

**Den norske stats oljeselskap a.s**  
**CONDITIONS OF SALE**  
**APPLICABLE TO NATURAL GAS LIQUIDS (NGL) SALES**  
**FOB**

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## **I DEFINITIONS**

Except where the context otherwise indicates, the following terms shall have the meaning ascribed to them in this Paragraph I, and shall include singular as well as plural.

- a) "Affiliate" shall mean any company or corporation of the Seller or Buyer which owns directly or indirectly fifty (50) per cent or more of the shares carrying voting rights of such Party (Parent Company), and any company or corporation other than such Party of which such Parent Company or such Party owns directly or indirectly fifty (50) per cent or more of the shares carrying voting rights.
- b) "Agreement" shall mean the sales Agreement of which these Conditions of Sale form a part. Certain specific provisions agreed between Buyer and Seller form Part 1 of the Agreement and the Conditions of Sale form Part 2 of the Agreement.
- c) "Buyer" shall mean the Party specified in Part 1 as the buyer of the product.
- d) "Cargo" shall mean any particular quantity of the Product loaded or to be loaded into a Vessel as set out in the Agreement and includes a full or Part Cargo.
- e) "Cargo Manifest" shall mean certificate of quantity, certificate of quality and certificate of origin when issued separately or issued as one certificate containing these three (3) certificates at the Loading Terminal.
- f) "Commencement of Loading" shall, in respect of a Cargo, mean the final connection of the Terminal's loading hose(s) or arm(s) to the Vessel's loading manifold prior to the loading of the Cargo.
- g) "Completion of Loading" shall, in respect of a Cargo, mean the final disconnection of loading hose(s) or arm(s) from the Vessel's loading manifold after the loading of the Cargo.
- h) "Day" shall mean a calendar day.
- i) "Dollars" or "USD" or "US Dollars" shall mean dollars of the United States of America.
- j) "Loading Terminal" shall mean the Kårstø Terminal or the Mongstad Refinery in Norway or the Teesside Terminal in UK or any other loading terminal from which the Seller shall supply a Cargo.
- k) "Metric Ton" shall mean the unit of weight equal to one thousand (1000) kilograms.
- l) "Month" shall mean a calendar month.
- m) "Operator" shall mean the operator of the Loading Terminal on the bill of lading date.
- n) "Part Cargo" shall mean a Cargo which is,

- i) loaded at more than one Loading Terminal or supplied by more than one supplier.
  - ii) discharged at more than one Discharge Port or received by more than one receiver.
  - iii) not occupying the full operational capacity of the Vessel
- o) "Party" shall mean either the Seller or the Buyer.
- p) "Parties" shall mean the Seller and the Buyer jointly.
- q) "Product" shall mean the natural gas liquid(s) or petroleum product to be sold pursuant to the Agreement.
- r) "Quarter" shall mean the period of the three consecutive Months commencing on 1st January or 1st April or 1st July or 1st October.
- s) "Seller" shall mean the Party specified in Part 1 as the seller of the product.
- t) "Vessel" shall mean the ship whether owned or chartered or otherwise obtained by the Buyer and accepted by the Seller in respect of loading a Cargo under the Agreement.
- u) "Working Day" shall mean any Day in the country of loading in which business is normally carried out (i.e. excluding weekends and bank holidays).
- v) "Year" shall mean a calendar year commencing on 1st January.

## **II DELIVERY**

The Product shall be delivered at the Loading Terminal free on board the Vessel.

## **III PROPERTY AND RISK**

The property and risk in the Product shall pass to the Buyer as the Product passes the Vessel's first permanent hose/arm connection upon loading at the Loading Terminal.

## **IV PRICE, CREDIT PERIOD AND CURRENCY**

The price to be paid in respect of a Cargo, currency and credit period shall be as stated in Part 1 of the Agreement. In the absence of any other agreed credit period, the payment for each Cargo shall be due on the twentieth (20th) Day after the Day of Completion of Loading.

## **V PAYMENT**

- a) Payment for each Cargo shall be made with good value in immediately available funds within the due date as set forth in Part 1 of the Agreement by telegraphic transfer to the Seller's bank account, as from time to time advised by the Seller, on presentation of the Seller's commercial invoice (telex invoice acceptable) and bills of lading and usual shipping documents, or in the

absence of such documents upon presentation of the Seller's Letter of Indemnity, as set out in Paragraph XI, without deduction, discount, set off or counter-claim.

