

Den norske stats oljeselskap a.s

CONDITIONS OF SALE

APPLICABLE TO PETROLEUM PRODUCTS SALES

CIF

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### APPENDIX

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## 1. Definitions

Except where the context otherwise indicates, the following terms shall have the meaning ascribed to them in this Paragraph 1, and shall include singular as well as plural.

- a) "Affiliate" shall mean any company or corporation of the Seller or the 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.
- c) "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.
- d) "Commencement of Loading" shall, in respect of a Cargo, mean the final connection of loading hose(s) or arm(s) prior to the loading of the Cargo.
- e) "Completion of Loading" shall, in respect of a Cargo mean the final disconnection of loading hose(s) or arm(s) from the Vessels loading manifold after the loading of the Cargo.
- f) "Commencement of Discharge" shall, in respect of a Cargo, mean the final connection of discharge hose(s) or arm(s) prior to the discharge of the Cargo.
- g) "Completion of Discharge" shall, in respect of a Cargo, mean the final disconnection of the discharge hose(s) or arm(s) following the discharge of the Cargo.
- h) "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 certificates at the Loading Terminal.
- i) "Discharge Port(s)" shall, in respect of a Cargo, mean the port(s), berth, terminal or other facility nominated by the Buyer and accepted by the Seller for discharge of such Cargo in accordance with the Agreement.
- j) "Dollars" or "USD" or "US dollars" shall mean dollars of the United States of America.
- k) "Loading Terminal" shall mean the Mongstad Refinery in Norway or the Kalundborg Refinery in Denmark or any other Loading Terminal(s) from which the Seller is supplied Cargo.
- l) "Metric Ton" shall mean the unit of weight equal to one thousand (1000) kilograms measured in air.
- m) "Day" shall mean a calendar Day.

n) "Month" shall mean a calendar Month.

- o) "Quarter" shall mean the period of the three consecutive Months commencing on 1st January or 1st April or 1st July or 1st October.
  - p) "Year" shall mean a calendar Year commencing on 1st January.
  - q) "Party" shall mean either the Seller or the Buyer.
  - r) "Parties" shall mean the Seller and the Buyer jointly.
  - s) "Product" shall mean the refined petroleum Product to be sold pursuant to the Agreement.
  - t) "Grade" shall mean any grade of the petroleum Product to be delivered pursuant to of the Agreement, included any blended Products as defined in the Agreement.
  - u) "Operator" shall mean the Operator of the Loading Terminal at Bill of Lading date.
  - v) "Part Cargo" shall mean when a Cargo is discharged in more than one Discharge Port or received by more than one receiver.
  - w) "Vessel" shall mean the ship whether owned or chartered or otherwise obtained by the Seller and employed by the Seller to ship the Product to the Buyer/Discharge Port.
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## **2. Delivery**

The Product shall be delivered on board the Vessel for shipment in bulk to the Discharge Port.

## **3. Property and Risk**

- 3.1. The property and risk in the Product delivered under the Agreement, shall pass to the Buyer as the Product passes the Vessel's first permanent hose connection upon loading at the Loading Terminal.

## **4. Insurance**

- 4.1. The Seller undertakes to procure and pay for insurance against marine risks to

- (a) the invoice value of each Cargo thereunder plus
- (b) 10% hereof

The insurance shall operate from the shoretank at the loading port to the shoretank at the Discharge Port, unless the Cargo is delivered into lighters pursuant to Paragraph 14 hereof in which case the insurance terminate when the Cargo is delivered into such lighters, and cover "all risks" conditions, against civil risks as per Institute Cargo Clauses-A (English Institute Cargo clauses (A) of 1.1.82), including contamination and leakage and/or losses in weight, however caused, between bill of lading quantity and disport shoretanks findings, with deductible 0,5%.

The benefit of the insurance shall accrue to the Buyer upon the passing of the risk and property to the Buyer according to Paragraph 3.

