

General Terms and Conditions for the Sale of Bitumen

1. DEFINITIONS

1.1 In these GTCs the following terms shall have the following definitions whenever used:

- 1.1.1 **“Agreement”** means the agreement between the Parties for the sale and purchase of Product as evidenced by the Transaction Summary and these GTCs;
- 1.1.2 **“Banking Day”** means a day other than a Saturday or Sunday on which banks in New York are open for business;
- 1.1.3 **“DAP”** has the meaning given to in INCOTERMS® 2010, as published by the International Chamber of Commerce, save where inconsistent with the terms of the Agreement;
- 1.1.4 **“Default”** has the meaning given to it in Clause 15.1;
- 1.1.5 **“Delivery Date Range”** means, in the case of FCA sales, the date or dates as specified in the Transaction Confirmation within which Seller shall deliver and Buyer shall take delivery of the Product at the Delivery Location;
- 1.1.6 **“Delivery Location”** means the location where the Product is to be delivered by Seller to Buyer and which shall be specified in the Transaction Summary;
- 1.1.7 **“Delivery Order”** means, in the case of DAP sales, the Buyer placing an order with the Seller for a delivery of a quantity of Product DAP at the Delivery Location.
- 1.1.8 **“ETA”** means estimated time and date of arrival;
- 1.1.9 **“FCA”** has the meaning given to in INCOTERMS® 2010, as published by the International Chamber of Commerce, save where inconsistent with the terms of the Agreement;
- 1.1.10 **“GTCs”** means these General Terms and Conditions;
- 1.1.11 **“LIBOR”** means the rate for one month deposits in US\$ which appears on the relevant Reuters page (or any successor page) as of 11:00 London time on the date of determination or, in the event that such rate is unavailable, the mean average of the rates at which US\$ rates are quoted by the principal offices of three banks nominated by Seller in the London interbank market;
- 1.1.12 **“Nomination Date Range”** means, in the case of DAP sales, the date or dates specified in the Transaction Confirmation within which the Buyer shall place Delivery Orders with the Seller equal to the total agreed quantity of Product to be purchased stated in the relevant Transaction Confirmation;
- 1.1.13 **“Party”** means either Seller or Buyer as the case may be and **“Parties”** means both of them;
- 1.1.14 **“Product”** means bitumen meeting the specifications set out in the Transaction Confirmation;
- 1.1.15 **“Transaction Confirmation”** means the written record of the Agreement as sent by Seller to Buyer and into which these GTCs shall be incorporated by reference. In the event of any conflict between the terms of the Transaction Confirmation and these GTCs, the terms of the Transaction Confirmation shall prevail;

1.1.16 “**Truck**” means a road truck which is either nominated by Buyer to Seller, in the case of FCA sales, to take delivery of the Product at the Delivery Location, or, in the case of DAP sales, is arranged by the Seller to deliver the Product at the Delivery Location ; and

1.1.17 “**Working Day**” means a day that is not a Saturday, Sunday or public holiday in the place in which loading of the Product will take place.

2. PRODUCT

2.1 Seller shall deliver to Buyer Product meeting the quality specifications set out in the Transaction Confirmation.

2.2 Product shall be delivered at a temperature of approximately 180° Celsius at the end of the truck loading arm of the loading terminal.

2.3 Seller’s obligations with regard to the quality of the Product supplied are limited solely to supplying Product which corresponds with the description set out in the Transaction Confirmation. Neither any reference to “typicals” nor any provision of the Agreement regarding the time of delivery shall form part of the Product’s description or any quality specifications. All conditions, warranties or other terms, whether express or implied by statute, at common law or otherwise including without limitation with respect to the description, satisfactory quality or suitability or fitness for any purpose of the Product are hereby excluded to the fullest extent permitted by law.

3. DELIVERY AND NOMINATIONS FOR FCA SALES

3.1 Seller shall deliver the Product FCA at the Delivery Location on board Trucks arranged by Buyer and nominated by Buyer to Seller.

3.2 Notwithstanding that delivery shall be on an FCA basis, Seller shall not be required to obtain an export licence or other official authorisation or to carry out any customs formalities necessary for the export of the Product or to pay any pay duties, taxes or other charges that may be payable on export of the Product.

3.3 Unless otherwise agreed, Buyer shall nominate Trucks to Seller in order to take delivery of the Product on an evenly spread basis within the Delivery Date Range.

3.4 Buyer or its nominated agent shall nominate each Truck to Seller no later than 1600 hours local time on the Working Day prior to the Truck’s ETA at the Delivery Location. Nominations may be made by telephone or email. Buyer’s nomination of each Truck shall comply with any requirements set out in the Transaction Confirmation and shall include details of:

3.4.1 the identity of the haulier;

3.4.2 the quantity requested to be loaded on the Truck;

3.4.3 the Truck’s ETA at the Delivery Location;

3.4.4 the destination and address at which the Truck will be discharged (i.e. the shipped to address”);
and

3.4.5 all additional information as may be required by Seller.

