

**ENTERPRISE GENERAL TERMS AND CONDITIONS FOR SALE OF PRODUCT FOB TERMINAL**  
**REVISED EFFECTIVE DECEMBER 1, 2024**

- 1 **AGREEMENT.** The following General Terms and Conditions for Sale of Product FOB Terminal, inclusive of all appendices, are attached to the Confirmation that identifies (a) the Product sold by the Enterprise entity indicated as “*Seller*” in the Confirmation (“**Enterprise**” or “**Seller**”); (b) the applicable purchaser of the Product indicated as “*Buyer*” in the Confirmation (“**Customer**” or “**Buyer**”); (c) the date of the Transaction indicated in the Confirmation (the “**Transaction Date**”); (d) the quantity and sales price of the Product sold; and (e) all other commercial terms and conditions applicable to such sale. The General Terms are incorporated into the Confirmation and together are the “**Agreement**.” If there is a conflict between the provisions of the Confirmation and the General Terms, they will be given priority first to the Confirmation and then to the General Terms. Seller and Buyer are each a “**Party**” and together the “**Parties**”.
- 2 **RESERVED**
- 3 **AUTHORIZATIONS, BINDING OBLIGATIONS AND NECESSARY APPROVALS.** Each Party represents and warrants to the other Party that: (a) the execution, delivery and performance of the Agreement has been duly authorized by all necessary corporate or other organizational action on its part and does not violate or conflict with any law applicable to it; (b) its obligations under the Agreement are, subject to applicable insolvency and bankruptcy laws and general principles of equity, legally valid and binding obligations, enforceable in accordance with their terms; (c) it has all necessary governmental and other third party permits, approvals and licenses applicable to it and required in connection with the execution, delivery and performance of the Agreement; and (d) it has reviewed and accepted and will fully comply with all of these General Terms.
- 4 **TRANSACTION.**
  - 4.1 **Transaction Terms.** Pursuant to the terms and conditions set forth in the Part 2 Transaction in the Confirmation and this Agreement, Seller will sell and deliver, and Buyer will purchase and receive, (a) the product indicated in the Confirmation as “*Product*” (“**Product**”); (b) which meets the product specifications indicated on the Confirmation as the “*Quality*” (as applicable for such Product, the “**Product Specifications**”); (c) which, if applicable, (1) will have been refrigerated within any product temperature range indicated as the “*Product Temperature Range*”, if set forth in the Confirmation, as measured at the base of the Terminal’s loading arm; or (2) will be within the API Gravity Range, if set forth in the Confirmation; (d) in the quantity indicated as the “*Contract Quantity*” on the Confirmation for each Cargo (the “**Cargo Volume**”); (e) at the price per unit of measurement (“**Unit**”) of Product indicated as the “*Contract Price*” on the Confirmation for the Month of Loading (the “**Contract Price**”); (f) for delivery at the Delivery Point; (g) to the Vessel indicated on the Confirmation as “*Vessel Name*” or as otherwise requested by Buyer and approved by Seller pursuant to the terms hereof (“**Buyer’s Vessel**”). The “**Month of Loading**” is as indicated in the Confirmation.
  - 4.2 **Load Volume Option.** If a “**Loading Percentage Range**” is indicated in the Part 2 Transaction in the Confirmation, either Buyer or Seller, as applicable and as indicated on the Confirmation, will have an option (the “**Load Volume Option**”) to load a minimum volume of Product equal to the minimum percentage indicated in the Loading Percentage Range multiplied by the Cargo Volume (the “**Minimum Load Volume**”) and a maximum volume of Product equal to the maximum percentage indicated in Loading Percentage Range multiplied by the Cargo Volume (the “**Maximum Load Volume**”). It is recognized and agreed that the Minimum Load Volume and Maximum Load Volume represent the upper and lower points of the Load Volume Option and will be for operational purposes only to provide flexibility in loading the Cargo and that the Minimum Load Volume does not reduce Buyer’s obligation to purchase the Cargo Volume, or Seller’s obligation to sell and deliver the Cargo Volume. Likewise, it is recognized and agreed that Seller’s obligation to deliver and load Product will not exceed the Maximum Load Volume.
- 5 **TERMINAL BERTH, BUYER’S VESSEL, VESSEL SCHEDULING AND VESSEL LOADING REQUIREMENTS.**
  - 5.1 **Terminal Berth.**
    - 5.1.1 Terminal Berth. Seller owns or leases berths or otherwise has the right to load the Product at the marine terminal facility indicated on the Confirmation as the “*Terminal*” (the “**Terminal**”). Seller will, subject to the terms of the Agreement, exercise due diligence to arrange for (a) one safe berth for Buyer’s Vessel at the Terminal to which Buyer’s Vessel may proceed to and depart from and where Buyer’s Vessel can lie safely afloat during the time period indicated in the Confirmation as the “*Laycan Window*” (the “**Laycan Window**”) and (b) provide or cause to be provided the necessary personnel, loading arms, connections, pipelines, tankage facilities

and any other equipment or facilities necessary for the loading of the Product onto Buyer's Vessel. The Laycan Window may be changed only with Seller's written consent.

- 5.1.2 Channel Disclaimer. **NOTWITHSTANDING ANYTHING IN THE AGREEMENT TO THE CONTRARY, SELLER DOES NOT, AND WILL NOT BE DEEMED TO, WARRANT THE SAFETY OR THE DRAFT (AIR OR WATER) OF THE ANCHORAGE, THE SHIP CHANNEL OR OTHER PUBLIC OR PRIVATE CHANNELS, PORTS, FAIRWAYS, APPROACHES THERETO, ANCHORAGES, OR OTHER PUBLICLY-MAINTAINED AREAS EITHER AT OR UTILIZED TO ACCESS THE BERTH WHERE BUYER'S VESSEL MAY BE DIRECTED AND SELLER WILL HAVE NO LIABILITY IN RESPECT THEREOF OR THEREFOR.**
- 5.1.3 No Modification of Facilities. Buyer's Vessel will be suitable for loading or discharging Product without alteration or modification of the Terminal. Neither Terminal Operator nor Seller will have any obligation to modify or alter their respective facilities to accommodate any Vessel, even if accepted for loading under the Agreement.
- 5.1.4 Vessel Berth Priority. Seller will have sole discretion to determine the preference and order of vessels, including Buyer's Vessel, scheduled at the berth and may rely upon all notice information given pursuant to the provisions of the Agreement. Without limiting and subject to the foregoing, it is Seller's general practice to load vessels in order of their arrival within their respective Laycan Windows, subject to (a) vessel service level, (b) current berth availability, (c) channel availability and conditions at the applicable Port, including without limitation, port closures, port congestion, and other port restrictions and conditions, (d) operational considerations at the Terminal, (e) timely receipt of Buyer's Vessel's scheduled arrival date and (f) timely issuance of an NOR under the Agreement.
- 5.1.5 Shifting Berths. Seller or Terminal Operator may, at any time and from time to time, require Buyer to (a) shift Buyer's Vessel from one berth to another or (b) remove Buyer's Vessel from any berth assigned by Seller or Terminal Operator. Unless such Vessel shift is due (in whole or part) to Buyer or Buyer's Vessel or Force Majeure, Seller will pay or cause to be paid all expenses incurred as a result of such Vessel shift and the time consumed in such Vessel shift will not count as Allowed Laytime. If Seller notifies Buyer of a Vessel shift due to conditions or facilities of Buyer or Buyer's Vessel which prevent Seller's completion of loading within the Allowed Laytime, Buyer will pay or cause to be paid all expenses incurred as a result of such Vessel shift and the time consumed in such Vessel shift will be included as berth occupancy time and as additional Laytime and will not result in Demurrage chargeable to Seller.
- 5.1.6 Orders to Vacate.
- 5.1.6.1 *Port Authority or Terminal Order*. Upon the issuance of an order to vacate issued by the Port Authority, Seller or Terminal Operator, which is due to the failure, inability of or the refusal by Buyer's Vessel to complete loading, for safety reasons, or to comply with any Terminal manual ("**Terminal Manual**") or other Terminal Requirements or the terms and conditions under the Agreement, then Buyer's Vessel will vacate the berth at the Terminal as directed in the order.
- 5.1.6.2 *Completion of Loading*. If Buyer's Vessel remains at its assigned berth after the time Seller or Terminal Operator has released Buyer's Vessel because it has ceased loading Product or Seller has earlier stopped loading as it deems necessary (such time, the "**Completion of Loading**"), Seller or Terminal Operator may require such Vessel to immediately vacate its berth, without delay.
- 5.1.6.3 *Prior to Completion of Loading*. If Buyer's Vessel remains at its assigned berth in excess of the Allowed Laytime and the Completion of Loading has not occurred, Seller or Terminal Operator may terminate loading and require such Vessel to immediately vacate its berth, without delay.
- 5.1.7 Excess Occupancy Payment. Buyer's Vessel will immediately vacate its berth upon Completion of Loading or upon receipt of an order to vacate, subject to channel availability. If Buyer's Vessel fails to so vacate, Buyer will pay Seller an additional dockage fee equal to the Demurrage, losses, damages, costs or expenses which Seller may incur, including, without limitation, Legal Costs and any such amounts as may be incurred due to delay to other vessels awaiting their turn for a berth at the Terminal (the "**Excess Occupancy Payment**").

## 5.2 **Buyer's Vessel**

- 5.2.1 Vessel Arrangement and Charges. Buyer will arrange for the arrival of Buyer's Vessel, as approved by Seller, at the Terminal; arrange for the subsequent usage, storage, sale or other

disposition of all Product; and be responsible for all charges attributable to Buyer's Vessel, including, but without limitation, all duties, fees, taxes, wharfage, dockage, dues and other charges, including, without limitation, those incurred for pilots, tugs, mooring, light and port dues, line handlers and agents.