## **5. Price, Credit Period and Currency**

- 5.1. The price to be paid in respect of a Cargo, currency and credit period shall be as stated in the Agreement. In the absence of any other agreed credit period, the payment for each Cargo shall be due on the fifth (5th) day after the date of Completion of Loading.

## 6. Payment

- 6.1. Payment for each Cargo shall be made with good value in immediately available funds within the due date as set forth in the Agreement by telegraphic transfer to the Seller's bank account, as from time to time nominated by the Seller, on presentation of the Seller's commercial invoice (telex invoice acceptable) and bill 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 Appendix 2 hereto, without deduction, discount, set off or counter-claim and at the expense of the Buyer.
- 6.2. 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.
- 6.3. 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.
- 6.4. Interest on overdue payments shall be paid for the period starting on and including the due date for payment as set forth in 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.
- 6.5. The Seller may 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 110 per cent of the estimated value of the Cargo for which it is provided and shall be established in favour of the Seller not later than five (5) Days prior to the Commencement of Loading for the Cargo 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 1 hereto.
- 6.6. If for any reason the loading of the Vessel in question 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 / bank guarantee in terms acceptable to the Seller.

- 6.7. All related banking fees, commissions and expenses whether of the Buyer or the Seller shall be for 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 thereafter prior to Commencement of Loading terminate the Agreement and claim damages forthwith. In any event, whether the Seller has exercised that right to terminate or not, the Seller shall be under no obligation to commence loading the Vessel. Any cost and loss of 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.
- 6.8. 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 6. If in this event the Seller requires the Buyer to open a stand-by letter of credit or bank guarantee in accordance with Paragraph 6.5, 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 6.5. 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.

## **7. Quality and Quantity**

- 7.1. The Product shall be of a quality and a quantity as specified in the Agreement.
- 7.2. 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.
- 7.3. 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.
- 7.4. The Seller shall have the right to appoint an independent inspector acceptable to both Parties at the Loading Terminal. The cost for such inspections shall be equally shared between the Parties. If agreement on appointing an independent inspector is not reached either Party may nominate its own inspector at its own expense.



- 7.5. 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 at Discharge Port (initial notice). Such initial notice shall be followed by a formal written claim to the Seller with all details necessary to evaluate the claim.

If a formal written claim is not received by the Seller within sixty (60) Days after Completion of Discharge, the claim shall be deemed to have been timebarred.

- 7.6. There are no guarantee or warranties, express or implied of merchantability, fitness, suitability for any particular purpose or use or otherwise which extend beyond the specification of the Product defined in the agreement.

## **8. Charter Party Conditions**

- 8.1. The Seller may arrange shipment under bills of lading which may incorporate any of the charter party conditions normally in use for tankships.
- 8.2. Without prejudice to the Buyer's obligations under Paragraph 13, the Seller undertakes to settle freight and demurrage due to the shipowner.

## **9. Berth and Discharge Port**

- 9.1. The Buyer shall provide free of charge, including all wharfage, dockage and quay dues, to the Seller, a berth or berths, dock and anchorage including discharge facilities at Discharge Port at which the Vessel can safely reach and leave and at which the Vessel can berth and discharge always safely afloat.
- 9.2. Any costs and risks (including but not limited to damages for delay) of shifting berth, unless for the Seller's or the Vessel's reasons, shall be for the account of the Buyer.
- 9.3. The Seller shall ensure that each of its Vessel's shall comply with all applicable regulations and rules of governmental, local and port authorities at the Discharge Port.

- 9.4. In the event that any Vessel nominated by the Seller does not comply with the foregoing provision 9.3, the Buyer may refuse acceptance of the Vessel. Such acceptance shall not be unreasonably withheld.

## **10. Alternative Discharge Port**

- 10.1. Where the Buyer exercises any Discharge Port options available under the terms of the charter party and allowable in accordance with the Agreement, the price stated in the Agreement shall be adjusted by the freight differential calculated in accordance with the charter party terms or, if the Vessel has not been voyage chartered, such rate shall be mutually agreed between the Parties in respect of such Discharge Port and provided always that any delays arising out of such failure to agree shall be for the Buyer's account.
- 10.2. The Buyer shall be liable for any additional costs incurred by the Seller, included but not limited to deviation as well as detention costs and costs in respect of any additional bunker consumption.

## **11. Nominations of Shipment**

- 11.1.1. In so far it is practicable no later than two (2) working Days before the Vessel is due to arrive at the Loading Port, the Seller shall send a notice of nomination to the Buyer specifying:
- (a) Name of Vessel, or TBN, and the pertinent physical characteristics of the vessel
  - (b) Loading date range
  - (c) Loading Terminal
  - (d) Quantity and quality loaded / to be loaded
  - (e) Preliminary estimated time of arrival (ETA) at Discharge Port.
- 11.2. The Buyer shall within the time stipulated in provision 11.1 accept or reject the Vessel nomination in writing to the Seller, such acceptance shall not be unreasonably withheld.
- 11.3. The Seller shall be entitled to substitute another Vessel of similar size and characteristics for any nominated and/or accepted Vessel, only after mutual consent of both Parties. The scheduled date of arrival of the substituted Vessel and the quantity to be discharged shall not, without prior written consent of the Buyer, which shall not be unreasonably withheld, differ from the latest accepted scheduled date and quantity for the Vessel previously nominated.

- 11.4. Upon receipt of such nomination as specified in provision 11.1, the Buyer shall notify the Seller of the final discharge instructions. Any change to the final Discharge Port so notified shall not be made without the Seller's prior written acceptance which shall not be unreasonably withheld and provided always that, such alternative Discharge Port is allowable pursuant to the charter party and the provisions of Paragraph 10.
- 11.5. In so far it is practicable the Seller will arrange for the Vessel to notify the Buyer or its representative at the Discharge Port of its arrival at a minimum:
- (a) 48 and 24 hours notice of estimated time of arrival (ETA) Discharge Port, and thereafter any variations of more than 12 hours.
- 11.6. The Seller will promptly advise the Buyer of any changes in the notifications and declarations arising from production changes, weather, operational matters or any circumstances beyond the Seller's reasonable influence. Any modifications in the quantity, date ranges or final loading date due to changed notifications and declarations shall be deemed to be accepted by the Buyer and any modified quantity, date ranges and/or final loading date respectively as nominated.
- 11.7. 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 17.00 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.

## **12. Laytime**

- 12.1. Laytime allowed to the Buyer, Sundays and holidays included, shall be in accordance with the sales Agreement thereof. If however 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 case 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 Cargo, pro rata for Part Cargo.
- 12.2. Laytime shall commence, berth or no berth, 6 hours after the Vessel's master or its representative has tendered to the Buyer or the Buyer's representative, notice of readiness to discharge, or when the Vessel is all fast - securely moored - at the berth, whichever is earlier.
- 12.3. Notice of readiness shall be tendered upon arrival of the customary anchorage at the Discharge port.
- 12.4. Laytime shall cease upon Completion of Discharge.
- 12.5. Time spent by the Vessel on inward passage or in handling or shifting ballast, bilge's, slops or bunkering unless carried out concurrently, or time lost through any suspension of discharge due to fault or failure of the Vessel or for Vessel's purposes, shall not count against laytime.

- 12.6. If the Vessel shifts berth for any reason other than a reason on the part of the Seller or the Vessel, then the time taken to shift berth shall count against laytime, or if the Vessel is on demurrage, as demurrage .

### **13. Demurrage**

- 13.1. In the event that the laytime is exceeded, the Buyer shall pay to the Seller demurrage in respect of the excess time based on a sum agreed thereof or in the absence of any agreement on the Vessel's charter party demurrage rate per Day (or pro rata for part of a Day). In the absence of such rate the Parties shall obtain the appropriate demurrage rate for the size of 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 the Vessel commences loading.
- 13.2. The Seller warrants that the Vessel is able to discharge the Cargo within the laytime provided shore facilities permit. All time lost as a result of the Vessel being unable to discharge the Cargo in accordance with the pumping warranty as stated in Paragraph 15, through fault of the Vessel, shall not count as laytime nor, if the Vessel is on demurrage as time on demurrage.
- 13.3. If, however, 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 Discharge Port (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.
- 13.4. For avoidance of doubt, Paragraph 20 shall not apply to Paragraph 12 and this Paragraph 13.
- 13.5. Payment of demurrage due shall be paid by the Buyer to the Seller no later than thirty (30) Days after the Seller's invoicing supported by appropriate documentation is received by the Buyer. In the event that payment has not been made within due date interest on overdue payment shall be calculated in accordance with Paragraph 6.4.

## **14. Lighterage**

- 14.1. Vessel may be lightered at the Discharge Port only with the written consent of the Seller and, if any lightering shall be undertaken at the request of the Buyer, the expense thereof shall be for the Buyer's account and all time used in such lightering together with all delay thereupon shall count against laytime, or if the Vessel is on demurrage, as demurrage.
- 14.2. Except in relation to any lightering carried out at the request of and for the purposes of the Seller, any lightering operation carried out shall be at the Buyer's risk and the Buyer shall be liable to the Seller in respect of any losses, costs, damages and proceedings arising therefrom and shall indemnify the Seller in respect thereof. This section shall not be included in the scope of Paragraph 24 hereof.
- 14.3. The same will apply for ship to ship transfer operations.

## **15. Pumping**

- 15.1. The Seller warrants that the Vessel shall discharge the entire full Cargo within 24 hours pumping time or maintain pressure at Vessel's rail during the discharge at, at least, 100 p.s.i.

## **16. Documents**

- 16.1. The Seller shall provide the Buyer with the original bills of lading, Cargo Manifest and the invoice for the Cargo. If such documents are not available and delivered to the Buyer when the Buyer shall pay for the Cargo, the Buyer agrees to pay the Seller upon presentation to the Buyer of the Seller's commercial telex invoice and the Seller's telex letter of indemnity (LOI) in the form set out in Appendix 2 hereto.
- 16.2. If documents are not available for presentation to the Vessel's master at the Discharge Port, the Seller will instruct master to discharge the Cargo and the Buyer undertakes ( by way of signing the standard "LOI" or any similar instrument the Seller may demand ) to hold the Seller harmless and indemnified against all claims as a result of such documents not being presented.
- 16.3. The Buyer declares that he himself is the consignee of the Cargo or if he is not the consignee warrants that the consignee is entitled to the Cargo, and undertakes to cause the consignee to surrender the bills of lading to the Vessel's master or agent immediately when they come to hand.
- 16.4. 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 provision 16.2 above shall apply, then the Buyer shall provide and pay for the necessary security and obtain release of the Vessel or any other Vessel or property as set out above and cover all legal and additional expenses incurred thereby and the Buyer shall pay at the rate of the Vessel's daily hire during the entire detention period of the Vessel. If any proceedings are commenced against the Seller with respect 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 the Buyer's own costs or alternatively at the Buyer's option pay the costs of attorneys appointed by the Seller.

## **17. Pollution and ITF Requirements**

- 17.1. The Seller warrants that all Vessel's 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 Discharge Port.
- 17.2. The Seller warrants that any Vessel loading the Cargo under the Agreement is owned or demise chartered by a member of The International Tanker Pollution Federation Ltd. (ITOPF).

The Seller 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 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.

- 17.3. The Seller will see to it that the minimum terms and conditions of employment of the crew of the Vessel will on arrival at Discharge Port be covered by an ITF (International Transport Worker's Federation ) agreement or a bona fide trade union agreement acceptable to ITF.

## **18. Disposal**

- 18.1. 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 18.
- 18.2. 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 related to such alternative disposal including name of end user and discharge port.
- 18.3. Without prejudice to the foregoing provisions of this Paragraph 18, in the event of any failure to comply with such undertakings or if the Seller has reasonable grounds for believing that such undertakings 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 on notifying the Buyer either in writing or orally.

## **19. Taxes, Duties and Charges**

- 19.1. The Seller shall be responsible for the payment of any taxes, duties or other charges arising at the port of loading and which arise from the sale and delivery to the Buyer of the Product until the stage when the risk has passed to the Buyer. All other taxes, duties, dues, levies and other charges imposed on the Product or the Vessel payable upon importation at Discharge Port (when not included in the agreed freight rates) shall be for the Buyer's account.
- 19.2. VAT and Excise Duty or Mineral Oil Tax (MOT)

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 3 hereto shall form part of this Paragraph 19, provision 19.2.

## 20. Force Majeure

- 20.1. Neither the Seller nor the Buyer shall be deemed in breach of this Agreement as a result of, and be liable to the other for, any failure, omission or delay in its performance in whole or in part of any terms and conditions of this Agreement to the extent that such failure, omission or delay arises or results from any cause beyond the reasonable control of a Party including but not limited to;
- a) compliance, voluntary or involuntary, with any order, demand or request of any government or of any international, national, port, transportation, local or other authority or agency or person purporting to be or to act with such authority ;
  - b) strike, lockout or other labour difficulty from whatever cause arising ;
  - c) natural calamity, fire, explosion, perils of the sea, storms, floods, hazardous weather or other Acts of God ;
  - d) war, hostilities declared or undeclared, embargo, blockade, civil unrest, riots terrorism, and any consequence thereof
  - e) hindrances to transportation or delivery, loss of tanker tonnage whether or not by requisition, wreckage of equipment, breakdown of machinery, suppliers facilities or installations ;
  - f) curtailment, failure or cessation of Product and/or feedstocks supplies from any of the Seller's Products and/or feedstocks sources, whether or not for the purpose of this Agreement.

Such cause(s) shall also relieve the Seller of any liability when these involve the Seller's supplier or other authority or agency or of any body or person purporting to be or act with such authority or agency.

- 20.2. Nothing in this Paragraph 20 shall relieve the Buyer of any of its obligations to make payments due or provide security to the Seller under the Agreement by the due dates or according to the provisions of Paragraph 6, which obligations are absolute.
- 20.3. If, as a result of an event of force majeure, the Seller is cut off from any one or part of its sources or its anticipated sources of any Product and /or feedstocks in whatever country situated or the loading or transportation of the Product is delayed, hindered, interfered with, curtailed or prevented, the Seller shall be entitled to withhold, reduce or suspend Product deliveries hereunder to such extent as the Seller shall in its absolute discretion determine.

In such event, the Seller shall not be bound to acquire by purchase or otherwise additional quantities of Product and/or feedstock from other suppliers to satisfy the Buyer's requirement hereunder. However, should the Seller thereafter purchase or otherwise acquire additional Product, the Seller shall not be required to allocate any to the Buyer.

- 20.4. The Party seeking relief under this Paragraph 20 shall advise the other Party as soon as practicable, by prompt written notice, of the circumstances causing the failure to fulfil its obligations and shall thereafter provide to the other Party all such information as is



reasonably available regarding the progress and possible cessation of such circumstances. Subject to the provisions of this Paragraph 20, performance of obligations under the Agreement shall be resumed as soon as reasonably possible after such circumstances have ceased. The time of 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. If any delivery hereunder shall be so delayed or prevented for more than thirty (30) Days, either Party may terminate this Agreement with respect to such delivery upon giving written notice.

## **21. Change in Seller's Supplies**

- 21.1. In the event that the production forecast for or the availability from any of the Seller's or the Seller's supplier's, sources of supply of the Product, whether deliverable under the Agreement or not, or the normal means of transport or delivery of such Product, is delayed, hindered, interfered with, curtailed or prevented, the Seller has the right to withhold, reduce, suspend or terminate deliveries of the Product to be made available to the Buyer to the extent that the Seller's actions is being based on information provided by or through the International Energy Agency (IEA) and/or in reasonable expectation by the Seller of a request or requirement of or made by or through the IEA or as a result of the Seller's compliance with a request or requirement of or made by or through the IEA..
- 21.2. In that event the Seller shall be free to allocate it's remaining availability as the Seller may in its absolute discretion think fit and the Buyer shall be obliged to accept and pay for any Product tendered for delivery even if less than the full contractual quantity. The Seller shall not be bound to purchase or otherwise make good shortage resulting from such causes.
- 21.3. In the event of such curtailment or interference, any additional Product made available to the Seller from outside sources may be disposed of by the Seller in its absolute discretion and need not to be taken into account in the determination whether or not, for the purpose of this Paragraph 21, the curtailment in question continues to subsist.
- 21.4. If the Seller is seeking relief under this Paragraph 21 it shall advise the Buyer as soon as practicable of the circumstances in question and the remedies implemented or to be implemented by the Seller. No curtailment, suspension or termination of deliveries or receipt of the Product pursuant to this Paragraph 21 shall operate to extend the duration of the Agreement. All Product, the timely delivery or receipt of which does not take place for reasons stated in this Paragraph 21 shall, unless otherwise agreed, be deducted from the volume of the Product required to be delivered and received hereunder.

## **22. Ice Clause**

- 22.1. In case of ice at the Discharge Port or on the voyage to the Discharge Port, the Vessel shall not force ice, but follow in icebreakers cut provided master considers such navigation safe and unharmed to the Vessel. The Buyer shall on its own account, place any necessary icebreakers at the Vessel's disposal.
- 22.2. If the Seller agrees to continue on such a voyage, then the Buyer undertakes to reimburse the Seller for:
  - a) any extra insurance applicable

- b) the cost of any ice damage incurred less any sum which can be recovered under any insurance.
- c) any period lost by detention of the Vessel in ice
- d) any charter hire or sums paid by the Seller or lost to the Seller for the period of repair due to such ice damage, including deviation to repair yard.

22.3. In the event that the discharge port is inaccessible due to ice the Vessel will proceed to nearest safe ice-free position and at the same time request revised orders. Immediately upon receipt of such request the Buyer shall nominate an alternative ice-free and accessible port in accordance with Paragraph 11, where there is no danger of being frozen in and where there are facilities for receiving the Cargo in bulk. In this event, any extra freight, expenses, demurrage and dues incurred as a result of such change, shall be for the Buyer's account.

22.4. In the event that the master deems the Vessel in danger of being frozen in at the Discharge Port, the Seller may, at its sole discretion, order the Vessel to cease discharging and leave the Discharge Port. In such circumstances the Buyer shall, on its own account, place necessary icebreakers at the Vessel's disposal.

The Vessel will thereafter proceed to the nearest safe ice-free position and at the same time request revised orders. Immediately upon receipt of such request the Buyer shall nominate an alternative ice-free and accessible port in accordance with Paragraph 11, where there is no danger of being frozen in and where there are facilities for receiving the remaining Cargo in bulk. In this event, any extra freight, expenses, demurrage and dues incurred as result of such change, shall be for the Buyer's account.

## **23. Suspension and Termination**

- 23.1. 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:
- a) 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
  - b) 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
  - c) 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
  - d) there is a major change in the direct or indirect ownership of the Buyer; or
  - e) 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
  - f) 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
  - g) 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 14 Days.
- 23.2. In the event of the Seller suspending deliveries of the Product in any of the circumstances referred to in (a) - (g) of this Paragraph, provision 23.1, 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.
- 23.3. If, pursuant to the provisions of this Paragraph 23, 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 but for such withholding, reduction or suspension.
- 23.4. Any termination of this Agreement shall be without prejudice to the rights and obligations of each Party as accrued at the date of termination.

## **24. Liability**

- 24.1. 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.

- 24.2. The Buyer shall hold harmless and indemnify the Seller from and against any action or claim from third parties for loss, damage, injury or death to or of third parties which might be alleged to have been caused by the Product.

## **25. Trade Marks**

- 25.1. 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 trade marks in relation to such Products.

## **26. Assignment**

- 26.1. 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 of this Paragraph 26 shall be void.

## **27. Applicable Law, Litigation and Arbitration**

- 27.1. This Agreement shall be governed by and construed in accordance with Norwegian Law to the exclusion of any other Law which may be imputed in accordance with choice of Law rules applicable in any jurisdiction. Neither Party shall be precluded from pursuing arrest, attachment and/or other conservatory actions in the courts of any other country or exercising any contractual rights in relation to the Product or the Vessel provided for elsewhere in the Agreement.
- 27.2. Except as provided for in Paragraph 27.3 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 and that cannot be resolved by mutual agreement between the Parties.
- 27.3. All claims, disputes and other matters arising out of or relating to this Agreement, where the amount in dispute does not exceed a sum of USD 50.000, which, in the opinion of one of the Parties, the Parties is unable to resolve by mutual agreement, shall exclusively and finally be settled by arbitration in Oslo, Norway and be conducted in accordance with the rules for Alternative Dispute Resolution Chapter III Fast track Arbitration, of the Oslo Chamber of Commerce.
- 27.4. The language of the arbitration proceedings shall be English.
- 27.5. The Parties shall agree upon a single arbitrator to whom the matter in dispute shall be referred for determination. If, the Parties have, within 10 Days from notice of arbitration, failed to agree upon an arbitrator, then the matter shall be referred to the President of Stavanger City Court which, at the request of either Party, shall appoint the said arbitrator within 14 Days.
- 27.6. Any arbitral award shall be enforceable 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 courts or other authority for a judicial acceptance of the award and an order of enforcement, as the case may be.

**28. General Provision**

- 28.1. The failure of the Seller or the Buyer at any time to require performance by the other 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.
- 28.2. This Agreement and all information obtained by one Party from the other Party shall be treated as confidential.
- 28.3. The headings appearing in the Agreement are for convenience only.
- 28.4. Any modification of and addition to this Agreement shall be made in writing.

**29. Notices**

- 29.1. 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 facsimiles 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.

-----End of Conditions of Sale-----

APPENDIX 1.

Stand-by Letter of Credit Format

Format of Irrevocable Stand-By Letter of Credit as required pursuant to Paragraph 6 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 drawing are allowed.

In addition to any payment made according to the above section A) we will honour claims for interest at the rate of 3 months British Bankers Association (BBA) interest settlement rates (BBAISR) for United States dollars as published on the due date plus 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 (1983 edition, International Chamber of Commerce, Paris).

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

Unquote

APPENDIX 2.

Letter of Indemnity Format

Format of Letter of Indemnity as required pursuant to Paragraph 16 of the Agreement ;

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



### APPENDIX 3.

#### 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 ).

- 3.1 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.
- 3.1.1 A sale of Product may be zero rated for VAT provided that :
  - 3.1.1.1 if the destination of the product is within the EU, the Buyer provides to the Seller within 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
  - 3.1.1.2 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
  - 3.1.1.3 if the destination of the Product is outside the EU, the Buyer provides to the Seller, within 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.
- 3.1.2 In circumstances where either sub-provisions 3.1.1.1, 3.1.1.2 or 3.1.1.3 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 invoice shall be paid in accordance with the Paragraph 6 of this Agreement.
- 3.1.3 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.
- 3.1.4 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 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.

- 3.2. Excise Duty or Mineral Oil Tax (MOT)
  - 3.2.1 Excise Duty or Mineral Oil Tax may be payable in respect of the Product on its leaving bonded premises at the Loading Terminal unless ;
    - 3.2.1.1 by the 15th Day of the Month following the Month in which loading of the Product herunder 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
    - 3.2.1.2 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
    - 3.2.1.3 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.
  - 3.2.2 If none of the exceptions set out in sub-provisions 3.2.1.1 to 3.2.1.3 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 3.2.1.1 to 3.2.1.3 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 3.2.1.1 to 3.2.1.3 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 and discharged quantities.
  - 3.2.3 For the purpose of this Paragraph, "evidence satisfactory" to an EU state shall, as a minimum require a certificate of discharge of the Product.