- b) If the Seller's bank and/or banks in the clearing centre of the currency in question are closed for business on the Day the payment is due, then the Buyer shall arrange for the payment to be made on the nearest Day to the due date when the Seller's bank and/or banks in the clearing centre of the currency in question is/are open for business. If the last preceding and next succeeding business Day are equally near, then payment shall be due on the former.
- c) The Buyer shall instruct its bank to advise the Seller's bank by Swift or tested telex quoting the value date of the transfer, the amount, invoice number and the clearing bank, if any. Such advice is to be sent in due time so as to enable the Seller's bank to credit the Seller with value on due date.
- d) Interest on overdue payments shall be paid for the period starting on and including the due date for payment as set forth in Part 1 of the Agreement and ending on but excluding the value date of the payment, on the basis of an annual rate corresponding to three (3) Month British Bankers Interest Settlement (BBAISR) (or such other interest rate as may be issued in replacement thereof) for USD (or if the payment is to be made in other currency than USD, for that other currency) as published by British Bankers Association (BBA) for the due date for payment plus three (3.00) percentage points.
- e) The Seller may, at any time before payment has been received by the Seller, require the Buyer to provide a stand-by letter of credit or a bank guarantee for payment of the Product, whichever the Seller may request. Each such stand-by letter of credit or bank guarantee shall be irrevocable, in an amount to cover one hundred and ten (110) per cent of the Seller's estimated value of the Cargo for which it is provided and shall be established in favour of the Seller and shall be confirmed irrevocably and unconditionally by a bank or banks to be approved by the Seller. The stand-by letter of credit shall be in a form acceptable to the Seller and meet the requirements set out in Appendix I hereto.
- f) If for any reason the loading of the Vessel will not take place within the period for loading referred to in the stand-by letter of credit or the bank guarantee, the Buyer shall either obtain an extension of the validity of such stand-by letter of credit or bank guarantee or provide a new stand-by letter of credit guarantee in terms acceptable to the Seller.
- g) All related banking fees, commissions and expenses whether of the Buyer or the Seller shall be before the account of the Buyer. If a stand-by letter of credit or a bank guarantee has not been provided as outlined herein, the Buyer shall be deemed in breach of the Agreement, and the seller may without prejudice to any other rights or remedies at any time terminate the Agreement forthwith. Any cost and loss of the income incurred by the Seller due to the Buyer's failure to provide security of payment as outlined herein, shall be borne by the Buyer.
- h) If VAT or similar charges become payable by the Seller due to a requirement by national regulations, where the Cargo is delivered under the Agreement,

the Seller shall invoice the Buyer for such VAT or similar charges, and the Buyer shall settle such invoiced amount in accordance with this Paragraph V. If in this event the Seller required the Buyer to open a stand-by letter of credit or a bank guarantee in accordance with Paragraph V e), such stand-by letter of credit or bank guarantee shall cover the VAT or similar charges in addition to the amount stipulated according to Paragraph V e). The Buyer shall upon the Seller's request supply such information related to the Cargo as is required by the Seller in order to ensure a correct processing of charges.

## **VI QUALITY AND QUANTITY**

- a) The Product shall be of a quality and a quantity as specified in Part 1 of the Agreement.
- b) The measurement of the quantity of the Product and the testing of the quality thereof shall be carried out at the Loading Terminal, in accordance with good standard practice at the Loading Terminal at the time of loading the Cargo.
- c) The Seller shall ensure that the Cargo Manifest is issued in accordance with good standard practice followed at the Loading Terminal at the time of loading the Cargo and that the Cargo Manifest is forthwith delivered to the Buyer. Save for fraud or manifest error, the said Cargo Manifest shall be conclusive and binding on both Parties. The figures of the certificate of quantity as stated in such Cargo Manifest shall be used by the Seller in the preparation of invoices and the Buyer shall be obliged to pay the invoiced amount based on such figures.
- d) The Seller shall have the right to appoint and the Buyer shall have the right to instruct the Seller to appoint, an independent inspector acceptable to the Buyer to verify the quantity and quality at the Loading Terminal. Such appointment shall be notified in writing to the other Party. All costs for such inspection shall be equally shared between the Parties.
- e) Any claim as to shortage in quantity of the Cargo and/or defects in quality of the Product shall be made by written notice to the Seller immediately after such apparent shortage and/or defects are discovered with all details and supporting documentation necessary to evaluate the claim.

If such formal written claim is not submitted to the Seller within sixty (60) Days of Completion of Loading, the claim shall be deemed to have been waived.

- f) There are no guarantees or warranties, express or implied of merchantability, fitness, suitability for any particular purpose or use or otherwise which extend beyond the quality of the Product defined in Part 1 of the Agreement.

## **VII NOMINATION OF SHIPMENT AND VESSEL ACCEPTANCE**

- a) No later than forty (40) Days (for deliveries at the Teesside Terminal: sixty (60) Days) prior to each Month the Parties shall consult together in respect of the delivery programme for the Month in question. For the purpose of this Paragraph VII, Month B is the Month containing the ten (10) Days loading range, and Month A is the preceding Month.

- b) No later than five (5) Days (for deliveries at the Teesside Terminal: twenty five (25) Days) prior to the first Working Day of Month A, the Buyer shall advise the Seller of the preferable ten (10) Day loading range for Month B, the quantity and Product to be delivered for Month B. Such ten (10) Days loading range shall be given as either the first (1st) to tenth (10th) Day or the eleventh (11th) to twentieth (20th) Day or the twenty first (21st) to last Day of the Month B. The nominated quantity and Product must be as specified in Part 1 of the Agreement.
- c) The Seller shall advise the Buyer of any adjustments required in the loading range and quantity as soon as the necessary information is available.
- d) No later than the twelfth (12th) Day of Month A, the Buyer shall advise the Seller of a provisional loading date, which must be within the ten (10) Day range established in accordance with the provision VII b, or adjustment in VIIc, above. The Buyer shall also advise the Seller of the quantity to be loaded (in Metric Tons), which may vary by not more than five (5) percent from the quantity established in accordance with the provision VII b, or adjustment in VIIc, above.
- e) No later than twelve (12) Days before the proposed date of loading (as defined under item (v) below), the Buyer shall send a final nomination notice to the Seller specifying;
  - (i) Name of the Vessel, its cubic capacity (in cubic meters) and details of the last Cargo carried.
  - (ii) The Product to be loaded. For deliveries from Loading Terminal that has capacity of loading either pressurised or fully refrigerated Product, the Buyer shall advise its preference in this respect.
  - (iii) The intended use of the Product, stated as either fuel and/or petrochemical feedstock and/or unspecified.
  - (iv) The quantity to be loaded in Metric Tons, which may vary not more than five (5) percent from the quantity established in accordance with the provision VII b, and VII d, above.
  - (v) The proposed date of loading, which may be no more than one (1) Day (for deliveries from the Teesside Terminal: two (2) Days) from the provisional loading date established in accordance with VII d above.
  - (vi) Document instructions will be compatible with procedures applicable to the Loading Terminal and consistent with good business practice.
  - (vii) Destination.

