



### SCE Terms and Conditions for Bulk Shipment by Barge and Vessel

Where necessary, Seller will furnish Buyer with Safety Data Sheets (“SDS”), which include health, safety, security and environment (“HSSE”) information on Product consistent with regulatory requirements. Buyer will comply with all applicable Laws concerning the availability and use of the Product SDS and Buyer will disseminate appropriate HSSE information to all persons (including but not limited to Buyer’s employees, contractors and customers) as required by applicable law or which Buyer foresees may be exposed to Product. When Buyer further processes, mixes or incorporates the Product into another material, resells, exchanges and/or transfers or otherwise deals with the Product, Buyer agrees to develop and use its own branded SDS and certificates of analysis consistent with the regulatory requirements of the jurisdiction(s) in which Buyer markets the Product, and Buyer shall not use any of Shell’s trademarks, the Shell name, Shell contact numbers and emergency numbers or the Shell Branded SDS on the Buyer’s SDS or certificates or analysis for the Product without obtaining the prior express written consent of Seller. Buyer will take reasonable steps to obtain obligations similar to those in this paragraph from its customers to whom it sells the Products.

Seller is a Responsible Care® Company and seeks to promote safe handling of its products throughout the value chain. As such, Seller requires that appropriate minimum controls shall be in place at all loading and discharge locations to protect Seller’s employees and contractors from injury and/or exposure during handling of Product. If the discharge of Product is suspended pursuant to Clause 1.1(d) and/or Clause 3.2(d) of such attached Terms and Conditions, and Buyer does not within 60 days after the commencement of such suspension, remedy the condition of the discharge berths and/or associated facilities such that they become, in Seller’s reasonable opinion, safe and fit for handling deliveries under this Contract, Seller shall have the right to terminate this Contract with immediate effect by giving a written termination notice to Buyer.

**These Terms and Conditions for Bulk Shipments by Barge or Vessel (“Terms and Conditions”) form an integral part of the Contract and, unless otherwise specifically provided herein, applicable provisions of the Contract shall be deemed included in this attachment. Any terms used in this attachment, which are defined in the Contract, are intended to have the same meaning when used in this attachment. “Vessel” as used in these Terms and Conditions may mean any tow, or oceangoing barge, or may mean any oceangoing or intercoastal self-powered vessel, whichever is appropriate. The term “tow” means any combination of boats or oceangoing barges with the ability to function as a single unit. “Barge” as used in these Terms and Conditions may mean any inland waterway barge.**

#### Part. A. Terms and Conditions for Bulk Shipments by Vessel

##### Nomination Procedure.

##### 1.1. Nomination of Port and Berth.

1.1.(a.) **Information Regarding Berths.** If Buyer and Seller have not specified such details in the Contract, as far in advance as may reasonably be accomplished, a Party receiving a vessel arranged by the other Party shall advise such other Party of the port, and name and exact location of the berth or anchorage to which the vessel should be directed for loading or discharge. The Party receiving a vessel will also advise of (i) limitations of the berth, including maximum beam, overall length, maximum draft, and summer deadweight; (ii) any controlling regulation; and (iii) any other details the Party arranging the vessel may from time to time reasonably require.

1.1.(b.) **Changes in Information.** A Party receiving a vessel arranged by the other Party shall advise the arranging Party immediately if during the course of the Contract there are any material changes to the details of the port, berth or anchorage. Seller and Buyer will confer promptly to implement reasonable measures required by such changes to avoid disruption in loading or unloading and to avoid additional freight or other charges. However, if such changes to the details of the port and berth or anchorage result in additional freight, costs for change or replacement of existing charters or other charges, the Party making such changes will be responsible for payment or reimbursement of all such freight, costs and charges.

1.1.(c.) **Condition of Port/Berth.** Buyer and Seller will undertake reasonable efforts to confirm that the cargo loading/receiving facilities nominated comply with all applicable local, national and international regulations and laws concerning the safe receipt and handling of the cargo, and do not present a hazard to the vessel, its crew or the environment, including but not limited to compliance with the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78).

1.1.(d.) **Discontinuance of Use of Berth.** Any provision of the Contract or these Terms and Conditions notwithstanding, if the vessel owner, its master or the Party arranging the vessel reasonably conclude that loading/discharge berths and associated facilities are unsafe or unfit for handling of the cargo, then such obligations may be suspended without penalty and both Parties shall reasonably cooperate with each other and persons involved to remedy any such conditions so as to allow resumption of performance.

##### 1.2. Chartering and Nomination of Vessels.

1.2.(a.) **Nomination of Vessel.** As soon as it may reasonably be available, a Party arranging a vessel will advise the other Party of the latest Estimated Time of Arrival (“ETA”) at the loading or discharge port, and the laytime allowance at each port and demurrage rate as per the performing vessel.