3.5 Upon acceptance of Buyer’s Truck nomination Seller will provide a loading reference to Buyer or its agent. Seller shall not be obliged to load any Truck that has not been nominated to and accepted by Seller or for which a loading reference has not been given to Buyer or its agent.

- 3.6 Buyer shall procure that each Truck and all personnel of Buyer and its nominated carrier shall at all times act at all times in compliance with all relevant procedures and standards of the loading terminal at the Delivery Location, including relating to protection of health, safety and the environment, and with which procedures and standards Buyer shall be deemed to be fully familiar, and with all applicable laws and regulations at the Delivery Location. Seller shall provide copies of all such procedures and standards to Buyer upon request by Buyer. Seller shall be entitled to refuse to load any Truck if Seller reasonably considers it necessary to do so at any time for any reason and/or if the loading terminal refuses to do so and irrespective of whether any such Truck has previously been accepted for loading.
- 3.7 The Buyer shall be responsible for checking any load limits or other restrictions applicable to the Truck or its contents at or on route to the intended discharge location.
- 3.8 Seller shall not be responsible for any miscommunication between Buyer, Buyer's forwarder or agent and the loading terminal.

4. DELIVERY AND NOMINATIONS FOR DAP SALES

- 4.1 Seller shall deliver the Product DAP at the Delivery Location on board Trucks arranged by Seller.
- 4.2 Should Buyer be required to obtain any license or other official authorization for the import of the Product in the country in which the Delivery location is, it shall be obliged to do so promptly. Notwithstanding that delivery shall be on a DAP basis, Seller shall not be required to obtain an export licence or other official authorisation where necessary for the export of the Product. Buyer is responsible for payment of any duties, taxes or other charges that may be payable on export of the Product including any interest on late payments to the seller as provided in the payment terms provision of this contract.
- 4.3 Unless otherwise agreed, Buyer shall place delivery orders to Seller in order to take delivery of the Product on an evenly spread basis within the Nomination Date Range.

5. PRICING AND PAYMENT

Price

- 5.1 Buyer shall pay Seller for the Product at the price specified in the Transaction Confirmation.

Payment – direct debit

- 5.2 Where payment for the Product is agreed to be made by direct debit, Buyer shall arrange for the necessary mandate or direct debit instructions to be provided to its bank and shall notify Seller of all necessary details to enable Seller to obtain payment by direct debit from Buyer's bank account.
- 5.3 Seller shall be entitled to debit Buyer's account for amounts invoiced by Buyer in respect of Product delivered.
- 5.4 If for any reason whatsoever Seller is not able to obtain invoiced sums via direct debit, then Buyer shall remain liable for all invoiced sums and shall, immediately upon notice from the Seller, make alternative arrangements to pay Seller's invoice.

Payment – open account

- 5.5 Unless otherwise specified in the Transaction Confirmation, payment for the Product shall be made in invoiced currency by telegraphic transfer in immediately available funds, free of all charges, without any deduction, withholding, set-off or counterclaim, to Seller's designated bank account as stated in Seller's invoice, by such date as is specified in the Transaction Confirmation or if no such date is specified by no

later than 5 (five) calendar days following the delivery of the Product against presentation of Seller's commercial invoice.

- 5.6 If the payment due date falls on a Saturday or any day other than Monday that is not a Banking Day, Buyer shall make payment on the preceding Banking Day. If the payment due date falls on a Sunday or a Monday that is not a Banking Day, Buyer shall make payment on the following Banking Day.

Payment in advance

- 5.7 Where the Transaction Summary specifies that Buyer is to make payment for Product in advance of delivery, Buyer shall pre-pay a provisional price for the Product within 3 (three) Banking Days of the date of Seller's invoice or prior to the first day of the Delivery Date Range, whichever is sooner. Buyer shall pay the price stated in Seller's provisional invoice in the invoiced currency by telegraphic transfer in immediately available funds, free of all charges, without any deduction, withholding, offset or counter-claim, to Seller's designated bank account. The provisional price shall be based on the pricing quotations available to Seller at the time of issuing the provisional invoice and the mean contract quantity to be delivered. Seller shall not be under any obligation to deliver the Product to Buyer until Seller has received pre-payment of the provisional price.
- 5.8 Seller shall issue its final invoice upon completion of pricing and delivery and the invoice will give credit for any of the provisional price that has been paid by Buyer. Any outstanding balance due by either Party to the other for any differential between the provisional and final invoice amounts shall be settled by the owing Party by no later than 5 (five) Banking Days after the issuance of such final invoice.

Interest

- 5.9 Buyer shall pay an interest charge on any late payments from the due date until the date on which Seller receives payment at the lesser of (a) a rate of 4 % above LIBOR and (b) the maximum rate of interest which Seller may lawfully charge to Buyer. Such interest shall be payable to Seller on demand and shall accrue until payment notwithstanding the termination of the Agreement for any reason whatsoever. This provision shall not be construed as an indication of any willingness on the part of Seller to provide extended credit as a matter of course and shall be without prejudice to any rights and remedies which Seller may have under the Agreement or otherwise.
- 5.10 Where any applicable law requires a deduction or withholding in respect of tax to be made, Buyer shall inform Seller of that requirement and will pay such additional amount to Seller as will ensure that the net amount received by Seller is equal to the full amount that Seller would have received had the deduction or withholding not been required.

Payment - standby letter of credit

- 5.11 Where the Transaction Confirmation specifies that payment is to be secured by a standby letter of credit, Buyer shall procure that a fully operative irrevocable standby letter of credit (the "LC") shall be issued in a form and by a first class international bank, both to be acceptable to Seller, by no later than 10 (ten) calendar days prior to the first day of the Delivery Date Range.
- 5.12 The LC shall be sufficient to cover the mean contract quantity of the Product at Seller's reasonable estimate of the contract price plus 15 per cent and a further amount to cover escalation in duties including, where applicable, value added tax.
- 5.13 In case such LC is not opened by Buyer by the date specified above, at Seller's option Seller has the right, without limitation of or prejudice to its other rights under the Agreement or otherwise or at law, to (a)

terminate the Agreement, (b) maintain the Agreement on amended terms acceptable to Seller or (c) postpone delivery of the Product on terms acceptable to Seller. Buyer shall be liable to Seller in respect of any and all costs, losses, expenses or damages whatsoever, whether direct or indirect, incurred by Seller as a result of the late opening of the LC, including without limitation any storage fees or costs and hedging costs. If the date of the Agreement is later than the date for opening of the LC specified in this clause then Buyer shall exercise its best efforts to procure the opening LC as soon as reasonably possible but shall do so in any event no later than 1200 hours on the Working Day immediately prior to the first day of the Delivery Date Range.

- 5.14 Any LC is to be payable at the counters of Seller's bank. Each Party shall pay its own banking charges, save that if the LC is a confirmed letter of credit, the confirmation charges shall be for Buyer's account.
- 5.15 The LC shall take effect in accordance with its terms but such terms shall not alter, add to, or in any way affect the provisions of the Agreement or cause any of Seller's rights under the Agreement to be waived unless the Parties expressly so agree in writing.
- 5.16 If for any reason the delivery of the Product, as the case may be, will not take place within any relevant period which may be referred to in the LC, Buyer shall promptly provide a new LC or amend the existing LC in terms acceptable to Seller.
- 5.17 Buyer will remain responsible for payment in the event that payment is not made under the LC for any reason.

6. TITLE AND RISK

- 6.1 Title to the Product delivered to Buyer shall remain with Seller and shall not pass to Buyer until such time as Seller has received payment in full for the Product. Save where Buyer has become the subject of a Default under the Agreement, Buyer may resell or use the Product in the ordinary course of its business (but not otherwise) before Seller receives payment for the Product. However, if Buyer resells the Product before that time it does so as principal and not as Seller's agent and title to the Product shall pass from Seller to Buyer immediately before the time at which resale by Buyer occurs. In such case Buyer shall be deemed to hold on trust for the benefit of Seller all receipts of sale of such Product until such time as Buyer has paid in full for the Product supplied.
- 6.2 Risk in the Product delivered under the Agreement shall pass from Seller to Buyer
 - 6.2.1 In the case of FCA deliveries: progressively as the Product passes the outlet of the loading terminal's loading arm into each Truck at the Delivery Location; or
 - 6.2.2 In the case of DAP deliveries: when the Product is placed at the disposal of the Buyer upon the delivering Truck at the Delivery Location.

7. DETERMINATION OF QUALITY AND QUANTITY

- 7.1 The quality of the Product delivered to Buyer shall be verified by Seller prior to delivery. There shall be no guarantee, condition, warranty or undertaking (whether express or implied) that the Product will remain of such quality and/or condition after delivery and Seller shall have no liability for any deterioration in the quality and/or condition of the Product after the transfer of risk in the Product to Buyer for any reason whatsoever.
- 7.2 In the case of FCA sales, any loss of or damage to the Product during or after loading or any pollution of or harm to the environment, in each case if caused by the Truck or its driver, shall be the responsibility of and for the account of Buyer. Any claim made against or losses, costs or damages, whether direct or indirect, sustained by Seller in respect of damage to any facilities at the loading terminal (or in the event the

facilities are operated by Seller any claim by Seller or by an affiliate of Seller) or arising out of any pollution of or harm to the environment caused by the Truck or its driver shall be for the account of Buyer.

7.3 In the case of DAP sales, any loss or damage to the Product during or after unloading of the Product or any pollution of or harm to the environment after the passing of risk in the Product to the Buyer, shall be the responsibility and for the account of Buyer. Any claim made against or losses, costs or damages, whether direct or indirect, sustained by Seller in respect of damage to any facilities at the Delivery Location or arising out of any pollution of or harm to the environment caused after the passing of risk shall be for the account of the Buyer.

7.4 The quantity of the Product shall be determined at the place of loading in accordance with the loading terminal's standard practices and the quantity so determined shall be referred to for the purposes of Seller's invoice.

8. HEALTH, SAFETY AND ENVIRONMENT

Definitions

8.1 In this Clause 8, the following definitions shall apply:

8.1.1 **"ADN"** means the European Agreement concerning the International Carriage of Dangerous Goods by Inland Waterways (ADN) adopted on 26 May 2000 on the occasion of a Diplomatic Conference held under the joint auspices of the United Nations Economic Commission for Europe (UNECE) and the Central Commission for the Navigation of the Rhine (CCNR);

8.1.2 **"CLP"** means Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures as amended from time to time;

8.1.3 **"EEA"** means the European Economic Area;

8.1.4 **"GHS"** means the Globally Harmonized System of Classification and Labelling of Chemicals (GHS) as amended from time to time;

8.1.5 **"REACH"** means Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals as amended from time to time and the expressions "Article", "Importer", "Intermediates", "Manufacturer", "Mixtures", "Only Representative", "Substance" and "Supplier" shall have the same meanings in this Agreement as in REACH; and

8.1.6 **"SDS" or "Safety Data Sheet"** means a safety data sheet prepared in accordance with GHS and any other applicable laws, rules and regulations, including (where the Loading Terminal or Discharge Terminal is located within the EEA) REACH and CLP.

Safety Data Sheet

8.2 Seller shall provide to Buyer a copy of the current SDS and any other information relating to health, safety and environmental data in connection with the Product delivered hereunder in compliance with the requirements of any applicable law(s), rules or regulations, including but not limited to GHS and, where applicable, REACH, CLP and ADN.

Buyer's responsibilities

- 8.3 Buyer shall provide its employees, agents, contractors, customers and other persons to whom it is a supplier of the Product delivered hereunder with a copy of a current SDS and any other information relating to health, safety and environmental data in connection with the Product delivered hereunder.
- 8.4 Buyer shall be responsible for any consequences that result from the use of an SDS or other information so supplied to Buyer.
- 8.4.1 Buyer shall provide persons responsible for the management of health, safety and environment matters within its own organisation with a copy of the SDS and any other information so supplied.
- 8.4.2 Buyer shall provide its employees with appropriate information and training to enable them to handle and use the Product delivered hereunder in a manner which does not endanger their health or safety.

Liability

- 8.5 To the extent permissible by law, Seller shall not be responsible in any respect whatsoever for any loss, damage or injury resulting from any hazards inherent in the nature of the Product delivered hereunder.

REACH and CLP

- 8.6 The provisions of this REACH and CLP clause shall apply only in respect of deliveries of Product under the Agreement where the Delivery Location is within the EEA.
- 8.7 Seller and Buyer each agree and undertake to the other that they will comply with those obligations under REACH and CLP which (subject to any exemption which may apply) are applicable to them in respect of the sale of the Product under the Agreement and its physical introduction into the EEA.
- 8.8 Subject to paragraph 8.10 below and except where the Substance is an Excluded Substance, at the time of each delivery Seller shall provide to Buyer for each Substance, on its own, in Mixtures and/or in Articles which is contained in or comprises the Product, the following information ("Substance Identifier"):
- 8.8.1.1 Chemical Abstract Service Index ("CAS") number; and/or
 - 8.8.1.2 European Inventory of Existing Commercial Chemical Substances ("EINECS") number; and/or
 - 8.8.1.3 European List of Notified Chemical Substances ("ELINCS") number; and/or
 - 8.8.1.4 any other appropriate identifier as defined in REACH,
- together with confirmation that each Substance has been duly registered in accordance with REACH requirements.
- 8.9 Seller shall provide the Substance Identifier and confirmation to Buyer in respect of the Product no later than the time when risk and property passes from Seller to Buyer.
- 8.10 Where Seller is neither an Importer nor an EEA-Manufacturer, the following shall apply:
- 8.10.1 in providing Buyer with Substance Identifier(s) (regardless of its/their source) and confirmation pursuant to its obligations under paragraph (b) above, Seller provides no warranty or representation as to the accuracy or completeness of such Substance Identifier(s) or confirmation; and

- 8.10.2 notwithstanding any other provision to the contrary in this Agreement, Seller accepts no liability for loss, damage, delay or expense incurred by Buyer for whatever reason arising from its reliance on the accuracy of the Substance Identifier(s) provided by Seller and/or on the confirmation as to the existence of a valid registration of the Substances to be imported into the EEA.
- 8.11 For Product originating outside and to be imported into the EEA:
- 8.11.1 The Importer, whether Buyer or Seller as the case may be, of the Product shall comply with those of its obligations under REACH which are applicable to the physical introduction of the Product into the EEA.
- 8.11.2 If an Only Representative has been appointed by a non-EEA Manufacturer or Manufacturers of any Substance contained in or comprising the Product, Seller shall inform Buyer of that fact and provide to Buyer the relevant written statement and the contact details of the Only Representative.

9. VAT

- 9.1 All amounts referred to in this contract are exclusive of VAT. The VAT treatment of the supply under this contract shall be determined pursuant to the VAT laws of the jurisdiction where a taxable transaction for VAT purposes is deemed to take place.
- 9.2 Buyer and Seller shall comply with VAT or similar tax legislation of the country where this taxable transaction for VAT purposes is deemed to take place. Where VAT or similar tax becomes payable under such applicable tax legislation, Seller shall issue an invoice setting out such VAT and any duty payable and the date of its payment. Payment of such VAT and duty, if any, shall be paid by Buyer to Seller in addition to the price for the Product in the same manner as provided for payment of such price. Such invoice may be rendered in either local currency of the country in which the VAT is payable or, at Seller's option, in the invoicing currency for the Product, converted at the appropriate exchange rate prevailing on the date of the tax point under the relevant VAT legislation.
- 9.3 A sale of Product may be zero rated for VAT provided Buyer provides Seller with sufficient evidence as is satisfactory to the relevant authorities in the relevant EU state to allow zero rating of the supply of the Product. If the destination of the Product is a different EU Member State than the one where the taxable transaction for VAT purposes is deemed to take place, or if the destination is outside the EU, Buyer shall provide to Seller evidence, satisfactory to the EU Member State in which the taxable transaction is deemed to take place, of receipt of the Product by Buyer or on Buyer's behalf at a destination outside this EU Member State or outside the EU.
- 9.4 Where a sale of Product on FCA terms is zero rated due to its intra community nature, Buyer warrants that he arranges the transport from the EU Member State of loading to the EU Member State of destination. Buyer also undertakes to provide Seller with proof of export satisfactory to the EU state in which the zero rated taxable transaction is deemed to take place.
- 9.5 In the event that Buyer or Seller fails to comply with its obligations mentioned under 9.1, 9.2 and/or 9.3 above, the non-complying Party shall indemnify the other Party in respect of any and all VAT, penalties and interest incurred by the other Party as a result of the non-complying Party's failure to comply with its obligations.
- 9.6 In the absence of Buyer providing any documentation as referred to in 9.3 and 9.4 above, Seller reserves the right to charge VAT at the rate applicable in the EU Member State in which the taxable transaction is deemed to take place.

10. EXCISE DUTY, ENVIRONMENTAL TAXES AND SIMILAR TAXES AND DUTIES

- 10.1 Where appropriate the Parties shall act in full compliance with the relevant legislation of the country where the Product is or is to be situated. If the Product leaves the bonded premises in such country or is sold in such country, excise duties, environmental taxes and similar taxes and duties may become payable unless the goods travel with a duly issued e-AD document, or correct documentation, such as but not limited to exemption certificates, satisfactory to the relevant authorities of the relevant EU state are provided by Buyer to Seller.
- 10.2 Payment of such excise duties, environmental taxes and similar taxes and duties, if any, shall be paid by Buyer to Seller in addition to the price for the Product in the same manner as provided for payment of such price. The taxes and duties included on such invoice will be rendered in either local currency of the country in which the taxes and duties are payable or, at Seller's option, in the invoice currency of the Product, converted at the appropriate exchange rate prevailing at the date of the tax point under the relevant taxes and duties rules.
- 10.3 In the event that excise duties, environmental taxes, and similar taxes and duties become payable afterwards due to the non-compliance of one of the Parties, the non-complying Party shall indemnify the other Party in respect of any and all excise duties, environmental taxes, and similar taxes and duties, penalties and interest incurred by the other Party as a result of the non-complying Party's failure to comply with its obligations. The settlement shall be made upon receipt by the non-complying Party of a duly supported claim in the local currency of the country in which the claim is payable or at Seller's option, in the invoice currency of the Product, converted at the appropriate exchange rate prevailing at the date of the claim issued by the relevant authorities.

11. CREDIT RISK

- 11.1 In the event that Seller determines in its sole and unfettered discretion (a) that the financial condition of Buyer or Buyer's guarantor (if any) has become impaired or unsatisfactory or (b) that it is necessary to obtain adequate assurances of Buyer's financial condition, Seller may upon notice to Buyer require Buyer to provide Seller with satisfactory security for Buyer's performance in a form and substance reasonably acceptable to Seller ("**Satisfactory Security**").
- 11.2 Such Satisfactory Security may include but not be limited to at Seller's option (a) cash prepayment for Product in advance of delivery, (b) an irrevocable standby letter of credit for the Product's estimated maximum value procured by Buyer in favour of Seller by a first class international bank acceptable to Seller or (c) delivery to Seller of a guarantee from Buyer's parent company or any other entity at Seller's discretion. Buyer shall provide Seller with Satisfactory Security by the deadline set by Seller in its notice.

12. LIMITATION OF LIABILITY

- 12.1 Notwithstanding any other provision of the Agreement, neither Party shall be liable to the other whether under the Agreement or otherwise in connection with it, whether in contract, tort (including in negligence), breach of statutory duty or otherwise (whether or not foreseeable and howsoever arising) in respect of (a) any indirect or consequential losses or expenses; and (b) to the extent not constituting indirect or consequential losses or expenses, any loss of anticipated profits, refinery or plant shut-down or reduced production, goodwill, use, market reputation, business receipts or contracts or commercial opportunities.
- 12.2 Without prejudice to any other time limits in the Agreement:
- 12.2.1 Buyer shall notify Seller of any complaint relating to Seller's failure to deliver Product meeting the contractual description and/or condition and/or quality and/or quantity no later than the 30th day following the date of delivery or where delivery was not made the date on which delivery should have been made; and

- 12.2.2 in no event shall either Party be liable in respect of any claim or dispute arising out of or in connection with the Agreement where legal proceedings in respect of that claim or dispute have not been commenced within one year of the date of delivery of the Product or where delivery was not made the date on which the Product should have been delivered.

If notice is not given and/or legal proceedings not commenced in respect of a complaint, claim or dispute within the time limits specified above, such claim shall be time barred and any liability of the other Party in respect of that complaint, claim or dispute shall be finally extinguished.

13. FORCE MAJEURE

- 13.1 Neither Buyer nor Seller will be liable for damages or otherwise for any failure or delay in performance of any obligation under the Agreement other than any obligation to make payment, where such failure or delay is caused by force majeure, being any event or occurrence or circumstance reasonably beyond the control of that Party, including but without prejudice to the generality of the foregoing, failure or delay caused by or resulting from acts of god, strikes, labour or trade dispute or other industrial action, fires, floods, drought, wars (whether declared or undeclared), civil commotion, armed conflict, terrorist attack, epidemics (including without limitation any associated quarantine or other containment measures), riots, perils of the sea, embargoes, accidents, breakdown, acts, orders or restrictions imposed by any government authority or person purporting to act therefore (including allocations, priorities, requisitions, prohibitions, quotas and price controls or failing to grant necessary consents or licences) or any circumstance which affects the ability of Seller or any of its affiliates or its supplier to produce, transport or deliver the Product to or at the Delivery Location (each a “**Force Majeure Event**”).
- 13.2 The Party whose performance is so affected shall notify the other Party hereto as soon as reasonably practicable indicating the nature of such Force Majeure Event and, to the extent possible, inform the other Party of the expected duration of the Force Majeure Event.
- 13.3 The Parties’ respective obligations under the Agreement (other than the obligation to pay when due all amounts that are owing to the other Party which shall not be suspended) shall be suspended and the time for Buyer and Seller to perform their obligations (other than payment obligations) shall be extended during any period during which these obligations are prevented, hindered, curtailed or delayed by reason of any Force Majeure Event. If any of these obligations shall be prevented, hindered, curtailed or delayed for more than 30 consecutive days, either Party may terminate the Agreement with respect to such delivery upon written notice to the other Party, without prejudice to any rights and obligations of the Parties which have accrued prior to the Force Majeure Event.
- 13.4 Where Seller’s performance is affected by a Force Majeure Event, Seller shall not be obliged to purchase additional Product from any source other than the source it had intended to use prior to the Force Majeure Event, nor shall Seller be required to supply any grade or specifications of product other than the agreed Product, nor shall Seller be obliged to deliver the Product at any place other than Delivery Location, nor shall Seller be obliged to allocate available Product pro rata between its customers.

14. GOVERNING LAW AND JURISDICTION

- 14.1 The Agreement and any dispute or claim arising out of or in connection with it, including any question regarding its existence, validity or termination and including non-contractual disputes or claims, shall be governed by and construed in accordance with English law.
- 14.2 The Parties irrevocably agree that the High Court of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Agreement, its subject matter, existence, validity, formation or termination and including non-contractual disputes or claims, save that either Party may bring proceedings in any other jurisdiction to obtain security or other interim or ancillary relief or to enforce any judgment of the English courts.

15. EVENTS OF DEFAULT

- 15.1 Without prejudice to the Parties' other rights under the Agreement or at law, a default ("**Default**") of the Agreement shall be deemed to occur if:
- 15.1.1 Buyer fails to provide a documentary letter of credit, standby letter of credit, parent company guarantee or other security to Seller within the time required by the Agreement and in all other respects in accordance with the Agreement.
 - 15.1.2 Either Party fails to make any payment due under the Agreement that is not cured within 7 calendar days of notice to the defaulting Party to make the payment.
 - 15.1.3 Any corporate action, legal proceedings or other procedure or step is taken in relation to:
 - 15.1.3.1 the suspension of payments, a moratorium of any indebtedness, winding up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme or arrangement or otherwise) of either Party or Buyer's Security Provider other than a solvent liquidation or reorganisation of that Party or Security Provider; or
 - 15.1.3.2 the appointment of a liquidator (other than in respect of a solvent liquidation of that Party), receiver, administrative receiver, administrator, compulsory manager, trustee in bankruptcy or other similar officer in respect of either Party or Buyer's Security Provider or any of that Party's or Security Provider's assets,
 - 15.1.3.3 or any analogous procedure or step is taken in any jurisdiction. This paragraph 15.1.3 shall only apply to any winding-up petition which is not frivolous or vexatious and is not discharged, stayed or dismissed within 14 days of commencement.
 - 15.1.4 Either Party or Buyer's Security Provider:
 - 15.1.4.1 otherwise becomes insolvent however evidenced;
 - 15.1.4.2 is unable or admits inability to pay its debts as they fall due; or
 - 15.1.4.3 is deemed to, or is declared to, be unable to pay its debts under applicable law.
 - 15.1.5 The occurrence of a material breach, (being any breach of the Agreement which has a serious effect on the benefit which the other Party would otherwise derive from a substantial part of the Agreement over its term), where that breach is either not capable of remedy or not remedied on or before the fifth calendar day following the day on which notice to remedy is given to the Party in material breach. In deciding whether any breach is material, no regard shall be had to whether it occurs by an accident, mishap, mistake or misunderstanding.
 - 15.1.6 For the purposes of the Agreement, "Buyer's Security Provider" means an entity or individual issuing a documentary letter of credit, standby letter of credit, parent company guarantee or other security for the benefit of Seller.
- 15.2 In the event that a Default has occurred, the non-defaulting Party, in its sole discretion, shall be entitled on notice to the defaulting Party to do any or all of the following, without prejudice to its other rights and remedies under the Agreement or otherwise: (1) suspend its performance under the Agreement; and/or (2) terminate the Agreement; and/or (3) if the non-defaulting Party is Seller, terminate any other agreement between the Parties (excluding any agreement in respect of which Seller has assigned all or a portion of its rights to receive and obtain payment thereunder). Termination of the Agreement and/or any

other agreements between the Parties shall be without prejudice to any rights and remedies accruing to the Parties before such termination.

- 15.3 If before title to the Product passes to Buyer, Buyer becomes the subject of a Default under the Agreement, then without limitation of or prejudice to Seller's other rights under the Agreement or otherwise:

15.3.1 Buyer's right to resell the Product or use it in the ordinary course of its business ceases immediately and Buyer shall keep the Product segregated from all other product, marked as the property of Seller; and

15.3.2 Seller may at any time require Buyer to deliver up all the Product in its possession which has not been resold or irrevocably incorporated into another product and, if Buyer fails to do so promptly, enter any premises of Buyer or of any third Party where the Product is stored in order to recover it.

16. ASSIGNMENT

- 16.1 Subject to Clause 16.2, neither Party may assign or transfer or subcontract its rights or obligations under the Agreement in full or in part, without the prior written consent of the other Party. If such consent is given and wherever the assignment or transfer or subcontract is made, the assigning or transferring or subcontracting Party shall remain jointly and severally liable with the assignee or transferee or subcontractor for the full performance of its obligations under the Agreement unless otherwise agreed in writing.

- 16.2 Notwithstanding the above, Seller may without Buyer's consent assign all or a portion of its rights to receive and obtain payment under the Agreement in connection with securitisation or bank funding arrangements, provided that such assignment does not contravene any applicable law, regulation or decree binding upon Buyer. Any payment made by Buyer to the payee specified in Seller's invoice in respect of the Product deliverable under the Agreement shall be in full discharge of Buyer's payment obligations to Seller under the Agreement. Any such assignment will not detract from Seller's obligations under the Agreement.

17. OTHER TERMS

- 17.1 The United Nations Convention on Agreements for the International Sale of Goods of Vienna 1980 shall not apply to the Agreement.

18. TRADE CONTROLS

- 18.1 Notwithstanding anything to the contrary herein, neither Party shall be obliged to act in any way or to perform, and nothing in the Agreement is intended, or should be interpreted or construed as requiring or inducing a Party to act in any way or to perform, any obligation otherwise required by the Agreement (including without limitation an obligation to (a) perform, deliver, accept, sell, purchase, pay or receive monies to, from or through a person or entity, or (b) engage in any other acts) if this would be in violation of, inconsistent with, penalised or prohibited by, or expose such Party to punitive measures under any laws, regulations, decrees, ordinances, orders or rules of the European Union ("EU"), any EU member state, Switzerland, the United Nations or the United States of America applicable to that Party relating to international boycotts, trade sanctions, foreign trade controls, export controls, non-proliferation, anti-terrorism or similar laws (the "Trade Restrictions").

- 18.2 Where any performance by a Party would be in violation of, inconsistent with, or expose such Party to punitive measures under a Trade Restriction, such Party (the "Affected Party") shall, as soon as reasonably

practicable, give written notice to the other Party of its inability to perform. The Affected Party shall be entitled:

18.2.1 immediately to suspend the performance of the obligation (whether a payment or performance obligation) until such time as the Affected Party may lawfully discharge such obligation; and/or

18.2.2 where the inability to discharge the obligation continues until the end of the contractual time for discharge thereof or a period of 30 days (whichever is the shorter), to a full release from the obligation, provided that where the obligation relates to payment for Product which has already been delivered, the obligation shall remain suspended (without prejudice to the accrual of any interest on an outstanding payment amount) until such time as the Affected Party may lawfully resume payment

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

18.3 Nothing in this clause shall be taken to limit or prevent the operation of the English law doctrine of frustration.

19. ANTI-CORRUPTION

19.1 The Parties to the Agreement each agree and undertake to the other that in connection with the Agreement, they will each respectively comply with and act in a manner consistent with all applicable laws, rules, regulations, decrees and/or official government orders of the governments of the United Kingdom, European Union, United States of America or Switzerland applicable to the Parties relating to anti-bribery and anti-money laundering. If either Party reasonably believes that the other Party has breached or is likely to breach its obligations under this clause, it shall have the right, by giving notice to the other Party, to suspend performance of the Parties' obligations under the Agreement for 14 days. During such suspension period, the Party in receipt of such notice shall provide such information as the other Party shall reasonably request. If the notifying Party has proof of the breach of this clause, it shall be entitled, by giving written notice to the other Party after the expiry of the suspension period, to terminate the Agreement upon notice to the other Party of its proof of breach. Such termination shall be without prejudice to any remedies available to the Parties under the Agreement or otherwise and without prejudice to any rights and obligations of the Parties which have accrued prior to termination. If the notifying Party does not produce proof of the breach of this clause within the suspension period specified in the Agreement the suspension shall be lifted and the Parties will continue to perform under the Agreement.

20. ENTIRE AGREEMENT

20.1 The Agreement constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

20.2 Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Agreement. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Agreement. Nothing in this clause or any other clause in the Agreement which seeks to limit or exclude either Party's liability shall limit or exclude any liability for fraud.

21. SEVERABILITY

21.1 If any provision (or part thereof) of the Agreement is declared invalid, illegal or unenforceable by a court or arbitral tribunal of competent jurisdiction or becomes invalid, illegal or unenforceable due to either Party's

compliance with applicable laws, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part thereof shall be deemed deleted. Any modification to or deletion of a provision or part thereof under this clause shall not affect the validity and enforceability of the remainder of the Agreement.

22. WAIVER

22.1 A failure or delay by a Party to exercise any right or remedy provided under the Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. A single or partial exercise of such right or remedy shall not prevent or restrict the further exercise of that or any other right or remedy. A waiver of any right or remedy under the Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.

23. THIRD PARTY RIGHTS

23.1 A person who is not a party to the Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement, save where the third party is an assignee and the assignment has been consented to pursuant to the terms of the Agreement. The rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under the Agreement are not subject to the consent of any other person.

24. NO PARTNERSHIP

24.1 Nothing in the Agreement is intended to, or shall be deemed to, establish any partnership or joint venture or any other similar association between the Parties, constitute any Party the agent, legal representative or employee of another Party for any purpose whatsoever, or authorise any Party to make or enter into any commitments for or on behalf of another Party. Each Party confirms it is acting on its own behalf and not for the benefit of any other person.

25. VARIATION

25.1 No variation or modification of the Agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).

26. NOTICES

26.1 Any notice or other communication given to a Party under or in connection with the Agreement shall be in writing and in English and shall be sent by email to the Party's email address for communications as specified in the Transaction Confirmation, save however in the case of any notice or other communication relating to the service of any proceedings, termination of the Agreement or assignment which may not be given by email and which should instead be sent by international courier delivery service.

26.2 Any notice or communication shall be deemed to have been received:

26.2.1 if sent by international courier delivery service, when delivered (at the time recorded by the delivery service);

26.2.2 if sent by email when delivered,

in each case unless delivered on a non-Business Day or after 5.00 pm (local time at the location of the recipient Party) on a Business Day, in which case it shall be deemed to have been delivered on the next Business Day. "**Business Day**" for these purposes means a calendar day other than a Saturday, Sunday or a public holiday in the country and region in which the receiving Party has its main place of business.

27. CONFIDENTIALITY

- 27.1 The Parties agree to keep confidential the existence and terms of the Agreement, save that each Party may disclose the existence and terms of the Agreement pursuant to an order of any court of competent jurisdiction, or as may be required by any applicable law, regulation, or by any governmental or other regulatory authority having jurisdiction over the Parties, or to any of its affiliates, professional advisors, auditors, banks, insurers, agents and/or brokers or in connection with any dispute or court or arbitration proceedings. The confidentiality obligations contained in the Agreement shall survive the termination or expiry of the Agreement for a period of two years.