The loading date range shall consist of three (3) consecutive Days, the second (2nd) of which shall be the proposed date of loading established in accordance with item (v) above.

The Buyer's final nomination of the Vessel, document instructions and destination may be made later than stipulated in this provision VII e, provided that such nominations shall be received by the Seller no later than the Working Day prior to the Day when such information is due to the Operator in accordance with procedures applicable to the Loading Terminal.

- f) The Parties recognise that the nomination procedures set out in the Paragraph VII a), to VII e), of this Paragraph are based on the lifting provision applicable to the Kårstø Terminal as set out in the Statpipe's Gas Terminal Kårstø - NGL Lifting Procedures (latest prevailing edition to apply, which may

be amended from time to time). In the event that the lifting provisions applicable to the Kårstø Terminal are changed significantly or the Parties have agreed that the Product will be supplied from a Loading Terminal to which lifting provisions apply which are significantly different from those applicable to the Kårstø Terminal, then the nomination procedures applicable to the Agreement shall be adjusted accordingly.

- g) The Vessel nominated by the Buyer shall be subject to acceptance by the Seller and the Operator and by any other party supplying the Cargo on behalf of the Seller. The Seller and the Operator or the party supplying the Cargo on behalf of the Seller may request the Buyer to provide such information as is required to obtain such acceptance, and the Buyer shall provide or cause to be provided such information no later than the Buyer's nomination of the Vessel in accordance with the provision VII e, above. Should the Seller or the Operator or the party supplying the cargo on behalf of the Seller request further information about the Vessel with regard to the acceptance of the Vessel, the Buyer shall provide or cause to be provided such further information as soon as possible but always prior to three (3) Working Days before the ETA of the Vessel at the Loading Terminal. The Seller shall notify the Buyer as soon as practicable after receipt of the notice specified above whether the Seller accepts or rejects the Vessel nominated.
- h) The Buyer warrants that the information provided for the purpose of the Vessel approval is correct. For deliveries at a Loading Terminal operated by the Seller, the Buyer will be required to provide the information in the form of a questionnaire issued by the Seller. The Buyer shall ensure that the Vessel can be inspected by the Operator's or the Seller's representative for the purposes of Vessel approval. If any response as provided by or on behalf of the Buyer proves to be incorrect, the Seller shall be entitled to reject the nominated Vessel forthwith and the Buyer shall indemnify the Seller against any losses or damages and costs, incurred by the Seller thereby.
- i) The Buyer shall be entitled to substitute the Vessel with another Vessel of similar size and characteristics provided always that the Buyer gives the Seller notice in writing of the name of the substitute Vessel not less than three (3) Working Days before the ETA of the Vessel at the Loading Terminal and that such Vessel is acceptable to the Seller. The scheduled date of arrival of the substituted Vessel and the quantity to be loaded shall not, without prior written consent of the Seller, which shall not be unreasonably withheld, differ from the latest accepted scheduled date and quantity for the Vessel previously nominated.
- j) The Buyer shall arrange for the Vessel to notify the Seller or its representative at the Loading Terminal of its estimated arrival at a minimum:
  - i) seventy two (72) and forty eight (48) and twenty four (24) hours notice of estimated time of arrival (ETA of the Vessel) at the Loading Terminal, and thereafter any variations of more than twelve (12) hours.
- k) Should the Buyer or the Vessel not conform or comply with the provisions of this Paragraph VII, the Seller or the Seller's supplier may refuse to berth or load the Vessel and shall be under no obligation to supply the Product which would otherwise have been deliverable to the Buyer on such Vessel and the Seller may sell or otherwise dispose of any such Product as the Seller may in

its absolute discretion determine. Any resulting delay or expenses shall be for the Buyer's account and the Buyer shall indemnify the Seller for all loss, costs or damages incurred by the Seller or the Seller's supplier as a result thereof.