1.2.(b.) **Information in Vessel Nomination.** To the extent applicable, the Party arranging the vessel shall include in the vessel nomination (i) the vessel’s name (including last two previous names, if any), flag and crew

nationality; (ii) the vessel's capacity; (iii) the vessel's length, beam and draft; (iv) the loading date range (which shall unless otherwise agreed, comprise a range of five (5) days for coastal movements and ten (10) days for ocean-going vessel); (v) the vessel's agent and protection and indemnity club representative in the port of loading and discharge, as applicable; (vi) confirmation of the type, quantity and quality of cargo expected from Seller to be offered for loading; (vii) details of last three previous cargoes carried; (viii) the laytime allowance and rate of demurrage as per the performing vessel; (ix) the charter Party form under which the vessel has been fixed, if requested by the other Party; and (x) amount of in-transit cargo on board, if any.

**1.2.(c.) Demurrage and Laytime on Vessels Nominated.** If division of laytime is not otherwise specified for any nomination, total time allowed for discharging all cargos shall be one half of total laytime allowed by the performing vessel, and laytime shall be allocated among cargo owners prorata (percentage by volume of the cargo to all cargo loaded or to be loaded on the vessel).

**1.2.(d.) Vessel Security and Safety Requirements** Vessels nominated by a Party shall comply with the requirements of the ISPS Code and, where the vessel may call upon a port within the USA and/or US territories or waters, the MTSA. The vessel shall, when required, submit a Declaration of Security (DOS) to the appropriate persons or authorities prior to arrival at the discharge port. A Party nominating a vessel will provide that the vessel, her master and crew will comply fully with the International Safety Management code and be in possession of a valid Safety Management Certificate. The vessel shall be owned or demise chartered by a member of the International Tanker Owners Pollution Federation Limited (ITOPF). The vessel shall have a full and efficient complement of master, officers and crew certified in accordance with Standards of Training Certification Watchkeeping (STCW) requirements. The vessel shall carry on board a valid certificate of insurance as described in the 1969 Civil Liability Convention for Oil Pollution Damage and the International Convention on Civil Liability for Oil Pollution Damage, 1992. The vessel shall have in place insurance cover for oil pollution no less in scope and amounts than available under the Rules of P&I Clubs entered into the International Group of P&I Clubs.

**1.2.(e.) Acceptance/Rejection of Vessel.** Unless the Party arranging the vessel advises that other time limits are imposed due to operational or chartering constraints, the Party receiving such vessel for loading or discharge shall give notice accepting or rejecting the vessel nomination within two (2) days. The Party receiving the vessel shall not unreasonably reject any vessel nomination. In the case of the receiving Party's reasonable rejection of the vessel, the Party arranging the vessel shall, as soon as practical, nominate and give notice of an alternative vessel and/or date range for arrival of such vessel for prompt acceptance or rejection, and in the event of further reasonable rejection, the Parties shall cooperate to find a reasonable alternative for transport of the cargo.

**1.2.(f.) Changes After Acceptance of Vessel.** If, after acceptance of the vessel nomination, the Party to receive the vessel cancels the shipment or makes any change with respect to (i) the quantity of cargo it will make available for loading or will receive for discharge, as the case may

be, (ii) the dates for loading or receipt of the cargo, and/or (iii) the port or berth of loading or discharge then, in addition to any other remedies, that Party shall be responsible for any additional shipping costs including deadfreight and/or cancellation penalties.

**1.2.(g.) Changes After Nomination.** A Party arranging a vessel may substitute vessels meeting requirements for the shipment, in which case such arranging Party shall promptly advise the other Party. Any such substituted vessel shall be an acceptable vessel and shall arrive at the port with proximate cargo capacity or quantity, as the case may be, within a reasonable time of the ETA of the original vessel considering the circumstances for change to the original vessel nomination.

**1.3. Additional War Risk Premiums.**

**1.3.(a.)** Where Seller has arranged the vessel, Buyer shall pay its prorata share of any additional war risk insurance premiums and/or crew war bonus where, after the effective date of the Contract the London insurance market declares a war risk zone and such additional expenses are charged by vessel owner due to the vessel transiting the war risk zone in order to load, transport or discharge the Product bought or sold pursuant to the Contract. The prorata share shall be determined by Buyer's percentage of all cargos that necessitate transit through the war risk zone for loading, transport or discharge. Any discount or rebate refunded to Seller on such premium for whatever reason shall be passed on to Buyer.

**1.3.(b.)** If the vessel is loading or discharging for others within the war risk zone, or transiting a war risk zone for others (i.e. such transit is not required for Buyer's cargo), Buyer shall not be liable for any additional war risk insurance premium and/or crew war bonus.

**1.4. Delay or Rejection of Buyer Arranged Vessel.** Where Buyer is responsible for arranging the vessel, as soon as it is reasonably concluded that the vessel will not arrive ready for loading by the last day of the previously agreed loading date range, Buyer shall offer to extend the loading date range suitably under the circumstances or to cancel the vessel nomination and nominate a substitute vessel or voyage. Buyer's extended date range or substitute vessel nomination will be subject to Seller's acceptance. Following reasonable rejection of a vessel by the load port or berth authorities or by Seller or the terminal for failure to comply with the safety and operational requirements, Seller shall not be obliged—until such conditions are remedied—to deliver under the Contract that quantity of cargo which could not be loaded because of such noncompliance.

**1.5. Notification of Incidents.** Should vessels involved in delivery of Product bought or sold pursuant to the Contract be involved in a marine incident including collision (with other ships, jetties, buoys, etc.), fire or explosion, grounding, spillage, storm damage, pollution or threatened pollution or any marine incident with loss of life or injury the Parties will promptly each advise the other as to information known about the incident. Parties advising any Shell affiliate shall do so by immediately emailing Shell Casualty London (email address "[Casualtyalert@Shell.com](mailto:Casualtyalert@Shell.com)") commencing with the words "Casualty Distribution" or by telephoning +44-207-934-7777. The text of the message should include (if known):

(i) type of casualty/incident; e.g., fire, explosion, collision, grounding, chemical or oil spill etc.; (ii) the date and geographical location of the incident; (iii) the name of the charterers of the vessel; (iv) the extent of the personal injuries/death; (v) estimate of damage to ship(s)/shore facilities; (vi) estimate of the cargo lost or damaged and a definition of the product or products involved; (vii) telephone number of a contact within the other Parties' and vessel owner's organization with whom Shell can respond/follow up; (viii) time and origin of the message. In the event that not all of the above information is immediately to hand, notification should not be withheld but should be dispatched immediately on the understanding that the balance of the information will be forthcoming immediately when available. Urgent Shell product related medical advice may be obtained by calling +31 70 377 6666. If this is necessary, the above procedures should still be followed. For avoidance of doubt, the above notification in no way absolves either Party from the requirement to notify appropriate authorities as their responsibility to do so may apply under law.

1.6. **Incident Response and Liability.** If a Party has arranged for charter of a vessel but does not bear risk of loss for the Product, then in the event of casualty, breakdown, accident, danger, damage or disaster at port or in transit losses are incurred, actions taken or sacrifices made which are necessary for completion of the voyage or salvage of the vessel or rescue of the crew, the Party with risk of loss shall be responsible for all costs payable or owed by the cargo interests on the vessel, and no such liability shall shift to charterer whether or not the loss or liability may be due to the negligence of the master of the vessel or her crew or other causes. If, in response to an emergency situation, the vessel or vessel owner contacts the charterer for instructions as to the cargo or actions to be taken in response, rescue or salvage, the charterer will undertake reasonable efforts to consult with and obtain concurrence from the Party bearing risk of loss of the cargo in responses taken or made. However, the charterer shall thereafter be able to make decisions reasonably required in response and the Party with risk of loss shall reimburse the cost of such actions and indemnify the charterer for any and all liabilities, expenses, losses or damages attributable to the cargo owner's interest which might reasonably arise therefrom. In no event shall the Party with risk of loss of the cargo raise as a defence to a claim for reimbursement that in undertaking or performing such measures, charterer (or those responding on charterer's behalf) acted as a volunteer.

## **Section 2. Conditions for Loading and Discharge of the Cargo.**

2.1. **Circumstances at Berth for Loading and Discharge.** Seller shall load (except where applicable Incoterms provide for delivery at vessel side) and Buyer shall accept discharge of (except under Incoterms that provide for Seller to incur expense of unloading) the cargo at no expense to the other Party at the berth and port arranged as provided in these Terms and Conditions and under circumstances where the nominated vessel can safely reach the berth, lie, load/discharge and leave, always safely afloat. All dues and port costs relating to the vessel (including but not limited to agency fees) and/or shifting berth (unless such shift is solely for purposes of the Party receiving the vessel) shall be the responsibility of the Party arranging the vessel.

2.2. **Responsibilities for Loading and Unloading.** The Party with responsibility for loading and/or unloading shall promptly arrange for each vessel to be loaded or discharged continuously and as expeditiously as possible. At all times when needed, the Party with such responsibility shall furnish or have furnished in good working order and in compliance with applicable requirements all flexible hoses, connections, pipelines, shoreside storage tankage and other accommodation for loading or discharge of the vessel. Certificates of fitness or test reports demonstrating sufficiency of the equipment shall be provided to the other Party or its designated inspectors upon request.

