

## Irving Oil

### General Terms and Conditions of Sale

These General Terms and Conditions of Sale, which may be amended or replaced from time to time, shall, unless otherwise agreed in writing by Irving Oil, apply to all supply of the Product by Irving Oil and shall be incorporated into and form part of the Invoice. When inconsistencies exist between the Invoice and these General Terms and Conditions of Sale, the terms and conditions in the Invoice shall prevail. In circumstances where the Customer has executed a separate written agreement with Irving Oil with respect to the Product and where the terms of such executed written agreement are inconsistent with these General Terms and Conditions of Sale, the terms and conditions such executed contract agreement shall prevail.

These General Terms and Conditions contain provisions in respect of domestic supply, sale and / or transportation of the Product within Ireland ("**Domestic Trade**") and any international supply, sale and / or transportation of the Product to or from Ireland ("**International Trade**"). For the avoidance of doubt, provisions relating to International Trade shall not apply in the event that the Customer engages in Domestic Trade only with respect to the Product.

#### 1.0 **Defined Terms and Interpretation**

1.1 **Definitions:** In these General Terms and Conditions of Sale, except where the context otherwise requires, the following terms, words and expressions have the following meanings:

- (a) "**Affiliate(s)**" means an entity or entities, including a partnership, directly or indirectly controlling, controlled by, or under direct or indirect common control with, a party where "**control**" means, in relation to a person ("**A**"), the power of a person ("**B**"), directly or indirectly, through contract or otherwise, to direct, cause or secure that the affairs or management of A are conducted in accordance with the wishes of B whether by means of the holding or possession of economic and / or voting interests, by contract or otherwise and "controlling" and "controlled" shall be construed accordingly.
- (b) "**Agreement**" has the meaning ascribed to it in subsection 2.1.
- (c) "**API**" means American Petroleum Institute.
- (d) "**Applicable Laws**" mean all laws, rules, regulations, statutes, orders, decrees, by-laws, documents and instruments having the force of law, as may be applicable from time to time amended, modified or re-enacted and shall include all instruments, orders, regulations, permissions, and directions for the time being made, given or issued thereunder or deriving validity therefrom.
- (e) "**Argus**" means Argus methodology and reference listings, and any reference to a particular "Argus" rate shall mean the rate as published by Argus Media Group.
- (f) "**ASTM**" means the American Society for Testing and Materials.
- (g) "**Business Day**" means any day on which banks are open for business in Dublin, Ireland.

- (h) **“Carrier”** means a carrier or other third party (including hauliers and third party customers) designated by Customer to take delivery of Product, directly or indirectly for Customer’s account, at a Terminal.
- (i) **“Claims”** mean any demand, claim, cause of action, judgment, loss, cost, expense, proceeding, penalty, award of damage or liability including reasonable legal fees and expenses and sums paid by way of settlement and compromise where such settlement or compromise was reasonable.
- (j) **“Completion of Loading”** means the disconnection of the loading hoses following the loading of a cargo at the Jetty.
- (k) **“Contract Price”** means the price for the Product(s) as set out and determined in accordance with the Invoice.
- (l) **“Contracting Parties”** has the meaning ascribed to it in subsection 20.14.
- (m) **“Customer”** means the party identified as such in the Invoice.
- (n) **“Customer’s Group”** means Customer and any of its Affiliates, Customer’s contractors and subcontractors and any of Customer’s contractors’ or subcontractors’ Affiliates, and the employees, officers, directors, and agents of all of the foregoing.
- (o) **“Customer Group’s Driver”** has the meaning ascribed to it in subsection 10.1.
- (p) **“Duty Demand”** has the meaning ascribed to it in subsection 5.4(a).
- (q) **“ETA”** means estimated time of arrival.
- (r) **“Holding Company”** has the meaning ascribed to it in section 8 of the Irish Companies Act, 2014.
- (s) **“Invoice”** means each invoice issued from Irving Oil to the Customer, including the recitals set out therein, to which these General Terms and Conditions of Sale apply.
- (t) **“Irving Oil”** means the party identified as such in the Invoice.
- (u) **“Irving Oil Group”** means Irving Oil and its Affiliates and their respective employees, officers, directors and agents of all of the foregoing.
- (v) **“ISPS”** means the International Code for the Security of Ships and Port Facilities and relevant amendments to the International Convention for the Safety of Life at Sea (**“SOLAS”**).
- (w) **“Jetty”** means the ship-loading jetty at the Refinery.
- (x) **“L15”** means a litre of the relevant Product at 15 degrees Celsius.
- (y) **“Laydays”** has the meaning ascribed to it in subsection 11.1.

