

**SIBUR INTERNATIONAL GMBH  
GENERAL TERMS AND CONDITIONS**

These General Terms and Conditions (hereinafter referred to as “GTC”) shall constitute an integral part of any Contract executed between SIBUR International GmbH and the Buyer. The GTC may be amended, revised, restated or supplemented by SIBUR International GmbH from time to time. The last version of the GTC is available at [www.sibur-int.com](http://www.sibur-int.com).

**PARAGRAPH I  
TERMS AND DEFINITIONS**

The following terms when used in the GTC with initial capital letters shall have the respective meanings as defined below:

“**Actual Contract Quantity**” shall mean the quantity of the Goods delivered by the Seller to the Buyer under the Contract.

“**Actual Monthly Quantity**” shall mean the quantity of the Goods delivered by the Seller to the Buyer under the Contract within the respective month of delivery.

“**Affiliate**” shall mean any person or entity that directly or indirectly controls, is controlled by, or is under the common Control of the Seller or the Buyer. “Control” shall mean direct or indirect beneficial ownership of more than fifty per cent (50%) of the authorized share capital which provide voting rights or other voting interests in the entity in question.

“**Anti-Competitive Behaviour**” shall mean any communication (by any means, whether electronic, written, verbal or otherwise), agreement (by any means, whether formal, informal, contractual, non-contractual, written or verbal) or other form of coordination or cooperation with any other competitor (whether past, present or potential) that is unlawful or otherwise restricted or prohibited under applicable competition laws and regulations.

“**Anti-Corruption Laws**” shall mean all applicable anti-bribery or anti-money laundering legislation of any government, including without limitation, the U.S. Foreign Corrupt Practices Act, the UK Bribery Act 2010, the U.K. Anti-Terrorism, Crime and Security Act 2001, the Money Laundering Regulation 1993 and the Proceeds of Crime Act 2002 and the applicable country legislation implementing the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions or such other relevant laws of any other country in which business will be conducted (as the case may be).

“**Applicable Authority**” shall mean (i) any supranational organization or any state or political subdivision thereof, (ii) any entity, authority or body exercising executive, legislative, judicial, regulatory or administrative functions on behalf of the supranational organization, the state or its political subdivision, including without limitation any supranational authority, government authority, ministry, agency, department, board, commission or instrumentality and subdivisions thereof, (iii) any court, tribunal or arbitrator and (iv) any self-regulatory organization acting on behalf of the state or itself pursuant to the rights granted thereto by applicable Law.

“**Business Day**” or “**Working Day**” or “**Banking Day**” or “**Bank Day**” shall mean any day other than Saturday, Sunday or any public holiday on which banks in Moscow (Russian Federation), Vienna (Austria), New York (USA), London (England), and the country of the Goods delivery are open for business.

“**Buyer**” shall mean a Party buying the Goods as specified in the Contract.

“**Carrier**” shall mean any person or company contracted by the Buyer or by the Seller as the case may be to undertake to perform or to procure the performance of a contract of carriage by rail, road, sea or a combination thereof as may be applicable to the terms of delivery.

“**Certificate of Origin**” shall mean the document issued by the Seller or the Manufacturer or a chamber of commerce or other agreed third party (as the case may be) specifying the country where the Goods are actually produced.

“**Certificate of Quality**” shall mean the document issued by the Seller in respect of the Goods confirming the quality of the Goods in accordance with the Contract.

“**Confidential Information**” shall have the meaning set forth in Clause 4.20.17 of the GTC.

“**Consent**” shall mean any consent, approval, authorization, waiver, permit, grant, franchise, concession, agreement, license, certificate, exemption, order, registration, declaration, filing, report or notice of, with or to any person (and the person for this purpose shall mean any natural person, firm, partnership, association, corporation, company, limited liability company, trust, joint stock company, business trust, Governmental Authority or other organization or entity).

“**Contract**” shall mean any contractual arrangement relating to the supply of the Goods to the Buyer by the Seller.

“**Delivery Date**” shall mean the moment when the Goods are deemed delivered to the Buyer. The Delivery Date shall be specified in the Contract.

“**ETA**” or “**Estimated Time of Arrival**” shall mean estimated time of arrival.

“**Euro**” or “**EUR**” or “**€**” shall mean the official currency of the European Union.

“**Force Majeure Event**” shall have the meaning set forth in Clause 4.19.4 of the GTC.

“**Goods**” shall mean the Goods to be delivered by the Seller to the Buyer as specified in the Contract.

“**Governmental Approval**” shall mean any Consent of or from an Authorized Authority, including without limitation any certificates, licenses or permits issued by an Authorized Authority.

“**GTC**” shall mean the standard terms and conditions of purchase set out in this document.

“**Incoterms**” shall mean the international commercial terms, the official publication by the International Chamber of Commerce No. 715, 2010.

“**Inspector**” shall mean an independent inspector appointed pursuant to the GTC to perform quality and quantity inspection of the Goods.

“**Inspector’s Report**” shall mean any report, conclusion, opinion, certificate or other written document (or combination thereof) issued by the Inspector and reflecting results of the Goods’ quantity and quality inspection as described in greater detail in Clause 4.8.3 of the GTC.

“**Law**” shall mean all applicable (i) provisions of all constitutions, treaties, statutes, laws, customs, codes, rules, regulations, ordinances or orders of any Applicable Authority, (ii) Governmental Approvals including without limitation any consent, approval, authorization, waiver, permit, grant, franchise, concession, agreement, license, certificate, exemption, order, permit, registration, declaration, filing, report or notice of or from an Applicable Authority and (iii) orders, decisions, injunctions, judgments, awards and decrees of any Applicable Authority.

“**Letter of Credit**” or “**Stand-by Letter of Credit**” shall have the meanings set forth in the Uniform Customs and Practice for Documentary Credits, 2007 Revision, ICC Publication No. 600 (UCP).

“**Manufacturer**” shall mean the plant by which the Goods are produced.

“**MT**” shall mean metric tonne (i.e. 1,000 kilograms).

“**Nomination**” shall mean the nomination of the Vessel which is to be loaded with the Goods, as would be described in greater detail in the Contract (when applicable).

“**NOR**” shall mean the notice of readiness tendered by the Vessel upon arrival of the Vessel at the Place of Destination (unloading port or customary anchorage or area or such other place as the Vessel may be ordered to await unload), if applicable.

“**Packaging**” shall mean all products made of any materials of any nature to be used for the containment, protection, handling, delivery and presentation of the Goods, including (but not limited to) paper, wooden, plastic and metal boxes, bags, pallets, and not fall within the definition of Transport as specified herein.

“**Party**” and “**Parties**” shall mean parties to the Contract referred to individually and collectively.

“**PDPR**” means per day pro rata.

“**Place of Destination**” shall mean the place the Goods are to be delivered to as specified in the Contract.

“**Place of Shipment**” shall mean the place where the Goods are to be loaded (dispatched), which shall be without limitations (i) the Manufacturer or warehouse or storehouse, (ii) the load port or terminal, or (iii) any other place, whichever is applicable and as may be specified in the Contract.

“**Planned Contract Quantity**” shall mean the quantity of the Goods set forth in the Contract agreed by the Parties to be delivered under the Contract during the terms of the Contract.

“**Planned Monthly Quantity**” shall mean the quantity of the Goods set forth in the Contract agreed by the Parties to be delivered under the Contract in a month.

“**Price**” shall mean the price per metric ton of the Goods at which the Seller sells the Goods to the Buyer as stipulated in the Contract.

“**Quarter**” shall mean the period of the three consecutive months commencing on 1<sup>st</sup> January (“Q I”), or 1<sup>st</sup> April (“Q II”), or 1<sup>st</sup> July (“Q III”), or 1<sup>st</sup> October (“Q IV”).

“**RMB**” or “**Yuan**” or “**CNY**” or “**Renminbi**” shall mean the lawful official currency of the People Republic of China.

“**RUB**” shall mean Russian Rubles, the lawful currency of the Russian Federation.

“**Seller**” shall mean SIBUR International GmbH that sells the Goods under the Contract.

“**Signing Date**” shall have the meaning set forth in the introductory paragraph of the Contract.

“**Specification**” shall mean the specification describing the quality of the Goods agreed by the Parties set forth in the Contract.

“**Transport**” shall mean containers, tank cars, cisterns, other means of transport used for the Goods delivery, transportation, storage, etc.

“**Transport Return Date**” shall mean the period within which the Buyer shall return the Transport (when applicable) and at the address specified in the Contract.

“**Tax**” or “**Taxes**” shall mean all (i) taxes, fees, duties, tariffs, levies, imposts, or other public charges of any kind, including, without limitation, taxes, required contributions or other charges on or with respect to income, franchise, gross receipts, property, sales, use, profits, capital stock, payroll, employment, social security, health insurance fund, pension fund and other social funds, workers compensation and unemployment or related compensation, (ii) taxes or charges in the nature of excise, withholding, ad valorem, stamp, transfer, value added or gains taxes, (iii) license registration or documentation fees, (iv) customs duties, tariffs and similar charges of any kind whatsoever and (v) any interest, penalties, additions to tax or additional amounts imposed by any taxing authority with respect to those items enumerated in clauses (i), (ii), (iii) and (iv) of this definition.

“**Third Party**” shall mean any person or entity other than a Party of the Contract.

“**Total Goods Value**” shall mean the amount, calculated by multiplying the Actual Contract Quantity by the Price.

“**Transport Document**” shall mean a document issued by a Carrier to a shipper, acknowledging that specified the Goods have been received on board as cargo for conveyance to a named Place of Destination as described in greater detail in Clause 2.2.2 of the GTC.

“**USD**” or “**US Dollar**” or “**Dollar**” or “**US\$**” or “**\$**” shall mean United States Dollars, the lawful official currency of the United States of America.

“**Verification Act**” shall mean verification act executed between the Buyer and the Seller and confirming the quantity of and amount paid for delivered the Goods for a particular period and as described in greater detail in Clause 4.5.9 hereof.

“**Vessel**” shall mean the ship contracted by the Buyer or the Seller, as the case may be, for the delivery of the Goods (if applicable).

**PARAGRAPH II**  
**CONDITIONS**

**2.1. Application of the GTC**

- 2.1.1. The GTC shall govern and be incorporated into every Contract.
- 2.1.2. Execution of the Contract by the Buyer shall (without affecting any other manner in which acceptance of the GTC may otherwise be evidenced) be deemed to constitute unqualified acceptance of the GTC.
- 2.1.3. If there is any conflict between the terms of the Contract and the GTC, the Contract shall prevail.
- 2.1.4. The GTC shall apply to the exclusion of, and shall prevail over, any terms or conditions contained in or referred to in the Buyer's acceptance of the Contract, or in any other documentation submitted by the Buyer, or in any correspondence or elsewhere, or implied by trade custom, practice or course of dealing, unless specifically excluded or varied in writing by any authorized representative of the Seller.
- 2.1.5. If, subsequent to any Contract which is subject to the GTC, a Contract is made with the Buyer in any form without reference to any conditions of sale or purchase, the GTC shall apply to the new Contract.

**2.2. Delivery**

**2.2.1. General Delivery Terms**

- a) The delivery shall be in accordance with relevant Incoterms subject to provisions of the Contract and GTC.
- b) The Goods may be delivered by the Seller by sea, railroad, road transport or self-delivered by the Buyer as specified by the Contract. If the means of transport is not specified in the Contract, the Seller may choose a means of transport suitable for delivery of the Goods at the Place of Destination at its own discretion; in such event the Buyer hereby unconditionally accepts the means of transport chosen by the Seller and waives any claims in this regard.
- c) The Seller shall use its reasonable endeavours to deliver the Goods on the date or between the dates (as the case may be) as specified in the Contract, but the time of delivery shall not be of the essence. The Seller shall notify the Buyer immediately if the delivery dates for the Goods cannot be met; in such a case the Parties shall re-schedule in good faith.

**2.2.2. Transport Documents**

- a) Transportation documents shall be:
- Bill of Lading (or "B/L" or "BL" or "BOL") – for delivery by sea;
  - Railway bill (or "RWB" or "Rail way bill" or "CIM consignment note") – for delivery by railroad;
  - CMR (or consignment note) – for delivery by road.
- b) Delivery of the Goods shall be immediately followed and witnessed by presentation by the Seller to the Buyer or Carrier, or the Buyer's representative of a valid transportation document. Such documents shall be signed and marked by the Seller and Carrier of the Goods or by authorized employee / representative of railway Carrier at the place of loading or by Master of the Vessel respectively and shall be a non-disputed proof of delivery by the Seller.
- c) The Buyer warrants that the Place of Destination is (i) reachable by the agreed means of transport and (ii) suitable and equipped, if necessary, for unloading of the Goods.

**2.2.3. Shipping information**

- a) If the Goods' transportation is arranged by the Seller, the Buyer shall submit to the Seller shipping information required for the Goods delivery via facsimile, or by other means agreed upon by the Parties, at least 5 (five) Business Days before the first day of laytime of each shipment.
- b) The shipping information shall include:

- all instructions regarding customary documentation which may be required at the Place of Destination;
  - the identity of the terminal(s) at the Place of Destination, with instructions to enable the Carrier to prepare and submit necessary information to the customs or border authorities; and
  - any other documents requested by the Seller.
- c) Should the Buyer fail to timely submit shipping information, the Seller may, at their sole discretion, choose to extend the time for delivery of the Goods which, if so extended, will not constitute a waiver of the Buyer's breach of the Contract. The Seller shall send the shipping details to the Buyer via facsimile or by other means agreed upon by the Parties within 5 (five) Business Days after shipment of the Goods. The shipping details shall include: transport details/Vessel name, the Goods quantity and ETA at the Place of Shipment or the Place of Destination (whichever is applicable).
- d) Date of shipment shall be the date stamped on the Shipping Document at the departure point.
- e) Any delays in loading the Goods at the Place of Shipment (including circumstances where the Seller is entitled to delay shipment) or in unloading the Goods at the Place of Destination caused by the Buyer's failure to provide any necessary information, or as a result of omissions or inaccuracies in the information provided, will be for the Buyer's account. The Buyer shall indemnify the Seller for all costs, losses and damages, including, but not limited to, demurrage and/or detention incurred by the Seller as a result thereof.

#### **2.2.4. The Seller's right to refuse.**

The Seller is entitled to refuse at any time to undertake or complete the delivery if:

- a) the delivery under an intended or customary route to the Place of Destination becomes unable whatsoever reason beyond the Seller's control;
- b) the cost of the delivery to the Place of Destination (including Taxes) and/or insurance, if applicable, has been significantly increased (more than by 20 (twenty)% within 1 (one) month), which could not be expected by the Seller acting reasonably; and/or
- c) at any time after the Good's loading but before the commencement of the Goods unloading:
  - i. importation of the Goods at the Place of Destination is prohibited under the laws of the country in which such the Goods were produced, or by regulations, rules, directives or guidelines applied by the government of that country or any relevant agency thereof; and/or
  - ii. the country, state, territory or region at which the Place of Destination becomes an embargoed country,
- d) Should the Seller agree to undertake or complete the delivery under an alternative route or at an alternative Place of Destination nominated by the Buyer, that is not subject to any such prohibition and that is acceptable to the Seller (which acceptance shall not be unreasonably withheld), or under changed circumstances as the case may be, the Buyer shall reimburse the Seller for any additional costs and/or expenses incurred by the Seller.

#### **2.2.5. Transfer of risk and title.**

The risk and title to the Goods shall transfer from the Seller to the Buyer at the Delivery Date, unless otherwise provided in the Contract or the GTC. The Parties agree that the transfer of risk, and title to, the Goods is not conditional upon delivery of the Transport Document or any other documentation. Neither the time, method, or place of payment, method of transportation, form of shipping document, manner of consignment nor place of acceptance of the Goods shall alter the foregoing.

#### **2.2.6. Laytime.**

The time allowed to the Buyer for the loading or unloading of the quantity of the Goods deliverable under the Contract shall be as set out in the Contract. If the amount of laytime permitted is not set out in the Contract

laytime shall be 24 (twenty four) hours for the delivery by sea and railroad and 6 (six) hours for the delivery by road respectively or such a lesser period as may be specified in the relevant charterparty, unless otherwise expressly mutually agreed by the Parties in writing. Sundays and Holidays shall be included unless loading on the Sunday or Holiday in question is prohibited by Law or regulation or custom at the unloading terminal. Laytime shall commence: (i) 6 (six) hours after NOR has been tendered (berth or no berth) for each voyage; or when the Vessel is all fast at the berth; whichever is the earlier or (ii) 2 (two) hours after the relevant train or truck has arrived at the Place of Destination. The train will be deemed to have arrived according to the schedule (the exact arrival time, when required, can be evidenced from the records of the relevant train station) and the truck will be deemed to have arrived as of the moment a relevant notice is furnished by the Carrier at the Place of Destination. The Buyer may not refuse to certify the receipt of the notice and if it does so, the Carrier must immediately notify the Buyer thereof and the time of arrival shall be according to the Carrier's records. The Carrier may, but not obliged to, engage a third party to certify the truck's arrival. The Buyer shall pay in full any Carrier's and Seller's expenses and costs related to the Buyer's refusal to certify the notification. For the purpose of calculating laytime, loading and unloading of the Goods shall be deemed to have been completed upon disconnection of the discharging hoses or the loading or unloading of the last portion of the firm cargo.

