



**ABU DHABI NATIONAL OIL COMPANY (ADNOC)**

**GENERAL TERMS AND CONDITIONS**

**FOR THE SALE OF SULPHUR**

**JULY 2021 EDITION**

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## PART 1

### PROVISIONS APPLICABLE TO FOB, CFR AND CIF SALES

The provisions of this Part 1 shall apply to Contracts for the sale of Sulphur between Seller and Buyer for which the Standard Contract Terms are specified as any of: (i) FOB the Loading Port; (ii) CFR the Destination Port; or (iii) CIF the Destination Port.

#### 1. DEFINITIONS AND INTERPRETATION

##### 1.1. Definitions

For all purposes of these GTCs, the following terms shall have the following meanings:

"**Abu Dhabi**" shall mean the Emirate of Abu Dhabi, United Arab Emirates.

"**Accepted Nomination**" shall have the meaning ascribed thereto in Article 33.3

"**Accepted Vessel**" shall have the meaning ascribed thereto in Article 43.5.

"**ADNOC**" shall mean Abu Dhabi National Oil Company, a company existing under the laws of Abu Dhabi, UAE and whose principal postal address is P.O. Box 898, Abu Dhabi, UAE.

"**ADNOC Group**" means ADNOC and each Person directly or indirectly Controlled by ADNOC.

"**ADNOC Operating Company**" shall mean ADNOC Gas Processing (AGP) and ADNOC L&S or whichever company performs and/or regulates the operations and procedures for the shipment and export of the particular Sulphur that is to be shipped and delivered under this Contract.

"**ADNOC Ship Vetting**" shall mean the approval process undertaken for or on behalf of the relevant ADNOC Operating Company for (i) the vetting of vessels used for the carriage of Sulphur; or (ii) any lighter if the Sulphur is to be discharged via lightering.

"**Affiliate**" means:

- (a) in relation to Seller or a member of the ADNOC Group, each other member of the ADNOC Group; and
- (b) in relation to Buyer, any other Person that, now or hereafter, directly or indirectly, Controls, is Controlled by, or is under common Control with, Buyer.

"**Agreed Schedule**" shall have the meaning ascribed thereto in Article 5.3.

"**Amended Seller Vessel Nomination**" shall have the meaning ascribed thereto in Article 43.4 of these GTCs.

"**Applicable Law(s)**" shall mean all applicable national and international laws, including governmental, local, port authority or terminal operator laws and regulations and any other laws and regulations or requirements in force of whatever nature and howsoever communicated.

**"Authorised Recipients"** has the meaning given to it in Article 22.4.

**"Banking Day"** shall mean any Day of the Year other than a Saturday, Sunday or a public or bank holiday in New York City, U.S.A.

**"Buyer"** shall mean the party defined in the Sales Confirmation as the "Buyer".

**"Buyer Vessel Nomination"** shall have the meaning ascribed thereto in Article 29.2 of these GTCs.

**"Certificates of Quantity and Quality"** shall mean the certificates of quantity and quality that document the quantity and quality of each Shipment of Sulphur as determined by the processes set forth in this Contract.

**"CIF"** or **"Cost Insurance and Freight"** shall have the meaning ascribed thereto in the Incoterms, except as modified by this Contract.

**"CFR"** or **"Cost and Freight"** shall have the meaning ascribed thereto in the Incoterms except as modified by this Contract.

**"Commercially Reasonable Endeavours"** shall mean the efforts that a prudent Person would use in similar circumstances to ensure that its obligations are fulfilled expeditiously without incurring additional costs beyond what it would have had to incur in the usual circumstances.

**"Confidential Information"** shall mean:

- (a) the existence and content of this Contract and any other documents relating to the sale and purchase of Sulphur, including drafts of such documents, and the existence and contents of any negotiations prior to their execution;
- (b) all commercial, fiscal, financial, technical, operational or other information relating to the sale and purchase of Sulphur, the Parties or their respective Affiliates and their respective business affairs (including information on assets, records, data, samples, business plans, production forecasts, actual production, budgets, financial statements, customers, clients, suppliers, plans, intentions and opportunities) which is obtained, whether before, on or after the date of this Contract, by a Party or any of its Authorised Recipients from the other Party, any of the other Party's Affiliates or any of their respective Personnel, professional advisers (including financial advisers, legal counsel, auditors and accountants) or Contractors, in any form (including orally, in writing, in electronic form or otherwise) and for whatever purpose (including for the purposes of the performance of this Contract or in connection with the negotiation of this Contract); and
- (c) any report, analysis, compilation, study or other document prepared by, on behalf of or for any Party or its Affiliates which contains, derives from or otherwise reflects any information described in sub-paragraphs (a) and (b) above, whether provided or obtained before, on or after the date of this Contract, but excludes any information which:
  - (i) at the time of its supply by (or on behalf of) a Party, is in, or subsequently comes into, the public domain, except by the breach of any of the

undertakings set out in this Contract;

- (ii) subsequently comes lawfully into the possession of either Party or any of its Authorised Recipients from a Third Party who does not owe the Party to which the Confidential Information relates an obligation of confidence in relation to such Confidential Information;
- (iii) was independently developed by a Party or any of its Authorised Recipients without any reliance on any part of the Confidential Information; or
- (iv) the Parties agree in writing is not confidential.

"**Contract**" and references herein to this "**Contract**" shall mean these General Terms and Conditions together with the Sales Confirmation and where applicable, the Discharge Instructions.

"**Contractors**" means contractors, agents and representatives.

"**Control**" means, in relation to a Person:

- (a) having, directly or indirectly, the power to vote fifty percent (50%) or more of the voting stock (other than directors' qualifying shares or other *de minimis* holdings required by Applicable Law to be held by other Person(s)) of such Person;
- (b) ownership, directly or indirectly, of fifty percent (50%) or more of the equity interests (other than directors' qualifying shares or other *de minimis* holdings required by Applicable Law to be held by other Person(s)) in such Person; or
- (c) having, directly or indirectly, the ability to direct or procure the direction of the management and policies of such Person, whether through the ownership of shares, by contract or otherwise,

and the terms "**Controlling**", "**Controlled by**" and "**common Control with**" shall be construed accordingly.

"**Day**" shall mean a calendar day in Abu Dhabi, unless otherwise stated in the Contract.

"**Delivery Period**" shall mean the period or each of the periods of time during which Sulphur is to be delivered pursuant to this Contract and listed under the heading "Delivery Period(s) and Quantity" in the Sales Confirmation.

"**Delivery Period Tentative Sulphur Allocation**" shall have the meaning ascribed thereto in Article 5.1 of these GTCs.

"**Delivery Point**" shall mean the outer edge of the discharge spout of the loading equipment at the Loading Port, past which the Sulphur shall be deemed to be on-board the relevant Vessel.

"**Destination Port**" shall mean the port or terminal at which the Sulphur to be delivered hereunder is to be discharged, consistent with the "Destination Port(s)" column set forth in the Sales Confirmation and as set forth in each applicable Discharge Instructions.

"**Destination Port Limits**" shall mean the port limits (as prescribed by the Port Authority) at the Destination Port.

"**Discharge Instructions**" shall mean all those terms set forth therein associated with discharging of Sulphur at the applicable Destination Port(s) including notice of readiness, tendering terms, discharging rates, laytime calculations / settlement and other related matters in respect of each nominated Vessel, as provided in the applicable Seller Vessel Nomination.

"**Dispute**" shall have the meaning ascribed thereto in Article 19.1.

"**DoS**" shall have the meaning ascribed thereto in Annex A of this Contract.

"**DWT**" shall mean deadweight tonnage.

"**ETA**" shall mean the expected date and time of arrival (in local time) of the Vessel at the Loading Port or the Destination Port, as applicable.

"**Fax**" shall mean an electronic facsimile transmission, including "E-Fax".

"**FOB**" or "**Free on Board**" shall have the meaning ascribed thereto in the Incoterms, except as modified by this Contract.

"**Force Majeure Event**" shall have the meaning ascribed thereto in Article 16.1.

"**Full Cargo**" means a quantity of Sulphur under the Contract which is loaded and transported on a Vessel without other cargo.

"**Governmental Authority**" means any governmental authority of Abu Dhabi, the UAE or any jurisdiction in which Seller or Buyer operates or conducts business (including the SCFEA), and any political subdivision, agency, department, commission, board, bureau, court or other authority, or any quasi-governmental or private body exercising, or purporting to exercise, any executive, legislative, judicial, administrative, police, regulatory or taxing authority or power of any nature, or any company (other than a member of the ADNOC Group) or instrumentality owned or controlled by any governmental authority, in each case of one of the foregoing.

"**General Terms and Conditions**" and "**GTCs**" shall mean these general terms and conditions for the sale of Sulphur, together with all Annexes thereto, which shall be publicly available save for Confidential Information in Annexes B and C.

"**Incoterms**" shall mean the international commercial terms for the sale of goods promulgated by the International Chamber of Commerce entitled Incoterms® 2020, as amended, from time to time.

"**Independent Inspector**" means an internationally recognised and reputable inspection company to make expert determinations on quality and quantity of sulphur to be loaded and carried on board any Vessel.

"**Indicative Discharge Dates**" shall mean a date or range of dates given in good faith and without guarantee, within which a nominated Vessel is reasonably expected to arrive at the Destination Port and always subject to safe navigation and/or bad weather and/or Force Majeure Event.

**"Institute Cargo Clauses"** or **"ICC"** shall mean the most recent set of terms for cargo insurance policies voluntarily adopted as standard terms by many international marine insurance organizations, including the Institute of London Underwriters and the American Institute of Marine Underwriters.

**"Institute Strikes Clauses"** shall mean the most recent set of terms for cargo insurance policies to cover losses caused by strikers, locked-out workers, people taking part in labour disturbances, riots and commotions, as well as acts by terrorists or any person acting for a political motive, as issued by the Lloyd's Market Association and International Underwriting Association of London.

**"Institute War Clause"** shall mean the most recent set of terms for cargo insurance policies to cover war risks as issued by the Lloyd's Market Association and International Underwriting Association of London.

**"ISPS"** shall mean the International Ship and Port Facility Security Code and the relevant amendments to Chapter XI of SOLAS (2003 edition), as amended or supplemented from time to time.

**"Laytime"** shall mean the time allowed to Seller for the loading of each Shipment of Sulphur on board a Vessel, or the time allowed to Buyer for the unloading of Sulphur from a Vessel (as the case may be), as calculated in accordance with this Contract.

**"Lifting Month"** shall mean, in respect of a particular delivery of Sulphur, the Month in which the first Day of the Set Range occurs.

**"Loading Port"** shall mean the Ruwais port, United Arab Emirates to which Sulphur shall be delivered by Seller or any other port as may be notified by Seller to Buyer.

**"Loading Port Limits"** shall mean the port limits, as prescribed by the Port Authority.

**"Master"** shall mean the master, captain or commander of a Vessel.

**"Month"** shall mean a period of time beginning on the first Day of a calendar month (Gregorian calendar) and ending on the last Day of such calendar month and **"Monthly"** shall be construed accordingly.

**"MT"** shall mean a metric tonne, being equal to 1,000 kilograms or 2,204.62 pounds.

**"NOR"** means the written notice tendered by the Vessel giving notice of the Vessel's arrival at the place designated under this Contract.

**"Original Invoice"** shall have the meaning ascribed thereto in Article 9.1 of these GTCs.

**"Part Cargo"** means a quantity of Sulphur under the Contract which is loaded and transported on a Vessel together with other cargo which is bought or sold by Third Parties.

**"Party"** shall mean either Seller or Buyer, and together the **"Parties"**.

**"Person"** means an individual, partnership, corporation (including a business trust), company, trust, unincorporated association, joint venture or other entity, whether a body corporate or an unincorporated association of persons, or a government or any political subdivision or agency

or instrumentality thereof and "**Persons**" shall be construed accordingly.

"**Personnel**" shall mean, in relation to a Person, the senior executives, directors, officers, employees or secondees of such Person.

"**Plant**" shall mean Seller's production plants at Ruwais, Habahan and Shah in Abu Dhabi or any plant as may be notified by Seller to Buyer in writing from time to time.

"**Port Authority**" shall mean such group or organization which at any time assumes the responsibilities with respect to the regulation of the Loading Port or the Destination Port (as applicable).

"**Price**" shall mean the price agreed between the Parties in the Sales Confirmation.

"**Quantity**" shall mean the quantity, in MTs, of Sulphur to be purchased for each Delivery Period, as set out under the heading "Delivery Period(s) and Quantity" in the Sales Confirmation.

"**RightShip Approved**" shall mean a ship approval of no less than a three (3) star rating / safety score to be minimum three (3) as determined by the private inspection and vetting company RightShip.

"**Ruwais Facility**" shall mean the facilities at Ruwais comprising of SHT-1 and SHT-2.

"**Sales Confirmation**" shall mean the sales confirmation entered into between Seller and Buyer with respect to the sale of Sulphur which forms a part of this Contract.

"**SCFEA**" shall mean the Supreme Council for Financial and Economic Affairs or such other government representative as may be directed by the SCFEA.

"**Seller**" shall mean the Abu Dhabi National Oil Company.

"**Seller Vessel Nomination**" shall have the meaning ascribed thereto in Article 43.1 of these GTCs.

"**Set Range**" shall mean, in respect of a particular delivery of Sulphur: a three (3) Day period as specified in an Accepted Nomination during which lifting is scheduled to occur; provided, however, Seller may shorten the period to one (1) or two (2) days if necessary in its sole discretion and as notified by Seller to Buyer in an Accepted Nomination.

"**SHT-1**" shall mean Sulphur Handling Terminal-1 at Ruwais, representing the available berthing, loading and storage facilities which form a part of Ruwais Facility.

"**SHT-2**" shall mean Sulphur Handling Terminal-2 at Ruwais, represent the berthing, loading and storages facilities which form a part of Ruwais Facility.

"**Shipment**" shall mean a quantity of Sulphur in Full Cargo to be delivered under this Contract.

"**SOLAS**" shall mean the International Convention for the Safety of Life at Sea of 1974 and the related Protocol of 1978, both as amended or supplemented from time to time.

"**Specification**" shall mean, in relation to Sulphur, the relevant specifications set out in the

Sales Confirmation.

"**Standard Contract Terms**" shall mean either (a) FOB the Loading Port, (b) CFR the Destination Port, or (c) CIF the Destination Port as specified in the Sales Confirmation under the heading "Standard Contract Terms".

"**STCW**" shall mean the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers of 1978, as amended or supplemented from time to time.

"**Sulphur**" shall mean Sulphur meeting the specifications as set out in the Sales Confirmation.

"**Third Party**" shall mean any Person other than Seller and Buyer.

"**US Dollars**" or "**US\$**" shall mean the lawful currency of the United States of America.

"**VAT Law**" shall mean all applicable laws relevant to the imposition of taxes on the supply or deemed supply of goods and services at each stage of the production and distribution, as may be applicable under the Contract, including but not limited to the Federal Decree-Law No (8) of 2017 on Value Added Tax in the United Arab Emirates.

"**Vessel**" shall mean any ship or vessel designed, constructed, equipped and maintained to safely load and carry Sulphur.

"**Working Day**" shall mean any Day of the Year other than a Friday, Saturday or a public holiday in Abu Dhabi, United Arab Emirates.