- l) In the event that the Buyer fails to lift the Product nominated in accordance with the provisions of this Agreement, the Seller shall have the right to dispose of the Product. Further, the Seller shall by giving written notice to the Buyer, as soon as practicable, be entitled, in its absolute discretion and without prejudice to the Seller's other rights and remedies, to treat the Agreement with regards to the Cargo in question as repudiated by the Buyer. Any costs and/or losses or damages incurred by the Seller or the Seller's supplier thereby shall be for the account of the Buyer.
- m) Where a particular date is specified in the Agreement for the Buyer giving notice and nomination and such date falls on a Saturday, or a Sunday or on a local public holiday, such nominations must be received by the Seller by the last Working Day prior to the date specified. Furthermore, a nomination may be considered as invalid for all the purposes thereof if it is not received by the Seller by 16.00 local time on the Day or date specified in the Agreement for receipt of such nomination. The Seller shall not be liable for any loss or damage, direct or indirect, which the Buyer may suffer as a result of the Seller regarding a nomination to be invalid.

#### **VIII SAFE BERTH AND UTILISATION**

- a) The Seller shall cause to be provided free of charge, berth or berths which the Vessel can safely reach, always lie safely afloat and leave such berth or berths.
- b) All duties, fees, taxes, quay dues and other charges, whether similar or not and without limitation, due in respect of the Vessel as well as pilotage, mooring and towage expenses incurred at the Loading Terminal shall be for the account of the Buyer.
- c) The Seller may require the Vessel to shift berth. All costs and risks (including but not limited to damages for delay) of shifting berth, shall be for the Seller's account if required for the Seller's purposes and for the Buyer's account if due to reasons within the control of the Buyer and/or the Vessel. Time consumed on account of shifting due to reasons attributable to the Buyer or the Vessel shall not count as used laytime or if the Vessel is on demurrage, as demurrage.
- d) The Vessel shall vacate the berth as soon as loading hoses/arms have been disconnected. In the event that the Vessel fails so to vacate the berth, any loss or damage suffered by the Seller resulting from such failure, including demurrage incurred due to delay in the berthing of other vessels awaiting loading, shall be paid by the Buyer to the Seller.
- e) The Buyer shall ensure that the Vessel shall comply with all applicable regulations and rules of governmental, local and port authorities at the Loading Terminal. The Buyer shall reimburse the Seller for any loss, costs or damages incurred by the Seller due to any failure to comply with such rules, regulations and directions. In the event that the Vessel does not comply with



this provision, the Seller may refuse acceptance of the Vessel. Such acceptance shall not be unreasonably withheld.

## **IX LAYTIME**

- a) Laytime allowed to the Seller, Sundays and holidays included, shall be in accordance with Part 1 of the Agreement. If there is no agreement on laytime it shall be one half of the total laytime allowed to the charterer under the relevant charter party, pro rata for Part Cargo. In the event that the charter party makes no stipulation as to the laytime allowed, the Buyer shall be entitled to such laytime which would be customary for such a size of the Cargo, pro rata for Part Cargo.
- b) Notice of readiness shall be tendered upon arrival of the customary anchorage at the Discharge Port.
- c) Laytime shall commence, berth or no berth, six (6) hours after the Vessel's master or its representative has tendered to the Seller or the Seller's representative, notice of readiness to load, or on Commencement of Loading, whichever is earlier, except that;
  - (i) if the Vessel arrives before the first Day of the nominated loading date, laytime shall not commence until 06.00 hours on the first Day of the loading date range or at the time of Commencement of Loading whichever is the earlier, or;
  - (ii) if the Vessel arrives after the last Day of the agreed loading range, the Seller may without prejudice to its rights it shall have under the Agreement, in its absolute discretion prefer to deliver the Cargo to the Vessel in which case the laytime shall commence upon the Commencement of Loading.
- d) Laytime shall cease upon Completion of Loading.
- e) Time spent by the Vessel on inward passage or in handling or shifting ballast, bilges, slops or bunkering unless carried out concurrently, or time lost through any suspension of loading due to fault or failure of the Vessel or for the Vessel's purposes, shall not count against laytime.
- f) The Buyer warrants that the Vessel is able to load the Cargo within the laytime provided shore facilities permit. All time lost as a result of the Vessel being unable to load the Cargo in accordance with this warranty shall not count as laytime or, if the Vessel is on demurrage, as time on demurrage.

## **X DEMURRAGE**

- a) In the event that the laytime is exceeded, the Seller shall pay to the Buyer demurrage in respect of the excess time based on the demurrage rate agreed in Part 1 of the Agreement or if no demurrage rate is stated in Part 1 of the Agreement, on the Vessel's charter party demurrage rate per Day (pro rata for part of a Day). In absence of such rate the Parties shall obtain the appropriate demurrage rate for the size of the Vessel, type and capacity and voyage in question from the London Tanker Broker's Panel Limited which findings shall be final and binding on both Parties. The obtained demurrage rate shall be the one current on the date of Commencement of Loading.

- b) If demurrage is incurred directly attributable to adverse weather or sea state conditions or as a result of fire, explosion, strike, lockout, stoppage or restraint of labour or by breakdown or failure of machinery, plant or equipment at the Loading Terminal (not in either case resulting from want of due diligence by the Buyer or its consignee and always provided that the Vessel is not already on demurrage), the rate of demurrage shall be reduced by one-half per running hour or pro rata for part of an hour for demurrage thus incurred.
- c) The Seller shall not be liable for demurrage unless a demurrage claim has been submitted to the Seller within sixty (60) Days of the date of Completion of Loading. Each demurrage claim shall be in writing and shall be supported by evidence available to the Buyer, provided that any supporting documentation which is not at that time available to the Buyer shall be submitted to the Seller within 90 Days of the date of Completion of Loading. If the Buyer fails to give notice or to provide such documentation within the aforesaid limits, then any liability of the Seller for demurrage shall be extinguished.
- d) For avoidance of doubt, Paragraph XV, Force Majeure, shall not apply to Paragraph IX and this Paragraph X.