#### **2.2.7. Demurrage**

- a) Without prejudice to the Contract, these demurrage terms apply to all supplies of the Goods, unless they are specified and/or extended in the provisions of a particular Incoterms term.
- b) If the Goods are not loaded or unloaded (whichever is applicable) by the Party which shall load/unload the Goods (whichever is applicable) within the time allowed in accordance with the laytime provisions of the Contract, such Party shall pay to the other Party demurrage in respect of the excess time at the rate set out in the Contract. Unless otherwise is provided in the Contract or the GTC, a Force Majeure Event shall not interrupt the running of laytime or vary or excuse the obligation to pay demurrage. The Party which shall load/unload the Goods shall indemnify the other Party for all costs for demurrage or detention of RTC / railway wagon(s) or detention of auto truck(s). In order to be indemnified, such demurrage and/or detention must result from delay in loading or unloading of the Goods by the Party which shall load/unload the Good or its action.
- c) Where no demurrage rate has been provided in the Contract, the demurrage rate shall be as set out in the relevant agreement with the Carrier or, if the agreement does not specify a demurrage rate, as per the market rate for the relevant/applicable means and size of transport on the date of the completion of loading/unloading as shall be assessed by a mutually agreed independent broker. In the event that the Parties do not agree on a mutually acceptable broker, then each Party will appoint an independent broker and the two so appointed will appoint a third. The assessment that is the furthest away from the median will be discounted and the applicable demurrage rate will be the average of the two remaining assessments.
- d) Unless otherwise agreed in the Contract or the GTC, the Parties understand that demurrage claims could be addressed to the Buyer within 9 (nine) months after the Delivery Date (and the Parties acknowledge this term as reasonable); however, it shall not be considered as time-barred by this Clause. The Parties consider this period reasonable as the Seller usually receives demurrage claims from the Carrier more than 6 (six) months after the Delivery Date.
- e) Demurrage claims shall be considered within 30 (thirty) days after their receipt by a relevant Party and shall be paid by the relevant Party not later than 5 (five) days after receipt of the Seller's invoice. If no motivated comments have been given within the specified 30 days period, the claim shall be deemed accepted.

#### **2.2.8. Transport and Packaging**

- a) The Goods may be supplied in Transport. The Transport and Transport Return Date are to be specified in the Contract.
- b) Late Transport return. In the event that the Buyer (or the Buyer's authorized representative, or the Buyer's Carrier, etc.) fails to return Transport in Transport Return Date, the Buyer shall reimburse all and any Seller's costs and expenses arising out of or in connection with such late Transport return.
- c) The Transport, unless otherwise provided in the Contract, shall be returned at the Buyer's expense and risk at the address specified by the Seller.
- d) Defective Transport. In the event that the Buyer (or the Buyer's authorized representative, or the Buyer's Carrier, etc.) returns the Transport defective, unrepaired, or affected (the "Defective Transport"), the Buyer shall reimburse all and any Seller's costs and expenses arising out of or in connection with such Defective Transport.
- e) Unless otherwise specified in the Contract or the GTC, the Packaging shall be per good commercial practice, taking into account the type of the Goods, transportation, storage used. The Packaging could be returnable and non-returnable as provided in the Contract.

#### **2.2.9. Documents**

Both Parties shall perform any and all acts and execute and deliver any and all documents as may be necessary and proper under applicable law or under the circumstances in order to accomplish the intents and purposes of the Contract and to carry out its provisions.

**PARAGRAPH III**  
**DELIVERY CONDITIONS**

**3.1. EXW**

**3.1.1. Delivery Date**

Delivery Date shall mean the moment of the receipt of the Seller's notice to the Buyer, within the agreed shipment period(s), that the Goods are ready for loading.

**3.1.2. Delivery Terms**

- a) The loading of the Goods at the Place of Shipment shall be at the Buyer's risk and expense; the Seller may load the Goods at the Buyer's risk and expense if specified in Article I of the Contract.
- b) The Seller shall provide the usual packaging and marking of the Goods, except when the Buyer gave special instructions to the Seller on this matter within reasonable time before shipment. The Seller may charge the Buyer any additional costs in connection with performing such special instructions unless these special requirements are not provided in Clause 2. 1.5 of the Contract and considered in the Goods' Price.

**3.1.3. Licenses and clearances**

Where necessary, the Seller shall provide the Buyer with reasonable support in acquisition of all appropriate export and import licenses and clearances; provided that the Buyer shall reimburse the Seller's costs and expenses arising out of or in connection with such support.

**3.1.4. Taxes prior to delivery**

All taxes, customs and other duties and fees incurred as a result of the conclusion and execution of the Contract which are levied on the Goods prior to delivery or required for the dispatch of the Goods outside the customs territory of the Russian Federation will be paid by the Seller. However, the Buyer shall reimburse the Seller for any related expenses.

**3.1.5. Taxes after delivery**

Unless otherwise expressly agreed by the Parties in the Contract, all taxes, customs and other duties and fees incurred as a result of or in connection with the conclusion and execution of the Contract if any, after delivery will be paid by the Buyer.

**3.2. FCA**

**3.2.1. Delivery Date**

The Delivery Date shall mean the moment when:

- a) Seller's auto truck(s), loaded with the Goods, arrive to Place of Destination (or closest possible to the Place of Destination in case the access to the Place of Destination is restricted) and stand ready for unload by Buyer's representative or Carrier.
- b) Seller's RTC / railway wagon(s), loaded with the Goods, arrive to Place of Destination (or closest possible to the Place of Destination in case the access to the Place of Destination is restricted) and gives Notice of Arrival ("NOA") to the Carrier or Buyer's representative at the zone of unloading.
- c) Seller's Vessel, loaded with the Goods, arrives to Place of Destination (or closest possible to the Place of Destination in case access to the Place of Destination is restricted) and gives Notice of Readiness ("NOR") to the Carrier or the Buyer's representative at the port of unloading.
- d) The Goods have been loaded at the Place of Shipment on the means of transport provided by the Carrier nominated by the Buyer – if the delivery is at the Manufacturer or warehouse or storehouse.

**3.2.2. Delivery Terms**

- a) Discharging and unloading of the Goods is the Buyer's sole responsibility and shall not prejudice completed delivery of the Goods by the Seller, except for the delivery is at the Manufacturer or warehouse or storehouse in which case the loading of the Goods shall be the Seller's responsibility and risk.



- b) The Buyer provides the Seller with full and timely information about the Place of Destination and the Carrier, including any special location access instructions and all contact information of the Carrier. The named information is to be provided to the Seller via facsimile or by other means agreed upon by the Parties, at least 5 (five) Business Days prior to each scheduled date of shipment of the Goods by the Seller. Such information can be changed by the Buyer with written notification to the Seller and no later than 1 (one) Business Day before each scheduled shipment.

The information must include:

- i. The name of the Carrier (person or entity).
- ii. Documentation testifying Carrier's rights to accept and carry the Goods (should be presented by the Carrier at delivery).
- iii. The identity, location and address of Place of Destination, with instructions for access to the Place of Destination.
- iv. Any other information requested by the Seller.

Should the Buyer fail to timely submit the named information, the Seller is not required to initiate the shipping and delivery of the Goods, which will not constitute a waiver of the Buyer's breach of Contract. Any delays in delivery of the Goods which result from inaccuracies of provided information will be on the account of the Buyer and shall not be viewed as breach of Contract by the Seller.

- c) If applicable, the Nomination shall be made in accordance with the GTC.
- d) Immediately upon the receipt of Seller's Nomination, but not later than one day from the receipt of Seller's Nomination, the Buyer shall provide the Seller with full written instructions regarding the particulars for the Bills of Lading including consignee, contact details and address of the authorized person of the consignee, other information necessary for the delivery and reasonably required by the Seller, number of the copies, addresses, etc. and such other information which may be required by the Place of Shipment, Place of Destination and/or the Seller. The Seller shall have the right to issue its own instructions if the Buyer fails to provide such instructions and/or information required by this Clause. Any delays or time lost caused by any failure of the Buyer to comply with this Clause shall count as laytime or time on demurrage.
- e) The Parties shall obtain any licenses, permits and documents which are necessary for successful import and export clearance of the Goods.
- f) Export permits shall be timely obtained by the Seller.
- g) Import permits shall be timely obtained by the Buyer.
- h) All delays for the reason of absence of custom clearance shall be at the expense of the liable Party.

### **3.2.3. Taxes prior to delivery**

All taxes, customs and other duties and fees incurred as a result of the conclusion and execution of the Contract which are levied on the Goods prior to delivery or required for the dispatch of the Goods outside the customs territory of the Russian Federation will be paid by the Seller.

### **3.2.4. Taxes after delivery**

Unless otherwise expressly agreed by the Parties in the Contract, all taxes, customs and other duties and fees incurred as a result of or in connection with the conclusion and execution of the contract if any, after delivery will be paid by the Buyer.

## **3.3. FOB**

### **3.3.1. Delivery Date**

- a) The Delivery Date shall mean the moment when the Goods have been loaded on board of the nominated Vessel by customary means of the loading port at the Place of Destination which date is set in the Bill of Lading.
- b) For the liquid Goods the Delivery Date means the moment when the Goods passes the flange connection between the delivery hose and the permanent hose connection of the vessel at the Place of destination.

### 3.3.2. Delivery terms

- a) Discharging and unloading the Goods is the Buyer's sole responsibility and shall not prejudice completed delivery of the Goods by the Seller.
- b) The time required by the Vessel to clean the tanks or otherwise prepare the Vessel for the loading of the Goods or start the voyage shall not be included in the laytime.
- c) The Buyer provides the Seller with full and timely information about the Vessel and the Place of Destination, including but not limited to the required documents, the mode of operation. The named information is to be provided to the Seller via facsimile or by other means agreed upon by the Parties, at least 5 (five) Business Days prior to each scheduled date of shipment of the Goods by the Seller.

The information must include:

- i. The name of the Place of Destination (loading port).
- ii. The identity of the expected arrival terminal(s) at loading port.
- iii. The name of the Vessel and Vessel's Master contact information.
- iv. Any other information requested by the Seller.
- d) Should the Buyer fail to timely submit the named information, the Seller is not required to initiate the shipping and delivery of the Goods, which will not constitute a waiver of the Buyer's breach of Contract. Any delays in delivery of the Goods which result from inaccuracies of provided information will be on the account of the Buyer and shall not be viewed as breach of the Contract by the Seller.
- e) The Nomination, if applicable, shall be made in accordance with the GTC.

The information on the Vessel to be submitted by the Buyer shall include:

- i. name of vessel, date built, flag;
- ii. position at 10:00 gmt on the date of nomination and ETA loadport;
- iii. deadweight;
- iv. draft;
- v. length and width;
- vi. ballast type;
- vii. type of hull;
- viii. cp speed;
- ix. three previous cargoes;
- x. demurrage rate;
- xi. vessel's approvals;
- xii. ship's agents loadport;
- xiii. details of any other cargo on board and conditions of segregation

The substitution of the nominated Vessel shall be subject to acceptance by the Seller and loading terminal.

### 3.3.3. Notice of Readiness (NOR)

- a) The Buyer shall arrange for the Master of the Vessel loading under the contract to advise telegraphically to Seller's local representative about the following notices within the limits specified:
  - i. At least 72 (seventy-two) hours before arrival to advise ETA.
  - ii. At least 48 (forty-eight) hours before arrival to confirm or amend ETA.
  - iii. At least 24 (twenty-four) hours before arrival to confirm or amend ETA.
  - iv. On arrival to advise the exact time of arrival.

- b) Upon arrival of the Vessel at the customary anchorage for the Place of Destination, the Master of the Vessel or his local representative shall give Seller's local representative a written NOR evidencing the Vessel's readiness to load the Goods. Such NOR shall not be given until the Vessel has clean tanks ready for loading and has received all clearances required by Customs and/or other local government authorities.
- c) The Buyer shall ensure that the Vessel and its Master shall comply with the rules and regulations at Place of Destination. All damage which may occur to the Vessel, port infrastructure, surroundings and people for the reason of such non-compliance shall be on account of the Buyer alone.
- d) If the Vessel tenders NOR at the Place of Destination before the first day of the loading date-range allocated to that Vessel, it can be given a loading berth as soon as possible but without commitment or obligation by the Seller to load immediately and laytime shall begin on commencement of loading or at 06:00 hours a.m. local time on the first day of the loading date-range, whichever occurs first.
- e) If the Vessel tenders NOR after the loading date-range as well as if the Vessel is not ready (not suitable) for loading of the Goods, the Seller shall not be obligated to deliver the Goods which should have been loaded on such Vessel unless the Seller specifically agrees to do so, in which case laytime shall begin when vessel is all fast at berth.
- f) In case the Vessel has not arrived at the port within the agreed delivery range, as well as if the Vessel is not ready (not suitable) for loading of the goods but the Seller agrees to deliver the Goods, laytime shall commence when vessel is all fast at berth.
- g) If the Buyer fails to submit notifications and NOR when due, the Seller shall not be responsible for any eventual demurrage at loading port.
- h) The Parties shall obtain any licenses, permits and documents which are necessary for successful import and export clearance of the Goods.
- i) Export permits shall be timely obtained by the Seller.
- j) Import permits shall be timely obtained by the Buyer.
- k) All delays for the reason of absence of custom clearance shall be at the expense of the liable Party.

#### **3.3.4. Demurrage**

- a) The Seller shall indemnify the Buyer for all costs for Demurrage. In order to be indemnified, such demurrage must result from delay in loading of the Goods by the Seller's fault beyond allowed laytime.
- b) The Seller shall pay demurrage for time used for loading in excess of laytime allowed. Seller's liability for demurrage under the contract shall not exceed the actual demurrage which the Buyer is held liable for under the terms of the charter party, as evidenced by the Buyer's documentation to Seller's reasonable satisfaction.
- c) The Seller shall not be liable for demurrage for any delay due to fault or failure of the Vessel or its Master or crew, or if loading is suspended for Vessel's own purposes, in which case the the Buyer shall pay all expenses incurred by the Seller as a result thereof.
- d) The demurrage rates referred to above shall be reduced by 50% (fifty percent) where demurrage is caused by events such as accidents occurring to equipment affecting the loading at the loading port or fire in or near the loading facilities.
- e) The Seller shall be unloaded and released from all liability for payment of demurrage if claims for demurrage have not been presented to the Seller in writing with complete supporting documentation within 60 (sixty) days from the date of the Bill of Lading under which the claim for demurrage arises.

#### **3.3.5. Taxes prior to delivery.**

All taxes, customs and other duties and fees incurred as a result of the conclusion and execution of the Contract which are levied on the Goods prior to delivery or required for the dispatch of the Goods outside the customs territory of the Russian Federation will be paid by the Seller.

**3.3.6. Taxes after delivery.**

Unless otherwise expressly agreed by the Parties in the Contract, all taxes, customs and other duties and fees incurred as a result of or in connection with the conclusion and execution of the contract if any, after delivery will be paid by the Buyer.

**3.3.7. Deadfreight.**

Only deadfreight through the Seller's fault will be compensated by the Seller. If the Buyer requires the Seller to compensate for the deadfreight it shall provide the Seller with a relevant claim accompanied by all documents substantiating the Buyer's costs and expenses. Only reasonable deadfreight will be compensated.

**3.4. CFR****3.4.1. Delivery Date**

- a) The Delivery Date shall mean the moment when the Goods have been loaded on board of the nominated Vessel by customary means of the loading port at the Place of Destination which date is set in the Bill of Lading.
- b) For the liquid Goods the Delivery Date means the moment when the Goods passes the flange connection between the delivery hose and the permanent hose connection of the vessel at the Place of destination.
- c) Discharging and unloading the Goods is the Buyer's sole responsibility and shall not prejudice completed delivery of the Goods by the Seller.

**3.4.2. Delivery terms**

- a) The Buyer provides the Seller with full and timely information about the unloading port. The named information along with the Buyer's documentary instructions is to be provided to the Seller via facsimile or by other means agreed upon by the Parties, at least 5 (five) Business Days prior to each scheduled date of shipment of the Goods by the Seller.

The information must include:

- i. The name of the unloading port.
- ii. All instructions regarding customary documentation which may be required at the unloading port.
- iii. The identity of the terminal(s) at unloading port with instruction to enable the Vessel to prepare and submit necessary information to the customs or border authorities.
- iv. Any other information requested by the Seller.

Should the Buyer fail to timely submit the named information, the Seller is not required to initiate the shipping and delivery of the Goods, which will not constitute a waiver of the Buyer's breach of Contract. Any delays in delivery of the Goods which result from inaccuracies of provided information will be on the account of the Buyer and shall not be viewed as breach of Contract by the Seller.

- b) If applicable, the Nomination shall be made in accordance with the GTC.
- c) Where the Seller expressly or impliedly provides the Buyer with a date or a range of dates within which a nominated Vessel shall arrive at the unloading port these shall be indicative only, made by the Seller as an honest assessment without guarantee. The Seller shall not assume any responsibility for the delivery of the Goods at the unloading port in indicated period.
- d) Immediately upon the receipt of Seller's Nomination, but not later than one day from the receipt of Seller's Nomination, the Buyer shall provide the Seller with full written instructions regarding the particulars for the Bills of Lading including consignee, contact details and address of the authorized person of the consignee, other information necessary for the delivery and reasonably required by the Seller, number of the copies, addresses, etc. and such other information which may be required by the Place of Shipment, Place of Destination and/or the Seller. The Seller shall have the right to issue its own instructions if the Buyer fails to provide such instructions and/or information required by this Clause. Any

delays or time lost caused by any failure of the Buyer to comply with this Clause shall count as laytime or time on demurrage.

#### **3.4.3. Charterparty Conditions**

The Seller may arrange shipment under the Bills of Lading which incorporate charterparty conditions normally in use for Vessels. Without prejudice to the generality of the foregoing, such conditions shall be deemed to include:

- i.** the provision that the Goods shall be unloaded from the Vessel at the Buyer's expense; and
- ii.** the provision that where, at any time after loading, but before the commencement of unloading:
  - importation of the Goods at the Place of Destination is prohibited under the laws of the country in which such the Goods were produced, or by regulations, rules, directives or guidelines applied by the government of that country or any relevant agency thereof; and/or
  - the country, state, territory or region at which the Place of Destination becomes an embargoed country,the Goods shall be unloaded at an alternative safe port nominated by the Buyer that is not subject to any such prohibition and that is acceptable to the Seller (which acceptance shall not be unreasonably withheld).

In such circumstances, such alternative port of unloading shall be deemed to be the unloading port stipulated under the contract for the shipment in question and all extra expenses (if any) involved in the Vessel's reaching such alternative Place of Destination and/or in the unloading of the shipment thereat shall be for the Buyer's account.

#### **3.4.4. Licenses and clearances.**

- (i) The Parties shall obtain any licenses, permits and documents which are necessary for successful import and export clearance of the Goods.
- (ii) Export permits shall be timely obtained by the Seller.
- (iii) Import permits shall be timely obtained by the Buyer.
- (iv) All delays for the reason of absence of custom clearance shall be at the expense of the liable Party.

#### **3.4.5. Taxes prior to delivery.**

All taxes, customs and other duties and fees incurred as a result of the conclusion and execution of the Contract which are levied on the Goods prior to delivery or required for the dispatch of the Goods outside the customs territory of the Russian Federation will be paid by the Seller.

#### **3.4.6. Taxes after delivery.**

Unless otherwise expressly agreed by the Parties in the Contract, all taxes, customs and other duties and fees incurred as a result of or in connection with the conclusion and execution of the contract if any, after delivery will be paid by the Buyer.

#### **3.4.7. Customs formalities**

If Goods are exported from the customs territory of the Russian Federation, the Buyer shall ensure the departure of Goods from the territory of the Russian Federation within 180 (one hundred and eighty) calendar days from the date when the customs procedures for export are completed on the territory of the Russian Federation (date of the stamp "Clearance allowed" in CCD).

For the delivery by sea the Buyer shall provide the Seller by e-mail or fax with the certified copies of the following documents with legible notes not later than 14 (fourteen) calendar days from the date of issue of bill in port on the territory of the Russian Federation:

- loading order (for Goods) indicating the port of discharge (POD) with stamp "loading is allowed" in CCD made by Russian Federation frontier customs authority,
- bill of lading indicating in column "POD" the place outside the customs territory of the Russian Federation.

In case the Buyer fails to fulfill the obligations under this Clause the Buyer shall pay the Seller liquidated damages amounting to 22,5% of Goods' value, export of which is documentary unsupported in accordance with this Clause.

The Parties expressly agreed that the above liquidated damages are the genuine pre-estimate of the Seller's losses in the event the railway bills are not provided to the Seller within specified period.

### **3.5. CF**

#### **3.5.1. Delivery Date**

The Delivery Date shall mean the moment when the Goods have been loaded on board of the nominated Vessel by customary means of the loading port at the Place of Shipment which date is set in the Bill of Lading.

For the liquid Goods the Delivery Date means the moment when the Goods passes the flange connection between the delivery hose and the permanent hose connection of the vessel at the Place of Shipment.

#### **3.5.2. Delivery terms**

- a) Indicative dates of arrival. Where the Seller expressly or impliedly provides the Buyer with a date or a range of dates within which a nominated Vessel shall arrive at the Place of Destination these shall be indicative only, made by the Seller as an honest assessment without guarantee. The Seller shall not assume any responsibility for the arrival of the Goods at the Place of Destination.
- b) If applicable, the Nomination shall be made in accordance with the GTC.
- c) Where the Seller expressly or impliedly provides the Buyer with a date or a range of dates within which a nominated Vessel shall arrive at the unloading port these shall be indicative only, made by the Seller as an honest assessment without guarantee. The Seller shall not assume any responsibility for the delivery of the Goods at the unloading port in indicated period.
- d) Immediately upon, but not later than one day from the receipt of the Seller's Nomination, the Buyer shall provide the Seller with the following information:
  - full written instructions regarding the particulars for the Bills of Lading (consignee, contact details and address of the authorized person);
  - other information necessary for the delivery and reasonably required by the Seller (number of the copies, addresses, etc.);
  - other information which may be required or by the Place of Shipment, Place of Destination and/or the Seller.
- e) The Seller shall have the right to issue its own instructions if the Buyer fails to provide such instructions and/or information required by this Clause. Any delays or time lost caused by any failure of the Buyer to comply with this Clause shall count as laytime or time on demurrage.

#### **3.5.3. Charterparty Conditions**

The Seller may arrange shipment under the Bills of Lading which incorporate charterparty conditions normally in use for Vessels. Without prejudice to the generality of the foregoing, such conditions shall be deemed to include:

- i. the provision that the Goods shall be unloaded from the Vessel at the Buyer's expense unless the Seller informed the Buyer reasonably in advance that the Seller bears the unloading costs; and
- ii. the provision that where, at any time after loading, but before the commencement of unloading:
  - importation of the Goods at the Place of Destination is prohibited under the laws of the country in which such the Goods were produced, or by regulations, rules, directives or guidelines applied by the government of that country or any relevant agency thereof; and/or

- the country, state, territory or region at which the Place of Destination becomes an embargoed country,

the Goods shall be unloaded at an alternative safe port nominated by the Buyer that is not subject to any such prohibition and that is acceptable to the Seller (which acceptance shall not be unreasonably withheld).

In such circumstances, such alternative port of unloading shall be deemed to be the unloading port stipulated under the contract for the shipment in question and all extra expenses (if any) involved in the Vessel's reaching such alternative Place of Destination and/or in the unloading of the shipment thereat shall be for the Buyer's account.

#### **3.5.4. Licenses and clearances**

Where necessary, the Seller shall provide the Buyer with reasonable support in acquisition of all appropriate licenses and clearances for the unloading of the Goods; provided that the Buyer shall reimburse the Seller's costs and expenses arising out of or in connection with such support.

#### **3.5.5. Taxes prior to delivery**

All taxes, customs and other duties and fees incurred as a result of the conclusion and execution of the Contract which are levied on the Goods prior to delivery or required for the dispatch of the Goods outside the customs territory of the Russian Federation will be paid by the Seller.

#### **3.5.6. Taxes after delivery**

Unless otherwise expressly agreed by the Parties in the Contract, all taxes, customs and other duties and fees incurred as a result of or in connection with the conclusion and execution of the contract if any, after delivery will be paid by the Buyer.

### **3.6. CPT**

#### **3.6.1. Delivery Date**

The Delivery Date shall mean the day when the Goods are loaded

- in Seller's auto truck(s) to be shipped to the Place of Destination named by the Buyer which day is stated in the stamp on the CMR at the Place of Shipment;
- in RTC / railway wagon(s) to be shipped to the Place of Destination named by the Buyer which day is stated in the stamp on the Railway Bill at the Place of Shipment (dispatched railway station);
- in Vessel(s) to be shipped to the Place of Destination named by the Buyer which day is stated in the stamp on the Bill of Lading at the Place of Shipment.

#### **3.6.2. Delivery terms**

- Discharging and unloading the Goods at the Place of Destination is the Buyer's sole responsibility and shall not prejudice completed delivery of the Goods by the Seller.
- The Buyer provides the Seller with full and timely information about the Place of Destination, including any special location access instructions. The named information is to be provided to the Seller via facsimile or by other means agreed upon by the Parties, at least 5 (five) Business Days prior to each scheduled date of shipment of the Goods by the Seller.

The information must include:

- The identity, location and full address of the Place of Destination, with instructions for access to the Place of Destination.
- All instructions regarding customary documentation which may be required at the Place of Destination (if any).
- Any other information requested by the Seller.

Should the Buyer fail to timely submit the named information, the Seller is not required to initiate the shipping and delivery of the Goods, which will not constitute a waiver of the Buyer's breach of Contract. Any

delays in delivery of the Goods which result from inaccuracies of provided information will be on the account of the Buyer and shall not be viewed as breach of Contract by the Seller.

**3.6.3. Nomination**

If applicable, the Nomination shall be made in accordance with the GTC.

**3.6.4. Licenses and clearances**

- (i) The Parties shall obtain any licenses, permits and documents which are necessary for successful import and export clearance of the Goods.
- (ii) Export permits shall be timely obtained by the Seller.
- (iii) Import permits shall be timely obtained by the Buyer.
- (iv) All delays for the reason of absence of custom clearance shall be at the expense of the liable Party.

**3.6.5. Taxes prior to delivery**

All taxes, customs and other duties and fees incurred as a result of the conclusion and execution of the Contract which are levied on the Goods prior to delivery or required for the dispatch of the Goods outside the customs territory of the Russian Federation will be paid by the Seller.

**3.6.6. Taxes after delivery**

Unless otherwise expressly agreed by the Parties in the Contract, all taxes, customs and other duties and fees incurred as a result of or in connection with the conclusion and execution of the contract if any, after delivery will be paid by the Buyer.

**3.6.7. Customs formalities**

If Goods are exported from the customs territory of the Russian Federation, the Buyer shall ensure the departure of Goods from the territory of the Russian Federation within 180 (one hundred and eighty) calendar days from the date when the customs procedures for export are completed on the territory of the Russian Federation (date of the stamp "Clearance allowed" in CCD).

For the delivery by sea the Buyer shall provide the Seller by e-mail or fax with the certified copies of the following documents with legible notes not later than 14 (fourteen) calendar days from the date of issue of bill in port on the territory of the Russian Federation:

- loading order (for Goods) indicating the port of discharge (POD) with stamp "loading is allowed" in CCD made by Russian Federation frontier customs authority,
- bill of lading indicating in column "POD" the place outside the customs territory of the Russian Federation.

For the delivery by road transport and/or for the delivery by railroad within 7 (seven) days upon request of the Seller the Buyer shall provide the copies of railway bills with legible notes made by the destination railway station and/or CMR with legible notes of border crossing».

In case the Buyer fails to fulfill the obligations under this Clause the Buyer shall pay the Seller liquidated damages amounting to 22,5% of Goods' value, export of which is documentary unsupported in accordance with this Clause.

The Parties expressly agreed that the above liquidated damages are the genuine pre-estimate of the Seller's losses in the event the railway bills are not provided to the Seller within specified period.

**3.7. DAP**

**3.7.1. Delivery Date**

- a) Delivery Date shall mean the moment of the Goods arrival at the Place of Destination ready for unloading.
- b) The time of the Goods arrival shall be indicated in the Transport Documents. In the event that Transport Documents do not specify the exact time of the Goods arrival, it is presumed that the Goods are arrived for unload:



- i. for the delivery by sea – as of the moment NOR is tendered to the Buyer by the vessel's master upon arrival to unloading port;
  - ii. for the delivery by railroad – as of the scheduled time of arrival for a relevant train (unless the moment is specified in the Seller's/Carrier's notice to the Buyer); and
  - iii. for the delivery by road transport – as of the moment of the Goods arrival specified in the Seller's/Carrier's notice to the Buyer.
- c) The Buyer may argue the actual time of the Goods arrival within 2 (two) days following a respective delivery, otherwise it is considered that the Buyer has no objections as regards the arrival time.

### **3.7.2. Delivery Terms**

The unload of the Goods at the Place of Destination shall be at the Buyer's risk and expense. If the unload is included in the price of transportation under the agreement with the Carrier, the Seller may nevertheless invoice the Buyer relevant unload expenses, unless such expenses are attributed to the Seller in above.

### **3.7.3. Licenses and clearances**

Where necessary, the Seller and the Buyer shall provide each other with reasonable support in acquisition of all appropriate export and import licenses and clearances; provided that the other party shall reimburse for the costs and expenses arising out of or in connection with such support.

### **3.7.4. Import Taxes and customs formalities**

All taxes, customs and other duties and fees incurred as a result of the conclusion and execution of the Contract which are levied on the Goods in the country of delivery, as well as any other customs formalities in the country of delivery, will be paid and/or performed by the Buyer. If the Buyer fails to pay or perform the above when due, the risk shall pass to the Buyer before the Delivery Date. If the Buyer delays the fulfillment of its obligations under this Clause for more than 2 (two) days, the Seller is entitled, but not obliged: (i) to make any relevant payments and formalities on its own; or (ii) if the Goods are not released in the country of delivery, to place the Goods at a customs warehouse (in this case the moment of placing the Goods shall be the Delivery Date, any further costs will be at the Buyer's expense). The above Seller's rights shall be without prejudice to the Seller's other rights under the Contract or the applicable Law. In addition, the Buyer shall indemnify the Seller for all costs, losses and damages, including, but not limited to, demurrage and/or detention incurred by the Seller as a result of the Buyer's failure to perform or duly perform obligations under this Clause.

## **3.8. DDP**

### **3.8.1. Delivery Date**

- a) Delivery Date shall mean the moment of the Goods arrival at the Place of Destination ready for unload.
- b) The time of the Goods arrival shall be indicated in the Transport Documents. In the event that Transport Documents do not specify the exact time of the Goods arrival, it is presumed that the Goods are arrived for unload:
  - i. for the delivery by sea – as of the moment NOR is sent to the Buyer;
  - ii. for the delivery by railroad – as of the scheduled time of arrival for a relevant train (unless the moment is specified in the Seller's/Carrier's notice to the Buyer); and
  - iii. for the delivery by road transport – as of the moment of the Goods arrival specified in the Seller's/Carrier's notice to the Buyer.

The Buyer may argue the actual time of the Goods arrival within 2 (two) days following a respective delivery, otherwise it is considered that the Buyer has no objections as regards the arrival time.

### **3.8.2. Delivery Terms**

- a) The unload of the Goods at the Place of Destination shall be at the Buyer's risk and expense, unless the expense are attributed to the Seller in Article I of the Contract.

- b) If any of licenses, clearances, other customs formalities or Taxes in the country of import could be performed, arranged or paid only by the Buyer or at the Buyer's side, the Buyer shall (i) inform the Seller thereof as a part of shipping information to be submitted to the Seller according to the GTC and (ii) perform, arrange and pay the same in due time. The Seller shall compensate the Buyer for documented direct expenses in relation thereto, provided that the Buyer furnishes the Seller with primary accounting documents substantiating the Buyer's costs such as acts, invoices, reports, etc. If the Buyer fails to perform or duly perform the obligation under this Clause, any adverse consequences to the Seller, Carrier and/or the Goods, including (i) delayed delivery and (ii) related penalties, fines, Taxes, costs, expenses will be at the Buyer's cost and risk. The Buyer shall indemnify the Seller for all costs, losses and damages, including, but not limited to, demurrage and/or detention incurred by the Seller as a result thereof.

### **3.8.3. VAT**

- a) Prior to concluding a Contract in case if the Buyer is a company registered in the EU, the Buyer should provide the Seller with its VAT Identification Number.
- b) In case if:
- (i) the Buyer is a company Registered in EU;
  - (ii) the Buyer wants to receive a VAT-exempt invoice;
  - (iii) the Buyer purchases the Goods from the Seller on the DDP basis at the Place of Destination in a certain country, picks up the Goods itself and moves the Goods out of this certain country;
- the Buyer shall within two weeks from the Delivery Date provide the Seller with copies of the Transport Documents, confirming that the Goods have been moved out of the country where they have been purchased.
- If the abovementioned Transport Documents (specified in Clause 2.2.2 ) have not been provided on time, the Seller has the right to issue a credit note to the original VAT-exempt invoice and issue a new invoice, increased by the amount of VAT that has to be paid by the Buyer within 7 (seven) days after the date invoice issued.

**PARAGRAPH IV  
SPECIAL CONDITIONS**

**TRANSPORT**

**4.1. Special Conditions of Delivery by Sea**

- 4.1.1.** Where the Seller expressly or impliedly provides the Buyer with a range of dates within an agreed period of delivery or arrival of the Vessel at Place of Destination, delivery may be performed on any of the dates provided.
- 4.1.2.** On the next day after dispatch of the Goods the Seller shall provide the Buyer with all information necessary for unloading of the Goods:
- a) The Contract reference number.
  - b) The name of arriving Vessel, from which the Goods must be unloaded.
  - c) Description of the Goods and their Bill of Lading quantity.
  - d) Estimated Time of Arrival and date of Bill of Lading.
  - e) Number of copies of Bill of Lading.
  - f) Details of any other cargo on board of the Vessel, if it can have any influence on unloading of the Goods process.
- 4.1.3.** Where the Buyer shall charter the Vessel, the Buyer shall ensure the Vessel's fitness and cleanliness satisfactory for delivery of the Goods in time and without affecting their quality. The cleanliness shall be evidenced by an appropriate certificate issued by Saybolt, SGS or other reliable body; however, it does not preclude the Seller to conduct an inspection of the Vessel and suspend the Goods' loading if there are reasonable doubts in the Vessel's condition. In this case the Parties shall promptly initiate an independent inspection, splitting relevant costs evenly. If the Vessel is found unsatisfactory, the Buyer may either: (i) clean the Vessel or (ii) substitute the Vessel with a satisfactory one or (iii) request to proceed with loading taking all risks related to adverse affect on the Goods. Option (iii) is allowed only upon the Seller's consent. Any related costs and expenses shall be born/compensated (paid in full) by the Buyer to the Seller, including, without limitations, the Seller's costs and expenses related to delay in the delivery of the Goods.
- 4.1.4. The Buyer warrants that:**
- a) the unloading port and unloading terminal, indicated as the Place of Destination, shall comply and shall remain fully compliant with the requirements of the ISPS Code;
  - b) the Buyer shall provide a safe port and safe berth for the Vessel and the Vessel shall when fully laden be able to safely reach, lie at, unload the Goods at and depart from the unloading terminal, always safely afloat, free from air draft and other physical restrictions and without causing damage to the unloading terminal, rivers, canals, shores, berths, docks, jetties, surroundings, environment and people.
- 4.1.5. The Buyer shall be liable for and shall indemnify the Seller** in respect of any loss or damage, including but not limited to any liability for damage to the Vessel, the berth, terminal, rivers, canals, shores, berths, docks, jetties, surroundings, environment and people, additional freight costs or any deviation costs or any demurrage or detention, or expenses arising out of and in relation to any failure of the Buyer to comply with Clause 4.1.4. Any costs or expenses arising out of or related to security regulations or measures required at the Place of Destination by the unloading port or facility or any relevant authority in accordance with the ISPS Code, if applicable, including but not limited to, security guards, launch services, tug escorts, port security fees or Taxes and inspections; and any delays caused by any additional or special security measures, inspections or other action required at the Place of Destination by the unloading port or facility or any

relevant authority as a result of the nominated Vessel's previous ports of call shall all be for the Buyer's account and such time shall count as laytime or time on demurrage.

#### **4.1.6. Nomination**

- a) Unless otherwise provided in the Contract, bulk cargo deliveries will require nomination of the Vessel and deliveries of other categories of the Goods will not require nomination.
- b) If the nomination is required, a Party chartering the Vessel shall not later than 5 (five) days prior to the first day of the laytime at loading port, nominate for the other Party's acceptance (and such acceptance not to be unreasonably withheld) the Vessel which is to be loaded with the Goods for each scheduled shipment (the "Nomination").
- c) The Nomination shall include:
  - (i) the Contract reference number;
  - (ii) the name of the Vessel on which the Goods will be loaded;
  - (iii) a description of the Goods and approximate quantity or the Bill of Lading quantity (if available);
  - (iv) ETA of the Vessel;
  - (v) the Vessel(s) loading laytime;
  - (vi) details of any other cargo on board or to be loaded on board if loading a part of cargo;
  - (vii) details of the last 3 (three) cargoes of the Vessel and such cargoes shall be of a nature, which are unlikely to have an adverse effect on the quality of the Goods;
  - (viii) Details of the agent at the Place of Destination (if available).
- d) The acceptance or reasonable rejection of the Vessel shall be advised by the consenting Party as soon as possible, however not later than 12 (twelve) hours upon receipt of such nomination.
- e) Unless otherwise specified herein, the nominating Party may substitute any Vessel named in the Nomination not later than five days prior to the first day of the ETA at the loading port. Such substitution shall always be subject to the requirements that a Vessel of a similar size be provided and that the quantity to be loaded shall not, without prior written consent of the other Party, differ by more than the acceptable deviation from the quantity of the Goods as provided in Clause 4.8.4 from the quantity specified in the Nomination. Where a Vessel is substituted, the nominating Party shall send to other Party a revised Nomination in the form set out above.

#### **4.1.7. NOR**

Upon arrival of the Vessel at the Place of Destination (the unloading port or customary anchorage or area or such other place as the Vessel may be ordered to await unload) or other closest possible point to the Place of Destination, the Vessel shall tender its notice of readiness (NOR). The Buyer is obliged to ensure his timely presence at Place of Destination at the date of delivery for unloading of the Goods.

The Buyer's (or the Buyer's representative / agent's) absence at the Place of Destination shall not prejudice the fact that the Seller had successfully performed delivery of the Goods for the purpose of the contract.

#### **4.1.8. Charterparty Conditions**

The Seller may arrange shipment under Bills of Lading which incorporate charterparty conditions normally in use for Vessels. Without prejudice to the generality of the foregoing, such conditions shall be deemed to include the provision that where, at any time after loading but before the commencement of unload:

- a) Importation of the Goods at the unloading port is prohibited under the laws of the country in which such Goods were produced, or by regulations, rules, directives or guidelines applied by the government of that country or any relevant agency thereof; and/or
- b) The country, state, territory or region at which the Place of Destination becomes an embargoed country,

the shipment shall be unloaded at an alternative safe port nominated by the Buyer that is not subject to any such prohibition and that is acceptable to the Seller (which acceptance shall not be unreasonably withheld).

In such circumstances, such alternative port of unloading shall be deemed to be the Place of Destination stipulated under the contract for the shipment in question and all extra expenses (if any) involved in the Vessel's reaching such alternative Place of Destination shall be for the Buyer's account.

**4.1.9. The Buyer's Right to Require**

Where the Buyer, by written instruction to the Seller, requests that the Vessel:

- a) co-mingle different grades of the Goods belonging to the Buyer; and/or
- b) otherwise breach the Vessel's natural segregation; and/or
- c) dope the Goods by introducing additives after loading; and/or
- d) add dye to the Goods after loading; and/or
- e) perform on board blending of the Goods; and/or
- f) carry additives/dye in drums on deck; and/or
- g) carry out such other cargo operation as the Buyer may reasonably require and always providing that the Vessel is capable of performing such operations and that such operations are within the scope of the charterparty conditions or otherwise agreed by the Vessel's owners;

then the Buyer shall indemnify and hold the Seller harmless against any liability, loss, damage, delay or expense that the Seller may sustain by reason of complying with the Buyer's request. The indemnity given by the Buyer to the Seller shall be no less in scope than the indemnity required by the Vessel's owners to comply with the Buyer's request.

**4.1.10. The Seller's Right to Refuse**

The Seller reserves the right to refuse at any time:

- a) to direct any Vessel to undertake or to complete the voyage to the Place of Destination if such Vessel is required in the performance of the Contract, in the Seller's opinion, to risk its safety or to risk ice damage, or to transit or to proceed or to remain in waters where there is war (whether declared or not), terrorism, piracy or threat thereof; or
- b) to direct the Vessel to undertake the voyage to the intended Place of Destination if such Vessel is required in the performance of the Contract to transit waters, which in the Seller's reasonable opinion, would involve abnormal delay; or
- c) to undertake any activity in furtherance of the voyage which in the opinion of the Vessel's master could place the Vessel, its cargo or crew at risk.

If the Seller agrees to direct the Vessel to undertake or to complete a voyage as referred to in this Clause, the Buyer undertakes to reimburse the Seller, in addition to the Total Goods Value payable under the Contract, for all costs incurred by the Seller in respect of any additional, freight, demurrage, insurance premium and any other sums that the Seller may be required to pay to the Vessel's owner including but not limited to any sums in respect of any amounts deductible under such owners' insurance and any other costs and/or expenses incurred by the Seller.

**4.1.11. Ice Clause**

- a) In case of ice at the Place of Destination or on the voyage to the Place of Destination which directly prevents or hinders safe navigation, the Vessel may only follow a path cut by ice breakers, provided that the master considers such navigation safe. Under no circumstances will the Vessel be obliged to force a path through the ice. If required, the Buyer shall, at its own expense, place icebreakers at the Vessel's disposal.
- b) The Buyer shall reimburse the Seller for:

- i. Any additional insurance premium incurred;
  - ii. The cost of any ice damage incurred less any sum which is recovered under the applicable insurance policy or policies; and
  - iii. Any charter hire paid by the Seller for the period of repair necessitated by ice damage, including hire paid by the Seller for the Vessel's deviation to the repair yard.
- c) In the event that the Place of Destination is inaccessible due to ice, or in the event that the master deems the Vessel to be at risk of being unable to leave the Place of Destination due to ice, the Vessel will proceed to the nearest ice-free position and request revised orders. Immediately upon receipt of such request, the Buyer shall nominate an alternate ice-free and accessible port or facilities for receiving the Goods, provided that if the Place of Destination is a loading port then such an alternative ice-free and accessible port or facilities shall be agreed with the Seller. Any additional freight, expenses, demurrage and/or dues incurred as a result of such revised orders shall be for the account of the Buyer.

#### **4.2. Special Conditions of Delivery by RTC/railway wagon(s)**

- 4.2.1.** Where the Seller expressly or impliedly provides the Buyer with a range of dates within an agreed period of delivery or arrival of RTC / railway wagon(s) loaded with the Goods, delivery may be performed on any of the dates provided.
- 4.2.2.** No later than 3 (three) Business Days after shipment of the Goods by RTC / railway wagon(s) the Seller shall provide by electronic post or facsimile to the Buyer all information necessary for unloading of the Goods:
- (a) The Contract reference number.
  - (b) Railway Bill reference number(s).
  - (c) RTC / railway wagon(s) identification number(s).
  - (d) Description of the Goods and their Railway Bill quantity.
- 4.2.3.** The Buyer at his own option can provide the Seller with written instructions regarding information necessary for efficient unloading of the Goods by the Carrier or the Buyer's representative. In case such information is provided, the Seller or his representatives / employees undertake to honestly follow the instructions where applicable, to partially assist in efficient unloading of the Goods by the Carrier or the Buyer's representative. Such assistance is not a duty, but an option of the Seller.
- 4.2.4. The Buyer warrants** that the railway zone at Place of Destination shall be safe and well suited for delivery of the Goods. The Buyer shall be liable for and shall indemnify the Seller in respect of any loss or damage, including but not limited to any liability for damage to the RTC / railway wagon(s), surroundings, environment and people, additional costs or expenses arising out of and in relation to any failure of the Buyer to nominate a safe railway zone at Place of Destination.
- 4.2.5. Notice of Arrival**
- a) The railway station administration using available contact information of the Buyer presents the Notice of Arrival of the Goods to the Place of Destination station ("NOA") to the Buyer in accordance with customary rules at the railway station. Such NOA corresponds to performed delivery of the Goods by the Seller.
  - b) The Buyer is obliged to ensure Carrier's timely presence at Place of Destination at the date of delivery for unloading of the Goods.
  - c) Carrier's absence at the Place of Destination shall not prejudice the fact that Seller had successfully performed delivery of the Goods for the purpose of the contract.
- 4.2.6. Laytime**

- a) Laytime per each RTC / railway wagon(s) shall be as set out in the Contract. In the event the laytime is not set out in the Contract, then such laytime shall be 24 (twenty four) hours starting on and including the date of arrival to the station as stated on the Railway Bills and shall run until the completion of unloading. For every day of delay the Buyer shall cover the rate amounting to the railcar owner's tariff (as of the date of this version of the GTC – 40,00 (forty) USD per wagon per day, and as may be amended from time to time) in accordance with invoices provided by the Seller, or such other period as may be customary at the Place of Destination, unless otherwise expressly mutually agreed by the Parties in writing. Sundays and Holidays shall be included (SHINC) unless loading on the Sunday or Holiday in question is prohibited by law or regulation or custom at the unload railway zone.
- b) Laytime shall commence 2 (two) hours after NOA has been tendered; or when the RTC / railway wagon stands ready at the station / railway unloading zone; whichever is the earlier. For the purpose of calculating of unloading time, unloading shall be deemed to have been completed upon disconnection of the discharging hoses or loading/loading of the last portion of the Goods of the last railway wagon cargo.
- c) If the train has not released the railroad track within the laytime period or promptly thereafter through no fault of the Seller (e.g. if the Buyer is to unload the Goods and has failed to unload them when due) and this resulted in additional costs, expenses or losses of the Seller, then the Buyer shall pay in full the Seller for such costs, expenses or losses within 5 (five) Business Days after the relevant claim of the Seller.

#### **4.2.7. Railway Transportation Contract Conditions**

- a) The Seller may arrange shipment with respect to a standard railway transportation contract. Without prejudice to the generality of the foregoing, such conditions shall be deemed to include the provision that where, at any time after loading but before the commencement of unloading;
- b) Importation of the Goods at the unloading railway zone is prohibited under the laws of the country in which such Goods were produced, or by regulations, rules, directives or guidelines applied by the government of that country or any relevant agency thereof; and/or
- c) The country, state, territory or region at which the Place of Destination is located becomes an restricted zone, the Goods shall be unloaded at an alternative railway zone nominated by the Buyer that is not subject to any such prohibition and that is acceptable to the Seller (which acceptance shall not be unreasonably withheld).
- d) In such circumstances, such alternative railway unloading zone shall be deemed to be the Place of Destination stipulated under the contract for the shipment in question and all extra expenses (if any) involved in the RTC's / railway wagon(s) reaching such alternative Destination Place shall be for the Buyer's account.

#### **4.2.8. Buyer's Right to Require**

The Buyer has the right to require extra services in relation to the Goods at the Place of Destination which shall not be viewed as included in the Total Goods Value. The Parties shall decide on a possibility of provision of such services by mutual written agreement no later than 3 (three) days before Estimated Time of Arrival of the RTC / railway wagon(s). Where the Buyer, by written instruction to the Seller, requests that such services should be provided, then the Buyer shall indemnify and hold the Seller harmless against any liability, loss, damage, delay or expense that the Seller may sustain by reason of complying with the Buyer's request. The indemnity given by the Buyer to the Seller shall be no less in scope than the indemnity required by RTC / railway wagon(s) owners to comply with the Buyer's request.

#### **4.2.9. Damage to RTC and Wagons**

- a) It is presumed that RTC and railway wagons arrive at the Place of Destination for unloading in good condition, unless the Buyer has promptly (but not later than 3 (three) hours after the RTC and railway

- wagons arrival) informed of the defects. If the defects will be revealed after that the Buyer shall pay repair costs or expenses of the Carrier or the Seller within 5 (five) Business days upon the Seller's or Carrier's respective invoice.
- b) Within 3 (three) Business days prior to the beginning of dispatches, the Buyer shall provide the Seller with the instruction for filling in the shipping documents for the Goods dispatch, including the delivery period, reference to the number and date of the relevant Contract, quantity of the Goods, full name and address of the consignee, railway code of the consignee, name of the destination station's railway roads, railway station confirmation to accept the Goods.
  - c) Under the Buyer's applications the Seller shall arrange for plans (the "Plans") for transportation of the Goods by railways. The procedure and dates for issuance of the Plans shall be regulated by the applicable local laws and regulation.
  - d) Should, through the fault of either of the Parties, the Plans no be fulfilled, the Party at fault will be held liable for all damages or fines imposed by the railway(s).
  - e) In case of impossibility to unload the Goods due to the technical reasons during periods indicated in the Clauses "Laytime" the Buyer shall notify the Seller on such effect (by telegram, fax, mail or email) within 24 (twenty-four) hours from the moment the rail tank-car arrival to the station of destination.
  - f) In case of rail tank-car damage caused within the time period of its disposal of the Buyer or the Buyer's counterparties, the Buyer shall immediately inform the Seller about the occurrence of such event and recover losses incurred due to rail tank-car damage within 60 (sixty) days from the date of the Seller's demand. In case a rail tank-car is lost within the time period of its disposal by the Buyer or the Buyer's counterparties, the Buyer shall pay to the Seller the amount that covers market value of a rail tank-car of identical model and year of manufacture including costs incurred for putting it into operation. A rail tank-car is considered lost if it is not returned to Seller within 120 (one hundred and twenty) days from the date of the Goods dispatch.
  - g) In case of readdressing the Goods by the Buyer or impossibility to accept the Goods, the Buyer shall notify the Seller of these changes in writing not later than 3 (three) Business Days before the planned date of dispatch. All the expenses of the Seller (including fines and penalties), caused by the Buyers' actions, shall be paid by the Buyer. The Parties shall undertake their best efforts to mitigate losses.
  - h) Redirection of the rail tank-cars by the Buyer (or the Buyer's consignee) without Seller's permission is prohibited. The Seller is entitled to charge the Buyer (the Buyer's consignee) at the rate at least 35 (thirty five) USD (unless otherwise stated in the customary rules of the respective railroad station) for each day of usage of each rail tank-car for improper fulfilment of this provision. The Buyer ensures that the rail tank-cars are unloaded to a level of 0.7 (one tenth of seven per cent) bar. The Buyer and/or consignee shall return the empty rail tank cars in acceptable technical and commercial condition and complete cargo documents with seal to the shipper's initial loading station or any other station as per Seller's instructions.
  - i) The Buyer shall reimburse Seller for the documented costs and expenses caused by the incorrect filling of the shipping documents for the empty rail tank-car return, resulted in the rail tank-car arrival to improper railway stations. In case the documents for the rail-tank cars return are filled in accordance with the Seller's instruction, the Buyer shall not be responsible for their return emptied to improper railway stations.
  - j) Instructions for empty rail tank-cars to be advised to the Buyer by the Seller in writing not later than the arrival of full rail tank-cars to the Place of Destination (the date of the Goods' delivery). Otherwise the Buyer shall not be held liable for possible costs which may arise due to absence of the instructions and/or incorrect filling-in the return railway bills for return of empty rail tank-cars.



- k) After a rail tank-car (a specialized rail tank-car for transportation of liquefied petroleum gases under excessive pressure) is unloaded, the Buyer shall install plugs at corner and control valves to seal the neck bonnet and to fix it by all bolts. The removal of the bonnet from the neck flange is not allowed. The Seller is entitled to charge the Buyer with incurred losses for the plugs at corner and control valves of the rail tank-car not installed at the place of unloading.
- l) Subject to the condition that the Place of Destination is within the Russian Federation territory the Buyer shall provide Seller by e-mail or fax with the certified copies of railway bills with legible notes made at the Place of Destination at the border crossing points within 30 (thirty) days from the date when the customs procedures for export are completed on the territory of the Russian Federation (date of the stamp "Clearance Allowed" in the cargo customs declaration (CCD)) failing which the Buyer shall pay the Seller liquidated damages amounting to 22,5% of Goods' value, export of which is documentary unsupported, at the latest the 180th (one hundred eightieth) day from the date of export customs clearance completion on the territory of the Russian Federation (date of the stamp "Clearance allowed" in the Cargo Customs Declaration (CCD)). The Parties agreed that the above liquidated damages are the genuine pre-estimate of the Seller's losses in the event the railway bills are not provided to the Seller within specified period.

#### **4.3. Special Conditions of Delivery by Auto Truck(s)**

- 4.3.1.** Where the Seller expressly or impliedly provides the Buyer with a range of dates within an agreed period of delivery of arrival of auto truck(s) loaded with the Goods, any of the provided dates can result in delivery.
- 4.3.2.** No later than 1 (one) day after shipment of the Goods by auto truck(s) the Seller shall provide by electronic post or facsimile to the Buyer all information necessary for unloading of the Goods:
  - (a) The Contract reference number.
  - (b) CMR consignment note reference number(s).
  - (c) Auto truck identification number(s).
  - (d) Description of the Goods and their CMR consignment note quantity.
  - (e) Estimated Time of Arrival of auto truck(s).
  - (f) Number of issued CMR consignment notes.
- 4.3.3.** The Seller has the right to substitute any of identified auto truck(s) and provide the Buyer with new information not later than 2 (two) days before Estimated Time of Arrival of auto truck(s). Such substitution shall always be subject to the requirements that auto truck(s) shall be of a similar size be provided and that the quantity to be loaded shall not, without prior written consent of the Buyer, differ by more than 5 (five)% from the quantity specified in the present Contact.
- 4.3.4.** The Buyer at his own option can provide the Seller with written instructions regarding information necessary for efficient unloading of the Goods by the Buyer. In case such information is provided, the Seller, his Carrier or his representatives / employees undertake to honestly follow the instructions where applicable, to partially assist in efficient unloading of the Goods by the Buyer. Such assistance is not a duty but an option of the Seller.
- 4.3.5.** **The Buyer warrants** that the Place of Destination shall be safe and well suited for delivery of the Goods. The Buyer shall be liable for and shall indemnify the Seller in respect of any loss or damage, including but not limited to any liability for damage to auto truck(s), surroundings, environment and people, additional costs or expenses arising out of and in relation to any failure of the Buyer to nominate a safe Place of Destination.

**4.3.6. The Buyer is obliged** to ensure his timely presence at Place of Destination at the Delivery Date for unloading of the Goods. Buyer's absence at the Place of Destination shall not prejudice the fact that the Seller had successfully performed Delivery of the Goods for the purpose of the contract.

**4.3.7. Time for Unloading**

- a) The time allowed to the Buyer for the unloading of the quantity of the Goods deliverable under the Contract by each auto truck shall be as set out in Article I of the Contract.
- b) Unloading time shall commence 2 (two) hours after the arrival of each auto truck to the Place of Destination. For the purpose of calculating unloading time, unloading shall be deemed to have been completed upon removal of last item of the Goods from last auto truck's cargo space.

**4.3.8. Carriage of the Goods by Road Contract Conditions**

- a) The Seller may arrange transportation with respect to a standard carriage of the Goods by road contract. Without prejudice to the generality of the foregoing, such contract shall be deemed to include the provision that where, at any time after loading but before the commencement of unloading;
  - (i) Importation of the Goods at the Place of Destination is prohibited under the laws of the country in which such Goods were produced, or by regulations, rules, directives or guidelines applied by the government of that country or any relevant agency thereof; and/or
  - (ii) The country, state, territory or region at which the Place of Destination is located becomes a restricted zone,  
the Goods shall be unloaded at an alternative location nominated by the Buyer that is not subject to any such prohibition and that is acceptable to the Seller (which acceptance shall not be unreasonably withheld).
- b) In such circumstances, such alternative railway unloading zone shall be deemed to be the Place of Destination stipulated under the contract for the shipment in question and all extra expenses (if any) involved in the auto truck's reaching such alternative Place of Destination shall be for the Buyer's account.

**4.3.9. Buyer's right to require**

The Buyer has the right to require extra services in relation to the Goods at Place of Destination which shall not be viewed as included in the Total Goods Value. The Parties shall decide on a possibility of provision of such services by mutual written agreement no later than 3 (three) days before Estimated Time of Arrival of the auto truck(s). Where the Buyer, by written instruction to the Seller, requests that such services should be provided, then the Buyer shall indemnify and hold the Seller harmless against any liability, loss, damage, delay or expense that the Seller may sustain by reason of complying with the Buyer's request. The indemnity given by the Buyer to the Seller shall be no less in scope than the indemnity required by auto trucks' owner to comply with the Buyer's request.

**4.4. Special Conditions of Delivery in Shipping Containers**

**4.4.1.** The period of free use and payment for excess use of containers in port of unloading shall be according to the applicable rules of the forwarder's agent/container owner or customary at the Place of Destination.

**4.4.2.** In the event a container is damaged while it is in possession of the Buyer or the Buyer's counterparties, the Buyer shall promptly inform the Seller thereof and within 30 (thirty) days after the Seller's request pay to the Seller the documented repair full costs, including, without limitations, expenses on transportation of the container to the place of repair and surveyor's services. If the owner of the container (or the forwarder agent, if authorized) decides that the repair of the container is impossible or not reasonable as a result of the incurred damage, the container is considered to be lost. In that case the Buyer shall pay the Seller the amount that

covers value of the corresponding size and type of container, but in any case not less than the cost of the container set by the owner.

- 4.4.3.** The assessment of damage to the container during its possession by the Buyer shall be done by the Seller or an expert engaged by the Seller or by the owner or by the expert engaged by the owner. The expert costs are born by the Seller or the owner. Upon the results of the assessment the expert shall prepare an act based on which the owner of the container shall resolve on the feasibility of the container's repair. The expert costs shall be paid in full by the Buyer to the Seller.
- 4.4.4.** The Buyer shall return the container in accordance with the Seller written instructions as soon as possible following the completion of the shipment and in any event within the free use period stated in the customary rules at the Place of Destination. The container is to be freed from all particles of the cargo and material used for the Goods separation.
- 4.4.5.** Should the Buyer fail to return the empty and clean container to the forwarder (or the forwarding agent) within the free use period, such container is considered to be lost. In that case the Buyer shall pay the Seller the amount that covers value of the corresponding size and type of container, but in any case not less than the cost of the container set by the owner.
- 4.4.6.** Should the Buyer fail to return the container within the free use period, the Seller is entitled at its own discretion: (i) to claim the cost of the lost container; or (ii) extend the return period and charge 35 (thirty five) USD per each day of use beyond the free use period or such a bigger rate as may applicable to the forwarder's agent/container owner or customary at the Place of Destination. In the event the container is lost or deemed to be lost (as described in this Clause 4.4), the charge for the use beyond the free use period shall be calculated until the payment of the cost of the lost container.
- 4.4.7.** The Buyer shall provide the Seller with full written instructions regarding the particulars for the Bills of Lading including consignee, contact details and address of the authorized person of the consignee, other information necessary for the delivery and reasonably required by the Seller, number of the copies, addresses, etc. and such other information which may be required by the Place of Shipment, Place of Destination and/or the Seller. The Seller shall have the right to issue its own instructions if the Buyer fails to provide such instructions and/or information required by this Clause.

## PAYMENT

### **4.5. Payment Conditions**

- 4.5.1. Price.** The Price for the Goods shall be paid by the Buyer according to the Contract.
- 4.5.2. Time of payment.** Time for payment, including but not limited to, Prepayment conditions or payment via Letter of Credit conditions, shall be of the essence.
- 4.5.3. Bank details.** Bank details of the Seller shall be indicated in the invoice. The Buyer shall effect the payment in accordance with the Article I of the Contract by telegraphic transfer and, unless otherwise follows from the context or specifically provided in the Contract or the GTC, with indicating the number and the date of the Contract/Amendment and the number and the date of the invoice issued by the Seller in the payment reference (the purpose of payment).
- 4.5.4. SWIFT confirmation.** The Buyer shall provide the Seller with a copy of SWIFT confirmation within 1 (one) Business Day after the payment has been effected.
- 4.5.5. VAT.** Unless otherwise expressly defined in the Contract the Price is exclusive of any VAT and the Seller shall have the right to invoice the Buyer for any such VAT in so far as such taxes are not for the account of the Seller according to the Contract.

- 4.5.6. The date of payment.** The date of payment is considered the date of crediting of the Seller's bank account for 100% (one hundred per cent) of the amount specified in the Seller's invoice.
- 4.5.7. Withholdings.** Unless otherwise expressly agreed to the contrary in the Contract, all payments due or payable to the Seller under the Contract shall be paid in full, regardless of whether the Buyer is required to withhold or to apply any Taxes on payments made under the Contract. If the Buyer is required to withhold or to apply any Taxes on payments made under the Contract, then Buyer shall gross up such payments so that the Seller receives after the deduction of Tax, the full sum due and payable under the Contract as if no such Taxes had been deducted, regardless of any withholdings or application of any Taxes on payments made under the Contract. The Total Goods Value and all other amounts payable by the Buyer to the Seller under the Contract shall be payable without the right to any discount, deduction, set-off, lien, claim or counter-claim.
- 4.5.8. Interest.** If the Total Goods Value or any other amounts due by the Buyer to the Seller under the Contract are not paid when due, interest shall be accrued and shall be paid on all amounts outstanding until payment in full is received into the Seller's bank account as described in Clause 4.10.2.
- 4.5.9. Banking expenses.** All expenses at the Seller's bank and at the Seller's correspondent bank shall be for the account of the Seller. All expenses outside the Seller's bank and at the Seller's correspondent bank shall be for the account of the Buyer.
- 4.5.10. Verification Act.** On a quarterly basis the Verification Act should be fully executed by both Parties. The Seller shall send by fax or by email to the Buyer the Verification Act signed by the Seller once in a quarter. Within 2 (two) days from the date of receipt of the Verification Act signed by the Seller the Buyer shall check the Goods delivered quantity, amount paid for the Goods, and provide the Seller with its motivated objections (if any). The Seller shall consider such motivated objections within 7 (seven) days and put the corrections into the Verification Act or negotiate with the Buyer on the amicable basis the content of the Verification Act which should be executed by both Parties. Without prejudice to the above, the Verification Act shall be executed upon any Party request if any.

#### **4.6. Payment terms**

##### **4.6.1. Letter of Credit**

###### **a) Issuance of the Letter of Credit**

The Buyer shall issue Letter of Credit within 5 (five) Business Days from the Signing Date in strict accordance with the terms and conditions set out in this Clause.

###### **b) Validity period of the Letter of Credit**

The validity period for the Letter of Credit shall cover the payment period envisaged in the Contract plus 30 (thirty) days, provided, however, that the minimal validity period could not be less than 90 (ninety) days. The foregoing is saved that the Buyer shall extend respectively the validity of the Letter of Credit in case of Force Majeure Event.

###### **c) Documents**

The documents to be provided by the Seller pursuant to the requirements of a Letter of Credit shall be the following:

- i. Seller's invoice (fax or email copy);
- ii. Transport Document (fax or email copy).

Documents prepared in Russian language are acceptable.

Minor mistakes and misprints in the documents are acceptable.

###### **d) Letter of Credit Conditions**

The payment for the Goods shall be effected by the Buyer as follows:

- i. The Buyer shall issue in favor of the Seller an irrevocable and divisible Letter of Credit payable at sight in strict accordance with the terms and from a bank and in a form confirmed in writing by the Sellers but in any case prior to the Goods dispatch.
- ii. The Buyer shall provide the Seller with the draft of such irrevocable Letter of Credit for the preliminary Seller's written approval.
- iii. Expenses in connection with the opening, amendment and utilization of the Letter of Credit shall be paid by the Buyer.
- iv. The Letter of Credit shall be issued in the amount of 110% (one hundred and ten per cent) of the Price multiplied by the shipment quantity of the Goods to be delivered.

**4.6.2. Prepayment (advance payment)**

The payment for the Goods shall be effected by the Buyer as follows:

- a) The Buyer shall pay 100% (one hundred per cent) of the amount specified in the Seller's proforma invoice in advance within 5 (five) Business Days after the date of the Seller's proforma invoice but in any case at least 3 (three) Business Days prior to the Goods dispatch by the Manufacturer.
- b) The Buyer shall effect the payment in accordance with the contract by telegraphic transfer and without deduction into the Seller's bank account and the Buyer shall indicate the number and the date of the Contract/Amendment and proforma invoice number in the payment reference (the purpose of payment).
- c) In case of the amount paid by the Buyer as the Prepayment for the Goods is less than the amount due to be paid for the Actual Contract Quantity or the Actual Monthly Quantity (as the case may be) the Buyer shall effect the payment of such outstanding balance within 5 (Five) days of an appropriate Seller's invoice.
- d) In case of the amount paid by the Buyer as the Prepayment for the Goods exceeds the amount due to be paid for the Actual Contract Quantity or the Actual Monthly Quantity (as the case may be) the Parties shall mutually agree if (i) such difference between the amounts will be applied to the further deliveries if applicable or (ii) the Seller shall return such difference between the amounts within 5 (Five) days of an appropriate Verification Act is executed by the Parties.

**4.6.3. Post payment**

- a) The Buyer shall pay 100% (one hundred per cent) of the amount specified in the Seller's invoice not later than date specified in the Contract.
- b) Partial payments shall be allowed.

**4.6.4. Documents against Payment**

The payment for the Goods shall be effected by the Buyer as follows:

The Buyer shall pay the Goods via Documents against payment at sight (hereinafter referred to as "D/P at sight" or "DaP at sight" or "DP at sight") in accordance with the conditions specified below.

The payment for the Goods shall be effected by the Buyer as follows:

- a) Within ten (10) Business days after the date when the documents stating the right of disposal of the Goods were issued the Seller shall (i) transfer the originals of such documents to the Seller's Bank and (ii) send the copy of such documents to the Buyer.
- b) The Seller's Bank shall transfer the originals of such documents to the Buyer's Bank; provided that such Buyer's Bank was expressly preliminary approved by the Seller in writing.
- c) UNDER NO CIRCUMSTANCES THE BUYER'S BANK MAY TRANSFER THE ORIGINALS OF THE DOCUMENTS STATING THE RIGHT OF DISPOSAL OF THE GOODS TO THE BUYER PRIOR OF THE DATE WHEN THE SELLER'S BANK CONFIRMED THAT ALL AMOUNT FOR

THE GOODS WERE DULY PAID BY THE BUYER IN ACCORDANCE WITH THE SELLER'S INVOICE AND ALL AMOUNT WAS ENTERED INTO THE SELLER'S ACCUNT.

- d) The Buyer shall pay 100% (one hundred per cent) amount specified in the copy of the original invoice provided by the Seller via e-mail or mail or fax or any other type of transfer within 5 (five) Business days from the date of receipt of the documents stating the right of disposal of the Goods by the Buyer's Bank.
- e) The Buyer shall effect the payments specified in this Clause by telegraphic transfer and without deduction into the Seller's bank account and the Buyer shall indicate the number and the date of the Contract and invoice number in the payment reference (the purpose of payments).
- f) The Parties expressly have acknowledged and agreed that the following documents are considered as the documents stating the right of disposal of the Goods:
  - I. Commercial invoice;
  - II. Bill of lading – for delivery by sea,  
or  
Railway bill – for delivery by railroad,  
or  
CMR – for delivery by road;
  - III. Packing list issued by the Seller.

The Parties may mutually agree in writing in the Contract other documents stating the right of disposal of the Goods depend on the reasonable requirement of the respective authority.

#### **4.7. Security of the Buyer's Payment Obligations**

##### **4.7.1. Parent company guarantee**

The Buyer shall provide the Seller with the Buyer's parent company guarantee securing the performance of all the Buyer's obligations under the Contract. The guarantee shall be provided within 10 (ten) Business Days after a relevant Seller's request and shall be in writing, in the form satisfactory for the Seller and issued for the term of the Contract plus 6 (six) months. In the absence of the Buyer's parent company, the guarantee may be issued by an Affiliate(s) or other third party(ies) as agreed with the Seller.

The Seller is not obliged to supply the Goods until the requested guarantee is duly furnished and the Buyer shall pay to the Seller any and all related costs in connection with such delay. If the Buyer delays the provision of the guarantee for more than 10 (ten) Business Days, the Seller is entitled to terminate the Contract.

##### **4.7.2. Defective Performance of Obligations**

In the event the Buyer fails to perform or delays the performance of any obligations hereunder at least 2 (two) times during any consecutive 6 (six) months or delays any of the obligations at least once for more than for 1 (one) month, then the Seller shall be entitled by written notice to the Buyer: (i) change the payment terms of the Goods to Prepayment (Clause 4.6.2) and/or (ii) request from the Buyer additional reasonable means of security of obligations, which the Buyer must provide within 15 (fifteen) Business Days following the relevant request. The change shall come into force with the next dispatch of the Goods after the notification. The Seller is entitled to suspend delivery of the Goods until the Goods are paid (as provided in Clause 4.6.2) and/or additional security of obligations is provided.

##### **4.7.3. Stand-by Letter of Credit**

###### **a) Issuance of the Stand-by Letter of Credit**

The Buyer shall issue the Stand-by Letter of Credit within 5 (five) Business Days from the Signing Date in strict accordance with the terms and conditions set out in Article I of the Contract.

###### **b) The validity period for the Stand-by Letter of Credit**

The validity period for the Stand-by Letter of Credit is 90 (ninety) days.

**c) Documents**

The documents to be provided by the Seller pursuant to the requirements of a Stand-by Letter of Credit shall be the following:

- (i) Seller's invoice (fax or email copy);
- (ii) Transport Document (fax or email copy).

**d) Stand-By Letter of Credit procedure**

The Buyer shall effect the payment 100% (one hundred per cent) of the amount specified in the Seller's invoice within the term specified in the Contract.

In case of the Buyer's failure to effect the payment on the due date in accordance with the Contract the payment should be done by the aforesaid Stand-By Letter of Credit against the presentation by the Seller to the Seller's bank specified in the Seller's invoice of the following documents:

- (a) the Seller's (Beneficiary) letter with the following statements (telex, fax or email acceptable):
  - the Seller has delivered the Goods in conformity with the Contract and that the invoice has been sent to the Buyer; and
  - the payment in accordance with the Seller's invoice for delivery of the Goods is properly due to the Seller, and such payment has not been made to the Seller by the Buyer within the terms of the Contract;
- (b) copy of the Seller's invoice (telex, fax or email acceptable);
- (c) Transport Documents (telex, fax or email acceptable).

**e) Stand-by Letter of Credit Conditions**

The payment for the Goods shall be effected by the Buyer as follows:

- i. The Buyer shall issue in favor of the Seller an irrevocable Stand-By Letter of Credit payable in strict accordance with the terms and from a bank and in a form confirmed in writing by the Sellers but in any case prior to the Goods dispatch.
- ii. The Stand-By Letter of Credit shall be issued in the amount of 110 % (one hundred and five per cent) of the Planned Contract Quantity or the Planned Monthly Quantity as the case may be and shall be valid for a period specified in Article I of the Contract, save that the Buyer shall extend respectively the validity of the Stand-by Letter of Credit in case of Force Majeure Event.
- iii. The Buyer shall provide the Seller with the draft of such a Stand-By Letter of Credit for the preliminary Seller's written approval.
- iv. Expenses in connection with the opening, amendment and utilization of the Stand-By Letter of Credit shall be paid by the Buyer.
- v. Any and all costs, loss or damage incurred by the Seller as a result of the Buyer's failure to comply with this Clause 4.6 shall be for the Buyer's account.

**4.8. Quality and Quantity of the Goods**

**4.8.1. Quality**

Save where the Buyer requires a quality inspection pursuant to Clause 4.8.3, the quality of the Goods shall be confirmed by a Certificate of Quality issued by the Seller or by the Manufacturer of the Goods as the case may be.

**4.8.2. Quantity**

- a) The Planned Contract Quantity and/or the Planned Monthly Quantity specified (as the case may be) in the Contract, unless otherwise agreed by the Parties in the Contract, shall be subject to a tolerance of +/-10% (plus/minus ten per cent) in the Seller's option.
- b) The Actual Contract Quantity and/or the Actual Monthly Quantity delivered under the Contract shall be equal to the quantity stated in respective Transport Document.
- c) The Actual Contract Quantity shall be the basis for determining the Total Goods Value.
- d) The Actual Contract Quantity or the Actual Monthly Quantity (as the case may be) may deviate by not more than 10% (ten per cent) of the Planned Contract Quantity or the Planned Monthly Quantity respectively without any right for the Buyer to claim that the Seller will have to meet the Planned Contract Quantity or the Planned Monthly Quantity specified in the Contract, and/or take back any surplus quantities to the Planned Contract Quantity or the Planned Monthly Quantity specified in the Contract as the case may be.
- e) In the event that the Seller is not able to supply the Planned Monthly Quantity or the Planned Contract Quantity of the Goods within specified period because of the reduction of the Manufacture production capacity, provided that the Seller informed the Buyer of this reasonably in advance, the Parties shall mutually agree delivery terms for the outstanding quantity of the Goods, and the Seller's suggestions shall be taken into account; provided, however, that it is agreed and acknowledged by both Parties that the Seller will not be obliged and is not expected and may not be required to supply in excess of the production capacity of the Manufacture. The Parties acknowledge that the remedy provided in this Clause will be the sole remedy that the Buyer will have in the event the Seller is not able to supply the Planned Monthly Quantity or the Planned Contract Quantity of Goods during the relevant period.
- f) In the event that the Buyer orders less Goods than the Planned Monthly Quantity or the Planned Contract Quantity for a relevant period, the Seller at its own discretion may either: (i) agree to supply the outstanding quantity of the Goods in the next period (the supply schedule shall be decided by the Seller, however, the Buyer's suggestions may be taken into account); or (ii) request the payment of 10% (ten per cent) of the Price of the outstanding quantity of the Goods as liquidated damages of the Seller (the Parties agree that the above amount is genuine pre-estimate of liquidated damages the Seller will suffer if the Seller supplies the Goods less than the Planned Monthly Quantity or the Planned Contract Quantity. Without prejudice to the above, however, if the amount of actual damages exceeds the above amount, the right of the Seller to claim the actual amount of damages shall not be limited). The Seller shall notify the Buyer the option it chooses to proceed in writing, however, the failure to notify will not evidence the waiver of the Seller's rights described above. The Parties acknowledge that the remedy provided in this Clause will be the sole remedy the Seller will have in the event the Buyer fails to order the Planned Monthly Quantity or the Planned Contract Quantity of the Goods during the relevant period.

#### **4.8.3. Quality and Quantity Inspection**

- a) Unless agreed otherwise, quality and quantity inspection is to be determined at the Place of Shipment (applicable for EXW, FCA, CPT, CIF, FOB, CFR) or the Place of Destination (applicable for DAP, DDP) (as may be applicable in accordance with the Contract or the GTC) by an Inspector such as SGS or similar internationally recognized inspection company mutually agreed between the Parties and in accordance with the standard practice (i) at the place of the inspection or (ii) of the Inspector if there is no standard practice at the place of inspection, unless the Contract or the GTC provides otherwise.
- b) The quantity Inspection of the liquid Goods shall be as per the quantity in vacuum (unless the Contract explicitly applies measurement in air). The Bill of Loading quantity of the Goods shall be stated based on the Inspection. Inspection of the other categories of the Goods is to be made upon the Buyers request, the



Seller shall be notified of the Inspection at least 7 (seven) days in advance and the Buyer shall provide the Seller's representative opportunity to present in order to observe the Inspection.

- c) The inspection results shall be documented in the Inspector's Report and shall be conclusive and binding on the Parties for invoicing purposes, for quality purposes and/or for quantity purposes and shall be final and binding for both Parties, except in case of fraud or manifest error.
- d) In the event that (i) the quality of the Goods does not conform with the contractual Specification or (ii) the quantity of the Goods does not conform the conditions of the Contract, the Parties shall discuss the Buyer's remedies for such non-conforming the Goods. The remedies may include, for example, a price adjustment for the Goods. The outcome of the Parties' discussion shall be documented in a written Amendment.
- e) The costs of the inspection (as per terms of Clauses a) and b)) shall be equally shared between the Seller and the Buyer (and the terminal, if the terminal participates in the inspection). Any other inspections and related services, if required by the Buyer, shall be paid solely by the Buyer; provided, however, that only results of the inspections as provided in Clauses a) and b) will have the final and binding effect on the Parties.
- f) The Inspector shall issue his report to the Seller and the Buyer as soon as practicable. The Inspector shall retain samples taken for at least 90 (ninety) days from the date of inspection.

#### **4.8.4. Deviation from the Planned Amount of the Goods**

- a) In case the Actual Contract Quantity or the Actual Monthly Quantity (as the case may be) is in excess of 100% (one hundred per cent) but less than or equal to 110% (one hundred and ten per cent) of the Planned Contract Quantity or the Planned Monthly Quantity respectively the Buyer shall effect the payment of such outstanding balance within 5 (Five) Days of an appropriate Seller's invoice.
- b) In case the Actual Contract Quantity or the Actual Monthly Quantity (as the case may be) is less than 100% (one hundred per cent) but in excess of or equal to 90% (ninety per cent) of the Planned Contract Quantity or the Planned Monthly Quantity respectively, the Seller at its own decision has the option to either: (i) meet the Planned Contract Quantity or the Planned Monthly Quantity (as the case may be) in further deliveries, or (ii) repay to the Buyer (pay back, return) the Prepayment paid by the Buyer for the Goods not delivered within 3 (three) Days after the execution of the respective Verification Act (option (ii) is not applicable to post payment of the Goods); or (iii) apply such amount of the Prepayment paid by the Buyer for the Goods not delivered to the further deliveries of the Goods (if applicable). In either event the conditions set forth in this Clause shall be the Buyer's sole and exclusive remedy for such short delivery, howsoever caused, always excepting fraud, and the Seller shall have no other liability to the Buyer whatsoever.
- c) In the event that the Actual Contract Quantity or the Actual Monthly Quantity (as the case may be) is in excess of 110% (one hundred and ten per cent) of the Planned Contract Quantity or the Planned Monthly Quantity respectively, the Buyer at its own option shall have the right to either: (i) return any quantity in excess of 110% (one hundred and ten per cent) of the Planned Contract Quantity or the Planned Monthly Quantity respectively to the Seller at the Seller's expense, or (ii) to retain any Goods quantity in excess of 110% (one hundred and ten per cent) of the Planned Contract Quantity or the Planned Monthly Quantity respectively upon its agreement to pay the Price for the entire quantity taken provided that any of such Buyer's decisions shall be made within 1 (one) day after Delivery Date of the respective Goods. The payment for such Goods shall be made by the Buyer within 5 (five) days after the Seller's invoice date.
- d) In the event that the Actual Contract Quantity or the Actual Monthly Quantity (as the case may be) is less than 90% (ninety per cent) of the Planned Contract Quantity or the Planned Monthly Quantity

respectively, the Buyer has the right to require the Seller to pay to the Buyer direct losses incurred by the Buyer in connection with the event where Actual Contract Quantity or the Actual Monthly Quantity (as the case may be) is less than 90% (ninety per cent) of the Planned Contract Quantity or the Planned Monthly Quantity respectively, provided that such direct losses are evidenced by the sufficient documents; such payment shall be made within 7 (seven) days after the execution of the respective Verification Act by the Parties. It is expressly mutually agreed and acknowledged by the Parties that in any case maximum amount of the direct losses may not exceed 10% (ten per cent) of the price of the Goods which were not delivered. Subject to all other conditions of the GTC, where the Seller is exempt from any liability (responsibility), in either event the Buyer's rights set forth in this clause shall be the Buyer's sole and exclusive remedy for such short delivery, howsoever caused, always excepting fraud, and the Seller shall have no other liability to the Buyer whatsoever.

- e) In the event that the Actual Contract Quantity or the Actual Monthly Quantity (as the case may be) is in excess of 110% (one hundred and ten per cent) of the Planned Contract Quantity or the Planned Monthly Quantity respectively and the Buyer fails to state its intention to return excess the Goods within the period specified above, the Buyer will be deemed irrevocably to have retained the excess the Goods and will accordingly pay for the excess the Goods retained within 5 (five) days after the Seller's invoice.
- f) In the event that the Actual Contract Quantity or the Actual Monthly Quantity (as the case may be) is less than 90% (ninety per cent) of the Planned Contract Quantity or the Planned Monthly Quantity respectively and the Buyer fails to state request to compensate within 10 (ten) days after the Delivery Date, the Buyer will be deemed irrevocably agreed with the Seller's obligation to meet the Planned Contract Quantity or the Planned Monthly Quantity respectively (as the case may be) in further deliveries.

#### **4.9. Claims**

- 4.9.1.** Claims if any on quality and/or quantity of the Goods to be provided by the Buyer to the Seller within 30 (thirty) days after the Delivery Date, unless other terms are not specified by the Parties in the relevant clauses of the GTC. If the Buyer fails to make a claim within the agreed period of 30 (thirty) days after the Delivery Date such claim will automatically be considered as time barred, null and void, and such delivered the Goods shall be deemed accepted by the Buyer and in accordance with all terms and conditions of the GTC and further claims in respect of the quality and/or quantity of the Goods are not permitted and may not be enforced.
- 4.9.2.** The Buyer shall not be entitled to use a claim in relation to a particular shipment of Goods as a basis for the refusal to accept other shipments of the Goods delivered under the Contract, or the Goods delivered pursuant to any other Contract agreed between the Parties.
- 4.9.3.** Unless otherwise specified in the Contract and/or the GTC any cause of action and/or claim that Buyer may have against Seller under the Contract shall be brought within one (1) year after the cause of action and/or claim accrues, failing which the Buyer shall be deemed to have waived its rights relating thereto.

#### **4.10. Responsibilities of the Parties**

- 4.10.1. Delivery liquidated damages.** For each full Week that the Seller delivers the Goods late commencing 30 (thirty) days after the latest date for delivery specified in Article I of the Contract, the Buyer shall be entitled to demand liquidated damages from the Seller for such delivery delay in the amount equal to 0.1% (one tenth of one per cent) of the price for the late delivered Goods per day, up to a maximum of 10% (ten per cent) of the price for the late delivered Goods.

The Parties acknowledge and agree that in no event shall the Seller be considered to be in breach under the Contract due to any late delivery and the Buyer shall not be entitled to liquidated damages until the Seller is at least more than 30 (thirty) days late under the terms and conditions specified in the Contract. The Seller shall not be liable to the Buyer in liquidated damages for delay caused by a Force Majeure Event, failure or default on the part of the Buyer, or where the Seller is entitled to delay delivery pursuant to the terms of the Contract. The Parties acknowledge and agree that in no event shall the Seller be considered to be in breach under the Contract due to any late delivery or non-delivery of the Goods and the Buyer shall not be entitled to claim any losses, or liquidated damages, or any other claims in case of the planned Manufacture production capacity repair; provided that the Seller shall notify the Buyer of such repair not later than one week prior to the month when the repair is planned. The Parties acknowledge and agree that Seller's notification of the repair is enough and sufficient evidence and confirmation of the planned repair.

THE LIQUIDATED DAMAGES SET FORTH HEREUNDER TOGETHER WITH THE RIGHT OF TERMINATION SET OUT IN CLAUSE 4.19.3 SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDIES FOR ANY LATE DELIVERY OF ANY GOODS OR PART THEREOF AND THE SELLER SHALL HAVE NO FURTHER LIABILITY WHATSOEVER, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY).

- 4.10.2. Interest for late payment.** In case the Buyer fails to comply with the terms of the payment set out in the Contract the Buyer shall pay to the Seller interest at the lesser of (i) one month LIBOR plus 4% (four per cent) per annum of the outstanding amount or (ii) the maximum allowed by applicable Law.
- 4.10.3. Suspension.** If the conditions or terms of payment are breached by the Buyer the Seller may, at the Seller's option, either suspend delivery of the Goods to the Buyer or unilaterally terminate the Contract. Such suspension shall not constitute a delay for the purposes of liquidated damages.
- 4.10.4. Late acceptance.** In the event that the Buyer fails or refuses to accept delivery of the Goods or any part thereof pending laytime (i.e. have not commenced the accepting and unloading/loading of the Goods as the case may be; or furnished the Seller with explanation of delay and further instructions as regards the Goods satisfactory for the Seller); provided that such Goods have been delivered in accordance with the terms of the Contract, without prejudice to the Seller's other rights under the Contract or the applicable Law, the Seller is entitled to pass the Goods to a proximate logistic company or keeper at the Buyers risk and expense of which the Buyer shall be notified within reasonable time. The Seller is entitled to exercise its right hereunder irrespective of whether the title to the Goods has passed to the Buyer under the Contract or not. The quantities of the Goods passed confirmed by such a logistic company or keeper shall be deemed as due confirmation of the quantities of the Goods delivered by the Seller; the term for quality claims for the Goods specified in Clause 4.9 shall commence as of the expiration of the laytime. The Seller shall be entitled to claim without limitation all and any transport and/or insurance cancellation costs, storage costs, additional transport costs, customs duties, demurrage and other similar or related costs and all expenses arising out of or in connection with such late acceptance from the Buyer till the moment when the Goods are taken by the Buyer.
- 4.10.5. The Seller's disposal rights.** In the event that the Buyer (or the Buyer's authorized representative, or the Buyer's Carrier, etc.) fails or refuses to accept delivery of the Goods or any part thereof within 5 (five) days of the due date mutually agreed by the Parties, entirely without prejudice to the Seller's other rights under the Contract or the applicable Law, the Seller shall at its sole discretion be entitled to sell the quantity of the Goods which were not taken by the Buyer. The Seller is entitled to exercise its right hereunder irrespective of whether the title to the Goods has passed to the Buyer under the Contract or not. The Buyer is also entitled either (i) to demand the Buyer to reimburse all Seller's costs of sale including, without limitation, storage costs, additional transport costs, customs duties, and other similar or related reasonable costs and expenses

together with any difference in the price obtained for the Goods when compared to the Price of the Goods set out in the Contract; or (ii) to deduct the amount of the received advance payment (applicable to the prepayment or CAD) for the damages incurred by the Seller as a result of such refusal; after calculating the damages the remaining part of the advance payment shall be either returned to the Buyer or offset against further deliveries. The Seller is entitled to exercise its right hereunder irrespective if the title to the Goods has passed to the Buyer under the Contract or not.

**4.11. Limitations of Liability**

- 4.11.1. UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE WHETHER IN THE CONTRACT, IN TORT (INCLUDING GROSS NEGLIGENCE), UNDER ANY WARRANTY OR OTHERWISE, FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR FOR EXEMPLARY OR PUNITIVE LOSSES OR DAMAGES, OR ANY LOSS OF PROFITS (SAVE IN RELATION TO SELLER'S LOSS OF PROFIT ARISING FROM THE BUYER'S FAILURE OR REFUSAL TO TAKE OR ACCEPT DELIVERY OF THE GOODS OR ANY PART THEREOF CONTRARY TO THE TERMS OF THE CONTRACT) OR REVENUES, OR ANY COST OF LABOR, RESULTING FROM OR ARISING OUT OF OR IN CONNECTION WITH THE GOODS OR SELLER'S PERFORMANCE UNDER, OR BREACH OF, THE CONTRACT, EVEN IF THE PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EACH PARTY SHALL UNDERTAKE ITS BEST EFFORTS TO MITIGATE ITS LOSSES.**
- 4.11.2. FOR THE AVOIDANCE OF DOUBT, EITHER PARTY MAY SEEK TO RECOVER FROM THE DEFAULTING PARTY ANY ACTUAL DIRECT DAMAGES INCURRED AS A RESULT OF THE DEFAULTING PARTY'S BREACH OF CONTRACT (INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES AND COSTS); PROVIDED, HOWEVER, THAT NOTWITHSTANDING ANYTHING CONTAINED HEREIN, TO THE FULL EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL THE SELLER'S LIABILITY IN CONNECTION WITH THE GOODS OR THE CONTRACT EXCEED THE TOTAL GOODS VALUE (INCLUDING, BUT NOT LIMITED TO TRANSPORTATION COSTS, STORAGE COSTS, ETC.) PAID TO THE SELLER BY THE BUYER FOR THE GOODS.**
- 4.11.3. UNDER NO CIRCUMSTANCES SHALL THE SELLER BE LIABLE FOR THE BUYER'S LOSS OF PROFIT, NON RECEIPT OF REVENUE, BUSINESS INTERRUPTIONS, THE SUSPENSION OF COMMERCIAL ACTIVITIES, OR FOR ANY INDIRECT LOSS IRRESPECTIVE OF ITS CHARACTER AND REASON.**
- 4.11.4. BOTH PARTIES ACKNOWLEDGE AND AGREE THAT THE EXCLUSIVE REMEDIES AND LIMITATIONS OF LIABILITIES SET FORTH HEREIN WERE BARGAINED FOR ON AN EQUAL FOOTING AND ARE CONDITIONS OF THE CONTRACT.**
- 4.11.5. NOTHING IN THE CONTRACT SHALL LIMIT OR EXCLUDE THE LIABILITY OF EITHER PARTY FOR DEATH OR PERSONAL INJURY RESULTING FROM ITS NEGLIGENCE OR FOR FRAUDULENT MISREPRESENTATION.**
- 4.11.6. Adverse Weather.** The Parties shall not be liable for delay caused by adverse weather. Notwithstanding the customary rules at the Place of Destination the Parties agree to evenly split losses caused by the adverse weather conditions and beyond the insurance coverage or other compensation from third parties.

**4.12. Health, Safety and Environment**

- 4.12.1.** The Goods supplied by the Seller in the condition in which it is sold is considered not to constitute a hazard to health or safety, provided that it is handled, used and stored in accordance with normally accepted safe Business practices applicable to the Goods. The Buyer shall, for its own protection, consult the producer's Material Safety Data Sheet (MSDS) (if any), relevant codes of practice and factory inspectorates with regard to adequate hygiene, safety and environmental standards and enforcement thereof, with respect to handling, processing and storing of the Goods, their by-products and wastes of any sort.
- 4.12.2.** The Buyer warrants to the Seller that it is aware of and understands the information in the MSDS for the Goods and it will adopt appropriate procedures to ensure that all persons or agents authorised by the Buyer to carry out any of the rights, duties or obligations of the Buyer under the Contract and all of the Buyer's other officers, employees, contractors and agents who are involved in the loading, transportation, delivery, handling or use of the Goods sold and delivered to the Buyer under the Contract are aware of, and comply with the information provided in the relevant Material Safety Data Sheet.
- 4.12.3.** The Buyer accepts the inherent risks associated with the Goods as set out in Clause 4.12 hereof and shall accordingly have no claim of any kind against the Seller directly or indirectly arising from damage to any property as a result of direct or indirect exposure to the Goods.
- 4.12.4.** The Seller shall not be liable for any cost, loss or damage resulting from the receipt of the Goods in non-compliant storage facilities. The Buyer shall indemnify the Seller against any claim which any third party might have or bring against the Seller in this respect.
- 4.12.5.** Any advice given by the Seller concerning storage, transport, use or application of the Goods delivered shall be on a without prejudice basis and the Seller shall not be liable for any loss, damage or expense resulting from observance of such advice.
- 4.13. REACH**
- 4.13.1.** Notwithstanding any other provision to the contrary in the Contract, in providing the Buyer with a Chemical Abstract Service Index number and/or Existing Commercial Chemical Substances Number and/or any other health, safety and environmental information relating to the Goods pursuant to this Clause 4.13, regardless of their source, the Seller provides no warranty or representation as to the accuracy or completeness of such identification number(s) or information relating to it and needed by the Buyer and/or reasonably requested by the Buyer to comply with the requirements of REACH, hence the Seller accepts no liability for loss, damage, delay or expense incurred by the Buyer for whatever reason arising from its reliance on the accuracy of the identification numbers or other information hereunder provided and /or the existence of a valid (pre-) registration of the Goods to be imported into the EU/EEA.
- 4.14. Restraint of Trade**
- 4.14.1.** The Buyer shall not sell or deliver or unload the Goods to a country or a resident of a country in contravention of any statutory regulation or direction of the country in which the Goods is produced.
- 4.14.2.** The Buyer undertakes that the Goods delivered under the Contract shall not be exported, sold or supplied by it to any country, state, territory or region or to any natural or legal person of such country, state, territory or region against which there are sanctions imposed by the United Nations Security Council, European Union, United Kingdom or United States on the export, sale or supply of such Goods to such location or person.
- 4.15. Sanctions, Trade Controls and Boycotts**  
Notwithstanding anything to the contrary elsewhere in the Contract:

**4.15.1.** Nothing in the Contract or in GTC is intended, and nothing in the Contract or in GTC should be interpreted or construed, to induce or require either party hereto to act in any manner (including failing to take any actions in connection with a transaction) which is inconsistent with, penalized or prohibited under any laws, regulations, decrees, ordinance, order, demand, request, rules or requirements of the United States of America applicable to such Party which relate to international boycotts of any type.

**4.15.2.** Neither Party shall be obliged to perform any obligation otherwise required by the contract (including without limitation an obligation to (a) perform, deliver, accept, sell, purchase, pay or receive monies to, from, or through a person or entity, or (b) engage in any other acts) if this would be in violation of, inconsistent with, or expose such party to punitive measure under, any laws, regulations, decrees, ordinances, orders, demands, requests, rules or requirements of the European Union, any EU member state, the United Nations or the United States of America applicable to the parties relating to trade sanctions, foreign trade controls, export controls, non-proliferation, anti-terrorism and similar laws (the "Trade Restrictions").

**4.15.3.** Where any performance by a Party would be in violation of, inconsistent with, or expose such Party to punitive measures under, the Trade Restrictions, such party (the "Affected Party") shall, as soon as reasonably practicable give written notice to the other Party of its inability to perform. Once such notice has been given the Affected Party shall be entitled:

**i.** to immediately suspend the affected obligation (whether payment or performance) until such time as the Affected Party may lawfully discharge such obligation; and/or

**ii.** where the inability to discharge the obligation continues (or is reasonably expected to continue) until the end of the contractual time for discharge thereof, to a full release from the affected obligation, provided that where the relevant obligation relates to payment for the Goods which have already been delivered, the affected payment obligation shall remain suspended (without prejudice to the accrual of any interest on an outstanding payment amount) until such time as the Affected Party may lawfully resume payment; and/or

**iii.** where the obligation affected is acceptance of the Vessel, to require the nominating Party to nominate an alternative Vessel;

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

**4.15.4.** Nothing in this Section shall be taken to limit or prevent the operation, where available under the governing law of the Contract, of any doctrine analogous to the English Common Law doctrine of frustration.

**4.16. Anti-Trust**

Each Party hereby warrants to the other party that, as at the date of the Contract and on each subsequent occasion it performs obligations under the Contract, it has not engaged in any Anti-competitive Behaviour in relation to the potential or actual terms and conditions of contract to be agreed or as agreed in relation to the Goods, including but not limited to the amount paid for the Goods, any level of volume discount or any other credit terms.

**4.17. Anti-Corruption**

**4.17.1.** Each Party hereby represents and warrants to the other that it complies with all Anti-Corruption Laws.

**4.17.2.** The Buyer and the 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 authorize the payment of any monies 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 organization;
  - 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 organization;
  - 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 the Buyer or the Seller;
  - vi. or any other person, individual or entity at the suggestion, request or direction or for the benefit of any of the above-described persons and entities, or
- b) engage in other acts or transactions,
- c) in each case if this is in violation of or inconsistent with the Anti-Corruption Laws.

**4.17.3.** Without prejudice to the other rights of the respective Party under the Contract or the applicable Law each Party may terminate the Contract forthwith upon written notice to the other at any time, if in their reasonable judgment the other is in breach of any of the above representations, warranties or undertakings.

**4.18. Arbitration and Law**

**4.18.1.** The Contract shall be governed by, interpreted and construed in accordance with the laws of England and Wales notwithstanding the choice of law rules of any jurisdiction and determined without reference to the principles of conflicts of laws.

**4.18.2.** Subject expressly to clause 4.18.3 below, any dispute, controversy, claim or difference relating to or arising out of, or in connection with, the Contract, including any question regarding the existence, scope, validity or termination of the Contract shall be settled, to the exclusion of the ordinary courts, by arbitration in accordance with the rules of the London Court of International Arbitration (LCIA), which Rules are deemed to be incorporated by reference into this clause. The number of arbitrators shall be 3 (three). Each Party shall nominate one arbitrator and the two appointed arbitrators shall appoint a third arbitrator who shall serve as the chairman of the arbitration tribunal. Unless otherwise agreed by the Parties, all arbitrators shall be fluent in English and have experience in acting as an arbitrator.

**4.18.3.** Notwithstanding clause 4.18.2 above any dispute, controversy, claim or difference relating to or arising out of demurrage in Delivery by Sea due or alleged to be due under the Contract shall be referred to arbitration in London in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced.

The reference shall be to three arbitrators. A party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other party requiring the other party to appoint its own arbitrator within 14 (fourteen) days of that notice and stating that it will appoint its arbitrator as sole arbitrator unless the other party appoints its own arbitrator and gives notice that it has done so within the 14 (fourteen) days specified. If the other party does not appoint its own arbitrator and give notice that it has done so within 14 (fourteen) days specified, the party referring a dispute to arbitration may, without the requirement of any further prior notice to the other party, appoint its arbitrator as sole arbitrator and shall advise the other party accordingly. The award of a sole arbitrator shall be binding on both parties as if he had been appointed by agreement.

Nothing herein shall prevent the parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator.

In cases where neither the demurrage claim nor any counterclaim exceeds the sum of USD 10,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure current at the time when the arbitration proceedings are commenced.

- 4.18.4.** Each Party shall submit the documents in English. Documents submitted in a language other than English shall be translated into English at the expense of the Party submitting the documents. Each Party shall have the right, at its sole cost and expense, to have an interpreter attend the arbitration hearings if it so chooses.
- 4.18.5.** The seat of the arbitration shall be London, England where all hearings shall take place. The arbitration proceedings shall be conducted in the English language, and the award shall be in English.
- 4.18.6.** The decision of a majority of the arbitrators shall be final and binding on the Parties. The arbitrators' awards shall be consistent with the limitations of liability and other terms and conditions set out in the Contract, to the extent permitted by English law.
- 4.18.7.** The United Nations Convention on Contracts for the International Sale of Goods shall not apply to the Contract.

**4.19. Duration and Termination**

- 4.19.1.** The Contract shall come into effect on the Signing Date and, subject to observance of Clauses 4.19.2 – 4.19.3 shall continue in force until all obligations have been fulfilled (unless earlier terminated hereunder or the Parties agreed otherwise in writing) and in the part of payments – until such time that same are made in full.

**4.19.2. Buyer's default**

- a) The Seller may, at its sole discretion and in addition to any other legal remedies it may have, upon giving written notice to the Buyer suspend all deliveries under the Contract and/or unilaterally terminate the Contract where:
  - i.** the Buyer is in breach of any condition of the Contract, including breach of any essential or material conditions of the Contract;
  - ii.** delivery or unloading of the Goods is delayed due to any cause(s) attributable to the Buyer and such delay is not excused by any other provision of the Contract;
  - iii.** loading or unloading of the Goods is delayed by more than 10 (ten) hours after the NOR has been tendered or a train or truck has been arrived at the Place of Destination due to reasons attributable to the Buyer;
  - iv.** there is a major change in the direct or indirect ownership of the Buyer or its parent company;
  - v.** the Buyer or its parent company commences, or becomes the subject of, any bankruptcy, insolvency, reorganization, administration, liquidation or similar proceeding or is in the Seller's reasonable opinion expected to be unable or unwilling to pay its debts as the same become due;
  - vi.** the Buyer or its parent company ceases or threatens to cease to function as a going concern or conduct its operations in the normal course of business;
  - vii.** a creditor attaches or takes possession of all or a substantial part of the assets of the Buyer or its parent company; or
  - viii.** if applicable, the Buyer delays the provision of the parent company guarantee or other security of its obligations as provided in the Contract for more than 10 (ten) Business Days.
- b) Where the Seller suspends delivery of the Goods due to any of the events referred to under the Clause a) the Seller may, so long as such event is continuing, at any time unilaterally terminate the entire Contract.



- c) Where, pursuant to the provisions of this Clause 4.19.2, the Seller, under the Contract providing for multiple deliveries, temporarily suspends the delivery of the Goods and then decides to resume deliveries under the Contract, the Seller may cancel the suspended delivery and shall be under no obligation to make up for any quantity of the Goods that would have been delivered to the Buyer but for such suspension.
- d) Where the Contract provides for multiple deliveries, then the rights given to the Seller in this Clause 4.19.2 apply to all deliveries such that where the Seller is allowed to terminate in respect of one delivery, then it is entitled to terminate all the remaining deliveries.
- e) Any termination of the Contract by the Seller shall be without prejudice to the rights and obligations of each Party as accrued on the date of termination.

#### **4.19.3. Seller's default**

- a) The Buyer may at its sole discretion, and in addition to any other legal remedies it may have, upon giving notice to the Seller terminate the Contract, where the Seller, for any reason whatsoever, is in a material breach of any conditions of the Contract.
- b) In relation to multiple deliveries under the Contract, the Buyer's right to terminate under this Clause 4.19.3 or otherwise, only applies to the delivery in respect of which the Seller is in breach and not to future deliveries.
- c) Any termination of the Contract by the Buyer shall be without prejudice to the rights and obligations of each Party as accrued at the date of termination.
- d) In the event of termination of the Contract by either Party pursuant to the provisions of Clause 4.19.2 (Buyer's Default) or Clause 4.19.3 (Seller's Default) then, save where the Buyer has terminated only part of a multiple delivery Contract, and in addition to any direct losses arising from the default or breach, the Party so terminating shall be entitled to claim damages from the Party in default as if the Party in default had failed to deliver or failed to accept, as the case may be, such quantity of the Goods as remained to be delivered under the Contract at the date of termination.

#### **4.19.4. Force Majeure**

- a) Except in relation to any failure or inability to make a payment due under the Contract, and the Buyer's liability for demurrage due hereunder, (which shall not be excused), neither Party shall be liable to the other Party (non-availability of funds is not meant here) for any delay or non-performance of any obligations under the Contract (other than the payment of money) if such delay or non-performance is (i) due to circumstances reasonably beyond such Party's control, including but not limited to any fires, strikes, lockouts, labour disputes of any kind, partial or general stoppage of labour, breakdown of or accident to the Manufacturer or warehouse or storehouse, machinery facilities, delays of carriers due to break down or adverse weather, embargoes, explosions, floods, drought, war, sabotage, any local or national health emergency, appropriations of property, civil disorders, government requirements, export or import restrictions or limitations, rules, orders or any other acts issued or requested by any governmental or other public authorities or any person purporting to act on behalf of such authorities, civil or military authorities, acts of aggression, terrorism (or the threat thereof), acts of God or of the public enemy or any other causes beyond Party's reasonable control (hereinafter "Force Majeure Event"), and (ii) could not have reasonably been prevented by such Party taking commercially reasonable precautions or customary steps to circumvent or mitigate such circumstances (if and to the extent such events were reasonably foreseeable).

- b) The Party whose performance is affected by a Force Majeure Event shall provide written notice to the other Party of such Force Majeure Event, specifying the nature and the expected duration of the Force Majeure Event, within 10 (ten) Business Days after the Force Majeure Event begins, and shall take prompt action using its commercially reasonable efforts to remedy the effects of the Force Majeure Event. If requested by the Party not affected by a Force Majeure Event, the Parties shall discuss the Force Majeure Event and further steps in order to fulfill the Contract obligations.
- c) The Seller when affected by a Force Majeure Event which prevents or hinders the supply of the Goods to the Buyer or any other customer shall apportion any quantity of the Goods remaining available to it pro rata between itself, the Buyer and third parties (including the Seller's Affiliates) with whom the Seller then has contractual commitments to deliver the Goods, provided that those arrangements were entered into prior to the occurrences of the Force Majeure Event.
- d) In case of a Force Majeure Event declaration, the party affected by it shall have no obligation to acquire by purchase or otherwise any shortfall of the Goods which by reason of Force Majeure Event such party is unable to deliver to the other party under the contract.
- e) If the affected party's inability to perform lasts more than 60 (sixty) days, any Goods, the delivery of which has been prevented by the Force Majeure Event, may be cancelled by either of the Parties by giving of notice to the other. In such cases neither of the Parties will be entitled to claim from the other Party any compensation for possible losses.
- f) A certificate or other document describing the occurrence of the Force Majeure Event issued by the respective Chambers of Commerce of the Seller's or the Buyer's country or of a transit country or any Applicable Authority shall be a sufficient proof of Force Majeure Event and its duration.
- g) In the event that the affected party's inability to perform exceeds three (3) months, the Party not affected by a Force Majeure Event shall, on giving of 30 (thirty) days written notice, have the right to terminate the Contract. Where the Contract is so terminated, neither Party will be entitled to compensation or damages arising from or in connection with this Clause, save in respect of shipments delivered prior to the Force Majeure Event.

#### **4.20. Miscellaneous**

- 4.20.1. Entire Contract.** The Contract including attachments thereto, the GTC and any addenda, or amendments constitutes the sole and entire understanding between the Parties with respect to the subject matter of the Contract and supersedes all and any prior oral or written agreements, negotiations and discussions between the Parties pertaining to the subject matter of the Contract or the Contract in whole.
- 4.20.2. Amendments.** Save as expressly provided in the Contract, no amendment or variation of the Contract shall be effective unless in writing in substantially the format set out at Annex A attached hereto and signed by a duly authorized representative of each of the Parties to it. Without prejudice the above, the Seller is entitled to unilaterally change the GTC from time to time by putting on the new version of the GTC on the Seller's website at [www.sibur-int.com](http://www.sibur-int.com). The new version of the GTC shall come into force within 10 (ten) days after such putting.
- 4.20.3. Assignment.** Neither Party may assign the Contract or any of its rights under the Contract or transfer any obligations under the Contract, without the other Party's prior written consent, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, the Seller may, without consent, assign or transfer its rights and/or obligations under the Contract in whole or in part to any Affiliate. Any attempt at assignment in violation of this Clause shall be null and void.

- 4.20.4. Binding effect.** The terms and conditions of the Contract shall be binding upon, and shall inure to the benefit of, the Parties hereto and their respective permitted successors and assigns.
- 4.20.5. No Third Party beneficiaries.** Nothing in the Contract will give rights to any third parties and the provisions of the Contract (Rights of Third Parties) Act 1999 as amended from time to time are specifically excluded.
- 4.20.6. The Parties' relationship.** The relationship hereby established between the Seller and the Buyer is solely that of the Seller and the Buyer. Each is an independent contractor engaged in the operation of its own respective business, and nothing in the Contract shall be construed to create a partnership, agency, joint venture, pooling, franchise or employer-employee relationship between the Parties. Neither Party has the power or the authority to act for, represent, or bind the other Party (or any of the other Party's Affiliates) in any manner.
- 4.20.7. Execution.** Either Party may sign the Contract and any related amendments attachments, or other documents and send a copy to the other Party by fax or email. Where original documents are required these shall be provided within 30 (thirty) days after the receipt of the copy document(s).
- 4.20.8. The Seller's warranties, guarantees and representations.** The Seller warrants that it has full legal title to the Goods and that it has full right and power to convey such title to the Buyer. FOR THE AVOIDANCE OF DOUBT THE SELLER MAKES NO GUARANTEES, WARRANTIES, REPRESENTATIONS, EXPRESS OR IMPLIED, WRITTEN OR ORAL, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS OR SUITABILITY OF THE GOODS FOR A PARTICULAR PURPOSE, CONCERNING THE GOODS. ANY WARRANTIES, CONDITIONS OR OTHER TERMS IMPLIED BY LAW, CUSTOM, CONTRACT, STATUTE OR OTHER LEGAL THEORY OR OTHERWISE, WHETHER AS TO MERCHANTABILITY, QUALITY, FITNESS FOR PURPOSE OF THE GOODS OR OTHERWISE ARE SPECIFICALLY EXCLUDED TO THE FULLEST EXTENT PERMITTED BY THE APPLICABLE LAW.
- 4.20.9. Notices.** Any consent, agreement, approval or notice required or permitted to be given or made under the Contract by one of the Parties hereto to the other Party shall be in writing and in English (unless otherwise agreed by the Parties) and shall be delivered in person or by Federal Express, DHL (or other recognized international courier service requiring signature upon receipt) or by facsimile or email (as evidenced by a paper copy of such email).
- In proving the giving of a communication, it shall be sufficient to prove that delivery was made to the appropriate address, or the communication was properly addressed and posted by an appropriate courier, or the fax was properly addressed and transmitted or the email was sent to the appropriate email address and dispatch of transmission from the sender's external gateway was confirmed as specified in the Contract.
- 4.20.10. The date of receipt.** The date of receipt of the notice, demand or other communication will be (i) if delivered by hand, at the time of delivery, (ii) if delivered by courier – on the 14th day after the same is so mailed, except in the event of disruption of the postal service in which event the notice, demand or other communication will be deemed to be received only when actually received; (iii) if sent by fax, at the time of transmission; and (iv) if sent by email, at the earlier of: the time a return receipt is generated automatically by the recipient's email server; the time the recipient acknowledges receipt; and 24 (twenty four) hours after transmission, unless the sender receives notification that the email has not been successfully delivered.
- 4.20.11. Change of notice details.** Either Party hereto shall promptly notify the other Party in writing as to the change of notice details of the Party and the new details to which notice shall be given to it thereafter.
- 4.20.12. The originals provision.** Where original documents are required to be delivered in accordance with the Contract, such documents shall be sent either by certified mail or by courier to the postal address of the receiving Party as stipulated in the Contract.
- 4.20.13. Language of the correspondence.** All correspondence concerning the Contract shall be conducted in English.

- 4.20.14. Expenses.** Whether or not the transactions contemplated hereby are consummated, all costs and expenses (including the expenses, costs and fees of each Party attorneys, auditors and financial and other professional advisors) incurred in connection with the Contract and/or the drafting or negotiation of the terms and conditions of the Contract and/or any other transaction arising out of or in connection with the Contract shall be borne and paid by the Party incurring such costs and expenses.
- 4.20.15. Waiver.** Any failure on the part of any Party hereto to comply with any of its obligations, agreements or conditions under the Contract may only be waived in writing by the Party to whom such compliance is owed but such waiver will not be considered to be a waiver of future failure(s) to comply with an obligation, agreement or condition. No act or omission by a Party may be deemed to be a waiver of any rights if such a waiver is not declared explicitly and in writing.
- 4.20.16. Severability.** If any part of the Contract is deemed to be unenforceable, invalid or in contravention of applicable Law by a court or arbitral tribunal of competent jurisdiction, the remainder of the Contract shall remain in full force and effect. The Parties shall negotiate in good faith to replace the invalid provision with a provision which reflects, to the extent possible, the original intent of the invalid provision.
- 4.20.17. Confidential Information.**
- a) In connection with the Contract a Party (hereinafter the “**Receiving Party**”) may discover, receive, or otherwise acquire, whether directly or indirectly, information related to the other Party (hereinafter the “**Disclosing Party**”) or Affiliates of the Disclosing Party or its Affiliates’ businesses, or information of third parties that the Disclosing Party is obligated to keep confidential (collectively, in whatever form or medium, “**Confidential Information**”). Confidential Information shall not include information (i) that is, or becomes, publicly known through no wrongful act or omission, direct or indirect, of the Receiving Party or its officers, directors, employees, consultants or agents, (ii) that was already known to Receiving Party without obligations of confidentiality prior to the receipt from Disclosing Party, as reasonably evidenced by the Receiving Party, and was legitimately in Receiving Party’s possession, without any obligation to keep such information confidential, (iii) that Receiving Party independently develops without the use of any Confidential Information of Disclosing Party, or (iv) that Receiving Party receives or has received on a non-confidential basis from a source other than Disclosing Party that is entitled to disclose the same to Receiving Party; provided however that Receiving Party is able to provide Disclosing Party with the documentary evidence regarding any of the exceptions (if any) or as required in connection with any rules or requirements of any stock exchange on which such Party is listed or may be listed, or as may otherwise be required by applicable Law.
  - b) Receiving Party shall (i) use Disclosing Party Confidential Information solely in connection with exercise of its rights or performance of its obligations under the Contract, and (ii) disclose Disclosing Party Confidential Information only as necessary to its officers, employees, consultants, vendors and contractor including legal advisors and auditors whose duties relate to the Contract and reasonably require familiarity with such information in order for Receiving Party to perform its obligations or exercise its rights hereunder and who are bound by a legally enforceable written obligation of confidentiality with terms that are the same as, or more stringent than, those set out herein.
  - c) Subject to the exceptions to the confidentiality obligations set out in this Clause above, neither Party (nor its Affiliates, subsidiaries or other related parties) may disclose, publish or otherwise reveal the contents of the Contract to any Third Party without the prior express written consent of the other Party (which consent shall not be unreasonably withheld or delayed); provided that (and without limiting the exceptions set out in this Clause), each Party shall be permitted to disclose the terms and conditions of the Contract (i) to actual or potential investors and lenders and their authorized representatives under written

confidentiality agreements that protect the confidentiality of the contents of the Contract which are the same as, or more stringent than, those set out herein, or (ii) as required in connection with any rules or requirements of any stock exchange on which such Party is listed or may be listed, or (iii) as may otherwise be required by the applicable Law, or (iv) as may be reasonably required for the performance of the Parties obligations under the Contract; provided however, that the Party making a disclosure pursuant to an exception set forth in the preceding subsections (i) or (iv) shall provide the other Party with prior written notice and shall, to the extent practical, cooperate with the other Party in seeking confidential treatment of the information to be disclosed (if and to the extent available).

d) No press release referring to the Contract or utilizing the other Party's name shall be made without the prior written consent of the other Party.

**4.20.18. Set-off.** No set-off may be made against any claims unless otherwise agreed in writing by the Seller in advance. Under no circumstances the Buyer shall be entitled to set-off against the payment (including any VAT payable) under the Contract any sums owed to the Buyer by the Seller under the Contract or any other agreement it has with the Seller.

**4.20.19. Warranties.** Each Party hereby represents and warrants to the other that:

- a) it has the authority to enter into and perform its obligations under the Contract,
- b) the Contract has been duly executed and delivered on behalf of such Party, and constitutes a legal, valid, binding obligation, enforceable against such Party in accordance with its terms,
- c) it is a corporation duly organized, validly existing and in good standing under the laws and regulations of its jurisdiction of incorporation or formation,
- d) neither the execution of the Contract nor its performance thereunder conflicts with any applicable Law or any other contract to which it is a party or any obligation to which it is subject,
- e) within 5 (five) days after the relevant event, the Party so effected will inform the other Party of any changes or amendments to its direct or indirect ownership.

**4.20.20. Counterparts.** If the Contract is executed in counterparts, each shall be deemed an original, but all of which together shall constitute one and the same instrument. The Parties hereby acknowledge and agree that the Contract has been prepared jointly and no rule of strict construction shall be applied against either Party.

**4.21. Headings, References and Usage of Terms.**

**4.21.1. Headings.** Any headings, article, clause, subclause, section, subsection and table headings in the Contract are inserted for purposes of convenience only and shall not affect in any way the meaning or interpretation of the Contract or the GTC.

**4.21.2. Reference to articles, clauses, etc.** Save where the context requires otherwise, references to Articles, Clauses, Subclauses, Sections, Subsections, Tables, Annexes, Appendixes, etc. shall be references to the articles, clauses, subclauses, sections, subsections, tables, annexes, appendixes, etc. of the Contract or the GTC, when made in the Contract or the GTC respectively.

**4.21.3. Singular and plural.** In the Contract and the GTC, the singular shall include the plural and vice versa and the word "including" shall be deemed to be followed by the phrase "without limitation", references to any gender shall include a reference to the other gender; references to other agreements or to any statute, rule or regulation or instrument shall mean the same as amended, modified or replaced from time to time.

**4.21.4. Herein, hereunder, hereinafter.** The terms "herein", "hereunder", "hereinafter" and similar terms shall be interpreted to refer to the Contract or the GTC, when made in the Contract or the GTC respectively, unless otherwise follows from the context.

- 4.21.5. Reference to period.** Where any period in days, weeks, months or years is referred to in the Contract or the GTC, such period shall be calculated in days, weeks, months or years respectively, unless expressly provided otherwise (and the day on which any such period is expressed to commence shall not be counted for the purpose of such period's calculation).
- 4.21.6. Writing.** A reference to "writing" or any cognate expressions is a reference to any mode of representing or reproducing words in a visible non-transitory form and includes fax and e-mail.
- 4.21.7. Including.** Any phrase introduced by the terms "including" or "in particular", or any cognate expression, shall be construed as illustrative and not limiting of any preceding words.

ANNEX A  
THE FORMAT OF THE AMENDMENT

AMENDMENT № *[to insert the number the amendment]*  
To *[to insert the title of the Contract № [to insert the contract number]*  
Dated *[to insert the month, date, year]*

This Amendment № *[to insert the number of the amendment]* (hereinafter this “Amendment”) dated as of *[to insert month, date, year]* (herewith and after the “Signing Date”),

by and between

- A. **SIBUR International GmbH**, a company organized and existing under the laws of Austria, with its registered legal address at Nussdorfer Platz 8, A-1190 Wien, Austria, represented by **[to insert the title, name]**, acting on the basis of **[to insert the document]**, (hereinafter the “Seller”), on the one hand, and
- B. *[to insert the name of the company]*, a company organized and existing under the laws of *[to insert the country]*, with its registered legal address at *[to insert the registered address]* represented by *[to insert the title, name]*, acting on the basis of *[to insert the document]* (herewith and after the “Buyer”), on the other hand.

The Seller and the Buyer may be referred to herein together, as “Parties”, or each individually, as a “Party”.

**RECITALS**

**WHEREAS**, the Seller and the Buyer entered into a *[to insert the title of the Contract] №[to insert the number of the Contract, if any]* between the Seller, on the one hand and the Buyer, on the other hand, dated as of *[to insert the date of the Contract]* (the “Contract”); and

**WHEREAS**, the Seller and the Buyer wish to amend the Contract, on the terms and conditions set forth in this Amendment;

**NOW THEREFORE**, in consideration of the premises and the mutual covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Amendment to [to insert Clause] [to insert the number] of the Contract.** The Contract is hereby amended to delete *[to insert Clause] [to insert the number]* and replace it with the following: *“[to insert the wording]”*.
2. **Amendment to [to insert Clause] [to insert the number] of the Contract.** Immediately following first/last sentence of *[to insert Clause] [to insert the number]* the following new sentence is added with the following: *“[to insert the wording]”*.
3. **Amendment to [to insert Clause] [to insert the number] of the Contract.** The Contract is hereby amended to delete *[to insert Clause] [to insert the number]* and replace it with “[Intentionally left blank by the Parties]”.
4. **Amendment to [to insert Appendix] [insert the number] to the Contract.** The *[to insert Appendix] [to insert the number]* to the Contract is hereby amended to delete the *[to insert Appendix] [to insert the number]* and replace it with the *[to insert Appendix] [to insert the number]* attached as ATTACHMENT I hereto.
5. **Definitions.** All terms used, but not defined, in this Amendment shall have the respective meanings set forth in the Contract.
6. **Headings; Interpretation.** The section headings in this Amendment are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Amendment. The Parties hereby acknowledge and agree that this Amendment has been prepared jointly and no rule of strict construction shall be applied against either Party. In this Amendment, the singular shall include the plural and vice versa and the word “including” shall be deemed to be followed by the phrase “without limitation”. The terms “herein” and “hereunder” and similar terms shall be interpreted to refer to this entire Amendment.
7. **Effective Date of Amendment; Incorporation of Terms; Continuing Effect.** This Amendment shall be deemed effective for all purposes *[as of the Signing Date of the Contract / as of the latest date of signing of this Amendment by the Parties / upon the last date of execution by all of the undersigned Parties]*. All of the amended provisions set forth in this Amendment shall be deemed to be incorporated in, and made a part of, the Contract, and the Contract, as amended by this Amendment, shall be read, taken and construed as one and the same agreement. Except as otherwise expressly modified by this Amendment, the Contract shall remain in full force and effect in accordance with its terms and conditions.
8. **Counterparts.** This Amendment is executed in the English simultaneously in two identical original counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Both counterparts have equal force and validity.

**IN WITNESS WHEREOF**, the Parties, intending to be bound, have caused this Amendment to be executed on their behalf by their duly authorized representative as of the Signing Date.

***The Seller:***

***SIBUR International GmbH***

***Address:***

***Nussdorfer Platz 8, A-1190 Wien, Austria***

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***Ilya Gushchin***

*This Amendment has been prepared by the responsible trader: [Mr/Mrs XXXX] employee of @@Trader\_Company located in @@Trader\_Location.*

***The Buyer:***

***[to insert the name of the Buyer]***

***Address:***

***[to insert the address of the Buyer]***

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***[to insert the name of the Buyer's authorized representative]***