



## BULK TRADING S.A.

### PETCOKE GENERAL SALE TERMS & CONDITIONS 2020

#### **1. Entire Agreement:**

These General Sale Terms & Conditions 2020 ("Terms") shall apply between the parties hereto and the Terms shall not be altered or changed except by written agreement signed by Seller and Buyer. These Terms are deemed an offer for sale by the Seller, are accepted by the Buyer and are incorporated into the Contract Confirmation between Seller and Buyer and bind the parties. The Buyer shall nevertheless be deemed to have accepted these Terms by agreeing to purchase, purchasing and/or taking delivery of goods or product from the Seller even where there is not a Contract Confirmation or other written agreement and where the applicable contract is based upon inter-party correspondence and exchanges only. Any acceptance of an offer or counter-offer by a party hereto, or sale and purchase by a party hereto, is expressly understood to be subject to these Terms without any alteration or addition thereto. Notwithstanding any other provisions therein to the contrary, no term in the Buyer's purchase order, standard purchase terms and conditions or other document from the Buyer which conflicts with these Terms, or which in any way increases the Seller's obligations or reduces the Seller's rights or remedies hereunder, shall be binding upon the Seller and in the event of a 'battle of the forms' these Terms shall be deemed the last sent and received between the parties. No usage of trade custom, or a prior course of dealing or performance between Buyer and Seller shall be deemed to modify these Terms. Any provision of these Terms which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability in such jurisdiction but shall not invalidate or render unenforceable such provision in any other jurisdiction to the extent permitted by applicable law. The parties hereby waive any provision of law which renders any provision hereof prohibited or unenforceable in any respect. In these Terms "goods" and/or "product" shall refer to the goods sold/agreed to be sold by the Seller to the Buyer as described in the Contract Confirmation or applicable contract. Neither Seller nor Buyer shall assign the whole or any part of its rights and obligations hereunder directly or indirectly without prior written consent of the other party. However, Seller shall have the right to assign to its designated financing bank its rights to the proceeds of the sales price payable hereunder without receiving the consent of the Buyer

#### **2. Default:**

Unless otherwise agreed in writing by the parties, terms for payment shall be stipulated in the Contract Confirmation. In the event Buyer shall fail to pay in accordance with these Terms, Seller may, at its option (1) terminate the Contract forthwith and without notice, without prejudice to any claim for damages for breach of contract, (2) suspend deliveries until all indebtedness is paid in full, or (3) convert the terms for payment to a cash delivery basis. No cash discount will be allowed unless specified otherwise in writing by Seller. Seller shall be entitled to interest on past due accounts/amounts due as set out below. Should Buyer default in payment under this Contract, Seller where permitted by law, shall be entitled to recover from Buyer all court/arbitration costs and lawyer's and attorney's fees and expenses incurred by Seller incident to or in connection with such default and proceedings, and proceedings intended to obtain security for Seller's claim and interest on past due amounts at 2.0% per month or the highest

rate chargeable to Buyer under applicable law, if less than 2.0% per month.

Where payment is agreed to be by letter of credit to be opened by or on behalf of Buyer in favour of Seller ("Letter of Credit"), such Letter of Credit shall be opened and confirmed to Seller by a bank and in a form acceptable to Seller on the date specified by the Contract Confirmation or agreed in writing by the parties and time for performance thereof shall be of the essence. Should the Letter of Credit not be opened and/or confirmed on time, Seller shall forthwith become entitled, but not obliged, to terminate the Contract without prejudice to its right to claim damages for Buyer non-performance and such entitlement to terminate the Contract shall not be lost, surrendered or affected in anyway by any passage of time, delay, or any other act or omission of Seller including, without limitation, by affirmation or waiver, before Seller exercises such entitlement, which entitlement shall persist and continue in favour of Seller until the Contract is performed in full by Buyer.