### **2.3. No Warranty of Discharge Date.**

2.3.(a.) Except where the Contract or Incoterms specified in the Contract provide otherwise, dates for discharge of the cargo, range of dates or fact of delivery are not provided in the form of a warranty, notwithstanding any vessel nomination or other communication by Seller specifying an arrival date, discharge date or other information related to cargo arrival and discharge.

2.3.(b.) Agreements and communications concerning the range of dates for arrival and laytime of vessels are offered for purposes of determining the Parties' liability, if any, for demurrage. No such agreements and communications shall confer to a Party rights or remedies or establish any breach of an obligation to supply or buy goods or products. The Parties' obligations to supply and buy such goods or products and its limitations of liability associated with it shall instead be as set forth and limited by the Contract.

### **2.4. Calculation of Laytime/Demurrage.**

2.4.(a.) In determination of allowed laytime, the number of running hours for loading/discharge equipment specified in the Contract or in the nomination of the vessel shall be allowed to each Party for loading and discharge and all other purposes. After commencement, all calendar days shall be included in calculation of laytime, including but not limited to Saturdays, Sundays and public holidays.

2.4.(b.) Laytime shall commence when notice of the vessel's readiness for loading or discharge ("Notice of Readiness") has been tendered to the Party receiving the vessel or his representative by the master of the vessel or his representative, confirming that the vessel is in all respects ready to load or unload the nominated cargo. A Notice of Readiness may be issued at any time of day or night, whether or not the berth is ready and available, and whether or not any free pratique or other port/customs requirements have been obtained. If a 6-Hour or other Notice of Readiness allowance has been made in the charter with the vessel owner, laytime shall commence upon expiration of such period or when the vessel is fully moored, whichever is earlier. A Notice of Readiness may be tendered at any time after the vessel has arrived within the customary anchorage or waiting place of the port, or if the vessel moves directly to the berth, when the vessel is securely moored to the berth.

2.4.(c.) If an agreement exists for ship-to-ship transfer of the cargo to or from a vessel directly to or from one or more vessels in the same port or place, and such transfer takes place within a port, then the place of transfer shall be treated as the first loading or discharging place

within the port for commencement of laytime or demurrage. If the transfer is accomplished at sea, then all time between the arrival of the vessel at the transfer area until the vessels have separated shall count as laytime or demurrage, as the case may be.

2.4.(d.) Whenever cargo is being loaded or discharged with cargos not subject to the Contract at the same port and the vessel is waiting to berth, then laytime and demurrage shall be apportioned on the basis of the ratio of the tonnage of cargo subject to the Contract to the total tonnage of all such cargoes.

2.4.(e.) Laytime shall cease on completion of loading or discharge of the cargo and disconnection of cargo hoses. It is further provided, however, that if the vessel is delayed after disconnection of the hoses by causes attributable to the Party responsible for such loading or unloading or its agents, laytime shall continue, and if allowable laytime is exceeded, such Party shall be responsible for all demurrage incurred until the delay attributable to that Party or its agents ceases.

2.4.(f.) No event shall suspend the running of time for laytime, or suspend demurrage if allowable laytime is exceeded (including an event of force majeure or similar excuse for non-performance set out in the Contract), except when and to the extent it is established that demurrage is not owed, is reduced or is excused under the charter with the vessel owner.

2.5. **Shifting.** A vessel may be required to shift from the original loading or discharging berth then back to the same or a different berth, provided the Party requesting the shift first obtains the written consent of the Party arranging the vessel (if different from the Party requiring such shift) and the master of the vessel agrees that such shift will not compromise the safety of the vessel, the crew or the cargo aboard his vessel. Consent of the Party arranging the vessel shall not be unreasonably withheld. The Party requiring such shift shall be responsible for all additional expenses incurred. Time spent will count as laytime, and if allowable laytime is exceeded, the Party requiring such shift shall be responsible for all demurrage incurred.

2.6. **Tank Washing.** If washing is performed by requirement of MARPOL 73/78 or compliance with any other laws or is performed as a requirement of a Party or any competent authority, additional time for washing and for discharge of resulting liquids and waste materials shall be included in calculation of laytime and, if allowable laytime is exceeded, then the Party with responsibility for loading or unloading at such berth shall be responsible for all demurrage incurred therefor. All such liquids and waste products shall, as between Buyer and Seller, be the responsibility of Buyer at the discharging facility, with full responsibility and title to the liquids and waste products. A Party receiving such liquids and waste products agrees to handle and dispose of all such liquids and waste products properly and in a manner that fully complies with all applicable laws.

2.7. **Payment of Demurrage.** The charterer shall have 120 days after completion of discharge to make a claim for demurrage due to the other Party exceeding its nominated allowable laytime. Within thirty (30) days of demand for demurrage, the other Party shall pay the charterer the full rate for demurrage specified in the charterers nomination. Where the charter with the vessel

owner allows for demurrage to be reduced for events including, but not limited to, (i) fire or explosion not due to negligence of Buyer or receiver, (ii) acts of God, (iii) acts of war, (iv) riots or civil commotion, (v) strikes, or (vi) arrest or restraint by governments, the other Party shall pay only the reduced amount. Liability as provided herein is absolute except as provided in these Terms and Conditions, and shall not be reduced by any liability allocation provisions found in the Contract.

