

P.M.I.® Comercio Internacional, S.A. de C.V.

# General Terms and Conditions for F.O.B. Crude Oil Sales

November 2018



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## **Article 1. Introduction and Definitions**

1.1 Introduction. These General Terms and Conditions for FOB Crude Oil Sales - November 2018 (together with all the attachments and Annexes thereto, the “General Terms”) are designed for use in sale transactions in which P.M.I. Comercio Internacional, S.A. de C.V. (“PMI”) is the Seller of Oil. These General Terms shall be deemed incorporated by reference in a written confirmation that contains the particular terms and trade details that govern the sale of Oil by Seller to Buyer including, without limitation, the contract date, Seller’s reference number, the Parties’ names and contact information, quality and quantity, delivery, price, term of contract, credit terms, payment terms, and/or any other specific terms and conditions which, when finalized, shall be sent in writing by Seller by email or other means to Buyer (the “Confirmation”). The Confirmation, together with these General Terms will constitute the Parties’ entire agreement for the purchase and sale of Oil hereunder (the “Agreement”).

The Agreement, defined herein as these General Terms together with any Confirmation, contains the entire agreement between Buyer and Seller and supersedes all representations, prior agreements, oral or written, in connection with the matters which are the subject of the Agreement; there are no other promises, representations or warranties. In the event of a conflict or inconsistency between the Confirmation and the General Terms contained in the Agreement, the Confirmation shall prevail over the General Terms.

1.2 Definitions. For purposes of these General Terms, the following terms shall have the meaning indicated below:

- a) “**Affiliate**” shall mean, with respect to any Party, any other entity that directly or indirectly controls, is controlled by, or is under common control with the referenced Party. In this definition, “control” means the power to direct the management and policies of an entity, directly or indirectly, through the ownership of more than fifty-percent (50%) of shares or other voting securities;
- b) “**AFRA**” shall mean Average Freight Rate Assessment as applied by the London Tanker Brokers Panel;
- c) “**Agreed Laydays**” shall mean the three-Day range for the arrival of a tanker set forth in an Agreed Lifting Program determined pursuant to Article 3.1;
- d) “**Agreed Lifting Program**” shall mean a final lifting program for a Month determined pursuant to Article 3.1;
- e) “**Agreement**” has the meaning ascribed to it in Article 1.1. Specifically, shall mean the contract formed by the particular terms of the agreement between Buyer and Seller as set forth in the Confirmation and these General Terms (including the attachments and Annexes thereto) for the purchase and sale of Oil;
- f) “**Allowed Laytime**” shall mean the period of time which Seller shall be allowed, in accordance with Article 4.3, to complete the loading of a tanker without incurring in demurrage;
- g) “**Anti-Corruption Laws**” shall mean any applicable foreign or domestic anti-bribery and anti-corruption laws, along with their implementing rules and regulations, as amended from time to time, including, but not limited to, the U.S. Foreign Corrupt Practices Act (“FCPA”), the UK Bribery Act 2010 (“UKBA”), Mexico’s Law for the Prevention and Identification of Operations with Resources of Illicit Origin, Mexico’s General Law of the National Anti-Corruption System, Code of Conduct of Petróleos Mexicanos, Subsidiary Production Companies and Affiliate Companies, Code of Ethics of Petróleos Mexicanos, Subsidiary Production Companies and Affiliate Companies, the Anti-Corruption Policies and Guidelines of Petróleos Mexicanos, Subsidiary Production Companies and Affiliate

Companies and the Policies and Guidelines for the Development of Due Diligence at Petróleos Mexicanos, its Production Subsidiaries and as appropriate, Affiliates in matters of Ethics and Corporate Integrity, among others;

- h) **"API-MPMS"** shall mean the American Petroleum Institute's Manual of Petroleum Measurement Standards;
- i) **"ASTM"** shall mean ASTM International, formerly known as the American Society for Testing and Materials;
- j) **"Barrel"** shall mean a unit of volume equal to forty-two (42) Gallons;
- k) **"BOL Date"** shall mean, with respect to a cargo of Oil, the date on which loading at the Loading Port is completed as reflected on the bill of lading for such cargo or, in the event no bill of lading has been issued, as reflected in the report with respect to such cargo issued by the Independent Inspector who witnessed the loading;
- l) **"BOL Volume"** shall mean the net standard volume of a loading of Oil for purposes of the bill of lading and invoice for such loading as determined in accordance with Article 5;
- m) **"Business Day"** shall mean any Day other than Saturday, Sunday or other Day in which banking institutions in New York, New York, are authorized or required by law to close;
- n) **"Buyer"** shall mean the entity purchasing the Oil from Seller under the Agreement;
- o) **"Commercially Reasonable Efforts"** shall mean, with respect to the production, delivery, lifting and transportation of Oil and the operation of a refinery and processing of Oil, those material activities which a reasonable business person, taking into consideration all pertinent facts, circumstances and exigencies, if any, existing at the time and consistently applying the Party's standards and practices for cost-benefit analysis and risk analysis as appropriate in such circumstances, would engage in so as to operate in an efficient manner, without undue economic risk or risk to personnel, property, or the environment, and taking into consideration also any value expected to result from accelerating efforts to overcome the consequences of an event of Force Majeure, as specified in Article 10, or other operational event as the result of such activities, it being understood that such activities may involve the expenditure of funds;
- p) **"Contract Quantity"** shall mean the quantity of Oil to be sold by Seller and purchased by Buyer hereunder;
- q) **"Cargo"** shall mean a vessel containing the quantity of Oil sold by Seller and purchased by Buyer in any Lifting Month;
- r) **"Confirmation"** has the meaning ascribed to it in Article 1.1. Specifically, shall mean the written confirmation that contains the particular terms and trade details that govern the purchase and sale of Oil between Buyer and Seller and that refers to these General Terms, including without limitation, the delivery terms, price, payment, quality and quantity;
- s) **"Day"** shall mean a calendar day;
- t) **"ETA"** shall mean estimated time of arrival to the Loading Port;
- u) **"FOB"** shall mean Free On Board, according to Incoterms 2010;
- v) **"FPSO"** shall mean Floating Production Storage and Offloading Vessel;
- w) **"FSO"** shall mean Floating Storage and Offloading Vessel;
- x) **"Gallon"** shall mean a unit of volume, measured at 60 °F (equivalent to 15.56°C), equal to 231 cubic inches or 3.78541 liters;
- y) **"General Terms"** has the meaning ascribed to it in Article 1.1. Specifically, shall mean these General Terms and Conditions for FOB Crude Oil Sales, including all Annexes attached thereto;
- z) **"Incoterms"** shall mean the 2010 edition of the trade rules published by the International Chamber of Commerce;
- aa) **"Independent Inspector"** shall mean any of the cargo inspectors identified in Annex 2, whose nomination and acceptance is pursuant to Article 3.1.2;

- bb) **“Lifting Month”** shall mean the Month in which a Cargo is programmed to be lifted;
- cc) **“Loading Port”** shall mean one of the loading terminals for delivery of Oil customarily used by Seller;
- dd) **“Metric Ton”** shall mean a unit of weight equal to 1,000 kilograms;
- ee) **“Mexico”** shall mean the United Mexican States;
- ff) **“Month”** shall mean a calendar month;
- gg) **“NOR”** or **“Notice of Readiness”** shall mean the valid notice served by the master of the Vessel to inform to the Loading Port that the Vessel is ready in all respects to load Oil, given pursuant to Article 3.4;
- hh) **“Oil”** shall mean Mexican crude oil of the type to be sold by Seller to Buyer under the Agreement;
- ii) **“OCIMF”** shall mean Oil Companies International Marine Forum;
- jj) **“Party”** means Buyer or Seller and collectively both are referred as the “Parties”.
- kk) **“Seller”** shall mean P.M.I. Comercio Internacional, S.A. de C.V. or PMI, a Mexican corporation;
- ll) **“U.S. Dollars”** or **“U.S.\$”** shall mean dollars of the United States of America;
- mm) **“VEF”** shall mean Vessel Experience Factor as per API-MPMS Chapter 17.9;
- nn) **“Vessel”** shall mean an ocean-going tanker.
- oo) **“W”** shall mean water.
- pp) **“WORLDSCALE”** shall mean, at any time under the Agreement, the most recent edition of the New Worldwide Tanker Nominal Freight Scale.

1.3 Singular and Plural. Terms defined in this Article 1.2 may be used in the Agreement in either their singular or plural form as the context requires.

Whenever the context may require, any pronoun will include the corresponding masculine, feminine or neuter forms. The words *“include”*, *“includes”* and *“including”* will be deemed to be followed by the phrase *“without limitation”*.

## **Article 2. Headings and References**

All headings used in the General Terms and the Agreement are for convenience only and shall not affect the construction or interpretation of any of the terms hereof. Unless otherwise specified, all references herein to Articles and Annexes are to the Articles and Annexes of the General Terms and the Agreement.