Seller may, from time to time, require and impose upon Buyer different terms of payment from those referred to in the above paragraph whenever it appears to Seller, in its sole discretion, that Buyer's financial condition requires, or might require different terms of payment. Further, Seller may require financial assurance or guarantee ("Assurance") of Buyer's ability to pay whenever Seller, in its sole discretion, determines that such ability is in doubt or might be in doubt. Any such Assurance shall be in the form and for the amount stipulated by Seller in its sole discretion. Such Assurance may, at the option of Seller, include, without limitation any of the following or any combination of the following: (1) the required opening of a letter of credit as security for payment and performance (in a format provided by the Seller and issued by a commercial Bank acceptable to Seller); (2) cash prepayments; and/or (3) a corporate guarantee. Any such demand may be in writing or oral and Seller may, upon the making of such demand, suspend shipments hereunder until written acceptance of differing payment terms or receipt of Assurance of financial ability in a form acceptable to Seller, whichever has been requested, has been received by Seller to its satisfaction. If within the period stated in such demand Buyer fails or refuses to agree to such different terms of payment or fails or refuses to give adequate Assurance of ability to pay to Seller's satisfaction, Seller may, at its option, treat such failure or refusal as a repudiation of the portion of this Contract which has not been fully performed and Seller shall then be discharged from its obligations concerning such portion. Buyer waives any entitlement to a written notice of any such demand or of any suspension or cancellation hereof. Failure of Buyer to accept delivery and/or make payment for the goods shipped hereunder in accordance with these Terms shall constitute a breach of the whole Contract, permitting Seller to suspend all deliveries until such breach is cured or to cancel this Contract forthwith. Any such Suspension or Cancellation may be notified in writing or orally. Seller's election to suspend deliveries shall not preclude it from subsequently cancelling this Contract and claiming damages. In the event of a default in any payment due from Buyer or any company associated or affiliated with Buyer to Seller or any company associated with Seller among the associated or affiliated companies of either, or, in the event any such companies associated or affiliated with Buyer become insolvent or enter into an arrangement with its creditors, Seller

may, at its option and without limitation withhold any payments due to Buyer or its associates or affiliates under this or any other agreement including in respect of any deliveries due to Seller or its associates or affiliates under this or any other contract and set-off such amount against payment due from Buyer. The foregoing specific rights shall be cumulative and alternative and shall be in addition to any of the rights, including but not limited to damages or specific performance to which Seller may be entitled.

### **3. Exclusion of Warranties:**

In respect of the product the Seller makes no warranty or guarantee of any kind, expressed or implied, whether of merchantability or fitness for any purpose, or against infringement or otherwise. All warranties or conditions as to quality or description or suitability or specification (whether statutory or otherwise) are hereby excluded to the fullest extent permitted by law. The Buyer assumes all risk and liability for the use of the product, whether used singly or in combination with other substances, and for loss, damage, or injury to persons or property of Buyer or others arising out of the use or possession of the product.

The parties acknowledge and agree that Seller is not a producer of the product and shall source the product from an identified or unidentified refinery or third-party supplier ("the Refinery"), that the product sold pursuant to this Contract is a resulting by-product of the oil refining process and as such that the product's characteristics, specification and quality (the "Specification") can vary depending upon the Refinery crude slate, operation and practices of the Refinery and other factors, and that Seller has no control over and makes no promise, warranty or guarantee as to the Specification of the product (even if a particular specification or characteristics are identified in the Contract Confirmation or in exchanges between the parties) which product is purchased by Buyer hereunder on the basis that it shall be supplied with an actual Specification and characteristics that are at the sole discretion of the Refinery in any event.

Notwithstanding anything to the contrary herein, if (i) the Refinery ceases to produce or supply the product for any reason whatsoever, (ii) there is a curtailment, reduction or interruption of production of the product at the Refinery, including without limitation as a result of a voluntary act of omission by the Refinery, or (iii) there is a total or partial shutdown of the Refinery or of its operations or activities for whatever reason, Seller shall not be obliged to supply, ship or sell to Buyer the product hereunder or otherwise and shall not be liable for any delays, loss or damage of whatever nature suffered by Buyer as a result thereof.