## **Part. B. Terms and Conditions for Bulk Shipments by Barge**

### **Section 3. Nomination Procedure.**

#### **3.1. Timing and content of Nominations.**

##### **3.1.(a.) Nomination of barge.**

The Party arranging the barge shall advise the other party in writing of nomination(s) of barge(s) for loading no later than 3 working days before the Latest Estimated Time of Arrival ("ETA").

##### **3.1.(b.) Acceptance/Rejection.**

The Party receiving the barge shall give notice accepting or rejecting the barge nomination within three (3) working hours of receipt of the properly transmitted nomination. In the case of reasonable rejection of the barge nominated, the other Party shall, as soon as practically possible, give notice of an alternative barge and/or loading date for prompt acceptance or rejection by the Party, not arranging the barge, and in the event of further reasonable rejection, both Parties shall cooperate to find a reasonable alternative for transportation of the cargo. The Party receiving the barge shall not, however, be obliged to accept any nomination, which at the time of acceptance would probably cause such Party to incur demurrage at the loading and or discharge port.

##### **3.1.(c.) Information in Nomination.**

The Party arranging the barge shall include in the nomination of the barge (i) the barge's name, the official European number, the port of loading and or discharge; (ii) the full identity of the carrier; (iii) confirmation of product, quantity, allowed deviation from this quantity and quality of cargo expected from Seller to be offered for delivery; (iv) details of last previous cargo carried; (v) the laytime allowance and rate of demurrage as per the performing barge; (vii) confirmation that the offered barge is EBIS (European Barge Inspection Scheme) inspected, and (viii) required presence of named independent surveyor and activities.

##### **3.1.(d.) Laytime and demurrage on nomination.**

Unless otherwise agreed in writing, time allowed for loading and or discharge of all cargoes shall not be less than one half of total laytime allowed as per the performing barge. Unless otherwise agreed in writing, total laytime allowed for loading and or discharge of all cargoes at a single port/berth shall not be less than 12 hours. The rate of demurrage in any nomination shall not exceed the rate applicable to the type and capacity employed under normal market conditions unless the parties otherwise agree in writing and when applicable, shall not exceed any amount which may have been specified in the Contract.

##### **3.1.(e.) Substitution of Barge.**

Until one (1) working day prior to loading the Party arranging the barge may, or if necessary to perform its obligations hereunder, must, with prior notification to the other Party and such other Party's prior agreement, substitute the nominated barge with another barge which is similar in all material respects and meets all the criteria and conditions in these Terms and Conditions, provided the substitute barge must present itself for loading at the port within the agreed loading date.

### 3.2. **Nomination of Port and Berth.**

#### 3.2.(a.) **Information Regarding Port and Berth.**

Prior to the nomination of barges to be used for transportation of the cargo, the Party arranging a barge shall obtain information from the Party receiving a barge as to the limitations of the loading/discharge berth, including maximum beam, length overall, maximum draft, manifold position and any controlling regulations. The Party arranging the barge shall nominate a barge not inconsistent with any limitations of the loading and or discharge berth.

#### 3.2.(b.) **Changes in information.**

A Party receiving a barge arranged by the other Party shall advise the arranging Party immediately if during the course of the Contract there are any material changes to the details of the port, berth or anchorage. Seller and Buyer shall promptly confer to implement reasonable measures required by such changes to avoid disruption in loading and unloading and to avoid additional freight and other charges. However, if such changes to the details of the port and berth or anchorage result in additional freight, costs for change or replacement of existing charters or other charges, the Party making such changes will be responsible for payment or reimbursement of all such freight, costs and charges.

#### 3.2.(c.) **Requirements Concerning the Loading and Receiving Port.**

Buyer and Seller will undertake reasonable efforts to confirm that the cargo loading/receiving facilities nominated comply with all local, national and applicable international regulations and laws concerning the safe delivery and handling of the cargo (including chapter 1.10 ADNR), and do not present a hazard to the barge, its crew or the environment.

#### 3.2.(d.) **Discontinuance of Use of Berth.**

Any provision of the Contract or these Terms and Conditions notwithstanding, if the barge owner, its master or the Party arranging the barge reasonably conclude that loading/discharge berths and associated facilities are unsafe or unfit for handling of the cargo, then such obligations may be suspended without penalty and both Parties shall reasonably cooperate with each other and persons involved to remedy any such conditions so as to allow resumption of performance.

