The seat of arbitration shall be New York, New York.
- 19.6 The language of the arbitration shall be English.
- 19.7 The costs of the arbitration, including the costs of legal representation, shall be allocated and paid by the Parties as determined by the arbitrators.
- 19.8 The arbitrators are not empowered to award punitive or exemplary damages, and each Party hereby waives any right to seek or recover punitive or exemplary damages with respect to any dispute resolved by arbitration.
- 19.9 All decisions of the arbitral tribunal shall be final and binding on the Parties and may be entered against them in a court of competent jurisdiction.

Section 20. MISCELLANEOUS

20.1 Severability

If any provision of the Agreement is declared to be illegal, invalid or otherwise unenforceable in any jurisdiction by a court or tribunal of competent jurisdiction then, to the fullest extent permitted by Applicable Law: (a) the other provisions of the Agreement shall remain in full force and effect in such jurisdiction; (b) such illegality, invalidity or unenforceability shall not affect the validity or enforceability of such provision in any other jurisdiction; and (c) the Parties shall negotiate in good faith to substitute therefor a provision in accordance with the spirit and purpose of the Agreement.

20.2 Survivability

If for any reason the Agreement shall be terminated then such termination shall be without prejudice to any rights, obligations or liabilities of either Party which have accrued at the date of termination but have not been performed or discharged, and any parts of the Agreement having any relevance thereto or any



bearing thereon shall, notwithstanding the termination of the Agreement for any reason, continue in full force and effect.

20.3 Consents

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

20.4 Conflict

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

20.5 Modification

The Seller is entitled, by written notice to the Buyer, to amend or modify these General Conditions in order to incorporate changes related to international or government regulations, new procedures adopted by the Terminal Operator, or any other event that may affect the performance of the Agreement. Any such amendment or modification shall take effect immediately upon the sending by the Seller of such written notice, whereupon the Agreement shall automatically be amended accordingly, without the need for any further action.

Except as otherwise expressly provided in this Section 20.5, the provisions of the Agreement shall not be amended or modified unless mutually agreed by the Parties, which agreement must be evidenced by an instrument in writing signed by the Parties.

20.6 Waiver

20.6.1 Unless explicitly set forth in writing and signed by the Party so waiving, no failure of either Party to exercise and no delay in exercising, and no course of dealing with respect to, any right, power or privilege under the Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege under the Agreement preclude any other or further exercise thereof or the exercise of any other right, power or privilege under the Agreement.

20.6.2 No waiver by either Party shall operate or be construed as a waiver in respect of any failure, breach, or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver.

20.7 Cumulative Remedies

The remedies provided in the Agreement are cumulative and are in addition to, and not in substitution for or exclusive of, any remedies provided by law.



20.8 Recording, Retention and Monitoring of Communications

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

20.8.1 record and retain electronic transmissions (including telephone conversations, e-mail and instant messaging between the Parties' respective representatives in connection with the Agreement or other commercial matters between the Parties) for their respective legitimate purposes; and

20.8.2 monitor electronic transmissions through their internal and external networks for purposes of security and compliance with Applicable Law and internal policies for their other legitimate business purposes.

20.9 eDocs

Where it is specified in the Special Provisions that any document issued pursuant to, or in connection with, the Agreement may be issued, signed and transmitted electronically (each, an "eDoc") then it is hereby expressly agreed that any applicable requirement of law, contract, custom or practice that any transaction, document or communication shall be made or evidenced in writing, signed or sealed shall be satisfied by an eDoc and the Parties agree not to contend in any dispute arising out of or in connection with any eDoc or any eDoc which is converted to paper that it is not in writing or that it is not equivalent to an original paper document signed by hand, or, as the case may be, sealed.

20.10 Entire Agreement

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

20.11 Confidentiality

20.11.1 If it is specified in the Special Provisions that the Agreement shall be held confidential, then details of the Agreement shall not be disclosed by either Party to any third party without the previous consent in writing of the other Party.

20.11.2 Notwithstanding the provisions of Section 20.11.1, a Party (the "Disclosing Party") may disclose details of the Agreement without the other Party's prior written consent if:

- (a) such disclosure is required by law or by any securities exchange or regulatory or governmental body or fiscal authority having jurisdiction over it, wherever situated; or
- (b) the confidential information is or was already in the public domain other than through the fault or action of the Disclosing Party; or
- (c) such disclosure is to an Affiliate, legal advisor, agent, financing bank, insurance company/broker or in connection with any dispute, legal or arbitration proceedings, and the Disclosing Party shall



cause all parties in receipt of such information to be bound by the same obligations of confidentiality as contained in the Agreement.

20.12 Warranties

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

20.13 Third Party Rights

Unless otherwise expressly specified in the Special Provisions, no term of the Agreement is intended to, or does, confer a benefit or remedy on any third party.

20.14 Trademarks

Nothing in the Agreement whether express or implied shall be deemed to confer any right upon either Party to apply any trade mark owned by the other Party or any of its Affiliates to any Product supplied under the Agreement nor to use such trade marks in relation to such Product.

20.15 Sovereign Immunity

Each Party warrants that it has entered into the Agreement in a commercial capacity and that with respect to the Agreement it is subject to civil and commercial law. Each Party hereby irrevocably and unconditionally and to the fullest extent permitted by Applicable Law waives any rights of sovereign immunity which it may have now or which it may subsequently acquire.

20.16 Further Assurances

Each of the Parties hereto shall, and shall cause their respective Affiliates to, execute and deliver such additional documents, instruments, conveyances, and assurances and take such further actions as may be reasonably required to carry out the provisions of the Agreement, and give effect to the transactions contemplated by the Agreement.

20.17 Successors and Assigns

The Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective permitted successors and permitted assigns.

20.18 Joint and Several Obligations

If a Party is made up of more than one person, all obligations of that Party under the Agreement shall be joint and several as between those persons.



PART II - FOR FOB DELIVERIES

Section 21. DELIVERY

Subject to the provisions of the Agreement, the Cargo shall be delivered by the Seller to the Buyer in bulk FOB at the Loading Terminal.

Section 22. QUANTITY AND QUALITY MEASUREMENT

22.1 The quantity and quality of the Product delivered under the Agreement shall be determined by measurement, sampling and testing carried out by the Seller at the Loading Terminal in accordance with Approved Industry Practice. The Parties shall jointly appoint an Independent Inspector to verify the quantity and quality of the Product delivered by the Seller at the Loading Terminal. The cost of the Independent Inspector's services shall be borne equally between the Buyer and the Seller. The Independent Inspector shall be instructed to report its results to both Parties.

22.2 Subject to Section 22.1, the quantity of Product delivered under the Agreement shall be measured using dynamic measurement at the Loading Terminal, certified by the Independent Inspector. If for any reason dynamic measurement is not available, static shore tank measurements shall apply. If dynamic measurement is not available at the Loading Terminal, any shore tank from which delivery is made is otherwise active during loading, or the difference between the shore and vessel delivered quantities with the Nominated Vessel's valid VEF applied is greater than zero point five percent (0.5%), the Nominated Vessel's receiving figures with the Nominated Vessel's valid VEF applied shall be used as the official delivered quantity.

If the Cargo in question is Crude Oil, the quantity shall be adjusted through temperature corrections to an equivalent volume at 60 degrees Fahrenheit, in accordance with Tables 5A and 6A of ASTM D1250-08(2013)e1, Standard Guide for Use of the Petroleum Measurement Tables, of the American Society for Testing and Materials International, as the same may be amended or updated from time to time. In the determination of the quantity of Crude Oil, full deduction of sediment and water shall be made. If the Product in question is a Refined Product, the quantity shall be adjusted in accordance with the ASTM standards applicable to such Refined Product, unless otherwise provided in the Special Provisions.

22.3 Subject to Section 22.1, the Independent Inspector shall for the purpose of determining the quality of the Product carry out or witness tests on a composite sample of the Product taken by the Independent Inspector or in his presence from the shore tanks at the Loading Terminal immediately prior to commencement of loading and in accordance with the test method(s) referred to in the specification of the Product set out in the Special Provisions, or, where no test method is set out, in accordance with the most current API and ASTM measurement standards at the time of delivery.

22.4 The Independent Inspector shall issue the certificates of quantity and quality for each Cargo in accordance with the provisions of the Agreement. In the absence of fraud or manifest error, the abovementioned certificates shall be binding and conclusive between the Seller and the Buyer for all purposes. They shall also



constitute the basis for preparing the bill of lading and invoice for the Cargo without prejudice of the rights of either Party to pursue a claim in the case of fraud or manifest error.

Section 23. TITLE AND RISK

- 23.1 Title and risk with respect to the Product to be delivered under the Agreement shall pass from the Seller to the Buyer when the Product passes the Nominated Vessel's permanent hose connection at the Loading Terminal.
- 23.2 The Seller shall have no responsibility whatsoever for any loss, damage, deterioration or evaporation of the Product, or any damage caused or alleged to be caused thereby, after title and risk with respect to the Product have passed to the Buyer in accordance with this Section 23.
- 23.3 All liability for loss or damage to the Product, property, personal injury, or any environmental damage or contamination, before, during or after the loading, caused by the Nominated Vessel or its crew shall be for the account of the Buyer.

Section 24. LOADING PERIOD

- 24.1 The Loading Period shall be the day or range of days in which the Nominated Vessel must tender a valid NOR at the Loading Terminal pursuant to Section 28. The Loading Period shall be either:
 - 24.1.1 as specified in the Special Provisions;
 - 24.1.2 established in accordance with the procedure(s) specified in the Special Provisions; or
 - 24.1.3 where such Loading Period cannot be ascertained by reference to Section 24.1.1 or 24.1.2, as notified by the Seller to the Buyer.
- 24.2 The Loading Period established in accordance with Sections 24.1.2 and 24.1.3 shall, unless otherwise specifically agreed between the Parties, fall entirely within any Delivery Period specified in the Special Provisions.
- 24.3 If the Agreement provides for more than one Cargo, deliveries shall be distributed evenly throughout the term of the Agreement, unless otherwise provided in the Special Provisions.
- 24.4 If, during any period of time for which the Buyer is obliged to lift a given quantity of Product, the Buyer lifts a quantity less than the quantity nominated for such period; the Seller, in addition to the other remedies available to it under the Agreement, shall not be obliged to supply such shortfall during any subsequent period.

Section 25. NOMINATION OF VESSELS

- 25.1 Unless otherwise provided in the Special Provisions, delivery under the Agreement shall be given and taken in one full cargo lot or a part cargo lot at the Buyer's election, but subject always to the prior agreement of the Seller and the Terminal Operator.
- 25.2 The Buyer shall nominate in writing to the Seller a vessel to take delivery of the relevant Cargo during the relevant Loading Period. Such nomination shall include:



- (a) a completed Intertanko Questionnaire – Q88 in respect of the vessel; (b) confirmation that the vessel can comply with the requirements set out in Annex E and the Port Regulations at all times; and (c) the following information with respect to the vessel:
- 25.2.1 the grade and approximate quantity to be loaded;
 - 25.2.2 the ETA of the vessel at the Loading Terminal;
 - 25.2.3 the vessel's itinerary, including the vessel's current position and all destination(s) of the vessel;
 - 25.2.4 the vessel's on board equipment for pollution control;
 - 25.2.5 the vessel's maximum topping off loading rate;
 - 25.2.6 the maritime agent in Colombia;
 - 25.2.7 details of any cargo on board or to be laden on board if loading a part cargo; and
 - 25.2.8 any other information as may be requested by the Terminal Operator and/or pursuant to the Seller's vetting procedures from time to time.
- 25.3 The nomination under Section 25.2 shall not be effective unless it is received by the Seller no later than eight (8) days prior to the first day of the relevant Loading Period. Notwithstanding the foregoing, if the nomination is received by the Seller after the above deadline and is accepted by the Seller, it shall be effective but the Buyer shall be liable for all costs resulting from any delays in loading the Product under the Agreement that are due directly to the failure by the Buyer to nominate in a timely manner and any such delays shall not count as used Laytime or if the Nominated Vessel is on Demurrage, as Demurrage. If the Agreement is entered into eight (8) days or less prior to the first day of the Loading Period then the nomination must be received, by the Seller, within twenty-four (24) hours after entering into the Agreement and in any event prior to the first day of the Loading Period.
- 25.4 In respect of any Nominated Vessel, the Buyer may, or if necessary to perform its obligations under the Agreement must, substitute therefor another vessel provided always that:
- 25.4.1 the size and all other material attributes of the substitute vessel and the quantity to be loaded shall not, without the prior written consent of the Seller, differ materially from the size and all other material attributes of the original Nominated Vessel and the quantity specified in the nomination;
 - 25.4.2 the Laydays which would have applied in respect of the original Nominated Vessel shall apply to the substitute vessel; and
 - 25.4.3 the Buyer shall give to the Seller notice in writing of the name and the destination(s) of the substitute vessel as soon as practicable but in any event not less than two (2) clear days before the ETA of the substitute vessel or the ETA of the original Nominated Vessel, whichever is the earlier. Additionally, any substitute vessel shall be



subject to all requirements and approvals (including vetting procedures) consistent with the original nomination and any costs associated with such requirements and approvals shall be for the Buyer's account.

- 25.5 The Buyer or its representative shall notify the Seller or its representative of any change(s) in the ETA notified pursuant to Section 25.2.2, but the Loading Period shall be revised only with the Seller's specific written agreement in its sole discretion.
- 25.6 Each vessel nominated will be considered on an individual basis for the specifically contemplated loading activity and, should the Seller accept the vessel, such acceptance shall only be valid for the specified loading activity.
- 25.7 The Seller shall provide written acceptance or rejection of the vessel nominated by the Buyer. If and when accepted by the Seller, the vessel nominated by the Buyer shall be considered a Nominated Vessel for all purposes herein. Any acceptance of a Nominated Vessel by the Seller pursuant to this Section 25 shall be understood to be valid only for the applicable Loading Period.
- 25.8 Notwithstanding anything to the contrary express or implied elsewhere in the Agreement, the Seller shall have the right:
 - 25.8.1 to reject any nomination made by the Buyer pursuant to Section 25.2 or 25.4 on any reasonable ground; and/or
 - 25.8.2 to refuse, on any reasonable ground, to accept for loading any vessel named pursuant to Section 25.2 or 25.4; and/or
 - 25.8.3 to reject the vessel in question, notwithstanding any prior acceptance of such vessel (whether named in the Special Provisions or nominated pursuant to Section 25.2 or 25.4), on any reasonable ground if such vessel is involved in any incident or more recent information regarding such vessel becomes available to the Seller which indicates that the information relied upon by the Seller in previously accepting the vessel was materially incorrect or incomplete.
- 25.9 Without derogating from any other reasonable ground that may be available to the Seller, it shall be a reasonable ground for the Seller to reject or refuse a vessel pursuant to this Section 25 if: (i) the vessel either at the time of nomination or subsequently at any time up to the time of commencement of loading is not approved, or is determined to be unacceptable, by any internal ship vetting system operated by the Seller, the Seller's Affiliate or the Seller's supplier as applicable; and/or (ii) if the Seller or the Seller's supplier considers that the vessel does not meet the requirements set out in Annex E and/or the Port Regulations.
- 25.10 The Buyer is hereby advised that the Terminal Operator may suspend or delay loading or order removal of an anchored or a fast vessel, when, in the reasonable opinion of the Terminal Operator, such vessel does not meet the operational and safety standards of the Loading Terminal. In any such event, the Seller shall be released from any liability, damages and/or losses of any nature incurred by the Buyer.



- 25.11 The Seller shall not be liable for the consequences of any rejection or delay (including but not limited to Demurrage) of the vessel or other restriction suffered in respect of the vessel by virtue of the application of the Port Regulations or other requirements of this Section 25, and the Buyer shall be liable for any costs, damages and/or losses incurred by the Seller arising out of any such rejection of, delay to, or restriction of, the vessel.
- 25.12 Any dead freight incurred due to the nomination by the Buyer of a vessel with dimensions larger than those required to transport the relevant Cargo shall be paid by the Buyer, notwithstanding the vessel's nomination is accepted by the Seller.
- 25.13 The Buyer shall provide the Seller, upon the Seller's request, with copies of all certificates and insurance policies held with respect to the vessel being nominated.

Section 26. DOCUMENTATION INSTRUCTIONS

The Buyer shall be responsible for submitting full documentation instructions at least five (5) Business Days prior to the first day of Loading Period. Any failure to comply with this obligation shall release the Seller from any liability that might arise in respect of Demurrage. The documentation instructions from the Buyer shall give instructions to the Seller regarding the documents that the Buyer requires for the preparation and arrangement of the bill of lading or other documents which the Seller or the Terminal Operator are to issue with regard to the sale of the Product. The Buyer is hereby advised that the Seller or the Terminal Operator shall not issue shipping documents to any person other than the Buyer.

Section 27. ARRIVAL OF THE VESSEL

- 27.1 The Buyer shall arrange for its Nominated Vessel to notify the Seller and the Terminal Operator, in writing, of the ETA of the Nominated Vessel. Such notification shall occur when the Nominated Vessel is seventy-two (72), forty-eight (48), twenty-four (24) and twelve (12) hours from its anticipated arrival at the Loading Terminal and otherwise in accordance with the standard reporting procedure applicable from time to time at the Loading Terminal.
- 27.2 If the Nominated Vessel fails, for any reason, to give at least twenty-four (24) hours prior notice of arrival at the Loading Terminal, the time allowed to the Seller for loading pursuant to Section 30 shall be extended by a period equal to the delay in giving such twenty-four (24) hours' notice, but in any case not exceeding an additional twenty-four (24) hours.
- 27.3 By no later than 24:00 hours (local time) on the last day of the Loading Period the Nominated Vessel must have arrived at the Loading Terminal and tendered a valid NOR. Unless otherwise agreed in writing by the Seller, if the Nominated Vessel tenders a valid NOR prior to the first day of the Loading Period, the Seller shall not be under any obligation to commence loading prior to 06:00 hours (local time) on the first day of the Loading Period.
- 27.4 The Seller shall not be responsible for Demurrage, dead freight charges or any other costs attributable directly to the failure of the Buyer or the Nominated Vessel's master to notify the Seller and/or the Terminal Operator of the ETA.



Section 28. NOTICE OF READINESS

- 28.1 The Buyer shall cause the Nominated Vessel to provide NOR to the Terminal Operator when the following requirements have been completely fulfilled:
- 28.1.1 the Nominated Vessel is anchored at the customary anchorage or, in the event there is no place to anchor, has arrived at the waiting place designated by the Terminal Operator and is fully ready to receive the Cargo;
 - 28.1.2 all immigration procedures have been fully completed and satisfied;
 - 28.1.3 all necessary clearances have been received from the Colombian customs authorities and/or the relevant port authorities; and
 - 28.1.4 the Nominated Vessel is ready to load in all other respects.
- 28.2 If the requirements in Section 28.1 are not completely fulfilled, any NOR shall be considered invalid, and the Nominated Vessel must re-tender NOR when the requirements are completely fulfilled.
- 28.3 Notwithstanding the provisions of Section 28.1, the NOR can be communicated before the conditions specified in Sections 28.1.2 and 28.1.3 have been fulfilled, if, according to customary practice at the Loading Terminal, such conditions can only be fulfilled once the Nominated Vessel anchors at the designated place, as determined by the relevant Governmental Authority.
- 28.4 The NOR can be communicated by e-mail, PDF file, radio or telephone, and any other legally accepted electronic communication, provided, however, that if communicated by radio or telephone, it shall be confirmed immediately thereafter in written form.

Section 29. SHIP MOORING CONDITIONS

- 29.1 The Buyer shall cause the Nominated Vessel to observe and comply with all applicable Port Regulations from the time of its arrival at the Loading Terminal, throughout loading and until its departure therefrom.
- 29.2 The Buyer acknowledges that it is fully familiar with the characteristics of the Loading Terminal, and all applicable Port Regulations, including, without limitation, those Port Regulations related to ship mooring conditions, ship loading conditions, stay periods, delays, quantity and quality measurement procedures, and tank storage and delivery.
- 29.3 The Buyer shall instruct the master of the Nominated Vessel to cooperate with the Terminal Operator as necessary to carry out the mooring and loading operations. The master of the Nominated Vessel shall be responsible for the crew's performance during the Nominated Vessel's mooring operations.
- 29.4 The Buyer shall ensure that the master of the Nominated Vessel complies with the loading instructions issued by the Terminal Operator. The operations, including mooring, departure, loading, and other contingencies, shall be performed in compliance with:



- 29.4.1 the International Safety Guide for Oil Tankers and Terminals (ISGOTT) as current from time to time;
- 29.4.2 the ICS/OCIMF Ship-to-Ship Transfer Guides as current from time to time; and
- 29.4.3 the Port Regulations.

The foregoing documents are hereby fully incorporated by reference into the Agreement. The Nominated Vessel must have all the equipment and facilities required to carry out the loading at the Loading Terminal, in accordance Sections 29.4.1, 29.4.2 and 29.4.3.

- 29.5 The Seller shall have the right to shift the Nominated Vessel from one Berth to another. All costs, including but not limited to damages for delay, shall be for the Seller's account if such shifting is for the Seller's purposes, and otherwise shall be for the Buyer's account.
- 29.6 The Seller shall have the option to load the Nominated Vessel from lighters, in which case the cost of such lighterage (together with any additional expense reasonably incurred by the Nominated Vessel in respect thereof) shall be for the Seller's account. The Seller shall be obliged to notify the place of lightering to the Nominated Vessel when NOR is tendered.
- 29.7 The Buyer shall cause the Nominated Vessel to vacate the Berth as soon as loading operations have been completed and the loading hoses have been disconnected. The Buyer acknowledges that if the Nominated Vessel does not vacate the Berth within a reasonable time, the Terminal Operator may give instructions for an immediate departure from the Berth. Further, if the Nominated Vessel does not comply with such instructions, the Terminal Operator may, without prejudice to any other right to which it may be entitled, take action pursuant to the Port Regulations. The Buyer shall compensate the Seller for any loss or damage suffered by the Seller or the Seller's supplier as a result of the Nominated Vessel's failure to vacate the Berth in accordance with the foregoing provisions (including the costs of any Demurrage, costs resulting from delays in the docking of others vessels awaiting their loading turns, or third party claims).
- 29.8 The Buyer shall bear the cost of any charge, tax, expense or other amount required to be paid to the applicable authorities or to third parties, in connection with the loading of the Nominated Vessel or with the arrival or stay of the Nominated Vessel at the Loading Terminal or its departure therefrom, including, without limitation, those incurred on account of mooring site changes based upon the Terminal Operator's request or instruction.
- 29.9 The Buyer shall ensure that the Nominated Vessel is seaworthy and it and its crew are in all respects fit for loading, stowage, carriage and discharge of the Cargo. During the performance of the Agreement, the Buyer shall also ensure that the owner of the Nominated Vessel and the Nominated Vessel are and shall remain fully in compliance with all international regulations regarding loading, stowage, carriage and discharge of oil or oil products, including but not limited to MARPOL.
- 29.10 The Seller shall not be responsible for any loss or damage incurred by the Buyer in the event the draft or Deadweight of the Nominated Vessel exceeds the limits established by the Port Regulations.



- 29.11 Where the Loading Terminal is in Colombia, the Buyer must obtain from DIMAR, through the Buyer's shipping agent in Colombia, approval for the Nominated Vessel to enter the port where the Loading Terminal is located and to anchor, at least twenty-four (24) hours before the Nominated Vessel's arrival.
- 29.12 All currently existing and future standards, procedures, rules and regulations regarding the operation of the Loading Terminal, issued by any applicable Governmental Authorities or by the Terminal Operator, shall apply to the Nominated Vessel. Such standards, procedures, rules and regulations include, but are not limited to, those with regard to fire and marine contamination, pollution prevention and control, and ballasting and de-ballasting.
- 29.13 The Buyer hereby agrees to indemnify, defend and hold harmless the Seller against any and all claims, demands, losses, costs, expenses, obligations, liabilities, actions, suits, damages and proceedings of whatsoever kind or nature, including, without prejudice to the generality of the foregoing, those arising in contract or tort or by strict liability, product liability, or otherwise, which are imposed on, incurred by or asserted against the Seller that may result from the non-compliance by the Nominated Vessel with the requirements of this Section 29.

Section 30. LAYTIME

- 30.1 Except as otherwise agreed in the Special Provisions and regardless of the volume of Product loaded, the Seller shall be allowed thirty-six (36) running hours of Laytime within which to load the Nominated Vessel (all days and holidays included unless loading on the day or holiday in question is prohibited by Applicable Law or the Port Regulations at the Loading Terminal).
- 30.2 Except as otherwise agreed in the Special Provisions and provided that the Buyer has complied with Section 27.1, Laytime shall start six (6) hours after the NOR has been tendered in accordance with Section 28, or when the Nominated Vessel is All Fast, whichever occurs first.
- 30.3 If the Nominated Vessel tenders a valid NOR before the first day of the Loading Period, such Laytime shall start at 06:00 hours (local time) on the first day of the Loading Period, or on the commencement of loading, whichever occurs first.
- 30.4 If the Nominated Vessel arrives or tenders NOR after 24:00 hours (local time) on the last day of the Loading Period, the Seller, at its own discretion, shall have the right to load or abstain from loading the Nominated Vessel. In this case, without prejudice to the Seller's other right, Laytime shall start only on the commencement of loading. The Seller shall not be responsible to the Buyer or any third parties for any dead freight charges or Demurrage, or any other damages that may arise as a result of the late arrival of the Nominated Vessel.
- 30.5 Except as otherwise agreed in the Special Provisions, Laytime shall end when the delivery hoses have been disconnected from the Nominated Vessel.

Section 31. ADJUSTMENT OF LAYTIME

- 31.1 Any delay arising out of any of the following circumstances shall not be counted or included in calculating the time taken by the Seller to load the Cargo or the time in respect of which the Seller is liable for Demurrage (whether or not the Nominated Vessel is already on Demurrage):

- 31.1.1 time during which the Nominated Vessel is in internal transit from the place of anchorage or any other waiting place, including time waiting for daylight, for a change of tide, for moderation of weather or sea state, for the arrival of tugboats or the pilot, or from the interval between the time the Nominated Vessel weighs anchor until the Nominated Vessel is All Fast;
- 31.1.2 time spent complying with Applicable Law and Port Regulations (e.g., the waiting time spent on customs paperwork, immigration procedures, and completion of the corresponding documents and certificates); and delays caused by the owner or operator of the Nominated Vessel due to loading prohibitions or restrictions imposed by the relevant port authorities, including nighttime docking;
- 31.1.3 time spent preparing for and handling or shifting of ballast, bilges, slop or other substances; cleaning, inspection and/or maintenance of tanks, pumps, and internal pipes; fuelling or any other activity connected solely to the Nominated Vessel, unless these operations are carried out simultaneously with the loading operations;
- 31.1.4 delay attributable to the immobilization, inefficiency, repairs or other problems attributable to the Nominated Vessel, including operational restrictions that the Nominated Vessel may present for receiving the Cargo;
- 31.1.5 delay attributable to failure by the Nominated Vessel to comply with requirements of the Port Regulations;
- 31.1.6 delay attributable to a fire or explosion occurring on board the Nominated Vessel, or due to any breakdown of the Nominated Vessel's equipment, or failure to comply with the Port Regulations with respect to equipment aboard;
- 31.1.7 delay attributable to labor disputes, strikes, a work slowdown, blockade, work stoppage or abstention from work involving the master, officers, or crew of the Nominated Vessel or of the tugboats or pilots;
- 31.1.8 delay attributable to leakage or spillage of Product or threat of leakage or spillage of Product, or any substance in or from the Nominated Vessel;
- 31.1.9 delay to or suspension of loading ordered by the Seller or by the Terminal Operator due to the existence of an unsafe condition in the Nominated Vessel;
- 31.1.10 delay to or suspension of loading ordered by the Seller because the Buyer has not fully complied with the payment terms under the Agreement;
- 31.1.11 delay caused by the marine agent in applying for DIMAR's approval;
- 31.1.12 delay to or suspension of loading due to bad weather or sea conditions;
- 31.1.13 delay attributable to restrictions imposed by the owner, charterer or master of the Nominated Vessel; or



- 31.1.14 any other delay attributable to the Buyer, the Buyer's agents, or the Nominated Vessel.
- 31.2 All time used for extra sampling and analysis to determine the quality of the Product will be for the account of the Party requesting the extra tests, provided however that, if the Product proves to be off-specification, the Seller shall be liable for all costs, including running Laytime or Demurrage, related to the extra sampling and analysis.
- 31.3 In the event of any delay of any kind or from any cause whatsoever (whether in connection with the scheduling of the Nominated Vessel's turn to load, provision of a Berth for the Nominated Vessel, berthing or loading of the Nominated Vessel or otherwise howsoever without limitation) any rights of the Buyer against the Seller, however the same may arise and whether or not arising under the Agreement, shall be limited to a claim for payment of Demurrage, and the Buyer shall not be entitled to complain directly or indirectly of any delay except for the purposes of founding a claim to such Demurrage.

Section 32. DEMURRAGE

- 32.1 If the Cargo is not loaded within the time allowed in accordance with Section 30.1, the time so allowed shall be extended by the excess time but (subject always to Sections 25.3 and 27.2) the Seller shall pay Demurrage to the Buyer, in the same currency as is prescribed for payment of the Product delivered under the Agreement, in respect of the excess time at the appropriate rate of Demurrage specified in Section 32.2; provided, however, that no Demurrage shall be paid for the time during which the Seller cannot deliver or is delayed in the delivery of, all or part of the Cargo for reasons that fall under the provisions of Section 8, or where such Demurrage is incurred as a result of a fault attributable to the Nominated Vessel, or if the loading is suspended under the provisions of Section 9.2.2, or if the loading is suspended at the request of the Nominated Vessel.
- 32.2 The appropriate rate of Demurrage shall be the rate stipulated in the Charter Party, provided that in the opinion of the Seller such rate is within the market levels for similar vessels and cargo. If there is no demurrage rate stipulated in the Charter Party, or if the demurrage rate stipulated in the Charter Party is considered by the Seller to be above market levels for the date the Nominated Vessel was nominated, the appropriate rate of Demurrage shall be equal to the demurrage assessment of a member of ASBA utilizing the nominated quantity, route taken and the date the Nominated Vessel was nominated. The Buyer shall procure any such assessment and shall be responsible for all costs and expenses associated therewith. Any claim brought under this Section 32 shall be in writing, with notice provided to the Seller by the Buyer within twenty eight (28) days after the date of disconnection of loading hoses, and full documentation provided to the Seller by the Buyer within eighty (80) days after the date of disconnection of the loading hoses. Such documents shall include but are not limited to:
 - 32.2.1 the Notice of Readiness;
 - 32.2.2 a statement of facts;
 - 32.2.3 a copy of the Charter Party or fixture recap for spot chartered vessels;



- 32.2.4 the invoice presented to the vessel party for demurrage incurred or invoice presented by the lightering company supporting overtime incurred;
 - 32.2.5 the bill of lading or Independent Inspector reports to substantiate proportions; and
 - 32.2.6 any other documents reasonably requested by the Seller.
- 32.3 If the Buyer fails to give such notice or provide such documentation within the above respective time limits, then the Buyer's claim shall be deemed to have been waived and any liability of the Seller for Demurrage shall be extinguished.
- 32.4 Except as otherwise agreed in the Special Provisions, if the delivery under the Agreement is co-loaded with product being delivered to the Buyer by another supplier at the same Berth, the Seller shall only be liable for that proportion of the demurrage equal to the ratio of the volume delivered by the Seller to the total volume loaded onto the Nominated Vessel at that Berth.
- 32.5 The Buyer shall not be entitled to recover Demurrage from the Seller except to the extent that the Seller is able to recover and does recover such Demurrage from the Seller's supplier and/or the Terminal Operator, and the Seller shall not be obliged to pay any amounts in excess thereof. The Seller may only rely on this Section 32.5 if, and to the extent, that: (a) the Seller's acquisition terms with the Seller's supplier include laytime and demurrage provisions so as to allow the recovery of demurrage on terms that are no worse than the Loading Terminal's usual terms; and (b) the Seller has exercised reasonable endeavors to recover from the Seller's supplier any demurrage for which the Buyer has presented a claim.
- 32.6 Further, in no event shall the Seller be required to reimburse the Buyer for any Demurrage payment higher than the actual amount of demurrage paid by the Buyer to its Nominated Vessel's owner/operator.



PART III - FOR DAP DELIVERIES

Section 33. DELIVERY

Subject to the provisions of the Agreement, the Cargo shall be delivered by the Seller to the Buyer in bulk DAP at the Discharge Terminal.

Section 34. QUANTITY AND QUALITY MEASUREMENT

34.1 The quantity and quality of the Product delivered under the Agreement shall be determined by measurement, sampling and testing carried out at the Discharge Terminal in accordance with Approved Industry Practice, by an Independent Inspector jointly appointed by the Buyer and the Seller. The cost of the Independent Inspector's services shall be borne equally between the Buyer and the Seller. The Independent Inspector shall be instructed to report its results to both Parties. The Buyer shall ensure that the Independent Inspector shall have full access to the facilities at the Discharge Terminal necessary to enable the Independent Inspector to perform its duties.

34.2 Subject to Section 34.1, the quantity of Product delivered under the Agreement shall be measured using dynamic measurement at the Discharge Terminal, certified by the Independent Inspector. If for any reason dynamic measurement is not available, static shore tank measurements shall apply. If dynamic measurement is not available at Discharge Terminal, any receiving shore tank is active during discharge, or the difference between the shore and vessel delivered quantities with the Nominated Vessel's valid VEF applied is greater than zero point three percent (0.3%), the Nominated Vessel's discharge figures with the Nominated Vessel's valid VEF applied shall be used as the official delivered quantity.

If the Cargo in question is Crude Oil, the quantity shall be adjusted through temperature corrections to an equivalent volume at 60 degrees Fahrenheit, in accordance with Tables 5A and 6A of ASTM D1250-08(2013)e1, Standard Guide for Use of the Petroleum Measurement Tables, of the American Society for Testing and Materials International, as the same may be amended or updated from time to time. In the determination of the quantity of Crude Oil, full deduction of sediment and water shall be made. If the Product in question is a Refined Product, the quantity shall be adjusted in accordance with the ASTM standards applicable to such Refined Product, unless otherwise provided in the Special Provisions.

34.3 Subject to Section 34.1, the Independent Inspector shall for the purpose of determining the quality of the Product carry out or witness tests on a composite sample of the Product taken by the Independent Inspector or in his presence from the Nominated Vessel's tanks at the Discharge Terminal immediately prior to commencement of discharge and in accordance with the test method(s) referred to in the specification of the Product set out in the Special Provisions, or, where no test method is set out, in accordance with the most current API and ASTM measurement standards at the time of delivery.

34.4 The Independent Inspector shall issue the certificates of quantity and quality for each Cargo in accordance with the provisions of the Agreement. In the absence



of fraud or manifest error, the abovementioned certificates shall be binding and conclusive between the Seller and the Buyer for all purposes. They shall also constitute the basis for preparing the invoice for the Cargo without prejudice of the rights of either Party to pursue a claim in the case of fraud or manifest error.

Section 35. TITLE AND RISK

- 35.1 Title and risk with respect to the Product to be delivered under the Agreement shall pass from the Seller to the Buyer when the Product passes the Nominated Vessel's permanent hose connection at the Discharge Terminal.
- 35.2 The Seller shall have no responsibility whatsoever for any loss, damage, deterioration or evaporation of the Product, or any damage caused or alleged to be caused thereby, after title and risk with respect to the Product have passed to the Buyer in accordance with this Section 35.