## **Article 3. Arrival Procedures and Lifting**

### **3.1 Lifting Program**

3.1.1 At least fifteen (15) Days before the end of each Month, Buyer shall furnish Seller with a lifting program for the following Month and preliminary lifting programs for the next two (2) Months thereafter, specifying the following:

- (a) a three-Day range for the arrival of each tanker;
- (b) the quantity of Oil to be lifted by each tanker;
- (c) the port of discharge of each cargo; and
- (d) in the case of the lifting program for the following Month, (i) the name, size and dimensions of tankers designated for lifting during such Month, (ii) the names of the tanker's agent and Buyer's representative, (iii) documentation instructions, (iv) the time required for

deballasting (which shall not exceed six (6) hours), (v) the distribution of the Oil to be loaded (e.g., commingled or segregated), and (vi) for at least the last ten (10) loading operations for crude oil for each nominated tanker, the volume loaded as measured in shore tanks or by flow meters and the corresponding volume loaded as measured on board, such volume to be evidenced by documentation (including ullage and innage reports and onboard quantity and slop certificates) satisfactory to Seller.

If the name of a tanker is not known at the time the lifting program for the following Month is furnished to Seller, Buyer shall notify Seller of such name and the other data referred to in Article 3.1.1(d) as soon as possible, but in any event not later than seven (7) Days prior to the first Day of the Agreed Laydays for the unspecified tanker, except for the information referred to in (vi) above which can be presented before the arrival of the tanker to the Loading Port. In no event shall Seller be liable for deadfreight if Buyer provides a tanker larger than that required to lift the quantity of Oil scheduled to be lifted hereunder. If Buyer does not furnish Seller with a lifting program complying with the requirements of this Article 3.1.1 for the following Month within the period specified above, Buyer shall be required to accept the lifting program for such Month established by Seller.

3.1.1.1 Vessel acceptance. Upon receipt of the nomination of the vessel with information related to her, and all the required information, Seller shall respond not later than two (2) Business Days, such response shall not be unreasonably withheld. Vessels must comply with requirements of the industry. Vessels with a satisfactory OCIMF's SIRE Program report of an inspection performed during the previous six (6) months of the nomination are strongly preferred. The acceptance of any Vessel not inspected under SIRE Program is subject to a vetting inspection, at Buyer's account. Vetting inspections shall be carried out in accordance with industry standards. In any event, Vessel must be acceptable to Seller before any loading of Oil to be delivered hereunder. Detailed requirements by Seller are those published in the "A guide to the vetting process", latest edition, published by the International Association of Independent Tanker Owners ("INTERTANKO"). Acceptance of a Vessel by Seller shall not constitute a continuing acceptance of such Vessel, as each Vessel nomination requires Seller's approval.

3.1.2 Seller shall be deemed to have accepted Buyer's lifting program for the following Month unless Seller has notified Buyer of alterations thereto at least five (5) Days prior to the beginning of such Month. Seller shall in any event notify Buyer within such time period of the Loading Ports to be used by Buyer's tankers (subject to adjustment as provided in Article 3.1.3) and the name(s) of the Independent Inspector(s) nominated by Seller for purposes of Article 5.1 and Article 6.1. If Seller timely so notifies Buyer of alterations to the lifting program, Buyer shall be deemed to have agreed to those alterations unless, within three (3) Days after Buyer's receipt of Seller's notice, Buyer requests Seller to reconsider such alterations. Seller's decision following any such reconsideration shall be final and binding on both Parties. Buyer may also notify Seller within such three-Day period that it objects to an Independent Inspector nominated by Seller. In such case, Seller shall select another Independent Inspector. The lifting program as finally determined pursuant to the provisions of Article 3.1.1 and this Article 3.1.2 for any Month is referred to herein as the "Agreed Lifting Program" for such Month, and the three-Day range for the arrival of any tanker contained in any Agreed Lifting Program is referred to herein as the "Agreed Laydays" for such tanker.

3.1.3 Seller may notify Buyer that any tanker scheduled in an Agreed Lifting Program shall load the Oil at a Loading Port different from (but on the same coast as) the Loading Port previously specified pursuant to Article 3.1.2 or shall load the Oil at two Loading Ports (on the same coast),

provided that such notice is given by Seller (i) at least twenty-four (24) hours prior to the ETA falling within or after its Agreed Laydays, or (ii) at least twenty-four (24) hours prior to the first Day of the Agreed Laydays, if Buyer has notified Seller of an ETA which is earlier than the first Day of the Agreed Laydays. Seller shall not be liable for any charges or expenses incurred by Buyer as a result of a shift from one Loading Port to another, or the specification of two Loading Ports, as provided above.

**3.2 Substitution of Tankers.** Buyer shall be entitled to substitute another tanker for any tanker designated in an Agreed Lifting Program; provided, however, that the substitute tanker shall have substantially the same characteristics (including carrying capacity) as the tanker previously nominated and accepted pursuant to Article 3.1 and shall meet the requirements for vessels loading at the particular Loading Port involved; and provided, further, that Buyer shall give Seller notice of the substitution not less than four (4) Days prior to the first Day of the Agreed Laydays for the substituted tanker. In the event that Buyer substitutes a tanker other than in accordance with the provisions of this Article 3.2, Seller may in its sole discretion refuse to load such tanker, or it may load such tanker at any Loading Port on any Day it may specify, whether or not within the Agreed Laydays for such tanker; Seller shall in no event be liable for demurrage, deadfreight or any other charges with respect to the loading of any such tanker.

**3.3 Advice of ETA.** Buyer shall arrange for each tanker to advise the Loading Port operator and Seller (through email and phone numbers provided in the Agreement) of its ETA at each of the following times, regardless of tanker's arrival before or within Agreed Laydays:

- (a) immediately upon leaving its last port of call before the Loading Port, if such departure is more than seventy-two (72) hours prior to its ETA at the Loading Port;
- (b) seventy-two (72) hours before ETA;
- (c) forty-eight (48) hours before ETA;
- (d) twenty-four (24) hours before ETA; and
- (e) twelve (12) hours before ETA.

Seller shall not be liable for demurrage, deadfreight or any other charges in respect of any delay in loading attributable to the failure of a tanker to give notice of its ETA at any of the times enumerated above, regardless of tanker's arrival before or within Agreed Laydays.

**3.4 Notice of Readiness.** The Buyer, its representative or the Master of the tanker (who shall be deemed to be acting on Buyer's behalf) shall, during the hours in which the Loading Port is open (for the purposes of this Article, the Loading Port shall be considered as closed and non-operational between 18:00 hours and 6:00 hours), give Seller or Seller's agent, and the Loading Port operator, notice of the readiness of the tanker to load at the Loading Port. Notice of Readiness shall not be given until the tanker (i) has anchored at the customary anchorage area at the Loading Port, (ii) has been granted free pratique, (iii) has received the required clearance from customs and other governmental authorities and (iv) is ready in all other respects to load; provided, however, that Notice of Readiness may be given before the conditions specified in clauses (ii) and (iii) above have been satisfied if, in accordance with the practice at the Loading Port, such conditions may be satisfied only after the tanker has been brought to the loading point. If, notwithstanding having tendered Notice of Readiness, the tanker is found not to be ready to load, such Notice of Readiness will be disregarded and Buyer shall be obligated to give a new Notice of Readiness when it is in fact ready to load.

**3.5 Oil Pollution.** Buyer shall ensure that all vessels used for loading Oil under the Agreement and that the Oil shipped thereon are covered by any oil pollution insurance coverage, free of expense to Seller.

Buyer undertakes that any vessel used for loading Oil under the Agreement:

- i. is owned by a member of the International Tanker Owners Pollution Federation Limited and will so remain throughout the charter period;
- ii. is covered, free of expense to Seller, by insurance protecting against any and all liabilities from pollution, issued by an internationally recognized Protection and Indemnity Association or by one or more internationally recognized insurers, in an amount not less than one billion U.S. Dollars (U.S.\$1,000,000,000.00), or such greater amounts as may become available in the insurance market and generally obtained by prudent owners of similar vessels; and,
- iii. carries all certificates required by applicable laws for the carriage of petroleum and petroleum products in Mexican waters and in international ocean transportation and for conducting cargo operations at the Loading Ports, including, without limitation, those required under the International Liability Convention on Civil Liability for Oil Pollution Damage, 1992. Buyer shall further ensure that each vessel used for loading Oil is in possession of a current certificate, issued in accordance with the standards of the International Maritime Organization, indicating full compliance with the requirements of the International Management Code for the Safe Operation of Ships and for Pollution Prevention.

Seller may, at its sole option, place pollution control personnel on board Buyer's vessels to observe cargo loading and related operations. Seller's representative may render advice to, but is not obligated to advise, Buyer, its representative or the vessel's Master, and may assist them in the avoidance of any type of pollution; provided, however, that Seller's representative shall not order the taking of any particular action or interfere in any way with the Master's exercise of authority. Notwithstanding the provisions of this Article 3.5, nothing in the Agreement shall be construed as relieving Buyer of any liability which it may have, or imposing on Buyer any liability which it does not have, under applicable law for the consequences of oil pollution of the sea occurring in connection with the purchase and lifting of Oil under the Agreement.

**3.6 Underlifting.** Both Parties acknowledge that Seller's commitment to sell and deliver and Buyer's commitment to buy and lift the Contract Quantity of Oil is of the essence of the Agreement.

Buyer shall not be subject to any liability for lifting less than the Contract Quantity, if and to the extent that such underlifting is due to demonstrated operational reasons concerning only the Loading Ports or the tankers involved, to the extent such underlifting does not exceed the operating tolerance agreed between the Parties, or such underlifting is the result of Force Majeure and excused pursuant to Article 10.

Seller shall not be subject to any liability for delivering less than the Contract Quantity to Buyer if and to the extent that such under delivery is due to demonstrated operational problems or limitations at the Loading Port or the tankers involved, or such under delivery is the result of Force Majeure and excused pursuant to Article 10 of the General Terms.

