

**QATAR PETROLEUM FOR THE SALE OF PETROLEUM PRODUCTS COMPANY LIMITED**

**GENERAL TERMS AND CONDITIONS FOR**

**FREE ON BOARD (“FOB”)**

**SALES AND PURCHASES OF SULPHUR**

**19 DECEMBER 2016**

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## **1 Introduction**

The General Terms and Conditions detailed herein are for use by Qatar I Petroleum For The Sale of Petroleum Products Company Limited ("QPSPP" or the "Seller") in support of specific Free on Board (FOB) sale and purchase agreements for Sulphur. Where there is a conflict or discrepancy between these General Terms and Conditions and any Specific Agreement for a particular contract then the terms set out in the Specific Agreement shall prevail.

## **2 Method of Delivery**

- 2.1 The Sulphur shall be delivered in bulk by the Seller FOB to the Buyer at the Delivery Point to the Accepted Vessel. Unless otherwise provided in the Specific Agreement, delivery shall be given and taken in full or part cargo lots at the Buyer's option, but in the case of part cargo lots subject to the prior agreement of the Seller and the Loading Terminal operator.
- 2.2 If there is any inconsistency or conflict between Incoterms and the Agreement, the terms of the Agreement shall prevail.

## **3 Risk and Title**

- 3.1 The Seller hereby expressly warrants that it has marketable title, free and clear of any liens or encumbrances to the Sulphur sold and delivered hereunder, and that the Seller has full right and authority to transfer such title and effect delivery of such Sulphur to the Buyer.
- 3.2 Risk in (including without limitation risk of loss or damage to, the Sulphur) and title to the Sulphur delivered by the Seller, and all liabilities with respect thereto, shall pass from the Seller to the Buyer as soon as the Sulphur passes the Delivery Point at the Loading Terminal.
- 3.3 The Parties agree that the transfer of risk in and title to the Sulphur is not conditional upon delivery of the Bills of Lading or any other documentation.
- 3.4 Any loss of or damage to the Sulphur during loading if caused by the Accepted Vessel or her officers or her crew, shall be for the account of the Buyer.

## **4 Quantity, Quality, Measurement and Sampling**

### **4.1 Quantity**

- 4.1.1 The Seller shall sell and deliver to the Buyer, and the Buyer shall purchase and take from the Seller, FOB at the Delivery Point, the amount of Sulphur sold under the Specific Agreement and at the intervals set out in the Specific Agreement, and the invoice quantity shall be the Bill of Lading ("BL") quantity (i.e. the quantity of Sulphur stipulated as having been loaded in the BL). Unless otherwise agreed in the corresponding Specific Agreement, the total amount of Sulphur sold under each Specific Agreement shall be sold and delivered ratably over the period of such Specific Agreement. The Seller shall have the right, at its own discretion, to issue one or more BLs for the Sulphur sold under the Specific Agreement.
- 4.1.2 The Seller has the option to provide per cargo plus or minus five percent (5%) of the Accepted Quantity as operational tolerance, subject to the availability at the time of loading. With the Buyer's consent and subject to availability, the operational tolerance shall be increased to plus or minus ten percent (10%) per cargo.

### **4.2 Quality**

- 4.2.1 The quality of the Sulphur shall be as made available by the Seller to the Buyer at the time and place of loading, unless specifications are described in the Specific Agreement, in which case the quality of the Sulphur shall comply with such

specifications. Such specifications represent the only quality characteristics which the Sulphur is required to meet.

**4.2.2 EXCEPT AS STATED IN THE SPECIFIC AGREEMENT, THE SELLER GIVES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE QUALITY OR SPECIFICATIONS OF THE SULPHUR SOLD. ALL STATUTORY OR OTHER CONDITIONS OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE DESCRIPTION OR SATISFACTORY QUALITY OF THE SULPHUR OR ITS FITNESS OR SUITABILITY FOR ANY PARTICULAR PURPOSE OR OTHERWISE ARE HEREBY EXCLUDED, EXCEPT TO THE EXTENT THAT EXCLUSION THEREOF IS NOT PERMITTED OR ENFORCEABLE BY OPERATION OF LAW.**

4.2.3 The Buyer shall not have the right to reject the Sulphur as a result of any defect in quality except if such Sulphur would create a material adverse effect on the Accepted Vessel, or its crew's health or safety. The Buyer's exclusive remedy with respect to any defect in quality shall be a quality adjustment payment (or credit against outstanding invoice) due from the Seller which shall be determined:

- (a) By mutual agreement between the Parties by reference to the prevailing market value for Sulphur of the same quality and specifications as that sold under the Specific Agreement; or, failing mutual agreement,
- (b) By the Expert appointed pursuant to Clause 13.4 below by reference to the prevailing market value for Sulphur of the same quality and specifications as that sold under the Specific Agreement.

### **4.3 Measurement, Sampling and Testing**

4.3.1 The Seller shall supply, operate and maintain, or cause to be supplied, operated and maintained, all devices required for collecting samples and for determining the quantity, quality and composition of the delivered Sulphur and all other measurement or testing devices that are necessary to perform the measurement and testing required under the Specific Agreement at the Loading Terminal.

4.3.2 Measurement of the quantities and the taking of samples for the purposes of determining the compliance of the Sulphur with the quality and quantity provisions of the Specific Agreement (if any) shall be carried out by the Seller in accordance with usual industry practice of applying ship's draft survey in the presence of the Independent Inspector and calculated using ship's calibration tables, applying any corrections where applicable. The certificates of quality and quantity (or such other equivalent documents as may be issued at the Loading Terminal) of the Sulphur comprising the shipment shall be based on the measurements of the Seller taken in accordance with Clause 4.3.1, shall be issued by the Loading Terminal operator in accordance with such standard practice, and shall be conclusive and binding on both Parties for invoicing purposes, but shall be without prejudice to the rights of either Party to make any claim pursuant to Clauses 4.5 and/or 13.

4.3.3 The Seller shall use reasonable best endeavours to arrange for the samples to be retained in a sealed condition by the Loading Terminal operator or the Independent Inspector (as applicable) for at least seventy five (75) days from the Bill of Lading (BL) date of the Sulphur, or longer if there is a dispute filed within sixty (60) days per Clause 4.5. The Buyer shall have the right to receive a representative sample of the Sulphur loaded, and such sample shall be placed on-board the Accepted Vessel if so requested by the Buyer at the time of Vessel nomination. The Buyer has the right to witness the sampling and validate the seals.

#### 4.4 Independent Inspection

- 4.4.1 The Seller shall appoint an Independent Inspector to measure and/or witness the measurement of the quality and quantity of Sulphur loaded at the Delivery Point, subject to any necessary prior agreement of the Loading Terminal operator having been obtained. All reasonable charges of the Independent Inspector will be shared equally between the Parties and the Independent Inspector shall provide a report to the Parties. The Independent Inspector shall also be entitled to take measurements on board the Vessel in accordance with Clause 4.4.2.
- 4.4.2 The Independent Inspector shall be entitled to take representative samples from the Accepted Vessel's and nominated shore stock. The Seller shall use reasonable best endeavours to arrange for such samples to be retained in a sealed condition for at least seventy five (75) days from the Bill of Lading date of the Sulphur. Both the Buyer and the Seller shall have the right to receive such samples and to witness the sampling and validate the seals. Such samples shall not take precedence in relation to any measurements taken and certificates issued by the Seller or the Loading Terminal operator respectively, pursuant to Clauses 4.3.1 and 4.3.2 but may be used by either Party to support a claim pursuant to Clause 4.5 and/or Clause 13.
- 4.4.3 Upon completion of loading, the Independent Inspector shall be required to prepare a report and signed certificates advising the quality and quantity of the Sulphur loaded and provide these to the Seller and Buyer as soon as practicable. The Independent Inspector shall advise the Seller and Buyer by telex, cable, e-mail or facsimile the determined quality and quantity as soon as possible after completion of loading of the cargo.
- 4.4.4 Should there be a difference between any of the findings of the Independent Inspector and the Seller pursuant to Clause 4.3.1, then the Independent Inspector must highlight this to the Parties as soon as possible. The Parties agree that any certificates of quality and quantity issued by the Independent Inspector regarding the loading of Sulphur at the Delivery Point are for information purposes only and shall not take precedence over any measurements taken or certificates issued by the Seller or the Loading Terminal operator respectively, pursuant to Clauses 4.3.1 and 4.3.2, but may be used by either Party to support a claim pursuant to Clause 4.5 and/or Clause 13.
- 4.4.5 If a mutually acceptable Independent Inspector is not or cannot be appointed, fails to appear, or is unable to properly perform the desired duties, then, without prejudice to Clause 4.5, the loading of the Accepted Vessel shall proceed and the Seller shall request the Loading Terminal operator to perform the duties that the Independent Inspector would have performed. In this case, the Loading Terminal operator will be deemed to be the Independent Inspector for purposes of this Clause 4.4.

#### 4.5 Disputes and Claims

- 4.5.1 Notice of claim as to any apparent defect in quantity or quality, in the case of the Buyer, or any apparent excess in the quantity, in the case of the Seller, with respect to the Sulphur shall be made in writing to the Seller or the Buyer, as the case may be, immediately after the apparent defect or excess is discovered. Any such complaint of deficiency of quantity or quality or excess in quantity shall be admissible only if notified in writing to the Seller or the Buyer, as the case may be, within sixty (60) days of the BL date and accompanied by evidence fully supporting the complaint. If the Seller or the Buyer, as the case may be, receives no formal notification as to the claim within the sixty (60) day period, the claim shall be deemed waived.
- 4.5.2 No claim shall be admitted in respect of any deficiency of quantity where the difference between (i) the loaded quantity as determined by the Independent

Inspector and the Seller or (ii) the loaded and discharged quantity is equal to or less than 0.5% of the Bill of Lading quantity.

- 4.5.3 Subject to Clause 4.5.1, in the event of dispute between the Parties over the quality of the Sulphur delivered to the Buyer, either Party may request that a properly sealed sample of the Sulphur, as provided pursuant to Clause 4.3.3, shall be opened and analyzed by an independent third party laboratory, in compliance with the latest methodology as defined by ASTM (or chosen in advance by the Parties if there is more than one methodology) and the findings will be final and binding on the Parties.
- 4.5.4 Subject to Clauses 4.5.1 and 4.5.2, in the event of a dispute between the Parties over the quantity of the Sulphur, either Party may refer the matter for determination by an Expert pursuant to Clause 13.

## **5 Vessel Nomination Procedures**

- 5.1 The Accepted Date Range shall be as determined in accordance with Clause 6.1. The Accepted Vessel shall arrive and tender Notice of Readiness to load the Sulphur at the Delivery Point within such Accepted Date Range.
- 5.2 The Buyer shall use its best endeavours to nominate to the Seller in writing no later than fifteen (15) days prior to the first day of the Accepted Date Range and, in any event, pursuant to the Load Port Authority Regulations and/or the Terminal Regulations and/or Procedures then in effect, a Vessel which complies with the Load Port Authority Regulations and the Terminal Regulations and/or Procedures. The nomination shall specify, for safety, environmental, security, and operational issues, as a minimum:
- 5.2.1 Vessel name, IMO Number, date built, flag, full crew list and the agent at the Loading Terminal (or "to be nominated" TBN);
- 5.2.2 Vessel details as required to be specified by the Loading Terminal operator or Load Port Authority including size, summer deadweight, overall length, beam, draught and capacity (or TBN);
- 5.2.3 Estimated time of arrival (ETA) of the Vessel; the Buyer or its representative shall thereafter notify the Seller or its representative of any change or changes in the ETA in accordance with Clause 6.2.1, but the Accepted Date Range shall be revised only with the Seller's written agreement. The giving or withholding of such agreement shall be at the Seller's sole discretion;
- 5.2.4 grade and approximate quantity of Sulphur to be loaded;
- 5.2.5 details of any cargo on board if loading a part-cargo;
- 5.2.6 the three (3) previous cargoes, load ports and discharge ports plus any other destinations of the Vessel during this period;
- 5.2.7 the intended destination of the Sulphur to be loaded plus any other destinations of the Vessel prior to its complete discharge;
- 5.2.8 such other data and information as the Seller or the Load Port Authority or Loading Terminal operator may reasonably require;
- 5.2.9 whether the Vessel was in dry dock at the last port that the Vessel visited; and
- 5.2.10 Full written instructions regarding the particulars and destination of the Bills of Lading and such other documentation which may be required. The Seller shall use reasonable endeavours to arrange for the instructions to be carried out, but the Seller shall not be required to follow any instruction that is inconsistent with the Load Port

Authority Regulations and/or the Terminal Regulations and/or Procedures in force from time to time or any provision, express or implied, in the Agreement.