## **XI DOCUMENTS**

- a) The Seller shall provide bills of lading and other usual shipping documents in accordance with instructions to be given by the Buyer in accordance with Paragraph VII (e).
- b) If such documents are not available to the Buyer when the Buyer shall pay for the Cargo, the Seller shall indemnify the Buyer in accordance with the following Letter of Indemnity:

Quote

### **LETTER OF INDEMNITY**

We refer to a Cargo of ..... metric tons of ..... loaded on board the vessel ..... at the port of ..... on ....., 19.....

Although we have sold and transferred title to the said Cargo to you, we have been unable to provide you with the original bills of lading, Cargo Manifest and time sheet for the above Cargo.

In consideration of your paying to us USD ..... being the full purchase price of the above Cargo, we hereby expressly warrant that we have marketable title to such product and that we have full right and authority to transfer such title to you and to effect delivery of the said product.

We agree to protect, indemnify and hold you harmless from and against any and all damages, costs, legal fees and other expenses which you may suffer from any breach of above warranties or from the fact that you are paying us the purchase price of the above Cargo without having in hand such original

bills of lading and other shipping documents, including but not limited to, any claims or demands which may be made by any holder or transferee of any of the original bills of lading and other shipping documents or by any other third party claiming an interest in or lien on the Cargo or proceeds thereof.

We will make all reasonable efforts to obtain and surrender to you, as soon as possible, the original bills of lading and the other shipping documents referred to above and this Letter of Indemnity shall become null and void upon our tendering these documents to you.

Our obligation to indemnify you is subject to the condition that you give us prompt notice of the assertion of any claims and full opportunity to conduct the defence thereof, and that you do not settle any such claim(s) without our approval.

This Letter of Indemnity shall be governed by and construed in accordance with Norwegian law and any disputes hereunder that cannot be settled by mutual agreement between the Parties shall be subject to the exclusive jurisdiction of the Norwegian Courts.

Unquote

- c) The Buyer warrants that the consignee is entitled to the Cargo, and undertakes to cause the consignee to surrender the bill of lading to the Vessel's master or agent as soon as possible when they come to hand.
- d) If documents are not available for presentation to the Vessel's master at the Discharge Port, the Seller will instruct the master to discharge the Cargo and the Buyer undertakes to hold the Seller harmless and indemnified against all claims as a result of such documents not being presented.
- e) Should the Vessel or any other vessel or property belonging to the Vessel's owner be arrested as a consequence of the fact that the Cargo has been delivered without presentation of bills of lading under circumstances in which the indemnification set out in (d) of this Paragraph XI shall apply, the Buyer to provide and pay for the necessary security and to obtain release of the Vessel of any other vessel or property as set out above and cover all legal and additional expenses incurred thereby and Vessel to remain on-hire during possible time lost. If any proceedings are commenced against the Seller with respects to said Cargo as a result of the foregoing, the Buyer shall have a right to instruct first class attorneys to defend the case at Buyer's own costs or alternatively at Buyer's option pay the costs of attorneys appointed by the Seller.

## **XII POLLUTION AND ITF REQUIREMENTS**

- a) According to the prevailing regulations Cargoes of butane and lighter gases are exempted from the requirements set forth in the provisions XII b and XII c below.
- b) The Buyer warrants that the Vessel shall be fitted according to the measures and procedures agreed to at the IMO (International Maritime Organisation) conference of Tanker Safety and Pollution Prevention as and when these become effective at the Loading Terminal.

- c) The Buyer warrants that the Vessel is owned or chartered by a member of The International Tanker Pollution Federation Ltd. (ITOPF).

The Buyer shall exercise reasonable efforts to ensure that the Vessel carries on board a certificate of insurance as described in the Civil Liability Convention for oil pollution damage and that the Vessel has in place insurance cover for oil pollution no less in scope and amounts than under the rules of P&I clubs entered into the international group of P&I clubs.

- d) The Buyer will arrange that the minimum terms and conditions of employment of the crew of the Vessel will on arrival at Loading Terminal be covered by an ITF (International Transport Worker's Federation) agreement or a bona fide trade union agreement on terms equivalent to ITF terms. The Buyer shall reimburse the Seller for any costs, loss or damages incurred by the Seller due to the failure to comply with such warranty.

The above requirements applies to any Loading Terminal operated by the Seller and other Loading Terminals where requirement for ITF approved agreements have been established.

The Buyer shall indemnify the Seller from and against any and all damages, costs, legal fees and other expenses which the Seller may suffer as a result of strikes, boycotts or any other industrial or legal action at the Loading Terminal following from the Buyer's failure to comply with the above warranty. The Buyer shall due to such circumstances not be relieved from the fulfilment of any obligations under the Agreement.