- (z) “**Liabilities**” has the meaning ascribed to it in subsection 20.14.
- (aa) “**Lifting Period**” means a period of lifting from Monday to Sunday inclusive.
- (bb) “**Loading Period**” means the period during which the Product shall be delivered to the Customer.
- (cc) “**Loading Port**” means Cork or Dublin harbour.
- (dd) “**Material Change**” has the meaning ascribed to it in subsection 13.2.
- (ee) “**Metric Tonne**” or “**MT**” means a quantity equivalent to a weight of 1,000 kilograms.
- (ff) “**Nomination**” has the meaning ascribed to it in subsection 9.4
- (gg) “**Nomination Reference**” means a unique reference number provided by Irving Oil to Customer each month for each Product.
- (hh) “**Nonparty**” has the meaning ascribed to it in subsection 20.14.
- (ii) “**NOR**” means the valid notice of readiness to load or discharge as given by the master of the vessel to Irving Oil or its representative at the Loading Port.
- (jj) “**Notice**” means any notice, nomination, request, demand, document or other communication by the terms of these General Terms and Conditions of Sale required or permitted to be given by one party to the other hereunder, in the form and in the manner described hereto.
- (kk) “**party**” means either Irving Oil or Customer, as the context requires, and “**parties**” means Irving Oil and Customer collectively.
- (ll) “**Platts**” means Platts European Market Scan, and any reference to a particular “Platts” rate shall mean the rate as published by Platts European Market Scan.
- (mm) “**Product**” means the commodity(ies) specified in the Invoice.
- (nn) “**Refinery**” means the refinery at Whitegate, Midleton, Co. Cork, Ireland.
- (oo) “**Regulations**” means all Applicable Laws, rules, regulations, decrees, agreements, concessions and arrangements of or with government or public authorities and/or agents thereof, affecting the Product(s) including, without limitation, the production, acquisition, gathering, manufacturing, processing, transportation, storage, trading, sale or delivery thereof.
- (pp) “**RL Terminal**” means the road tanker loading facilities for Products at the Refinery or the Tedcastles Dublin Terminal.
- (qq) “**RTV**” means any road tank vehicle used for lifting Product.

- (rr) “**Specifications**” mean a list of properties with limiting values which describe the quality of the Product(s) being supplied under these General Terms and Conditions of Sale.
- (ss) “**Taxes**” mean any and all national, supra-national, federal or local taxes, duties, assessments, imposts, dues, levies or other charges which are imposed on, arise out of or are in any manner whatsoever dependent on or attributable to the sale and/or delivery hereunder of Product, as same may be amended or replaced from time to time.
- (tt) “**Terminal**” means the applicable Product supply terminals including the Jetty and the RL Terminal and any other Product supply terminal(s) as may be determined by Irving Oil.
- (uu) “**VAT**” has the meaning ascribed to it in subsection 5.1.
- (vv) “**Tedcastles Dublin Terminal**” means the terminal at Dublin Port, Co. Dublin.

1.2 **Interpretation:** In these General Terms and Conditions, except where the context otherwise requires:

- (a) words importing or connoting the singular number include the plural, and vice versa;
- (b) words importing or connoting the masculine gender include the feminine gender, and vice versa;
- (c) any reference to Ireland is to the country of Ireland (excluding Northern Ireland) and Irish shall be construed accordingly;
- (d) any reference to a recital or section is to the relevant recital or section to these General Terms and Conditions of Sale and any reference to a subsection, part, paragraph is to the relevant subsection, part, or paragraph of the section in which it appears;
- (e) headings in these General Terms and Conditions of Sale and their division into sections and subsections are for convenience of reference only and do not affect the scope, intent or interpretation of any provision of these General Terms and Conditions of Sale;
- (f) any reference to persons includes natural persons, firms, partnerships, companies, corporations, associations, organizations, governments, states, foundations and trusts (in each case whether or not having separate legal personality);
- (g) any reference to a statute, statutory provisions or subordinate legislation (“**legislation**”) shall, except where the context otherwise requires, be construed as referring to such legislation as amended and in force from time to time and to any legislation which re-enacts or consolidates, with or without modification, any such legislation; and,
- (h) any phrase introduced by the words “**including**”, “**include**”, “**in particular**” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.3 **Contra Proferentem:** In the event that an ambiguity or question of intent or interpretation arises the Agreement shall be construed as if drafted jointly by the parties and no presumption or burden

of proof shall arise favouring or disfavouring any party by virtue of the authorship of any of the provisions of the Agreement.