## **Article 4. Loading Conditions; Demurrage**

### **4.1 Berthing of Tankers; Commencement of Laytime**

4.1.1 Subject to the provisions of Articles 4.1.2 and 4.1.3, Seller shall provide a safe loading point at the Loading Port for each tanker designated in accordance with the provisions of Article 3, which loading point may be a berth, dock, anchorage, sea terminal, sea buoy mooring, submarine loading line or other place, including alongside lighters FSO, FPSO or other vessels, as Seller may direct.

Seller represents and warrants that the port facility where loading will be made hereunder shall comply with all laws and regulations related to the security of the port facility, including, but not limited to, the International Ship and Port Facility Security Code ("ISPS Code") and related amendments to the International Convention for the Safety of Life at Sea ("SOLAS Convention"), and with any other laws and regulations relating to the security of the port, including without limitation, any facility security plan or transportation incident security response plan requirements and other security measures, including recordkeeping and reporting requirements, that may be imposed by any national, state or local government authorities. The aforesaid laws and regulations shall hereafter be referred to collectively as the "Security Regulations". Notwithstanding any other provision of the Agreement, Seller shall be liable for all losses, damages, liabilities, costs, expenses, demurrage, and delays arising from Seller's failure to comply with the Security Regulations and/or from any Security Regulations or measures required by the port facility or any relevant authority in accordance with the Security Regulations.

In the event that a tanker arrives within its Agreed Laydays, then laytime shall commence at the earlier of (i) six (6) hours after Notice of Readiness is given or (ii) the commencement of loading; provided, however, that any Notice of Readiness given within the last two (2) hours in which the Loading Port is open on any Day shall not, for purposes of determining the commencement of laytime, be deemed given until the Loading Port next opens.

4.1.2 Seller shall not be obligated to provide a loading point for any tanker arriving after the last Day of its Agreed Laydays. Regardless of whether such tanker is permitted to berth, Seller shall in no event be liable for demurrage, deadfreight or other charges in connection with the loading thereof. If such tanker is permitted to berth, laytime shall commence at the commencement of loading.

4.1.3 Seller shall not be obligated to provide any tanker arriving prior to its Agreed Laydays with a loading point until the first Day of its Agreed Laydays. In such case, laytime shall commence at the earlier of (i) six (6) hours after the Loading Port opens on the first Day of the Agreed Laydays for such tanker or (ii) the commencement of loading. If such tanker is permitted to berth prior to the first Day of its Agreed Laydays, then laytime shall commence at the commencement of loading.

**4.2 Shifting Loading Point of Tankers.** Seller shall have the right to shift tankers at the Loading Port from one loading point to another, provided that all expenses incurred in connection therewith shall be borne by Seller and all time expended in such shifting of tankers shall count as laytime. Notwithstanding the provisions of the preceding sentence, the expenses incurred in connection with a shifting of any tanker which is attributable to one of the events referred to in Article 4.4 shall be borne by Buyer, the time consumed during such shifting shall not count as laytime, and Seller shall not be obligated to provide such tanker with a loading point until a loading point becomes available.

4.3 **Allowed Laytime.** The Allowed Laytime for tankers loading up to 500,000 Barrels of Oil shall be thirty-six (36) hours. The Allowed Laytime for tankers loading more than 500,000 Barrels of Oil shall be the number of hours calculated as follows:

Step 1: subtract 500,000 from the number of Barrels to be loaded;

Step 2: multiply the amount calculated as provided in Step 1 by 0.0000272;

Step 3: add 36 to the amount calculated as provided in Step 2, and

Step 4: round the amount calculated as provided in Step 3 to the nearest whole number.

Laytime shall cease upon the disconnection of delivery hoses after the completion of loading. In the event that Seller has agreed to load a tanker at a single Loading Port with Oil for both Buyer and one or more other customers of Seller, then (i) the Allowed Laytime applicable to the aggregate amount of Barrels loaded for Buyer and such other customer or customers, or vice versa, shall not be counted as used laytime. In the event that an Agreed Lifting Program provides for loading of Buyer's tanker at two Loading Ports, or Seller notifies Buyer pursuant to Article 3.1.3 that a loading shall be at two Loading Ports, the Allowed Laytime shall be the Allowed Laytime applicable to the aggregate amount of Oil to be loaded, provided that there shall not be counted as laytime in any such case the time consumed from the time at which delivery hoses are disconnected at the first Loading Port until the time that laytime would commence at the second Loading Port pursuant to the provisions of Article 4.1.

4.4 **Adjustments to Laytime.** In the event that the loading of any tanker is delayed, directly or indirectly, for any of the following reasons, whether occurring prior to, during or after the berthing or commencement of loading of the tanker:

- a) regulations or decisions of Buyer, or of the owner or operator of the tanker, prohibiting or restricting loading at any time;
- b) lightering at Buyer's request;
- c) delay or suspension in loading due to failure of Buyer to comply with any provision of the Agreement;
- d) more than one stoppage in loading as a result of Buyer's instructions as to distribution of the Oil in the tanker;
- e) discharge of ballast or slops;
- f) the condition or facilities of the tanker, or any other reason attributable to or within the reasonable control of Buyer or the tanker;
- g) regulations of the Loading Port operator, port authorities or the Government of Mexico or any political subdivision or agency thereof, including, but not limited to, regulations or decisions closing the Loading Port, prohibiting night traffic or berth maneuvering or prohibiting or restricting loading for any reason;
- h) customs or customs clearance procedures, or time required in order to be granted free pratique;
- i) inspection, gauging and measurement of tanks or valves before, during and after loading;
- j) maneuvering of tanker from anchorage until all fast at the loading point, beginning with the earlier of pilot on board or anchor aweigh;
- k) bad weather, rough seas, fires or explosions; or
- l) any of the events listed in Article 10.1 and not specifically listed above, or any other event of Force Majeure;

then the amount of time during which the loading of such tanker is so delayed shall not count as laytime.

**4.5 Demurrage.** Seller shall pay Buyer demurrage for any hour or part of an hour of laytime in excess of the Allowed Laytime for the tanker involved, at a rate equal to the lowest of: (i) the rate specified in the charterparty for the tanker, if the tanker is spot chartered or voyage chartered, (ii) the rate determined by multiplying the AFRA for the deadweight in Metric Tons of the tanker times the WORLDSCALE rate for such deadweight, and (iii) the rate determined by multiplying the AFRA for a hypothetical tanker with a deadweight in Metric Tons equal to the weight in Metric Tons of the Oil loaded times the WORLDSCALE rate for such hypothetical tanker. For all loadings that commence during a particular Month, the applicable AFRA shall be the one that is determined on the basis of freight assessments for the period ended on the fifteenth Day of the preceding Month. In the event that WORLDSCALE or AFRA is interrupted, or its structure changed so as no longer to represent the relevant conditions under the Agreement, Seller and Buyer shall consult and agree on another rate for the evaluation of the demurrage in question. The right of Buyer to demurrage pursuant to this Article 4.5 shall constitute Buyer's exclusive remedy with respect to any failure of Seller to complete the loading of any tanker within the Allowed Laytime.

**4.6 Buyer's Liability for Delay and Damage.**

4.6.1 Buyer shall pay Seller at the rate of U.S.\$1,500.00 per hour for each hour or part thereof that loading is delayed due to any of the reasons specified in clauses (a), (b), (c), (d), (e) (but only to the extent that more than six (6) hours are expended in discharging ballasts or slops) or (f) of Article 4.4; provided, however, that if Seller incurs, as a result of such delay in loading, damages (including demurrage charges payable to third parties) in an amount in excess of the payment provided above, Buyer shall be liable to Seller for the amount of such damages.

4.6.2 Each tanker shall clear berth as soon as loading is completed and the delivery hoses are disconnected. Buyer shall pay Seller at the rate of U.S. \$1,500.00 per hour for each hour or part thereof in excess of two (2) hours that the tanker remains in berth subsequent to completion of loading and disconnection of the delivery hoses; provided, however, that if Seller incurs, as a result of such delay in clearing berth, damages (including demurrage charges payable to third parties) in an amount in excess of the payment provided above, Buyer shall be liable to Seller for the amount of such damages.

4.6.3 In the event that for any reason Buyer's tanker causes damage to any facilities at the Loading Port, then (i) Buyer shall take responsibility before the owner of such facilities and assume the cost of repair or replacement of such facilities (ii) any delay in loading the tanker as a result of such damage shall not be counted as laytime for such tanker, and (iii) Buyer shall pay Seller at the rate of U.S.\$1,500.00 per hour for each hour or part thereof that any loading point may not be used as a result of such damage; provided, however, that if Seller incurs, as a result of such damage to a loading point, demurrage charges in an amount in excess of the payment provided in clause (iii) above, Buyer shall be liable to Seller for the amount of such charges. Should any such damage occur, Buyer shall post such security for the payments provided in the preceding sentence as Seller may request, it being understood that Seller may detain the tanker at the Loading Port until such security shall have been posted.

## **Article 5. Quantity Measurements**

**5.1 Determination of Quantity.** The volume of each loading of Oil shall be determined by an Independent Inspector selected as provided in Article 3.1.2, whose fees shall be shared equally by the Parties. Measuring and gauging shall be performed in accordance with one of the following measurement systems in decreasing order of preference, depending on the operational conditions prevailing at the Loading Port involved. Seller and Buyer or their respective representatives may witness the taking of the measurements.