"**Year**" shall mean a period of time beginning on the first Day of a calendar year (Gregorian calendar) and ending on the last Day of such calendar year and "**Yearly**" shall be construed accordingly.

## 1.2. Interpretation

- (a) The Annexes attached are incorporated herein by reference and form a part of this Contract.
- (b) The headings in this Contract are for convenience only and shall not be interpreted in any way to limit or change the subject matter of this Contract.
- (c) As used in this Contract, the words "include" and "including" shall be read respectively as "include, without limitation" and "including, without limitation", unless expressly provided otherwise.
- (d) Unless otherwise expressly stated in this Contract, all references in this Contract to Articles and Annexes shall be to the Articles and Annexes of this Contract.
- (e) As used in this Contract, except where the context otherwise requires, the singular includes the plural and vice-versa.
- (f) As used in this Contract, references to this Contract or any other contract or document shall be construed as a reference to such agreement, contract or document as amended, novated, modified or supplemented and in effect from time to time and shall include a reference to any document which amends,

novates, modifies or supplements it, or is entered into, made or given pursuant to or in accordance with its terms.

- (g) As used in this Contract, references to any statute, law or statutory instrument shall be construed as a reference to such statute, law or statutory instrument as the same may have been, or may from time to time be, amended or re-enacted and all instruments, orders, plans, regulations, by-laws, permissions and directions at any time made thereunder.
- (h) As used in this Contract, a reference to a Party or to a Person includes a reference to its successors, permitted transferees and assigns.
- (i) References to any legal term used in this Contract for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any other legal concept or thing shall, in respect of any jurisdiction, be deemed to include what most nearly approximates such legal term in that jurisdiction.
- (j) Unless where otherwise stated, in the event of a conflict or inconsistency between the body of these GTCs and any of its Annexes, the body of these GTCs shall prevail, and in the event of a conflict or inconsistency between these GTCs and the Sales Confirmation, the Sales Confirmation shall prevail.

## **2. PURCHASE AND SALE**

Subject to all of the terms and conditions of this Contract, Buyer shall purchase from Seller, take delivery of, and pay for, and Seller shall sell and deliver to Buyer Sulphur, during the Delivery Period(s), at the Price(s) and under the specified Standard Contract Terms set forth in the Contract.

## **3. WARRANTY OF TITLE**

3.1. At the time property in the Sulphur passes to Buyer under this Contract;

- (a) Seller warrants that it is entitled to possession of the Sulphur, has title to the Sulphur which shall be free of any liens, charges and encumbrances of whatsoever kind unless disclosed or known to Buyer before this Contract was made, and has the right to sell the Sulphur; and
- (b) Buyer will have the benefit of the warranty as to enjoyment of quiet possession implied by law.

## **4. RISK AND PROPERTY**

The risk and property in the Sulphur delivered under this Contract shall pass from Seller to Buyer as the Sulphur passes the Delivery Point.

## **5. CARGO SCHEDULING**

5.1. If the Parties have agreed in the Sales Confirmation to a term contract, this Article 5.1 shall apply and Article 5.2 shall not apply to the Contract. Unless otherwise agreed in writing, at least thirty five (35) Days prior to the first Day of each Delivery Period, Seller shall cause to be delivered to Buyer a tentative allocation showing the Lifting

Months and the quantity of Sulphur to be lifted, for the duration of such Delivery Period (and, at Seller's option, for any of the following Delivery Periods), such allocation being the "**Delivery Period Tentative Sulphur Allocation**".

- 5.2. If the Parties have agreed in the Sales Confirmation to a spot contract, this Article 5.2 shall apply, and Article 5.1 shall not apply to the Contract. The quantity and Lifting Month(s) set out in the Sales Confirmation shall be considered as identifying the Lifting Month(s) for the purpose of Article 5.3.
- 5.3. For all cases where the Standard Contract Terms are specified as (a) FOB the Loading Port or (b) CFR the Destination Port or (c) CIF the Destination Port, unless otherwise advised by Seller, at least twenty (20) Days prior to the first Day of each Lifting Month set out in the Delivery Period Tentative Sulphur Allocation (for a term contract) or in the Sales Confirmation (for a spot contract), Seller shall deliver to Buyer written confirmation of the delivery terms which shall set out the quantities to be delivered in the applicable Lifting Month, and the Set Range(s) for the same, and both Parties hereby agree that such written confirmation delivered by Seller shall be an "**Agreed Schedule**" for the purpose of the Contract, and (in respect of CFR Destination Port or CIF Destination Port) any loading in respect of an Accepted Nomination shall be deemed to have taken place within the period agreed for shipment.

## **6. DELIVERY PERIODS AND QUANTITY**

- 6.1. The quantity of Sulphur delivered on board any Vessel under the Contract shall be determined in the manner provided in Article 7.
- 6.2. Without prejudice to Seller's right to reduce quantities pursuant to Article 6.3 below, the quantities of Sulphur to be purchased during any Month, as identified within a Delivery Period Tentative Sulphur Allocation (for a term contract) or any quantity stated in the Sales Confirmation (for a spot contract), may be decreased by up to ten percent (10%) or increased by up to ten percent (10%), at the option of Seller in its sole discretion by notifying Buyer at least twenty (20) Days prior to the first Day of the relevant Month. The quantity to be purchased and sold during such Lifting Month and the Delivery Period Tentative Sulphur Allocation shall be deemed modified accordingly.
- 6.3. Notwithstanding Article 6.2 and without prejudice to Article 16, should there occur at any time an event or circumstance which reduces the quantity of Sulphur available to Seller below that necessary to enable Seller to fulfil its existing commitments to its customers (including Buyer) for Sulphur, including a reduction or cessation of production at the Plants, Seller shall have the right in its sole discretion to reduce the quantities of such Sulphur otherwise deliverable by Seller to Buyer hereunder. Any such reduction shall be allocated in a reasonable and equitable manner among Seller's customers for Sulphur. In the case of any reduction affecting or allocated to Buyer under this provision, Seller's obligation to sell and deliver quantities of Sulphur hereunder and Buyer's obligation to purchase and lift such quantities shall be correspondingly reduced. In the case of term contracts only, should Seller subsequently have excess amounts of Sulphur, then Seller and Buyer shall discuss whether part of such excess should be added to quantities of Sulphur made available to Buyer during subsequent liftings to

compensate for the reduction in the quantities of Sulphur made available to Buyer during earlier liftings.

## **7. QUANTITY AND QUALITY**

### **Measurement, sampling and determination of quality and quantity**

- 7.1. The quantity and quality of each shipment of sulphur delivered on board any vessel under the contract shall be determined in the manner set forth in this Article 7 and shall be determined by an Independent Inspector (appointed in accordance with Article 7.2) at the time of loading in accordance with the customary practices at the Loading Port.
- 7.2. Seller shall give Buyer written notice of one or more proposed Independent Inspectors. Buyer may within two (2) Days of receipt of Seller's notice confirm the acceptance of Seller's proposal. In the event that the Parties cannot agree on a mutually agreed Independent Inspector as proposed within five (5) Days of Seller's original notice then Seller shall be entitled at its sole discretion to appoint an Independent Inspector on behalf of the Parties. The costs of the Independent Inspector, appointed in accordance with this Article 7.2, shall be shared equally.
- 7.3. The Independent Inspector shall verify the determination of quantity and quality, and all reasonable facilities shall be supplied, as necessary, to the Independent Inspector at the Loading Port to enable him to do so. The costs incurred relative to the services of such Independent Inspector shall be shared equally by Seller and Buyer. If the Independent Inspector is not available for any reason at the time of loading, the quantity loaded shall be determined by Seller on the basis of the weighing equipment in use at the Loading Port.
- 7.4. Buyer shall have a right to designate a representative at its own expense subject to Seller's approval (such approval not to be unreasonably withheld) who shall have the right to witness the determination of quantity and quality at the time of loading.
- 7.5. The verification of quantity and quality made by the Independent Inspector or by Seller pursuant to Article 7.3 above shall be final and binding (except in cases of fraud or manifest error) on Buyer and Seller, and shall be conclusively evidenced by the Independent Inspector (or Seller, if Seller has made such determination) signing the Certificate of Quantity and Quality. Such determination of quantity and quality shall be used for all references to quantity and quality in all documentation (including the Invoice and bill of lading) and such Certificate of Quantity and Quality shall be accepted by Buyer and any Third Party (including a bank if a letter of credit is involved) for the purposes of payment for Sulphur sold hereunder.
- 7.6. Subject to the last sentence of Article 7.3 above, the quantity of Sulphur delivered and lifted for any given shipment shall be determined at the time of loading, on the basis of a draft survey carried out by the Independent Inspector.
- 7.7. Two (2) representative samples of each shipment of Sulphur shall be taken from the loading belt at Loading Port. The samples shall be sealed and signed by Seller or its representative. One sample shall be placed on board the Vessel for the consignee and

one shall be retained by Seller as a reference sample and properly kept for sixty (60) Days.

- 7.8. In the event that the Certificate of Quantity and Quality shows that the Sulphur does not conform to its Specification, Buyer shall not be entitled to reject the Sulphur. The Parties shall negotiate an adjustment amount and in the event that the Parties fail to agree such amount within ten (10) Days of receipt of Seller's receipt of Buyer's claim for an adjustment to the Price, the Parties shall refer the determination of such amount to an independent and internationally recognised expert to be appointed by mutual agreement of the Parties, failing which the expert shall be appointed by the International Chamber of Commerce International Centre for Alternative Dispute Resolution. The expert shall act as an expert and not as an arbitrator. The cost of the expert's determination shall be shared equally, and the expert's determination shall be final and binding on the Parties. Buyer's rights under this Article 7.8 shall be its sole and exclusive remedy in the event that the Sulphur does not conform to its Specification.
- 7.9. Buyer hereby waives its right to assert any claim against Seller concerning the quality of Sulphur if such claim is not asserted in writing to Seller within thirty (30) Days after the Sulphur has been unloaded at the Destination Port.
- 7.10. Where a Vessel is required to shift between berths (including a shift to a layby berth or to anchorage); or berthing, loading, unloading or unberthing of any Vessel is delayed, prevented or hindered due to issues concerning the quality of the Sulphur, and such causes are not solely attributable to the fault of Seller, Buyer shall have no claim against Seller in respect of such shifting between berths, delay, prevention or hinderance to berthing, loading or unberthing of a Vessel or the consequences thereof.
- 7.11. Seller shall reimburse Buyer for any extra water content over and above 0.5%. The water content determined during the loading shall be final and binding on Buyer and Seller based on the Certificate of Quantity and Quality prepared by the Independent Inspector or Seller as per this Article 7. Buyer shall, to the extent necessary to do so, raise a separate request for the reimbursement of the water content, and shall not include the same in the cost of the delivered Sulphur.
- 7.12. Any amount due by Buyer to Seller in connection with the determination of the quality and quantity of the Sulphur under the Articles 7.2 and 7.3 (including the costs of the independent inspector and or any analyses performed at Buyer's request) shall be paid by Buyer within thirty (30) Days of Seller's invoice and in accordance with the payment terms set forth in the Sales Confirmation.

## **8. PRICES**

The Price(s) applicable to the Sulphur to be purchased under the Contract shall be as set out in the Sales Confirmation.

## 9. INVOICE AND PAYMENT

- 9.1. Unless otherwise provided in the Sales Confirmation, the invoicing and payment terms shall be as set out in Annex B (*Payment Terms*).

### Payment by Letter of Credit

- 9.2. Where payment by letters of credit is agreed in the Sales Confirmation such credit support shall not be construed as excluding Buyer's basic responsibility for paying the Price within the due date for Sulphur.
- 9.3. Failure by Buyer to provide letters of credit in accordance with the terms of the Sales Confirmation and shall be a repudiatory breach by Buyer of this Contract entitling Seller to terminate this Contract and to claim damages. Any delay in exercising such a right to terminate this Contract shall not constitute a waiver of that right. In any event, whether Seller has exercised that right to terminate or not, Seller:
- (a) shall be under no obligation to commence loading or discharge of the Sulphur in question;
  - (b) where applicable and where entitled to, shall be entitled to give such instructions to the Vessel as it may reasonably think fit; and
  - (c) shall be entitled to claim damages (including demurrage, if any).

## 10. DUTIES AND TAX

### Buyer's Responsibilities

- 10.1. Buyer shall be liable for all duties, taxes, imposts, levies, wharfage, landing fees and other port and marine service charges, imposts, fees, and dues of every description imposed or levied by any Governmental Authority or port authority in relation to the Sulphur delivered, its export including the delivery, transportation, ownership, sale or use after the Delivery Point.

### Seller's Responsibilities

- 10.2. Seller shall be liable for all duties, taxes, imposts, levies, wharfage, landing fees and other port and marine service charges, imposts, fees, and dues of every description imposed or levied by any Government Authority or port authority in relation to the Sulphur at any stage before the Delivery Point.

### Value Added Tax

- 10.3. The consideration payable in respect of any supplies made under this Contract (the "**Consideration**") is exclusive of value added tax ("**VAT**").
- 10.4. Where VAT is or becomes applicable to any supplies made or provided by Seller under this Contract, Seller shall be entitled to charge VAT in addition to the Consideration. The VAT for such supply will be calculated as follows:

A x R

Where:

A is the Consideration payable for the supply; and  
R is the applicable rate of VAT under the VAT Law

- 10.5. If Seller charges VAT pursuant to Article 10.4 above, Seller shall:
- (a) include the VAT amount as an additional line item in the applicable invoice for the payment of the supply (or, if such invoice was issued without VAT, in a separate tax invoice in accordance with the VAT Law);
  - (b) provide to Buyer information that may be reasonably required to establish Seller's liability for VAT under the relevant VAT Law; and
  - (c) do such things and provide such information and documents as may reasonably be required by Buyer to enable Buyer to claim an input tax credit under the VAT Law.

## 11. FAILURE TO TAKE DELIVERY

- 11.1. If for any reason other than the fault of Seller or Force Majeure affecting Buyer, Buyer is unable to or fails to accept or to take delivery of all or any part the Sulphur to be delivered to Buyer under this Contract (the "**Undelivered Quantity**"), Seller shall, at its sole discretion have the right, after serving notice on Buyer, to sell, at such time(s) and in such amount(s) as Seller deems commercially reasonable, the Undelivered Quantity to a Third Party and the price(s) thereof shall be deemed conclusively to be the best price(s) which Seller could obtain.
- 11.2. If the Parties have agreed in the Sales Confirmation to a spot contract, this Article 11.2 shall apply and Article 11.3 shall not apply to the Contract. If, in Seller's opinion, Buyer (a) is unable to lift or fails to accept or to take delivery of all or any part, or (b) does not make a proper Buyer nomination (for FOB Loading Port) or confirm (for CFR / CIF Destination Port) an Accepted Vessel for lifting, in each case in accordance with this Contract, quantities of Sulphur set out in the Sales Confirmation:
- (a) the Contract shall automatically terminate on the Day after the last Day of the Delivery Period; and
  - (b) promptly upon Seller's demand, Buyer shall pay to Seller the amount due to Seller by Buyer in accordance with Article 11.4 of these GTCs.
- 11.3. If the Parties have agreed in the Sales Confirmation to a term contract, this Article 11.3 shall apply and Article 11.2 shall not apply to the Contract. Following the Parties' agreement on the Price if in Seller's opinion Buyer (a) does not lift or refuses to accept or (b) does not make a proper Buyer nomination (for FOB Loading Port) or confirm (for CFR / CIF Destination Port) an Accepted Vessel for lifting, in each case in accordance with this Contract, quantities of Sulphur set out in a Delivery Period Tentative Sulphur Allocation during the applicable Delivery Period, Seller may at its

option (which shall be notified from Seller to Buyer within ten (10) Days after the end of the Delivery Period):

- (a) reduce the amount of Sulphur to which Buyer is entitled under the Contract by up to the amount of such quantities not lifted, accepted, or for which an Accepted Vessel has not been nominated (for FOB Loading Port) or confirmed (for CFR / CIF Destination Port), and, promptly upon Seller's demand, Buyer shall pay to Seller the amount due to Seller by Buyer in accordance with Article 11.4 of this GTC; or
- (b) carry forward such quantities not lifted, accepted, or for which an Accepted Vessel has not been properly nominated (for FOB Loading Port) or confirmed (for CFR / CIF Destination Port) to a succeeding Delivery Period after the Delivery Period in which such quantities were to be lifted or accepted, or the Delivery Period for which such quantities were to be nominated (for FOB Loading Port) or confirmed (for CFR / CIF Destination Port) for lifting on an Accepted Vessel, as the case may be, provided that Buyer shall be liable for all costs incurred by Seller in relation to the carry forward of any quantities in accordance with this Article 11.3(b).