### **XIII DISPOSAL**

- a) The Buyer shall not under any circumstances dispose of the Product delivered under the Agreement to countries with which the Norwegian Government has decided not to have trade relations. Without diminution of such obligation on the Buyer, the Seller undertakes to inform the Buyer as soon as practicable of any changes in such laws, regulations, rules or guidelines which become known to the Seller. The Buyer acknowledge that at the date hereof it is informed of all such laws, regulations, rules and guidelines relevant to its undertakings under this Paragraph XIII.
- b) In the event the Product is disposed of to a third party, the Buyer shall ensure that the end user abides by the restrictions set forth herein and without delay provide the Seller with all relevant information as the Seller may require to such alternative disposal including name of end user and discharge port.
- c) Without prejudice to the foregoing provisions of this Paragraph XIII, in the event of any failure to comply with such obligations, or if the Seller has reasonable grounds for believing that such obligations will not be complied with, the Seller may at its sole discretion terminate the Agreement forthwith, or forthwith suspend delivery under the Agreement, until further notice to commence or complete loading hereunder is given, by notifying the Buyer either in writing or orally.

#### **XIV TAXES, DUTIES AND CHARGES**

- a) Without prejudice to the Paragraph VIII b, hereof, the Buyer shall be responsible for the payment of any taxes, duties, imposts, fees or other charges arising at the Loading Terminal and which arise from the sale and delivery to the Buyer of the Product in respect of any stage after the property and risk of the Product has passed to the Buyer according to Paragraph III hereof.
- b) The value added tax (VAT) and excise duty or mineral oil tax (MOT) rules and regulations effective from January 1993 of the European Union (EU) shall apply.

Either Party shall promptly and correctly complete and submit all documents required in connection with the Cargo, and will be considered as responsible for any costs and expenses which may arise from its failure to comply with the EU-regulations.

The provisions as outlined in Appendix II shall form part of this Paragraph XIV b).

#### **XV FORCE MAJEURE**

- a) Neither the Seller nor the Buyer shall be responsible for any failure to fulfil their respective obligations under the Agreement if fulfilment has been prevented, delayed, hindered or curtailed by:
  - i. any circumstances whatsoever which are beyond the reasonable control of the Seller or the Buyer, as the case may be, or
  - ii. compliance with any order, demand or request of any government or of any international, national, port, transportation, local or other authority or agency or of any body or person purporting to be or to act for such authority or agency; or
  - iii. any strike, lockout or labour dispute;

provided always that nothing contained herein shall relieve the Buyer of any of its obligations to make payments due to the Seller under the Agreement by the due dates for payment according to the provisions of Paragraph V which obligations are absolute.

- b) The Party seeking relief under (a) of this Paragraph XV shall advise the other Party as soon as practicable of the circumstances causing the failure to fulfil its obligations and shall thereafter provide such information as is available regarding the progress and possible cessation of those circumstances.
  - i. The performance of obligations under the Agreement shall be resumed as soon as reasonably possible after such circumstances have ceased.
  - ii. The time allowed for the Seller to make, or the Buyer to receive delivery hereunder shall be extended during any period in which delivery shall be delayed or prevented by reason of any of the foregoing causes up to a period of thirty (30) Days.

- c) If any delivery hereunder shall be so delayed or prevented for more than thirty (30) Days, either Party may terminate the Agreement with respect to such delivery upon giving written notice.

## **XVI SUSPENSION AND TERMINATION**

- a) The Seller may at its sole discretion, and in addition to any other legal remedies it may have, forthwith upon giving written notice to the Buyer either suspend deliveries under the Agreement or terminate the Agreement if:
  - i. the Buyer for any reason whatsoever fails to make any payment due to the Seller under the Agreement by the due date or otherwise is in substantial breach of its obligations under this Agreement; or
  - ii. the Buyer fails to take delivery of the Product in accordance with the provisions of the Agreement and such failure is not excused by any other provision of the Agreement; or
  - iii. a petition is filed with a court having jurisdiction or an order is made or an effective resolution is passed for the dissolution, liquidation or winding up of the Buyer or its Parent Company; or
  - iv. there is a major change in the direct or indirect ownership of the Buyer; or
  - v. the Buyer or its Parent Company becomes insolvent or is adjudged bankrupt or makes an assignment for the benefit of its creditors or does not pay or is in the Seller's reasonable opinion expected to be unable or unwilling to pay its debts as the same become due; or
  - vi. a receiver is appointed or an encumbrancer takes possession of the whole or a significant part of the assets or undertaking of the Buyer or its Parent Company; or
  - vii. the Buyer or its Parent Company ceases or threatens to cease to carry on its business or a major part thereof or a distress, execution or other process is levied or enforced or sued out upon or against any significant part of the property of the Buyer or its Parent Company and is not discharged within fourteen (14) Days.
- b) In the event of the Seller suspending deliveries of the Product in any of the circumstances referred to in (i) - (vii) of this Paragraph XVI, the Seller may, so long as the event continues and in addition to any other legal remedies it may have, forthwith, upon giving notice to the Buyer, terminate the Agreement.
- c) If, pursuant to the provisions of this Paragraph XVI, the Seller withholds, reduces or suspends deliveries of the Product, then the Seller shall be under no obligation to make up any quantity of the Product which would have been delivered to the Buyer without such withholding, reduction or suspension.
- d) Any termination of this Agreement shall be without prejudice to the rights and obligations of each Party as accrued at the date of termination.