- a) Flow meters installed on loading lines: Such meter measurements shall be taken immediately before, during and after loading. When measurements are made with positive displacement meters, the meters and associated provers will be installed, maintained and calibrated by Seller or its representative according to the latest revision of API-MPMS Chapter 5.2 "Measurement of liquid hydrocarbons by displacement meters". If turbine meters are used, measurements will follow the latest revision of API-MPMS Chapter 5.3 "Measurement of liquid hydrocarbons by turbine meters" for the meters and associated provers. If ultrasonic meters are used, measurements will follow the latest revision of API-MPMS Chapter 5.8 "Measurement of liquid hydrocarbons by ultrasonic flow meters using transit time technology" for the meters and associated provers.
- b) Shore tanks: The shore tanks shall have been calibrated on a periodic basis according to the latest revision of any of the methods included in API-MPMS Chapter 2 "Tank Calibration". Tank measurements shall follow the latest revision of API-MPMS Chapter 3.1A "Standard Practice for the Manual Gauging of Petroleum and Petroleum Products" and Chapter 7 "Temperature Determination". Tank volume calculations shall follow the latest revision of API-MPMS Chapter 12.1.1 "Calculation of Static Petroleum Quantities - Upright Cylindrical Tanks and Marine Vessels".
- c) Volume measured on board: Volume measurements on board the vessel shall be made in accordance with the latest edition of the API-MPMS Chapter 17 "Marine Measurement" and its applicable parts, on the basis of at least 3 (three) measurements for each tank. Vessel volume calculation shall follow the latest revision of API-MPMS Chapter 12.1.1 "Calculation of Static Petroleum Quantities - Upright Cylindrical Tanks and Marine Vessels." The On-Board-Quantity ("OBQ") (including free water) measured prior to loading shall be deducted from the total observed volume measured after loading. Volume corrections in respect of temperature shall then be effected at 60 °F (equivalent to 15.56 °C) in accordance with API-MPMS Chapter 11.1 "Physical Properties Data" (Section 1 "Temperature and Pressure Volume Correction Factors for Generalized Crude Oils, Refined Products and Lubricating Oils"), thereby arriving at the gross standard volume. Such gross standard volume shall then be further corrected dividing it by the current Vessel Experience Factor ("VEF") for the vessel, determined in accordance with the latest revision of API-MPMS Chapter 17.9 "Vessel Experience Factor".

**5.2 Volume Corrections for Temperature.** Except in the case that quantity measurements are made pursuant to the provisions of Article 5.1(c), in which case temperature corrections shall be made in the manner and at the time specified in such subsection (c), temperature readings shall be taken in accordance with the methods listed below in decreasing order of preference, depending on operational conditions prevailing at the Loading Port involved: (i) the average of the temperatures taken at various times during loading at flow meters; and (ii) the temperature taken in shore tanks by an Independent Inspector. Temperature corrections at 60 °F (equivalent to 15.56 °C) will then be effected for all volume determinations in accordance with API-MPMS Chapter 11, Section 1 "Temperature and Pressure Volume Correction Factors for Generalized Crude Oils,

Refined Products and Lubricating Oils”, provided that temperature corrections shall not be made in the case that volume is determined by means of flow meters pursuant to Article 5.1(a) and temperature compensatory at 60 °F (equivalent to 15.56 °C) is integrated into the meter system. Water content, determined in the manner provided in Article 6.2 “Analysis of Samples”, shall be deducted from the volume corrected for temperature as provided above in order to obtain the BOL Volume.

**5.3 Conclusiveness of Measurements**. Quantity and temperature measurements made by the Independent Inspector as provided in this Article 5 shall be final and binding on the Parties, except in the case of manifest error. In any event, without prejudice to the right of either Party subsequently to demonstrate manifest error in such measurements, the determination of the Independent Inspector shall govern for purposes of the quantity stated in the BOL and the obligation of Buyer to make payment in accordance with the provisions of Article 8.

**5.4 Quantity Claims Settlement Procedure**. A potential quantity claim will be considered from Buyer to Seller or vice versa, for any shipment where the overall Total Calculated Volume (TCV) difference in Barrels found at Loading Port between bill of lading’s TCV (as obtained from meters or shore tank gauges) and vessel’s received TCV after correction with a valid VEF is equal or greater than  $\pm 0.3\%$ .

For such cases, the difference found between bill of lading’s TCV and vessel volume obtained at her arrival to discharge port will be evaluated. For that purpose, Buyer and Seller shall appoint a mutually agreeable Independent Inspector for the discharge port and share the costs of such inspector. Seller is not responsible for in-transit differences, OBQ / Remaining On Board (“ROB”) differences or ship-to-shore differences experienced at discharge port. Therefore, the following assumptions will be made to obtain vessel arrival volume, for comparison purposes:

1. ROB after discharge operations will be considered equal to OBQ found at Loading Port.
2. VEF used at disport will be the same as calculated by the Independent Inspector at the Loading Port for the loading operation.

If the difference between bill of lading’s TCV and discharge port vessel volume obtained using above considerations remains equal or greater than  $\pm 0.3\%$ , (percentage always with respect to bill of lading’s TCV), the Loading Port difference will be considered as confirmed and the claim will be valid.

Consequently, the amount to settle the claim will be the difference in Barrels found at Loading Port. The procedure to settle the claim will be by means of a volumetric adjustment to the BOL Volume, for that amount of Barrels, which will result in the issue of a credit or debit note, for the value in U.S. Dollars of such Barrels, being understood that either Party has the right to file a claim within ninety (90) Days from the BOL date. The Independent Inspector fees at the discharge port will be shared equally between Buyer and Seller only for those shipments where a discrepancy, as described at the beginning of this Article, is experienced at the Loading Port. In all other cases, the Independent Inspector fees at the discharge port will be at Buyer’s sole expense.

For shipments loading at more than one loading port or loading more than one type of Oil, this procedure shall be applied considering overall quantities for its application.

Quantity claims described above shall not be valid if sufficient data is not available to allow calculation of a VEF in accordance with API-MPMS Chapter 17.9 “Vessel Experience Factor (VEF)”.

## **Article 6. Quality**

**6.1 Determination of Quality.** Sampling of the Oil loaded in each shipment for quality shall be done in accordance with the latest revision of API-MPMS Chapter 8.2/ASTM D-4177 "Standard Practice for Automatic Sampling of Petroleum and Petroleum Products", when Oil is sampled by automatic samplers, and API-MPMS Chapter 8.1/ASTM D-4057 "Standard Practice for Manual Sampling of Petroleum and Petroleum Products", when Oil is sampled manually by an Independent Inspector, selected in accordance with Article 3.1.2, whose fees shall be shared equally by the Parties. Buyer and Seller or their representatives may witness the taking of samples. Quality shall be determined by using the methods listed below in decreasing order of preference, depending on the operational conditions prevailing at the Loading Port involved: (i) from samples drawn from automatic samplers installed in the loading lines; (ii) from samples drawn from the storage shore tanks delivering the Oil; or (iii) from a composite sample obtained in proportional parts from the vessel's tanks. The samples thus drawn shall be mixed and equally filled in four (4) containers of one (1) Gallon each and finally each container shall be sealed. Two (2) of such containers shall be handed over to the Master of the tanker, and from the other two (2), one shall be delivered to the Independent Inspector and the other one shall be kept by Seller for ninety (90) Days after the bill of lading date.

**6.2 Analysis of Samples.** The Independent Inspector shall witness quality tests for sulfur, salt and Reid vapor pressure on the samples according to the latest revision of ASTM or API-MPMS procedures, at Seller's choice. Gravity tests on all Oil shall be made in accordance with the latest revision of API-MPMS Chapter 9.1/ASTM D-1298 "Standard Test Method for Density, Relative Density or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method". Water ("W") shall be determined pursuant to the latest revision of API-MPMS, Chapter 10.9/ASTM D-4928 "Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration", in tests witnessed by the Independent Inspector. Quality tests conducted in accordance with the above provisions shall be final and binding upon the Parties for invoicing purposes, but without prejudice to the right of either party to pursue a claim. Sediments will not be subject to measurement.

**6.3 No Warranties.** Seller does not guarantee or warrant the suitability of the Oil for any purpose whatsoever. Buyer hereby releases Seller from any and all warranties whatsoever, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

## **Article 7. Delivery**

**7.1 Passing of Title.** Delivery of the Oil shall be made in bulk to Buyer FOB the applicable Loading Port to tankers provided by Buyer. Delivery shall be deemed completed when the Oil passes the flange connection of the delivery hose at the tanker's rail. At that point, Seller's responsibility with respect to the Oil shall cease, and Buyer shall assume all risk of loss of or damage to, and deterioration or evaporation of, the Oil so delivered. Any loss of or damage to Oil or any property of Seller or of any other person during loading which is in any way attributable to the tanker or its officers or crew shall be borne by Buyer.

**7.2 Port and Loading Expenses.** All expenses ashore pertaining to the pumping of the Oil from shore tanks to tankers shall be borne by Seller, including, but not limited to, wharfage, dockage and quay dues at the Loading Port. Seller shall also pay all export taxes or duties imposed by Mexico or any political subdivision or taxing authority thereof. All other expenses pertaining to the loading of any tanker, including, without limitation, all tanker agency fees, anchorage, tonnage,

towage, pilotage, customs, consular, entrance, clearance and quarantine fees, port dues and all charges and expenses relating to berthing and unberthing of tankers, shall be borne by Buyer.