11.4. In the event of an Undelivered Quantity, Buyer shall pay compensation to Seller in an amount equal to, where such amount is greater than zero:

$$(CP*Undelivered\ Quantity)-(RP*Undelivered\ Quantity)+C$$

where:

"CP" = the Contract Price for the Undelivered Quantity;

"RP" = either (i) the realised price in US\$ actually obtained by Seller for the re-sale of the Undelivered Quantity in accordance with Article 11.1; or, in the absence of such a re-sale, (ii) the estimated value of the Undelivered Quantity at the time of Buyer's default; and

"C" = the sum of (i) the reasonable costs and expenses actually incurred by Seller as a result of Buyer's failure to take delivery of the Undelivered Quantity, including any storage fees, deviation costs and demurrage payable by Seller and/or Seller's supplier in respect of a Vessel or other vessels waiting at the

Loading Port and (ii) an amount equal to five percent (5%) of the total Price which would have been paid by Buyer for such Undelivered Quantity.

- 11.5. Buyer shall settle any amount payable under Article 11.4 within ten (10) Days of Seller's invoice and in accordance with the payment terms set forth in the Sales Confirmation.
- 11.6. The remedies set out in this Article 11 shall be Seller's sole and exclusive remedy for Buyer's failure to take the Undelivered Quantity, without prejudice however to Seller's rights under Article 17.

## **12. WARRANTIES**

- 12.1. Unless otherwise stated in the Sales Confirmation, all statutory or other conditions or warranties express or implied with respect to the description or satisfactory quality of the Sulphur or its fitness for any particular purpose or otherwise are hereby excluded (save to the extent that exclusion thereof is not permitted or is ineffective under the Governing Law).
- 12.2. Buyer shall:
  - (a) to the extent it is not already familiar with the content of the same, familiarise itself with any information provided to it by Seller, including information provided in any material safety data sheets for Sulphur; and
  - (b) adopt and follow safe handling, storage, transportation, use, treatment and disposal practices with respect to Sulphur at all times and comply with applicable laws and good industry practice that a reasonable and prudent buyer would employ in similar operating conditions at the time, taking into consideration the local practices generally recognised and observed by the petroleum industry in Abu Dhabi and those generally accepted practices applicable to the petroleum operations of Seller, including applicable guidelines and the need to ensure safe and efficient operations.
- 12.3. Buyer shall indemnify, defend and hold harmless each Seller Party from and against:
  - (a) any and all claims, suits, actions or other legal proceedings made against, or losses suffered due to such claims, suits, actions or other legal proceedings by, any Seller Party resulting from;
  - (b) the negligent act or omission of any Buyer Party in connection with the performance or non-performance by such Buyer Party of the Contract;
  - (c) any Buyer Party's acceptance, handling, storage, transportation, use, treatment, disposal, on-sale or on-supply of Sulphur supplied by Seller pursuant to the Contract;
  - (d) any and all claims, suits, actions or other legal proceedings made against, or losses suffered by, any Seller Party resulting from the breach by any Buyer Party of any applicable law; and
  - (e) any liability, whether strict liability or otherwise, relating to or arising from any

release, discharge, treatment, storage or disposal of, or exposure to, any Sulphur subsequent to Buyer Party's acceptance thereof, including any liabilities relating to the cleanup, removal, remediation, or remedial or corrective action thereof or relating thereto.

12.4. In furtherance of the foregoing, Buyer:

- (a) shall fully release each Seller Party from any liability relating to or arising from any release, discharge, treatment, storage or disposal of, or exposure to, Sulphur subsequent to Buyer Party's acceptance thereof, including any liabilities relating to the cleanup, removal, remediation, or remedial or corrective action relating thereto; and
- (b) hereby waives any claim or remedy against any Buyer Party now or hereafter available under any applicable law for any such liability, including under the U.S. Comprehensive Environmental Response, Compensation and Liability Act or any analogous state law.

12.5. For the purposes of this Article 12 "**Seller Party**" shall mean its shareholders, directors, officers, employees and representatives and its affiliates, agents, advisors, contractors, subcontractors, vendors and licensees and their respective directors, officers and employees but excludes any Buyer Party; and "**Buyer Party**" shall mean its shareholders, directors, officers, employees and representatives and its affiliates, agents, advisors, contractors, subcontractors, vendors and licensees and their respective directors, officers and employees but excludes any Seller Party.

### 13. [NOT USED]

### 14. COMPLIANCE WITH LAWS

14.1. The laws, rules and regulations issued and revised from time to time by the Government of the United Arab Emirates and Abu Dhabi shall apply to the Shipment of the Sulphur from the United Arab Emirates under this Contract.

#### **Destination**

14.2. It is a condition of the Contract that the Sulphur purchased and delivered under this Contract shall not be (or not be permitted to be) discharged or imported (whether by Buyer or others) directly or indirectly and irrespective of the means of carriage, into any destination or to be delivered to any Person or entity which is at the time of such import prohibited under the Applicable Law or is at the time of such import targeted by applicable economic or financial sanctions administered by any relevant sanctions authority ("**Sanctions**"). Buyer shall keep itself informed as to such Applicable Law and Sanctions and acknowledges that, at the time of entering into this Contract and during the Delivery Period, it is informed of all such Applicable Laws and Sanctions.

14.3. Buyer undertakes that the Sulphur deliverable hereunder shall not:

- (a) be exported or resold to any Sanctioned Territory;
- (b) be sold or resold or supplied to any Person or loaded on board a Vessel: (i) organized under the laws of, resident in or operating from any Sanctioned

Territory; or (ii) otherwise targeted by Sanctions; and

- (c) be sold or resold or supplied to any Person or loaded on board a Vessel for the purposes of any commercial activity carried out in or from any such Sanctioned Territory.
- 14.4. For the purposes of this Article, "**Sanctioned Territory**" shall mean any country, state, territory or region against which there are Sanctions that target, prohibit, restrict, penalize, or condition the Shipment through or thereto of the Sulphur.
- 14.5. Where requested by Seller, Buyer shall provide Seller with all appropriate documentation verifying the final destination of the Sulphur purchased and delivered under this Contract within thirty (30) Days of the request or within such lesser period as will enable Seller to comply with any requirement or request of any government or authority and shall identify the port(s) of discharge, the date(s) of discharge, and the quantity discharged and whether or not the Sulphur delivered has been otherwise sold or disposed of. The obligations of Buyer to comply with the requirements of this Article 14 shall not be affected by any sale or disposal of the Sulphur in question by Buyer.
- 14.6. Within ninety (90) Days of the bill of lading date of each Shipment under this Contract, Buyer shall deliver to Seller, a duly certified copy of the official discharge certificate for such cargo in the form required by and acceptable to the Government of the United Arab Emirates and Abu Dhabi.
- 14.7. Where Seller has reasonable grounds to believe that Buyer has not complied with these undertakings, Seller may at its sole discretion, by written notice to Buyer or orally (with written confirmation to follow):
- (a) terminate the Contract immediately or suspend any further delivery of the Sulphur under the Contract until further notice; or
  - (b) decline to commence or complete loading of any Shipment of the Sulphur.
- 14.8. The rights provided to Seller under this Article 14 shall be without prejudice to Seller's common law rights and other rights under this Contract.

#### **Trade controls and boycotts**

- 14.9. Buyer agrees to comply with all relevant trade controls, export and re-export controls, embargoes, and Sanctions in a manner in which there is no breach of the aforementioned undertakings of this Article 14. Notwithstanding anything to the contrary elsewhere in the Contract, nothing in the Contract is intended, and nothing herein should be interpreted or construed, to induce or otherwise require either party hereto to act or refrain from acting (or agreeing to act or refrain from acting) in any manner which is inconsistent with, penalised, or prohibited under any laws, regulations, decrees, ordinance, order, demand, request, rules or requirements of the United Arab Emirates, United Nations, the United States, the European Union or its

member states relating to foreign trade controls, export controls, embargoes, international boycotts or sanctions of any type.

- 14.10. Nothing in this Article 14 shall be taken to limit or prevent the operation of the English common law doctrine of frustration (including frustration of the adventure or purpose of the Contract).

## **15. ANTI-BRIBERY AND CORRUPTION**

- 15.1. Buyer and Seller agree and undertake to each other that in connection with this Contract, they will each respectively comply with all Applicable Law(s) relating to anti-bribery and anti-money laundering and that they shall each respectively take no action which would subject the other to fines, or penalties under such laws, regulations, rules or requirements.

- 15.2. Buyer and Seller each represent, warrant and undertake to the other that they shall not, directly or indirectly:

- (a) pay, offer, give or promise to pay or authorise the payment of any monies or the transfer of any financial or other advantage or other things of value to:
  - (i) a government official or an officer or employee of a government or any department, agency or instrumentality of any government;
  - (ii) an officer or employee of a public international organisation;
  - (iii) any person acting in an official capacity for or on behalf of any government or department, agency or instrumentality of such government or of any public international organisation;
  - (iv) any political party or official thereof, or any candidate for political office;
  - (v) any director, officer, employee or agent/representative of an actual or prospective counterparty, supplier or customer of Buyer or Seller;
  - (vi) any other person, individual or entity at the suggestion, request or direction of or for the benefit of any of the above-described persons and entities; or
- (b) engage in other acts or transactions,

in each case if this is in violation of or inconsistent with the anti-bribery or anti-money laundering law, rule or regulation of any government including without limitation the US Foreign Corrupt Practices Act, the UK Bribery Act 2010, the UK Anti-Terrorism, Crime and Security Act 2001, the Money Laundering Regulation 2007 and the Proceeds of Crime Act 2002 and the applicable country legislation implementing the Organisation for Economic Cooperation and Development Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

- 15.3. In particular, each Party represents and warrants to the other that it has not made any payments or given anything of value to officials, officers or employees of the Government of the United Arab Emirates or any agency, department or instrumentality

of such government in connection with the Sulphur which is the subject of the Contract which would be inconsistent with or contravene any of the above-referenced legislation.

- 15.4. Buyer warrants that it has not made or given, and shall not make or give, directly or indirectly, any payment or anything of significant value to any representative of Seller or any other person or entity, to secure or influence the award of the Contract or its terms, performance, administration, extension or termination.
- 15.5. Buyer or Seller may terminate the Contract forthwith upon written notice to the other at any time, if in its reasonable judgment (supported by credible evidence) the other is in breach of any of the above representations, warranties or undertakings in this Article 15.

## 16. FORCE MAJEURE

### General

- 16.1. Neither Party shall be considered in default of the performance of its obligations under this Contract to the extent that such performance is prevented, hindered or delayed as a direct result of any event or combination of events which is beyond the reasonable control of such Party (such event being a "**Force Majeure Event**"), provided that the Party claiming relief from its obligations under this Contract as a result of a Force Majeure Event ("**Affected Party**") may only be so relieved if the Affected Party:
- (a) notifies the non-Affected Party of the Force Majeure Event in accordance with Articles 16.4 and 16.7; and
  - (b) mitigates the effects of the Force Majeure Event in accordance with Article 16.8, and such relief may only be to the extent permitted under Article 16.9.

### Inclusions

- 16.2. A Force Majeure Event shall include, subject to and without limiting the generality of Article 16.1:
- (a) natural disasters such as floods, lightning, storms, typhoons, tornados, earthquakes, tidal waves, landslides, soil erosion, subsidence, washouts, radioactive contamination or epidemics;
  - (b) war (whether declared or undeclared), blockade, acts of piracy, terrorist acts, seizure or act of sabotage, imposition of sanctions, embargo or breaking off of diplomatic relations;
  - (c) revolution, rebellion, civil war, riot, civil disturbance, civil commotion, insurrection or military uprising;
  - (d) trade or labour disputes, boycotts, strikes, lockouts, industrial disturbances, go-slows or occupation of premises;
  - (e) failures, explosions, breakages, fires or destruction of tankage, pipelines,

refineries, terminals or any kind of installation and, where Seller is the Affected Party, tankers, vessels or any other similar means of transportation of the Sulphur;

- (f) any accidents at, closing of, or any sudden and unforeseeable capacity restrictions (outside of the ordinary course of business) of, mooring facilities, docks, ports, harbours or other similar navigational facilities and, where Seller is the Affected Party, navigational accidents or maritime peril;
- (g) any compliance with Applicable Law; and
- (h) in case of Seller only, any curtailment, reduction in, interference with, failure or cessation of supplies of Sulphur from any of Sellers' or Seller's suppliers' sources of supply or by any refusal to supply, whether lawful or otherwise by Seller's suppliers (provided in fact the sources of supply are for the purposes of this Contract), including:
  - (i) a change in the production policies or sales policies of the Emirate of Abu Dhabi; and
  - (ii) any declared force majeure event affecting any of Seller's suppliers under any applicable supply arrangements between Seller and such suppliers.

### **Exclusions**

- 16.3. Notwithstanding anything to the contrary in Article 16.1, a Force Majeure Event shall not include or excuse:
- (a) failure to make any payment of monies due and payable in accordance with this Contract (other than as to any specified means, currency or place of payment);
  - (b) changes in market conditions, including changes that directly or indirectly affect the demand for or price of Sulphur, changes to market prices or currency devaluation;
  - (c) financial hardship or the inability of the Affected Party to make a profit or achieve a satisfactory rate of return in relation to or in connection with any activities undertaken pursuant to this Contract; or
  - (d) the ability of either Party to obtain better economic terms from a Third Party.

### **Notification of a Force Majeure Event**

- 16.4. Promptly after the occurrence of the Force Majeure Event becomes known to it, the Affected Party shall notify the other Party in writing of the date on which the Force Majeure Event started, the effects of the Force Majeure Event on its ability to perform

its obligations and the likely duration of its delayed performance or non-performance as a result of the Force Majeure Event.