- 5.3 Should any of the above information not be available, e.g., if a specific Vessel cannot be identified, then the Buyer shall provide such outstanding information no later than ten (10) days prior to the first day of the Accepted Date Range or the last day for naming a Vessel under the Terminal Regulations and/or Procedures if earlier.
- 5.4 The Buyer's Vessel nomination shall not be effective (and the Seller has no obligation to deliver Sulphur in respect thereof) unless it is received by the Seller not later than ten (10) days prior to the first day of the Accepted Date Range. Notwithstanding the foregoing, if the nomination is received by the Seller after such tenth (10<sup>th</sup>) day and the Seller (acting in its absolute discretion) accepts such nomination, it shall be effective but, subject to the provisions of Clauses 6.3.1, 6.4.8 and 6.4.9, Laytime shall not commence until such time as the Accepted Vessel has actually commenced loading.
- 5.5 Notwithstanding anything to the contrary expressed or implied elsewhere in the Agreement, the Seller shall have the right:
- 5.5.1 to accept any nomination made by the Buyer pursuant to Clause 5.2 and the Vessel named by the Buyer in such nomination accepted by the Seller shall be the "Accepted Vessel";
- 5.5.2 to reject any nomination made by the Buyer pursuant to Clause 5.2 on any reasonable grounds;
- 5.5.3 to reject an Accepted Vessel in question prior to arrival at the Load Port, notwithstanding any prior acceptance of such Vessel (whether named in the Specific Agreement or nominated pursuant to Clause 5.2 or Clause 5.3 or substituted pursuant to Clause 5.8), on any reasonable grounds if such Vessel is involved in any incident or more recent information regarding such Vessel becomes available to the Seller at any time after such prior acceptance. In such event, the Buyer shall nominate another Vessel to the Seller within two (2) days of the Seller's rejection of the originally nominated Vessel.
- 5.6 The Seller shall give notice of acceptance or rejection of any nomination made by the Buyer in accordance with Clause 5.2 or Clause 5.3, within two (2) Working Days of receipt of the nomination. In case of rejection, the Buyer shall promptly nominate an alternative Vessel for the Seller's acceptance or rejection. In the case of the second nomination being rejected, the Buyer and Seller shall agree an alternative solution, but this in no way reduces the Buyer's obligation to lift the Accepted Quantity during the Accepted Date Range.
- 5.7 If the Specific Agreement is concluded on a date later than any of the dates for nomination and/or notification, then the Parties shall endeavour to complete all procedures which should have been accomplished within twenty four (24) hours of concluding the Specific Agreement.
- 5.8 The Buyer may, if necessary to perform its obligations under the Agreement, substitute another Vessel for the Accepted Vessel provided that:
- 5.8.1 the size of the substitute Vessel, its carrying capacity and the quantity and quality of Sulphur to be loaded shall not, without the prior written consent of the Seller, differ materially from the size and carrying capacity of the previously Accepted Vessel previously named and the quantity and quality of Sulphur specified in the previous nomination;
- 5.8.2 the Laytime which would have applied in respect of the previously Accepted Vessel shall apply to the substitute Vessel;

- 5.8.3 the Buyer shall give to the Seller written notice of such substitution (together with the information specified in Clause 5.2 in respect of the substitute Vessel) no later than five (5) days prior to the first day of the Accepted Date Range of the previously Accepted Vessel; and
- 5.8.4 the substituted Vessel is accepted by the Seller and the Loading Port Authority pursuant to the provisions of this Clause 5.
- 5.9 The Buyer shall be liable for all costs associated with any delays to the Accepted Vessel or in loading Sulphur under the Agreement due to the information required to be provided by the Buyer pursuant to this Clause 5 not being provided by the specified time or date in Clause 5.3, and any delays caused by lack of information shall not count against Laytime or, if the Accepted Vessel is on demurrage, as time on demurrage.
- 5.10 Notwithstanding any prior acceptance of a Vessel by the Seller, if at any time prior to the passing of title and risk in the Sulphur the Accepted Vessel ceases to be in every way fit, ready to load, handle, carry, discharge or be suitable for operations at the Load Port:
- 5.10.1 the Seller shall have the right not to berth the Accepted Vessel and any demurrage resulting shall not be for the account of the Seller; and
- 5.10.2 the Buyer shall be obliged to replace such Accepted Vessel with another Vessel that is in every way fit, ready to load, handle, carry, discharge and suitable for operations at the Load Port and which complies with the other requirements of this Clause 5.
- 5.11 The Buyer shall make itself familiar with the Vessel size limitations and restrictions at the Delivery Point and its approaches, such as restrictions in deadweight and displacement tonnage, length overall, loaded draught, tides, under keel clearance and other limitations currently in effect. The Buyer shall keep itself informed of any changes in the mentioned restrictions which may occur from time to time, and shall not nominate Vessels with specifications exceeding such limitations.
- 5.12 The Buyer must be fully familiar with and shall comply with the Terminal Regulations and/or Procedures at the Delivery Point, as then currently in effect, and the Seller shall provide to the Buyer all relevant and readily available information, if requested.
- 5.13 The Buyer represents, warrants and undertakes that:
- 5.13.1 it will not nominate a Vessel that does not comply with the Terminal Regulations and/or Procedures or the Load Port Authority Regulations, including but not limited to Vessel draught, overall length, beam, deadweight and age;
- 5.13.2 the Accepted Vessel will comply fully with the International Safety Management (ISM) Code for the Safe Operation of Ships and Pollution Prevention effective July 1, 1998 (including any subsequent amendments or replacements thereof) and that the Accepted Vessel's owner shall comply with all financial capability, responsibility, security or like laws, regulations and/or other requirements of whatever kind with respect to pollution damage;
- 5.13.3 at the time of loading, the Accepted Vessel shall have a full and competent professional crew, officers and master, and be operated and maintained to fully comply with the latest IMO and IMDG Code recommendations, and OCIMF Guidelines for the Control of Drugs and Alcohol On-board Ship;
- 5.13.4 the Accepted Vessel shall be fully compliant with the ISPS Code and the Buyer shall provide any necessary documentation to the Seller if so requested;

- 5.13.5 it is familiar with, and shall cause the Accepted Vessel to comply with, the Terminal Regulations and/or Procedures and the Load Port Authority Regulations, including but not limited to any security regulations and safety and emergency procedures;
- 5.13.6 the Accepted Vessel shall have in place full and valid P&I insurance as described herein, no less in scope and amounts than is available under the rules of P&I Clubs entered into among the International Group of P&I Clubs. The P&I Insurance will include full coverage against liability for cargo loss/damage and coverage against liability for pollution and shall be placed as an unlimited entry (or if the same is not available, at the maximum possible entry), per incident, with a club which is a member of the International Group of P&I Clubs. Such certificate shall be carried on board the Accepted Vessel and if requested by the Seller, the Buyer shall promptly furnish to the Seller proper evidence of such P&I Insurance upon nominating the Vessel or at any time during the term of the Agreement;
- 5.13.7 the Accepted Vessel has on board all the appropriate certificates of financial responsibility, including P&I Insurance, regarding pollution for the voyage; and
- 5.13.8 without prejudice to any of the foregoing, the Buyer shall procure that each Accepted Vessel shall, at the time of loading:
- (a) regarding health, safety, security, environmental and operational matters, comply with all applicable regulations, legislation and directions of governmental, local and port authorities (including the Loading Terminal) and shall conform in all respects to all relevant international regulations and agreements; and
  - (b) have hull, machinery, boilers, tanks, cargo holds, equipment and facilities which are in good order and condition, in every way fit for the service required and fit to load and carry the Sulphur specified in the Specific Agreement.
- 5.14 Should the Buyer or the Accepted Vessel not comply with the provisions of this Clause 5 or be unable to perform properly or fail to load the Accepted Quantity, the Seller (or Seller's Delegates) may refuse to berth or load or continue to load the Accepted Vessel and shall be under no obligation to supply the Sulphur which would otherwise have been deliverable to the Buyer on such Accepted Vessel, and the Seller may sell or otherwise dispose of any such Sulphur as the Seller may in its absolute discretion determine and pursue its remedies as per Clause 16.5.

## **6 Loading Conditions, Arrival, Laytime and Vessel Shifting**

### **6.1 Accepted Date Range and Accepted Quantity**

The Buyer and Seller shall set out in the Specific Agreement a two (2) day Accepted Date Range for commencing the lifting of a corresponding quality and quantity of Sulphur, which shall both also be set out in the Specific Agreement. If the Accepted Date Range and/or Accepted Quantity are not set out in the Specific Agreement, the Accepted Date Range and/or Accepted Quantity shall be as agreed between the Parties or, in the absence of any agreement, determined as follows:

On or before the first (1st) day of each month M-1 the Seller shall issue to the Buyer the lifting schedule for month M specifying the Accepted Quantity, quality and corresponding Accepted Date Range of all Sulphur cargoes to be lifted during month M (such lifting schedule being the "Lifting Schedule"), which Buyer shall accept.

## 6.2 Notices

- 6.2.1 The Buyer shall ensure that the Seller and Loading Terminal operator and/or Load Port Authority are notified of the estimated time of arrival (ETA) for the Accepted Vessel at seven (7) days, seventy two (72) hours, forty eight (48) hours, twenty four (24) hours and twelve (12) hours in advance of arrival, with notification of variations in excess of four (4) hours within the last twenty four (24) hours, plus any intervals as required by the Seller, the Seller's Delegates or the Loading Terminal operator and/or the Load Port Authority. On arrival, the Buyer shall confirm the exact time that the Accepted Vessel arrived.
- 6.2.2 The Accepted Vessel shall submit a Declaration of Security ("DoS") to the appropriate authorities prior to arrival at the Load Port when required.
- 6.2.3 Upon arrival of the Accepted Vessel at the customary anchorage for the Loading Terminal and the Delivery Point, the master of the Accepted Vessel or his local representative shall give the Seller or the Seller's local representative at the Loading Terminal a Notice of Readiness. Such Notice of Readiness shall not be given until after the Accepted Vessel has received all clearance required by the customs and other local government authorities and is in all respects ready to load.
- 6.2.4 The Buyer shall ensure that prior to midnight (local time at the Loading Terminal) on the last day of the Accepted Date Range, the Accepted Vessel is ready to load the Accepted Quantity of Sulphur pursuant to the Specific Agreement, having arrived at the Loading Terminal (or customary waiting place) and completed all formalities including the tendering of the NOR.
- 6.2.5 The tendering of NOR by the Accepted Vessel obliges the Buyer to receive the Sulphur as soon as is practicable for the Seller, even if this means that loading is outside of the Accepted Date Range.

## 6.3 Loading Conditions

- 6.3.1 The Seller has no obligation to commence loading the Accepted Vessel prior to 06:00 hours (local time at the Loading Terminal) on the first day of the Accepted Date Range unless otherwise agreed in writing between the Parties.
- 6.3.2 The Seller shall provide, or cause to be provided, a safe berth for the Accepted Vessel, free all wharfage, dockage, and quay dues and other charges, which the Accepted Vessel can safely reach and leave and where it can always lie and load whilst always safely afloat. The Seller shall maintain in good working order all necessary conveyor belts (or other such equipment used for loading), connections storage and accommodation for loading of the Accepted Vessel.
- 6.3.3 The Seller has the right to instruct the Accepted Vessel to shift Berths, with all costs, including but not limited to towage, pilotage, additional agency fees and demurrage for the Seller's account if such shifting is for the Seller's purposes. Without limitation, shifts made for the following reasons shall be deemed not to be "for the Seller's purposes":
- (a) If the Specific Agreement states that a Berth shift is required;
  - (b) if it is customary for the Loading Terminal and/or Load Port or customary for the particular quantity and/or combination of qualities of Sulphur that is to be loaded;
  - (c) as a result of Force Majeure;
  - (d) for safety reasons attributable to the Accepted Vessel;

- (e) due to a problem with the Accepted Vessel; or
  - (f) for the Accepted Vessel taking on bunkers.
- 6.3.4 The Buyer is responsible for all costs related to shifting or berthing other than any shift that is specifically for the Seller's purposes.
- 6.3.5 The Seller shall not be liable for any loss or damage, nor be obliged to commence or continue loading, should the Accepted Vessel exceed the length, draught or other dimensions as previously advised by the Buyer and so ascertained for the Loading Terminal or approach.
- 6.3.6 The Buyer shall be responsible for any excess Berth utilisation costs related to the Accepted Vessel. If the Seller incurs any such costs due to any delay or failure of equipment or crew of the Buyer or the Accepted Vessel which are not charged directly to the Buyer or the Accepted Vessel by the Loading Terminal, the Buyer shall reimburse these costs to the Seller within seven (7) days of demand by the Seller.
- 6.3.7 As soon as the conveyor belts (or other such equipment used for loading) have completed their loading operations the Accepted Vessel shall vacate the Berth, subject to safety considerations and documentation. Early Departure Procedure ("EDP") shall be applied in all cases at the Seller's option where possible as follows:
- (a) the Seller shall cause the shipping agent to provide a non-negotiable copy of the Bill of Lading complete in every respect, with the exception of quantities loaded, prior to the Accepted Vessel's departure;
  - (b) once the Accepted Vessel has adopted EDP and left the berth and immediately after the Bill of Lading figures are known, the shipping agent, using the master's authority, shall sign the first original(s) of the Bill of Lading, subsequent Bill of Lading and any other cargo documents, promptly providing such documents to the Buyer upon written request; and
  - (c) the Seller shall cause the shipping agent, within one (1) Working Day of the BL date, to advise the Accepted Vessel's master by facsimile or telex, the outstanding information, inclusive of quantities for the master to complete the non-negotiable copy of the Bill of Lading previously placed on board by the shipping agent.

Otherwise documents should be delivered to the Accepted Vessel at a suitable anchorage.

The Buyer shall indemnify the Seller in respect of any direct costs, losses, damages and expenses that the Seller incurs for excess Berth utilization by the Accepted Vessel or due to the Accepted Vessel not vacating the Berth promptly following removal of the conveyor belts (or other such equipment used for loading), including, without limitation, wharfage and demurrage of the next Vessel awaiting to berth, provided the delay in vacating the Berth is due to the Buyer or the Accepted Vessel. The Buyer shall reimburse these costs to the Seller within seven (7) days of the Seller's request.

- 6.3.8 The Buyer shall not be obliged to pay to the Seller the amounts described in Clauses 6.3.6 and 6.3.7 if and to the extent that any such excess Berth utilisation costs or delay in the Accepted Vessel vacating the Berth is due solely to any circumstances for which the Seller is or will be liable to pay (and for which the Seller will not be relieved from paying) demurrage to the Buyer pursuant to the Agreement.
- 6.3.9 The Buyer shall indemnify the Seller against any direct costs, losses, damages and expenses incurred as a result of claims made against the Seller by the Seller's

Delegates and/or the Loading Terminal operator and/or the Load Port relating to damage to their facilities that was caused by the Buyer or the Accepted Vessel. The Seller shall, however, use reasonable endeavours to mitigate such claims.

#### 6.4 Laytime

- 6.4.1 Subject to the provisions of the Agreement, Laytime shall commence as set out in this Clause 6.4.
- 6.4.2 If the Accepted Vessel arrives at the Delivery Point and tenders proper NOR within the Accepted Date Range allocated to such Accepted Vessel pursuant to Clause 6, Laytime shall commence six (6) hours after such proper NOR is tendered or when the Accepted Vessel is all fast in the Berth with the conveyer belts (or other such equipment used for loading) positioned, whichever occurs first.
- 6.4.3 If NOR is tendered for the Accepted Vessel before the first day of the Accepted Date Range, Laytime shall begin to run at the earlier of either:
- (a) 06:00 hours local time on the first day of the Accepted Date Range; or
  - (b) commencement of loading.
- 6.4.4 If NOR is tendered for the Accepted Vessel after the last day of the Accepted Date Range, the Seller shall determine (in its absolute discretion) whether to accept the Accepted Vessel for loading and if the Seller does accept the Accepted Vessel for loading, Laytime shall commence only upon commencement of loading.
- 6.4.5 Laytime allowed for loading the Accepted Quantity shall be forty eight (48) running hours.
- 6.4.6 Should the Accepted Vessel not give at least twenty four (24) hours notice prior to arriving at the Loading Terminal and tendering NOR, Laytime shall be extended by the period of the delay in giving such notice, subject to such extension of time being a maximum of twenty four (24) hours.
- 6.4.7 Loading shall be completed and Laytime, or demurrage if on demurrage, shall cease upon removal of the conveyor belts (or other such equipment used for loading) which shall be effected promptly upon completion of loading. Should the removal of the conveyor belts (or other such equipment used for loading) be delayed for any reason not attributable to the Seller, the time taken to remove shall not count against Laytime, or if on demurrage as demurrage. Should the Seller delay the Accepted Vessel for more than two (2) hours after the conveyor belts (or other such equipment used for loading) have been removed, Laytime, or demurrage if on demurrage, shall resume after the said two (2) hours and shall continue from that point until the delay is terminated.
- 6.4.8 Time shall not count against Laytime if the Accepted Vessel is:
- (a) on an inward passage moving from the waiting place to the loading place until the Accepted Vessel is securely moored at the Berth with its gangway (or equivalent) in place;
  - (b) prevented from loading or continuing to load by the Load Port Authority or the Loading Terminal operator, or the Accepted Vessel refuses to load or to continue loading;
  - (c) delayed as a result of the Buyer or the Accepted Vessel or the master, crew owner or operator of the Accepted Vessel preventing, obstructing or delaying loading, including (but not limited to) as a result of their failure to comply with

the Terminal Regulations and/or Procedures or the Load Port Authority Regulations, fully or partly;

- (d) preparing to handle, or is handling ballast, draining pumps and pipes or bunkering, discharging slops or Vessel generated waste, unless concurrent with normal operations such that no time is lost;
- (e) cleaning, preparing and inspecting the cargo holds;
- (f) inefficient or has any fault or failure including breakdown, repairs and maintenance;
- (g) delayed in reaching or clearing the Berth after the Load Port Authority notifies the Accepted Vessel to proceed, or after removal of conveyor belts (or other such equipment used for loading) or release of the Accepted Vessel, caused by conditions not reasonably within the Loading Terminal operator's or Load Port Authority's control, including but not limited to awaiting tide, tugs, pilot, better weather or sea conditions, daylight, immigration, customs or pratique and/or channel blockage – unless any or all of these delays are directly caused by the Seller's requirement to shift Berth for the Seller's purposes as per Clause 6.3.3;
- (h) delayed due to a labour dispute, strike, lock-out, picketing, go-slow, work to rule, stoppage or restraint of labour;
- (i) delayed due to a spill or risk of spill of Sulphur or oil on or from the Accepted Vessel that could create serious danger and/or pollution damage;
- (j) complying with the law of the jurisdiction of the Load Port and/or published or posted Terminal Regulations and/or Procedures or Load Port Authority Regulations and/or the regulations, guides, recommendations, guidelines and/or codes referred to in Clause 5.13, any of which causes an interruption or delay of operations;
- (k) subject to delay in or suspension of loading ordered by the Seller, the Load Port Authority or the Loading Terminal operator, because of the Buyer's material failure to comply with the requirements of the Agreement in respect of payment, health and safety, and/or any other terms and conditions of a material nature; and/or
- (l) subject to any other delay reasonably allocated to the Accepted Vessel, the Buyer or representatives of the Buyer (including as set out in Clauses 5.4 and 6.4.6).

6.4.9 Time shall not count against Laytime, or if on demurrage as demurrage, if the Seller is prevented, delayed or hindered in bringing the Sulphur to the Delivery Point or timely loading Sulphur as a result of Force Majeure.

## **6.5 Compliance with Regulations**

- 6.5.1 The Seller shall use reasonable endeavours to ensure that the Load Port and Loading Terminal complies with the requirements of the International Code for the Security of Ships and of Port Facilities and the relevant amendments to Chapter XI of SOLAS (ISPS Code).
- 6.5.2 The Buyer shall ensure that the Accepted Vessel complies with the requirements of the International Code for the Security of Ships and of Port Facilities and the relevant amendments to Chapter XI of SOLAS (ISPS Code).

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

6.5.4 The Seller's liability to the Buyer under the Agreement for any costs, losses or expenses incurred by the Accepted Vessel, the charterers or the Accepted Vessel owners resulting from the failure of the Load Port or Loading Terminal to comply with the ISPS Code shall be limited to the payment of demurrage and direct costs actually incurred by the Buyer. The Seller shall reimburse these costs to the Buyer within seven (7) days of demand by the Buyer, and the Buyer shall provide reasonable evidence of such costs.

In such event the Buyer and the Seller shall negotiate in good faith to agree an alternative solution, provided always, that such negotiations shall be without prejudice to the Seller's obligation to deliver, and the Buyer's obligation to receive, the Sulphur under the Agreement.

6.5.5 The Buyer shall procure that disposal of dirty ballast, bilges, slops or other substances by the Accepted Vessel shall be in accordance with MARPOL 73/78, including updates, and in any event prohibited within the Loading Terminal and the Load Port.

## **7 Demurrage**

7.1 Subject to the provisions of the Agreement (including Clauses 6.4.8 and 6.4.9), if the time taken to load the Accepted Vessel exceeds the Laytime allowance due to no fault of the Buyer, the Seller shall pay the Buyer demurrage in the same currency as is prescribed for payment of the Sulphur delivered under the Agreement for the time used for loading in excess of the allowed Laytime.

7.2 The Buyer shall be deemed to have waived any claim relating to demurrage and the Seller shall be discharged and released from all liability for payment of demurrage if the Buyer's fully documented claim for demurrage has not been received by the Seller within sixty (60) days from the date of the Bill of Lading from which the claim for demurrage arises. Full supporting documentation shall include, but not be limited to:

7.2.1 clear calculation of any claim;

7.2.2 the demurrage rate, if any, as specified in the Specific Agreement;

7.2.3 the Accepted Vessel's port and loading logs, signed by the master of the Accepted Vessel;

7.2.4 a copy of the relevant sections of the charter party (if the demurrage rate has not been specified in the Specific Agreement and is specified in the charter party) and/or related third party invoice;

7.2.5 NOR documents;

7.2.6 the loading/Laytime statement;

7.2.7 the Buyer's invoice; and

7.2.8 details of the Buyer's bank account into which any demurrage payment should be made.

- 7.3 Should any of the supporting documents be unavailable within the timeframe stipulated, then the Buyer shall notify the Seller of the claim within the sixty (60) day period and the Buyer shall provide as much supporting documentation and detail as is available including an estimate of the total amount of the claim. Such submission shall satisfy the conditions for receipt of a claim, provided that all supporting documentation is submitted to the Seller within one hundred (100) days of the NOR having been served.
- 7.4 The appropriate demurrage rate per day, or pro rata for part of a day, shall be determined as below:
- 7.4.1 the rate, if any, as specified in the Specific Agreement; or
- 7.4.2 where no rate is specified in the Specific Agreement, then the applicable charter party rate, subject to the provisions of Clause 7.4.3; or
- 7.4.3 where no rate is specified in the Specific Agreement and there is no charter party rate (for example where the Buyer owns or time charters the Accepted Vessel), or the Accepted Vessel is significantly larger than the size of the cargo, or the Seller at its sole discretion believes that the rate claimed is not representative of the market, then the demurrage rate shall be as assessed for a similar shipment using an appropriately sized Vessel for the lifting, by reference to the Baltic Exchange or any other body mutually agreed by the Parties. Should the Baltic Exchange not make such reference, or cease to make such references, and the Parties cannot agree on another body within thirty (30) days of the written request of either Party, then the Seller shall appoint a body or independent expert to make such reference.
- 7.5 Should the Buyer be receiving Sulphur or any other product from another party at the same Berth, the demurrage liability of the Seller shall be limited to that proportion of the total demurrage due, equal to the ratio of:
- (a) the quantity of Sulphur purchased by the Buyer from the Seller: to
- (b) the sum of the quantity of Sulphur purchased by the Buyer from the Seller and the quantity of Sulphur or other such product received by the Buyer from another such party, in each case which is loaded on the Accepted Vessel at the Load Port concerned.
- 7.6 Should all or part of the demurrage payable by the Seller be due to the occurrence of any of the following events, then provided that neither Party has given notice pursuant to Clause 12 that such event constitutes Force Majeure, the rate of demurrage payable shall be reduced to fifty percent (50%) of the full rate, for the affected period:
- 7.6.1 explosion or fire in the Loading Terminal or Load Port;
- 7.6.2 breakdown of machinery or equipment affecting the supply of Sulphur;
- 7.6.3 revolution, war, riot, civil unrest, arrest or restraint of rulers;
- 7.6.4 weather and/or sea conditions including, but not limited to, sandstorms, fog, mist, heavy rain, storm, wind and waves; or
- 7.6.5 delay to the Accepted Vessel at the Load Port resulting directly from the Accepted Vessel being required by the Load Port Authority or any other relevant authority to take any action or any special or additional security measures or to undergo additional inspections by virtue of the Accepted Vessel's previous ports of call, except where a) the Parties have agreed otherwise or b) the Accepted Vessel has failed to comply with the requirements of the International Code for the Security of Ships and of Port Facilities and the relevant amendments to Chapter XI of SOLAS

(ISPS Code) or with the Load Port Authority Regulations or the Terminal Regulations and/or Procedures.

- 7.7 The Seller's liability for demurrage shall not exceed the amount actually paid by the Buyer in respect of the delay incurred in loading the Accepted Vessel. The Seller has the right to carry out an independent audit of the Buyer's documentation relating to the claim for up to three (3) years after the Bill of Lading date (or NOR to load if no Bill of Lading) relating to the claim. All costs related to such audit shall be for the Seller's account.
- 7.8 The Seller shall pay demurrage to the Buyer within thirty (30) days of the date of the Buyer's valid and complete claim (the date of the invoice equals day one (1)) and shall otherwise comply with the provisions on payment in Clause 8.
- 7.9 The Buyer's claim for demurrage, as described in this Clause 7, shall be the Buyer's sole remedy for the time used to load the Sulphur in excess of the allowed Laytime.

## **8 Payment**

- 8.1 The Buyer shall pay the Seller for the Sulphur within thirty (30) days of each Bill of Lading (the "Due Date") (BL date counts as day one (1)) against presentation of:
- 8.1.1 the Seller's invoice;
  - 8.1.2 a full set of original Bills of Lading issued or endorsed to the Buyer (and the Seller's invoice shall be based on the quality and quantity set out in such Bill of Lading); and
  - 8.1.3 original certificates of quality and quantity issued at the Loading Terminal in accordance with Clause 4.
- 8.2 Should any or all of the supporting documents not be available or provided by the Seller, the Buyer shall pay the Seller against receipt of the Seller's invoice and a Letter of Indemnity, executed by the Seller. The Letter of Indemnity shall be valid until the earlier of (a) the end of three (3) years from its date of issue and (b) provision by the Seller of the missing documentation.
- 8.3 The price of the Sulphur shall be as specified under the Specific Agreement and shall, unless otherwise agreed between the Seller and the Buyer, be in US Dollars. Unit prices (e.g. US Dollars per Tonne) shall be calculated to three (3) decimal places and shall be rounded up where the fourth digit after the decimal point is a five (5) or higher. Invoices shall be rounded to two (2) decimal places and shall be rounded up where the third digit after the decimal point is a five (5) or higher.
- 8.4 Should the final price for the Sulphur not be known at the time of invoicing, the Seller shall prepare a provisional invoice based upon the BL quantity and quality of the Sulphur and the pricing information available at the time and the Buyer shall make payment against this. The Seller shall prepare a final invoice as soon as practicable thereafter and the Due Date for payment of the balance due by either Party shall be seven (7) days after the Buyer receives the final invoice.
- 8.5 Unless otherwise agreed, the payment of any other costs, expenses or charges which arise under the terms of the Agreement shall be made against presentation of the Seller's invoice and shall be for settlement by the Buyer on or by the date advised thereon.
- 8.6 At least seven (7) days before the Due Date, the Seller shall provide the Buyer with the invoice and supporting documentation along with written notice of the bank details into which payment must be made quoting the Buyer's name and the invoice number. The Seller may provide the invoice and supporting documentation in writing in a form including originals, facsimile or secure electronic submission if so agreed between the Parties. Should the Seller provide the invoice less than seven (7) days before the Due Date, or make changes by late

- notice of less than seven (7) days before the Due Date, then payment shall be made within seven (7) days after receipt by the Buyer of the invoice or within seven (7) days of such late notice (the "Adjusted Due Date").
- 8.7 Where any payment under the Agreement falls due on a non-Banking Day then the Buyer shall pay the Seller on or before the last preceding Banking Day to comply with the Due Date or Adjusted Due Date.
- 8.8 Where the currency of the Specific Agreement is the US Dollar, the Seller shall have the option, by giving at least seven (7) days notice to the Buyer before the Due Date, or the Adjusted Due Date, to invoice and/or demand payment in a currency other than US Dollars provided that:
- 8.8.1 Where the option to invoice or demand payment in a currency other than US Dollars is exercised by the Seller, the rate of exchange from US Dollars to the chosen currency shall be the mid rate of exchange quoted at 1500 hours on Tokyo Fix (Reuters code: TKFE) (or if no rate is quoted at such time, the first rate quoted immediately thereafter) published on Reuters on the second banking day (as defined below) before the Due Date or Adjusted Due Date. Should Reuters not publish such rate of exchange for such day, then the rate of exchange shall be the last rate of exchange published by Reuters immediately before such second banking day;
- 8.8.2 Should Reuters either not quote, or cease to quote for the currency in question, then the Seller and the Buyer shall consult and agree an appropriate exchange rate prior to any payment in a currency other than US Dollars.
- 8.8.3 For purposes of Clause 8.8.1 only, "banking day" shall mean days on which banks in New York and the central bank of the chosen currency are open for normal banking business.
- 8.9 Should the Accepted Vessel fail to tender NOR before the end of the Accepted Date Range (except when the failure or delay to tender NOR has been wholly and directly caused by an act or omission of Seller), or the completion of loading is delayed by the Buyer or the Accepted Vessel, the Seller shall have the right, for invoicing purposes, to deem the date of delivery to be the last day of the Accepted Date Range, and the applicable pricing terms and Due Date shall reflect the deemed date of delivery rather than that shown on the Bill of Lading.
- 8.10 Payment for the Sulphur shall be made by the Buyer in full and free of all charges without deduction, withholding, set-off, condition or counterclaim in immediately available funds as specified in the Specific Agreement or as otherwise notified in writing by the Seller pursuant to Clause 8.6.
- 8.11 Should any payment for the Sulphur not be received by the Due Date or Adjusted Due Date or any other monies due to the Seller for any reason whatsoever not be received by the dates specified in the Agreement, the Seller shall have the right to charge the Buyer interest on the amount overdue at the rate of LIBOR plus three percent (+3%). The interest shall be calculated daily based upon a three hundred and sixty (360) day year.
- 8.12 The charging of interest by the Seller does not signify an acceptance of late payment and shall not be construed as an indication of any willingness on the part of the Seller to provide extended credit as a matter of course and shall be without prejudice to any rights and remedies which the Seller may have for late or delayed payment under the Agreement or otherwise. The Buyer shall indemnify the Seller for any additional costs incurred by the Seller related to the late or non-payment by the Buyer. Such costs may include but not be limited to legal fees and debt collection agency fees.
- 8.13 In the event of a disagreement concerning any invoice or statement, the Buyer shall make provisional payment of the total amount stated in such invoice or statement on or before the

Due Date or Adjusted Due Date, and shall notify the Seller within thirty (30) days of the date of the relevant invoice of the reason for such disagreement (or where the reason for disagreement concerns a deficiency in quantity or quality, within the period specified in Clause 4.5.1) and the amount that is in dispute.

- 8.14 Without prejudice to Clause 8.6, an invoice or statement may be modified by the Seller upon notification by the Seller to the Buyer that a modification is justified and the basis for such modification.
- 8.15 Any dispute concerning any invoice or statement shall be resolved through the procedures described in Clause 4.5 or the dispute resolution procedures set forth in Clause 13 as applicable. Following resolution of any dispute regarding amounts set forth in an invoice or statement, a Party to whom an amount is owed shall be paid such amount by the other Party together with interest accrued thereon at an annual rate equal to LIBOR (calculated on the basis of a 360-day year) in respect of each day from and including the Due Date or Adjusted Due Date for such invoice or statement until and including the date upon which the amount so due is actually received by the relevant Party in immediately available funds.
- 8.16 With the prior consent in writing of the Buyer, which consent shall not be unreasonably withheld or delayed, the Seller may assign, transfer or otherwise dispose of, either partially or totally, its right to receive payment of the price of the Sulphur sold under the Agreement or of any other monies owed by the Buyer to the Seller under the Agreement, and such assignment, transfer or disposal shall be effective upon the Seller giving the Buyer written notice thereof.

## **9 Taxes, Duties, Other Charges and Costs**

- 9.1 The Seller shall obtain all necessary approvals, licenses and permits necessary for export, and be recorded as the exporter.
- 9.2 The Seller shall be liable for all costs imposed or levied on the Sulphur prior to risk and title to the Sulphur passing to the Buyer, including but not limited to all taxes, duties, imposts, charges, fees and dues.
- 9.3 The Buyer shall be liable for all costs imposed or levied on the Sulphur after taking risk and title, including but not limited to all taxes, duties, imposts, charges, fees and dues, and, in the case of taxes only, even if the tax laws are amended and such changes are applied retroactively, after the passing of risk and title to the Sulphur to the Buyer has taken place.
- 9.4 The Buyer shall be liable for all costs imposed or levied on the Accepted Vessel, including but not limited to all taxes, duties, imposts, charges, pilotage, mooring fees, quay dues and tonnage expenses except for those incurred specifically relating to shifting Berth for the Seller's purposes in accordance with Clause 6.3.3.
- 9.5 Should Value Added Tax (VAT), Mineral Tax (MT), Excise Duty (ED) or other tax or duty be applicable from the sale of the Sulphur or the transfer of risk and title therein (which, without limitation, may be levied depending on the destination of, use of and/or documentation of the Sulphur), the Seller shall invoice the Buyer for these unless the Buyer can prove to the Seller that the purchase of the Sulphur is exempt therefrom, in which case the Buyer shall provide proof of such exemption (including but not limited to the destination and use of the Sulphur) satisfactory to the Seller. The Buyer shall indemnify the Seller against all costs, penalties and interest associated with the payment or recovery of any taxes and/or duties where the documentation provided by the Buyer relating to the tax or duty fails to comply with the necessary requirements, including but not limited to timelines, and any circumstance of fraud or misrepresentation.
- 9.6 The Seller shall use its reasonable endeavours to ensure that the correct tax or duty is payable on the sale of the Sulphur and mitigate unnecessary costs and charges to the Buyer.

- 9.7 Should taxes and/or duties which are payable by or on behalf of the Buyer be subsequently recoverable by the Seller, the Seller shall inform the Buyer and then the Seller shall use its reasonable endeavours, at the Buyer's expense and cost, to obtain a credit or repayment in respect of such taxes and/or duties. If the Seller succeeds at recovering any repayment, the Seller shall pay it to the Buyer within seven (7) days of receiving the credit or repayment, after first deducting any costs, charges and taxes incurred by Seller associated with such credit or repayment.
- 9.8 The Buyer shall pay the Seller for any other expenses, costs or charges that the Seller incurs or is subject to, arising directly as a result of a transfer of Sulphur made under the Agreement, provided that such expenses, costs or charges are not expressly stated to be for the Sellers account, pursuant to the Agreement.

## **10 Financial Security**

- 10.1 The Seller shall have the right in its sole discretion at any time to require the Buyer to provide financial security for the anticipated value of the Sulphur and/or costs associated with the purchase of the Sulphur in such amount as may be reasonably determined by the Seller (acting in its sole discretion). Such security may include, but not be limited to:
- 10.1.1 payment for the Sulphur in advance of loading;
  - 10.1.2 making a cash deposit against potential non-Sulphur liabilities;
  - 10.1.3 provision of a bank performance bond in a format and from a bank acceptable to the Seller;
  - 10.1.4 provision of an irrevocable standby letter of credit in a format acceptable to the Seller (example per Appendix B) and raised from or confirmed by a bank acceptable to the Seller;
  - 10.1.5 provision of a parent company guarantee in a format and substance from an Affiliate acceptable to the Seller (example per Appendix B).
- 10.2 Should loading be delayed and if the Seller so requests, the Buyer shall provide either new financial security or an extension of the validity of the existing financial security to cover the circumstances, in accordance with Clause 10.1.
- 10.3 All costs and charges associated with providing financial security in accordance with Clause 10.1 are for the Buyer's account and there shall be no discount for early payment.
- 10.4 Unless otherwise specified by the Seller, the security shall be received by the Seller no later than 17:00 hours London time on the fifth (5th) Working Day prior to the first (1st) day of the Accepted Date Range for the loading of the Sulphur.
- 10.5 The Buyer's failure to provide any financial security within the time prescribed by the Seller shall be a breach of condition by the Buyer, which shall give the Seller the absolute right to either terminate the Agreement, or without prejudice to the right to terminate, suspend in whole or in part the supply of Sulphur under the Specific Agreement, in either case without any liability of the Seller to the Buyer.
- 10.6 The Buyer shall be liable for all losses suffered by the Seller as a result of the Buyer's breach.
- 10.7 The Seller's right to terminate the Agreement pursuant to this Clause 10 shall be without prejudice to any right of action or claim accrued on or before the date of termination.

**11 Destination**

- 11.1 The Buyer shall request permission from the Seller should it wish to change the intended destination of the Sulphur previously advised at the time of nomination in accordance with Clause 5.2.7 and such consent shall not be unreasonably withheld or delayed.
- 11.2 The Seller shall have the right to appoint a representative to verify and/or witness the discharge of the Sulphur sold under the Agreement for up to three (3) years after the Bill of Lading date. This shall include verification of any relevant documentation and the investigation of the discharge by an independent expert and all costs in this regard shall be for the Seller's account.
- 11.3 Upon the Seller's request, the Buyer shall provide written evidence to the Seller, within two (2) Working Days, of the details of discharge, including but not limited to, the quantity and date of discharge, and the Discharge Port and terminal for each cargo or part cargo.
- 11.4 The Buyer shall provide to the Seller an original certificate of discharge for each delivery of Sulphur. The Seller shall provide blank certificates of discharge that shall be completed and signed by the master of the Accepted Vessel and attested by an official seal and signature of the Customs Authorities or local chamber of commerce responsible for the Discharge Port. Should the Seller's certificate of discharge not be available at the time of loading then the Seller shall accept a certificate of discharge prepared on headed paper by the Accepted Vessel's agents and attested by an official seal and signature of the Customs Authorities or local chamber of commerce responsible for the Discharge Port. If the Customs Authorities or local chamber of commerce responsible for the Discharge Port refuses to attest the certificate of discharge, the certificate of discharge shall be signed only by the Buyer, who shall certify such refusal took place.
- 11.5 The certificate of discharge shall clearly state the Accepted Vessel's name and agent, Discharge Port, date, quality and quantity of discharge, consignee, plus the Load Port, the date of loading and quality and quantity loaded. Should there be any trans-shipment, lightering or ship-to-ship transfer then the documentation must reflect the final destination and details of the operations, logistics and facilities used.
- 11.6 The Buyer shall ensure that the Seller receives the completed certificate of discharge within two (2) months of the Bill of Lading date, and should any detail not be available then the Buyer must formally advise the missing information to the Seller in writing.
- 11.7 The Seller may, in its sole discretion, either cancel or suspend in whole or in part the supply of Sulphur under the Agreement or any other agreement between Buyer and Seller as a result of Buyer's violation of this Clause 11 without any liability of the Seller to the Buyer.
- 11.8 It is an express condition of the Agreement that the Sulphur purchased shall not be sold, supplied, imported or exported (by the Buyer or others), directly or indirectly and irrespective of means, to any destination or counterparty that is:
- 11.8.1 at the relevant time prohibited under the laws of the country in which the Sulphur was produced;
  - 11.8.2 in violation of any code, decree, directive, rule, regulation or guideline issued or applied by the government (or any agency thereof) of the producing country; or
  - 11.8.3 prohibited by the conditions under which the Seller has purchased the Sulphur and advised to the Buyer in the Specific Agreement.
- 11.9 The Seller undertakes to advise the Buyer of any sale and/or delivery restrictions and updates of changes to such restrictions. However it is the express responsibility of the Buyer to keep itself informed of any sale and/or delivery restrictions and ensure compliance. Should the Buyer have, or could have, difficulty in complying with the above due to any conflicting law,

policy, demand or request from another government or agency thereof, then the Buyer shall advise the Seller immediately and the Parties shall jointly review the implications thereof. The Seller may at its sole discretion either cancel or suspend in whole or in part the supply of Sulphur under the Agreement as a result of Buyer's violation of Clause 11 without any liability of the Seller to the Buyer.

- 11.10 Notwithstanding anything to the contrary, nothing in the Agreement is intended to, nor should be interpreted to, induce or require either Party or any other person to act (or be prevented from acting) in any way that is prohibited by, penalised under, or inconsistent with, any applicable laws, regulations or requirements relating to anti-trust or competition law, foreign trade or export controls, embargoes or international boycotts of any type.

## **12 Force Majeure**

- 12.1 No failure, delay or omission by either Party to fulfil any of its obligations under the Agreement, in whole or in part, shall give rise to any claim against such Party or be deemed to be a breach of the Agreement by such Party if and to the extent such failure, delay or omission arises from events that are beyond the reasonable control of the affected Party to avoid, prevent or overcome, (each an event of "Force Majeure"), except in relation to each Party's respective obligations concerning payment and the provision of security and documentation. Subject to the foregoing, such events shall include, but not be limited to:

- 12.1.1 the refusal of the producing country's government (or any agency thereof) to sell or allow the sale of the requested volume of Sulphur to the Seller or the Seller's supplier;
- 12.1.2 the election of the producing country's government (or any agency thereof) to take royalty Sulphur in kind;
- 12.1.3 compliance by the Seller or the Seller's supplier with contractual obligations to the producing country's government (or any agency thereof);
- 12.1.4 compliance with laws, regulations, orders, guidelines, requests, or the like of any government (or any agency thereof), or international organisation;
- 12.1.5 the restriction on production of Sulphur by reason of the imposition by any government or person purporting to act under governmental authority of conditions or requirements which in the reasonable judgment of the Seller or the Seller's supplier make it necessary to cease or reduce the production of said Sulphur;
- 12.1.6 expropriation, nationalisation, confiscation, allocation, or requisitioning of Sulphur by an act of a government (or any agency thereof);
- 12.1.7 war (declared or undeclared), embargoes, blockades, acts of the public enemy, pirates, assailing thieves or other belligerents, civil unrest, riots or disorders, terrorism, sabotage, revolutions or insurrections;
- 12.1.8 fires, explosions, lightning, maritime peril, collisions, strandings, storms, landslides, earthquakes, floods, disease, pestilence, and other actions of the elements;
- 12.1.9 strikes, lockouts or other labour difficulties (whether or not involving employees of the Seller, the Seller's supplier, the Seller's agents or the Buyer);
- 12.1.10 disruption or breakdown of Sulphur production, storage, transportation or loading facilities, equipment, labour or materials;
- 12.1.11 closing or restrictions on the use of harbours, pipelines or any applicable Loading Port;

- 12.1.12 any change in the characteristics of the Sulphur before it is loaded which would result in the Sulphur not meeting the description set forth in the Specific Agreement;
- 12.1.13 any interruption in Seller's source of supply; and/or
- 12.1.14 any other cause whether or not of the same class or kind that is beyond the reasonable control of the affected Party to avoid, prevent or overcome.
- 12.2 Notwithstanding the above, where a delay occurs or is anticipated to occur due to Force Majeure, the Party affected shall give prompt notice to the other Party in writing thereof and give full details of the cause and an estimate of the impact and duration of the delay and shall endeavour to remedy the delay with all reasonable dispatch. Upon cessation of the event of Force Majeure, the Party affected shall promptly resume performance of its obligations and keep the other Party updated on the progress made in such efforts.
- 12.3 During any period that delivery by the Seller of the Sulphur sold under the Agreement is affected by Force Majeure, the Seller can maintain delivery of the Sulphur during the Accepted Date Range. In the event that the Sulphur sold under the Agreement is affected by Force Majeure, the Seller can, subject to the Buyer's agreement, advance or postpone delivery of the Sulphur until such time when delivery can take place without delaying or interfering with the loading of other Vessels, which at the time the Force Majeure occurred were scheduled to load before or after the Accepted Vessel.
- 12.4 During any period that the Seller is unable to obtain sufficient Sulphur to meet its obligations under the Agreement due to Force Majeure, the Parties shall jointly review and negotiate an acceptable outcome to mitigate the consequences, however:
- 12.4.1 subject to Clause 12.6, neither Party may unilaterally cancel or terminate the Agreement, nor extend the Agreement to make up for time or Sulphur lost;
- 12.4.2 the Seller shall be entitled to allocate its available supplies of Sulphur from any source at its sole and absolute discretion;
- 12.4.3 the Seller shall not be obliged to purchase Sulphur to supply the shortfall;
- 12.4.4 the Buyer shall be free to purchase any Sulphur from other parties; and
- 12.4.5 the shortfall quantity of Sulphur not supplied by the Seller to the Buyer shall be deducted from the quantity required to be delivered under the Specific Agreement.
- 12.5 The Parties' performance under the Agreement shall be resumed as soon as is practicable after the Force Majeure event and its effects have been remedied.
- 12.6 If by reason of Force Majeure the fulfilment by either Party of any terms and conditions of the Agreement is delayed for a period exceeding six (6) consecutive months, either Party shall have the right to terminate the Agreement by giving not less than thirty (30) days' written notice thereof.
- 12.7 Nothing contained in this Clause 12 shall relieve the Buyer of its obligations to pay in full for all Sulphur sold and delivered hereunder or to make any other payment (including under any indemnity) which has become due and payable under the Agreement prior to or during the occurrence of any Force Majeure.

### **13 Law and Settlement of Disputes**

#### **13.1 Governing Law**

The Agreement shall be governed by and construed in accordance with English law.

### **13.2 Mutual Agreement**

The Parties shall act in good faith and use all reasonable endeavours to settle any claim or dispute amicably through negotiations and other constructive discussions within sixty (60) days of notification of such claim or dispute by either Party as follows:

- 13.2.1 the claimant shall communicate to the other Party the nature of its claim or position in the dispute;
- 13.2.2 within fourteen (14) days of such communication, the Party to which the claim or dispute has been submitted shall accept or refuse such claim or agree or refuse to settle such dispute;
- 13.2.3 should the claim be refused or the dispute not settled, then representatives and/or senior management from each Party shall meet within twenty eight (28) days of the initial communication of the claim or dispute and use all reasonable endeavours to settle it;
- 13.2.4 the Parties shall advise each other in writing of the outcome of the meeting within the following fourteen (14) days; and
- 13.2.5 further meetings and/or investigation shall be conducted as soon as practicable after the initial meeting in order to expedite amicable resolution of the claim or dispute within the sixty (60) days referenced at the beginning of Clause 13.2.

### **13.3 Arbitration**

Without prejudice to Clauses 13.2 and 13.4, any claim or dispute that the Parties are unable to resolve by mutual agreement pursuant to Clause 13.2 shall be exclusively and finally settled as follows:

- 13.3.1 By arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce (the "Rules") as in force on the date that one Party notifies the other Party that it wishes to commence arbitration proceedings, except as modified by the provisions of this Clause 13 (Law and Settlement of Disputes).
- 13.3.2 Any arbitration initiated under this Clause 13 shall be conducted by one or more arbitrators appointed pursuant to the Rules.
- 13.3.3 The place of arbitration shall be London, England.
- 13.3.4 The arbitration shall be conducted in English, and all arbitrators shall be fluent in the English language.
- 13.3.5 The arbitration tribunal shall decide all questions strictly in accordance with the terms of the Agreement and shall give effect to the same.
- 13.3.6 The arbitrators' mandate shall continue until registration of the award.
- 13.3.7 The Parties agree that the arbitrators' award shall be final and binding upon the Parties, and that the Parties shall give effect to and comply with any such award. The Parties agree to exclude and waive any appeal right to any court which would otherwise have jurisdiction in the dispute or out of the award. Any Party may, however, make an application to any court having jurisdiction for registration of the award, for the arbitral award to be recognized and enforced, including enforcement of any award granting interlocutory relief, against any Party and for the obtaining of any evidence (whether by discovery of documents, interrogatories, affidavits, or testimony of witnesses, or whatever) which the arbitrators direct shall be admitted in the arbitral proceedings.

13.3.8 Notwithstanding the other provisions of this Clause 13, any claim or dispute may be referred for settlement to an alternative dispute resolution mechanism, if all the parties to the claim or dispute agree that such alternative is more appropriate to the circumstances.

13.3.9 The arbitrators may, upon the request of a party who is not a Party, add such requesting party to the arbitration at any time.

13.3.10 The Parties agree that if a claim or dispute which is or is to be referred to arbitration hereunder:

- (a) raises issues which are substantially the same as, or are connected with, issues raised in a claim or dispute arising out of any other agreement relating to the Seller and which has already been referred to arbitration; or
- (b) arises out of substantially the same facts as are the subject of a related claim or dispute as described above,

then the arbitrators appointed or to be appointed in respect of the related claim or dispute shall also become the tribunal in respect of the claim or dispute under the Agreement. Such arbitrators shall have the power to make all necessary directions as to the determination of the claim or dispute as they may consider appropriate.

#### **13.4 Experts**

13.4.1 Should any term or area of the Agreement require the assistance of an expert, or the Parties mutually agree to the assistance of an expert, the Party requesting the appointment of the Expert shall give notice to the other Party giving details of the question proposed to be determined by the Expert. The Parties shall jointly appoint the Expert and determine his terms of engagement.

13.4.2 If, within fourteen (14) days from the service of the above notice, the Parties have failed to appoint the Expert, then the Expert shall be appointed by the International Centre for Expertise in accordance with the provisions for the appointment of experts under the Rules of Expertise of the International Chamber of Commerce. .

13.4.3 The Expert appointed pursuant to these provisions (the "Expert") shall be qualified by education, training, and experience to determine the question in dispute. No Expert shall be appointed who is or at any time has been an employee or agent of the Seller or the Buyer, or who has an interest (financial or otherwise) which conflicts or may conflict with the Expert's impartiality versus the Parties.

13.4.4 The Expert shall be instructed, as soon as possible after his appointment, to fix a reasonable time and place (or method) for receiving submissions and information from the Parties, and the Expert may make such other inquiries and require such other evidence as may be necessary for determining the issue in question. The Expert shall be instructed to render his decision within one month of his appointment, with a possible extension of fourteen (14) days if justified by specific circumstances, such as delays in the Parties' provision of pertinent information.

13.4.5 Each Party shall provide all necessary information and evidence for the Expert to perform his required function.

13.4.6 The Expert shall not act as an arbitrator, and shall render his decision only as an expert. No law relating to arbitration shall apply to such Expert, his determination, or the procedure by which he reaches his decision.

- 13.4.7 The Expert's decision shall be made in writing, contain the reasons for such decision, and shall be final and binding on the Parties, except in the case of fraud, manifest error, conflict of interest, or corruption.
- 13.4.8 Each Party shall bear the costs and expenses of all counsel, witnesses, and others retained by it for the purposes of an Expert decision; however, the Parties shall share the costs of the Expert equally.

### **13.5 Miscellaneous**

- 13.5.1 The Seller and/or the Buyer may pursue arrest, attachment and/or other interim actions against the Accepted Vessel and/or the other Party, in any court in relation to non-payment of any monies due under the Agreement.
- 13.5.2 Should any term within the Agreement be determined to be inconsistent with, or in conflict with English law, then such term shall be deemed omitted or amended to conform with English law without affecting any other term or the validity of the Agreement.
- 13.5.3 Neither the Seller nor the Buyer waives any of their rights whatsoever under the Agreement should they delay or not insist on the strict performance of any of the terms and conditions of the Agreement, which shall remain in full force and effect. All rights, benefits and remedies are cumulative.
- 13.5.4 Each Party hereby consents, in respect of any legal action or proceedings arising out of or in connection with the Agreement, to the giving of any relief or the issue of any process in connection with such action or proceedings in respect of the making, enforcement or execution of any order or judgement which may be made or given in such action or proceedings against its assets as may be invested in financial, commercial or industrial activities, or deposited in banks (except any assets or properties of the government (or any agency thereof) of the State of Qatar which may be necessary for its proper functioning as a sovereign power).
- 13.5.5 Each Party in relation to the Agreement only (i) hereby represents and warrants that it has entered into the Agreement and it is acting in a commercial capacity and (ii) hereby irrevocably consents for the benefit of the other Party not to claim and hereby irrevocably waives immunity from suit for itself and from execution or attachment in respect of its assets as may be invested in financial, commercial or industrial activities, or deposited in banks (except for any assets or properties of the government (or any agency thereof) of the State of Qatar which may be necessary for its proper functioning as a sovereign power).
- 13.5.6 The United Nations Convention on Contracts for the International Sale of Goods of Vienna, 11th April 1980, as amended, shall not apply to the Agreement.
- 13.5.7 The Buyer understands that the Agreement is subject to any and all applicable English laws, rules and regulations and shall not knowingly take any action that would violate or cause the Seller (or the government (or any agency thereof) of the State of Qatar) to be in violation of or penalised under any applicable law of any jurisdiction.

### **14 Termination and Suspension**

- 14.1 If the Buyer enters into an arrangement with its creditors or goes into bankruptcy or liquidation of any kind, whether compulsory or voluntary, or is subject to any other analogous proceedings, then the Seller may forthwith terminate the Agreement upon written notice to this effect to the Buyer or its representatives. Such termination shall not affect the rights of either Party against the other insofar as these rights were accrued prior to such termination, but neither shall such termination create any liability of the Seller towards the Buyer.

- 14.2 The Agreement may be terminated or suspended upon seven (7) days written notice, without prejudice to any right of action or claim accrued to that date, by either Party in the event of a material breach by the other Party. Such material breach shall include, without limitation, the following:
- 14.2.1 the Buyer fails to nominate a Vessel in accordance with the Agreement;
  - 14.2.2 the Buyer fails to make payments by the Due Date or Adjusted Due Date or fails to raise financial security if required by the Seller as per Clause 10;
  - 14.2.3 the Buyer fails to take delivery of the Sulphur in accordance with the Agreement;
  - 14.2.4 the Seller fails to make delivery of the Sulphur in accordance with the Agreement;
  - 14.2.5 the Buyer fails to comply with the destination requirements as per Clause 11;
  - 14.2.6 either Party fails to comply with the Ethical Standards requirements as per Clause 19.
- 14.3 The Agreement may also be terminated by either Party:
- 14.3.1 upon extended Force Majeure as per Clause 12.6; or
  - 14.3.2 in accordance with Clause 15.3.