**7.3 Loading Port Regulations.** All Loading Port laws, rules and regulations of the Government of Mexico or any political subdivision or agency thereof, or of Seller or its representative (including those referred to in Annex 1 of these General Terms), now or hereafter in existence relating to operations at Loading Ports, shall apply to all tankers provided by Buyer, including, without limitation, any regulations relating to (i) the prevention and control of fires and water pollution and (ii) lead free and segregated ballast. If Buyer's vessel does not meet any of the requirements set out above, Seller or Seller's suppliers may refuse to berth or load or continue to load the vessel with the scheduled loading, provided that Seller shall in no event be liable for demurrage or any other charges in connection therewith. Buyer shall reimburse Seller or its agent for any expenses they may incur as a result of the noncompliance by any such tanker with any such applicable law, rule or regulation, including, without limitation, any expenses incurred by Seller or its agent in connection with the extinguishing of fires, the repair of damage caused thereby, the cleaning-up of water pollution and the payment of any charges assessed by the Government of Mexico or any political subdivision or agency thereof.

**7.4 Buyer's knowledge of Loading Port Facilities; Standard Procedures.** Buyer hereby acknowledges that it is fully familiar with the facilities and conditions at the Loading Ports, including the loading conditions and procedures and the facilities for the storage and delivery of Oil. Annex 1 contains certain information and current requirements relating to the Loading Ports. The facilities and conditions at the Loading Ports may be changed at any time. Buyer also acknowledges that Loading Port operator's standard procedures in effect at the Loading Ports from time to time relating, *inter alia*, to quality and quantity measurements, safety in loading, and inspection of vessel tanks, shall supplement (but not conflict with) the procedures specified herein. Seller shall supply Buyer with a copy of such procedures upon Buyer's request.

## **Article 8. Payment Terms**

**8.1 Currency, Time and Place of Payment; Overdue Payments.** Buyer shall make all payments required to be made by it hereunder in immediately available U.S. Dollars, without any discount or deduction whatsoever, by wire transfer to such account at such bank as may be designated by Seller from time to time. Payments in respect of Oil sold and delivered shall be made no later than thirty (30) Days after the date of the bill of lading therefore. All other payments to Seller shall be made five (5) Days after presentation by Seller of a written demand setting forth the provisions of the Agreement giving rise to the payment obligation, the nature of such obligation, and the amount thereof. If any payment hereunder is due on a Day on which banks at such place as Seller may have designated as the place where payment is to be made are not open for business, such payment shall be due on the immediate preceding Day on which banks in such place are open for business. In the event that Buyer fails to make any payment when due, then, to the extent permitted by applicable law and without prejudice to the application of any other provision hereof or to any other remedy provided to Seller hereunder or otherwise (including, without limitation, Article 8.4), interest shall accrue daily on the amount of the overdue payment, commencing on the date such payment was due, at a rate per annum equal to three percent (3% or 300 basis points) above the Prime Rate in effect from time to time as announced by Citibank, N.A. at its offices in New York, New York, payable on demand.

**8.2 Payment Expenses.** Buyer shall bear all expenses and bank charges in connection with any payments made to Seller under the Agreement, including, without limitation, any costs of establishing and obtaining confirmation of the letters of credit referred to in Article 8.3.

**8.3 Security for Payment.** If any payment under the Agreement is required to be made by means of letters of credit, each such letter of credit shall be: irrevocable; in a form and for a term satisfactory to Seller; payable against the presentation by Seller of a bill of lading and an invoice; in an amount equal to Seller's estimate of the value of the Oil for which it is provided, plus ten percent (10%); established in favor of and notified to Seller not less than three (3) Business Days prior to the first Day of the Agreed Laydays for the first shipment to which it relates; and confirmed irrevocably and unconditionally by a bank satisfactory to Seller.

**8.4 Failure to Make Payment.** If Buyer fails to make any payment required to be made by it hereunder when and as the same shall become due and payable, then (in addition to all other rights or remedies provided to Seller hereunder or otherwise) Seller shall have the right, at its sole discretion, to suspend further deliveries (if any) of Oil until Buyer makes the required payment together with any accrued interest thereon or to terminate the Agreement effective immediately upon notice to Buyer.

#### **Article 9. Notice of Claims**

Any claim which Buyer may have, arising out of or relating to the Agreement must be notified in writing to Seller: (i) within sixty (60) Days after the date of the bill of lading for the shipment involved, if such claim is for demurrage (any such claim must be accompanied by complete substantiation and a copy of the charterparty, if any, for the tanker); (ii) within ninety (90) Days after the date on which the loading of any shipment is completed, if such claim relates to the quantity or quality of Oil in such shipment; or (iii) within thirty (30) Days after the occurrence of the events giving rise to such claim, if such claim involves any other matter relating to the Agreement. Seller shall not be liable to Buyer in respect of (and Buyer shall be deemed to have waived) any claim which is not so notified to Seller, and Buyer shall reimburse Seller for any expenses, including attorneys' fees, which Seller incurs in connection with the defense of any such claim.

#### **Article 10. Force Majeure**

**10.1 Relief from Liability.** Neither Party to the Agreement shall be liable for demurrage, loss, damage, claims or demands of any nature arising out of delays or defaults in performance under the Agreement due to impediments beyond the reasonable control of such Party ("Force Majeure"), which shall include, but not be limited to: *Acts of God* (accidents due to natural causes without human intervention and which could not have been foreseen) or of the public enemy; floods or fire; hostilities or war (whether declared or undeclared); blockade; labor disturbances, strikes, riots, insurrections or civil commotion; quarantine restrictions or epidemics; electrical shortages or blackouts; earthquakes; tsunamis; tides; storms; bad weather or other acts of nature at the Loading Port; accidents; breakdown or injury to producing or delivering facilities in Mexico; interruption or decline of Seller's supply of Oil for any reason, or other shortage or unavailability of Oil for export from Mexico (whether due to increased domestic demand or otherwise); or laws, decrees, regulations, orders or other directives or actions of either general or particular application of the Government of Mexico or any agency thereof or of a person or authority purporting to act therefor, or request of any such person or authority.

It is expressly understood that Force Majeure shall not include any of the following events: (1) deterioration of a Party's financial condition; (2) changes in market conditions; (3) breach of any contract entered into by a Party in connection with the Agreement.

10.2 **Notice**. Any Party claiming Force Majeure shall promptly notify the other in writing the underlying circumstances of the particular causes of Force Majeure, the way it affects its obligations under the Agreement, the reasonable actions taken to overcome any such Force Majeure event, if applicable, and the expected duration thereof. The Party claiming Force Majeure will use Commercially Reasonable Efforts to give the other Party prompt notice of cessation of the Force Majeure condition.

10.3 **Payment for Oil Sold and Delivered**. Nothing in this Article shall relieve Buyer of its obligation to pay in full for Oil sold and delivered hereunder and to pay all other amounts due to Seller from Buyer under the Agreement. For clarity purposes, the obligations of Buyer to pay any fees under the Agreement (including minimum fees) will not be excused for any reason whatsoever, including any Force Majeure event that does not affect Seller's ability to carry out its obligations under the Agreement.

10.4 **No Obligation to Apportion**. If, as a result of Force Majeure, Seller at any time does not have available a sufficient amount of Oil for export to supply the aggregate amount of Oil to be sold by it hereunder to Buyer and under such commitments as Seller may have with its other customers, Seller shall not be obligated to prorate the Oil available to it for export among its customers, including Buyer, and may allocate such available Oil in its sole discretion; it being understood that the occurrence of an event of Force Majeure shall not under any circumstances require Seller to purchase crude oil from any party to sell to Buyer.

#### **Article 11. Governing Law and Dispute Resolution**

11.1 **Settlement by Arbitration**. All disputes arising under or relating to the Agreement shall be settled finally by arbitration in Mexico City conducted in accordance with the Rules of Arbitration of the International Chamber of Commerce in effect at such time. The language to be used in the arbitration shall be English. The number of arbitrators shall be three, one to be appointed by each Party and the third to be appointed by the Parties' appointed arbitrators. If within thirty (30) Days after the appointment of the first two arbitrators by the Parties, such arbitrators have not reached agreement on the appointment of the third arbitrator, such third arbitrator shall be appointed by the Court of Arbitration of the International Chamber of Commerce. Additionally, the Parties hereby agree that the Emergency Arbitrator Provisions contained in the Rules of Arbitration of the International Chamber of Commerce shall not apply.

11.2 **Governing Law**. The Agreement shall be governed, construed and interpreted in accordance with the laws of Mexico.

#### **Article 12. Indemnity**

Seller and Buyer mutually covenant to protect, defend, indemnify and hold each other harmless including each other's directors, officers, employees, consultants, agents, Affiliates and representatives from and against any and all claims, demands, suits, losses, expenses (including without limitation, costs of defense, attorneys' reasonable fees and interest), damages, fines, penalties, causes of action and liabilities of every type and character, including but not limited to personal injury or death to any person including employees of either Party or loss or damage to any personal or real property, caused by, arising out of or resulting from the negligent or willful acts or omissions of such indemnifying Party, its officers, employees, representatives or agents with respect to the purchase and sale of Oil hereunder. In the event the Parties are jointly and/or concurrently negligent, each Party shall indemnify the other Party to the extent of its negligent or willful acts or omissions.