### 3.3. **Chartering and Nomination of Barges.**

#### 3.3.(a.) **Barge(s) requirements.**

A Party arranging a barge shall ensure that its nominated barge shall at all times (including in particular at the time of loading and or discharge) comply with the following conditions: EBIS and all applicable laws (including chapter 1.10 ADNR), rules, safety and other regulations

and directions of governmental, local and port authorities and of the loading and or receiving terminal and shall conform in all respects to all relevant trade and international regulations. The barge shall have double hull, machinery, tanks, equipment and facilities which are in good working order and condition, in every way fit for the services required and fit to load, carry and discharge the cargo specified. The barge shall have a crew, certified in accordance with European standards. For barges loading two or more cargoes sold by Seller to Buyer (whether different products, different specifications or different grades requiring fully segregated stowage, including vapour phase), the barge shall be capable of loading and discharging the cargoes concurrently.

#### 3.3.(b.) **Remedies at Loading Port.**

**Seller and/or loading terminal shall have the right to reject or refuse to their berth any barge before or after acceptance of its nomination and may refuse to load or continue to load the barge within the scheduled loading, without liability or cost whatsoever, provided Seller or the terminal, at their discretion, determine that the acceptance of the barge or the continuance of loading will jeopardize the safety and/or disrupt the normal operation of the loading terminal or is not otherwise suitable for loading the cargo, or that the barge does not meet any of the requirements set out above.**

### Section 4. **Conditions for Loading and discharge.**

4.1.(a.) **Circumstances at Berth for Loading and Discharge.** Seller shall load (except where applicable Incoterms provide for delivery at the barge's side) and Buyer shall accept discharge of (except under Incoterms that provide for Seller to incur expense of unloading) the cargo at no expense to the other Party at the berth and port arranged as provided in these Terms and Conditions and under circumstances where the nominated barge can safely reach the berth, lie, load/discharge and leave, always safely afloat. All dues and port costs relating to the barge and/or shifting berth (unless such shift is solely for the purpose of the Party receiving the barge) shall be the responsibility of the Party arranging the Barge. After loading has been completed, Seller will notify Buyer of the actual quantity loaded. Where Seller arranged the barge, Seller shall also advise of any revision to the E.T.A. at the discharge port.

4.1.(b.) **Responsibilities for Loading and Unloading.** The party with responsibility for loading and/or unloading shall promptly arrange for each barge to be loaded or discharged continuously and as expeditiously as possible. At all times, when needed, the Party with such responsibility shall furnish or have furnished in good working order and in compliance with applicable requirements all flexible hoses, connections, pipelines, shoreside storage tankage and other accommodation for loading or discharge of the barge. Appropriate certificates or test reports demonstrating sufficiency of the equipment shall be provided to the other Party or its designated inspectors upon request

#### 4.2. **Calculation of Laytime**

4.2.(a.) **Commencement of Laytime**  
Notwithstanding article 4.2.(b) in the event of loading or discharge of Product out of or into a production site



terminal facility, laytime shall start, except as otherwise agreed, after the barge is securely moored alongside loading/discharge berth and load/discharge readiness is agreed between captain of the barge, surveyor (if present) and the terminal. If on arrival of the barge the loading or discharge berth is occupied however, laytime will start from arrival time of the barge at the load or discharge port. If barge arrives before the agreed loading date (as agreed in the valid nomination), laytime will start on the agreed loading date or upon commencement of loading whichever is the earliest. If barge arrives after the agreed loading date as agreed in the valid nomination, laytime will start at commencement of loading.

4.2.(b.) **Public Terminal Clause.** If the loading/discharge of the Product is made out of or into a third party storage facility where loading or discharge of the Product is carried out on a first come first serve basis, subject to dock availability as determined by the facility, laytime shall not commence before the barge is all fast in all respect and securely moored alongside the load/discharge berth / dock.

4.2.(c.) **Calculation of Laytime** In determination of the allowed laytime, the number of running hours for loading/discharge equipment specified in the Contract or in the nomination of the barge shall be allowed to each Party for loading and discharge and all other purposes. After commencement, all calendar days shall be included in calculation of laytime, including but not limited to Saturdays, Sundays and public holidays.

4.2.(d.) **Conclusion of Laytime.** Laytime shall cease on completion of loading or discharge of the cargo, including stripping of the cargo tank in accordance with the Cargo Waste Handling regulation (Scheepsafvalstoffenbesluit) where appropriate, and disconnection of the cargo hoses. It is further provided, however, that if the barge is delayed after disconnection of the hoses by causes attributable to the Party responsible for such loading or unloading or its agents, laytime shall continue, and if allowable laytime is exceeded, such Party shall be responsible for all demurrage incurred until the delay attributable to that Party or its agents ceases.