- 16.5. The Affected Party shall bear the burden of proving that a Force Majeure Event has occurred that has so affected it.
- 16.6. If an Affected Party fails to promptly notify the other Party in accordance with Article 16.4, such Affected Party may only be relieved from the date of such notification.
- 16.7. The Affected Party shall provide to the non-Affected Party:
  - (a) updates on any material developments with respect to any Force Majeure Event, from time to time; and
  - (b) promptly after the end of the Force Majeure Event, written notice that the Force Majeure Event has ended, in which case, the Affected Party shall resume performance of its obligations as soon as reasonably practicable.

#### **Mitigation of the Effect of a Force Majeure Event**

- 16.8. The Affected Party shall use all reasonable endeavours to mitigate the effects of the Force Majeure Event on the performance of its obligations (including co-operating with the non-Affected Party to develop and implement a plan of remedial action and reasonable alternative measures to remedy the effects of the Force Majeure Event).

#### **Force Majeure Relief**

- 16.9. Subject to the requirements for relief set out in Article 16.1, if a Force Majeure Event occurs in respect of a Shipment of Sulphur:
  - (a) if Seller is the non-Affected Party, Seller may immediately terminate the affected Shipment(s) without liability for damages and other contractual remedies and shall be entitled to dispose of, in its sole discretion, such undelivered Shipment(s); and
  - (b) in all other circumstances, the Affected Party may only be relieved from its obligations under this Contract until the earlier of:
    - (i) the end of the Force Majeure Event; or
    - (ii) the expiry of the Set Range, and,  
if the Force Majeure Event continues beyond the Set Range, the affected Shipment(s) shall be deemed terminated without liability for damages and other contractual remedies.

#### **Obligation of the Non-Affected Party to Co-operate**

- 16.10. The non-Affected Party shall use all reasonable endeavours to co-operate with the Affected Party in mitigating the effects of any Force Majeure Event (including co-

operating to develop and implement a plan of remedial action and reasonable alternative measures to remedy the effects of such Force Majeure Event).

### **No Extension of Time**

16.11. Nothing in this Article 16 shall operate to extend the term of this Contract.

16.12. Nothing in this Article 16 shall be taken to limit or prevent the operation of the English common law doctrine of frustration (including frustration of the adventure, of purpose or of this Contract).

### **17. DEFAULT EVENTS**

17.1. The events and circumstances set out below with respect to a Party (the "**Defaulting Party**") shall constitute "**Default Events**":

- (a) the Defaulting Party or its immediate or ultimate parent or the party which has issued any credit support (including a letter of credit, performance guarantee or other financial instrument) pursuant to the terms of this Contract in favour of the Defaulting Party:
  - (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
  - (ii) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;
  - (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors;
  - (iv) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation and is not withdrawn, dismissed, discharged, stayed or restrained within fifteen (15) Days of the institution or presentation thereof;
  - (v) has a resolution passed for its winding up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
  - (vi) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets;
  - (vii) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within fifteen (15) Days thereafter;
  - (viii) causes or is subject to any event which, under the Applicable Law(s) of any

jurisdiction, has an analogous effect to any of the events specified in sub-Articles (i) to (vii) above; or

- (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts;
  - (b) the Defaulting Party commits a repudiatory or renunciatory breach of this Contract;
  - (c) buyer, as the Defaulting Party, fails to deliver to Seller, as the Non-Defaulting Party, any credit support complying with Article 9 of this Contract within the time set out in this Contract;
  - (d) without prejudice to the Non-Defaulting Party's rights under Article 17.1(c) above, the Defaulting Party fails to make a payment in full and by the due date of any amount due to the Non-Defaulting Party under this Contract and does not correct such failure within fourteen (14) Days' notice being given by the other Party of such breach; or
  - (e) a change of Control of the Defaulting Party occurs.
- 17.2. In the event of a Default Event, the party not subject to the Default Event (the "**Non-Defaulting Party**") may at its absolute discretion, without prejudice to its other statutory or common law rights, by and upon notifying the Defaulting Party by notice in writing:
- (a) identifying the Default Event and requiring that the Default Event be cured to the Non-Default Party's satisfaction within seven (7) Days failing which the Non-Defaulting Party may terminate this Contract by notice under Article 17.2(b); and/or
  - (b) terminate this Contract with immediate effect; and/or
  - (c) in the case of the Non-Defaulting Party being Seller, suspend delivery of the Sulphur under this Contract until the Default Event has been remedied in full; and/or
  - (d) in the case of the delivery of multiple cargoes, terminate an individual cargo; and/or
  - (e) set-off monies payable by the Non-Defaulting Party against the liabilities of the Defaulting Party pursuant to this Contract or any other contract between the Non-Defaulting and Defaulting Party.
- 17.3. Provided that where remedies under Articles 17.2(c)-(e) are exercised, should the Default event continue for at least seven (7) Days, the Non-Defaulting Party may at any time terminate this Contract under Article 17.2(b).
- 17.4. So long as Buyer is in default of any of its obligations under this Contract (including any default for which a sum of money is payable by Buyer under this Contract), Seller, without relieving Buyer of any of its obligations, shall be fully relieved of any

obligation to sell or deliver Sulphur to Buyer under this Contract or under any other contract between the Parties.

- 17.5. Enforcement of any provisions of this Contract shall not be affected by any previous waiver or course of dealing, and election of any particular remedy shall not be exclusive of any other. The remedies provided in this Contract are in addition to and not by way of limitation upon any other rights and remedies Buyer or Seller has. All rights and remedies are cumulative.

## 18. GOVERNING LAW

The construction, validity and performance of the Contract and any Dispute in relation thereto shall be governed by and construed in accordance with the laws of England and Wales.

## 19. DISPUTE RESOLUTION

- 19.1. The Parties shall attempt in good faith to amicably settle any dispute, controversy or claim arising out of or in connection with the conclusion, validity, effect, interpretation, performance, termination or dissolution of this Contract and/or any non-contractual obligations arising out of or in connection with this Contract ("**Dispute**").
- 19.2. If the Dispute is not settled amicably within sixty (60) Days from the date the Dispute is first notified in writing to the other Party or Parties, such Dispute shall be referred by any Party and finally resolved by arbitration in accordance with the rules of arbitration of the International Chamber of Commerce applicable at the time of conclusion of this Contract (the "**ICC Rules**") by three (3) arbitrators. Each Party shall nominate an arbitrator for confirmation by the International Court of Arbitration (the "**Court**") under the ICC Rules. The two arbitrators nominated by the Parties shall nominate the third arbitrator who will act as president of the arbitral tribunal (the "**President**") within thirty (30) Days from their confirmation by the Court. Failing nomination by the arbitrators of the President within the time limit provided for in this clause or any other time limit agreed by the Parties, the President shall be appointed by the Court. The seat of the arbitration shall be at the option of Seller, in London, England.
- 19.3. The arbitration shall be conducted in the English language.
- 19.4. Either Party may apply to any competent judicial authority for interim or conservatory relief. The application for such measures or the enforcement of such measures ordered by such judicial authority shall not be deemed an infringement or waiver of this agreement to arbitrate and shall not affect the powers of the arbitrator.
- 19.5. The arbitration proceedings, including all documents, submissions, written and oral evidence, transcripts and correspondence used therein or relating thereto, as well as any order or award issued in connection therewith shall be strictly confidential ("**Confidential Arbitration Information**"). Notwithstanding this provision, but without prejudice to any other confidentiality obligation which may otherwise be applicable, either Party may disclose to a domestic court, for the purposes of setting aside and/or enforcement proceedings pending before such domestic court, any Confidential Arbitration Information, which it deems necessary for the purposes of

those proceedings, after seeking an appropriate confidentiality order from such court, if available under the applicable law.

### **Small Claims**

- 19.6. Notwithstanding Article 19.2 above, the Parties agree, pursuant to Article 30(2)(b) of the ICC Rules, that the Expedited Procedure Rules shall apply, provided the amount in dispute does not exceed US\$ 500,000 at the time of the communication referred to in Article 1(3) of the Expedited Procedure Rules. The seat of the arbitration shall be at the option of Seller, in London, England.

### **Demurrage Claims**

- 19.7. Notwithstanding Articles 19.2 and 19.6 above, the Parties agree that where the Dispute between them is in relation to demurrage, including the commencement and computation of laytime, then the dispute shall be referred to arbitration to be conducted in accordance with the London Maritime Arbitrators Association ("**LMAA**") Terms current at the time when the claiming Party commences arbitration proceedings. The tribunal shall consist of 3 arbitrators, each arbitrator shall be a full Member of the LMAA, and the timetable for constitution of the tribunal shall be in accordance with that laid out in the current LMAA Terms.

## **20. LIMITATION OF LIABILITIES**

- 20.1. Except as specifically provided in this Contract, in no event, including the negligent act or omission on its part, shall either Party be liable to the other, whether under this Contract or otherwise in connection with it, in contract, tort, breach of statutory duty or otherwise, in respect of any indirect or consequential losses or expenses including if and to the extent that they might otherwise not constitute indirect or consequential losses or expenses, loss of anticipated profits, plant shut-down or reduced production, loss of power generation, blackouts or electrical shut-down or reduction, goodwill, use, market reputation, business receipts or contracts or commercial opportunities, whether or not foreseeable.
- 20.2. In addition to the foregoing, in respect of any claims relating to Seller's failure to supply the agreed quantity, as set out in the Agreed Schedule, or with respect to any deficiency of quantity or variation in quality, Seller shall in no circumstances be liable for more than the difference between the market price and the Price for the Sulphur deliverable under the Contract.
- 20.3. The provisions of this Article 20 shall continue to apply notwithstanding the termination or expiry of this Contract for any reason whatsoever.

## **21. MISCELLANEOUS PROVISIONS**

### **Survival of Rights upon Termination**

- 21.1. The termination or expiration of this Contract shall not discharge or release any rights, duties, obligations or liabilities arising prior to such termination or expiration nor prejudice any right or remedy accruing before, at, or in consequence of such

termination or expiration or any proceeding with respect to any such right or remedy including any proceeding by way of arbitration under this Contract.

### **Severability**

21.2. If any provision of the Contract is declared to be illegal, invalid or otherwise unenforceable by a court of competent jurisdiction, the remainder of the Contract (and of such provision) shall not be affected except to the extent necessary to delete such illegal, invalid or unenforceable provision (or part thereof).

### **Agency**

21.3. Buyer represents that:

- (a) this Contract is entered into without the assistance or intervention, direct or indirect, of any broker, intermediary, commission agent or any similar person, firm or corporation (each hereinafter referred to as an "**Agent**");
- (b) neither Buyer nor any of its Affiliates, directors, officers, employees, agents, representatives and consultants have engaged the services of any such Agent for the purposes of exercising or obtaining improper influence in connection with this Contract; and
- (c) no Contractors fee or other compensation has been paid or is payable by Buyer or any of its Affiliates, directors, officers, employees, agents, representatives and consultants to any Agent in connection with this Contract.

### **No Partnership**

21.4. The relationship between Seller and Buyer shall be that of independent contractors and nothing in this Contract is intended to, nor shall it, establish any relationship of partnership, joint venture, employment, franchise, agency or other form of legal association between Seller and Buyer or their respective Personnel. Neither Seller nor Buyer shall have, nor represent to any Third Party that it does have, any power or authority to bind the other Party or incur any obligations on the other Party's behalf.

### **Further Assurance**

21.5. Each Party shall, from time to time, execute such documents and perform such acts and things as either Party may reasonably consider necessary for the performance of this Contract and to give each of them the full benefit of this Contract.

### **Costs**

21.6. Except as otherwise stated in this Contract, each Party shall pay its own costs and expenses in relation to the negotiation, preparation, execution and carrying into effect of this Contract.

### **No Third Party Rights**

21.7. This Contract shall be binding upon and inure solely to the benefit of the Parties and their respective successors and permitted assignees and nothing in this Contract,

express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever.

- 21.8. Except where expressly stated to the contrary, the Parties do not intend that any term of this Contract may be relied upon or enforced solely by virtue of the Contracts (Rights of Third Parties) Act 1999 by any Person who is not party to it.

## 22. CONFIDENTIALITY

- 22.1. For the purpose of this Contract, a Party who discloses Confidential Information shall be a "**Disclosing Party**" and a Party who receives Confidential Information shall be a "**Receiving Party**".
- 22.2. Subject to Article 22.4, the Receiving Party shall not, without the prior written approval of the Disclosing Party (such approval not to be unreasonably withheld):
- (a) disclose any Confidential Information to any Person; and
  - (b) use the Confidential Information for any purpose other than for the performance of its obligations under this Contract.
- 22.3. The Receiving Party shall use the same degree of care, but no less than reasonable efforts, to safeguard the confidentiality of any Confidential Information that it would use to safeguard the confidentiality of its own Confidential Information of like kind.
- 22.4. The Receiving Party may disclose Confidential Information:
- (a) to a Third Party only to the extent such disclosure is limited to operational information and is required to discharge the Disclosing Party's contractual obligations under this Contract, any related charterparty, or any sales agreement related to the relevant product;
  - (b) to its Personnel who are required to have access to the Confidential Information in order to discharge their functions and contractual obligations under this Contract, provided that such Personnel agrees to abide by the obligations of such Party with respect to the Confidential Information;
  - (c) to an Affiliate, provided that the Affiliate agrees to abide by the obligations of such Party with respect to the Confidential Information;
  - (d) to a Contractor engaged by or on behalf of such Party or its Affiliates, provided that such Contractor agrees in writing to an undertaking of confidentiality no less onerous than that set out in Articles 22.2 and 22.3, except that under no circumstances shall the Receiving Party disclose any Confidential Information to a Contractor that is a competitor, or Personnel of a competitor, of the Disclosing Party;
  - (e) to any professional advisers (including financial advisers, legal counsel, auditors and accountants) of such Party subject to such adviser providing a written undertaking of confidentiality no less onerous than that set out in Articles 22.2 and 22.3, except where such adviser is subject to a professional obligation of confidentiality under its applicable code of practice;

- (f) to the extent required by Applicable Law, by any Governmental Authority with jurisdiction over the subject matter or in connection with any court, judicial or other similar proceedings, provided that the Receiving Party uses its Commercially Reasonable Endeavours to, and only to the extent permitted by Applicable Law:
  - (i) provide the Disclosing Party with prompt notice of such requirement to disclose Confidential Information so as to enable the Disclosing Party to:
    - a. seek an appropriate protective order or other remedy in respect of such disclosure; and/or
    - b. consult with the Receiving Party on taking steps to resist or narrow the scope of such disclosure; and
  - (ii) use Commercially Reasonable Endeavours to disclose only that part of the Confidential Information required to be disclosed and not otherwise subject to a protective order or other remedy,

(the recipients in this Article 22.4 being the "**Authorised Recipients**").

22.5. Each Party shall be responsible for any breach of the terms of this Article 22 by its Personnel or Affiliates to whom it discloses Confidential Information pursuant to Articles 22.4(a) and 22.4(c), respectively.

22.6. Notwithstanding anything to the contrary in this Contract, Seller may disclose the terms of these GTCs, including to other potential buyers, without the consent of Buyer.

### **23. ASSIGNMENT OF CONTRACT**

23.1. Save as provided for under Article 23.2 Buyer may not assign nor transfer its rights and obligations under this Contract directly or indirectly whether by way of merger, consolidation, acquisition or sale of assets to any Third Party or a receiver or trustee in bankruptcy or otherwise without the prior written consent of Seller.

23.2. It shall not be deemed an "assignment" for the purposes of this Article 23 if Buyer permits or agrees one or more Shipments of Sulphur to be delivered under this Contract

to a company or companies of which Buyer owns at least fifty one percent (51%) of all outstanding voting securities.