## 2.0 **Agreement to Purchase and Supply**

2.1 **Supply and Purchase:** Irving Oil agrees to supply and sell to Customer, and Customer agrees to purchase from Irving Oil at the applicable Terminal for the Contract Price, Product in the amounts specified in the Invoice and on the terms and conditions set forth in these General Terms and Conditions of Sale (as may be amended or replaced from time to time) and the Invoice (the "**Agreement**"). Except as expressly provided in subsections 17.1, the Agreement is for the sole benefit of Irving Oil and Customer, and nothing herein expressed or implied shall give or be construed to give any person or entity other than Irving Oil and Customer, including, without limitation, any customer of Customer, any legal or equitable right whatsoever.

2.2 **Product Nominations:** If requested by Irving Oil, Customer shall nominate to Irving Oil in writing Customer's Product requirements for the period(s) specified by Irving Oil. Once confirmed by Irving Oil, any such Product nominations of Customer will be binding on the parties in accordance with their terms.

2.3 **Location of Purchases/Deliveries:** All Products to be purchased by Customer pursuant to the Agreement shall be delivered into and received by RTVs or vessels provided by and at the sole expense and risk of Customer at the Terminal all in the manner and subject to the provisions of each of the subsections of section 10.0.

3.0 **No Obligations to Renew:** Notwithstanding the foregoing or any other provision of these General Terms and Conditions of Sale, Customer acknowledges and agrees that nothing contained in these General Terms and Conditions of Sale constitutes either an express or an implied commitment on the part of Irving Oil to supply and sell any Product to Customer other than as set out in the Invoice.

## 4.0 **Price**

4.1 **Price Components:** The price to be paid by Customer for each of the respective Products supplied by Irving Oil hereunder shall be as determined and set out in the Invoice.

4.2 **Resale by Customer:** Customer acknowledges and agrees that: (i) it shall solely and exclusively determine any resale prices to be charged by Customer to its customers for Product purchased by Customer under these General Terms and Conditions of Sale; (ii) nothing contained in these General Terms and Conditions of Sale, or otherwise, shall be construed as a suggestion by Irving Oil as to any of the resale prices to be charged by Customer to its customers in respect of the resale of Product purchased under these General Terms and Conditions of Sale; and (iii) nothing contained in these General Terms and Conditions of Sale, or otherwise, shall be construed as an attempt by Irving Oil to influence upward, or to discourage the reduction of, any of the prices to be charged by Customer to its customers in respect of the resale of any Product purchased by Customer under these General Terms and Conditions of Sale.

## 5.0 **Taxes and Excise Duties**

5.1 **Taxes and Value Added Tax:**

- (a) All Taxes shall be for the account of Customer. The Contract Price and any other payments due from Customer are exclusive of Value Added Tax (or such other tax as may replace it), or similar taxes (together “**VAT**”) and subject to subsection 5.1(b) and 5.1(c) below, if applicable, Customer shall pay to Irving Oil VAT properly chargeable on production by Irving Oil to Customer of a VAT invoice.
- (b) Notwithstanding subsection 5.1(a) above, where the Product is to be dispatched to another European Union (EU) member state, VAT shall not be payable by Customer to Irving Oil in the event that Customer provides to Irving Oil:
  - (i) prior to the date of issue of the invoice described in subsection 5.1(a) above, a valid VAT registration number issued by the tax authorities of an EU member state other than the EU member state from which the Product is to be dispatched, and
  - (ii) within thirty (30) calendar days of the date of dispatch of the Product, evidence satisfactory to Irving Oil that the Product has been received by Customer or another party acting on its behalf in an EU member state other than that from which the Product was dispatched.
- (c) Notwithstanding subsection 5.1(a) above, where the Product is to be exported to a destination outside the EU, VAT shall not be payable by Customer to Irving Oil provided that Customer provides to Irving Oil within thirty (30) calendar days of removal of the Product, evidence satisfactory to Irving Oil that the Product has been received by Customer or another party acting on its behalf at a destination outside the EU.
- (d) In the event that Customer is not able to comply with the provisions of subsection 5.1(b) or 5.1(c) above and is accordingly charged VAT in accordance with subsection 5.1(a) above, Irving Oil agrees to issue to Customer a credit note for the VAT charged in the event Customer is subsequently able to provide the information or documentation specified in subsection 5.1(b) or 5.1(c).