4.2.(e.) **Time Excluded from Laytime.**

In any circumstance and any provision of Seller's or Buyer's transport agreement for the barge notwithstanding, time shall not count against laytime or, if the barge is on demurrage, for demurrage when time is spent or lost:

4.2.(e).(i.) by any delay due to fault, failure or inefficiency of the barge or loading or discharge is delayed or prevented for reasons attributable to Buyer or the owner, operator, or crew of the barge;

4.2.(e).(ii.) as a result of strike, lock out, stoppage or restraint of labour;

4.2.(e).(iii.) due to emergency shutdown of loading terminal machinery;

4.2.(e).(iv.) as a result of delay to the barge getting into berth after commencement of laytime for any reason over which neither Seller of Buyer nor the loading or receiving terminal has control;

4.2.(e).(v.) due to any action taken by the independent surveyor appointed under these Terms and Conditions or

the Contract (including, but not limited to, the inspection of barge's tanks)

4.2.(e).(vi.) due to any action taken by Seller at the Buyer's or Buyer's representative's request, if such action results in demurrage;

4.2.(e).(vii.) due to any action taken by barge crew in unloading and calculation of vessel's loaded figures;

4.2.(e).(viii.) due to the barge being prevented from reaching the berth by reason of bad weather; or

4.2.(e).(ix.) due to an event included as an Event of Force Majeure by the Contract.

4.3. **Transport document.**

As per CMNI/ADNR regulations, the Party arranging the barge shall always be responsible for the proper issuance of transport documentation and accompanying documents, such as permits, licences, notifications, certificates in line with the ADNR regulations. The Party arranging the barge shall ensure that it is mentioned as shipper/consignor in the transport document and shall indemnify the Party receiving a barge for all damages and costs which arise from the fact that the Party receiving a barge is incorrectly mentioned as shipper on the transport document. Upon loading, Seller shall provide the carrier with a copy of the Safety Data Sheet (SDS) and any other relevant information relating to health, safety and environment, related with the Product. In case of FOB shipment: Seller will provide the carrier a FOB receipt after loading to be signed by captain of the barge. Buyer shall provide the carrier with instructions to enable issuance of the transport document.

4.4. **No Warranty of Discharge Date.**

4.4.(a.) Except where the Contract or Incoterms specified in the Contract provide otherwise, dates for discharge of the cargo, range of dates or fact of delivery are not provided in the form of a warranty, notwithstanding any barge nomination or other communication by Seller specifying an arrival date, discharge date or other information related to cargo arrival and discharge

4.4.(b.) Agreements and communications concerning the E.T.A. and laytime of the barges are offered for purposes of determining the Parties' liability, if any, for demurrage. No such agreements and communications shall confer to a Party rights or remedies or establish any breach of an obligation to supply or buy goods or products. The Parties obligations to supply and buy such goods or products and its limitations of liability associated with it shall instead be as set forth and limited by the Contract. Regardless of cause, where in the course of delivery of a cargo for Buyer, Seller may be exposed to barge owner's claim for demurrage, which exceeds Seller's limitation of liability contained within the Contract for the sale of the products, Buyer shall be responsible for such additional demurrage, in addition to any liability Buyer would otherwise have.

4.5. **Late Arrival or Failure to Arrive.** In the event a barge nominated by Buyer and accepted in accordance with these Terms and Conditions fails to arrive at the loading port before the expiration of the nominated loading date range, then Seller shall have the option of deeming such barge to have been withdrawn by Buyer.

4.6. In the event of (i) withdrawal of any barge by Buyer prior to or on arrival of any barge at the loading port without timely substitution of another barge, (ii) arrival of the barge arranged by Buyer after the agreed loading date, or (iii) rejection of a barge arranged by Buyer by the load port, berth authorities, Seller or the terminal for failure to comply with the safety and operational requirements, Seller shall not be obliged to load and or deliver under the Contract that quantity of cargoes. Notwithstanding the provisions of the Contract, Buyer shall indemnify Seller in such circumstances for any and all liabilities, expenses, losses or damages (including but not limited to storage costs of cargoes and associated losses and expenses) and all costs and penalties in associated charters with barge owners or contracts with suppliers of the cargo or the terminal operators, if any.

#### 4.7. Calculation of Laytime and demurrage

##### 4.7.(a.) Exceptions to Reimbursement of Demurrage

4.7.(a).(i.) No demurrage shall be owed by Party except to the extent laytime used exceeds such Party's pro rata (percentage by volume of Seller's cargo to all cargo loaded on the barge) share of laytime allowed for loading or discharge.

4.7.(a).(ii.) No demurrage shall be payable by Party to the extent delay is due to fault or failure of the barge or loading or discharge is suspended for barge's purposes.

4.7.(a).(iii.) If a Party's obligation is not otherwise excused by these Terms and Conditions, and demurrage is incurred due to a Force Majeure Event as described in the Contract, the rate of demurrage shall not exceed 50% per running day or pro-rata for part of a running day for such demurrage or part that would otherwise be owed by such Party.