- 23.3. Any assignment in contravention of this Article 23 shall be void and unenforceable as against Seller and shall give Seller the right to terminate this Contract.
- 23.4. Seller shall have the right to assign or transfer its rights and obligations under this Contract directly or indirectly to any Affiliate of Seller without the prior consent of Buyer.

## **24. ENTIRE AGREEMENT, MODIFICATION AND WAIVER**

- 24.1. This Contract constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements between the Parties, whether oral or written, with respect to such subject matter.
- 24.2. No amendment, modification or alteration of this Contract or any term or provision herein shall be valid unless reduced to writing and signed by and on behalf of Seller and Buyer.
- 24.3. No waiver by either Seller or Buyer of any term or provision including any condition or warranty or innominate term or waiver of any breach of such shall be effective unless made in writing and no such waiver shall be construed as waiver of or apply to another term or provision.

## **25. NOTICES**

- 25.1. Unless otherwise provided elsewhere in this Contract any communication by either Party to the other shall be in writing and in the English language. Such communication (other than routine communication for the performance of this Contract) shall be in letter format on the headed paper of the notifying Party and served by receipted hand delivery, Fax transmission, email or registered post or courier to the address of the other Party specified for this purpose in the Sale Confirmation and shall, unless otherwise provided herein, be deemed to have been received as follows:
- (a) in case of hand delivery, at the moment it was received at the correct address;
  - (b) in case of Fax transmission, if it was transmitted on a Business Day before 1600 hours, on that day; in any other case, on the following Business Day, and always provided that:
    - i. a transmission record is retained by the sender to show that the transmission was correctly completed and that all pages were transmitted; and
    - ii. a hard copy of the notice or other communication is forwarded by the sender to the recipient on the same day as the Fax transmission by receipted hand delivery or registered post;
  - (c) in case of registered post or courier, if delivered on a Business Day before 1600 hours, on that day; in any other case, on the following Business Day; and

- (d) in case of email transmission, at the time it was received by the receiving Party and the notifying Party bears the risk of a failure in transmission. If received on a Business Day before 1600 hours, it will be deemed to have been received on that day; in any other case, on the following Business Day

25.2. For the purpose of this Article, "**Business Day**" means a day (a period of twenty four (24) hours starting at 0000 hours and finishing at 2400 hours on the same day) on which the office of the Party receiving the relevant communication is ordinarily open for business.

25.3. Any alterations to the contacts or addresses specified in the Sales Confirmation shall be notified immediately to the other Party in accordance with Article 25.1.

25.4. Notices may not be given by instant messaging.

## **26. TIME BAR**

26.1. Without derogating from the specific time limits set out in the Contract, and any other provisions requiring compliance with a given period, all of which shall remain in full force and effect, arbitration proceedings in respect of any claim or Dispute or reimbursement arising with respect to Article 7.11 shall be commenced within six (6) months of the date on which the Sulphur was delivered or, in the case of a total loss, the date upon which the Sulphur should have been delivered, failing which the claim shall be time barred, and any liability or alleged liability of the other Party shall be finally extinguished.

26.2. Without derogating from the specific time limits set out in Article 7.9 (complaint of deficiency of quantity or quality), and Article (c) (submission of demurrage claims), and any other provisions requiring compliance within a given period, all of which shall remain in full force and effect, arbitration proceedings in respect of any claim or Dispute arising under this Contract shall be commenced in accordance with Article 19 within one (1) year of the date on which the Sulphur was delivered or, in the case of a total loss, the date upon which the Sulphur should have been delivered, failing which the claim shall be time barred and any liability or alleged liability of the other Party shall be finally extinguished.

## **PART 2**

### **PROVISIONS APPLICABLE TO FOB SALES ONLY**

#### **27. VESSEL(S) AT THE LOADING PORT**

- 27.1. While any Vessel tendered in accordance with this Contract is awaiting berth, proceeding to berth, berthing, unberthing, or proceeding from berth at the Loading Port, each Party shall be responsible for and shall indemnify the other Party in respect of any proven loss, damage or injury whatsoever of or to (a) the Sulphur, (b) the Vessel, (c) the Loading Port or (d) otherwise, (excluding all indirect or consequential damages except as specifically provided in Article 27.2), which may be caused by its act or omission or those of its agents, employees, Contractors or suppliers of services and provided that the Master, crew and agents of the Vessel shall be considered to be the agents of Buyer. In the event of any such damage caused to the Loading Port, Buyer shall cooperate and comply fully with Seller's and the Port Authority's accident procedures then in effect at the Loading Port.
- 27.2. Without limiting the foregoing, in the event that berthing, loading or unberthing of any such Vessel is delayed or causes delay as a result of an act or omission of Buyer, its agents (where the Master, crew and agents of the Vessel shall be considered to be the agents of Buyer), employees, Contractors or suppliers of services, Buyer shall indemnify and hold harmless Seller against all losses, claims, damages, expenses or liabilities (including liability for demurrage payable to Third Parties) which Seller may suffer or to which Seller may become subject in consequence thereof, and will reimburse Seller in respect of any legal, administrative or other expenses whatsoever incurred by Seller in connection with the investigation or defence of any claims, whether or not resulting in liability, arising out of any such delay.

#### **28. SHIPPING TERMS**

- 28.1. Buyer shall pay for and arrange for the lifting of the Sulphur to be delivered under this Contract at the Loading Port and for its carriage to the Destination Port.
- 28.2. Upon completion of loading Buyer shall ensure the Master of the Vessel, or the Vessel's agent on the Master's behalf, signs as presented by or on behalf of Seller a full set of original negotiable bills of lading and returns the same to Seller.
- 28.3. Each Vessel tendered by Buyer for the carriage of Sulphur under this Contract shall be designed, constructed, equipped and maintained to safely load and carry Sulphur.
- 28.4. Subject to the provisions of this Contract, at the time of loading, Buyer may increase or decrease, for trim purposes only and by a maximum of five percent (5%) in either direction, the quantity of Sulphur specified in the Accepted Nomination in respect of any Vessel, if Seller, in its sole discretion, determines that Seller's programme will not thereby be adversely affected. If the Parties have agreed in the Sales Confirmation to a term contract, any such increase or decrease shall be offset, if Seller so requires, by appropriate adjustment in subsequent liftings of Sulphur. If the Parties have agreed in

the Sales Confirmation to a spot contract, the quantity to be purchased and sold pursuant to this Contract shall be deemed modified accordingly.

## 29. SCHEDULING AND VESSEL NOMINATION

- 29.1. Each shipment of Sulphur shall be delivered in bulk at the Loading Port to a Vessel nominated by Buyer and accepted by Seller as provided in this Article 29.
- 29.2. Following receipt of an Accepted Nomination from Seller, but at least fifteen (15) Days prior to the first Day of the Set Range in such Accepted Nomination, Buyer shall submit to Seller its written instructions for documentation relating to the carriage of Sulphur and its Vessel(s) nomination (the "**Buyer Vessel Nomination**").

## 30. VESSEL NOMINATION REQUIREMENTS

- 30.1. Buyer Vessel Nomination shall specify:
- (a) the name of the Vessel, flag and IMO Number of the Vessel;
  - (b) the Vessel's agent at the Loading Port;
  - (c) the Vessel's Q88 or Baltic questionnaire, summer deadweight tonnage, draft, overall length, net registered weight and date of construction, H&M value, P&I club;
  - (d) the quantity of Sulphur to be loaded;
  - (e) the ETA of the Vessel at the Loading Port (which will be on a date sufficiently early to permit the loading of the Sulphur to be completed before the expiry of the Set Range);
  - (f) if only a Part Cargo is to be loaded at the Loading Port, the details including quantity of any cargo on board or to be laden on board, and the name of the immediately prior loading port;
  - (g) the Destination Port of the Sulphur and documentation schedule, if known;
  - (h) full written instructions regarding the particulars and destination of the bills of lading and such other customary Loading Port documentation which may be required by Seller. For the avoidance of doubt:
    - (i) Buyer shall be liable for all costs resulting from any delays in loading the Sulphur hereunder due to failure by Buyer to supply such information in a timely manner, and
    - (ii) any such delays shall not count as used Laytime or, if the Vessel is on demurrage, as time on demurrage;
  - (i) the nature of the product(s) contained in the bulk vessels / tanks of the Vessel during her current voyage and during her preceding three (3) voyages;
  - (j) the quantity of dirty and clean ballast expected to be on board the Vessel on

arrival and, where the discharge is possible, the time required to discharge each;  
and

- (k) loading information, including the size of hatches and hatch openings and the height of such hatches above sea level.

30.2. The nomination shall not be effective unless it is received by Seller not later than the time specified in Article 29. Notwithstanding the foregoing, if the nomination is received by Seller after the above deadline and is accepted by Seller, it shall be effective but Laytime shall not commence until such time as the Vessel has actually commenced loading.

30.3. Not later than five (5) Working Days prior to the first Day of the Set Range for the Sulphur lifting for which the Vessel was nominated, Buyer shall provide to Seller in writing any information listed in Article 30.1 that was not available at the time of nomination.

### **31. SUBSTITUTION OF VESSEL**

31.1. In respect of any Vessel named in the nomination, Buyer may, or if necessary to perform its obligations under this Contract must, substitute therefor another Vessel provided always that:

- (a) the substitute Vessel is nominated to Seller in accordance with Article 30.1 not later than five (5) Days prior to that Vessel's ETA at the Loading Port or the first Day of the Set Range, whichever is earlier;
- (b) the size of the substitute Vessel does not, without Seller's written consent, materially vary from the size of the Vessel previously nominated;
- (c) the quantity of Sulphur to be loaded in the substitute Vessel does not, without the prior written consent of Seller, vary, except for Vessel trim, from the quantity specified in the Accepted Nomination;
- (d) the substitute Vessel will not prejudice Seller's vessel lifting schedule at the relevant Loading Port(s) or such other commitments and obligations of Seller and to be determined by Seller in its absolute discretion;
- (e) the Set Range specified in the Accepted Nomination shall continue to apply;
- (f) any approval of the substitute Vessel by Seller shall be subject to ADNOC Ship Vetting and compliance with Article 33; and
- (g) the consent of the relevant ADNOC Operating Company where Seller in its sole discretion considers it appropriate or necessary to obtain that consent.

### **32. ETA**

Buyer shall notify Seller of any change or changes to the ETA notified under Article 30.1(e), provided that if any such changed ETA will not permit the Vessel to complete the loading of the Sulphur before the expiry of the Set Range, any resulting

delay in the commencement of the loading (including as a result of Article 36.11) shall be for Buyer's account and shall not count as Laytime or as time on demurrage.

### **33. VESSEL COMPLIANCE AND APPROVAL**

33.1. Buyer shall ensure that all Vessels tendered for loading hereunder shall:

- (a) comply with all Applicable Laws(s) at the Loading Port (including in relation to draft limitations and/or other restrictions);
- (b) be required to satisfy ADNOC Ship Vetting;
- (c) comply with the berthing arrangements and other applicable requirements set out in Annex A;
- (d) be in a condition and have cargo holds suitable for loading bulk Sulphur;
- (e) be a bulk ship, single deck, with clear openings for free movement of the loading boom;
- (f) have a minimum loading rate of five hundred and fifty (550) MT/ HR without ballasting or deballasting problems;
- (g) be no more than twenty (20) years old or, if in excess of twenty (20) years old, shall have been suitably modified to ensure compliance with all Loading Port requirements and regulations, but in no event shall any Vessel exceed twenty (20) years in age;
- (h) be fully covered under or by insurance satisfying the requirements of CLC, be covered under or by P&I club insurance, and in each case with an insurer of good repute and standing;
- (i) be manned and maintained so as to fully comply with the standards set out in STCW (or such other safety guide as may be issued in replacement thereof);
- (j) for Vessels more than twenty (20) years old, be RightShip approved throughout its charter;
- (k) be of such size and draft, and be so manned and equipped as to be in every way fit for entering, berthing at, loading at and leaving the Loading Port safely and without delay;
- (l) have clearly visible draft marks;
- (m) have standard mooring lines of six (6) fore and six (6) aft of two hundred (200) metre length;
- (n) comply in all respects with the standards established by SOLAS, ISM and ISPS and have all valid and relevant certificates relating thereto;
- (o) have a deadweight tonnage (DWT) of not less than five thousand (5,000) MT and not more than eighty- thousand (80,000) MT; and

- (p) have a fully operational air conditioning system.
- 33.2. Buyer shall ensure that Accepted Vessels or substitutes have and are able to submit and, if requested, shall provide to Seller copies of a valid International Ship Security Certificate ("**ISSC**") and other relevant documents and information evidencing compliance with ISPS including, if requested, a Declaration of Security ("**DoS**") and a list of the last ten (10) ports at which the relevant Vessel has called at before arriving at the Loading Port. Loss, damage, expense, cost or delay including demurrage caused by the Vessel's failure to comply with the requirements of the ISPS or Buyer's failure to produce or provide copies of the ISSC, DoS and other relevant documents of ISPS compliance shall be for the account of Buyer, and Seller shall be entitled to take such measures as Seller deems appropriate, including denial of or delaying entry into or restricting movement within the Loading Port or requesting substitution with a compliant Vessel. Seller shall not pay demurrage or otherwise be liable for any loss, costs or expenses by whomsoever suffered or incurred as a result of Seller's acts or omissions in taking such measures. Buyer shall also ensure that such Vessels and those on board shall comply at all times with all regulations and customs of the Loading Port, the loading installations and the authorities in control thereof.
- 33.3. Seller shall give written notice accepting or rejecting any Vessel nominated by Buyer within two (2) Working Days of receipt of Buyer's nomination. A Buyer's nomination accepted by Seller shall be known as an "**Accepted Nomination**".

#### **34. REJECTION OF NOMINATIONS AND VESSELS**

- 34.1. Notwithstanding anything to the contrary express or implied elsewhere herein, Seller shall have the right (which right may only be exercised prior to the passing of property hereunder):
- (a) To reject any nomination made by Buyer pursuant to Article 30 and/or 31 on any reasonable grounds;
  - (b) To refuse, on any reasonable grounds, to accept for berthing and/or loading any Vessel named pursuant to Article 30 and/or 31; and
  - (c) To reject the Vessel in question, notwithstanding any prior acceptance of such Vessel on any reasonable grounds if such Vessel is involved in any incident or more recent information regarding such Vessel becomes available to Seller at any time after such prior acceptance.
- 34.2. Without derogating from any other reasonable grounds that may be available to Seller, reasonable grounds shall include if the Vessel is determined by Seller to be unacceptable under Seller's documented marine insurance requirements.

#### **35. CONSEQUENCES OF REJECTION**

- 35.1. In the event of a rejection or a delay of the Vessel or other restriction suffered in respect of the Vessel by virtue of the application of any regulations or other applicable requirements of Article 30 and/or 31 and/or 33:
- (a) Seller shall not be liable for the consequences of rejection, delay, or restriction of the Vessel, including demurrage;

- (b) Buyer shall be liable for any costs or damages incurred by Seller arising out of any such rejection of, delay to or restriction of the Vessel, including demurrage;
- (c) Without prejudice to Seller's rights under this Contract to treat the failure to give a valid nomination as a failure to take delivery under Article 11 and/or as a repudiatory breach of this Contract, Buyer's obligations under this Contract to nominate a suitable Vessel and to ensure that it tenders NOR at the Loading Port in accordance with Article 36.3 shall be unaffected.