### **4. Taxes and Duties:**

The Buyer shall pay: the amount of any present or future tax, fee, duty, levy or any other charge not included in the price or otherwise paid by Buyer, imposed by any government or agency upon the sale, manufacture or delivery of the goods sold hereunder; and the amount of any increase in the cost of Seller or labour, and without limitation, any increase in other items or factors used by Seller in determining the sales price to Buyer of the goods sold hereunder shall be added to and become part of the price hereunder, and such amounts shall be paid by the Buyer and shall apply to all shipments thereafter made unless and until further adjustment of price shall be made pursuant to the provisions of this Contract.

### **5. Title and Risk:**

Risk of loss of, or damage to, the goods or product sold hereunder shall in the case of a CFR transaction pass from Seller to Buyer as per Incoterms 2010, in the case of a CIF transaction pass from Seller to Buyer as per Incoterms 2010, and in the case of a FOB transaction pass from Seller to Buyer as per Incoterms 2010. Title in the goods or product sold hereunder shall pass from Seller to Buyer either: a) when

Seller has received for value full payment for the goods or product; or b) if payment is by letter of credit, when the documents stipulated in the Contract Confirmation have been irrevocably accepted by the issuing or confirming bank and as such payment for the goods or product is assured. The Buyer shall be deemed to be the cargo owner for purposes of general average or salvage and shall provide any general average or salvage security that may be required upon demand. Where title in the goods remains with the Seller but the goods are in the possession of the Buyer, unpaid for, the Seller shall be entitled to enter any premises of the Buyer to recover the goods or items of equivalent value, at the Buyer's cost.

### **6. Force Majeure:**

(a) No failure or omission to carry out or to observe any of the terms, provisions or conditions of this Contract, other than an obligation relating to performing vessel detention charges whether liquidated or unliquidated, shall give rise to any claim by one party hereto against the other, or be deemed to be a breach of this Contract if the same shall be caused by, or arise out of, war, hostilities, sabotage, blockade, revolution, or disorder; expropriation or nationalization; cutoff of gas or other raw material supplies to facilities for the production of the product; disruption of rail or pipeline transportation of product to the load port, and consequent delays; breakdown or damage to storage, pipeline or loading facilities; prevention of loading by terminal or port authorities; embargoes or export restrictions; acts of God, explosion, fire, frost, earthquake, storm, lightning, tide, tidal wave or perils of the sea; accidents to or closing of harbors, docks, straits, canals or other assistances to or adjuncts of shipping or navigation; strikes, lockouts or other labor disturbances; or any other events, matter, or thing wherever occurring, of the same class or kind as those above set forth, which shall not be reasonably within the control of the party affected thereby and which by due diligence such party is unable to prevent or overcome, including without limitation an event described at clause 6(c) hereof (herein called "force majeure.") When the term "party" as used in this Clause 6 applies to the Seller, it shall also include the Seller's supplier Refinery.

(b) The party claiming force majeure shall notify the other party within 2 Lugano, Swiss business days after the claiming party has notice thereof, and both parties will then jointly use reasonable efforts to minimize any possible resulting waiting time and/or damages and/or costs.

(c) The Buyer acknowledges that the Seller is not a producer of the product. Any event or circumstance which prevents, hinders or limits supply of all or part of the product as required hereunder by the Refinery intended by the Seller to supply the product shall constitute a force majeure condition affecting the Seller for the purposes of clause 6(a) and 6(b).

(d) If force majeure affects Seller, Seller may, at its option, by notice to the Buyer within a reasonable time, either: (i) cancel from this Contract its performance obligations in respect of any product quantities which have not been, or might not be, delivered due to force majeure, without affecting the balance of its obligations and entitlements hereunder, or (ii) deliver such product quantities in one or more lots, after Seller deems the effect of force majeure to have ended, on the same terms as set forth in this Contract. If, by reason of force majeure, there is a curtailment of or interference with the availability of any product from the source of supply intended by the Seller for a specific shipment, Seller will be free to withhold, reduce, suspend or cancel deliveries hereunder to such extent as Seller deems appropriate, and Seller will not be required to acquire by purchase or otherwise additional product quantities from other suppliers whatsoever.

(e) Notwithstanding the foregoing provisions of this clause, force majeure shall not include occurrences arising out of the acts of any government or instrumentality which owns, directly or indirectly, any interest in the party claiming force majeure.