### **Article 13. New or Changed Regulations**

It is understood by the Parties that each Party is entering into the Agreement in reliance on the laws, rules, statutes, regulations, decrees, agreements, concessions and arrangements (hereinafter called "Regulations") in effect on the date hereof with governments, government instrumentalities or public authorities affecting the Oil sold/purchased hereunder, including, without limitation to the generality of the foregoing, those relating to the production, acquisition, sale, gathering, manufacturing, transportation, storage, trading or delivery of the Oil, insofar as such Regulations affect the Parties.

In the event that at any time and from time to time during the term of the Agreement any Regulations are changed or new Regulations become effective, whether by law, decree, or regulation or by response to the insistence or request of any governmental or public authority or any person purporting to act therefore, and the material effect of such changed or new Regulation (a) is not covered by any other provision of the Agreement, and (b) has a material adverse economic effect upon either Party, the affected Party shall have the option to request renegotiation of the pertinent terms in the Agreement. The said option may be exercised by the affected Party at any time after such changed or new Regulation is promulgated, by written notice of desire to renegotiate, such notice to contain the new terms desired by the affected Party. The notification given by the affected Party, will not entitle such Party to suspend its obligations hereunder. If the Parties do not agree upon new terms within thirty (30) Days after the affected Party gives such notice, the affected Party shall have the right to terminate the Agreement at the end of the said thirty (30) Day period. Any Oil lifted during such thirty (30) Day period shall be sold and purchased under the terms applying hereunder without any adjustment in respect of the new or changed Regulations concerned.

### **Article 14. Destination of Oil**

Buyer warrants that it shall not cause or permit the Oil purchased under the Agreement to be shipped directly or indirectly through or to, or be resold, exchanged or otherwise supplied to any country, government, governmental entity or national thereof subject to the United States Of America ("U.S.") or European Union trade sanctions or any country, government, governmental entity or national thereof with whom U.S. or European Union persons are prohibited from trading or dealing under U.S. or European Union law. Buyer agrees to notify Seller of the final destination of oil and, upon Seller's request, provide relevant documentation adequate to verify such destination. It is a condition of the Agreement that Buyer complies with its obligations under this article. In the event that Buyer is in breach of any of the provisions of this article, in whole or part, Seller shall be entitled to terminate the Agreement immediately without any liability to Seller, and Buyer shall hold Seller harmless and indemnify Seller for any damages, losses, costs, fines or penalties incurred by Seller resulting from Buyer's breach.

### **Article 15. Material Safety Data Sheets**

Seller shall furnish Buyer, upon Buyer's written request, with Material Safety Data Sheets that provide warnings and safety and health information concerning the Oil. Buyer shall be responsible for further distribution of said Material Safety Data Sheets as necessary. Nothing herein shall relieve the Buyer of its duties in relation to the safe and proper evaluation, storage, use, transport and disposal of the Oil sold hereunder. Compliance with any recommendation included in the Material Safety Data Sheets or other safety information shall not excuse Buyer from complying

with all applicable laws, statutes, Regulations or decrees of any state or territory having jurisdiction over Buyer.

**Article 16. Representations and Warranties**

Both Parties represent and warrant that: (i) both are corporations duly organized and validly existing under the laws of the jurisdiction of its incorporation, (ii) the Agreement has been duly authorized by all necessary corporate or other action of the Parties; and constitutes the legal, valid and binding obligation, enforceable in accordance with its terms; (iii) unless otherwise specifically agreed, Buyer is purchasing the Oil hereunder exclusively for its own use; (iv) Buyer has not been contacted by or negotiated with any finder, broker or other intermediary for the purchase of the Oil and no such person is entitled to any compensation with respect to the Agreement or the sale of the Oil hereunder and; (v) during the term of the Agreement, Buyer will keep in full force and effect and/or will obtain all permits and licenses required by the applicable law and Regulations, for the duly execution and performance of the Agreement.

**Article 17. Limitation of Liability**

Neither Party shall be liable for any consequential, indirect or special losses or damages of any kind arising out of or in any way connected with the performance of or failure to perform the Agreement, including, but not limited to, losses or damages resulting from shutdown of plants or inability to perform sales or any other contracts arising out of or in connection with the performance or non-performance of the Agreement.

Notwithstanding any of the foregoing, the Parties understand and agree that any limitation of liabilities for special or consequential damages caused by a breach to the confidentiality obligations contained in the Agreement, shall be null and void.

**Article 18. Merger**

The Agreement is a complete and exclusive statement of all terms and conditions governing the purchase and sale of Oil and supersedes all prior communications between the Parties concerning the subject matter or in consideration hereof. Except as otherwise agreed hereunder, no prior contract or course of dealing between the Parties and no statement of any agent, employee or representative of Buyer or Seller made prior to the execution of the Agreement, shall be admissible in construing the terms of the Agreement. For the avoidance of doubt, any repetition in a Confirmation of any Article or any part of such Article of these General Terms shall be for emphasis only and shall not by reason of such repetition exclude any other part of such Article or any other Article or any part thereof of these General Terms.

**Article 19. Confidentiality**

Buyer and Seller agree that the terms and conditions of the Agreement and any commercial, financial and/or related information, will be considered as confidential and proprietary information of Buyer or Seller, as applicable, and shall not be disclosed without the prior written consent of the other Party; provided however, that either Party may disclose such information pursuant to governmental, administrative, tax and judicial requirements to which such Party is subject if such disclosure is mandatory upon such Party and failure to disclose would subject such Party to civil or criminal penalties. In the event of any such disclosure, and if permitted by law, the Party that was required to disclose the confidential information, will give prompt notice to the other Party of

the information to be disclosed and will seek to obtain confidential treatment of the information by the person to whom it is to be disclosed.

The Parties may disclose the terms and conditions of the Agreement to their respective Affiliates; provided however, that such Parties shall be liable for any disclosures made by their respective Affiliates. This provision of confidentiality will not apply to confidential information: (i) which is or later becomes public information through no fault of the receiving Party; (ii) which the receiving Party can show through written documentation known to it prior to receipt from the disclosing Party; (iii) which is disclosed to the receiving Party by a third party having no obligations of confidence with respect thereto; or (iv) which is independently developed by personnel of the receiving Party who the receiving Party can reasonably demonstrate had no direct or indirect access to the correspondent confidential information received from the other Party. In case of doubt as to whether or not the information to be disclosed is subject to the confidentiality obligations contained herein, then it shall be treated as confidential. The burden of proving that any disclosed information wasn't subject to the confidentiality provisions of this clause and the Agreement, will remain in the receiving Party.

All confidential information disclosed by either Party to the other during the course of the Agreement shall be received in confidence and made available only to those employees, financial advisor, accountants, attorneys and other representatives of the Receiving Party who have a need to know the same in connection with their work assignments pursuant to carrying out the objectives of the Agreement. This obligation shall be of a continuing nature and shall not be canceled by the expiration, suspension or termination of the Agreement

#### **Article 20. No Third Party Beneficiaries; Assignment**

Nothing in the Agreement, express or implied, is intended to or shall be construed to confer upon or give to any person or entity any rights, benefit or remedy of any nature as a third party beneficiary of the Agreement or any part thereof. Buyer shall not assign to any Party any right or interest in the Agreement or delegate to any Party any obligation hereunder without the prior written consent of Seller. In the event of any such attempted assignment or delegation by Buyer without the prior written consent of Seller, Seller shall have the right, without prejudice to any other rights or remedies it may have hereunder or otherwise, to terminate the Agreement effective immediately upon written notice to Buyer. Seller may freely assign the Agreement to any subsidiary or Affiliate thereof. The Seller may freely assign its collection rights under the Agreement to any Bank or financial institution in case of seeking for a guaranty of Buyer's payment obligations hereunder. The Agreement shall be binding upon and shall inure to the benefit of the Parties and their permitted successors and assignees.

#### **Article 21. No Waiver; Cumulative Remedies**

Except as specifically provided in the Agreement, no failure or delay of either Party in exercising any right, power or remedy hereunder and no course of dealing between the Parties hereto shall operate as a waiver by either Party of any such right, power or remedy; nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder. Without prejudice to this Article 21 and except to the extent otherwise expressly provided in the Agreement, all rights, powers and remedies provided hereunder are cumulative and not exclusive of any other rights, powers and remedies provided by law or otherwise. Except as required by the Agreement, no notice or demand upon one Party in any case shall entitle the other Party to any other or future notice or demand in

similar or other circumstances or constitute a waiver of the right of the first Party to take any other or further action in any such circumstances without notice or demand.

**Article 22. Severability of Provisions**

The invalidity, illegality or unenforceability of any one or more of the provisions of the Agreement shall in no way affect or impair the validity and enforceability of the remaining provisions thereof.

**Article 23. Recording of Conversations**

Each of the Parties representatives and signatories of the Agreement: (i) consents to the recording of telephone, electronic, digital, and/or video conference communications between the trading, operations, marketing and other relevant personnel of the Parties in connection with the Agreement or any potential transaction between the Parties, (ii) will seek and use its best effort to obtain any necessary consent of, and give any necessary notice of such recording to, its relevant personnel, and (iii) agrees, to the extent permitted by applicable law, that recordings may be submitted in evidence in any legal proceedings.