### **36. ARRIVAL OF VESSEL, BERTH AND LOADING ETC.**

- 36.1. Buyer shall arrange for the Vessel to notify Seller and the Loading Port by electronic mail or Fax ninety six (96) hours, seventy two (72), forty eight (48) hours, thirty six (36) and twenty four (24) hours and twelve (12) hours in advance of the ETA of each Vessel at the Loading Port Limits. Buyer shall notify Seller and the Loading Port immediately upon learning of any reason whereby any such ETA is unlikely to be achieved.
- 36.2. Buyer shall notify Seller by electronic mail or Fax of the Destination Port of the Sulphur to be lifted and the documentation required for each Shipment at least seven (7) Days prior to the first Day of the Set Range.
- 36.3. The Vessel shall tender to Seller, the relevant ADNOC Operating Company and the Loading Port a NOR meeting the following requirements:
  - (a) NOR to be tendered within office hours 0800-1700 hours between Saturday and Wednesday inclusive and 0800-1200 hours on Thursday (all times local time); and
  - (b) when the Vessel is at all fast at the berth, and is in every respect ready to receive the Sulphur;
  - (c) whether or not the customs and other governmental and Port Authority formalities to commence loading of the Sulphur have been completed, but after first having obtained free pratique.
  - (d) If all berths are occupied upon its arrival at the Loading Port, the Vessel may tender to Seller, the relevant ADNOC Operating Company and the Loading Port a NOR at a customary waiting area/place after the Vessel has dropped anchor, whether in berth or not; whether customs and other governmental and Port Authority formalities to commence loading of the Sulphur have been completed or not; but after first having obtained free pratique.
- 36.4. Subject to the Port Authority's prior approval, (a) clean ballast, that is, ballast free from oil, chemicals and other harmful materials, shall be discharged overboard and (b) dirty ballast, that is, ballast containing any oil, chemicals or other harmful materials, shall be discharged into the shore facilities provided by the Port Authority for this purpose, if any. In its discretion, the Port Authority may require a chemical analysis prior to any discharge. Only clean ballast shall be discharged overboard and Buyer shall be fully

and solely responsible for any costs, consequences, penalties or liabilities arising out of any discharge overboard of any dirty ballast.

- 36.5. Before the commencement of loading of any Vessel at each Loading Port, Seller or the relevant ADNOC Operating Company shall have the right to, or instruct the Port Authority at the Loading Port to, inspect during daylight and test the same and the tanks therein, and to reject the Vessel if, in Seller's or ADNOC Operating Company's reasonable opinion, such Vessel's condition is such as to give rise to risk of loss, damage or injury ashore or afloat. Buyer shall indemnify Seller on demand against any loss or damage whatsoever arising to Seller from such condition or from such rejection or either of them, and Seller shall be under no liability of any nature whatsoever arising from Seller's inspection of or failure to inspect any Vessel and any subsequent acceptance or rejection thereof.
- 36.6. Buyer shall ensure that no lifting of Sulphur causes the Vessel to exceed the draft limitations and/or other restrictions at the Loading Port.
- 36.7. Seller shall provide a safe berth at which the Vessel having an overall length, loaded draft, displacement and deadweight tonnage consistent with the restrictions in effect at the Loading Port can safely reach and leave and at which it can always lie safely afloat.
- 36.8. Buyer shall ensure the Vessel meets all the restrictions regarding overall length, loaded draft, displacement, deadweight tonnage, port and berth conditions and other relevant limitations currently in effect at each Loading Port and shall keep itself familiar with all changes which may occur from time to time in the vessel restrictions in force at each Loading Port and shall not tender any Vessel with specifications not in compliance with the said restrictions.
- 36.9. If, while the Vessel nominated by Buyer is approaching, entering or departing from or is present in the berth, the length, draught or other dimensions of such Vessel shall exceed the length, draught or other dimensions so ascertained for the berth in question for whatever reason, Seller shall not be liable for any loss or damage caused as a result thereof and Seller shall not be obliged to commence or continue loading.
- 36.10. Seller shall have the right to shift the Vessel from one berth to another. All costs of shifting the Vessel shall be for Seller's account if for Seller's purposes. If shifting is for Buyer's purposes such costs shall be for Buyer's account.
- 36.11. Vessels which have arrived at the Loading Port and have given NOR in accordance with Article 36.3 and other vessels which have been accepted for loading at the Loading Port under arrangements and contracts between Seller or other parties shall be loaded on in accordance with the procedures as applied by the relevant ADNOC Operating Company and/or the Port Authority at the Loading Port as are applied from time to time, which may include on a "first come first served" basis, upon condition that the NOR has been tendered for the Vessel to load within its Set Range and without prejudice to Seller's rights under this Contract. Seller may without liability to Buyer decline to load any Vessel that does not arrive and tender a NOR to load within the appropriate Set Range. Seller will nevertheless endeavour to load such Vessel as soon

as it is convenient to do so, consistent with the bulk vessel/ tanker programme for the Month.

- 36.12. The Vessel shall vacate the berth as soon as loading is completed and hatch covers securely closed and fastened, provided that such Vessel's departure is not delayed awaiting production of Loading Port documents unless such documents can be delivered to the Vessel at a suitable anchorage or, subject to Buyer's approval, an early departure procedure is applied. If the Vessel fails to vacate the berth, unless for reasons attributable to Seller, any loss or damage suffered by Seller, its supplier or the relevant ADNOC Operating Company resulting from such failure shall be paid by Buyer to Seller.
- 36.13. Seller shall cause Sulphur to be delivered and Buyer shall receive such Sulphur with due regard for appropriate safety and quality precautions.
- 36.14. If the Performing Vessel arrives at the Loading Port with holds that are unacceptable to surveyors appointed by Seller:
- (a) the relevant ADNOC Operating Company or the Loading Port, the Vessel shall be ordered off the berth; and
  - (b) the Vessel will not be accepted until such time as she returns to the berth in a condition acceptable to the surveyors appointed by Seller, the relevant ADNOC Operating Company or the Loading Port; and
  - (c) any NOR tendered before the Vessel is accepted in accordance with Article 36.14 (b) shall automatically be void; and
  - (d) The Vessel's master or his representative shall tender a new NOR to load supported by a new hold cleanliness certificate; and
  - (e) any expenses or costs arising in connection with such non-acceptance of the Vessel shall be for Buyer's account.
- 36.15. The Vessel shall remain on an even keel during loading and on completion of loading.
- 36.16. No cargo is to be loaded in tween deck, deep tanks, wing tanks, and bunker spaces. The master shall have liberty to load cargo in such spaces for the purpose of stability of the Vessel at Owners' and Buyer's risk. Any extra time used and additional expenses incurred in loading into and/or discharging from such places to be for Buyer's account and laytime admissible will be calculated at half the specified rates for loading/discharging. No cargo shall be loaded or stowed on deck.

### **37. LAYTIME, DELAY AND DEMURRAGE**

- 37.1. In the event of any delay of any kind or from any cause whatsoever whether in connection with the scheduling of the Vessel's turn to load (including any change in such scheduling), provision of a berth for the Vessel, berthing or loading of the Vessel or otherwise howsoever without limitation, and provided always that the Vessel is eventually loaded, any rights of Buyer against Seller, however the same may arise and whether or not arising under this Contract shall be limited in all circumstances whatsoever to a claim for the payment of demurrage as specified below, and Buyer

shall not be entitled to complain directly or indirectly of any delay except for the purpose of founding a claim to such demurrage.

- 37.2. The Laytime allowed to Seller for the loading of each Shipment of Sulphur shall be twenty four (24) hours based on an average of: (i) thirteen thousand (13,000) MT for SHT-2; and (ii) eleven thousand (11,000) MT for SHT-1 to be loaded per day (Fridays and Saturdays included). Any period of time where loading at the Loading Port is prohibited by any Applicable Law(s) or regulation, shall not count towards Laytime even if used.
- 37.3. Laytime shall be calculated based on the quantity shown on the bill of lading, and the bill of lading quantity shall be determined by draft survey (or otherwise in accordance with Article 7). Time during which loading is prevented or hindered due to the draft survey shall not count towards Laytime or time on demurrage.
- 37.4. All extra trimming and/or levelling, if required, to be for Buyer's account.
- 37.5. After the Vessel has arrived at the Loading Port and has tendered her NOR:
- (a) within the Set Range, Laytime shall commence:
    - (i) from 1300 hours if the Vessel has arrived within the Loading Port Limits and notice of readiness has been tendered, in accordance with Article 36.3 and accepted to load before noon (1200 hours) on such Day of arrival; and,
    - (ii) at 0800 hours on the next working day if the Vessel has arrived within the Loading Port Limits and notice of readiness has been tendered, in accordance with Article 36.3, and accepted to load after noon (1200 hours) on such Day of arrival WIBON, WIFPON, WICCON
  - (b) prior to the commencement of the Set Range, Laytime shall commence at 1300 hours on the first Day of its Set Range, notwithstanding the fact that loading may have commenced for any reason prior to 1300 hours on the first Day of the Set Range.
  - (c) after the expiry of its Set Range, and without prejudice to Seller's common law rights and rights of termination under Article 11.1, Laytime shall commence only upon the commencement of loading and no demurrage shall be payable.
- 37.6. Laytime shall not commence or run, and Seller shall be under no obligation to load nor be under liability for demurrage, if Buyer has failed to provide, upon Seller's request or as provided in the Contract, the finalised documentation required by Seller or the relevant ADNOC Operating Company to enable the loading of the Sulphur (including, if applicable, confirmed letters of credit), and Seller shall be under no obligation to maintain any berth at the Loading Port to the benefit of Buyer's Vessel, and Seller shall

be entitled to issue a "Free Berth Basis" notification and berth other Vessels as Seller deems appropriate.

- 37.7. Loading shall be deemed to be completed and time shall cease to count towards Laytime or demurrage once the Sulphur has been fully loaded.
- 37.8. Any time lost as a result of delay, prevention or hindrance by reason of any cause or circumstance whatsoever beyond the reasonable control of Seller shall not be counted toward Laytime or time on demurrage, as applicable. Without prejudice to the generality of the forgoing, this shall include the following:
- (a) any shortfall in Sulphur delivered at the Ruwais Facilities where such shortfall has not arisen or resulted from, or been caused by, Seller or the relevant ADNOC Operating Company;
  - (b) time spent awaiting daylight inspection of the removal of the discharge spout from over the last cargo hatch at the berth and/or for unberthing and time spent awaiting cargo reconciliation or quantity determination or otherwise getting the Vessel ready to load or discharge;
  - (c) inward passage of the Vessel from the Loading Port Limits until the Vessel is securely moored at the berth and its gangway, if to be used, is in place;
  - (d) obtaining clearance from port authorities, clearance from ADNOC Gas Processing Safety, awaiting free pratique, pilot, tugs, tides or daylight inspection;
  - (e) preparing for and handling or discharge of ballast, Vessel or hold inspection, Vessel inerting or deinerting, tank or hold cleaning and/or handling slops;
  - (f) any inability or inefficiency or breakdown of the Vessel, its equipment, including its gears, or failure to comply with the requirements of the Loading Port with respect to equipment aboard or any other matter causing delay or restriction to loading operations;
  - (g) holds change and hatches opening/closing;
  - (h) trimming
  - (i) restrictions, including those as to loading rate, imposed by the owner, charterer or Master of the Vessel;
  - (j) any action taken by an independent inspector, if any, appointed by Buyer and Seller or by Seller or any action taken by Seller at the said independent inspector's request;
  - (k) industrial disturbance including without limitation any strike, lock out, stoppage or restraint of labour of the Master, officers or crew of the Vessel or tugboat or pilot;
  - (l) bad weather;

- (m) bunkering or awaiting bunkers;
- (n) any other matter attributable to the Vessel, her Master or crew;
- (o) any event related to the conditions under which time is excluded from demurrage and Laytime under Article 37;
- (p) Force Majeure Event;
- (q) compliance with the instructions, laws or regulations of a Governmental Authority or the Vessel's classification society; or
- (r) the procedures necessary to implement the "split cargo basis" ordered by the SCFEA in relation to Month-end liftings.

37.9. In the event of a Vessel's failure or inability (due to breakdown, inefficiency or other causes attributable to the Vessel, her Master or crew) to carry out deballasting, loading, or shifting operations efficiently and without delay, Seller shall have the right:

- (a) to require the Vessel to defer berthing or loading or to vacate the loading berth until the Vessel is again in an efficient state and ready to carry out such operations efficiently and without delay, and any time thereby lost shall not count towards Laytime or demurrage whether or not the Vessel is on demurrage when this right is exercised by Seller; and/or
- (b) to recover from Buyer in compensation for the disruption to the loading programme at the Loading Port a sum per hour (or pro rata for a part thereof), for the time the Vessel is alongside in excess of the Laytime allowed hereunder, determined in accordance with the demurrage rate specified in Article 37.11.

37.10. The appropriate rate of demurrage shall be the applicable charterparty rate unless, in Seller's reasonable opinion, the applicable charterparty rate is higher than the market rate, for a Vessel of the size and type used for a single voyage charter from the Loading Terminal to Buyer's Destination Port. If the parties fail to agree within thirty (30) Days of any claim being made upon such rate, then such rate shall be determined by Seller obtaining estimates as to market demurrage rates at the time of loading for a Vessel of the size and type used for a single voyage charter from the Loading Terminal to Buyer's Destination Port from up to three (3) reputable charter brokers. The demurrage rate shall be lower of:

- (a) the average of all demurrage rates so obtained (even if Seller is not able to obtain three (3) quotes); and
- (b) the charterparty demurrage rate.
- (c) In no event shall Seller be liable for demurrage unless the demurrage claim has been received by Seller in writing within ninety (90) Days from completion of loading, stating in detail the specific facts upon which the claim is based together with full originals of all relevant documentation. If Buyer fails to give such notice or fails to provide such documentation within the ninety (90) Days, then any liability of Seller for demurrage shall be extinguished. Any claim for demurrage which has been accepted by Seller shall be notified by Seller to Buyer, and Buyer shall issue an invoice

for such demurrage within thirty (30) Days from the date of Seller's notice. Seller shall pay Buyer's invoice for demurrage within thirty (30) Days of such invoice date.

- 37.11. Buyer shall pay Seller despatch money at the rate of half the applicable demurrage rate per day of twenty four (24) continuous running hours or pro rata for part of a day for all Laytime saved at the Loading Port.

### **38. ALLOCATION OF COSTS**

- 38.1. All taxes, fees, imposts, wharfage and duties in respect of the Vessel (not the Sulphur) incurred at the Loading Port shall be for Buyer's account.

### **39. BUYER INDEMNITY**

- 39.1. Buyer shall indemnify Seller against all direct loss, damage, injury or liability of whatsoever nature caused to Seller by or arising out of:
- (a) the fault or negligence of the Vessel while at or off each Loading Port; and
  - (b) the failure of Buyer to provide timely notifications or to follow the other procedures set forth in this Part 2.
- 39.2. Except where otherwise provided, any amount due by Buyer to Seller pursuant to this Part 2 shall be settled within thirty (30) Days of Seller's invoice and in accordance with the payment terms set forth in the Sales Confirmation.