- 5.2.2** TBN Vessels. In the event the vessel indicated next to the "Vessel Name" on the Confirmation is "to be nominated" ("TBN"), Buyer will notify Seller of the vessel's name on or before the earlier of (a) the final date provided for in the Terminal Requirements and (b) the date specified in the Confirmation. Seller will notify Buyer of its acceptance or rejection of such vessel; provided, however, that such acceptance will not be unreasonably withheld, conditioned or delayed. Seller may accept a vessel identified after such applicable vessel nomination date in its sole discretion.
- 5.2.3** Inspection. Seller may send its representatives to inspect Buyer's Vessel to ascertain whether the Buyer's Vessel complies with the provisions of the Agreement. Any inspection (or lack thereof) of a Buyer's Vessel hereunder will not (a) modify or amend any of Buyer's obligations, representations, warranties and covenants under the Agreement, or (b) constitute a waiver by Seller of any of Buyer's obligations, representations, warranties and covenants under the Agreement or an acceptance or waiver of any default of Buyer under the Agreement.
- 5.2.4** Rejection. Seller may reject any vessel or Buyer's Vessel that Seller determines at any time, acting reasonably, (a) does not meet the requirements of the Agreement (including, without limitation, the Loading Requirements and Legal & Regulatory Requirements), the Port Authority or any Terminal Requirements; (b) presents a risk to the Terminal, personnel at the Terminal, or the environment; or (c) is not compatible with the Terminal. Neither the exercise nor the non-exercise of such right will reduce the responsibility of Buyer to Seller, nor increase the responsibility of Seller to Buyer under the Agreement. In the event of Seller's rejection of the Buyer's Vessel, Buyer may be entitled to substitute another vessel pursuant to Section 5.2.5.
- 5.2.5** Substitution. Buyer may substitute another vessel that will comply with the Loading Requirements; provided that: (a) the substituted vessel is able to load the accepted loading quantity of Product during the Laycan Window; (b) the scheduled arrival date range of any vessel thus substituted is not, without the prior written consent of Seller, different from the latest accepted date range of the vessel for which the substitution is made; (c) Buyer acknowledges that the substituted vessel will strictly comply with the Vessel Warranty and assumes all responsibility and liability for any failure to comply; and (d) unless otherwise agreed, Buyer has provided written notice to Seller of the substitution on or before the earlier of 48 hours prior to the first Day of the Laycan Window or the final date provided for in the Terminal Requirements.
- 5.2.6** Vessel System Failures. In the event Buyer's Vessel's critical safety or environmental systems fail, fully or partially, after initial acceptance by the Terminal, Seller may reject Buyer's Vessel and order Buyer's Vessel to vacate the berth. Upon Buyer's notice of the completion of suitable repairs returning such critical equipment to good working order, Seller may send its representatives to inspect the Buyer's Vessel to verify that such critical safety or environmental systems have been fully repaired. Any inspection (or lack thereof) will not (a) modify or amend Buyer's obligations, representations, warranties and covenants under the Agreement, or (b) constitute a waiver by Seller of any of Buyer's obligations under the Agreement or an acceptance of any default of Buyer under the Agreement. Seller will promptly notify Buyer of its acceptance or rejection of the repaired Buyer's Vessel. Buyer's Vessel must be reaccepted by Seller prior to the start or resumption of loading. Any resulting delays will count as used Laytime and be subject to Demurrage cost reimbursement from Buyer to Seller.
- 5.2.7** Vessel Damage to Terminal. Buyer assumes full responsibility and liability for any damage sustained by wharves, berths, docks, facilities, tugs, and/or vessels owned, operated, or maintained by Seller or Terminal Operator, caused by Buyer, Buyer's Vessel or any other waterborne craft ordered by, or being operated for the account of Buyer. **BUYER WILL FULLY AND COMPLETELY INDEMNIFY AND HOLD HARMLESS SELLER AND TERMINAL OPERATOR FOR ANY SUCH DAMAGES OR LOSSES.** This Section 5.2.7 is without prejudice to any other rights, remedies, claims, causes of action or defenses thereto which may exist for or in favor of Seller and/or the Terminal Operator for any such damages or losses.

### **5.3 Vessel Scheduling.**

- 5.3.1** Arrival Notice. Buyer will arrange for the agent or master of Buyer's Vessel to give written notice to Seller and Terminal Operator by electronic mail as provided in the Confirmation or as otherwise instructed by Seller at least 72 hours and again 48 hours before arrival, stating the expected date and hour of arrival. Similar notice will be given at least 24 hours prior to the estimated arrival time and thereafter if there is any change in the estimated arrival time in excess of 1 hour. Buyer will also give all notices required by the Terminal Requirements. Notices provided will not alter a Laycan Window.
- 5.3.2** Seller Questionnaire. Buyer will arrange for Buyer's Vessel to fully complete and submit to Seller or Terminal Operator all answers to any reasonably required pre-berthing questions at least at least five (5) Days prior to the first Day of the Laycan Window or promptly upon Seller or Terminal Operator's acceptance of a nominated Buyer's Vessel, whichever is sooner.
- 5.3.3** Notice of Readiness. Upon arrival of Buyer's Vessel at the customary anchorage or other waiting area for the applicable Port for the Terminal, the Vessel's agent or master will present to Seller and Terminal Operator a "Notice of Readiness" (an "**NOR**") by electronic mail that Buyer's Vessel is "load ready" in all respects (including in receipt of all required certificates from Governmental Authorities and any documentation reasonably required by Terminal Operator) to load Product, berth or no berth. Such NOR shall be received by Seller or Terminal Operator within the Laycan Window. Upon receipt of Buyer's NOR, Seller will notify Buyer of Seller's acceptance or rejection of such NOR; provided, however, that Seller will not unreasonably withhold, condition or delay its approval of a validly submitted NOR.
- 5.3.4** Notice to Proceed. When a berth becomes available after Seller's receipt and acceptance of Buyer's NOR, Seller will give Buyer's Vessel a notice to proceed to berth. Buyer's Vessel will not proceed up the applicable Ship Channel until it has received such notice to proceed to berth.
- 5.3.5** Early Arrivals. In order to facilitate dock optimization, in the event (a) Buyer's Vessel arrives at the customary anchorage or other waiting area prior to the start of the Laycan Window, and (b) the NOR is tendered (or Buyer's Vessel is capable of tendering a NOR, whether or not such NOR is actually tendered), Seller reserves the right, at its sole discretion, to order Buyer's Vessel's to immediately transit to the berth. In the event Seller elects to exercise this option, Laytime calculations will commence as provided under Section 7.1(f) or 7.1(g), as applicable; provided, however, that all other Laytime related items will be in accordance with the other provisions of Section 7.
- 5.4** **Vessel Loading Requirements.** Buyer warrants and represents to Seller and Terminal Operator (the "**Vessel Warranty**") that Buyer's Vessel will strictly comply with the requirements set forth in Sections 5.4.1 through 5.4.6 below (collectively, the "**Loading Requirements**"):
- 5.4.1** Minimum Load Rate. Buyer's Vessel will be a "load ready" Vessel capable of receiving Product at a minimum sustained loading rate (in Units per hour) indicated in the Confirmation as "*Minimum Load Rate*" (the "**Minimum Load Rate**"), unless waived in writing by Seller, and will be conditioned to load Product prior to its arrival at the Terminal. In the event that, for reasons attributable in whole or in part to Buyer or Buyer's Vessel, Buyer's Vessel does not perform at the required Minimum Load Rate, Seller may at its sole discretion: (a) reduce the Cargo Volume, (b) complete loading and recover any amounts due from Buyer attributable to said reduced loading rate as set forth in the Agreement or (c) cease loading and require the Vessel to immediately vacate the berth. Any such volume reductions will not reduce Buyer's obligations to load the Cargo Volume. Buyer may request waiver of this provision by providing a written request at least 2 Business Days prior to the Buyer's Vessel's NOR, but such waiver will be at Seller's sole and absolute discretion.
- 5.4.2** Vessel Representative. Buyer's Vessel will, at all times, have a designated individual on board fluent in the use of the English language and possessing full and complete knowledge as to Buyer's Vessel's total condition. Upon arrival at the Terminal, Buyer will advise Seller and Terminal Operator of the aforesaid individual's name, and such individual will not leave the Vessel prior to Buyer's Vessel's departure without first advising Seller and Terminal Operator of the name of a replacement individual of equal fluency and knowledge who will fulfill this requirement. Seller or Terminal Operator may order any Vessel failing to comply with said requirement to vacate the berth. If Buyer's Vessel fails to meet such Vessel representative requirement and as a result of such noncompliance Buyer is unable to load Product, Buyer will be liable for any and all resulting delays, and such delays will not count as Laytime or time on Demurrage.

- 5.4.3 Terminal Requirements.** Buyer's Vessel will fully comply with the general limitations and restrictions applicable at the Terminal in effect at loading, including those in the Terminal Manual, and be fit to load under the loading conditions at the Terminal at the time of loading (collectively, the "**Terminal Requirements**").
- 5.4.4 Legal & Regulatory Requirements.** Buyer's Vessel will fully comply with (or hold waivers from) and adhere to the USCG's, Terminal Operator's and Seller's requirements and all other applicable Laws and Regulations in effect as of the date Buyer's Vessel gives its NOR and as of the date of Cargo loading, including but not limited to, all U.S. and environmental Laws and Regulations, and have in place all certificates required by such applicable Laws and Regulations, including certificates of financial responsibility (the "**Legal & Regulatory Requirements**").
- 5.4.5 Insurance Requirements.** Buyer will cause the owner/operator of the Vessel to obtain and maintain the following minimum insurance coverages (the "**Insurance Requirements**"):
- 5.4.5.1 Hull and Machinery Insurance.** Buyer's Vessel must be insured under a Hull and Machinery policy, with such policy including insurance coverage for collision liability, with sister-ship clause un-amended, and with limits of liability at least equal to the full market value of such Buyer's Vessel.
- 5.4.5.2 Protection & Indemnity ("P&I") Insurance.** Buyer's Vessel must maintain insurance through any combination of (i) full entry with a P&I Club (that is a member of the International Group of P&I Clubs), and/or (ii) policy(ies) with commercial insurers, with terms no less broad and limits of not less than those customarily maintained by owners/operators of similar vessels in similar trades, including coverage for injury to or death of master, mates, and crew, tower's liability, excess collision liability and cargo legal liability. Buyer's Vessel must also have coverage for pollution liability, whether insured under the P&I policy or as a separate policy, for the maximum scope and amount available from Buyer's Vessel's insurers.
- 5.4.5.3 Certificates of Insurance & Endorsements.** Buyer will furnish Seller, at least 5 Business Days before the first Day of the Laycan Window, certificates of insurance acceptable to Seller evidencing compliance with such insurance requirements. All such required insurance policies will be endorsed to provide for a waiver of subrogation in favor of Seller and Terminal Operator, and their respective parents, subsidiaries, Affiliates, officers, employees, agents, joint owners and each party for which any of them is operating.
- 5.4.6 Safety Requirements.** Buyer's Vessel will maintain strict compliance with all fire, safety, environmental protection and all other rules, regulations, polices and directives of Seller, Terminal Operator, the applicable Port Authority, the USCG and all other Governmental Authorities. All applicable Governmental Authority inspections and requirements will be completed prior to the berthing of Buyer's Vessel. If Buyer's Vessel fails to fully comply with such safety requirements, any fine or occurrence that results therefrom will be the sole responsibility of Buyer and neither Seller nor Terminal Operator will have any liability therefor.
- 5.4.7 Failure to Meet Loading Requirements.** Buyer assumes all responsibility and liability for any failure by Buyer or Buyer's Vessel to comply with the Vessel Warranty and the Loading Requirements. If Buyer or Buyer's Vessel is not in compliance with the Vessel Warranty or any of the Loading Requirements, Seller may, in addition to any other remedies available to Seller under the Agreement, at law or in equity: (a) prohibit Buyer's Vessel from berthing, (b) require Buyer's Vessel to immediately vacate its berth, (c) suspend or refuse to load Product onto Buyer's Vessel, (d) deem such failure to load as a cancellation by Buyer under the Agreement, (e) dispose of any such Product as it determines in its sole discretion, and/or (f) utilize such berth to berth and load other vessels. Any and all delays resulting from such failure by Buyer or Buyer's Vessel to comply with the Vessel Warranty or any of the Loading Requirements will not count as Laytime or time on Demurrage. **ALL EXPENSES AND COSTS INCURRED BY SELLER OR TERMINAL OPERATOR AS A RESULT OF BUYER OR BUYER'S VESSEL NOT MEETING THE LOADING REQUIREMENTS WILL BE FOR THE ACCOUNT OF BUYER, AND BUYER WILL INDEMNIFY SELLER AND TERMINAL OPERATOR FOR ALL COSTS, INCLUSIVE OF LEGAL COSTS, LOSSES, AND DAMAGES INCURRED BY SELLER AND/OR TERMINAL OPERATOR AS A RESULT THEREOF AND WILL DEFEND AND HOLD SELLER AND TERMINAL OPERATOR HARMLESS FROM ANY CLAIMS WITH RESPECT TO SUCH NON-COMPLIANCE.**