**Article 24. Notices**

Except as otherwise provided, all notices, consents and other communications given under the Agreement shall be in writing, in English language, and shall be deemed to have been duly given: (i) when delivered in person, (ii) when received by email, (iii) when received by the addressee if sent by certified mail, or other express delivery service (courier service) receipt requested or (iv) by any other means as the Parties may agree from time to time, in each case to the appropriate address as designated by the Parties or as provided below. All notices under the Agreement received after 17:00 hours receiving Party's local time shall be deemed received 08:00 hours receiving Party's local time the following Business Day.

To Seller: P.M.I. Comercio Internacional, S.A. de C.V.  
Avenida Marina Nacional No. 329  
Torre Ejecutiva Pemex – 22nd floor  
Col. Verónica Anzures  
Del. Miguel Hidalgo  
C.P. 11300  
Ciudad de México  
México

Telephone: +52 55 1944 0040  
Attn.: Dirección Comercial de Petróleo Crudo

or at such other address, email or telephone as may be notified in writing by Seller to Buyer from time to time in the manner provided in this Article 24.

To Buyer: At the address, email or telephone of its principal office or any office dealing with Seller with respect to the Agreement, or at any such other address, email or telephone as may be notified in writing by Buyer to Seller from time to time in the manner provided in this Article 24.

## **Article 25. Amendments and Waivers**

No amendment to the Agreement will be effective unless agreed to by both Parties and confirmed in writing. Any waiver of any provision of the Agreement by either Party must be upon the express written agreement of such Party.

Any amendment, modification or supplement of these General Terms will be made by Seller and notified in writing to the other Party before the Agreement subscription.

## **Article 26. Taxes**

Seller shall be liable for and shall report and pay (as required under applicable law) to the applicable taxing authority any and all taxes with respect to Oil delivered hereunder, the taxable incident of which occurs before or at the transfer of title to Oil to Buyer. Buyer shall be liable for and shall report and pay (as required under applicable law) to the applicable taxing authority any and all taxes with respect to Oil delivered hereunder, the taxable incident of which is the transfer of title or the delivery of Oil hereunder or the taxable incident of which occurs after the transfer of title to Oil to Buyer, regardless of the character, method of calculation or measure of the levy or assessment.

Seller (or its supplier, as applicable) shall be the exporter of record for Oil shipped. Consequently, as between the Parties, Seller shall bear any and all duties or taxes imposed by government or political subdivision or taxing authority thereof by reason of exportation of Oil, as well as costs of carrying out of customs formalities in Mexico.

If any ad valorem or personal property taxes apply with respect to Oil, the Party having title to Oil at the time such tax applies shall be responsible for payment and reporting (as required under applicable law) of such taxes.

For purposes of the Agreement, the term "taxes" means any and all foreign, federal, state and local taxes, duties, fees and charges of every description, including all motor fuel, excise, VAT, special fuel, environmental, spill, gross earnings or gross receipts and sales and use taxes, however designated, paid or incurred, in accordance with applicable law, with respect to the purchase and sale, storage, use, transportation, resale, importation or handling of Oil hereunder; provided, however, that "taxes" does not include: (i) any income withholding tax or tax imposed on or calculated based upon net profits, gross or net income, profit margin or gross receipts, (ii) any tax measured by capital value or net worth, whether denominated as franchise taxes, doing business taxes, capital stock taxes or the like; (iii) business license or franchise taxes or registration fees; or (iv) any ad valorem or personal property taxes.

## **Article 27. Relationship of the Parties**

The Parties are independent entities and nothing contained in the Agreement shall be deemed or construed as creating a relationship of partnership, association, principal and agent or joint venture by or between them. The Parties shall have no right or authority to assume or create any obligation or responsibility on behalf of the other Party or to bind the other Party in any manner whatsoever.

## **Article 28. Anti-Corruption**

- (i) Buyer and Seller each warrant and undertake to the other that in connection with the Agreement and its performance thereof, they will each, respectively, comply with all

applicable laws, regulations, rules and requirements of the Mexican, U.S., or any other relevant jurisdiction applicable to such Party relating to anti-bribery, anti-corruption or anti-money laundering and that each shall respectively take no action which would subject the other to fines or penalties under such laws, regulations, rules or requirements.

- (ii) Buyer and Seller each represent, warrant and undertake to the other Party that they shall not, in connection with the Agreement and its performance thereof, directly or indirectly, pay, offer give or promise to pay or authorize the payment of monies or other things of value, or produced any unfair advantage in favor of the other Party, in violation of any laws, regulations, rules or requirements of any relevant jurisdiction applicable to such Party relating to anti-bribery, anti-corruption or anti-money laundering, to:
  - (a) a government official or any officer or employee of a government or any department, agency or instrumentality of any government;
  - (b) an officer or employee of a public international organization;
  - (c) 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;
  - (d) any political party or official thereof, or any candidate for political office, or
  - (e) 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.
- (iii) Buyer and Seller shall in connection with the Agreement: (a) abide the principles of transparency, honesty and impartiality and (b) shall report to each other any corruption act related to the Agreement by any Party's directors, officers, employees, agents or subcontractors, they are aware of or that is being under investigation of any applicable authority.
- (iv) Buyer and Seller each represent, warrant and undertake to the other that itself, its directors, officers, employees, agents or subcontractors, have not made any payments or given anything of value to officials, officers or employees of the government of the country in which the Oil originated or any agency, department or instrumentality of such government in direct connection with the Oil which is the subject of the Agreement which would be inconsistent with or contravene any of the above-referenced legislation.
- (v) Buyer and Seller each warrant and acknowledge that Seller is bounded in its commercial transactions by the principles contained in the Code of Conduct of Petróleos Mexicanos, Subsidiary Production Companies and Affiliate Companies, the Code of Ethics of Petróleos Mexicanos, Subsidiary Production Companies and Affiliate Companies, the Anti-Corruption Policies and Guidelines of Petróleos Mexicanos, Subsidiary Production Companies and Affiliate Companies and the Policies and Guidelines for the Development of Due Diligence at Petróleos Mexicanos, its Production Subsidiaries and, as appropriate, Affiliates in matters of Ethics and Corporate Integrity, which have been read by the Parties as published on the Petróleos Mexicanos website.

Both parties agree to comply with the documents alluded in the aforesaid paragraph (v), all which have been adopted previously by the Board of Directors of Seller.

For the purposes of this Article, the term "unfair advantage" includes but is not limited to a Party obtaining an advantage in the conduct of business that other persons do not obtain and that such unfair advantage is obtained by virtue of, directly or indirectly, paying, offering, giving or promising to pay or authorizing the payment of any monies or other things of value to officials of the other Party.

**Annex 1. Restrictions at offshore installations**

(1/6)

<b>TERMINAL</b>	<b>LATITUDE AND LONGITUDE AT SITE</b>	<b>MAXIMUM DEPTH (FT)</b>	<b>MAXIMUM DRAFT (FT)</b>	<b>DEADWEIGHT METRIC TONS<sup>1</sup> MIN / MAX</b>	<b>LENGTH MIN / MAX</b>	<b>LENGTH FROM BOW TO INTAKE MIN / MAX</b>
<b>DOS BOCAS</b> SEA BUOY 1	18° 37' 35" N 093° 09' 43" W	105' 00"	92' 00"	100,000 250,000	228/333 m 748/1,092 ft	114/166 m 374/544 ft
SEA BUOY 2	18° 37' 40" N 093° 11' 02" W	105' 00"	92' 00"	100,000 250,000	228/333 m 748/1,092 ft	114/166 m 374/544 ft
<b>CAYO ARCAS</b> SEA BUOY 1	20° 10.38' 24.03" N 091° 58' 51.20" W	147' 00"	147' 00"	80,000 250,000	224/350 m 734/1,148 ft	112/175 m 367/574 ft
SEA BUOY 2	20° 8.68' 26.82" N 091° 59' 26.65" W	147' 00"	147' 00"	80,000 250,000	224/350 m 734/1,148 ft	112/175 m 367/574 ft
<b>FPSO YUUM K'AK' NÁAB</b>  Tandem	19° 36' 00.12" N 92° 17' 36.00" W	328' 00"	328' 00"	50,000 350,000	228/350 m 656/1,148 ft	114/175 m 380/575 ft

<sup>1</sup> Or such other unit of measure (e.g., displacement) as may be mutually agreed by the parties.