### **PART 3**

#### **PROVISIONS APPLICABLE TO CFR AND CIF SALES ONLY**

##### **40. SHIPPING TERMS AND SHIPPING DOCUMENTS**

- 40.1. Subject to the provisions of the Contract, Seller shall, at Seller's expense, contract or procure a contract for carriage of the Sulphur from the Loading Port to the Destination Port on terms negotiated by Seller.
- 40.2. Upon completion of loading Seller shall ensure the Master of the Vessel signs and returns a full set of original negotiable bills of lading as presented and which may incorporate the terms of the applicable charterparty for that Vessel.
- 40.3. After completion of the loading of each Vessel at the Loading Port with Sulphur, Seller shall forward and tender with commercial promptness the shipping documents in respect thereof, which shall comprise a full set of clean negotiable bills of lading (received for shipment bill of lading and/or bill of lading incorporating the provisions of a charter party being acceptable) and any other transport documents (e.g. the receipt from the carrier), if any, in due form to Buyer.

##### **41. SET RANGE AND INDICATIVE DISCHARGE DATES**

- 41.1. Any references in the Sales Confirmation to, or where Seller provides Buyer with, a range of dates within which the Vessel is scheduled to arrive at the Destination Port, such set range, or Indicative Discharge Dates, shall be indicative only.
- 41.2. Seller shall not assume any responsibility whatsoever for the delivery of the Sulphur at the Destination Port and shall be under no obligation to ensure any Vessel arrives at a Destination Port on a specific day or range of days.

##### **42. PASSING OF RISK AND PROPERTY**

- 42.1. Risk and property in the Sulphur shall pass in accordance with Article 4 save that, if a Vessel has commenced or completed loading prior to being nominated pursuant to Article 43 then subject to Seller's rights to retain documents until payment in accordance with the terms of the Contract, property in the Sulphur shall pass upon Seller's receipt of Buyer's acceptance of the nomination and risk shall be deemed to have passed at the Delivery Point.

##### **43. VESSEL NOMINATION**

- 43.1. No later than fifteen (15) Days before the first Day of the Set Range, Seller shall give to Buyer its written nomination ("**Seller Vessel Nomination**") which shall specify as to each such Vessel:
  - (a) the name of the Vessel, flag and IMO Number of the Vessel;
  - (b) the Vessel's/charterer's agent at the Loading Port and at the Destination Port (if known);
  - (c) the Vessel's summer deadweight tonnage, draft, overall length, net registered

weight and date of construction, H&M value, P&I Club;

- (d) the approximate quantity of Sulphur to be loaded (in accordance with the Agreed Schedule);
  - (e) the expected Set Range during which the lifting is scheduled to occur or, if known, the bill of lading date;
  - (f) details of any other cargo on board or to be laden on board if delivery is of a Part Cargo;
  - (g) the ETA at the Loading Port and the ETA at the Destination Port (if known); and documentation schedule, if known; and
  - (h) Discharge Instructions.
- 43.2. Within two (2) Days of receiving Seller Vessel Nomination, Buyer shall give written notice to Seller either accepting or rejecting Seller's nominated Vessel ("**Buyer Vessel Confirmation**") and which shall also provide:
- (a) in case of acceptance of Seller's nominated Vessel, any additional information which Buyer might require and identified in Article 43.3 below; or
  - (b) in case of rejection of Seller's nominated Vessel, reasons for such rejection.
- 43.3. The additional information referred to in Article 43.2(a) and to be specified in Buyer Vessel Confirmation shall include:
- (a) any requirements at the Destination Port in relation to the berths for Vessels;
  - (b) full written instructions regarding the particulars and destination of the bills of lading and such other customary Loading Port documentation which may be required by Buyer. For the avoidance of doubt, Buyer shall be liable for all costs resulting from any delays in loading Sulphur hereunder due to failure by Buyer to supply such information in a timely manner;
  - (c) the Destination Port and Destination Port Limits; and
  - (d) all restrictions at the Destination Port with respect to maximum draft, length, deadweight, displacement, age, flag and the like, the procedures relevant to health, safety and Vessel operations and all applicable governmental, local and port authority regulations, and any other applicable requirements of whatsoever nature in force at the Destination Port that shall apply to the Vessel.
- 43.4. In the event of Buyer's rejection of Seller's nominated Vessel, Seller shall nominate another Vessel within three (3) Days of receiving Buyer's Vessel Confirmation (an "**Amended Seller Vessel Nomination**"). Buyer shall give written notice to Seller of

its Buyer Vessel Confirmation within two (2) Days of receiving the Amended Seller Vessel Nomination whether to accept the Amended Seller Nomination.

- 43.5. A Vessel accepted by Buyer pursuant to a Buyer Vessel Confirmation shall be an "**Accepted Vessel**".
- 43.6. All costs, expenses and liabilities incurred as a direct result of Buyer's failure to comply with its obligations under Article 43 or 44 and/or of a change in the Applicable Law(s) at the Destination Port entered into force or change in the Destination Port after loading at the loading port after Buyer Vessel Confirmation shall be for Buyer's account.

#### **44. VESSEL REQUIREMENTS**

- 44.1. Seller shall ensure that all Vessels tendered for loading hereunder shall:
- (a) comply with all Applicable Laws(s) at the Destination Port;
  - (b) comply with the applicable requirements set out in Annex A;
  - (c) be no more than twenty (20) years old or, if in excess of twenty (20) years old, shall have been suitably modified to ensure compliance with all Destination Port requirements and regulations, but in no event shall any Vessel exceed twenty (20) years in age;
  - (d) be fully covered under or by insurance satisfying the requirements of CLC;
  - (e) be manned and maintained so as to fully comply with the standards set out in STCW (or such other safety guide as may be issued in replacement thereof);
  - (f) for Vessels more than twenty (20) years old, be RightShip approved throughout its charter; and
  - (g) be of such size and draft and be so manned and equipped as to be in every way fit for entering, berthing at, loading at and leaving each Destination Port safely and without delay.
- 44.2. Notwithstanding anything to the contrary express or implied in this Article 44 or Annex A, if any Vessel nominated by Seller does not comply with the foregoing terms in this Article 43, Buyer may:
- (a) reject the Vessel when nominated or subsequently; and/or
  - (b) refuse to berth or load the Vessel in question.
- 44.3. It is understood that Buyer is familiar with the vessel restrictions regarding overall length, loaded draft, displacement, deadweight tonnage and other relevant limitations currently in effect at each Destination Port. Buyer shall keep itself familiar with all changes which may occur from time to time in the vessel restrictions in force at each

Destination Port and shall immediately inform Seller in writing of any changes to the information provided in a Buyer Vessel Confirmation.

#### **45. SUBSTITUTION OF VESSEL**

- 45.1. Seller shall be entitled to substitute an Accepted Vessel for another Vessel provided that:
- (a) the quantity of each type of Sulphur to be loaded in the substitute Vessel does not vary, except for vessel trim, from the quantity specified in the Agreed Schedule;
  - (b) the size of the substitute Vessel does not, without Buyer's written consent, materially vary from the size of the Vessel previously nominated and the Vessel complies with the requirements at the Destination Port in relation to the berths for Vessels provided in Buyer Vessel Confirmation; and
  - (c) Buyer is notified in relation to the substitute Vessel of the information specified in Article 43.1 for such Vessel at least five (5) Working Days prior to the beginning of the Set Range.

#### **46. ETA**

Seller shall notify Buyer of any change or changes to the Set Range and to the ETA at the Destination Port notified under Article 43.1(g).

#### **47. REJECTION OF NOMINATIONS OF VESSEL**

- 47.1. Notwithstanding anything to the contrary express or implied elsewhere, Buyer shall have the right (which right may only be exercised prior to the passing of property hereunder) to refuse, on only reasonable grounds, to accept any Vessel named pursuant to Articles 44 and/or 45. Buyer shall not be liable for any loss or damage, direct or indirect, which Seller may suffer as a result of Buyer exercising such right.
- 47.2. Notwithstanding any prior acceptance of a Vessel under Articles 43.2 and 43.4 Buyer shall have the right (which right may only be exercised prior to the passing of property hereunder) to reject the Vessel in question if such Vessel is involved in any incident or more recent information regarding such Vessel becomes available to Buyer at any time after such prior acceptance, resulting in the Vessel not being allowed to trade under the relevant Vessel's flag state and/or her Classification society and/or the relevant Port State Control.
- 47.3. Without derogating from any other reasonable grounds that may be available to Buyer, reasonable grounds shall include if the Vessel is determined by Buyer to be unacceptable under Buyer's documented marine assurance requirements.
- 47.4. Nothing herein shall qualify Seller's common law rights against Buyer for a wrongful or invalid rejection of a Vessel nomination under the terms of this Contract including

for the avoidance of doubt treating the rejection as a failure to accept delivery under Article 11 and/or a repudiatory breach of this Contract.

#### **48. VESSEL ARRIVAL AND DISCHARGE**

- 48.1. As soon as practicable after the loading has been completed, the Master of the relevant Accepted Vessel shall notify Buyer of such completion of loading and the sailing date of the Vessel.
- 48.2. Seller shall arrange for the Vessel to notify Buyer and the Port Authority at the Destination Port by Fax or email not less than ninety six (96) hours, seventy two (72) hours, forty eight (48) hours, thirty six (36) hours, twenty four (24) hours, and again twelve (12) hours in advance of the ETA of each Vessel at the Destination Port Limits (or as otherwise required under the Discharge Instructions). Seller shall notify Buyer and the Port Authority at the Destination Port immediately upon learning of any reason whereby any such estimated time of arrival is unlikely to be achieved.
- 48.3. Upon arrival of the Vessel at the Destination Port the Vessel shall tender NOR after she has arrived at the customary anchorage at the Destination Port and is in every respect ready to discharge cargo;
  - (a) whether in berth or not;
  - (b) whether in free pratique or not; and
  - (c) whether the required clearance(s) from customs and other governmental authorities has been received or not.
- 48.4. After tender of NOR pursuant to Article 48.3 above, Seller having regard to the requirements and procedures of the terminal at the Destination Port and the time when the Vessel has complied with the provisions of Articles 48.2 and 48.3, shall commence and complete discharge as soon as reasonably practicable.
- 48.5. Unless otherwise agreed in writing by Seller, Seller shall not be under any obligation to commence discharge hereunder prior to 0600 hours (local time) on the first day of the Vessel arrival at the Destination Port.
- 48.6. Buyer shall comply at all times with the relevant Discharge Instructions for the applicable Destination Port(s).
- 48.7. Buyer at all times warrants that the Destination Port is a safe port and shall provide a safe berth at the Destination Port at which a fully laden Vessel having an overall length, loaded draft, Under Keel Clearance (UKC) as per the Vessel owners' guidelines, displacement and deadweight tonnage consistent with the information previously provided to Buyer and the restrictions in effect at the Destination Port can safely reach and leave and at which it can always lie safely afloat.
- 48.8. If the Vessel is ordered by any relevant authority and/or by Buyer to drift outside the Destination Port Limits, then from the time of the Vessel's arrival at the drifting location to the time the Vessel departs, or upon receipt of Buyer's instructions, whichever is later, all such time shall count as Laytime or demurrage and, if applicable, Buyer shall reimburse Seller for the cost of any bunkers consumed while drifting which

Seller may be obliged to pay to the owners of the Vessel under the relevant charterparty.

- 48.9. Buyer shall have the right to shift the Vessel from one berth to another. In all cases, including shifting due to bad weather, all shifting-related costs (including unberthing and re-berthing costs) shall be for Buyer's account unless such shifting is for Seller's purposes only.

#### **49. LIGHTERING**

- 49.1. The parties may mutually agree in writing that delivery of the Sulphur is to be made by discharge into a lighter.
- 49.2. Where discharge of the Sulphur requires the Vessel to discharge into a lighter, then this shall be subject to the prior written approval of ADNOC Ship Vetting, the Master of the Accepted Vessel and the Accepted Vessel's owners. Buyer shall ensure that the lighter(s) remain acceptable throughout such operations. Seller shall be entitled on reasonable grounds and without incurring any liability whatsoever to refuse to discharge the Vessel into a lighter.
- 49.3. All costs, expenses, charges or dues incurred in respect of a discharge of the Vessel into a lighter shall be borne and paid for by Buyer who shall indemnify Seller for all costs, expenses, charges, dues and liabilities incurred by reason of such discharge of the Sulphur.
- 49.4. All time used for lightering, including any time lost due to bad weather or awaiting tide or daylight, shall count as running hours for the purposes of determining Laytime and demurrage under Article 50.

#### **50. LAYTIME, DELAY AND DEMURRAGE**

- 50.1. Unless otherwise provided in the Contract, the Laytime allowed to Buyer for the unloading of each Shipment of Sulphur at the Destination Port shall be in accordance with the terms of the Discharge Instructions for that particular Destination Port. In case of any inconsistency between these GTCs and the terms of the Discharge Instructions, the terms of the Discharge Instructions shall prevail.
- 50.2. Seller shall be under no obligation to discharge nor under liability for any time lost if Buyer has failed to provide the documentation required by Seller or owners of the Vessel to enable the discharge of the Sulphur (including any letters of credit and/or a letter of indemnity in a form which is acceptable to the Vessel's owners).
- 50.3. Any time lost as a result of delay, prevention or hindrance by reason of any cause or circumstance whatsoever beyond the reasonable control of Buyer shall not be counted toward Laytime or, if the Vessel is on demurrage, time on demurrage. Without prejudice to the generality of the foregoing, this shall include the following:
- (a) any inward passage, including awaiting pilot or tugs, until the Vessel is securely moored at the berth and its gangway, if to be used, is in place;
  - (b) preparing for and handling or discharge of ballast, (if not concurrent with the discharging operations);

- (c) any breakdown of the Vessel, its equipment including its pumps or failure to comply with the requirements of the Destination Port with respect to equipment aboard or any other matter causing delay or restriction to the discharge operations;
  - (d) restrictions, including those as to the discharging rate, imposed by Seller, the owner or Master of the Vessel;
  - (e) industrial disturbance including any strike, lock out, stoppage or restraint of labour of the Master, officers or crew of the Vessel;
  - (f) bunkering or awaiting bunkers (if not concurrent with the discharging operations); and
  - (g) any other matter attributable to the Vessel, her Master or crew, Seller or Seller's agents.
- 50.4. Discharge shall be deemed to be completed and time shall cease to count towards Laytime or demurrage once the Sulphur has been fully discharged, the Vessel cargo holds have been swept and cleaned and all of the receivers' equipment has been returned to shore. If after completion of discharge a Vessel continues to remain at berth whilst awaiting cargo documentation or otherwise, Laytime shall resume three (3) hours after the completion of discharge until such time as the documentation is completed.
- 50.5. If the time used at the Destination Port in discharging any Vessel carrying a Shipment of Sulphur sold hereunder exceeds the Laytime allowed for such unloading, Buyer shall be liable for demurrage for such excess time.
- 50.6. The appropriate rate of demurrage payable shall be determined by the demurrage rate (to be agreed upon at the time of Vessel nomination/acceptance).
- 50.7. Demurrage shall be payable per running hour and "pro rata" for any part of an hour for all time that used Laytime exceeds the allowed Laytime.
- 50.8. Delays in berthing for discharging, and any delays after berthing due to weather conditions (including fog) shall count as one half Laytime. This Article 50.8 shall not be applicable to any STS operation, discharge to a floating storage facility or lightering where Laytime or time on demurrage shall count in full.
- 50.9. In no event shall Buyer be liable for demurrage unless the demurrage claim has been received by Buyer in writing within ninety (90) Days from disconnection of the discharging hoses, stating in detail the specific facts upon which the claim is based together with any supporting documentation. If Seller fails to give such notice or fails to provide such documentation within the ninety (90) Days, then any liability of Buyer for demurrage shall be extinguished. Any claim for demurrage which has been

accepted by Buyer shall be notified by Buyer to Seller, and Seller shall issue an invoice for such demurrage within thirty (30) Days from the date of Buyer's notice.