## **XVII LIABILITY**

- a) Except as expressly provided in the Agreement, neither the Seller nor the Buyer shall be liable, for indirect, consequential or special losses or damages of any kind arising out of or in any way connected with the performance of, or failure to, perform the Agreement. In any event the Seller shall not be liable for more than the difference between the contract price and the market value of the quantity of the Product in respect of which damages are claimed at the date of Completion of Loading.
- b) The Buyer shall hold harmless and indemnify the Seller from and against any action or claim from third parties for loss, damages, injury or death to or of third parties which might be alleged to have been caused by the Product.

## **XVIII TRADEMARKS**

Nothing in the Agreement contained whether express or implied shall be deemed to confer any right upon the Buyer to apply any trade mark owned by the Seller or any of its Affiliates to any Product supplied under the Agreement nor to use such trademarks in relation to such Products.

## **XIX ASSIGNMENT**

Neither Party shall assign any of its rights and obligations under this Agreement, in whole or in part, without the prior written consent of the other Party. The assigning Party shall remain jointly and severally liable for the full performance by the assignee(s) or any subsequent assignee(s) of its/their obligations with regard to this Agreement. Any assignment not made in accordance with the terms in this Paragraph XIX shall be void.

## **XX APPLICABLE LAW, LITIGATION AND ARBITRATION**

- a) The Agreement shall be governed by and construed in accordance with the laws of Norway.
- b) Except as provided for in (c) below, the Parties hereto accept Stavanger City Court as the proper legal venue for the settlement of any controversy or dispute that may arise in connection with, or as a result of, the Agreement which the Parties are unable to resolve by mutual agreement.
- c) Any controversy or dispute that may arise in connection with or as a result of Paragraph IX and X, where the amount in dispute does not exceed a sum of USD one hundred thousand (100,000) or any other controversy or dispute that may arise in connection with or as a result of the Agreement, where the amount in dispute does not exceed a sum of USD twenty-five thousand (25,000) which the Parties are unable to resolve by mutual agreement, shall be referred to and finally resolved by arbitration in Oslo conducted by one (1) arbitrator in accordance with the rules for Alternative Dispute Resolution Chapter III, Fast Track Arbitration, of the Oslo Chamber of Commerce.

The arbitration proceedings shall be conducted in the English language.

Any arbitral award shall be enforceable in accordance with the rules of the New York convention of 1958 on the recognition and enforcement of foreign arbitral awards. Judgement upon the awards rendered may be entered in any court or other authority having jurisdiction or application may be made to said courts or other authority for a judicial acceptance of the award and an order of enforcement, as the case may be.

## **XXI GENERAL PROVISIONS**

- a) The failure of one Party at any time to require performance by the other Party of any provision hereof shall in no way affect the right of a Party to require any performance which may be due thereafter pursuant to such provision. Nor shall the waiver by the Seller or the Buyer of any breach of any provision of this Agreement be taken or held to be a waiver of any subsequent breach of such provision.
- b) This Agreement and all information obtained by one Party from the other Party shall be treated as confidential.
- c) The headings appearing in the Agreement are for convenience only.
- d) Any modification of and addition to this Agreement shall be made in writing.
- e) The provisions of Part 1 of the Agreement shall prevail over the provisions of Part 2 of the Agreement to the extent there is any inconsistency.

## **XXII NOTICES**

Unless otherwise agreed in writing, any notices, statements, requests or other communications to be given to either Party pursuant to the Agreement shall be sufficiently made if sent by post (by airmail if airmail is possible) postage paid, or by telegraph, telex or facsimile transmission or by courier to the address of the other Party specified for this purpose in the Agreement and shall, unless otherwise provided herein, be deemed to have been given on the Day on which such communication ought to have been received in due course of postal, telegraphic, telex or facsimile transmission.



## **APPENDIX 1**

**Format of Irrevocable Stand-By Letter of Credit as required pursuant to Paragraph V of the Agreement;**

**Quote**

**Stand-By Letter of Credit**

At request of ..... (hereinafter referred to as Buyer), we,  
..... hereby open our irrevocable stand-by letter of  
credit no..... in favour of Statoil, Den norske stats oljeselskap a.s, N-  
4035 Stavanger, Norway (hereinafter referred to as the Seller) covering the purchase  
of .....

We hereby irrevocably and unconditionally undertake to make payment of up to  
..... in favour of the Seller's account no. 15013832 with Chase Manhattan  
Bank, London, upon the Seller's first written request and presentation of the following  
documentation:

- A) A copy of the Seller's commercial invoice evidencing the quantity of product purchased by the Buyer.
- B) The Seller's signed statement stating that payment of the above mentioned invoice is due and that payment has not been made by the Buyer.

This stand-by letter of credit shall be valid also in the event that the quantity and/or invoiced amount exceed(s) or is/are less than the quantity and/or amount stated herein.

We hereby agree that request for payment in accordance with the terms stipulated herein will be duly honoured upon presentation of the documentation as set out in A) and B) above if presented to our ..... on or before ..... after which date this stand-by letter of credit becomes null and void.

Partial drawings are allowed.

In addition to any payment made according to the above section A) we will honour claims for interest at the rate of three (3) months British Bankers Association (BBA) interest settlement rates (BBAISR) for United States Dollars as published on the due date plus three (3) percentage points calculated from due date according to invoice to actual date of payment to beneficiary.