Section 36. INDICATIVE ARRIVAL DATE RANGE

Where an "Arrival Date Range" is specified in the Special Provisions, it shall be the day or range of days in which the Nominated Vessel must tender a valid NOR at the Discharge Terminal and discharging shall commence as soon as reasonably practicable, even if this means discharging is effected or completed outside such Arrival Date Range or outside any other period specified in the Special Provisions.

Section 37. INSURANCE

- 37.1 The responsibility for securing insurance, whether against marine or other risks, shall rest wholly with the Seller.
- 37.2 In all cases, if and for so long as the voyage to the Discharge Terminal, or any seas through which the Nominated Vessel has to travel in performance of the Agreement incurs, for the Seller pursuant to the terms of the relevant Charter Party, any additional costs or charges including but not limited to insurance or war risk insurance premia for the Nominated Vessel's hull and machinery, protection and indemnity or cargo insurances, then any and all costs of such additional insurance and/or additional premia and/or other expenses shall be paid by the Buyer to the Seller in addition to the price payable pursuant to the Agreement.
- 37.3 The Seller shall be entitled at any time (including after the shipment of the Cargo):
- 37.3.1 to direct any Nominated Vessel not to undertake or not to complete the voyage to the Discharge Terminal if such Nominated Vessel is required in the performance of the Agreement:
- (a) to transit or to proceed to or to remain in waters or ports or Berths so that the Nominated Vessel concerned would be involved in a breach of any applicable institute warranties or, in the Seller's reasonably held opinion, to risk its safety or to risk ice damage; or
 - (b) to transit or to proceed to or to remain in waters or ports or Berths where there is war (de facto or de jure) or threat thereof;

- 37.3.2 to direct any Nominated Vessel not to undertake the voyage to the intended Discharge Terminal if such Nominated Vessel is required in the performance of the terms of the Agreement to transit waters which, in the Seller's reasonably held opinion, would involve abnormal delay; or
 - 37.3.3 to direct any Nominated Vessel not to undertake any activity in furtherance of the voyage which in the opinion of the Nominated Vessel's master could place the Nominated Vessel, its Cargo or crew at risk.
- 37.4 If the Seller agrees to direct a Nominated Vessel to undertake or to complete the voyage as referred to in Section 37.3, the Buyer undertakes to reimburse the Seller, in addition to the price payable under the Agreement, for costs incurred by the Seller in respect of any additional insurance premia and any other sums that the Seller may be required to pay to the Nominated Vessel owner or underwriters including but not limited to any sums in respect of any amounts deductible under such owners' insurance and any other costs and/or expenses incurred by the Seller.

Section 38. NOMINATION OF VESSELS

- 38.1 Unless otherwise provided in the Special Provisions, delivery under the Agreement shall be given and taken in one full cargo lot or a part cargo lot at the Seller's election.
- 38.2 The Seller shall nominate in writing to the Buyer a vessel to take delivery of the relevant Cargo. This shall be done at least eight (8) days prior to the first day of the Arrival Date Range as specified in the Special Provisions, or if that time has passed at the time when the Agreement is entered into, on or about the time the Agreement is entered into. Such nomination shall include: (a) confirmation that the vessel can comply with the requirements set out in Annex E and the Port Regulations at all times; and (b) the following information with respect to the vessel:
- 38.2.1 the name of the vessel, date built, Deadweight (DWT), length and flag;
 - 38.2.2 the grade and approximate quantity to be loaded (or the bill of lading quantity, if known);
 - 38.2.3 the Arrival Date Range and the ETA at the Discharge Terminal;
 - 38.2.4 details of any other cargo on board or to be laden on board if delivery is of a part cargo; and
 - 38.2.5 any other information as may be requested by the Terminal Operator from time to time.
- 38.3 The Seller or its representative shall notify the Buyer or its representative of any change(s) in the ETA notified pursuant to Section 38.2.3.
- 38.4 The Buyer shall, within one (1) Business Day or such other period as may be specified in the Special Provisions after receipt of the Seller's nomination made pursuant to Section 38.2, notify the Seller of:

- 38.4.1 the final Discharge Terminal, if not already specified in the Special Provisions, when the Seller's approval thereto shall be required in writing within one (1) Business Day thereafter, such approval not to be unreasonably withheld. No change to the final Discharge Terminal so nominated or specified shall be made without the Seller's prior written acceptance which shall not be unreasonably withheld and subject always to the provisions of Section 38.9;
- 38.4.2 if the Special Provisions provide a range within which a Discharge Terminal or terminals may be nominated, the Seller's approval to each terminal shall be required in writing within one (1) Business Day after any valid nomination, such approval not to be unreasonably withheld.

All costs (including but not limited to demurrage) arising directly out of any failure by the Buyer to comply with the foregoing shall be for the Buyer's account.

- 38.5 In respect of any Nominated Vessel, the Seller may, or if necessary to perform its obligations under the Agreement must, substitute therefor another vessel provided always that:
 - 38.5.1 the size and all other material attributes of the substitute vessel and the quantity to be loaded shall not, without the prior written consent of the Buyer, differ materially from the size and all other material attributes of the original Nominated Vessel and the quantity specified in the nomination; and
 - 38.5.2 the Seller shall give to the Buyer notice in writing of the name of the substitute vessel not less than two (2) clear days before the ETA of the substitute vessel or the ETA of the original Nominated Vessel, whichever is the earlier.
- 38.6 The Buyer shall provide written acceptance or rejection of the vessel nominated by the Seller within one (1) Business Day of receipt of the Seller's nomination. If and when accepted by the Buyer, the vessel nominated by the Seller shall be considered a Nominated Vessel for all purposes herein.
- 38.7 Without derogating from any other reasonable ground that may be available to the Buyer, it shall be a reasonable ground for the Buyer to reject or refuse a vessel pursuant to this Section 38 if: (i) the vessel either at the time of nomination or subsequently at any time up to the time of commencement of loading is not approved by any internal ship vetting system operated by the Buyer or alternatively is determined by such internal ship vetting system to be unacceptable under the Buyer's ship vetting policy; and/or (ii) the vessel does not meet the requirements set out in Annex E and/or the Port Regulations.
- 38.8 The Seller warrants that the Nominated Vessel will discharge its full Cargo within twenty-four (24) hours (or pro-rata in the case of a part cargo) or will maintain 100 PSI at the Nominated Vessel's rail, provided shore facilities permit discharge within such time or at such pressure and provided the Nominated Vessel does not leave the Berth for any reason. Time lost as a result of the Nominated Vessel being unable to discharge the Cargo as stated above shall not count as Laytime or time on Demurrage.



38.9 Where the Buyer exercises any Discharge Terminal options in accordance with the Special Provisions or Section 38.4.1 and available to the Seller under the terms of the relevant Charter Party:

38.9.1 unless otherwise provided for in the Special Provisions, the price stated in the Special Provisions shall be adjusted by the freight differential calculated in accordance with such Charter Party terms as evidenced solely by the Nominated Vessel owner's confirmation or, if the Nominated Vessel has not been voyage chartered or chartered under a Contract of Affreightment, such rate as shall be mutually agreed between the Parties in respect of such Discharge Terminal, provided always that any delays arising out of such failure to agree shall be for the Buyer's account; and

38.9.2 the Buyer shall be liable for any additional costs incurred by the Seller, including but not limited to, deviation costs and costs in respect of any additional bunker consumption.

Section 39. ARRIVAL OF THE VESSEL

39.1 The Seller shall arrange for its Nominated Vessel to notify the Buyer and the Terminal Operator, in writing, of the ETA of the Nominated Vessel. Such notification shall occur when the Nominated Vessel is seventy-two (72), forty-eight (48) and twenty-four (24) hours from its anticipated arrival at the Discharge Terminal and otherwise in accordance with the standard reporting procedure applicable from time to time at the Discharge Terminal.

39.2 Subject to compliance by the Nominated Vessel with all other requirements of the Discharge Terminal at the time in question, the Buyer shall provide or cause to be provided free of charge to the Seller (subject to the provisions of Section 7) a Berth to be indicated by the Buyer or its representative at which the Nominated Vessel can when fully laden safely reach and leave and where it can lie and discharge always safely afloat.

39.3 The Buyer shall at all material times and at no expense to the Seller provide and maintain or cause to be provided and maintained, in good working order, all necessary flexible hoses, connections, pipelines, and tankage facilities necessary for the discharging of the Nominated Vessel.

Section 40. NOTICE OF READINESS

40.1 NOR may be tendered at any time after the Nominated Vessel has arrived within the customary anchorage or waiting place of the Discharge Terminal or, if the Nominated Vessel moves directly to the Berth, when the Nominated Vessel is All Fast.

40.2 NOR can be communicated by e-mail, PDF file, radio or telephone, and any other legally accepted electronic communication, provided, however, that if communicated by radio or telephone, it shall be confirmed immediately thereafter in written form.

Section 41. DISCHARGE OF THE CARGO

41.1 All Port Regulations at the Discharge Terminal shall apply to the Nominated Vessel. The Buyer shall provide all information regarding the Port Regulations at

the Discharge Terminal as is readily available to it, upon the Seller's written request. Despite anything to the contrary express or implied in this Section 41 or in Section 39 and Section 42, if the Nominated Vessel does not comply with any material Port Regulation at the Discharge Terminal, the Buyer or the Buyer's customer may refuse to berth or discharge the vessel in question.

- 41.2 The Buyer shall arrange for the Cargo to be discharged from the Nominated Vessel as expeditiously as possible.
- 41.3 The Buyer shall have the right to shift the Nominated Vessel from one Berth to another. All costs, including but not limited to damages for delay, shall be for the Buyer's account if such shifting is for the Buyer's purposes and otherwise shall be for the Seller's account.
- 41.4 The Nominated Vessel shall not be compelled to lighter at the Discharge Terminal, but if any lightering shall be undertaken at the request of the Buyer the expense thereof shall be for the Buyer's account and all time expended in connection with such lightering shall count as running hours for the purposes of calculating the liability for Demurrage under the provisions of Section 44.
 - 41.4.1 Any lightering operations shall be carried out in accordance with the procedures set out in the ICS/OCIMF Ship-to-Ship Transfer Guides. The lightering vessel shall be subject to the Seller's prior acceptance, which shall not be unreasonably withheld.
 - 41.4.2 Any ship-to-ship transfer (transhipment) operations shall be carried out in accordance with the procedures set out in the ICS/OCIMF Ship-to-Ship Transfer Guides. The receiving vessel shall be subject to the Seller's prior acceptance, which shall not be unreasonably withheld.
 - 41.4.3 Except in relation to any ship-to-ship transfer carried out at the request of and for the purposes of the Seller, any ship-to-ship transfer operation shall only be carried out with the Seller's express consent and shall only be carried out outside port limits and at the Buyer's sole risk and the Buyer shall be liable to the Seller in respect of all time spent in excess of permitted running hours calculated at the relevant Demurrage rate despite the Nominated Vessel being outside port limits, and for all and any losses, costs, damages and proceedings arising therefrom and the Buyer shall indemnify the Seller in respect thereof. This Section 41.4.3 shall not be included in the scope of Section 15.1.
- 41.5 All time used for any lightering operation (excluding any time consumed for the purposes set out in Section 43.1) shall be counted or included in calculating the time taken by the Buyer to discharge the Nominated Vessel or the time in respect of which the Buyer is liable for Demurrage. Any additional steaming and/or waiting time used solely for the purposes of any lightering operation shall count as Laytime or, if the Nominated Vessel is on Demurrage, as Demurrage.
- 41.6 Except in relation to any lightering carried out at the request of and for the purposes of the Seller, any lightering operation carried out shall be at the Buyer's risk and the Buyer shall be liable to the Seller in respect of any losses, costs, damages and proceedings arising therefrom and shall indemnify the Seller in respect thereof. This Section 41.6 shall not be included in the scope of Section 15.1.



- 41.7 In relation to any dispute as to quantity when lightering or ship-to-ship transfers have been undertaken, the first laden vessel's figures (not being a lightering vessel or a receiving vessel) shall prevail, subject always to the provisions of Sections 3.3 and 3.4.

Section 42. LAYTIME

- 42.1 Except as otherwise agreed in the Special Provisions, the time allowed to the Buyer for the discharge of the quantity of Product deliverable by each Nominated Vessel shall be:

42.1.1 in the case of discharge of a full cargo lot, thirty-six (36) running hours of Laytime; and

42.1.2 in the case of discharge of a part cargo lot, that proportion of thirty-six (36) running hours which the quantity of Product in the shipment bears to the total quantity of Product loaded on the Nominated Vessel at the Loading Terminal(s), all days and holidays included unless discharging on the day or holiday in question is prohibited by Applicable Law or the Port Regulations at the Discharge Terminal.

- 42.2 Subject to Section 42.3, Laytime shall start Berth or no Berth six (6) hours after NOR has been tendered in accordance with Section 40, or when the Nominated Vessel is All Fast, whichever occurs first.

- 42.3 Should the Nominated Vessel arrive at the Discharge Terminal:

42.3.1 such that running hours pursuant to Section 42.1 above commence at a time within the Arrival Date Range then the time allowed and damages for delay shall be computed in all respects in accordance with Section 42 to Section 44;

42.3.2 such that running hours pursuant to Section 42.1 above would commence at a time prior to the Arrival Date Range, then despite anything to the contrary in Section 44, time shall not count against the Buyer whether as Laytime or as Demurrage until 00:01 hours (local time) on the first day of the Arrival Date Range or on commencement of discharge, whichever is earlier; and

42.3.3 after the last day of the Arrival Date Range, and provided that the Nominated Vessel is accepted for discharging by the Buyer in its sole and absolute discretion and without prejudice to any of the Buyer's other rights, running hours shall commence only on commencement of discharge,

and, save as aforesaid, Section 42 to Section 44 shall apply in full.

- 42.4 In all cases Laytime shall end when the discharging hoses have been disconnected from the Nominated Vessel. However, time shall recommence two (2) hours after disconnection of hoses if the Nominated Vessel is delayed in its departure due to the Buyer's or the Buyer's receiver's purposes and shall continue until the termination of such delay.



Section 43. ADJUSTMENT OF LAYTIME

- 43.1 Any delay arising out of any of the following circumstances shall not be counted or included in calculating the time taken by the Buyer to discharge the Cargo or the time in respect of which the Buyer is liable for Demurrage (whether or not the Nominated Vessel is already on Demurrage):
- 43.1.1 time during which the Nominated Vessel is in internal transit from the place of anchorage or any other waiting place until the Nominated Vessel is All Fast;
 - 43.1.2 time spent awaiting daylight, change of tide, arrival of tugboats or the pilot prior to berthing;
 - 43.1.3 time spent complying with Port Regulations and awaiting immigration, customs or pratique;
 - 43.1.4 time spent preparing for and handling or shifting of ballast, bilges, slop or other substances or fuelling unless these operations are carried out simultaneously with the cargo operations;
 - 43.1.5 delay due to any breakdown of the Nominated Vessel's equipment, or failure to comply with the Port Regulations with respect to equipment aboard;
 - 43.1.6 delay attributable to any onboard strike, lockout, stoppage or restraint of labor by members of the crew;
 - 43.1.7 delay attributable to restrictions imposed by the owner, charterer or master of the Nominated Vessel; or
 - 43.1.8 any other delay attributable to the Seller, the Seller's agents, or the Nominated Vessel.
- 43.2 All time used for extra sampling and analysis to determine the quality of the Product will be for the account of the Party requesting the extra tests, provided however that, if the Product proves to be off-specification, the Seller shall be liable for all costs, including running Laytime or Demurrage, related to the extra sampling and analysis.
- 43.3 If Crude Oil washing is performed at the request of the Buyer or other competent authority, any additional time shall count as Laytime or time on Demurrage if the Nominated Vessel is on Demurrage.

Section 44. DEMURRAGE

- 44.1 If the Cargo is not discharged within the time allowed in accordance with Section 42.1, the Buyer shall pay Demurrage to the Seller, in the same currency as is prescribed for payment of the Product delivered under the Agreement, in respect of the excess time at the appropriate rate of Demurrage specified in Section 44.2; provided, however, that if by reason of her own deficiencies the Nominated Vessel cannot maintain an average pumping rate as specified in Section 38.8 from the time of commencing pumping, any additional time used solely by reason of such deficiencies shall be deducted in calculating the time (if any) in respect of which the Buyer is liable for Demurrage as herein provided. The Buyer's liability for



Demurrage shall be absolute and shall not be excused by or subject to the provisions of Section 8.

- 44.2 The appropriate rate of Demurrage shall be either:
- 44.2.1 the rate, if any, specified in the Special Provisions; or
 - 44.2.2 the applicable single voyage Charter Party rate or applicable Contract of Affreightment rate, as evidenced solely by the Nominated Vessel owner's confirmation; or
 - 44.2.3 for owned or time chartered Nominated Vessels, or where no single voyage Charter Party rate or Contract of Affreightment rate is available, the appropriate rate of Demurrage shall be equal to the demurrage assessment of a member of ASBA utilizing the nominated quantity, route taken and the first day of the month in which the NOR is tendered. The Seller shall procure any such assessment and shall be responsible for all costs and expenses associated therewith.
- 44.3 Any claim brought under this Section 44 shall be in writing, with notice provided to the Buyer by the Seller within twenty eight (28) days after the date of disconnection of discharging hoses, and full documentation provided to the Buyer by the Seller within eighty (80) days after the date of disconnection of the discharging hoses. Such documents shall include but are not limited to:
- 44.3.1 the Notice of Readiness;
 - 44.3.2 a statement of facts;
 - 44.3.3 the discharge pressure logs (where applicable);
 - 44.3.4 a copy of the Charter Party or fixtures recap for spot chartered vessels;
 - 44.3.5 the invoice presented to the vessel party for demurrage incurred or invoice presented by the lightering company supporting overtime incurred;
 - 44.3.6 the bill of lading or Independent Inspector reports to substantiate proportions; and
 - 44.3.7 any other documents reasonably requested by the Buyer.
- 44.4 If the Seller fails to give such notice or provide such documentation within the above respective time limits, then the Seller's claim shall be deemed to have been waived and any liability of the Buyer for Demurrage shall be extinguished.



ANNEX A

LETTER OF INDEMNITY

DATE: [DATE]
TO: [BUYER]
FROM: [SELLER]
REF: Agreement dated [DATE] in respect of your purchase from us of [QUANTITY] of [PRODUCT] loaded on board [VESSEL NAME], bill of lading date [DATE] (the "Cargo").

Dear Sirs,

Although we have sold the above named Cargo to you, we have not been able to provide "Buyer" with the [*insert relevant Payment Documents as set out in Section 4.6*] (the "Payment Documents").

In consideration of you paying to us the full purchase price of U.S. Dollars \$_____ we hereby warrant that we had good title to such Cargo free and clear of any lien or encumbrance, and that title to such Cargo has been passed as provided in the Agreement to you free and clear of any lien or encumbrance.

We further agree to make all reasonable efforts to obtain and surrender to "Buyer" as soon as possible the Payment Documents and to protect, indemnify, and hold you harmless from and against any and all damages, costs and expenses (including reasonable attorneys' fees) which you may suffer by reason of the Payment Documents remaining outstanding or breach of the warranty given above, including but not limited to any claims and demands which may be made by a holder or transferee of the Payment Documents or any other third party claiming an interest in or lien on the Cargo or proceeds thereof.

Our obligation to indemnify "Buyer" is, of course, subject to the conditions that "Buyer" give us immediate notice of the assertion of any claim(s) and full opportunity to conduct defense thereof without your approval.

This letter of indemnity shall expire upon our providing to "Buyer" the Payment and other shipping Documents.

This letter of indemnity shall be governed by and construed in accordance with the laws of the state of New York and any disputes, controversies or claims arising out of or in relation to this letter of indemnity or the breach, termination or invalidity thereof shall be subject exclusive jurisdiction of the New York courts.

Terms not defined herein shall be interpreted by reference to the Agreement.

Yours faithfully,

Authorized signature



ANNEX B

PARENT COMPANY GUARANTEE

As security for the proper and punctual performance by _____, (the "Company") of all obligations owed from time to time by the Company to ECOPETROL S.A. (the "Beneficiary") under any and all agreements which have already been made or may in the future be made between the Beneficiary and the Company, we _____ (the "Guarantor") hereby unconditionally and irrevocably guarantee to the Beneficiary, as primary debtor and obligor, the due and punctual payment and performance of all the obligations of the Company under any such agreements upon the Beneficiary's first demand, of any amount (with respect to principal) up to _____, plus all interest, costs and expenses with respect to such obligations. If the Company fails to pay or perform any such obligations in the manner and at the time required, the Guarantor shall pay, perform or cause the performance of such obligation upon demand by the Beneficiary.

Notwithstanding anything to the contrary contained herein, the Guarantor shall only be liable under this Guaranty for the maximum amount of such liability that can be hereby incurred without rendering this Guaranty, as it relates to the Guarantor, voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount.

This Guaranty constitutes a guaranty of payment when due and not of collection, and the Guarantor specifically agrees that it shall not be necessary or required that the Beneficiary exercise any right, assert any claim or demand or enforce any remedy whatsoever against the Counterparty or any other Person before or as a condition to the obligations of the Guarantor hereunder.

The Guarantor hereby expressly represents and warrants to the Beneficiary that: (i) it is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization, (ii) it has all requisite corporate power and authority to execute, deliver, and perform this Guaranty, (iii) the execution, delivery, and performance of this Guaranty has been duly authorized by all necessary corporate action, (iv) this Guaranty constitutes the legal, valid and binding obligation of the Guarantor, enforceable against the Guarantor in accordance with its terms, (v) no governmental approvals are required in connection with the execution, delivery and performance of this Guaranty, except as have been obtained and are in force, and (vi) the execution, delivery and performance of this Guaranty by the Guarantor will not violate any provision of the Guarantor's constitutive documents or of any material agreements to which it may be a party.

This Guaranty is intended to be and shall be construed as a continuing, absolute, unconditional and irrevocable Guaranty and shall remain in full force and effect until [_____] or such time at which all obligations of the Company under any agreement with the Beneficiary are irrevocably satisfied and/or discharged in full, notwithstanding (a) any amendment or termination of any such agreement, (b) any extension of time or concession granted by the Beneficiary, or (c) any delay or failure by the Beneficiary in pursuing any remedies available against the Company or (d) any



other circumstance which might otherwise constitute a defense available to, or a legal or equitable discharge of, the Company, any surety or any guarantor. The Guarantor agrees that the Beneficiary may at any time and from time to time, either before or after the maturity thereof, without notice to or further consent of the Guarantor, extend the time of payment of, exchange or surrender any collateral for, or renew any of the obligations, and may also make any agreement with the Company or with any other party to or person liable on any of the obligations, or interested therein, for the extension, renewal, payment, compromise, discharge or release thereof, in whole or in part, or for any modification of the terms thereof or of any agreement between the Beneficiary and the Company or any such other party or person, without in any way impairing or affecting this Guarantee. The Guarantor agrees that the Beneficiary may resort to the Guarantor for payment of any of the obligations, whether or not the Beneficiary shall have resorted to any collateral security, or shall have proceeded against any other obligor principally or secondarily obligated with respect to the obligations.

This Guaranty and the obligation by the Guarantor to pay, perform or cause the performance of such obligation upon demand by the Beneficiary shall continue to be effective, to the maximum extent permitted by law, if at any time the Company is unable to perform (in whole or in part) any of its obligations as result of any law, including but not limited to regulations, decrees, ordinances, orders, demands, requests, rules or requirements of the United States of America, the United Nations, the European Union ("EU"), any EU member state applicable to the Parties relating to trade sanctions, foreign trade controls, export controls, non-proliferation, anti-terrorism and similar laws (the "Trade Restrictions"), or any other applicable law. The Guarantor is hereby liable for indemnifying the Beneficiary against any loss suffered, paid or incurred by the Beneficiary in relation to any non-payment or non-performance of the Company's obligations as result of any Trade Restrictions or any other applicable law.

This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment (in whole or in part) of any of the obligations is invalidated, declared to be fraudulent or preferential, set aside, rescinded or must otherwise be returned by the Beneficiary upon the insolvency, bankruptcy or reorganization of the Company or otherwise, all as though such payment had not been made.

The Guarantor hereby waives (a) promptness, diligence, presentment, demand for performance, protest, notice of protest, notice of dishonor, notice of default, notice of acceptance and any other notice with respect to any of the Obligations and this Guaranty and (b) any requirement that the Beneficiary protect, secure, perfect or insure any lien, security interest or other encumbrance, or any property subject thereto, or exhaust any right or take any action against the Company or any other person or entity (including any other guarantor) or any collateral securing the obligations, as the case may be.

The Beneficiary shall have no obligation to pursue any remedy or take any action against or in respect of the Company prior to enforcing its rights under this Guaranty directly against the Guarantor. In addition, the Guarantor may not claim that the Beneficiary could have avoided or mitigated, in any matter or through any action, the damages



resulting from a default of the Company under an agreement between the Company and the Beneficiary or resort to any other guaranty held at any time in its favor, before proceeding against the Guarantor in connection with its obligations under this Guaranty.

Except as otherwise required by law, each payment made by the Guarantor hereunder shall be made without setoff, counterclaim or other defense and without deduction or withholding for or on account of any present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any governmental authority, including any interest, additions to tax or penalties applicable thereto ("Taxes"). If such deduction or withholding is so required of the Guarantor, the Guarantor shall pay the amount required to be deducted or withheld to the appropriate authority before penalties attach thereto or interest accrues thereon and shall forthwith pay the Beneficiary such additional amount as may be necessary to ensure that the net amount actually received by the Beneficiary free and clear of Taxes is equal to the amount that the Beneficiary would have received had there been no such deduction or withholding. The Guarantor shall, on or before the [thirtieth] day of making such deduction or withholding, forward to the Beneficiary an official receipt evidencing such deduction or withholding (or a certified copy thereof).

The Guarantor will not exercise any rights which it may acquire by way of subrogation in consequence of its payment of any of the obligations until all the obligations shall have been indefeasibly paid in full. If any amount shall be paid to the Guarantor in violation of the preceding sentence, such amount shall be held in trust for the benefit of the Beneficiary and shall forthwith be paid to the Beneficiary to be credited and applied to the obligations. Subject to the foregoing, upon payment of all the obligations, the Guarantor shall be subrogated to rights of the Beneficiary against the Company, and the Beneficiary agrees to take at the Guarantor's expense such steps as the Guarantor may reasonably request to implement such subrogation.

All of the obligations of the Guarantor set forth herein shall bind the Guarantor and its successors. The Guarantor may not assign or delegate its duties or obligations hereunder without the prior written consent of the Beneficiary, and any purported assignment or delegation without such consent shall be null and void. The Guarantor confirms that any permitted assignee of the Beneficiary under an agreement between the Company and the Beneficiary may exercise all rights, actions and remedies of the Beneficiary under this agreement.

This Guaranty and the obligations arising hereunder shall be governed by, and construed and interpreted in accordance with, the laws of the State of New York, without reference to its conflicts of laws principles (other than New York General Obligations Law Sections 5-1401 and 5-1402). Any failure or delay by the Beneficiary to exercise any right, in whole or in part, hereunder shall not be construed as a waiver of the right to exercise the same or any other right. THE GUARANTOR HEREBY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OR RELATING TO ANY INDEBTEDNESS OR THIS GUARANTY.



No amendment or modification of this Guaranty shall be effective unless in writing and signed by the Guarantor and the Beneficiary.

The Guarantor hereby irrevocably and unconditionally (a) submits for itself and its property in any legal action or proceeding relating to this Guarantee and any other agreement with the Beneficiary to which it is a party, or for recognition and enforcement of any judgment in respect thereof, to the non-exclusive general jurisdiction of the courts of the State of New York, the courts of the United States for the Southern District of New York, and appellate courts from any thereof, (b) consents that any such action or proceeding may be brought in such courts and waives any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same and (c) agrees that nothing herein shall affect the right to effect service of process in any manner permitted by law or shall limit the right to sue in any other jurisdiction.

The Guarantor shall pay upon demand and presentation of invoices all reasonable and actual costs and expenses incurred by the Beneficiary in connection with the successful enforcement of this Guaranty, including, without limitation, reasonable fees and expenses of counsel.

All notices or other communications under this Guaranty shall be in writing and shall be telegraphed, mailed by certified or registered mail (return receipt requested) with charges prepaid, hand delivered or sent by facsimile transmission, by tested or otherwise authenticated telex or cable or by commercial courier to the address set forth below for each of the Guarantor and Beneficiary (or such other address as is specified by a party at least ten days prior notice to the other parties):

If to the Beneficiary: ECOPETROL S.A., Carrera 7 # 37-69, Piso 5, Bogota, Colombia.

If to the Guarantor:

This Guaranty may be executed in any number of counterparts, each of which shall be deemed to be an original. This Guaranty has been duly executed by the Guarantor by its officers thereunto duly authorized as of the [____] day of [_____], 20XX.

By: [_____]

Name:

Title:



ANNEX C

STANDBY LETTER OF CREDIT / PERFORMANCE BOND

[Issuing Bank]

We hereby issue our irrevocable Standby Letter of Credit number: [_____]

In favor of ("Beneficiary"): The Seller

Carrera 7 N° 37 - 69

Bogota, D.C.

Colombia, South America

By order and for account of: [Name of applicant]

Maximum Amount: USD [_____] (Amount in letters)

Product:

Volume:

Loading Port:

Destination Port:

Contract Number:

Expiry Date: [DD-MM-YYYY] (90 DAYS AFTER ISSUING DATE)

Payment under this Standby Letter of Credit is available with (confirming/issuing bank) against presentation by draft(s) at sight drawn on [issuing bank] accompanied by a written certificate to be completed and signed by an authorized signatory of the beneficiary.

Provided a drawing in respect of payment is presented by the beneficiary of this Standby Letter of Credit by not later than five (5:00) pm on any banking day in [bank city], and provided that such drawing conforms to the terms and conditions of this Standby Letter of Credit, the issuing bank will pay in accordance with the beneficiary's instructions the amount specified within two (2) banking days ([bank city] time). Any presentation received by (confirming/issuing bank) after five (5:00) will be considered as next day presentation.

We undertake to effect payment as per your instructions on a sight basis against drafts drawn under and in compliance with the terms of this Standby Letter of Credit presented at our office at [full name and address of confirming/issuing bank] together with this Standby Letter of Credit on or before 5:00 pm ([bank city] time) on the expiration date.



All bank commissions and/or charges related to this credit are for applicant's account, including confirmation fees, if any, advising fees, if any, amendment fees, if any, discrepancy fees, if any, telecommunications fees, if any, funds transfer fees, if any, among other costs and commissions.

At the request of the beneficiary, this letter of credit will be cancelled or the outstanding amount reduced, upon receipt of their tested message or signed statement that payment has been received and accepted by the beneficiary outside the letter of credit.

This Standby Letter of Credit is issued subject to the International Standby Practices 1998 (ISP98) International Chamber of Commerce Publication No. 590. For matters not addressed by ISP98, this Standby Letter of Credit is governed by and construed in accordance with the laws of the state of New York, without regard to conflicts of laws principles, provided that, in the event of any conflict between ISP98 and New York law, ISP98 shall control.

[THIS MESSAGE IS THE OPERATIVE CREDIT INSTRUMENT AND NO MAIL CONFIRMATION WILL FOLLOW.]



ANNEX D

PAYMENT UNDERTAKING

Date: (to be inserted)

To: (to be inserted)

From: (to be inserted)

CC: (to be inserted)

RE: Purchase of (to be inserted) pertaining to contract (N°. (to be inserted)) dated (to be inserted) between (to be inserted) and (to be inserted)

We, _____the Buyer_____, hereby confirm that our subsidiary (to be inserted) ("Buyer") has entered into a contract (N° (to be inserted)) dated (to be inserted) with (to be inserted) ("Seller") for purchase of the following (hereinafter referred to as "the contract"):

Product: (to be inserted)

Quantity: (to be inserted)

Unit price: (to be inserted)

Delivery date: (to be inserted)

Payment: (to be inserted)

Estimated cargo amount: (to be inserted)

In the event that___ the Buyer___ fails to perform its payment obligation in accordance with the contract, we, Buyer hereby irrevocably undertake to pay you, without any set-off, discount, deduction or counterclaim whatsoever, all monies due or owing by___ the Buyer ___to you in United States dollars (or other contractual currency) by wire transfer remittance to your designated bank account against your presentation of original commercial invoice (PDF sent through email acceptable) and full set of original shipping documents (or Letter of Indemnity (PDF sent through email acceptable) in lieu of temporarily missing shipping documents) from you to us in accordance with the contract.

This payment undertaking, whether returned or not, shall automatically expire or terminate at the moment upon any payment owed to you being effected by Buyer in accordance with the contract or by us as per this payment undertaking.



The proceeds of sale due under this payment undertaking are assignable without having to provide consent to notify of such assignment when making payment under this payment undertaking the assignment shall be a lawful assignment.

This payment undertaking is duly executed and issued by an authorized officer of the corporation.

This payment undertaking shall be governed by and construed in accordance with the laws as per the contract and any dispute thereof shall be referred to and resolved as per the dispute resolution clause in the contract.

Yours faithfully,



ANNEX E

NOMINATED VESSEL REQUIREMENTS

In order to be approved as a Nominated Vessel, a vessel nominated under the Agreement must comply with the following requirements:

1. General

The vessel shall:

- 1.1 Have P & I (Protection and Indemnity Club), coverage for a minimum of one (1) billion U.S. Dollars.
- 1.2 Have the International Association of Classification Societies (IACS) classification.
- 1.3 Comply with MARPOL and any other International Maritime Organization – IMO conventions adopted by the Colombian government.
- 1.4 Have watch and deck officers assigned to the vessel able to communicate in English.
- 1.5 Be a current member in good standing of the International Vessel Owners Pollution Federation Limited (ITOPF).
- 1.6 Hold ISM Code Certificates.
- 1.7 Hold a certificate of insurance of the kind provided for in the Civil Liability convention for Oil Pollution Damages (CLC Certificate) issued to it by a signatory state.
- 1.8 Be covered by insurance for the amount of one (1) billion U.S. Dollars. Such insurance shall include, but not be limited to, excess pollution liability insurance in the maximum amount available per incident.
- 1.9 Be in full compliance with ISGOTT/OCIMF requirements.
- 1.10 Arrive at the Loading Terminal complying with the water ballast exchange as per the Loading Terminal's requirements.

2. Physical Characteristics

The Nominated vessel shall have:

- 2.1 Minimum / Maximum total displacement according to the technical characteristics of the Loading Terminal and Discharge Terminal at which the vessel is calling.
- 2.2 Oxygen content in its cargo tanks of no more than 8%.
- 2.3 Minimum arrival draft of a level at which the propeller is fully submerged.

3. Vessel Type



- 3.1 The vessel shall be of the following types:
 - Wet and semi-wet deck seal type vessel.
 - Segregated Ballast Tanks (SBT), type vessel.
- 3.2 The vessel shall not be of the following types according to the technical characteristics of the Loading Terminal and Discharge Terminal at which the vessel is calling:
 - Dry deck seal type vessel.
 - Clean Ballast Tanks (CBT), type vessel.
 - Combination carriers.

4. Equipment

The vessel shall possess, in a fully operational state, the following:

- 4.1 An Inert Gas system (IGS).
- 4.2 A Base VHF radio in CCR.
- 4.3 Closed cargo operation capability.
- 4.4 A fully operational crane.
- 4.5 A fully operational bow capstan.
- 4.6 A Bow stopper AKD/SMITH type 200 ton SWL.
- 4.7 Manifold flanges according to the technical characteristics of the Loading Terminal and Discharge Terminal at which the vessel is calling.

5. Other

Such additional requirements as may be imposed by the Terminal Operator or under Applicable Law, or as may be set forth in such treaties as may in the future be ratified by the Colombian Congress.