4.7.(a).(iv.) If a claim for demurrage arises from the loading or discharge of cargo purchased by Buyer from Seller where the barge was also loaded or discharged or was to be loaded or discharged with other cargo(es) at the same berth and such other cargo(es) was/were not purchased by Buyer from Seller, a Party's liability for demurrage under the foregoing provisions shall be limited to that proportion of the total demurrage due equal to the ratio of the cargo purchased by Buyer from Seller to the total quantity of cargo loaded or discharged on the barge at the berth or that demurrage incurred while actually loading or discharging cargo(es) supplied by Seller from the time the cargo hose was connected to the time the cargo hose was disconnected, whichever is less.

4.7.(b.) **Rate of Demurrage.** Unless further limited by these Terms and Conditions, demurrage shall be payable at the lesser of the rate specified in the Contract or as agreed under the barge nomination procedure, or as specified in charter with the performing barge owner, per day or pro-rata for part of a day for all time taken to load or discharge exceeding the allowed laytime and which under the provisions of the Contract counts as laytime or for demurrage. A Party shall not in any circumstance be obligated to reimburse demurrage in an amount exceeding the amount such Party is obliged to pay to the barge under the applicable transport agreement. Notwithstanding any obligation of a Party to pay demurrage for delays to the barge, such Party shall not be obliged to reimburse any, or,

as applicable, that portion of demurrage that is excluded or limited by these Terms and Conditions.

4.7.(c.) **Timing of Demurrage Claims.** A Party shall in no event be liable for demurrage unless notice of demurrage claim has been received by the other Party in writing, within thirty (30) days from completion of discharge; and unless reasonable details of such claim, with specific facts and supported by the necessary documentation upon which the claim is based (which shall include loading and or discharge terminal's timesheet jointly signed by barge's and loading or discharge terminal's officers is received by the other Party.

##### 4.7.(d.) Payment of Claims.

Valid claims for demurrage shall be paid by the relevant Party within thirty (30) days of the other Party's presentation of an invoice therefore and shall be paid in Euros to such other Party's nominated bank account or in such other manner as may be agreed between Parties.

#### 4.8. Incident Response and Liability.

If a party has arranged for charter of a barge but does not bear risk of loss for the product, then in the event of casualty, breakdown, accident, danger, damage or disaster at port or in transit, losses are incurred, actions taken or sacrifices made, which are necessary for completion of the voyage or salvage of the barge or rescue of the crew, the party with risk of loss shall be responsible for all costs payable or owed by the cargo interests of the barge, and no such liability shall shift to charterer whether or not the loss or liability may be due to the negligence of the master of the vessel or her crew or other causes. If, in response to an emergency situation the barge, the carrier contacts the charterer for instructions as to the cargo or actions to be taken in response, rescue or salvage, the charterer will undertake reasonable efforts to consult with and obtain concurrence from the party bearing risk of loss of the cargo in responses taken or made. However, the charterer shall thereafter be able to make decisions reasonably required in response and the party with risk of loss shall reimburse the cost of such actions and indemnify the charterer for any and all liabilities, expenses, losses or damages attributable to the cargo owner's interest which might reasonably arise therefrom. In no event shall the party with risk of loss of the cargo raise as a defence to a claim for reimbursement that in undertaking or performing such measures, charterer (or those responding on charterer's behalf) acted as a volunteer.

#### 4.9. CNMI convention.

The CMNI Convention rules "*Convention de Boudapest Relative au Contract de Transport de Marchandises en Navigation Intérieure*" accredited by the CCR at Budapest on the 3rd October 2000 including all their later amendments shall form an integral part of these Terms and Conditions, whether the carriage is national or international.

#### 4.10. Cargo waste handling (C.D.N.I.) (Scheepsafvalstoffenbesluit).

Where appropriate, discharge installation will allow barge to strip cargo tanks empty and receive this quantity of product on shore. After discharge, both the discharge installation as well as the barge will issue a discharge certificate in duplicate. **Low water Level.**

Relevant official Pegels along the river stipulate the maximum quantity, which can be loaded between load- and discharge ports. In case the quantity ordered for cannot be loaded due to the above, it is well understood by both Seller as well as Buyer, that this condition is considered to be a Force Majeure situation. Best solution possible to be agreed between Seller and Buyer.

4.11. **Ice Clause.**

National authorities issue (if applicable) daily reports about navigability on rivers, canals and other waterways during winter (icy) conditions. These reports show the (im)possibility to navigate through the various waterways. In case the route from load- to disport is reported to be blocked due to ice formation in such a daily report, this condition is considered to be a Force Majeure situation. Best possible solution to be agreed between Seller and Buyer.