All related banking charges and commissions whether of the Buyer or the Seller shall be for the account of the Buyer.

This stand-by letter of credit is subject to the Uniform Customs and Practice for documentary credit (UCP 500 1993 Revision, International Chamber of Commerce, Paris).

This telex is the instrument of utilisation. No mail confirmation follows.

**Unquote**

## **APPENDIX 2**

### **Supplement for Value Added Tax (VAT) and Excise Duty or Mineral Oil Tax (MOT)**

The provisions below shall apply only where the Loading Terminal or Discharge Port is located within the European Union (EU).

- 2.1. Where VAT or similar tax becomes payable under the rules applicable at the Loading Terminal or Discharge Port, the Seller shall issue an invoice setting out such VAT and the date for its payment. Payment for such VAT shall be made to the Seller in addition to the price for the Product and in the same manner as provided for the price of the Product.
- 2.1.1 A sale of Product may be zero rated for VAT provided that:
  - (a) if the destination of the product is within the EU, the Buyer provides to the Seller within thirty (30) Days of the date of Completion of Loading evidence satisfactory to the EU states in which the Loading Terminal and Discharge Port are located that the Product has been received by the Buyer, or some other Party acting on its behalf, within another EU state, or such other evidence as is satisfactory to the relevant authorities in the above EU states to allow zero rating of the supply of the Product; and
  - (b) before transfer of property in the Product to the Buyer, a valid VAT registration number issued by an EU state other than the EU state in which the Loading Terminal is situated, and evidence satisfactory to the EU states in which the Loading Terminal and Discharge Port are located that the transport arrangements for the product qualify for zero rating; or
  - (c) if the destination of the Product is outside the EU, the Buyer shall provide to the Seller, within thirty (30) Days of Completion of Loading of the Product, evidence satisfactory to the EU state in which the Loading Terminal is located, of receipt of the Product by the Buyer, or some other party acting on its behalf, at a destination outside the EU.
- 2.1.2 In circumstances where either sub-provisions 2.1.1. (a), (b) or (c) above may apply, the Seller will issue an invoice in respect of the Product which is zero rated for VAT. However, if the Buyer fails to comply with the requirements set out in sub-provisions referred to above within the allotted time frame or in the event of any fraud or misappropriation in respect of the Product and/or the document/information referred to above, the Seller shall be entitled to issue a further invoice for the amount of any VAT payable on the Product (inclusive of excise duty if appropriate) together with interest at the rate stipulated under the VAT rules applicable. Such invoice may be rendered either in local currency of the country in which VAT is payable or, at the Seller's option, in the invoicing currency for the Product. Any such invoices shall be paid in accordance with the Paragraph V of this Agreement.
- 2.1.3 The Buyer shall indemnify the Seller in respect of any costs, penalties and interest incurred by the Seller as a result of the Buyer's failure to pay, or delay in paying, any VAT in accordance with the Agreement.

- 2.1.4 If the Seller is subsequently able to obtain a credit or repayment from the authorities of any such VAT which has been paid by the Buyer, the Seller shall within five (5) banking Days in London reimburse the Buyer with the net amount so credited or repaid less any costs, penalties and interest and the Seller shall use all reasonable efforts, at the cost of the Buyer, to obtain such credit or repayment.
- 2.2 Excise Duty or Mineral Oil Tax (MOT)
- 2.2.1 Excise Duty or Mineral Oil Tax may be payable in respect of the Product on its leaving bonded premises at the Loading Terminal unless;
- (i) by the fifteenth (15th) Day of the Month following the Month in which loading of the Product hereunder from bonded premises is completed with an Accompanying Administrative Document (AAD), a properly completed copy 3 thereof, together with proof of discharge of the shipment, is returned to the Seller; or
  - (ii) the Buyer has provided to the Seller evidence satisfactory to the EU state where the Product was taken out of bonded premises, that the Product was delivered to a non-EU state either duty paid or into bonded premises; or
  - (iii) the Buyer can provide evidence satisfactory to the EU state where the Product was taken out of bonded premises without an AAD as a result of the Buyer's nomination, that the Product was delivered into bonded premises within the EU in circumstances where such deliveries allow for suppression of Mineral Oil Tax.
- 2.2.2 If none of the exceptions set out in sub-provisions 2.2.1.(i) to 2.2.1. (iii) above are complied with, or in the event of any fraud or misappropriation in respect of the Product and/or the documents referred to in sub-provisions 2.2.1. (i) to 2.2.1. (iii) above, the Buyer shall indemnify, and hold indemnified, the Seller against all liability in respect of Excise Duty and Mineral Oil Tax incurred by the Seller and/or reimbursements of amounts equivalent to such Duty or Tax by the Seller directly or indirectly to its supplier or the owner of the bonded premises from which the Product was despatched, including any interest, penalties and costs in respect thereof. In addition, notwithstanding compliance with sub-provisions 2.2.1 (i) to 2.2.1. (iii) above, the Buyer shall remain liable under the above indemnity for any Excise Duty or Mineral Oil Tax claimed by any relevant EU state in respect of discrepancies between the loaded in discharged quantities.
- 2.2.3 For the purpose of this Paragraph, "evidence satisfactory" to an EU state shall, as a minimum, require a certificate of discharge of the Product.