## 6 PRODUCT DELIVERY.

**6.1 Product Loading.** Seller will load Product in accordance with this Agreement and the Terminal Requirements.

**6.2 Suspension of Loading.** If either Seller or Terminal Operator determines at any time that unsafe weather conditions or other conditions exists which, in its opinion, would make the continuation of the loading operations hazardous, Seller or Terminal Operator may suspend or cease the loading and/or order Buyer's Vessel to immediately vacate its berth; provided, however, that neither Seller nor Terminal Operator is under any obligation, and should not be deemed to be under any obligation, to take any such action due to an such unsafe condition.

**6.3 Title and Risk of Loss.** Title to, and risk of loss of, Product, or any part thereof, shall pass from Seller to Buyer at the Delivery Point provided in the Confirmation.

### 6.4 Product Quantity and Quality.

**6.4.1 Measurement Procedures.** The Measurement Procedures may be found at [https://portal.enterpriseproducts.com/measurement\\_contracts.html](https://portal.enterpriseproducts.com/measurement_contracts.html) which are made part hereof and will apply to the Cargo and to this Agreement. Any error or discrepancy in measurement tests or samples must be documented in a notice to the other Party delivered within 48 hours of receipt of the inspection finding claimed to be in error or such Claim is deemed waived

**6.4.2 Shortage in Quantity.** Buyer must claim any shortage in quantity of Product delivered by Seller by a written notice to Seller delivered within 48 hours of completion of delivery at the Delivery Point with specific reference to the loading certificate and/or other authorized sampling and testing upon which Buyer bases its Claim or such Claim is deemed waived.

#### 6.4.3 Non-Conforming Product.

**6.4.3.1 Claim.** If Seller delivers Product to Buyer which does not conform to the Product Specifications (the "**Non-Conforming Product**"), Buyer must provide written notice to Seller within 48 hours of the completion of delivery at the Delivery Point with specific reference to the loading certificate and/or other authorized sampling and testing upon which Buyer bases its Claim or such Claim is waived and such Product will be deemed to have met the Product Specifications.

6.4.3.1.1 Should further sampling and testing establish that the Product conforms to the Product Specifications, then all direct and indirect costs and damages incurred by Seller that are associated with Buyer's allegations of Non-Conforming Product will be paid by Buyer to Seller within five (5) Business Days of presentation of an invoice to Buyer.

6.4.3.1.2 Seller hereby acknowledges and agrees that the Product delivered by Seller to Buyer in this Part 2 Transaction shall be the same grade of Product that Buyer sold and delivered to Seller in the Part 1 Transaction.

**6.4.3.2 Exclusive Remedies.** Subject to Section 6.4.3.1, Buyer will make reasonable efforts to accept such Non-Conforming Product and the Parties will in good faith negotiate a commercially reasonable adjustment to the Contract Price to account for such Non-Conforming Product.

### 6.5 USPPI.

**6.5.1 Destination Information.** Buyer will notify Seller of the port(s) of discharge, and country(ies) of destination and all other information which may be needed by Seller in order for Seller to timely issue any documents required of Seller by applicable Laws and Regulations, including any export requirements.

**6.5.2 U.S. Buyer.** If the Buyer is domiciled in the U.S., the purchase and sale of Product under this Agreement is a domestic transaction. The Buyer will be the USPPI and solely responsible for (i) clearing the Product for export from the United States, including obtaining any required export licenses, carrying out any export customs formalities, (ii) paying any export costs, duties, taxes, charges or fees and/or (iii) completing and filing all customs reporting and export documentation.

- 6.5.3 *Non-U.S. Buyer.* If the Buyer is not domiciled in the U.S., and to the extent that Seller is the last United States party of record with respect to the sale or export of Product hereunder, the Seller will be the USPPI, however, all costs, duties, taxes, charges and fees incurred by Seller with respect to any required customs reporting or export documentation will be deemed taxes, fees and charges to be assessed to, and be the responsibility of, Buyer pursuant to this Agreement.

## 7 LAYTIME AND DEMURRAGE.

### 7.1 Laytime.

- 7.1.1 Commencement. Subject to strict compliance by Buyer and Buyer's Vessel with the Agreement, including other Laytime exceptions contained in the Agreement, channel availability and the Terminal Requirements, Laytime will commence as follows ("**Commencement of Laytime**"):

- (a) if the NOR is given within the confirmed Laycan Window and Buyer's Vessel is permitted by the applicable Port Authority or other Governmental Authority to proceed to its berth, Laytime will commence 6 hours after Seller's receipt of the NOR;
- (b) if the NOR is given within the confirmed Laycan Window (and in the case of Vessels that are subject to daylight restricted hours as set by the applicable Port Authority or other Governmental Authority, prior to daylight cutoff on the last Day of the confirmed Laycan Window) and Buyer's Vessel is not permitted to proceed to its berth, Laytime will commence 6 hours after pilots board Buyer's Vessel;
- (c) if the NOR is tendered before the first Day of the confirmed Laycan Window, Laytime will not commence until the first to occur of (i) when loading commences or (ii) when pilots board Buyer's Vessel on the first Day of the confirmed Laycan Window plus 6 hours; and
- (d) if the NOR is tendered (i) after the last Day of the confirmed Laycan Window or (ii) after daylight cutoff on the last Day of the confirmed Laycan Window for Vessels that are subject to daylight restricted hours as set by the applicable Port Authority or other Governmental Authority, Seller is under no obligation to deliver the Product which would have otherwise been loaded on such Vessel; provided however, Seller may, in its sole discretion, agree in writing to do so, in which event, Laytime will commence when loading commences.

- 7.1.2 Cessation. Laytime will cease at the Completion of Loading.

- 7.1.3 Allowed Laytime. Subject to Section 5.3, the allowed Laytime for loading Product at the Delivery Point (weekends, holidays, day & night included) will begin at the Commencement of Laytime and extend for a period of time equal to the amount of time indicated in the Confirmation as "*Base Laytime*" ("**Base Laytime**") for the applicable Product plus an additional 6 hours to connect/disconnect the loading arm(s), accommodate the independent inspector and carry out other standard Terminal operational requirements (the "**Allowed Laytime**").

- 7.1.4 Heightened Security Measures. Notwithstanding Section 7.1.1 above, due to heightened security at all U.S. ports, Laytime will not commence until all Legal & Regulatory Requirements are complete, including but not limited to USCG and U.S. Immigration Service for Vessel inspection and clearance.

### 7.2 Demurrage.

- 7.2.1 Demurrage. Subject to and except for adjustments pursuant to Section 7.3, for all time used by Seller to load Buyer's Vessel in excess of the Laytime, Seller will pay Demurrage to Buyer; provided, however, that the supporting documents of Buyer's Vessel's owner must accompany any Demurrage Claim, and such Claim will not exceed the lesser of the aggregate amount claimed by such owner to Buyer or any "*Demurrage Cap*" indicated in the Confirmation. **BUYER ACKNOWLEDGES AND AGREES THAT BUYER'S RIGHT TO DEMURRAGE PURSUANT TO AND AS LIMITED BY THIS SECTION 7.2.1 WILL CONSTITUTE ITS SOLE AND EXCLUSIVE REMEDY IN RESPECT OF ANY FAILURE OF SELLER TO COMPLETE THE LOADING WITHIN THE LAYTIME, AND BUYER HEREBY RELEASES SELLER FROM ANY OTHER DIRECT OR INDIRECT DAMAGES, SPECIAL DAMAGES, COSTS OR EXPENSES ARISING OUT OF OR RESULTING FROM FAILURE TO LOAD BUYER'S VESSEL WITHIN THE LAYTIME.**

**7.2.2** Claims. Buyer must notify Seller of any Claim for Demurrage in writing and must provide a fully documented claim within sixty (60) Days of Completion of Loading. For the purposes of this Section 7.2.2, full documentation must include copies of the: (a) NOR, (b) owner's supporting documents, including the master's statement of facts, (c) the agent's port log, (d) the Laytime statement, and (e) an invoice showing the total Demurrage amount due to Buyer.