- 50.10. Buyer shall settle Seller's invoice for demurrage within thirty (30) Days of the invoice date and in accordance with the payment terms set forth in the Sales Confirmation.

## **51. INSURANCE**

- 51.1. In the case of CFR deliveries only, neither party shall have any obligation to secure insurance for the Sulphur.
- 51.2. Notwithstanding Article 51.1, in all cases and for so long as the voyage to the Destination Port or any seas through which the Vessel has to travel in performance of the Contract, Seller shall pursuant to the terms of the relevant charterparty incur additional insurance or war risk insurance premia and/or piracy premia and/or other additional costs in relation thereto, whether at the date of the Contract or subsequently for the Vessel's hull and machinery, protection and indemnity or cargo insurances, crew bonuses and the provision of security services for the Vessel, or any or all of them, the cost of such additional insurance and/or additional premia and/or costs shall be paid by Buyer to Seller in addition to the Price payable pursuant to the Contract.

## **52. ALLOCATION OF COSTS**

- 52.1. All imposts, fees, charges (including shifting expenses, pilotage, mooring and towage expenses) and dues (including quay dues) in respect of the Vessel (not the Sulphur) incurred at the Destination Port shall be for Buyer's account, except those included in the contract of carriage.
- 52.2. The following shall, subject to Seller contracting and paying for the carriage of the Sulphur from the Loading Port to the Destination Port, be for Buyer's account and paid by Buyer to Seller (or such person as Seller may instruct in writing):
- (a) all costs relating to the Sulphur from the time they have been delivered on board the Vessel at the Loading Port, except, where applicable, the costs of customs formalities necessary for export as well as all duties, taxes and other charges payable upon export;
  - (b) all costs and charges relating to the Sulphur while in transit until their arrival at the Destination Port, unless such costs and charges are for Seller's account under the contract of carriage;
  - (c) unloading costs including lighterage, wharfage charges and cargo handling fee;
  - (d) where applicable, all duties, taxes and other charges as well as the costs of carrying out customs formalities payable upon import of the goods and, where necessary, for their transit through any country unless included within the cost of the contract of carriage; and
  - (e) unless otherwise agreed in the Sales Confirmation, the freight to the Destination Port(s) payable under the provisions of the relevant contract of carriage.

- 52.3. Except where otherwise provided, any amount due by Buyer to Seller pursuant to this Part 3 shall be settled within thirty (30) Days of Seller's invoice and in accordance with the payment terms set forth in the Sales Confirmation.

## **PART 4**

### **PROVISIONS APPLICABLE TO CIF SALES ONLY**

#### **53. CARGO INSURANCE**

- 53.1. Seller undertakes to procure and pay for insurance against marine risks to the full value of the Sulphur hereunder plus ten percent (10%). Such insurance which shall operate from the time the Sulphur passes the loading belt at the Loading Port until the Destination Port, shall be in accordance with the provisions of Institute Cargo Clause A, Institute War Clauses, Institute Strike Clauses, JWLA-027 and other customary terms and conditions, the benefit thereof shall accrue to Buyer upon the passing of risk in the Sulphur as provided for in this Contract.
- 53.2. If requested by Buyer, Seller shall provide Buyer with the original certificate of insurance or broker's cover note.
- 53.3. Buyer may procure any additional cover required at Buyer's expense. Seller shall provide Buyer, at Buyer's request, risk and expense, if any, with the information necessary for Buyer to procure any additional insurance.

**ANNEX A****(PART ONE)****BERTHING ARRANGEMENTS AT THE LOADING PORT**

<b>PARAMETERS</b>	<b>RUWAIS SULPHUR HANDLING TERMINAL 1</b>	<b>RUWAIS SULPHUR HANDLING TERMINAL 2</b>
	<b>BERTH - 1</b>	<b>BERTHS 1 &amp; 2</b>
Minimum - Maximum DWT	4,000 MT - 45,000 MT	20,000 MT - 80,000 MT
Maximum vessel displacement	58,500 MT	109,600 MT
Maximum DWT for Molten Sulphur	9,000 MT	N/A
Dredged Depth	12 meters below chart datum	17.1 meters below chart datum
Maximum Berth Length	350 M	350 M
Maximum LOA	220 M	258 M
Maximum water depth alongside	11.4 M	17.1 M
Max. Summer Draft	11.0 M	14.5 M
Max. Freeboard on arrival	11.0 M	13.7 M
BCT channel / turning basin depth	15 M	N/A
Turning Basin at BCT No. 4 buoy	600 M	N/A

Distance b/w BCT No.4 buoy/berth - 1 & 2 loader	600 M	N/A
Distance b/w BDI / Fertil berth	145 M	N/A
Distance b/w BCT No.6 buoy / berth loaders	340 M	N/A
Parallel body length (Minimum)	105 M	-
Minimum Loading Rate Granular Sulphur	-	-
Maximum Loading Rate Granular Sulphur	1,000 MT / HR	4,000 MT / HR
Ship Loader	One structural steel semi arc ship loader outrigger beam	-
Minimum Discharging / Loading Rate Molten Sulphur	No minimum	N/A
Maximum Discharging/ Loading Rate Molten Sulphur	700 M3 / HR	N/A
Discharging / Loading arm	10 inch	N/A

## ANNEX A

### (PART TWO)

#### VESSEL REQUIREMENTS

If any Vessel does not meet any of the requirements of this Annex A:

- (a) at the Loading Port, Seller may refuse to berth, load or continue loading such Vessel; and/or
- (b) at the Destination Port, Buyer or Buyer's receiver may refuse to berth, discharge or continue discharging such Vessel.

#### 1. ISPS CODE

##### A. FOB Provisions

- (i) Buyer shall procure that the Vessel shall comply with the requirements of the International Code for the Security of Ships and of Port Facilities and the relevant amendments to Chapter XI of SOLAS (ISPS Code).
- (ii) The Vessel shall when required submit a Declaration of Security (DoS) to the appropriate authorities prior to arrival at the Loading Terminal.
- (iii) Notwithstanding any prior acceptance of the Vessel by Seller, if at any time prior to the passing of risk and title the Vessel ceases to comply with the requirements of the ISPS Code:
  - (a) Seller shall have the right not to berth such nominated Vessel and any demurrage resulting shall not be for the account of Seller.
  - (b) Buyer shall be obliged to substitute such nominated Vessel with a Vessel complying with the requirements of the ISPS Code and with Article 31 of these GTCs.
- (iv)
  - (a) Seller shall procure that the terminal/installation at the Loading Port shall comply with the requirements of the International Code for the Security of Ships and of Port Facilities and the relevant amendments to Chapter XI of SOLAS (ISPS Code).
  - (b) Subject always to sub-paragraph (vi) below any costs or expenses in respect of the Vessel including demurrage or any additional charge, fee or duty levied on the Vessel at the loading port and actually incurred by Buyer resulting directly from the failure of the Loading Port to comply with the ISPS Code shall be for the account of Seller, including the time required or costs incurred by the Vessel in taking any action or any special or additional security measures required by the ISPS Code.

- (v) Save where the Vessel has failed to comply with the requirements of the International Code for the Security of Ships and of Port Facilities and the relevant amendments to Chapter XI of SOLAS (ISPS Code), Seller shall be responsible for any demurrage actually incurred by Buyer arising from delay to the Vessel at the Loading Port resulting directly from the Vessel being required by the port facility or any relevant authority to take any action or any special or additional security measures or undergo additional inspections.
- (vi) If the Loading Port is not operated by Seller or an Affiliate of Seller, Seller's liability to Buyer hereunder for any demurrage, costs, losses or expenses incurred by the Vessel, the charterers or the Vessel owners resulting from the failure of the terminal/installation at the Loading Port to comply with the ISPS Code shall be limited to the payment of demurrage, costs, losses or expenses that Seller is able to recover and does recover from its supplier or other relevant Third Party, and then only to the extent of such recovery. Seller shall, however, use reasonable endeavours so to recover from its supplier or other relevant Third Party.

#### **B. CIF/CFR Provisions**

- (i) Seller shall procure that the Vessel shall comply with the requirements of the International Code for the Security of Ships and of Port Facilities and the relevant amendments to Chapter XI of SOLAS (ISPS Code).
- (ii) The Vessel shall, when required, submit a Declaration of Security (DoS) to the appropriate authorities prior to arrival at the Destination Port.
- (iii) Notwithstanding any prior acceptance of the Vessel by Buyer, if at any time prior to the arrival of the Vessel at the Destination Port the Vessel ceases to comply with the requirements of the ISPS Code Buyer shall have the right not to berth such nominated Vessel at the Destination Port and any demurrage resulting shall not be for the account of Buyer.
- (iv)
  - (a) Buyer shall procure that the Destination Port shall comply with the requirements of the International Code for the Security of Ships and of Port Facilities and the relevant amendments to Chapter XI of SOLAS (ISPS Code).
  - (b) Subject always to sub-paragraph (vi) below, any costs or expenses in respect of the Vessel including demurrage or any additional charge, fee or duty levied on the Vessel at the Destination Port and actually incurred by Seller resulting directly from the failure of the Destination Port to comply with the ISPS Code shall be for the account of Buyer, including the time required or costs incurred by the Vessel in taking any action or any special or additional security measures required by the ISPS Code.
- (v) Save where the Vessel has failed to comply with the requirements of the International Code for the Security of Ships and of Port Facilities and the relevant amendments to Chapter XI of SOLAS (ISPS Code), Buyer shall be

responsible for any demurrage actually incurred by Seller arising from delay to the Vessel at the Destination Port resulting directly from the Vessel being required by the port facility or any relevant authority to take any action or any special or additional security measures or undergo additional inspections.

- (vi) If the Destination Port is not operated by Buyer or an Affiliate of Buyer, Buyer's liability to Seller under this Contract for any costs, losses or expenses incurred by the Vessel, the charterers or the Vessel owners resulting from the failure of the terminal/installation at the Destination Port to comply with the ISPS Code shall be limited to the payment of demurrage, costs, losses or expenses that Buyer is able to recover and does recover from its receiver or other relevant Third Party, and then only to the extent of such recovery. Buyer shall, however, use reasonable endeavours so to recover from its receiver or other relevant Third Party.

## **2. CLC**

The Vessel shall carry on board certificate(s) as required pursuant to the 2001 Civil Liability Convention for Bunker Oil Pollution Damage or any Protocols thereto ("**CLC**").

## **3. ISM CERTIFICATES**

The Vessel shall have on board at all times a valid ISM certificate and the owners, before and during the voyage, comply with the requirements of the ISM Code. (For the purposes of the Contract, "**ISM**" means the International Management Code for the Safe Operations of Ships and for Pollution Prevention.)

## **4. BALLAST**

Discharge of dirty ballast, bilges, slops or other substances into water shall be in accordance with MARPOL 73/78, as amended from time to time, and is in any event totally prohibited within the confines of the Loading Port or the Destination Port.

## **5. PORT REGULATIONS**

The Vessel shall comply with Buyer's regulations (or Buyer's receivers' regulations, as applicable) at the Destination Port.

## **6. MARITIME TRAFFIC SCHEMES**

The Vessel shall comply with all regulations and recommendations contained in any Maritime Traffic Schemes applicable to the voyage the subject matter of the Contract and in particular and as appropriate the Vessel shall comply with the "Turkish Straits Maritime Traffic Scheme Regulations" dated 6th November 1998, as amended or re-issued from time to time.

## **7. CFR AND CIF DELIVERY:**

Seller shall ensure that all Vessels tendered for loading hereunder shall be no more than twenty (20) years old or, if in excess of twenty (20) years old, shall have been suitably modified to ensure compliance with all Destination Port requirements and regulations,

but in no event shall any Vessel exceed twenty five (25) years in age, save where not in conflict with the requirements under the Discharge Instructions in which case those requirements shall prevail over the requirements set forth in this Annex A.

**8. FOB DELIVERY:**

Buyer shall ensure that all Vessels tendered for loading hereunder shall be no more than twenty (20) years old or, if in excess of twenty (20) years old, shall have been suitably modified to ensure compliance with all Loading Port requirements and regulations, but in no event shall any Vessel exceed twenty five (25) years in age and always subject to ADNOC Ship Vetting acceptance.

**ANNEX B**  
**PAYMENT TERMS**

*[Intentionally Left Blank for Publication Purposes]*

**ANNEX C**

**FORM OF LETTER OF INDEMNITY**

To: [*insert Buyer's name*]

We refer to our Agreement dated the [*insert date*] (the "**Agreement**") in respect of your purchase from us of [*insert quantity*] MT of [*insert product*] (the "**Product**").

In consideration of your making payment of US dollars [*insert amount*] for [*insert quantity*] MT of Product in accordance with the Agreement and accepting delivery of the Product without having been provided with a full set(s) of clean original negotiable bills of lading [*and insert any other contractually required original documents*], (the "**Documents**"), we hereby represent and warrant that:

- (i) the Documents were issued in conformity with the requirements of the Agreement;
- (ii) we are entitled to possession of the Documents;
- (iii) we were entitled to possession of the Product;
- (iv) we had good title to such Product;
- (v) title in the Product has been passed, as provided in the Agreement, to you free of all liens, charges or encumbrances of whatever kind;
- (vi) you will have the benefit of the warranty as to enjoyment of quiet possession implied by law in the Agreement but without prejudice to any other warranty so implied.

Without prejudice to your rights under the Agreement, we hereby agree to protect, indemnify and hold you harmless from and against any and all damages, losses, liabilities, costs, claims and reasonable expenses which you may suffer by reason of:

- (a) our failure to present the Documents to you in accordance with the Agreement, except to the extent that such liability could have been avoided or minimised by the exercise of due diligence by you, your servants or agents.
- (b) any action or proceeding brought or threatened against you by reason of our said failure and any breach of our above express representations and warranties in connection with questions of title to or the right to possession of the Documents or the Cargo or the proceeds of either; or any liens, charges or encumbrances asserted on the documents or the Cargo or any other claims arising out of or in connection with the Documents.

Our obligation to indemnify you is subject to the conditions that you give us prompt notice if the assertion of any claim and full opportunity to conduct the defence thereof and that you do not settle any such claim without our approval.

Our liability hereunder shall cease one year from the date of issue of this letter or on the date that we provide you with the Documents whichever is earlier. We agree to provide the Documents to you after they have come into our possession.

No term of this indemnity is intended to, or does, confer a benefit or remedy on any party other than you whether by virtue of the Contracts (Rights of Third Parties) Act 1999 or howsoever.

This indemnity shall be governed by and construed in accordance with the law governing the Agreement, and any disputes resolved in accordance with the dispute resolution mechanism set out in the Agreement.

Signed by:

Title:

of: ADNOC