**Annex 1. Restrictions at offshore installations**

**(2/6)**

**RESTRICTIONS AT PAJARITOS TERMINAL**

	LENGTH		BEAM MAX MTS	DRAFT MAX. FT.		DEADWEIGHT IN METRIC TONS	
	DAY NIGHT			BOW	STERN	MINIMUM	MAXIMUM
	MIN MTS	MAX MTS					
3E	230	240	37	34'00"	34'00"	60,000	72,000
3W	230	250	42	34'00"	34'00"	70,000	82,000
4E	250	250	42	34'00"	34'00"		82,000
4W	230	230	42	39'00"	39'00"		72,000
5M	230	230	42	39'00"	39'00"		60,000
6M	250	250	42	37'00"	37'00"		60,000
7E	250	250	42	39'00"	39'00"		82,000
7W	250	250	42	39'00"	39'00"		82,000

Note: Drafts for Berth 3 E/W are basis High Tide

**Annex 1. Restrictions at offshore installations**

(3/6)

**RESTRICTIONS AT SALINA CRUZ TERMINAL**

<b>TERMINAL</b>	<b>LATITUDE AND LONGITUDE AT SITE</b>	<b>MAXIMUM DEPTH (FT)</b>	<b>MAXIMUM DRAFT (FT)</b>	<b>DISPLACEMENT METRIC TONS<sup>2</sup> MAX</b>	<b>BEAM MAX</b>	<b>LENGTH MAX</b>	<b>BOW TO CENTER MANIFOLD MAX</b>
SINGLE POINT MOORING SEA BUOY 3	16° 06' 54.52" N 095° 13' 15.72" W	92' 00"	72' 00"	295,000	70 m	350 m	200 m
SINGLE POINT MOORING SEA BUOY 1			46'00"	80,000	38 m	230	170

**RESTRICTIONS AT MADERO TERMINAL**

<b>BERTH</b>	<b>LATITUDE AND LONGITUDE AT SITE</b>	<b>MAXIMUM DRAFT (FT)</b>	<b>DISPLACEMENT METRIC TONS<sup>2</sup> MAX</b>	<b>BEAM MAX</b>	<b>LENGTH MAX</b>
4	22° 15' 15.61" N 97° 48' 38.11"	23'07" with high tide	53,333	32.2 m	237 m
5	22° 15' 10.94" N 97° 48' 46.57"	23'07" with high tide	53,333	32.2 m	237 m

<sup>2</sup> Or such other unit of measure (e.g., deadweight) as may be mutually agreed by the parties.

## **Annex 1. Restrictions at offshore installations**

(4/6)

### **1. OFFSHORE INSTALLATION SITES AND CONDITIONS**

(See tables above)

Port and offshore installations restrictions and conditions are revised from time to time by the Port Authorities / Harbor Master; Buyer will be responsible to confirm the last information through Vessel's Local Port Agent. Information given as a reference.

### **2. OPERATIONS**

2.1 The pilot who is sent on board as port authority shall direct the activities to be undertaken, including the commencement, continuation and suspension of mooring operations. However, the Master of the tanker shall remain ultimately responsible for the safety of his ship.

Services (including diesel, Intermediate 15, fuel oil, water, etc.) are not available at these installations.

At the time of giving the first advice of ETA pursuant to Article 3.3 of the Agreement, the tanker shall also include the following minimum information:

1. Name of the tanker, distinctive signal and DWT in Metric Tons;
2. Forward and aft draft;
3. Quantities of segregated ballast on board;
4. Dimensions and characteristics of cargo manifold;
5. Type of installed mooring equipment;
6. Time required for deballasting (if any); and
7. Any special requirements.

2.2 Notices sent in accordance with Article 3.3 of the Agreement or paragraph 2.1 above, shall be sent to the appropriate terminal and shall also be sent to Seller to the following (or such other numbers or addresses as Seller may notify to Buyer from time to time as part of the Agreement):

By E-Mail: crudeoiloperations@pmicim.com  
Attention: Crude Oil Operations Dept.

2.3 In the event that an emergency occurs prior to the tanker's arrival, such as a malfunction in the main engine or steering gear or the occurrence of navigational restrictions, notice thereof shall be given in accordance with paragraph 2.2 above, in order that such event be taken into account in the loading schedule and necessary steps be taken to control the event so reported.

## **Annex 1. Restrictions at offshore installations**

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### **3. MOORING OF TANKERS**

In order that the tanker is allowed to moor either at a Single Point Mooring (SPM), the following equipment must be provided and ready for use and the following requirements must be satisfied:

- 3.1 Tankers in the range of up to 60,000 DWT metric tons must have a lifting equipment with a minimum capacity of 10 (ten) tons SWL and tankers in the range of 60,001 – 120,000 DWT, must have a lifting equipment with a minimum capacity of fifteen (15) tons SWL and tankers from 120,001 DWT and above must have a lifting equipment with a minimum capacity of twenty (20) metric tons SWL.
- 3.2 The lifting equipment should be able to provide a clear lift above the deck of at least ten (10) meters while reaching any manifold connection and should be able to achieve the appropriate SWL, shown before, when plumbing a point one (1) meter outboard from the ship's side over the full length of the cargo manifold.
- 3.3 Before the tanker is moored, the lifting equipment shall be ready on the port side for the loading of maneuvering equipment (grommet, poles, shackles, etc.), the port side being where the loading hoses will be connected. Lifting equipment must always suspend the hoses in order that no additional force is required for the cargo to flow.
- 3.4 In order to moor at an SPM, tankers of 150,000 DWT Metric Tons or less at maximum summer draft, must have a bow fairlead of at least 600 mm by 450 mm. Tankers over 150,000 DWT Metric Tons at maximum summer draft must have two bow fairleads of at least 600 mm by 450 mm each; both shall be the same size.
- 3.5 In order to moor at an SPM, tankers of 150,000 DWT Metric Tons or less at maximum summer draft, must have one tongue type or hinged bar type chain stopper to accept 3" (76 mm) chafe chain. Tankers over 150,000 DWT Metric Tons at maximum summer draft, must have two such stoppers. The indicated stopper must be located on the deck at least 2.7 meters and no more than 3.7 meters from the bow fairlead.
- 3.6 The tanker shall provide personnel to operate the loading and maneuvering gear during mooring and unmooring and during connection and disconnection of hoses.
- 3.7 There shall be two intake hoses of 16" in diameter and the flange shall be 150 lbs. ANSI and of a thickness of 1 7/16", the foregoing being fully prepared for the connection of camlocks.

The length of the loading line axle shall be at least 2,500 mm for tankers of 160,000 DWT Metric Tons or less and at least 3,000 mm for tankers over 160,000 DWT Metric Tons, and in either case the length between the center line of the loading line and the center line of the fuel line shall be at least 2,000 mm. The distance from the manifold to the side shall be at least 4,600 mm.

## **Annex 1. Restrictions at offshore installations**

**(6/6)**

- 3.8 The distance from the center line of the loading line to the deck shall be no more than 2,100 mm and the distance from such center line to the spilling tray shall be at least 900 mm.
- 3.9 The loading lines in the manifold must have a vent and a manometer.
- 3.10 The spilling tray must be protected by Irving grills or similar grills.
- 3.11 The tankers shall be equipped with an operational Inert Gas System. All tanks shall be fully inert at the time of arrival.

### **4. PERSONNEL ON BOARD**

A pilot of the port, a loading Master, an Independent Inspector and a mooring team will go on board and will be provided food and sleeping quarters by the tanker in order that they may always remain on board during the loading operation. A responsible officer of the tanker must always be present to supervise mooring, unmooring and loading operations.

### **5. STANDARDS AND REQUIRED INFORMATION**

All tankers operating at the offshore facilities must observe the technical recommendations of the OCIMF. In addition, tankers must be equipped with permanent mooring equipment designed for safe and efficient mooring to the SPM and to avoid pollution of the waters.

During loading, the tanker will provide Seller with any information necessary for safe and efficient loading operations.

The tanker shall have sufficient light from arrival to departure for night operations, in particular for the ladder by which personnel board and leave the tanker.

### **6. TRANSFERS FROM SHIP TO SHIP**

If applicable, all tankers loading at Mexican Ports by ship to ship transfer operations must observe all applicable OCIMF guidelines regarding the transfer of cargo from a vessel to another vessel.

## **Annex 2. Independent Inspectors**

- CAMIN CARGO CONTROL
- INSPECTORATE
- SOCIETE GENERALE DE SURVEILLANCE (SGS)
- INTERTEK

**Annex 3. Form of Letter of Indemnity**

**P.M.I. COMERCIO INTERNACIONAL, S.A. DE C.V.**

\_\_\_\_\_, 20\_\_

Att'n: \_\_\_\_\_

Re: Payment for cargo without producing the relevant bills of lading.

M/T \_\_\_\_\_, PMI Ref: O/ \_\_\_\_\_

**LETTER OF INDEMNITY**

Gentlemen:

We refer to a cargo of (VOLUME) barrels of (TYPE OF OIL) shipped on board the vessel M/T (NAME OF THE SHIP) at the port of (NAME OF PORT OF LOADNG), México pursuant to the bills of lading dated \_\_\_\_\_.

Although we have sold and transferred title of said cargo to you, we have been unable to provide you with the 3/3 original clean on board Bills of Lading covering said sale.

In consideration of your paying the full purchase of U.S. Dollars (INVOICE AMOUNT), we hereby expressly warrant that we have good and marketable title, free and clear of any lien or encumbrance to such material and that we have full right and authority to transfer such title and effect delivery of such material to you, and to protect, indemnify and save you harmless from and against any and all damages, costs and expenses (including reasonable attorney fees) which you may suffer by reason of the original shipping documents remaining outstanding, or breach of the warranties given above including but not limited to, any claims and demands which may be made by a holder or transferee of the shipping documents, or by any third party claiming an interest in or lien on the cargo or proceeds thereof. Our obligation to indemnify you is, of course, subject to the condition that you give us prompt notice of the assertion of any claim (s) and full opportunity to conduct the defense thereof and that you do not settle any such claim (s) without our approval.

This Letter of Indemnity shall be governed by and construed in accordance with the Law specified in the Agreement and any dispute not settled by negotiation between us shall likewise be resolved in accordance with the said Agreement.

This letter of indemnity shall expire upon our tendering to you of "the shipping documents" or one year after Bill of Lading date.

Signed

By: \_\_\_\_\_

Title: \_\_\_\_\_

Authorized Signatory: