

Vita Gas (PTY) Ltd General Terms and Conditions for the FCA Sale of LPG

1. DEFINITIONS

1.1 In these GTCs the following terms shall have the following definitions whenever used:

- 1.1.1 **“Agreement”** means the agreement between the Parties for the sale and purchase of Product as evidenced by the Transaction Summary and these GTCs;
- 1.1.2 **“Banking Day”** means a day other than a Saturday or Sunday on which banks in South Africa are open for business;
- 1.1.3 **“Default”** has the meaning given to it in Clause 14.1;
- 1.1.4 **“Delivery Date Range”** means the date or dates as specified in the Transaction Confirmation within which Seller shall deliver and Buyer shall take delivery of the Product at the Delivery Location;
- 1.1.5 **“Delivery Location”** means the location where the Product is to be delivered by Seller to Buyer and which shall be specified in the Transaction Summary;
- 1.1.6 **“ETA”** means estimated time and date of arrival;
- 1.1.7 **“FCA”** has the meaning given to in INCOTERMS® 2010, as published by the International Chamber of Commerce, save where inconsistent with the terms of the Agreement, in which event the terms of this Agreement shall prevail;
- 1.1.8 **“GTCs”** means these General Terms and Conditions;
- 1.1.9 **“Laws”** means all statutes, regulations, legal instruments and codes of conduct having the force of law in South Africa at any time relevant to this Agreement;
- 1.1.10 **“Party”** means either Seller or Buyer as the case may be and **“Parties”** means both of them;
- 1.1.11 **“Product”** means LPG meeting the specifications set out in the Transaction Confirmation;
- 1.1.12 **“Standards”** means any national or international standard determined by the South African Bureau of Standards or any other international body which is responsible for determining and publishing standards which pertain to the LPG industry and shall include, but in no way be limited to, SANS 10228:2012 and SANS 10087;
- 1.1.13 **“Transaction Confirmation”** means the written record of the Agreement as sent by Seller to Buyer and into which these GTCs shall be incorporated by reference. In the event of any conflict between the terms of the Transaction Confirmation and these GTCs, the terms of the Transaction Confirmation shall prevail;
- 1.1.14 **“Truck”** means a road truck which is nominated by Buyer to Seller to take delivery of the Product at the Delivery Location, whether or not such Truck is directly owned or operated by Buyer;
- 1.1.15 **“VAT”** means Value Added Tax or its equivalent and **“VAT invoice”** or **“tax invoice”** means an invoice issued and complying with the VAT Laws of the country in which VAT is levied;
- 1.1.16 **“Weekend Nomination Deadline”** is defined in clause 4.5; and
- 1.1.17 **“Working Day”** means a day that is not a Saturday, Sunday or public holiday in the Delivery Location.

2. PRODUCT

- 2.1 Seller shall deliver to Buyer Product meeting the quality specifications set out in the Transaction Confirmation.
- 2.2 Seller's obligations with regard to the quality of the Product supplied are limited solely to supplying Product which corresponds with the description set out in the Transaction Confirmation. Neither any reference to "typicals" nor any provision of the Agreement regarding the time of delivery shall form part of the Product's description or any quality specifications. All conditions, warranties or other terms, whether express or implied by statute, at common law or otherwise including without limitation with respect to the description, satisfactory quality or suitability or fitness for any purpose of the Product are hereby excluded to the fullest extent permitted by law.

3. DELIVERY AND NOMINATIONS

- 3.1 Seller shall deliver the Product FCA at the Delivery Location on board Trucks arranged by Buyer and nominated by Buyer to Seller.
- 3.2 Notwithstanding that delivery shall be on an FCA basis, Seller shall not be required to obtain an export licence or other official authorisation or to carry out any customs formalities necessary for the export of the Product or to pay any duties, taxes or other charges that may be payable on export of the Product.
- 3.3 Unless otherwise agreed, Buyer shall nominate Trucks to Seller in order to take delivery of the Product on an evenly spread basis within any Delivery Date Range.
- 3.4 Buyer to nominate performing truck(s) to Seller at least 1 Working Day prior to estimated day of arrival of truck(s). Nominations to be received before 15H00, by email (for the avoidance of doubt, the Weekend Nomination Deadline is 15H00 Thursday). Nominations to include:
- Seller's contract number;
 - Buyer's name;
 - The identity of the haulier;
 - Truck and trailer registration number and driver name and ID number;
 - The quantity requested to be loaded on the truck;
 - The truck's ETA at the Delivery Location;
 - A 7-day loading forecast shall be sent to the Seller by 12pm every Friday for the following week's loading (Monday – Sunday);
 - Any additional information as may be required by Seller from time to time.

Only trucks with an order number will be loaded by the loading installation. Acceptance of nominated trucks always subject to terminal acceptance. Terminal reserves the right to refuse to load any truck (whether or not previously acceptable) on reasonable grounds.

Seller shall, if available, provide up to three (3) truck-loading bays, each of which are capable to load at a rate of 90m³ / working hour. In the event that Buyer's nominated truck does not meet the recommended coupling configurations and standards at the delivery Location, then delays and slower loading may be experienced. Notwithstanding the foregoing, Seller does not warrant the loading rates.

Truck loading slots shall be allocated on a first nominated first allocated basis unless the Parties agree otherwise.

Buyer shall make available blind flanges and appropriate number of bolts and nuts for blinding the fill lines of the trucks.

Buyer shall be responsible for ensuring that Trucks shall at all times comply with the loading terminal's "Standard Operating Procedure: Loading a tanker" and instructions. Buyer shall indemnify Seller for any losses, costs or consequences incurred as a result of Truck's failure to comply with such procedure and/or instructions.

The normal times of operations of the loading terminal shall be 07:00 hours to 19:00 hours local time, 7 (seven) days a week, 365 days a year (excluding gazetted public holidays).

- 3.5 Buyer shall have the option to request delivery of unstenched Product on a truck by truck basis. Any requests for unstenched Product must be notified by Buyer to Seller in writing at least 3 Working Days prior to the day of intended delivery.
- 3.6 Upon acceptance of Buyer's Truck nomination Seller will provide a loading reference to Buyer or its agent. Seller shall not be obliged to load any Truck that has not been nominated to and accepted by Seller or for which a loading reference has not been given to Buyer or its agent.
- 3.7 In the event that Buyer wishes to load unstenched Product and Seller agrees to supply unstenched Product, Buyer hereby specifically warrants and represents to Seller, without prejudice to the other terms of the Agreement, that the carriage of unstenched Product and its intended use by Buyer, and/or Buyer's direct or indirect customers, shall be lawful and shall comply with all regulations and standards applicable in South Africa.
- 3.8 Buyer shall procure that each Truck and all personnel of Buyer and its nominated carrier shall act at all times in compliance with all relevant procedures, Standards, terminal regulations and directives (together hereafter "**Regulations**") of the loading terminal at the Delivery Location, including but in no way limited to relating to protection of health, safety and the environment, and with which Regulations Buyer shall be deemed to be fully familiar, and with all applicable Laws at the Delivery Location. Seller shall provide copies of all such Regulations to Buyer upon request by Buyer. Seller shall be entitled to refuse to load any Truck if Seller reasonably considers it necessary to do so at any time for any reason and/or if the loading terminal refuses to do so and irrespective of whether any such Truck has previously been accepted for loading. To the extent that Buyer or its Trucks fails to abide by or breach(es) any Regulations or Laws, Buyer hereby indemnifies Seller on a full indemnity basis, including legal costs on an attorney and own client basis, against any and all losses suffered by Seller, or claims brought against Seller by the loading terminal and/or other third parties arising from such failure to abide by or breach of the Regulations and Laws.
- 3.9 Buyer shall be responsible for checking any load limits or other restrictions applicable to the Truck or its contents at or on route to the intended discharge location.
- 3.10 Seller shall not be responsible for any miscommunication between Buyer, Buyer's transporter or agent and the loading terminal.

4. LOADING

- 4.1 Seller shall, if available, provide up to three (3) truck-loading bays, each of which are capable to load at a rate of 45mt / working hour. In the event that Buyer's nominated Truck does not meet the recommended coupling configurations and standards at the Delivery Location, then delays and slower loading may be experienced. Notwithstanding the foregoing, Seller does not warrant the loading rates.

- 4.2 Truck loading slots shall be allocated on a first nominated first allocated basis unless the Parties agree otherwise.
- 4.3 Buyer shall make available blind flanges and appropriate number of bolts and nuts for blinding the fill lines of the trucks.
- 4.4 Buyer shall be responsible for ensuring that Trucks shall at all times comply with the loading terminal's "Standard Operating Procedure: Loading a tanker" and instructions. Buyer shall indemnify Seller for any losses, costs or consequences incurred as a result of Truck's failure to comply with such procedure and/or instructions.
- 4.5 The normal times of operations of the loading terminal shall be 07:00 hours to 19:00 hours local time, 7 (seven) days a week, 365 days a year (excluding gazetted public holidays). In the event that Buyer wishes to load the Product onto its Trucks during Saturday and/or Sunday, then nominations for loading on such days must be received by Seller no later than 15:00hrs on the Thursday immediately preceding such weekend ("**Weekend Nomination Deadline**"). In the event that no loadings are nominated by any other user of the terminal at the Delivery Location by the Weekend Nomination Deadline, then Seller may not be able to offer any loadings on such weekend and the terminal may be closed until the following Monday.

5. PRICING AND PAYMENT

Price

- 5.1 Buyer shall pay Seller for the Product at the price specified in the Transaction Confirmation.

Payment – open account

- 5.2 Unless otherwise specified in the Transaction Confirmation, payment for the Product shall be made in invoiced currency by telegraphic transfer in immediately available funds, free of all charges, without any deduction, withholding, set-off or counterclaim, to Seller's designated bank account as stated in Seller's invoice, by such date as is specified in the Transaction Confirmation or, if no such date is specified by no later than 5 (five) calendar days following the delivery of the Product, against presentation of Seller's commercial invoice.
- 5.3 If the payment due date falls on a Saturday or any day other than Monday that is not a Banking Day, Buyer shall make payment on the preceding Banking Day. If the payment due date falls on a Sunday or a Monday that is not a Banking Day, Buyer shall make payment on the following Banking Day.

Payment in advance

- 5.4 Where the Transaction Summary specifies that Buyer is to make payment for Product in advance of delivery, Buyer shall pre-pay a provisional price for the Product within 3 (three) Banking Days of the date of Seller's tax invoice or prior to the first day of the Delivery Date Range, whichever is sooner. Buyer shall pay the price stated in Seller's tax invoice in the invoiced currency by telegraphic transfer in immediately available funds, free of all charges, without any deduction, withholding, offset or counter-claim, to Seller's designated bank account. The provisional price shall be based on the pricing quotations available to Seller at the time of issuing the tax invoice and the mean contract quantity to be delivered. Seller shall not be under any obligation to deliver the Product to Buyer until Seller has received pre-payment of the provisional price.
- 5.5 Seller shall reconcile the tax invoice upon completion of pricing and delivery Any outstanding balance due by the Buyer will be covered by an additional tax invoice sent by Seller and shall be settled by the Buyer by no

later than 5 (five) Banking Days after the issuance of such additional tax invoice. Any outstanding balance due by the Seller will be covered by a credit note.

Interest

- 5.6 In the event that payment is not made on the Due Date, the Buyer will be charged on the outstanding balance from the Due Date until the date payment is made at the rate of 1.5% per month or pro rata part thereof or alternatively, the percentage rate indicated in the Transaction Confirmation above the ZAR interbank rate (JIBA1M). JIBA1M means the rate for one month deposits in ZAR which appears on the relevant Bloomberg page (or any successor page) after 12:00 London time on the Due Date or, in the event that such rate is unavailable, the mean average of the rates at which ZAR rates are quoted by the principal offices of three banks nominated by Seller in the ZAR interbank market. If the JIBA1M rate is less than zero, it shall be deemed to be zero. Such interest shall be payable to Seller on demand and shall accrue until payment notwithstanding the termination of this Agreement for any reason whatsoever. This provision shall not be construed as an indication of any willingness on the part of Seller to provide extended credit as a matter of course and shall be without prejudice to any rights and remedies which Seller may have under the Agreement or otherwise. Such rate shall also apply to any other late payments made by Buyer to Seller under the Agreement.
- 5.7 Where any applicable law requires a deduction or withholding in respect of tax to be made, Buyer shall inform Seller of that requirement and will pay such additional amount to Seller as will ensure that the net amount received by Seller is equal to the full amount that Seller would have received had the deduction or withholding not been required.

Payment - standby letter of credit

- 5.8 Where the Transaction Confirmation specifies that payment is to be secured by a standby letter of credit, Buyer shall procure that a fully operative irrevocable standby letter of credit (the "LC") shall be issued in a form and by a bank, both to be acceptable to Seller, by no later than 10 (ten) calendar days prior to the first day of the Delivery Date Range.
- 5.9 The LC shall be sufficient to cover the mean contract quantity of the Product at Seller's reasonable estimate of the contract price plus 15 per cent and a further amount to cover escalation in duties including, where applicable, value added tax.
- 5.10 In case such LC is required in the Transaction Confirmation and is not opened by Buyer by the date specified above, at Seller's option Seller has the right, without limitation of or prejudice to its other rights under the Agreement or otherwise or at law, to (a) terminate the Agreement, (b) maintain the Agreement on amended terms acceptable to Seller or (c) postpone delivery of the Product on terms acceptable to Seller. Buyer shall be liable to Seller in respect of any and all costs, losses, expenses or damages whatsoever, whether direct or indirect, incurred by Seller as a result of the late opening of the LC, including without limitation any storage fees or costs and hedging costs. If the date of the Agreement is later than the date for opening of the LC specified in this clause then Buyer shall exercise its best efforts to procure the opening LC as soon as reasonably possible, but shall do so in any event no later than 12:00 hours on the Working Day immediately prior to the first day of the Delivery Date Range.
- 5.11 Any LC is to be payable at the counters of Seller's bank. Each Party shall pay its own banking charges, save that if the LC is a confirmed letter of credit, the confirmation charges shall be for Buyer's account.
- 5.12 The LC shall take effect in accordance with its terms, but such terms shall not alter, add to, or in any way affect the provisions of the Agreement or cause any of Seller's rights under the Agreement to be waived unless the Parties expressly so agree in writing.

- 5.13 If for any reason the delivery of the Product, as the case may be, will not take place within any relevant period which may be referred to in the LC, Buyer shall promptly provide a new LC or amend the existing LC in terms acceptable to Seller.
- 5.14 Buyer will remain responsible for payment in the event that payment is not made under the LC for any reason.

6. TITLE AND RISK

- 6.1 Title and risk in the Product delivered under the Agreement shall pass from Seller to Buyer progressively as the Product passes the coupling between the loading terminal gantry and the receiving Truck at the Delivery Location.

7. DETERMINATION OF QUALITY AND QUANTITY

- 7.1 The quality of the Product delivered to Buyer shall be determined during the bullet batching at the Terminal and the certificate of quality issued, witnessed or countersigned by the loading terminal shall be conclusive evidence, and will be final and binding on both parties, save in the case of fraud or manifest error.
- 7.2 There shall be no guarantee, condition, warranty or undertaking (whether express or implied) that the Product will remain of such quality and/or condition after delivery and Seller shall have no liability for any deterioration in the quality and/or condition of the Product after the transfer of risk in the Product to Buyer for any reason whatsoever.
- 7.3 Any loss of or damage to the Product during or after loading or any pollution of or harm to the environment, in each case if caused by the Truck or its driver, shall be the responsibility of and for the account of Buyer. Any claim made against or losses, costs or damages, whether direct or indirect, sustained by Seller in respect of damage to any facilities at the loading terminal (or in the event the facilities are operated by Seller any claim by Seller or by an affiliate of Seller) or arising out of any pollution of or harm to the environment caused by the Truck or its driver shall be for the account of Buyer.
- 7.4 The quantity of the Product shall be determined by the loading terminal at the Delivery Location in accordance with the loading terminal's standard practices. Certificates issued by the loading terminal in respect of the quantity of the Product shall be conclusive evidence of the quantity delivered and will be final and binding on both parties, save in the case of fraud or manifest error.

8. HEALTH, SAFETY AND ENVIRONMENT

Definitions

- 8.1 In this Clause 8, the following definitions shall apply:
- 8.1.1 "Appropriate standards" means GHS and SANS 10228:2012.
- 8.1.2 "**SANS 10228:2012**" means South African National Standard: The identification and classification of dangerous goods for transport by road and rail modes.

- 8.1.3 “GHS” means the Globally Harmonized System of Classification and Labelling of Chemicals as amended from time to time;

“SDS” or “Safety Data Sheet” means a safety data sheet prepared in accordance with SANS 10228:2012, GHS (to the extent applicable and not covered by SANS 10228:2012) and any other applicable Laws and Standards. **Safety Data Sheet**

Seller shall provide to Buyer a copy of the current SDS and any other information relating to health, safety and environmental data in connection with the Product delivered hereunder in compliance with the requirements of any applicable Law(s) and appropriate Standards. **Buyer's responsibilities**

- 8.2 Buyer shall provide its employees, agents, contractors, customers and other persons to whom it is a supplier of the Product delivered hereunder with a copy of a current SDS and any other information relating to health, safety and environmental data in connection with the Product delivered hereunder.
- 8.3 Buyer shall be responsible for any consequences that result from the use of an SDS or other information so supplied to Buyer.
- 8.3.1 Buyer shall provide persons responsible for the management of health, safety and environment matters within its own organisation with a copy of the SDS and any other information so supplied.
- 8.3.2 Buyer shall provide its employees with appropriate information and training to enable them to handle and use the Product delivered hereunder in a manner which does not endanger their health or safety.

Liability

- 8.4 To the extent permissible by law, Seller shall not be responsible in any respect whatsoever for any loss, damage or injury resulting from any hazards inherent in the nature of the Product delivered hereunder.
- 8.5 Buyer hereby holds Seller harmless and indemnifies Seller on a full indemnity basis, including legal costs on an attorney and own client basis, against any and all claims brought against Seller by any third parties to or on behalf of whom Buyer has sold or distributed Product delivered hereunder.

9. VAT

- 9.1 All amounts referred to in this contract are exclusive of VAT. The VAT treatment of the supply under this contract shall be determined pursuant to the VAT laws of the jurisdiction where a taxable transaction for VAT purposes is deemed to take place.
- 9.2 Buyer and Seller shall comply with VAT or similar tax legislation of the country where this taxable transaction for VAT purposes is deemed to take place. Where VAT or similar tax becomes payable under such applicable tax legislation, Seller shall issue a VAT invoice setting out such VAT and any duty payable and the date of its payment. Payment of such VAT and duty, if any, shall be paid by Buyer to Seller in addition to the price for the Product in the same manner as provided for payment of such price. Such invoice may be rendered in either local currency of the country in which the VAT is payable or, at Seller's option, in the invoicing currency for the Product, converted at the appropriate exchange rate prevailing on the date of the tax point under the relevant VAT Laws.

- 9.3 In the event that Buyer or Seller fails to comply with its obligations mentioned under 9.1 and/or 9.2, the non-complying Party shall indemnify the other Party in respect of any and all VAT, penalties and interest incurred by the other Party as a result of the non-complying Party's failure to comply with its obligations.

10. CREDIT RISK

- 10.1 In the event that Seller determines in its sole and unfettered discretion (a) that the financial condition of Buyer or Buyer's guarantor (if any) has become impaired or unsatisfactory or (b) that it is necessary to obtain adequate assurances of Buyer's financial condition, Seller may upon notice to Buyer require Buyer to provide Seller with satisfactory security for Buyer's performance in a form and substance reasonably acceptable to Seller ("**Satisfactory Security**").
- 10.2 Such Satisfactory Security may include but not be limited to at Seller's option (a) cash prepayment for Product in advance of delivery, (b) an irrevocable standby letter of credit for the Product's estimated maximum value procured by Buyer in favour of Seller by a first class international bank acceptable to Seller or (c) delivery to Seller of a guarantee from Buyer's parent company or any other entity at Seller's discretion. Buyer shall provide Seller with Satisfactory Security by the deadline set by Seller in its notice.
- 10.3 Notwithstanding anything to the contrary in the Agreement and without prejudice to any other legal remedies available to Seller. If Buyer fails to provide Satisfactory Security to Seller in accordance with the above, Seller may suspend its performance under or terminate the Agreement or any other agreements between the Parties.

11. LIMITATION OF LIABILITY

- 11.1 Notwithstanding any other provision of the Agreement, neither Party shall be liable to the other whether under the Agreement or otherwise in connection with it, whether in contract, delict (including in negligence), breach of statutory duty or otherwise (whether or not foreseeable and howsoever arising) in respect of (a) any indirect or consequential losses or expenses; and (b) to the extent not constituting indirect or consequential losses or expenses, any loss of anticipated profits, refinery or plant shut-down or reduced production, goodwill, use, market reputation, business receipts or contracts or commercial opportunities.
- 11.2 Without prejudice to any other time limits in the Agreement:
- 11.2.1 Buyer shall notify Seller of any complaint relating to Seller's failure to deliver Product meeting the contractual description and/or condition and/or quality and/or quantity no later than the 30th day following the date of delivery or where delivery was not made the date on which delivery should have been made; and
- 11.2.2 in no event shall either Party be liable in respect of any claim or dispute arising out of or in connection with the Agreement where legal proceedings in respect of that claim or dispute have not been commenced within one year of the date of delivery of the Product or where delivery was not made the date on which the Product should have been delivered.

If notice is not given and/or legal proceedings not commenced in respect of a complaint, claim or dispute within the time limits specified above, such claim shall be time barred and any liability of the other Party in respect of that complaint, claim or dispute shall be finally extinguished.

12. FORCE MAJEURE

- 12.1 Neither Seller nor Buyer shall be liable for damages or otherwise for a failure, delay, hindrance, reduction in, interference with, curtailment or prevention of performance of its obligations under the Agreement insofar as that party proves that the failure was due to an impediment beyond its control including but not limited to:
- a. war, whether declared or not, civil war, riots and revolutions, acts of piracy, acts of sabotage;
 - b. natural disasters such as violent storms, cyclones, earthquakes, tidal waves, floods, destruction by lightning, perils of the sea;
 - c. explosions, fires, breakdowns or destruction of tankage, vessels, pipelines, refineries or terminals and any of kind of installations;
 - d. boycotts, strikes, lock-outs, labour disputes of all kinds, go-slows, occupation of factories and premises;
 - e. any compliance with any law, regulation or ordinance, or with any order, demand or request of an international, national, port, transportation, local or other authority or agency (including the International Energy Agency (“IEA”) and the National Energy Regulator of South Africa “NERSA”) or of any body or person purporting to be or to act for any such authority or agency or any corporation directly or indirectly controlled by any of them;
 - f. any curtailment, reduction in, interference with, failure or cessation of supplies of Product from any of Seller’s or Seller’s suppliers’ sources of supply or by any refusal to supply Product whether lawful or otherwise by Seller’s suppliers (provided in fact the sources of supply are for the purposes of the Agreement) or should, for any reason whatsoever (including, without limitation, reasons which are within the Seller’s control), the Seller ceases to have the right to aggregate or otherwise throughput or deliver Product, on a term basis, into or out of the Sunrise Energy LPG Terminal in Saldanha Bay;
- each a “Force Majeure Event”.
- 12.2 A Force Majeure Event shall not include delay, hindrance, interference with, curtailment or prevention of a party’s accrued obligation to make payment under the Agreement whether in respect of price, despatch, demurrage or to provide any instrument for payment or payment security or any other financial obligation whatsoever.
- 12.3 The party seeking relief (the “**Relying Party**”) shall as soon as reasonably practicable after the Force Majeure Event becomes known to it give notice in writing to the other party of such Force Majeure Event and the effects, or the reasonably anticipated effects, on its ability to perform in as much detail as possible and the appropriate relief sought, and of its intention to rely on this clause. The Relying Party shall use all reasonable endeavours to mitigate and overcome the effects of the Force Majeure Event (save where the Force Majeure Event concerns the Seller’s right to utilise the Sunrise LPG Terminal) and shall, during the continuation of the Force Majeure Event, provide the other party with reasonable updates, when and if available, of the extent and expected duration of the Force Majeure Event. Delay or failure to comply with this clause shall not deprive the Relying Party of the right to claim relief but may make the Relying Party liable in damages to the other party for loss which otherwise could reasonably have been avoided.
- 12.4 The appropriate relief under this clause shall be as follows:

- a. in respect of a Force Majeure Event that renders impossible the Relying Party's performance of its obligations, immediate termination of the affected delivery obligation(s) without liability for damages, penalties and other contractual remedies;
 - b. in respect of a Force Majeure Event that delays, hinders, reduces or interferes with the performance of the delivery obligation(s), immediate postponement of those obligations without liability for damages, penalties and other contractual remedies. Should the Force Majeure Event continue for a consecutive period of 30 days then either party may terminate the Agreement without liability for damages, penalties and other contractual remedies by and upon giving written notice to the other party;
 - c. in respect of a Force Majeure Event that delays, hinders, reduces or interferes with the performance of an obligation other than the delivery obligation(s), immediate postponement of those obligations without liability for damages, penalties and other contractual remedies until such time as the Force Majeure Event is removed.
- 12.5 Where Seller's performance is affected by a Force Majeure Event, Seller shall not be obliged to purchase additional Product from any source other than the source it had intended to use prior to the Force Majeure Event, nor shall Seller be required to supply any grade or specifications of product other than the agreed Product, nor shall Seller be obliged to deliver the Product at any place other than Delivery Location, nor shall Seller be obliged to allocate available Product pro rata between its customers.
- 12.6 Seller shall have no liability whatsoever for late performance of obligation and/or breach where resulting from corona virus delays at product load/disport.
- All time and costs for corona virus related delays at the product load place to be for account of Buyer.
 - If FM under the FM clause arises from corona virus then termination only after 60 continuous days.

13. GOVERNING LAW AND JURISDICTION

- 13.1 The Agreement and any dispute or claim arising out of or in connection with it, including any question regarding its existence, validity or termination and including non-contractual disputes or claims, shall be governed by and construed in accordance with the Laws of the Republic of South Africa.
- 13.2 The Parties irrevocably agree that the High Court of the Republic of South Africa, Western Cape: Cape Town Division, shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Agreement, its subject matter, existence, validity, formation or termination and including non-contractual disputes or claims, save that either Party may bring proceedings in any other jurisdiction to obtain security or other interim or ancillary relief or to enforce any judgment of the South African courts.

14. EVENTS OF DEFAULT

- 14.1 Without prejudice to the Parties' other rights under the Agreement or at law, a default ("**Default**") of the Agreement shall be deemed to occur if:
- 14.1.1 Buyer fails to provide a documentary letter of credit, standby letter of credit, parent company guarantee or other security (including Satisfactory Security) to Seller within the time required by the Agreement and in all other respects in accordance with the Agreement.

- 14.1.2 Either Party fails to make any payment due under the Agreement that is not cured within 7 calendar days of notice to the defaulting Party to make the payment.
- 14.1.3 Any corporate action, legal proceedings or other procedure or step is taken in relation to:
- 14.1.3.1 the suspension of payments, a moratorium of any indebtedness, winding up, dissolution, business rescue, administration or reorganisation (by way of voluntary arrangement, scheme or arrangement or otherwise) of either Party or Buyer's Security Provider other than a solvent liquidation or reorganisation of that Party or Security Provider; or
 - 14.1.3.2 the appointment of a liquidator (other than in respect of a solvent liquidation of that Party), receiver, administrative receiver, administrator, compulsory manager, trustee in bankruptcy or other similar officer in respect of either Party or Buyer's Security Provider or any of that Party's or Security Provider's assets,
 - 14.1.3.3 or any analogous procedure or step is taken in any jurisdiction. This paragraph 14.1.3 shall only apply to any winding-up petition which is not frivolous or vexatious and is not discharged, stayed or dismissed within 14 days of commencement.
- 14.1.4 Either Party or Buyer's Security Provider:
- 14.1.4.1 otherwise becomes insolvent however evidenced;
 - 14.1.4.2 is dissolved (other than pursuant to a consolidation, amalgamation or merger);
 - 14.1.4.3 proposes or makes a general assignment or an arrangement or composition with or for the benefit of its creditors;
 - 14.1.4.4 is unable or admits inability to pay its debts as they fall due; or
 - 14.1.4.5 is deemed to, or is declared to, be unable to pay its debts under applicable law as they become due; or
 - 14.1.4.6 fails to provide adequate assurance of its ability to perform all of its obligations under this Agreement or any other agreement between the parties within 48 hours of a reasonable request therefore from the other party, when a party has reasonable grounds with respect to such party's performance.
- 14.1.5 The occurrence of a material breach, (being any breach of the Agreement which has a serious effect on the benefit which the other Party would otherwise derive from a substantial part of the Agreement over its term), where that breach is either not capable of remedy or not remedied on or before the fifth calendar day following the day on which notice to remedy is given to the Party in material breach. In deciding whether any breach is material, no regard shall be had to whether it occurs by an accident, mishap, mistake or misunderstanding.
- 14.1.6 For the purposes of the Agreement, "**Buyer's Security Provider**" means an entity or individual issuing a documentary letter of credit, standby letter of credit, parent company guarantee or other security for the benefit of Seller.
- 14.2 In the event that a Default has occurred, the non-defaulting Party, in its sole discretion, shall be entitled on notice to the defaulting Party to do any or all of the following, without prejudice to its other rights and remedies under the Agreement or otherwise: (1) suspend its performance under the Agreement; and/or (2) terminate the Agreement; and/or (3) if the non-defaulting Party is Seller, terminate any other agreement

between the Parties (excluding any agreement in respect of which Seller has assigned all or a portion of its rights to receive and obtain payment thereunder). Termination of the Agreement and/or any other agreements between the Parties shall be without prejudice to any rights and remedies accruing to the Parties before such termination.

- 14.3 Where the non-defaulting party elects to terminate and liquidate an agreement, then a settlement amount shall be calculated by the non-defaulting party in a commercially reasonable manner for each such liquidated and terminated agreement and such settlement amounts shall be netted to a single liquidated amount, of which notice shall be given in writing to the defaulting party within 5 business days of notice of termination and liquidation being given. The single liquidated amount shall be due and payable by one party to the other 3 business days after notice of such liquidated amount has been given by the non-defaulting party.
- 14.4 Settlement amount shall mean, with respect to an agreement and the non-defaulting party, any amounts payable or which would become payable by either party but for the termination or liquidation, together with the losses and costs (or gains), which the non-defaulting party incurs or would incur as a result of the liquidation, including losses and costs (or gains) based upon the then current replacement value of such agreement together with, at the non-defaulting party's election but without duplication or limitation, all losses and costs which such party incurs or would incur as a result of maintaining, terminating, obtaining or re-establishing any hedge or related trading position.
- 14.5 If before title to the Product passes to Buyer, Buyer becomes the subject of a Default under the Agreement, then without limitation of or prejudice to Seller's other rights under the Agreement or otherwise:
- 14.5.1 Buyer's right to resell the Product or use it in the ordinary course of its business ceases immediately and Buyer shall keep the Product segregated from all other product, marked as the property of Seller; and
- 14.5.2 Seller may at any time require Buyer to deliver up all the Product in its possession which has not been resold or irrevocably incorporated into another product and, if Buyer fails to do so promptly, enter any premises of Buyer or of any third Party where the Product is stored in order to recover it.
- 14.6 The non-defaulting party's rights under this clause shall be in addition to, and not in limitation or exclusion of, any other rights which the non-defaulting party may have (whether by agreement, operation of law or otherwise). After a default, the defaulting party shall indemnify and hold the non-defaulting party harmless from all costs and expenses (including, without limitation, reasonable attorney fees and disbursements) incurred by the non-defaulting party in the exercise of the remedies hereunder.

15. CERTIFICATE OF INDEBTEDNESS

- 15.1 A certificate under the hand of any director or manager of Seller as to the existence and the amount of Buyer's indebtedness to Seller at any time, as to the fact that such amount is due and payable and as to any other fact, matter or thing relating to Buyer's indebtedness to Seller, shall be sufficient and satisfactory prima facie proof of the contents and the correctness thereof and of the amount of Buyer's indebtedness for the purpose of provision sentence or summary judgment or any other proceedings of whatsoever nature against Buyer in any competent court, and shall be valid as a liquid document for such purpose. It shall not be necessary to prove the appointment of the person signing such certificate and such certificate shall be binding on Buyer.

16. ASSIGNMENT

- 16.1 Subject to Clause 16.2, neither Party may cede, assign, transfer or subcontract its rights or obligations under the Agreement in full or in part, without the prior written consent of the other Party. If such consent is given and wherever the cession, assignment, transfer or subcontract is made, the ceding, assigning, transferring or subcontracting Party shall remain jointly and severally liable with the cedent, assignee, transferee or subcontractor for the full performance of its obligations under the Agreement unless otherwise agreed in writing.
- 16.2 Notwithstanding the above, Seller may without Buyer's consent cede and assign all or a portion of its rights to receive and obtain payment under the Agreement in connection with securitisation or bank funding arrangements, provided that such assignment does not contravene any applicable law, regulation or decree binding upon Buyer. Any payment made by Buyer to the payee specified in Seller's tax invoice in respect of the Product deliverable under the Agreement shall be in full discharge of Buyer's payment obligations to Seller under the Agreement. Any such cession or assignment will not detract from Seller's obligations under the Agreement.

17. OTHER TERMS

- 17.1 The United Nations Convention on Agreements for the International Sale of Goods of Vienna 1980 shall not apply to the Agreement.
- 17.2 To the extent permissible by law, Seller shall not be responsible in any respect whatsoever for any loss, damage or injury resulting from any hazards inherent in the nature of the Product delivered hereunder.

18. TRADE CONTROLS

- 18.1 Notwithstanding anything to the contrary herein, neither Party shall be obliged to act in any way or to perform, and nothing in the Agreement is intended, or should be interpreted or construed as requiring or inducing a Party to act in any way or to perform any obligation otherwise required by the Agreement (including without limitation an obligation to (a) perform, deliver, accept, sell, purchase, pay or receive monies to, from or through a person or entity, or (b) engage in any other acts) if this would be in violation of, inconsistent with, penalised or prohibited by, or expose such Party to punitive measures under any applicable laws, regulations, decrees, ordinances, orders or rules of the United Kingdom, European Union ("EU") and any one of its member states at the time of execution of this Agreement, Switzerland, South Africa, the United Nations, the United States of America or other jurisdiction applicable to that Party relating to international boycotts, trade sanctions, foreign trade controls, export controls, non-proliferation, anti-terrorism or similar laws (the "**Trade Restrictions**").
- 18.2 Where any performance by a Party would be in violation of, inconsistent with, or expose such Party to punitive measures under a Trade Restriction, such Party (the "**Affected Party**") shall, as soon as reasonably practicable, give written notice to the other Party of its inability to perform. The Affected Party shall be entitled:
- 18.2.1 immediately to suspend the performance of the obligation (whether a payment or performance obligation) until such time as the Affected Party may lawfully discharge such obligation; and/or
- 18.2.2 where the inability to discharge the obligation continues until the end of the contractual time for discharge thereof or a period of 30 days (whichever is the shorter), to a full release from the obligation, provided that where the obligation relates to payment for Product which has already

been delivered, the obligation shall remain suspended (without prejudice to the accrual of any interest on an outstanding payment amount) until such time as the Affected Party may lawfully resume payment

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

19. ANTI-CORRUPTION

19.1 The Parties to the Agreement each agree and undertake to the other that in connection with the Agreement, they will each respectively comply with and act in a manner consistent with all applicable laws, rules, regulations, decrees and/or official government orders of the governments of the United Kingdom, EU, United States of America, Switzerland, South Africa or other jurisdiction applicable to the Parties relating to anti-bribery and anti-money laundering. If one Party reasonably believes that the other Party is in breach of any of its obligations under this clause, the non-breaching Party may terminate the Agreement forthwith upon written notice (supported by reasonable evidence) to the other Party without prejudice to the non-breaching Party's rights under the Agreement or generally.

20. ENTIRE AGREEMENT

20.1 The Agreement constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

20.2 Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Agreement. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Agreement. Nothing in this clause or any other clause in the Agreement which seeks to limit or exclude either Party's liability shall limit or exclude any liability for fraud.

21. SEVERABILITY

21.1 If any provision (or part thereof) of the Agreement is declared invalid, illegal or unenforceable by a court or arbitral tribunal of competent jurisdiction or becomes invalid, illegal or unenforceable due to either Party's compliance with applicable laws, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part thereof shall be deemed deleted. Any modification to or deletion of a provision or part thereof under this clause shall not affect the validity and enforceability of the remainder of the Agreement.

22. WAIVER

22.1 A failure or delay by a Party to exercise any right or remedy provided under the Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. A single or partial exercise of such right or remedy shall not prevent or restrict the further exercise of that or any other right or remedy. A waiver of any right or remedy under the

Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.

23. THIRD PARTY RIGHTS

- 23.1 A person who is not a party to the Agreement shall not have any rights to enforce any term of the Agreement, save where the third party is an assignee and the assignment has been consented to pursuant to the terms of the Agreement. The rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under the Agreement are not subject to the consent of any other person.

24. NO PARTNERSHIP

- 24.1 Nothing in the Agreement is intended to, or shall be deemed to, establish any partnership or joint venture or any other similar association between the Parties, constitute any Party the agent, legal representative or employee of another Party for any purpose whatsoever, or authorise any Party to make or enter into any commitments for or on behalf of another Party. Each Party confirms it is acting on its own behalf and not for the benefit of any other person.

25. VARIATION

- 25.1 No variation or modification of the Agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).

26. NOTICES

- 26.1 Any notice or other communication given to a Party under or in connection with the Agreement shall be in writing and in English and shall be sent by email to the Party's emails address for communications as specified in the Transaction Confirmation, save however in the case of any notice or other communication relating to the service of any proceedings, termination of the Agreement or assignment which may not be given by email and which should instead be sent by international courier delivery service.

- 26.2 Any notice or communication shall be deemed to have been received:

26.2.1 if sent by international courier delivery service, when delivered (at the time recorded by the delivery service);

26.2.2 if sent by email when delivered,

in each case unless delivered on a non-Business Day or after 5.00 pm (local time at the location of the recipient Party) on a Business Day, in which case it shall be deemed to have been delivered on the next Business Day. "**Business Day**" for these purposes means a calendar day other than a Saturday, Sunday or a public holiday in the country and region in which the receiving Party has its main place of business.

27. CONFIDENTIALITY

- 27.1 The Parties agree to keep confidential the existence and terms of the Agreement, save that each Party may disclose the existence and terms of the Agreement pursuant to an order of any court of competent jurisdiction, or as may be required by any applicable law, regulation, or by any governmental or other regulatory authority having jurisdiction over the Parties, or to any of its affiliates, professional advisors, auditors, banks, insurers, agents and/or brokers or in connection with any dispute or court or arbitration proceedings. The confidentiality obligations contained in the Agreement shall survive the termination or expiry of the Agreement for a period of two years.