## **7. Governing Law and Arbitration:**

This Contract shall be governed by English law. The United Nations Convention on Contracts for the International Sale of Goods shall not apply. Any dispute, controversy or claim arising out of or relating to, or in connection with, this Contract, or the breach, termination or validity thereof, shall be referred to the arbitration of three persons in London, one to be appointed by Seller, one to be appointed by Buyer and the third one by the two so chosen. The language of the arbitration shall be English. Except as provided herein, the Terms of the London Maritime Arbitrators Association in force at the time (the "LMAA") shall apply. The second arbitrator must be appointed within 20 calendar days of the appointment of the first arbitrator, failing which the first appointed arbitrator shall become the sole arbitrator. The award shall be final and binding and the parties consent to the jurisdiction of any court for the recognition and enforcement thereof. The parties waive any defense based upon sovereign immunity, lack of jurisdiction or forum non conveniens.

If the amount in dispute is US\$50,000 or less, then (a) the dispute is to be referred to Arbitration under the "LMAA Small Claims Procedure"; (b) the arbitrator's decision is to be final and binding on both parties; and (c) the parties waive the right to appeal the arbitrator's decision.

No third party shall acquire, or is intended to acquire, any rights hereunder pursuant to the Contracts (Rights of Third Parties) Act 1999.

## **8. Claims:**

The goods shall be inspected by an independent inspector appointed by the Seller prior to loading at the loading port at Seller's cost and the resulting certificate of analysis provided by the inspector shall be final and binding as to the specification and quality of the goods. The Weight of the goods shall be finally determined by a draft survey at the loading port undertaken by an independent surveyor appointed by Seller at its cost. The Buyer may, at its own cost, appoint an inspector to inspect the goods at the loadport. If Buyer has any complaints or objections to the quantity or quality or Specification of the goods sold hereunder Buyer shall notify Seller immediately by telephone and give Seller an opportunity to investigate. Failure to so notify Seller of such complaints or objections in writing with reasonable supporting evidence within twenty-four (24) hours from the time of delivery to Buyer of any analysis provided for in this Contract shall be a waiver of entitlement to rely upon any defects in the supplied goods by Buyer.

(a) Subject to the above provision, notice by Buyer of claims as to product delivered shall be made before product is used, but must be received by the Seller not later than 10 days after the bill of lading date. Notice by Buyer of claims for non-delivery of product must be received by the Seller not later than 15 days after the bill of lading date of any product that has been delivered or, if no product has been delivered, not later than 15 days after the date fixed for delivery. In either case, if the Seller has not received such notice within such time, Buyer shall be deemed to have finally waived all claims in respect thereto, and such claims shall be forever barred.

(b) No claim of any kind by Buyer, including for interest and costs, as to product delivered or for non-contractual delivery of product and whether or not based on negligence, shall be greater in amount than the purchase price of the product in respect of which damages are claimed. No claim of any kind by the Buyer for non-contractual delivery of product shall be greater in amount than the difference between the Contract price for that product and the market price at the time of default. The Seller shall not be liable to the Buyer for any: loss of profit or loss of opportunity; or for any indirect or consequential losses; or for any form of punitive damages.

The Buyer assumes all risk and liability for post-delivery storage of the product and for use of the product, whether used singly or in combination with other substances, and for

loss, damage, or injury to persons or property of Buyer or others arising out of the use or possession of the product.

(c) No suit or legal proceeding or demand for arbitration arising under or in connection with this Contract shall be maintainable against Seller unless commenced by Buyer within 60 calendar days after completion of discharge or failure to deliver product hereunder and such time limit shall not be capable of being extended.

## **9. Compliance with Export and Import Laws:**

(a) The Buyer warrants that product delivered hereunder shall not be imported to any destination prohibited by the law of the country in which the product was produced or originated or prohibited by the law of the country of Seller. The Buyer shall also ensure that the discharge port country's government does not prohibit importation of product from the country of origin or shipment.

(b) The Buyer warrants that it is in compliance with the requirements of the European Union's Chemicals law (Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006), commonly known as REACH - Registration, Evaluation and Authorization of Chemicals ("REACH") with respect to the Product and its substances and shall carry out the custom formalities for the import of the Product into any country within the European Union.