## **15 New and Changed Regulations or Specifications**

- 15.1 The Agreement is entered into on the basis of the laws, rules, regulations, decrees and specifications ("Regulations") available and applicable on the date of the Agreement.
- 15.2 If at any time during the term of the Agreement, the Regulations are changed by any government or their agent or public authority, or the basis of reference prices are changed, which has a material impact upon either Party, and is not covered elsewhere in the Agreement, then the Seller and the Buyer each have the option to give notice and request a renegotiation of the Agreement within sixty (60) days of serving notice of the change, or the change being implemented, whichever is the later. Upon receipt of any such notice the Seller and Buyer shall forthwith proceed to renegotiate the Agreement (including the price of the Sulphur), each acting in good faith.
- 15.3 Should the Parties fail to agree on new terms within sixty (60) days of notice being served, then the Seller and the Buyer each shall have the right to terminate the Agreement at the end of the said sixty (60) days.
- 15.4 The Parties must continue to perform their obligations during the period of renegotiation in accordance with the terms of the Agreement, and all Sulphur lifted during this period shall be governed by the originally agreed terms. If agreement is reached upon new terms and conditions to be implemented, then such new terms and conditions shall apply as of the date that notice was originally given by a Party under Clause 15.2 and any payments made in respect of such period shall be adjusted accordingly.

## **16 Liability**

- 16.1 **NEITHER THE BUYER NOR THE SELLER SHALL BE LIABLE UNDER ANY CIRCUMSTANCES FOR INDIRECT, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES IN RELATION TO THE PERFORMANCE (OR NON-PERFORMANCE) OF THE AGREEMENT, INCLUDING BUT NOT LIMITED TO LOSS OF ANTICIPATED PROFITS, GOODWILL, REPUTATION, CONTRACTS OR OPPORTUNITIES. FOR THE AVOIDANCE OF DOUBT, THE FOREGOING PRINCIPLES SHALL ALSO APPLY TO ANY INDEMNITY GIVEN PURSUANT TO THE AGREEMENT (INCLUDING ANY LETTER OF INDEMNITY).**

16.2 Without prejudice to Clauses 4.5.1 and 4.5.2, should there be any claim hereunder against the Seller (with respect to the quality and/or quantity of the Sulphur supplied, and/or any delay and/or failure in the supply of the Sulphur), then the Seller's liability shall be limited to the following direct costs and expenses:

16.2.1 deadfreight charges for any amounts by which the quantities of Sulphur actually delivered are less than ninety percent (90%) of the Accepted Quantity (such deficiency in quantity below ninety percent (90%) of the Accepted Quantity to be referred hereinafter to as the "Shortfall Amount");

16.2.2 additional freight costs and agents fees for the Shortfall Amount if the Buyer has to travel to another destination to load the Shortfall Amount, including but not limited to Load Port demurrage;

16.2.3 any amount by which the price of the replacement cargo of Sulphur for the Shortfall Amount (including brokerage if applicable) exceeds the price that the Buyer would have paid for the Seller's cargo of Sulphur; and

16.2.4 should the replacement cargo purchased by the Buyer be at a lower price than would have been paid to the Seller under the Specific Agreement then the difference shall be deducted from the Buyer's claim.

In any event, or combination of events, the Seller's liability shall be limited to the value of the BL quantity (or Accepted Quantity if no BL) of the Sulphur specified for the specific delivery in the Agreement.

16.3 Any claim or dispute by either Party shall be deemed waived unless the claiming Party notifies the other Party in writing within the period(s) defined in the Agreement, and in the absence of any such express period, within sixty (60) days of the Bill of Lading, or the last day of the Accepted Date Range for loading if there is no Bill of Lading, providing as much supporting documentation and detail as is available, including an estimate of the total claim.

16.4 The Buyer shall defend, indemnify and hold the Seller harmless against any loss, damage or injury resulting from any risk or event that occurs after title to the Sulphur has been transferred to the Buyer, including, without limitation, from the handling, transportation or use of the Sulphur sold under the Agreement.

16.5 Without prejudice to any other remedy that may be available to the Seller, if the Buyer fails to accept delivery of the Sulphur in accordance with the terms of the Agreement without the prior written consent of the Seller, the Seller reserves the right to pursue disposal of the cargo via any other means. The Seller will, if reasonably or commercially feasible, advise the Buyer promptly in writing before any action is taken. If taken, this action will not relieve the Buyer of any remaining obligations to receive specific quantities of Sulphur or any other obligations under the Agreement. Further, the Buyer will be liable to the Seller for:

(i) any difference in price between the purchase price payable under the Agreement for such cargo of Sulphur and, if less, the actual price at which the cargo was actually sold; and

(ii) any and all other direct costs, losses, damages, expenses and liabilities incurred by the Seller as a result of the Buyer's failure to accept delivery of the Sulphur.

16.6 Each Party shall use all reasonable endeavours to mitigate any and all costs, losses, damages and expenses that could be claimed against the other Party.

16.7 Notwithstanding any contrary provision in the Agreement, neither Party limits or excludes its liability in respect of any costs, losses, damages, expenses or liability caused by its gross

negligence, wilful misconduct, any fraud or any statutory or other liability which cannot be excluded under applicable law.

- 16.8 The Buyer acknowledges that the Sulphur sold by the Seller has been purchased by the Seller from producing entities in the State of Qatar (the "Producing Entities") and that Qatar Petroleum is acting as the Seller's Delegate. Subject to Clauses 16.1 and 16.7 the Buyer hereby agrees to be responsible to compensate the Producing Entities and Qatar Petroleum for any costs, losses damages, expenses and liabilities suffered by the Producing Entities or Qatar Petroleum (as applicable) as a result of any breach of the Agreement by the Buyer and further agrees to defend, indemnify, and hold harmless the Seller, the Producing Entities and Qatar Petroleum in respect of any such costs, losses, damages, expenses and liabilities. The Buyer's liability and indemnity covered in this Clause 16.8 shall be capped, per incident, at the value of the BL quantity (or Accepted Quantity if no BL) of the Sulphur under the Agreement. For the avoidance of doubt, nothing in this Clause 16.8 shall be construed to apply to the Buyer's obligations under Clause 5.13 or 16.4 or the sub-Clauses thereto. For clarification, nothing in this Clause 16.8 shall render the Buyer liable for consequential and indirect losses/damages (including, without limitation, loss of production).
- 16.9 Notwithstanding any contrary provision in the Agreement, except for claims or disputes related to the payment for the Sulphur or interests for late payment thereof, neither Party shall be liable to the other Party for unrelated claims or disputes which are USD one thousand (1,000) or less; each Party hereby waives any right to recover any amounts for such claims or disputes. Claims or disputes shall be deemed unrelated if they do not arise from the same cargo and BL and the same facts or circumstances that give rise to the claim or dispute.
- 16.10 This Clause 16 shall remain effective after the expiry and/or termination of the Agreement.

## **17 Third Party Rights and Assignment**

- 17.1 The Agreement has been entered into for the sole benefit of the Seller (the Seller to include the Producing Entities and Qatar Petroleum to the extent set out in Clause 16.8) and the Buyer.
- 17.2 Nothing in the Agreement, express or implied, is intended to create or confer upon any person (other than the Parties, the Producing Entities, Qatar Petroleum and each of their respective successors and permitted assignees) any rights, remedies, third party status or obligations, beneficiary status or liabilities under or by reason of the Agreement. For the avoidance of doubt, the Producing Entities and Qatar Petroleum shall be entitled to the benefit of the Agreement to the extent set out in Clause 16.8.
- 17.3 Subject to Clauses 8.16 and 17.4, neither Party has the right to assign, transfer or otherwise dispose of its rights and obligations under the Agreement, in whole or in part, without the prior consent in writing of the other Party, which consent shall not be unreasonably withheld or delayed. Upon such consent the assignee shall assume all rights and obligations and shall be subject to all terms and conditions of the Agreement as if such assignee were a Party to the Agreement initially. However, whenever an assignment, transfer or other disposal is made, the assigning Party shall remain jointly and severally responsible with the assignee for the full performance of their obligations under the Agreement.
- 17.4 The Seller may, in its absolute discretion, assign, transfer or otherwise dispose of its interests in the Agreement to any entity that is wholly owned and/or controlled (directly or indirectly) by the government of the State of Qatar provided that such entity (i) is subject to the Law and (ii) shall undertake in writing to succeed to and assume all of the rights and obligations of the Seller, and that the rights of the Buyer are not diminished by such assignment, transfer or disposal. The Seller shall not be obliged to remain jointly and severally responsible for the performance of such entity's obligations following any such assignment, transfer or disposal.

## **18 Health, Safety and Environment**

- 18.1 The Buyer shall ensure that it, its agents, contractors and its respective employees take care and attention for the proper and safe handling, storage, transportation, use and/or disposal of the Sulphur sold under the Agreement, including, but not limited to, the provision of appropriate equipment, information and training to staff, contractors and agents.
- 18.2 Each Party shall comply with all legislation, permits and consents applicable at and in the Load Port, as well as all international treaties and regulations signed by the country supplying the Sulphur, the Terminal Regulations and/or Procedures and the Load Port Authority Regulations.
- 18.3 The Seller shall be responsible for procuring and maintaining all permits and consents necessary for the performance of its obligations under the Agreement and the Buyer shall be responsible for procuring and maintaining all permits and consents necessary for the performance of its obligations under the Agreement.
- 18.4 The Seller shall provide information to the Buyer about the health, safety and environmental data including handling requirements and impacts of the Sulphur, as required under all applicable rules and regulations and as requested by the Buyer, including, for example, a material safety data sheet.
- 18.5 The Buyer shall be responsible for, and provide all necessary documentation, guidance and advice to its agents, employees, customers and any entity that receives the Sulphur, as applicable, regarding the handling and use after the Buyer has received the Sulphur. The Buyer represents and warrants that it has in place a health, safety and environment management system and a crisis response plan, and the Seller has the right to appoint an independent expert to assess the effectiveness of such systems and plan as they relate to the Agreement. All costs of any such expert shall be for the Seller's account.
- 18.6 The Buyer shall advise the Seller immediately if the Accepted Vessel is involved in any health, safety or environmental incident as per Appendix C.

## **19 Ethical Standards**

Each of the Seller and the Buyer undertake that, in connection with the Agreement, its directors, officers, employees and agents, will not make, offer or agree to make or offer any loan, gift, service or other payment, directly or indirectly, whether in cash or in kind, for the purposes of influencing any act or decision, or inducing a director, officer, employee or agent of the other Party, any third party or government officials to do or omit to do any act in order to obtain or retain any improper benefit under the Agreement or otherwise to secure any improper advantage. Should either Party be in violation of this provision, the other Party may terminate the Agreement and any other agreement between the Parties immediately and without liability, except for payment of any amount owed prior to the date of termination.

Furthermore, the Buyer agrees and undertakes to comply with the Seller's Code of Conduct, as amended from time to time.

## **20 Confidentiality**

- 20.1 All information contained in, and relating to the Agreement, is confidential as between the Seller and the Buyer for the duration of the Agreement and for three (3) years thereafter. Neither Party shall disclose information or documents about the Agreement to any third party without the other Party's prior consent in writing, and, if required by the disclosing Party, subject to a written undertaking of confidentiality by such third party. For the avoidance of doubt, these General Terms and Conditions for FOB Sales and Purchases of Sulphur, standing alone, are not QPSPP confidential information.

- 20.2 The obligations of non-disclosure and of confidentiality shall not apply to the Agreement or information or documents of the disclosing Party to the extent that they:
- (a) are or become known to the receiving Party independently of any disclosure by the disclosing Party or any agent or Affiliate or shareholder of the disclosing Party, which has not been wrongly disclosed to or obtained by such receiving Party and in respect of which there is no bar against disclosure;
  - (b) are, or have become, public knowledge otherwise than through a wrongful act or default of the receiving Party or a person to whom the receiving Party is permitted to disclose such confidential information hereunder.
- 20.3 If a receiving Party is required to furnish the Agreement or any other confidential information of the disclosing Party in any arbitration or legal proceedings (other than arbitration or legal proceedings between the Parties themselves), the receiving Party shall be entitled to make such disclosure provided that prior to any such disclosure the receiving Party shall immediately notify the disclosing Party of such fact, and shall make every reasonable effort to contest such requirement and/or obtain protective orders limiting the disclosure of the Agreement or other confidential information of the disclosing Party, and secure for the disclosing Party the opportunity to seek relief from the requirement of disclosure from the arbitrator or authority conducting the legal proceeding.
- 20.4 To the extent required, a receiving Party may disclose the Agreement or other confidential information of the disclosing Party to the following persons who require such disclosure where bona fide necessary for the proper performance of their duties related to the Agreement:
- (a) directors, officers, employees of the receiving Party or its Affiliates, banks or other financial institutions and communicated in accordance with the regulations of a recognized stock exchange; or
  - (b) any consultant, accountant, legal counsel or agent retained by the receiving Party,
- provided that any such receiving person undertakes in writing, or is under a duty to the disclosing Party, to maintain the confidentiality of such information.
- 20.5 The receiving Party will use Confidential Information of the other Party solely for purposes of performing its obligations under the Agreement.
- 20.6 Without prejudice to Clause 20.4, the Seller may disclose the Agreement or other confidential information of the Buyer to Qatar Petroleum acting as the Seller's Delegate to the extent Qatar Petroleum requires such bona fide disclosure for the proper performance of its roles, duties and obligations related to the Agreement or under the Decree Law No. (15) of the State of Qatar, as amended by Law No. (9) of 2016 of the State of Qatar.

## 21 Notices

All notices, nominations, confirmations, and other communications for the purposes of the Agreement shall be in English and must be made to the other Party in writing in the form of letter, telegram, cable, telex or facsimile. Such notice shall only be valid once received at the required address (physical or electronic) and it is the responsibility of the sender to ensure timely receipt. Proof of receipt includes the correct response/answerback from the receiver's machine showing that the transmission had been sent and received correctly, and physical delivery to the address advised under the Agreement, whether or not the counterparty is there to receive it.

The address for notices shall be set out in the Specific Agreement.

The Seller and the Buyer may modify their respective addresses for notices at any time upon at least fifteen (15) days advance written notice to the other Party.

## 22 Definitions and Miscellaneous

22.1 The following terms and abbreviations used in this and the Specific Agreement shall mean:

“**Accepted Date Range**” means the three (3) day date range, from 00:01 in local time on the first date to 24:00 in local time on the last date during which the Accepted Vessel must tender Notice of Readiness (NOR) for loading a cargo of Sulphur at the Loading Terminal;

“**Accepted Quantity**” means the quantity of Sulphur to be delivered against a specific nomination;

“**Accepted Vessel**” means a Vessel nominated by the Buyer and accepted by the Seller pursuant to Clause 5 of these General Terms and Conditions;

“**Affiliate**” means, in relation to either Party, a company or entity that directly or indirectly controls, or is controlled by, or is under common control with the Seller, or the Buyer, as the case may be, and in relation to the Seller shall also include Qatar Petroleum, Affiliates of Qatar Petroleum and the Government of the State of Qatar. For the purposes of this definition, “**control**” shall mean (except for nominal shares held by directors which may be required by the law of the jurisdiction of such corporation or legal entity):

- (a) ownership or control (whether directly or otherwise) of fifty percent (50%) or more of the equity share capital, voting capital or the like of the controlled entity;
- (b) ownership of equity share capital, voting capital, or the like by contract or otherwise, conferring control of, power to control the composition of, or power to appoint, fifty percent (50%) or more of the members of the board of directors, board of management, or other equivalent or analogous body of the controlled entity; or
- (c) entitlement to receive fifty percent (50%) or more of any, but not necessarily every, income or capital distribution made by the controlled entity, either on the liquidation, winding up, dissolution, or otherwise;

“**Agreement**” means these “General Terms and Conditions” (including Appendices) together with the applicable Specific Agreement;

“**API**” means the American Petroleum Institute;

“**ASTM**” means the American Society for Testing and Materials;

“**Baltic Exchange**” means the independent panel of international shipbrokers based in London that provide reports and ship market assessments known as the “**Baltic Exchange**”;

“**Banking Day**” means any day that the banks are open for normal business in the place specified for the payment of the invoice. If no place is specified then this shall be Doha, Qatar;

“**Berth**” means a jetty, dock, anchorage, submarine line, single point or single berth mooring facility, offshore location, alongside Vessels or lighters or any other loading place as agreed by the Parties;

“**Bill of Lading**” or “**BL**” is the customary document of title provided by the Seller to the Buyer pursuant to the Agreement;

“**Buyer**” shall have the meaning set out in the applicable Specific Agreement;

“**Delegate**” means any entity that is designated by the Seller or the Buyer to perform any obligation or exercise any of their rights under the Agreement, including any entity that is a direct or indirect source of Sulphur or services;

“**Delivery Point**” means the Accepted Vessel’s rail at the Loading Terminal;

“**Discharge Port**” means any Berth at which Sulphur is to be, or was, discharged;

“**DoS**” is a Declaration of Security;

“**Due Date**” and “**Adjusted Due Date**” means the date that payment under the Agreement should be received by the Seller from the Buyer, as per Clause 8;

“**EDP**” has the meaning given in Clause 6.3.7;

“**ETA**” means the estimated time of arrival for a Vessel at the Load Port;

“**Expert**” means an expert appointed pursuant to Clause 13;

“**FOB**” means Free On Board, as defined in the Incoterms. If there is any inconsistency or conflict between Incoterms and the Agreement, then the Agreement shall prevail;

“**Force Majeure**” has the meaning given in Clause 12;

“**ICS**” means the International Chamber of Shipping;

“**IMDG**” means International Maritime Dangerous Goods;

“**IMO**” means the International Maritime Organisation;

“**Incoterms**” means Incoterms 2000, as published by the International Chamber of Commerce;

“**Independent Inspector**” means an independent, recognised, person or firm, of first class and good international reputation, that is qualified to sample and test the quality and quantity of Sulphur, who shall be appointed by the Seller but mutually acceptable to the Parties, acting reasonably and appointed in accordance with Clause 4;

“**Institute Warranties**” means the set of express warranties for use in policies covering ships, mainly relating to navigational warranties restricting the ship's navigational areas as issued by the British Institute, unless otherwise agreed in the policy;

“**ISM**” means International Safety Management;

“**ISPS**” means International Ship and Port Security;

“**Law**” means Law No. 15 of 2007 of the State of Qatar;

“**Laytime**” means the time allowed to the Seller for loading the Sulphur as specified in Clause 6.4;

“**Letter of Indemnity**” means a letter of indemnity substantially in the form set out in Appendix A;

“**LIBOR**” means the London Interbank Offer Rate as published by the British Bankers Association for the three (3) month rate for the US Dollar displayed on the appropriate page of the Reuters screen as of 11 a.m. on the relevant day. If the agreed page is replaced or service ceases to be available, the Seller may specify another page or service displaying the appropriate rate after consultation with the Buyer;

“**Lifting Schedule**” has the meaning given in Clause 6.1;

“**Load Port**” means any port within which any Berth is situated at which Sulphur is to be, or was, loaded for shipment, as determined by the Load Port Authority;

“**Load Port Authority**” means such entity having authority and jurisdiction over the Load Port from time to time;

“**Load Port Authority Regulations**” means the port regulations and information issued by the Load Port Authority in relation to the Load Port from time to time;

“**Loading Terminal**” means the storage and delivery facilities for Sulphur at a Load Port, as may be specified in the Specific Agreement;

“**MARPOL**” means the International Convention for the Prevention of Pollution from Ships;

“**MPMS**” means the Manual of Petroleum Measurement Standards published by API, latest edition;

“**Notice of Readiness**” or “**NOR**” means a valid written notice of readiness to load as given by the master of the Accepted Vessel (or representative) to the Seller (or representative) at the Loading Terminal, NOR tendered by radio shall qualify as written notice provided it is confirmed in writing as soon as reasonably possible;

“**OCIMF**” means the Oil Companies International Marine Forum;

“**Party**” means either the Buyer or the Seller, and jointly they may be referred to as the “**Parties**”;

“**P&I Club**” means the applicable Protection and Indemnity Club being a member of the International Group of P&I Clubs;

“**Pricing Reference**” means any index used to determine the price of Sulphur, as specified in the Specific Agreement;

“**QPSPP**” has the meaning given in Clause 1;

“**Regulations**” has the meaning given in Clause 15.1;

“**Rules**” has the meaning given in Clause 13.3.1;

“**Shortfall Amount**” has the meaning given in Clause 16.2.1;

“**Specific Agreement**” means the specific contract details and any special terms and conditions negotiated and agreed by the Parties, which supplement these General Terms and Conditions;

“**SPM**” is a Single Point Mooring;

“**Sulphur**” is the chemical element that has the symbol **S** in the Periodic Table of elements and atomic number 16. It is extracted from oil or natural gas and is supplied in dry, granulated forms;

“**Terminal Regulations and/or Procedures**” means all regulations and procedures established or customarily practiced by the operator of a Loading Terminal with respect to notifications, nominations, berthing, scheduling, Vessel acceptance, documentation, departure, measurement, and other health, safety, environmental and operational matters;

“**Tonne**” means a metric tonne or quantity with a mass of one thousand (1,000) kilograms;

“US Dollar” or “USD” or “\$” means the lawful currency of the United States of America;

“Vessel” means a ship which is wholly or mainly constructed or is adapted for the carriage of Sulphur; and

“Working Day” means a day that the banks are open for normal business in Doha, State of Qatar unless expressly stated otherwise in the Agreement.

## **22.2 Amendments**

All changes, updates and modifications of the Agreement shall only be effective once formally detailed and confirmed in writing by the Parties as having been agreed.

## **22.3 Brand, Trade Marks, partnerships and agencies**

Nothing in these General Terms and Conditions:

- (a) shall give the right for either Party to use any brand or trade mark or other intellectual property right used and/or owned by the other Party; or
- (b) is intended to or shall operate to create a partnership, agency, unincorporated association or other co-operative entity between the Seller and the Buyer.

## **22.4 Gender**

Words denoting or implying any gender include all genders.

## **22.5 Interpretation**

22.5.1 The order of Clauses, sections and sub-sections, and their headings are for convenience only and do not affect interpretation of the Agreement.

22.5.2 Where the Agreement specifies “... days notice”, this shall always mean that the notification day equals day one (1), e.g. fifteen (15) days notice means that a notice given on the 1st day of the month shall be effective on the fifteenth (15th) day of the month. For the avoidance of doubt, where the last day for any notice to be given under the Agreement falls on a day which is not a Working Day, such notice shall be given on or before the last preceding Working Day.

22.5.3 The Gregorian calendar shall apply to the Agreement and any references to days, months, quarters and years in the Agreement are to days, months, quarters and years of the Gregorian Calendar. Unless expressly stated otherwise, all references to a time of day shall be a reference to the time of day in Doha, Qatar.

22.5.4 Where the word “deliver” is used it shall include “arrange to be delivered” and the term “delivery” shall be interpreted accordingly.

22.5.5 Where the word “supply” is used it shall include “arrange to be supplied” and the term “supply” shall be interpreted accordingly.

## **22.6 Language**

English is the governing language of the Agreement and must be used for all notices, communication and information.

## **22.7 No Waiver**

22.7.1 Neither Party shall be deemed to have waived, released or otherwise modified any of its rights hereunder unless such Party has expressly stated its intention to do so in a written instrument duly executed by such Party, provided further that any such instrument shall relate only to such matter to which it expressly refers, and therefore shall not apply to any other matter or to any prior, concurrent or subsequent matter.

22.7.2 If any provision of the Agreement is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such finding shall not affect, impair or invalidate the other provisions of the Agreement, unless the exclusion of the invalid or unenforceable provision results in a material change which causes the transactions contemplated herein to be unreasonable, and all remaining provisions not affected by such finding shall remain in full force and effect. The Parties agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves, to the greatest extent possible, the economic, legal, and commercial objectives of the invalid or enforceable provision.

## **22.8 Operator, Agent and Delegate**

Any references within the Agreement to the Seller or the Buyer performing an obligation or exercising a right shall not be interpreted as personal to the Seller or the Buyer so as to prevent an operator, agent or Delegate from performing such obligation or exercising such right on behalf of the Seller or the Buyer; provided always that each Party shall remain liable to the other under the Agreement for procuring the performance of such obligations and for the actions of any operator, agent or Delegate, as the case may be.

## **22.9 Persons**

Words denoting persons shall include companies, firms, corporations and joint ventures, and vice versa.

## **22.10 Recording of Conversations**

QPSPP has the unconditional right to record any or all negotiations and conversations and such recordings may be used for its' own purposes and in evidence in any proceedings relating to the Agreement and for the purposes of other commercial matters between the Parties.

## **22.11 References**

All references to documents, codes, rules, publications, laws, rules, regulations and decrees, include all updates, amendments, supplements and replacements thereof.

## **22.12 Singular / Plural**

Words denoted in the singular shall include the plural and vice versa.

## **22.13 Time of the essence**

The Agreement has been entered into by the Parties on the specific understanding that time is of the essence in the performance of the Agreement where a time period is stated.

## **23 Entire Agreement**

The Agreement constitutes the entire understanding and agreement between the Buyer and the Seller for the transactions described therein. For all matters covered in the Agreement it supersedes any prior understanding, agreement and/or statement of intent in the negotiations, both written and oral, that relate to the Agreement.

**Appendix A**  
**Letter of Indemnity (Example)**

From: Qatar Petroleum For The Sale Of Petroleum Products Company Ltd (QPSP)

Agreement Reference: ..... Dated

To: .....

IN CONSIDERATION of your paying for the cargo of .....

Metric Tonnes of Sulphur .....

which sailed from (Load Port) .....

on (Vessel and date).....

loaded with such cargo when the (documents)  
.....

for such cargo has not been delivered to you at the time payment is due under our Agreement dated

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We hereby warrant to you that at the time property passed as specified under the terms of the above Agreement we had the right to sell the said cargo to you and we had unencumbered title to the said cargo.

We hereby irrevocably and unconditionally undertake to indemnify you and hold you harmless against:

- (i) any claim made against you by anyone as a result of breach by us of any of our warranties as set out above; and
- (ii) all losses, costs (including, but not limited to, costs as between attorney or solicitor and own client), damages, and expenses which you may suffer, incur or be put to, other than losses, costs damages or expenses which are of a type excluded by Clause 16.1 of the Agreement, arising as a result of our failure to deliver the above document(s) in accordance with the Agreement.

This indemnity shall terminate on the earlier of (a) three years from the date of this letter of indemnity or (b) delivery by us of the aforesaid document(s).

This indemnity shall be governed by and construed in accordance with English law and all disputes, controversies or claims arising out of or in relation to this indemnity or the breach, termination or validity hereof shall be subject to the exclusive jurisdiction of the courts of England.

**Appendix B**  
**Financial Security (Examples)**  
**Standby Letter of Credit Format (Example)**

Irrevocable Standby Letter of Credit No. [●]

**Beneficiary**

**Applicant**

[name and address]

[name and address]

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

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

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

Covering: [Details of the Agreement]

Multiple drawings are permitted.

The expiration of this Letter of Credit is [●]

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

**Special Conditions:**

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

Except as otherwise expressly provided herein, this Standby Letter of Credit is subject to the Uniform Customs and Practices for Documentary Credits Revision 2007 (ICC Publication No. 600).

For floating price Agreements, add to the Special Conditions:

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

## Appendix B II

### Form of Parent Company Guarantee (Example)

Dear Sirs:

- 1 This Parent Company Guarantee is hereby delivered as of the date hereof in consideration of Buyer entering into a Sulphur sales and purchase agreement dated the [●] day of [●], (hereinafter referred to as the "Agreement"), between: Qatar Petroleum For The Sale of Petroleum Products Company Ltd (QPSPP), a company organized and existing under the laws of the State of Qatar (hereinafter referred to as "Seller"); and [●], a corporation organised under the laws of [●] (hereinafter referred to as "Buyer").
- 2 We the undersigned (name of the Parent Company), a company incorporated under the laws of [●] have our registered office at [●] (hereinafter referred to as the "Parent Company"), represent and warrant to Seller that we are the Parent Company of (name of Buyer) under the Agreement, of which we the Parent Company, own or control all or a majority of the issued and outstanding equity share capital thereof.
- 3 In our capacity as the Parent Company of Buyer, we the Parent Company by this Parent Company Guarantee, hereby irrevocably and unconditionally:
  - (a) guarantee to the Seller, as principal obligor and not merely as surety, the due, timely prompt, full and complete performance by Buyer of all obligations including without limitation, payments, sums, due interests, demurrages, fines, penalties and damages, thereby due to Seller, as well as the full performance of all and any of Buyer's obligations and/or all and any of Buyer's liabilities under the Agreement.
  - (b) subject to (c) below with respect to any obligation to make payment under the Agreement, agree that if and to the extent that Buyer has failed to perform any or all of its respective obligations or has committed any breach of its respective obligations, and has failed to remedy any such breach within the time limits contained in the Agreement, the Parent Company, upon receiving written notification from Seller shall immediately perform or cause to be performed Buyer's unfulfilled obligations in accordance with the Agreement free of offsets, without restriction or conditions not otherwise contained in the Agreement, and notwithstanding any contestation or objection by Buyer; and
  - (c) agree that if, and to the extent that, Buyer fails timely to perform any obligations which constitutes an obligation to pay any amount under the Agreement, the Parent Company will, within 5 Business Days after receiving written notification from Beneficiary following the due date of such obligation, pay such sum as has not been paid by Buyer, together with interest thereon at the rate per annum payable by Buyer on such sum pursuant to the Agreement from the date such sum becomes payable by Buyer under the Agreement until the payment of such sum in full. A "Business Day" is any calendar day other than a Friday, Saturday or Sunday and any other national holiday or day on which the banks in the primary office location of the Parent Company and Seller are closed for business.

The Parent Company waives any right it may have of first requiring Seller to proceed against or enforce any other rights or other guarantee or security with respect to or claim payment from Buyer before making a demand against or claiming from the Parent Company hereunder.

- 4 This Parent Company Guarantee shall extend to any amount that constitutes part of the obligations owed by Buyer pursuant to the Agreement. If the obligations are unenforceable or not allowable due to the existence of a bankruptcy, reorganization or similar proceeding Buyer or the Parent Company (including, without limitation, the dissolution of Buyer or the Parent

Company), the obligations of the Parent Company under this Parent Company Guarantee shall continue in full force and effect and shall continue to legally bind the Parent Company as if there had been no such unenforceability against or refusal or inability or lack of capacity on the part of Buyer to allow payment of any amount that constitutes part of the obligations. This Parent Company Guarantee shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the obligations is rescinded or must otherwise be returned by Seller upon the insolvency, bankruptcy, reorganization or liquidation of, or similar proceeding with respect to Buyer or the Parent Company (including, without limitation, the dissolution Buyer or the Parent Company) or otherwise, all as though such payment had not been made.

- 5 Notwithstanding any payment or payments made by the Parent Company under this Parent Company Guarantee, the Parent Company shall not have any right of subrogation in respect of the Agreement, and the Parent Company waives, until the Buyer's obligations under the Agreement have been discharged in full:
  - (a) any right to enforce any remedy that the Parent Company may have against the Buyer; and
  - (b) the benefit of, and any right to participate in, any security with respect to the obligations now or hereafter held by the Seller.

If, notwithstanding the foregoing, any amount shall be paid to the Parent Company on account of such subrogation rights prior to the time when all of the obligations under the Agreement shall have been paid in full, such amount shall be held by the Parent Company in trust for Seller and shall forthwith upon receipt by the Parent Company, be turned over to Seller in the exact form received by the Parent Company, to be applied against the obligations in such order as Seller may determine.

- 6 As separate and primary obligations, the Parent Company shall indemnify and hold Seller harmless against all costs, liabilities, losses, and/or damages resulting from or arising out of Buyer's breach of its obligations, and/or the Parent Company's failure to perform with respect to or breach of this Parent Company Guarantee or the unenforceability of the Parent Company's obligations hereunder.
- 7 All payments by the Parent Company hereunder shall be made free and clear of, and without deduction for or on account of any taxes, except to the extent that the Parent Company is required to make any such payment subject to the deduction or withholding of any tax. If any tax or amount in respect of a tax must be deducted or withheld from any amounts payable or paid by the Parent Company, on account of or by reference to any payment by or obligation of the Parent Company hereunder, the Parent Company shall pay such additional amounts as may be necessary to ensure that Seller receives a net amount equal to the full amount which it would have received from the Parent Company had payment not been made subject to such deduction or withholding.
- 8 All taxes required to be deducted or withheld by the Parent Company from any amounts paid or payable hereunder shall be paid by the Parent Company prior to the date on which penalties attach thereto and the Parent Company shall, within 30 days of such payment being made, deliver to Seller such evidence as is reasonably available to the Parent Company that payment has been duly remitted to the appropriate taxing authority.
- 9 The Parent Company represents and warrants to Seller:
  - (a) The Parent Company is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation and has all requisite power and authority to conduct its business as now being conducted and to execute, deliver and perform its obligations under this Parent Company Guarantee;

- (b) The execution, delivery and performance by the Parent Company of this Parent Company Guarantee has been duly authorized by all necessary corporate action on the part of the Parent Company and this Parent Company Guarantee has been validly executed and delivered by the Parent Company;
  - (c) This Parent Company Guarantee constitutes a legal, valid and binding obligation of the Parent Company;
  - (d) No authorisations, approvals or consents of any governmental or regulatory authority or agency or any other person and no filings or registrations with any governmental authority or agency are necessary for the execution, delivery or performance by the Parent Company of this Parent Company Guarantee or for the validity or enforceability thereof;
  - (e) The obligations of the Parent Company under this Parent Company Guarantee rank at least pari passu with all of its other unsecured and unsubordinated liabilities (contingent or otherwise) and its unsecured and unsubordinated obligations, except obligations that are mandatorily preferred by law;
  - (f) Neither the execution and delivery by the Parent Company of this Parent Company Guarantee, nor its compliance with, or performance of the terms and conditions of this Parent Company Guarantee will contravene the organizational documents of the Parent Company or any legal obligation or any order, writ, injunction, or decree of any court or governmental authority or will conflict with or result in any breach of any of the terms, covenants, conditions or provisions of, or constitute a default under, any agreement, contract or instrument to which the Parent Company is a party, except for any such conflict, breach or default that would not reasonably be expected to have a material adverse effect on the Parent Company's ability to perform its obligations under this Parent Company Guarantee; and
  - (g) There is no action, suit or proceeding at law or in equity by or before any court or arbitral tribunal now pending or, to the best of the knowledge of the Parent Company, threatened against the Parent Company which would reasonably be expected to have a material adverse effect on the Parent Company's ability to perform its obligations under this Parent Company Guarantee.
- 10 This Parent Company Guarantee shall inure to the benefit of Seller and its respective successors and assigns. Seller may at any time assign or otherwise transfer any or all of its rights hereunder to an Affiliate of Seller. The Parent Company shall not assign or transfer any or all of its obligations hereunder, but may cause others to perform its obligations hereunder.
- 11 This Parent Company Guarantee is a continuing guarantee and shall be effective as of the Effective Date of the Agreement, and remain in full force so long as Buyer has obligations to be performed by it in accordance with the Agreement and/or the Parent Company has obligations pursuant to or arising out of this Parent Company Guarantee.
- 12 The Parent Company's obligations hereunder shall not be exonerated, discharged or released by any of the following described actions, circumstance, matter or things which, but for this provision, might operate to discharge, release or otherwise exonerate the Parent Company from its obligations under this Parent Company Guarantee in whole or in part or otherwise affect such obligations, and whether or not known to the Parent Company or Seller:
- (a) any amendment, modification, extension, indulgence, time, waiver, or concession granted to Buyer, whether as to payment, time, performance, or otherwise;
  - (b) the taking, variation, renewal, or refusal or neglect to perfect or enforce the Agreement or any rights or remedies against or securities granted by Buyer;

- (c) any legal limitation, disability, incapacity or other similar circumstances relating to Buyer;
  - (d) any unenforceability, invalidity, or frustration of any obligations of Buyer to be performed by it in accordance with the Agreement, with the intent that the Parent Company's obligations hereunder shall remain in full force and this Parent Company Guarantee shall be construed accordingly as if there were no such unenforceability, invalidity, or frustration;
  - (e) any notice (including notice of the acceptance of this Parent Company Guarantee), promptness, diligence, presentment, protest and demand with respect to any of the Obligations; and/or
  - (f) the bankruptcy or insolvency of Buyer.
- 13 No failure to exercise, and no delay in exercising on the part of Seller, any right, power, or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise thereof, or the exercise of any other right, power, or privilege. No waiver by Seller shall be effective unless it is in writing.
- 14 The rights and remedies of Seller herein provided are cumulative, and not exclusive of any rights or remedies provided by law. This Parent Company Guarantee shall not be reduced or defeated by any other compensation, which Seller receives on account of any breach, claim, liability or loss by Buyer.
- 15 If any provision of this Parent Company Guarantee is prohibited or unenforceable in any jurisdiction, such prohibition or unenforceability shall not invalidate the remaining provisions hereof, or affect the validity or enforceability of such provision in any other jurisdiction.
- 16 Terms defined in the Agreement shall have the same meanings in this Parent Company Guarantee, except as otherwise defined herein.
- 17 All notices, requests, demands and other communications that are required or may be given under this Parent Company Guarantee shall be in writing and shall be deemed to have been duly given:
- (a) when received, if personally delivered or delivered by express courier service; or
  - (b) when transmitted, if transmitted by facsimile, subject to sender's facsimile machine receiving the correct answerback report or the recipient confirming by telephone to the sender that the recipient has received the facsimile message.

A notice given in accordance with this article but received on a day other than a Business Day or after business hours in the place of receipt will be deemed to have been received on the next Business Day in that place. In each case notice shall be sent to:

(Name and address of the Parent Company)

Attention:

Telephone number:

Facsimile number

E-mail:

or such other place as the Parent Company may designate by written notice to Seller (at the notice address for Seller provided in the Agreement or otherwise advised to the Parent Company in writing by Seller).

- 18 Any notice given under or in connection with this Parent Company Guarantee shall be in English.
- 19 This Parent Company Guarantee shall be governed by, subject to, and construed and interpreted in accordance with English law.
- 20 Any dispute between Seller and the Parent Company regarding this Parent Company Guarantee that cannot be settled amicably between them within three (3) months, shall be submitted to and finally settled by the courts of England.

Signed for and behalf of

(Name of the parent company)

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Signed by: President and Attorney in Fact

## **Appendix C**

### **Incident Reporting**

The Buyer shall advise the Seller on a highly urgent basis by telephone if the Accepted Vessel, in performing the Agreement, is involved in any accident, casualty, collision, grounding, pollution, spill to deck, fire/explosion, or any incident involving cargo loss or affecting performance of the Accepted Vessel, including alleged pollutions, touching bottom, hard contact with terminals, jetties, piers, SPM's, and failure or breakdown of the Accepted Vessel's equipment including main, auxiliary or cargo handling machinery.

The Buyer should arrange for an immediate report of the incident to be sent by e-mail to the Seller.

The contact details for telephonic and written notification of incidents shall be set out in the Specific Agreement.

Periodic follow-up reports should be e-mailed to the same address as information regarding the incident develops.

The initial notification and report should include:

- AA Name of the Vessel
- BB Date and local time incident occurred
- CC Location coordinates
- DD Type of incident
- EE Estimate of damage, extent of cargo loss and extent of any pollution
- FF Any personal injuries
- GG Effect on operations, delays to the Vessel
- HH Authorities notified
- II Degree of publicity, if any

As soon as practical, the Buyer shall arrange through the Accepted Vessel's owners/operators to forward a written report by e-mail, detailing the incident, including root causes.

These reporting requirements do not relieve the Accepted Vessel's master/owner from responsibilities to provide appropriate responses to any incident specified in the foregoing and do not imply any obligation on the Seller or the Buyer either to take, or not to take, any action subsequent to the receipt of such report(s) other than those expressly covered under the terms of the Agreement.