**7.2.3** Waiver of Demurrage Claims. **BUYER'S FAILURE TO GIVE SELLER NOTICE AND PROVIDE A DEMURRAGE CLAIM WITH FULL DOCUMENTATION WITHIN SUCH SIXTY (60) DAYS WILL CONSTITUTE A WAIVER OF SUCH DEMURRAGE CLAIM AND SELLER'S LIABILITY FOR SUCH DEMURRAGE WILL AUTOMATICALLY BE EXTINGUISHED.**

**7.3** **Exceptions to Laytime and Demurrage.** Any time consumed due to any of the following events will not be computed as Laytime, or, if on Demurrage, as time on Demurrage, even if any of such events occur after the expiration of Laytime:

- (a) time consumed by the Buyer's Vessel in waiting for tide, traffic, mooring, tugs, pilots, survey or inspection;
- (b) any delay due to the Buyer's Vessel's condition, breakdown, or any other causes attributable to, or for which Buyer, the Buyer's Vessel, her master or crew is responsible (including, but not limited to, pollution or threat thereof, or any delay in bunkering the Buyer's Vessel, taking on or discharging ballast water or discharging slops);
- (c) any delay due to prohibition of loading at any time by the Buyer's Vessel, the owner or operator of the Buyer's Vessel, or by Governmental Authorities, unless such prohibition is caused by Seller's or Terminal Operator's failure to comply with applicable Laws and Regulations;
- (d) any delays due to the Buyer's Vessel's noncompliance with or violation of applicable operating or safety rules and/or regulations, including (i) federal or state laws, (ii) USCG regulations, (iii) Terminal Requirements, (iv) any other applicable regulations, or (v) obligations to obtain or maintain required certificates and certifications;
- (e) any delays awaiting Customs and Immigration clearance, other required governmental or port clearance, or free pratique, if applicable;
- (f) any delay caused by strike, lockout, stoppage or restraint of labor of the master, officers or crew of the Buyer's Vessel, or of tugs or pilots; or
- (g) any delay caused by conditions not reasonably within Seller's or Terminal Operator's control, including but not limited to, weather, awaiting tide, Force Majeure, blockage of channels caused by spills or accidents, or maritime security restrictions.

## **8 PRODUCT AND SERVICE REPRESENTATIONS AND WARRANTIES.**

### **8.1 Buyer's Representations and Acknowledgements.**

**8.1.1** Product Usage Representation. Buyer represents and warrants that it is a sophisticated purchaser of Product; is knowledgeable and aware that (a) the Product will be received in full compliance with all Laws and Regulations that may be applicable thereto, (b) the Product constitutes hazardous material and that Buyer is sophisticated and knowledgeable with respect to (i) the hazards and risks associated with such Product, and (ii) the handling, receipt, transportation, storage and use of such Product and (c) it will cooperate with Seller to facilitate the dissemination of any health and safety warnings and notices from Seller concerning Product delivered hereunder. Further, Buyer will (x) make reasonable efforts to determine the uses of the Product delivered hereunder by Buyer's customers, and (y) promptly transmit to its customers any health and safety warnings and notices received from Seller.

**8.1.2** Product Insurance Acknowledgement. Buyer acknowledges that the sale of Product under the Agreement is on an "FOB" basis at the Terminal and Seller has no responsibility for insuring Buyer's Product or property or other Persons or their property with respect to events following delivery of Product to the Delivery Point.

### **8.2 Seller's Product Warranties.**

**8.2.1** Title Warranty. Seller warrants (a) title to Product delivered to Buyer hereunder; (b) the right to sell the same; and (c) that all such Product is, at the time of delivery, free from any liens, encumbrances and adverse claims arising prior to delivery to Buyer.



- 8.2.2 Limited Product Warranty. Seller makes the following, and only the following, limited representations and warranties to Buyer regarding the Product: Product delivered to Buyer at the Delivery Point will be in full compliance with all Laws and Regulations that may be applicable thereto; *provided, however*, that nothing in the Agreement will require Seller to take any action that would constitute a violation of any such Laws and Regulations.
- 8.2.3 Exclusive Nature and Disclaimer. **NOTWITHSTANDING ANY OTHER PROVISION OF ANY AGREEMENT OR OTHER COMMUNICATION BETWEEN THE PARTIES, THE FOREGOING PRODUCT WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER REPRESENTATIONS, WARRANTIES AND GUARANTEES, EXPRESS OR IMPLIED, WITH RESPECT TO THE DESCRIPTION OR SATISFACTORY QUALITY OF PRODUCT, FITNESS OR SUITABILITY OF THE PRODUCT FOR ANY PARTICULAR PURPOSE OR OTHERWISE, WHETHER WRITTEN OR ORAL, EXPRESSED OR IMPLIED IN FACT OR IN LAW, AND WHETHER BASED ON STATUTE, CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE. THE WARRANTY OF MERCHANTABILITY AND WARRANTY OF FITNESS FOR PARTICULAR PURPOSE ARE EXPRESSLY EXCLUDED AND DISCLAIMED.**
- 8.2.4 Exclusive Remedy. **BUYER'S EXCLUSIVE REMEDY FOR A BREACH OF ANY OF THE PRODUCT WARRANTIES BY SELLER WILL BE LIMITED TO EITHER (I) REPLACEMENT IN KIND OF ANY PRODUCT SHOWN TO BE OTHERWISE THAN AS WARRANTED, OR (II) SELLER'S CURE OF THE BREACH WITHIN 30 DAYS OR IF NO CURE IS AVAILABLE, PAYMENT OF DIRECT DAMAGES RESULTING FROM SUCH BREACH, AT SELLER'S OPTION, AND SELLER IS NOT LIABLE FOR ANY OTHER DAMAGES, INCLUDING SPECIAL DAMAGES.**

## 9 FAILURE TO LOAD CONTRACT QUANTITY.

### 9.1 Cargo Deficiency Payment and Cancellation Fee.

- 9.1.1 Failure to Load Contract Quantity. In the event Buyer fails to load the Contract Quantity for any reason other than a cancellation of the Cargo as contemplated in subsection 9.1.3 or Seller's Force Majeure, Buyer will pay Seller a deficiency payment calculated pursuant to the following formula (the "**Cargo Deficiency Payment**"):

$$\text{Cargo Deficiency Payment} = \text{CDF} \times (\text{Contract Quantity} - (\text{ACV} + \text{SFMV})) + \text{CF}$$

**WHERE:**

"CDF" is the Cargo Deficiency Fee indicated in the Confirmation;

"Contract Quantity" is the Contract Quantity described in the Part 2 Transaction in the Confirmation;

"ACV" is the actual volume of Product loaded on the applicable Cargo;

"SFMV" is Seller's Force Majeure Volume attributable to the applicable Cargo; and

"CF" is the sum of any and all costs and fees incurred by Seller to downgrade, liquidate, transport, store, carry over, dispose, resell and remarket the Product in the event of such failure by Buyer.

- 9.1.2 Rescheduled Cargo. If Seller in its sole discretion reschedules Buyer's Vessel for loading from the Laycan Window to a later date (a "**Rescheduled Laycan Window**") and Buyer's Vessel loads Product during the Rescheduled Laycan Window, the Cargo Deficiency Payment, if any, will be calculated based on the loading during the Rescheduled Laycan Window in lieu of the original Laycan Window.
- 9.1.3 **Cancellation Fee**. If (i) there is a fee per Unit indicated in the Confirmation as a "*Cargo Cancellation Fee*" (the "**Cargo Cancellation Fee**"), and (ii) Buyer in such Transaction cancels a Cargo at any time, or fails to schedule the loading of the Contract Quantity for any reason, whether or not Buyer provides a cancellation notice to Seller, Buyer will also pay Seller a cancellation payment equal to the product obtained pursuant to the following formula (the "**Cargo Cancellation Payment**"):

$$\text{Cargo Cancellation Payment} = \text{Cargo Cancellation Fee} \times \text{Contract Quantity}$$

**WHERE:**

“**Contract Quantity**” is the Contract Quantity described in the Part 2 Transaction in the Confirmation

- 9.2 No Buyer’s Force Majeure.** Notwithstanding anything to the contrary contained in the Part 2 Transaction in the Confirmation or this Agreement, the Contract Quantity used to calculate the Cargo Deficiency Payment pursuant to Section 9.1 will not be reduced for (i) an event of Force Majeure declared by Buyer, (ii) the late arrival or the failure of Buyer’s Vessel to arrive during the Laycan Window (unless permitted to load by Seller pursuant to this Agreement) or (iii) Buyer’s default under this Agreement or the inability of Buyer to load a Cargo due to Buyer’s Vessel’s non-compliance with this Agreement. Further, notwithstanding anything to the contrary contained in the Agreement, if there is no Cargo Deficiency Payment, Buyer will not be excused from purchasing and loading the Contract Quantity hereunder by an event of Force Majeure declared by Buyer.

## **10 PAYMENT AND CREDIT.**

### **10.1 Invoices and Payment.**

- 10.1.1 Contract Price.** Seller will issue an invoice(s) for the Contract Price for all amounts owed by Buyer under the Agreement.

**10.1.1.1 *Provisional Invoice.*** If Seller is unable to calculate the Contract Price at the time it issues the invoice for such Product, Seller will issue a provisional invoice (the “**Provisional Invoice**”) based on the Contract Price for the Product but using the average of the daily high and low averages for the first 5 Days of the Month of Loading plus any applicable fees set forth in the Confirmation.

**10.1.1.2 *Final Invoice.*** Upon publication of the Contract Price for all applicable published pricing days, Seller will issue a final invoice reflecting any applicable adjustments pursuant to the Provisional Invoice (the “**Final Invoice**”).

Buyer and Seller hereby agree that a net amount will be determined in respect of amounts payable under the Part 1 Transaction and the Part 2 Transaction (as described in the Confirmation). Each Party’s obligation to make payment will be satisfied and discharged upon the Party with the larger aggregate amount that otherwise would have been payable (“**Payor**”) making payment to the other Party (“**Payee**”) of the net amount of the excess of the larger aggregate amount owed by the Payor, over the smaller aggregate amount that otherwise would have been payable by the Payee.

The Payor will pay such amount owed to Payee within 10 Days from the date of the Final Invoice.

### **10.2.1 Payment.**

**10.1.2.1 *Provisional and Final Invoice.*** Payor will make all payments under the Provisional Invoice and Final Invoice in U.S. Dollars without discount, offset or counterclaim (except as contemplated in this Section 10) by wire transfer in same day funds against presentation of commercial invoice and independent inspector’s certificate of quantity by the later of (a) 10 Days from the Completion of Loading, with the loading completion date to count as Day zero (0), and (b) 5 Business Days of receipt of the invoice.

**10.1.2.2 *Other Invoices.*** All other invoices issued pursuant to the Agreement, including, without limitation, the invoices related to a Cargo Deficiency Payment, Cargo Cancellation Payment and/or Excess Occupancy Payment, will be paid by the later of (a) the stated due date on the applicable invoice and (b) 5 Business Days after Buyer’s receipt of the applicable invoice.

**10.1.2.3 *Interest.*** Payments received by Payee after the due date will be subject to accrued interest thereon (calculated at the Interest Rate from the due date). The Payee shall have the right to require the payment by the Payor of interest on any unpaid amount from the due date (shown in the Final Invoice) until the Payee receives cleared funds into the Payee’s payment account calculated at the Interest Rate;

**10.1.2.4 *Payment Disputes.*** Subject to a Party’s audit rights pursuant to the Agreement, either Party will have the right to withhold from payment any portion of any invoice which it objects to prior to the applicable due date of such payment and disputes in

good faith, but it will timely pay any undisputed portion thereof. The Parties will promptly work to resolve the disputed portion, provided, however, if it is determined that such Party owes any disputed amounts that such Party has withheld, such withholding Party will pay such amounts to the other Party together with accrued interest thereon (calculated at the Interest Rate).

**10.1.2.5** *U.S. Banking Holidays.* If the due date of any invoice falls on a (a) Saturday or (b) Tuesday, Wednesday, Thursday or Friday which is not a Business Day, payment will be due on the preceding Business Day. If the due date falls on a (y) Sunday or (z) Monday which is not a Business Day, payment will be due on the following Business Day. All payments made pursuant to the Agreement will be made to the accounts specified in writing by the Party to whom the payment is owed.

## **10.2 Credit Support.**

**10.2.1** Initial Credit Support. Seller has established the initial credit support terms and conditions indicated on the Confirmation as "*Credit Requirements*" to ensure the payment by Buyer, or Buyer's Guarantor, if any, of all payments which may become due by Buyer pursuant to the terms and conditions of the Agreement (the "**Initial Credit Support**"). The Initial Credit Support will be due from Buyer at least 5 Business Days before the first Day of the Laycan Window. All bank charges attendant to the Initial Credit Support and all subsequent Adequate Assurances, if any, will be for the account of Buyer.

**10.2.2** Adequate Assurances. If Seller determines that the financial capacity of Buyer, or Buyer's Guarantor, if any, becomes impaired or unsatisfactory to Seller in its sole judgment, Seller may demand additional Adequate Assurances by written notice to Buyer, and Buyer will advance cash payment, a Letter of Credit or other security satisfactory to Seller within 2 Business Days after the date of Seller's demand.

## **11 EVENTS OF DEFAULT AND REMEDIES**

**11.1** **Events of Default.** An event of default (an "**Event of Default**") with respect to Buyer will mean any of the following:

- (a) the failure of Buyer to pay when due any required payment under the Agreement and such failure is not remedied within three (3) Business Days after written notice thereof;
- (b) the failure of Buyer to comply with its other respective obligations or covenants under the Agreement (other than its obligations to make any payment or obligations which are otherwise specifically covered in this Section 11 as a separate Event of Default), and such failure is not cured within ten (10) Days after written notice thereof;
- (c) Buyer or Buyer's Guarantor, if any, becomes subject to insolvency;
- (d) the failure of Buyer's Guarantor if any, to perform any covenant in its guaranty, such guaranty expires, is terminated or ceases to guaranty the obligations of Buyer under the Agreement;
- (e) any representation or warranty made by Buyer under the Agreement will prove to be untrue when made in any material respect; or
- (f) Buyer's failure to provide the Initial Credit Support or Adequate Assurance pursuant to Section 10.2 of the General Terms.

**11.2** **Remedies.** In addition to other all rights and remedies available to Seller at law and in equity, if an Event of Default occurs as to Buyer, Seller may, in its sole discretion, (a) notify Buyer of an early termination date (which will be no earlier than the date of such notice) on which the Agreement will terminate, (b) suspend performance of its obligations under the Agreement until such Event of Default is cured and/or (c) reject Buyer's NOR (in which case Buyer's Vessel will not be authorized to proceed to the Terminal); provided that if the Event of Default described in Section 11.1(c) occurs, Seller may in its sole discretion terminate the Agreement, without notice, as if an early termination date had been immediately declared. If notice of an early termination date is given under this Section 11, the early termination date will occur on the designated date, whether or not the relevant Event of Default is then continuing.

## **12 OTHER TERMS AND CONDITIONS.**

**12.1** **Pollution Prevention.** Seller will, or will instruct Buyer to immediately notify all appropriate Governmental Authorities of any Product spills, discharges or releases, irrespective of cause. Upon the

occurrence of any spill or discharge of Product reportable under applicable Laws and Regulations or other environmental pollution in connection with the Agreement, the Parties will take any action required under applicable Laws and Regulations or as required or directed by any Governmental Authority, including actions to prevent or mitigate resulting pollution damage. A Party may take such actions to prevent or mitigate pollution damage as it deems appropriate, even if not required by applicable Laws and Regulations. A Party will notify the other Party promptly of any such actions, in each case no later than 24 hours after the commencement of such actions. Each Party will be responsible for costs arising from actions required under applicable Laws and Regulations to be taken in relation to any spill or discharge of Product or other environmental pollution in connection with the Agreement to the extent such spill, discharge, or pollution is attributable to such Party's activities or conduct. If either Party incurs costs to clean up or contain a spill or discharge or to prevent or mitigate resulting pollution damage, such Party reserves all rights provided by law to recover such costs from the other Party or from any third party. The Parties will take all reasonable steps to encourage the legally responsible party or parties, as applicable, including, but not limited to, Buyer's Vessel's owner or operator, to take all necessary and appropriate measures to prevent or mitigate actual or threatened pollution damage. If a third party is legally liable for such costs and expenses, each Party will cooperate with the other Party for the purpose of obtaining reimbursement from such third party or from any domestic or foreign environmental or oil spill trust fund. Each Party acknowledges that no provision under these procedures is intended to imply that a Party assumes any pollution liability for the benefit of or on behalf of the other Party. Each Party's obligations hereunder will survive termination of the Agreement.

- 12.2 Accidents.** Buyer will give Seller notice of all accidents occurring at the Terminal as soon as possible. In respect of a serious occurrence (including, but not limited to, death, serious injury or significant property damage), notification to Seller will be immediate. In all cases, such notice will be confirmed in writing under the notice provisions of the Agreement.
- 12.3 Index Revisions.** If an index used to determine the Contract Price is not available in the future for the determination of the Contract Price or the manner in which an index is calculated changes in some material respect, the Parties agree to promptly negotiate in good faith a mutually satisfactory alternate index or substitute methodology for calculating the Contract Price, that is based on or reflects as nearly as possible the considerations and inputs used with respect to the original index.
- 12.4 Taxes.**
- 12.4.1 Seller's Responsibility.** Seller will pay all Taxes (except for income taxes of Buyer or any property taxes, which Taxes are governed by the law applicable thereto), fees, or other charges (other than excise and export taxes noted below) imposed or assessed by any Governmental Authority with respect to the Product prior to its delivery to Buyer hereunder, the taxable incident of which occurs before delivery to Buyer at the Delivery Point.
- 12.4.2 Buyer's Responsibility.** Buyer will pay any and all Taxes (except for property taxes, which Taxes are governed by the law applicable thereto), fees and other charges (other than excise taxes noted below) imposed or assessed by any Governmental Authority with respect to the Product at and after its delivery to Buyer hereunder, the taxable incident of which occurs on, during or after delivery to Buyer at the Delivery Point. Buyer will also pay any and all Taxes, fees and other charges imposed or assessed by any Governmental Authority with respect to the Product stored by or otherwise in the possession of Seller for the benefit of Buyer, the taxable incident of which is on account of the existence of the Product in the possession of Seller, including all ad valorem Taxes on Product in the possession of Seller for the benefit of Buyer on any December 31 within the Term.
- 12.4.3 Title Transfer and Delivery Taxes and Fees.** All Taxes, fees, duties and other charges imposed or assessed by any Governmental Authority, the taxable incident of which is the transfer of title or delivery of the Product hereunder, an excise or export tax, or the receipt of payment therefore, regardless of the character, method of calculation or measure of the levy or assessment, will be paid by the Buyer.
- 12.4.4 Exemption and Resale Certificates.** Prior to the date any required payment becomes due, Buyer will furnish Seller all current exemption or resale certificates or direct pay permits required or permitted by law for use by Buyer regarding the imposition or payment of any excise sales or use taxes.
- 12.5 Audit.** Each Party has the right, at its sole expense during normal working hours and upon reasonable advance notice, to cause an internationally recognized firm of accountants agreeable to the other Party to examine the records of the other Party at the home office of the other Party, but only to the extent

reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to the Agreement. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statements and the payments thereof will be promptly made and will bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of two (2) Years from the rendition thereof; and provided further, that for the purpose of such statement and payment objections, this Section 12.5 will survive any termination of the Agreement.

**12.6 Trade Restrictions.** Buyer warrants that it will not cause or permit the Product purchased under this Agreement to be shipped directly or indirectly through or to, or be to be resold, exchanged, bartered or otherwise supplied to any country, government, governmental entity or national thereof subject to U.S. trade sanctions, or any country, government, governmental entity or national thereof with whom U.S. persons are prohibited from trading or dealing under U.S. law (lists of such countries, governments, governmental entities or nationals are available at the following web sites: <http://www.bis.doc.gov/index.php/policy-guidance/lists-of-parties-of-concern>; and <http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>). Upon Seller's request, Buyer agrees to notify Seller of the final destination of the Product and provide Seller with relevant documentation adequate to verify such destination. Buyer further warrants that it will not cause or permit any violation of the United States Foreign Corrupt Practices Act or financial transactions law in connection with this Agreement or the purchase of Product from Seller. It is a condition of this Agreement that Buyer complies with its obligations under this Section 12.6. **IN THE EVENT THAT BUYER IS IN BREACH OF ANY OF THE PROVISIONS OF THIS SECTION 12.6, IN WHOLE OR IN PART, THEN SELLER WILL BE ENTITLED TO TERMINATE THIS AGREEMENT (OR THE RELEVANT TRANSACTION) IMMEDIATELY, WITHOUT ANY LIABILITY TO BUYER, AND BUYER WILL INDEMNIFY AND HOLD HARMLESS SELLER FOR ANY CLAIMS, INCLUDING ANY FINES OR PENALTIES, INCURRED BY SELLER ARISING FROM OR RELATING TO SUCH BREACH BY BUYER; PROVIDED THAT SELLER SHALL, CONCURRENT WITH ANY SUCH TERMINATION, ALSO TERMINATE THE PART 1 TRANSACTION.**

**12.7 Liability; Stipulated Damages.**

**12.7.1 Indemnity.** BUYER WILL RELEASE, PROTECT, DEFEND, INDEMNIFY, AND HOLD HARMLESS SELLER AND ITS AFFILIATES FROM AND AGAINST LIABILITY FOR ANY AND ALL CLAIMS OF ANY KIND ARISING FROM INJURIES SUSTAINED OR DAMAGES SUFFERED (INCLUDING THIRD PARTY INJURIES OR DAMAGES) AFTER THE DELIVERY POINT, AND WHICH MAY ARISE IN CONNECTION WITH, OR IN RELATION TO, THE PURCHASE, TRANSPORTATION, STORAGE, HANDLING, SALE, DISPOSAL, OR DISPOSITION OF THE PRODUCT, EXCEPTING ONLY TO THE EXTENT THAT SUCH LIABILITY AND CLAIMS ARISE FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF SELLER.

**12.7.2 Stipulated Damages.** Each Party agrees that because of the unique nature of the economic damages and losses that would be sustained by either Party under the Agreement, the specified damages and payment obligations set forth in the Agreement for damages incurred (the "**Stipulated Damages**"):

- (a) make it extremely difficult, impracticable or impossible to determine with precision, the actual amount of damages that would or might be incurred by the non-breaching Party in such circumstances;
- (b) are stipulated to be (i) in the nature of liquidated damages; (ii) not a penalty; (iii) a reasonable approximation of the anticipated harm or loss and (iv) fair, reasonable and appropriate; and
- (c) will, without duplication, be the sole and exclusive measurement of damages of the non-breaching Party with respect to such circumstances and neither Party will be entitled to recover any Special Damages as a consequence of such harm or loss.

**ACCORDINGLY, EACH PARTY HEREBY WAIVES THE RIGHT TO CONTEST ANY AND ALL STIPULATED DAMAGES AS UNENFORCEABLE, AN UNREASONABLE PENALTY OR OTHERWISE. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THE AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. WHERE THERE IS A BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS HEREIN PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF**

**DAMAGES WILL BE THE SOLE AND EXCLUSIVE REMEDY, THE LIABLE PARTY'S LIABILITY WILL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED UNLESS OTHERWISE PROVIDED IN THE AGREEMENT. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY HEREIN PROVIDED, THEN THE LIABLE PARTY'S LIABILITY WILL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY. EXCEPT AS SPECIFICALLY PROVIDED IN ANY OTHER PROVISION OF THE AGREEMENT, NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR SPECIAL DAMAGES.**

- 12.8 Force Majeure.** If either Party is delayed or rendered unable by Force Majeure to carry out its obligations under the Agreement (other than Buyer's obligations to purchase and take the Contract Quantity (as adjusted by the Loading Percentage Range for each Cargo) or to make any payments when due), then that Party will give prompt written notice to the other Party of the Force Majeure stating facts supporting such claim of delay or inability so caused. Such Party will be excused from performance of such obligations to the extent of such delay or inability and for no longer period and the Agreement will otherwise remain unaffected. The Party claiming Force Majeure will use commercially reasonable due diligence to remove the cause and resume full performance of its obligations with all reasonable dispatch; provided, however, that this provision will not require the settlement of strikes, lockouts, or other labor difficulty of the Party involved, when such course is determined inadvisable by the Party having the difficulty. Notwithstanding anything to the contrary in the Agreement, all payments owed by Buyer (including without limitation, the Cargo Deficiency Payment, the Cargo Cancellation Payment and the Excess Occupancy Payment) will be payable by Buyer regardless of any event of Force Majeure.
- 12.9 Change in Laws.** If after the Transaction Date, any Laws and Regulations render the Agreement or Seller's performance thereunder illegal or unenforceable, then either Party may terminate the Agreement upon written notice to the other Party. In such circumstances, the Parties will meet immediately and for a period of not less than five (5) Days negotiate in good faith modifications to the affected transaction to remedy the unenforceability, or illegality and to restore the agreement as near as possible to its original intent and effect.
- 12.10 Assignment.** The Agreement will inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns; provided, however, that neither Party will assign the Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party, which consent will not be unreasonably withheld, conditioned or delayed. Any assignment not made in accordance with this provision will be null and void. Notwithstanding the foregoing:
- (a) Either Party may, without the need for consent from the other Party (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign the Agreement or the accounts, revenues or proceeds thereof in connection with any financing or other financial arrangements; (ii) transfer or assign the Agreement to an Affiliate of such Party; or (iii) transfer or assign the Agreement to any Person or entity succeeding to all or substantially all of the assets of such Party by way of merger, reorganization or otherwise; provided, however, that such assignee agrees to be bound by the terms and conditions of the Agreement;
  - b) Seller will have the right to assign the Agreement to the purchaser of all or substantially all of its limited liability company interests or to the purchaser of the Terminal, and such assignment will constitute a novation, provided such subsequent purchaser is not less creditworthy than Seller in Buyer's sole discretion; and
  - (c) Any required consent to any assignment by a Party may be refused by the non-assigning Party if the non-assigning Party has reasonable grounds for insecurity with respect to whether a proposed assignee has the financial resources to support the payment and performance of the assigning Party's obligations hereunder. If the non-assigning Party has reasonable grounds for insecurity, then as a condition to assignment, the non-assigning Party may require Adequate Assurance from the assignee.
- 12.11 Confidentiality.**
- (a) Confidential Information. Each Party hereby agrees to treat the terms of the Agreement as confidential and not to disclose such terms or any proprietary non-public information obtained from the other Party related to its negotiation or performance (the "**Confidential Information**") to a third party, without the prior written consent of the other Party. This Section 12.11 will not apply to the Parties with respect to such information as may have fallen into the public domain through a means other than the act or omission of the Party making the disclosure.

- (b) Permitted Disclosures. Confidential Information may be disclosed by a Party (without the aforesaid prior written consent): (i) to any Governmental Authority or arbitrator appointed in accordance with the terms of the Agreement or in compliance with any bona fide governmental or legal requirements, or as may be required to enforce or protect rights under the Agreement; and (ii) to any Affiliate, to a legal, accounting, or other professional, business or technical consultant/adviser, to an entity in accordance with the regulations of a recognized stock exchange, or to a bank or financial institution from which the Party concerned is seeking or obtaining financing; provided that such recipient agrees to preserve confidentiality hereunder.
- (c) Further Actions. A Party disclosing Confidential Information in accordance herewith will use reasonable endeavors to ensure that the recipient of such Confidential Information will respect its confidentiality.

**12.12 Entire Agreement, Amendments and Interpretation.** The Agreement, inclusive of all exhibits, appendices and attachments, constitutes the entire agreement between the Parties relating to the subject matter contemplated by the Agreement and supersedes any prior or contemporaneous agreements or representations affecting the same subject matter. No amendment, modification or change to the Agreement will be enforceable unless reduced to a writing executed by the Party against whom such amendment, modification or change is sought to be enforced and specifically referencing the Agreement. The Parties acknowledge that each Party and its counsel have reviewed the Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party will not be used in interpretation of the Agreement.

**12.13 Counterparts, Severability and Survival.**

**12.13.1 Counterparts.** The Agreement may be executed in several counterparts, each of which is an original and all of which constitute one and the same instrument. A facsimile or electronic copy of the Agreement or any amendment hereto, bearing the signature of a Party will be binding upon such Party to the same extent as an original counterpart bearing such Party's signature.

**12.13.2 Severability.** Except as may otherwise be stated herein, any provision or Section hereof that is declared or rendered unlawful by any applicable court of law or regulatory agency, or deemed unlawful because of a statutory change, will not otherwise affect the lawful obligations that arise under the Agreement. If any provision of the Agreement is declared unlawful, the Parties will promptly renegotiate to restore the Agreement as near as possible to its original intent and effect.

**12.13.3 Survival.** The representations and warranties set forth in Section 3 and the Product warranties set forth in Section 8.2, as limited by Sections 8.2.2, 8.2.3, and 8.2.4, will survive for a period of time equal to one (1) Year from the date of delivery of such Product to Buyer. Any termination or expiration of this Agreement will be without prejudice to any rights, remedies, obligations and liabilities which may have accrued to Buyer or Seller, respectively, pursuant to this Agreement or otherwise under applicable Laws and Regulations. All rights or remedies which may have accrued to the benefit of either Buyer or Seller (and any of this Agreement's provisions necessary for the exercise of such accrued rights or remedies) prior to the termination or expiration of this Agreement will survive such termination or expiration. Furthermore, the provisions of Sections 5.2.7, 5.4.7, 7.2, 12.1, 12.5, 12.6 12.7, 12.11 and 12.14 of the General Terms will survive the termination or expiration of this Agreement for a period not exceeding two (2) Years or the period for filing a Claim under the applicable statutes of limitations.

**12.14 Governing Law and Resolution of Disputes.**

**12.14.1 Governing Law.** The Agreement and all rights and obligations of the Parties arising from or relating to the Agreement will be governed by and construed, enforced and performed in accordance with the laws of the U.S. state indicated in the Confirmation as "*Governing Law*" without giving effect to provisions concerning conflict of laws and to the exclusion of the laws of any other legal system. **THE PARTIES AGREE THAT THE PROVISIONS OF THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS WILL NOT APPLY TO, OR GOVERN, THE AGREEMENT OR ANY CARGO.**

**12.14.2 Resolution of Disputes.** Any dispute, controversy or Claim arising out of, relating to, or in connection with the Agreement, including with respect to the formation, applicability, breach, termination, invalidity or enforceability thereof (a "**Dispute**") will be resolved pursuant to this Section 12.14.2.

**12.14.2.1** *Non-U.S. Buyers.* For a Buyer who is not domiciled in the U.S., any Dispute will be finally settled by arbitration held under the LCIA Arbitration Rules (the “**Rules**”) of the London Court of International Arbitration (the “**LCIA**”). The following will apply to any Dispute:

- (a) The number of arbitrators will be three.
- (b) The Claimant will nominate an arbitrator in its Request for arbitration, and the Respondent will nominate an arbitrator in its Response (each term as defined in the Rules). The two arbitrators will nominate a third arbitrator within **30 calendar days** after the nomination of the second arbitrator. The third arbitrator will act as chair of the tribunal. If any of the three arbitrators is not nominated within the time prescribed above, the LCIA will appoint that arbitrator. While the Parties will make arbitrator recommendations as set forth above, the Parties recognize that the LCIA has the authority to appoint the arbitrators for any proceeding.
- (c) The seat of arbitration will be Houston, Texas.
- (d) The arbitration will be conducted in the English language.
- (e) The arbitration award will be final and binding on the Parties. The Parties undertake to carry out any award without delay and waive their right to any form of recourse based on grounds other than those contained in the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 insofar as such waiver can validly be made.
- (f) Judgment upon the award may be entered by any court having jurisdiction thereof or having jurisdiction over the relevant Party or its assets.
- (g) The existence of a Dispute will not in any way modify the obligations of the Parties under the Agreement.

**12.14.2.2** *U.S. Buyers.* For a Buyer who is domiciled in the U.S., the following will apply to any Dispute:

- (a) ***Applicable Law. This Agreement, the rights of the Parties hereunder, and the legal relations between the Parties under this Agreement will be governed by and construed in accordance with the laws of the State of Texas, excluding any conflicts of law rule or principle that might refer construction of such provisions to the laws of another jurisdiction.***
- (b) ***Jurisdiction and Venue. Exclusive venue for any legal proceeding, action or dispute arising out of or relating to this Agreement (each, an “Action”) will be (i) the division of the Texas business court under Chapter 25A of the Texas Government Code (the “Business Court”) in Harris County, Texas or that includes Harris County, Texas; and (ii) solely for those Actions where the Business Court does not have jurisdiction, a federal or state district court located in Harris County, Texas. To the maximum extent permitted by law, each Party hereby agrees that the Business Court shall have jurisdiction over Actions arising out of or related to this Agreement, the transaction(s) described herein and any transaction(s) hereunder. The Parties irrevocably and unconditionally submit to the jurisdiction of the foregoing courts, agree to the provisions in this Section, and waive any objection thereto, including on any venue or inconvenient forum grounds or on grounds that the transactions contemplated by this Agreement do not constitute a qualified transaction as defined in Chapter 25A of the Texas Government Code.***
- (c) ***Supplemental Jurisdiction – Texas Business Court. With respect to any Action that is brought in the Business Court, the Parties irrevocably agree that the Business Court should exercise supplemental jurisdiction over any other Action, controversy or claim (including any third-party claim) arising out of or related to the Action (“Supplemental Claim(s)”), and agree to seek the Business Court’s consent to exercise supplemental jurisdiction over such Supplemental Claim(s). If the Business Court refuses to exercise***



**supplemental jurisdiction over any such Supplemental Claim(s), and such Supplemental Claim(s) are then filed in federal court or state district court pursuant to this Agreement, the Party who asserted any related claim(s) that remains pending in the Business Court has, in its sole discretion, 30 days to dismiss without prejudice such claim(s) in the Business Court and refile the Action in the federal or state district court in which the Supplemental Claim(s) are pending. Should a Party exercise its right to dismiss and refile as provided in the preceding sentence, the refiled Action will be treated as though it was originally filed on the same day the first-filed case was filed for purposes of statutes of limitation and statutes of repose.**

**(d) Waiver of Jury Trial. Each Party waives, to the fullest extent permitted by Applicable Law, any right it may have to a trial by jury in respect of any Action brought under this Agreement.**

- 12.15 Non-Waiver, Duty to Mitigate and No Partnership or Third Party Beneficiaries.** No waiver by any Party of any its rights with respect to the other Party or with respect to any matter or default arising in connection with the Agreement will be construed as a waiver of any subsequent right, matter or default whether of a like kind or different nature. Any waiver will be in writing and signed by the waiving Party. Each Party agrees that it has a duty to mitigate damages. Nothing contained in the Agreement will be construed or constitute any Party as the employee, agent, partner, joint venturer or contractor of the other Party. The Agreement is made and entered into for the sole protection and legal benefit of the Parties, and their permitted successors and assigns, and except as provided in Sections 5.2.7, 5.4.5, 5.4.7, 12.6 or 12.7 of the General Terms, no other Person will be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or Claim in connection with, the Agreement.
- 12.16 Laws and Regulations.** The loading of Cargo onto Buyer's Vessel and Buyer's receipt of such Cargo is subject to and will be in accordance with the Terminal Manual, the Measurement Procedures, all Laws and Regulations and any order, directive or notice received from the applicable Port Authority.
- 12.17 Defined Terms and Usage.** Capitalized terms used in the Agreement and not otherwise defined in the body of the Agreement, including these General Terms, will have the meanings as set forth below and will apply equally to both singular and plural forms of the defined terms. Whenever the context may require, any pronoun will include the corresponding masculine, feminine or neuter forms. The words "include," "includes" and "including" will be deemed to be followed by the phrase "without limitation." The headings used for the sections and subsections in the Agreement are for convenience and reference purposes only. References to sections or sub-sections will be to sections and sub-sections in these General Terms, unless otherwise indicated. References to Persons, entities, organizations and Governmental Authorities will include all successors in interest thereto.
- 12.18 Early Termination.** In the event that the Part 2 Transaction should be terminated early as provided in these General Terms, the Parties acknowledge and agree that the Part 1 Transaction shall also terminate effective at the same time, and except in circumstances where the termination of the Part 2 Transaction is due to an event of Seller Force Majeure, Buyer shall remain responsible for the Cargo Deficiency Payment and/or the Cargo Cancellation Payment, as applicable.

"ACV" will have the meaning indicated in Section 9.1.1 of the General Terms.

"Adequate Assurance" will mean sufficient security in a form, amount, for a term, and from an issuer acceptable to Seller, including, but not limited to, a Letter of Credit, cash, a prepayment, or a parent company guaranty in form and substance satisfactory to Seller of the prompt payment, when due, of any and all present or future indebtedness of Buyer as a result of the sale of Product hereunder.

"Affiliate" will mean, with respect to any Person, any other Person (other than an individual) that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, such Person. For this purpose, "control" will mean the direct or indirect ownership of 50% or more of the outstanding capital stock or other equity interests having ordinary voting power.

"Agreement" will have the meaning indicated in Section 1 of the General Terms.

"Allowed Laytime" will have the meaning indicated in Section 7.1.3 of the General Terms.

"API" will mean the American Petroleum Institute.

["Argus CMA Diff" will mean, with respect to any Month, the arithmetic average of the amount reported for the Month in the row entitled "WTI diff to CMA Nymex" under the column "Diff weighted average" in the table entitled "WTI" on the page entitled "US Gulf Coast and Midcontinent" set forth in "Argus Crude," an Argus Media Ltd publication, or its

successor publication, for each trading day that such publication reports such differential during the period beginning with the twenty-sixth (26th) day of the calendar month that is two (2) calendar months prior to such Month through and including the twenty-fifth (25th) day of the calendar month that is immediately prior to such Month.]

["**Argus LLS Diff**" will mean, with respect to any Month, the arithmetic average of the amount reported for the Month in the row entitled "LLS" under the column "Diff weighted average" in the table entitled "Gulf coast and midcontinent domestic" on the page entitled "US Gulf Coast and Midcontinent" set forth in "Argus Crude," an Argus Media Ltd publication, or its successor publication, for each trading day that such publication reports such differential during the period beginning with the twenty-sixth (26th) day of the calendar month that is two (2) calendar months prior to such Month through and including the twenty-fifth (25th) day of the calendar month that is immediately prior to such Month.]

"**ASTM**" will mean the American Society for Testing and Materials.

"**As-Available Basis**" means a service-level basis that is subordinate to or lower in priority than the same service for any customer with "Firm Basis" and/or "Priority As-Available Basis" arrangements for such service, and is further subject to (i) the availability of, and operational capabilities and considerations with respect to, the Terminal required for the performance or provision of such service, (ii) a confirmed nomination, (iii) the terms and conditions of the Agreement, and (iv) the operational limits of the Terminal prevailing at the time.

"**Barrel**" will mean forty-two (42) United States Gallons.

"**Base Laytime**" will have the meaning indicated in Section 7.1.3 of the General Terms.

"**Business Day**" will mean a Day on which the banks in Houston, Texas are open for the transaction of normal banking business, excluding any Day in which usual business cannot be conducted due to events of Force Majeure.

"**Buyer**" will have the meaning indicated in Section 1 of the General Terms.

"**Buyer's Guarantor**" will mean the party, if any, indicated in the Confirmation as "*Buyer's Guarantor*."

"**Buyer's Vessel**" will have the meaning indicated in Section 4.1 of the General Terms.

"**Cargo**" will mean the particular sale, delivery and loading of Product on Buyer's Vessel as specified in the Confirmation.

"**Cargo Cancellation Fee**" will have the meaning indicated Section 9.1.3 of the General Terms.

"**Cargo Cancellation Payment**" will have the meaning indicated in Section 9.1.3 of the General Terms.

"**Cargo Deficiency Payment**" will have the meaning indicated in Section 9.1.1 of the General Terms.

"**Cargo Volume**" will have the meaning indicated in Section 4.1 of the General Terms.

"**CDF**" will have the meaning indicated in Section 9.1.1 of the General Terms.

"**CF**" will have the meaning indicated in Section 9.1.1 of the General Terms.

"**Claim**" or "**Claims**" will mean all claims or actions, threatened or filed and whether groundless, false or fraudulent, arising out of the Agreement, and the resulting losses, damages, expenses, Legal Costs, whether incurred by settlement or otherwise, and whether arising or accruing prior to or after the termination of the Agreement.

"**Commencement of Laytime**" will have the meaning indicated in Section 7.1.1 of the General Terms.

"**Completion of Loading**" will have the meaning indicated in Section 5.1.6.2 of the General Terms.

"**Confidential Information**" will have the meaning indicated in Section 12.11 of the General Terms.

"**Confirmation**" will have the meaning indicated in the Confirmation.

"**Contract Price**" will have the meaning indicated on the Confirmation and in Section 4.1 of the General Terms.

"**Day**" will mean a period of twenty-four (24) consecutive hours commencing at 7:00 a.m. Houston Time.

"**Delivery Point**" will have the meaning indicated in the Confirmation.

"**Demurrage**" will mean the charge applicable to Seller's failure to complete the loading within the Allowed Laytime and will be calculated pursuant to Section 7 of the General Terms.

"**Dispute**" will have the meaning indicated in Section 12.14.2 of the General Terms.

"**Event of Default**" will have the meaning indicated in Section 11.1 of the General Terms.

"**Excess Occupancy Payment**" will have the meaning indicated in Section 5.1.7 of the General Terms.

"**°F**" means degrees Fahrenheit.

**"Final Invoice"** will have the meaning indicated in Section 10.1.1.2 of the General Terms.

**"Firm Basis"** means a service-level basis that is firm, committed, or dedicated (as applicable), that is in precedence to or higher in priority than the same service for any customer with "As-Available Basis" and/or "Priority As-Available Basis" arrangements for such service, and is further subject to (i) a confirmed nomination, (ii) the terms and conditions of the Agreement, and (iii) the operational limits of the Terminal prevailing at the time.

**"FOB"** will mean "free-on-board," specifying at what point the Seller transfers ownership of the Product to the Buyer.

**"Force Majeure"** will mean in the Agreement any cause which is not reasonably within the control of the Party, or its Affiliates, claiming suspension or delay, including strikes, lockouts, or other industrial disturbances; wars, blockades, insurrections, or acts of terrorists or the public enemy; epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, or other acts of God; arrests or restraints of governments and people; compliance (voluntary or involuntary) with Laws and Regulations, or requests of any official or agency of any Governmental Authority; rationing of, shortages of, or inability to obtain or use any material or equipment; accidents at, closing of, or restrictions upon the use of mooring facilities, docks, harbors, ports, pipelines, or other navigational or transportation mechanisms; riots or civil disturbances; fires; explosions; failures, disruptions, breakdowns, or accidents to machinery, facilities, wells, storage plants, refineries, refrigeration units, terminals, or lines of pipe (whether owned, leased or rented); the testing, making repairs, performing maintenance, alterations, enlargements or connections to machinery, facilities, or lines of pipe (whether owned, leased or rented) whether the Party has scheduled such testing, repairs and maintenance and notified the other Party or not; the necessity to not operate, or to reduce the operation of, equipment to protect the safety of the public and/or environment; freezing of lines, embargoes, priorities, expropriation, or condemnation by government or Governmental Authorities; interference by civil or military authorities; and any inability to either tender or accept or deliver Product that is caused by pipeline pro-rationing or lack of physical capacity to deliver or accept Product, including brine handling, supply or disruption. Neither the loss of Buyer's markets; Buyer's inability economically to use or resell the Product; Buyer's Vessel's inability to timely arrive, dock or load Product (whether due to Force Majeure or otherwise), nor Seller's ability to sell the Product to a market at a more advantageous price will constitute an event of Force Majeure, however, any event of Force Majeure affecting the applicable Terminal, Port, anchorage or Ship Channel will constitute an event of Force Majeure pursuant to the Agreement.

**"Gallon"** will mean a United States Gallon of 231 cubic inches of liquid at sixty degrees Fahrenheit (60° F) and at the equilibrium vapor pressure of the liquid.

**"General Terms"** will have the meaning indicated in the Confirmation.

**"Governmental Authority"** will mean any U.S. national, state, regional, local, or municipal governmental body, agency, instrumentality, authority or entity established or controlled by governments, or subdivision thereof, including, but not limited to, any legislative, administrative or judicial body, or any Person acting in an official capacity.

**"Houston Time"** will mean the time in Houston, Texas U.S.

**"Initial Credit Support"** will have the meaning indicated in Section 10.2.1 of the General Terms.

**"Insurance Requirements"** will have the meaning indicated in Section 5.4.5 of the General Terms.

**"Interest Rate"** will mean the lesser of: (i) the rate of interest published from time-to-time as the prime rate in the "Money Rates" section of *The Wall Street Journal* or its successor publication plus two percent (2%) or (ii) the maximum non-usurious interest rate which may be charged pursuant to applicable Texas law, Article 5069-1.04 Texas Rev. Civ. Stat. as amended.

**"Laws and Regulations"** will mean the applicable treaties, statutes, laws, rules, regulations, decrees, ordinances, licenses, permits, compliance requirements, decisions, orders, directives, and agreements of, and/or concessions and arrangements with, any Governmental Authority.

**"Laycan Window"** will have the meaning indicated in Section 5.1.1 of the General Terms.

**"Laytime"** will mean the amount of time used for loading Cargo onto a Vessel.

**"LCIA"** will have the meaning indicated in Section 12.14.2.1 of the General Terms.

**"Legal Costs"** will mean, with respect to a Party, the reasonable costs and expenses incurred by it, including legal fees (inclusive of charges associated with its in-house counsel) and costs of collection, by reason of the enforcement and protection of its rights under the Agreement.

**"Legal & Regulatory Requirements"** will have the meaning indicated in Section 5.4.4 of the General Terms.

**"Letter of Credit"** will mean an irrevocable, transferable standby letter of credit in form and substance acceptable to Seller, in its sole discretion (i) with a minimum term to expiration of 60 Days from the date of delivery; (ii) issued by or confirmed by a major U.S. commercial bank or a major foreign bank (with a U.S. branch office) acceptable to Seller,

in its sole discretion; (iii) having a long-term senior unsecured debt rating of at least A- from Standard & Poor's Ratings Group (a division of The McGraw-Hill Companies, Inc.) and any successor thereto that is a nationally recognized rating agency or A3 from Moody's Investors Service, Inc. and any successor thereto that is a nationally recognized rating agency; and (iv) providing for the payments of drawings thereunder at the counters of (or otherwise through) an office of the issuer or confirmer of such Letter of Credit located in the continental U.S.

**"Load Volume Option"** will have the meaning indicated in Section 4.2 of the General Terms.

**"Loading Percentage Range"** will have the meaning indicated in Section 4.2 of the General Terms.

**"Loading Requirements"** will have the meaning indicated in Section 5.4 of the General Terms.

**"Maximum Load Volume"** will have the meaning indicated in Section 4.2 of the General Terms.

**"Measurement Procedures"** will mean the Measurement Procedures set forth at [https://portal.enterpriseproducts.com/measurement\\_contracts.html](https://portal.enterpriseproducts.com/measurement_contracts.html)

as such procedures may be amended by Seller from time to time.

**"Minimum Load Rate"** will have the meaning indicated in Section 5.4.1 of the General Terms.

**"Minimum Load Volume"** will have the meaning indicated in Section 4.2 of the General Terms.

**"Month"** will mean a period commencing at 7:00 a.m. Houston Time on the first Day of a calendar month and ending at 7:00 a.m. Houston Time on the first Day of the next succeeding calendar month.

**"Month of Loading"** will have the meaning indicated in Section 4.1 of the General Terms.

**"Non-Conforming Product"** will have the meaning indicated in Section 6.4.3.1 of the General Terms.

**"NOR"** will have the meaning indicated in Section 5.3.3 of the General Terms.

**"NYMEX"** or **"Nymex"** will mean the New York Mercantile Exchange; provided, that in the event the NYMEX ceases to operate as a commodity futures exchange, then the Parties shall mutually agree to an alternative commodity futures exchange to use for purposes of this Agreement.]

**"NYMEX CMA"** will mean, with respect to any Month, the arithmetic average of the daily settlement prices, trading days only, for the "Light Sweet Crude Oil" prompt month futures contract reported by NYMEX for all trading days from the first (1st) day of the Month through the last day of such Month, excluding each day that is a weekend, NYMEX holiday or other day for which NYMEX does not report the daily settlement price. Such daily settlement prices are currently published by the CME Group on its internet website at [www.cmegroup.com](http://www.cmegroup.com).]

**"Party"** or **"Parties"** will have the meaning indicated in Section 1 of the General Terms.

**"Payee"** will have the meaning indicated in Section 10.1.1.2 of the General Terms.

**"Payor"** will have the meaning indicated in Section 10.1.1.2 of the General Terms.

**"Person"** means any individual, partnership, limited partnership, joint venture, corporation, limited liability company, limited liability partnership, trust, unincorporated organization or Governmental Authority or any department or agency thereof.

**"P&I"** will have the meaning indicated in Section 5.4.5.2 of the General Terms.

**"Port Authority"** will mean the legal authority managing the Port, including the USCG, United States Customs, United States Immigration Service, the applicable pilots association, and any other local or state agency, department, commission or authority managing all or some of the Port.

**"Port"** will mean the port complex (not all-weather) consisting of public terminals owned, managed and leased by the Port Authority and private industrial companies along the Ship Channel.

**"Priority As-Available Basis"** means a service-level basis that is (a) subordinate to or lower in priority than the same service for any customer with "Firm Basis" arrangements for such service and (b) in precedence to or higher in priority than the same service for any customer with "As-Available Basis" arrangements for such service, and if further subject to (i) a confirmed nomination, (ii) the terms and conditions of the Agreement, and (iii) the operational limits of the Terminal prevailing at the time.

**"Product"** will have the meaning indicated in Section 4.1 of the General Terms.

**"Product Specifications"** will have the meaning indicated in Section 4.1 of the General Terms.

**"Provisional Invoice"** will have the meaning indicated in Section 10.1.1.1 of the General Terms.

**“Rescheduled Laycan Window”** will have the meaning indicated in Section 9.1.2 of the General Terms.

**“Rules”** will have the meaning indicated in Section 12.14.2.1 of the General Terms.

**“Seller”** will have the meaning indicated in Section 1 of the General Terms.

**“SFMV”** will have the meaning indicated in Section 9.1.1 of the General Terms.

**“Ship Channel”** will have the meaning utilized by the USCG for that certain waterway to access the Terminal.

**“Special Damages”** will mean any prospective or speculative profits, lost profits or special, indirect, incidental, treble, speculative, remote, exemplary, punitive, or consequential damages, including, without limitation, loss of use, increased cost of operations, loss of profit or revenue or business interruption, whether based upon statute, contract, tort, strict liability, or negligence (including, but not limited to the sole, joint, or concurrent negligence of Seller), or in any other manner arising out of the Agreement, any indemnity provision, or otherwise.

**“Stipulated Damages”** will have the meaning indicated in Section 12.7.2 of the General Terms.

**“Taxes”** will mean and includes all forms of taxation and statutory, governmental, supra-governmental, federal, state, principal, local or municipal governmental impositions, duties, assessments and levies, tariffs and rates (including without limitation all employment taxes and national insurance contributions), in each case whether of the United States or elsewhere, wherever imposed and all penalties, charges, costs and interest relating thereto and any deductions or withholdings of any sort and “taxable” will be construed accordingly.

**“TBN”** will have the meaning indicated in Section 5.2.2 of the General Terms.

**“Terminal”** will have the meaning indicated in Section 5.1.1 of the General Terms.

**“Terminal Manual”** will have the meaning indicated in Section 5.1.6.1 of the General Terms.

**“Terminal Operator”** will mean the then current operator of the Terminal.

**“Terminal Requirements”** will have the meaning indicated in Section 5.4.3 of the General Terms.

**“Transaction”** will have the meaning indicated in the Confirmation.

**“Transaction Date”** will have the meaning indicated in Section 1 of the General Terms.

**“Unit”** will have the meaning indicated in Section 4.1 of the General Terms.

**“U.S.”** will mean the United States of America.

**“USPPI”** means the ‘U.S. Principal Party in Interest’, as defined by 15 C.F.R. § 30.3(b)(2).

**“USCG”** will mean the United States Coast Guard.

**“Vessel”** will mean Buyer’s Vessel unless the context requires a different meaning.

**“Vessel Warranty”** will have the meaning indicated in Section 5.4. of the General Terms.

**“Year”** will mean a period of three hundred sixty-five (365) consecutive Days; except in a leap year it will mean a period of three hundred sixty-six (366) consecutive Days.