**5.2 Excise Duty or Mineral Oil Tax or Other Taxes and Costs:**

- (a) Subject to subsection 5.2(b), Customer shall indemnify and hold harmless Irving Oil against all liability in respect of excise duty or similar tax on mineral oil which is incurred by Irving Oil, the supplier, and/or the owner of the duty suspended installation from which the Product was dispatched together with any interest, penalties and associated costs of paying such duty or tax. Customer shall indemnify and hold harmless Irving Oil in respect of any other tax or cost incurred by Irving Oil including any carbon tax, applicable sales tax or duty, cargo or harbour dues, or government levy of whatever kind, and any interest, penalties or charges in respect thereof.
- (b) Customer shall not be required to indemnify Irving Oil pursuant to subsection 5.2(a):
  - (i) Where the Product was dispatched from a duty suspended installation with an accompanying administrative document (“**ADD**”) and Customer provides Irving Oil by the fifteenth (15th) day of the month following that in which Product was

dispatched a properly completed copy of that ADD together with proof of discharge of the cargo; or

- (ii) Where the Product was dispatched from a duty suspended installation without an ADD and Customer provides to Irving Oil evidence satisfactory to Irving Oil that Product was delivered to a duty suspended installation within the European Union; or
- (iii) Where the Product was delivered to a destination outside the European Union and Customer provides to Irving Oil evidence satisfactory to Irving Oil that the Product was so delivered.

**5.3 Indemnify Irving Oil:** If any of the Taxes to be borne and paid by Customer as provided in section 5.0 hereof or any other provision of these General Terms and Conditions of Sale are required to be paid or incurred, or are in fact paid or incurred, in the first instance by or on behalf of Irving Oil, Customer shall indemnify and save harmless Irving Oil and Irving Oil's Affiliates in respect thereof and will forthwith reimburse Irving Oil and Irving Oil's Affiliates for any such payments.

**5.4 Evidence of Compliance and Duty Demands:**

- (a) In respect of International Trade of Product only, Irving Oil reserves the right to delay the loading of the vessel until it has received either the required evidence of compliance with all Applicable Laws or a bank guaranteed letter of indemnity from Customer in a form acceptable to Irving Oil. Any demurrage and other costs resulting from such delay shall be for Customer's account.
- (b) On receipt of Customer's estimate of liftings at the RL Terminal for a Lifting Period, Irving Oil may issue to Customer a demand for payment of excise duty (a "**Duty Demand**") based on the quantities in Customer's estimate or Irving Oil's estimate of Customer's liftings. Customer shall pay to Irving Oil the excise duty set out in the Duty Demand by not later than Wednesday of the relevant Lifting Period.
- (c) Excise duty invoices shall be issued by Irving Oil in accordance with the procedure set out in subsection 8.1. Irving Oil shall balance excise duty due from Customer on a twice monthly basis and make the appropriate adjustments on the next Duty Demand. In the event Customer fails to make payment on the due date of the Duty Demand, Irving Oil reserves the right to refuse any liftings in excess of the balance on Customer's duty account.

**5.5 Other Financial Benefits:** If Irving Oil receives, whether directly or indirectly, any financial or other benefits as a result of the establishment by any governmental authority (national, supra-national, federal, local authority, county or otherwise) of any program of environmental or emissions reduction "credits," or any other program whereby manufacturers and/or refiners of energy products receive financial and/or other benefits based on their environmental performance during the manufacturing and/or refining process and/or their production, sale or delivery of energy products which satisfy prescribed environmental standards and/or product quality Specifications, such benefit(s) shall be for the sole and exclusive benefit of Irving Oil and shall not reduce or otherwise affect the prices to be paid by Customer for Product supplied hereunder.

## 6.0 **Supply of Product, Risk and Title**

- 6.1 **FOB:** In respect of International Trade only, product will be sold and supplied by Irving Oil, and accepted by Customer, Free on Board, the applicable Terminal, Incoterms 2000.
- 6.2 **Risk and Title:** All risk as to Product, and all title and property in Product, shall pass to Customer as the Product passes the permanent hose connection of the vessel at the Jetty or RTV at the RL Terminal, as applicable, irrespective of the time of delivery of any bills of lading. Any loss or damage to the Product, to any person or to any property of Irving Oil and all Claims or liability arising from such loss or damage, including any liability arising from spill or discharge, occurring before, during or after the loading of the vessel or the RTV which is caused by the operator of or defect in the vessel or the RTV or by Customer or anyone for whom at law Customer is responsible shall be for the account of Customer. Customer shall defend, indemnify and hold harmless Irving Oil from and against any and all Claims with respect to damage to any persons, property and/or facilities at the Loading Port or applicable Terminal by Customer or anyone for whom at law Customer is responsible, howsoever such Claims arise or are caused.
- 6.3 **Legislation:** Customer shall defend, indemnify and hold harmless Irving Oil in respect of any liability whatsoever under the Dangerous Substances Acts 1972 and 1979 (as amended or replaced from time to time) and all Regulations enacted thereunder as consignee of the Product once loading has been completed at the Jetty or the RL Terminal.

## 7.0 **Quantity and Quality of Product**

- 7.1 **Measurement of Quantity:** The quantity of Product delivered for Customer's account under the Agreement shall be determined by Irving Oil in its sole discretion by the metering equipment at the Jetty or RL Terminal, as applicable. Metering systems shall conform to the API/ASTM standards then in effect relative to meter calibration/accuracy. In the event there is no metering equipment available at the applicable Terminal or Jetty, the quantity of Product shall be as determined by Irving Oil in its sole discretion and based on shore tank or RL Terminal measurements in accordance with standard oil industry practice. Terminal and Jetty quantity measurements shall be as determined in the sole discretion of Irving Oil and shall be conclusive and binding on Customer absent manifest error or fraud.
- 7.2 **Gross/Net Quantity:** Product shall be delivered on a gross quantity basis unless otherwise specified in these General Terms and Conditions of Sale. If Product is sold on a net basis, gross quantities shall be adjusted to volume at L15 in accordance with the latest revision of ASTM Table Number 6B, IP Petroleum Measurement Tables (ASTM designation D-1250, IP designation 200). The quantity of Product so determined shall be the invoice quantity of Product for all purposes of these General Terms and Conditions of Sale.
- 7.3 **Quality of Product:** Product supplied under these General Terms and Conditions of Sale will meet the Specifications as agreed by the Customer and Irving Oil.
- 7.4 **Inspection:** Either party shall have the right, at its own expense, to appoint a mutually acceptable independent inspector to witness the determination of the quantity and quality of the Products.



- 7.5 **RL Terminal Dispute:** In respect of any sales from the RL Terminal, if Customer disputes the quantity of Product stated on the bill of lading or other designated receipt of Product document, Customer must bring such matter to the attention of Irving Oil prior to leaving the RL Terminal. Under no circumstances shall any Claims relating to Product quantity be accepted by Irving Oil once the RTV has passed the exit gate of the RL Terminal. Any Notice of claim as to a defect in quality of Product shall be given in writing by Customer to Irving Oil promptly but in any event within 24 hours after the RTV has passed the exit gate of the RL Terminal. Under no circumstances shall any Claims relating to Product quality be accepted by Irving Oil if Irving Oil does not receive any Notice of claim within such prescribed period.
- 7.6 **Jetty Dispute:** In respect of any sales from the Jetty, any Notice of claim as to a shortage of quantity of Product or as to defect in quality of Product shall be given in writing by Customer to Irving Oil promptly but in any event within 24 hours following Completion of Loading. Under no circumstances shall any Claims relating to Product quantity or quality be accepted by Irving Oil if Irving Oil does not receive any Notice of claim within such prescribed period.
- 7.7 **Limitation of Liability:** Notwithstanding subsection 7.3, should any Product supplied not meet the Specifications, the parties will act in good faith to resolve the situation and minimize the commercial damage to all parties. Notwithstanding anything to the contrary contained in these General Terms and Conditions of Sale and to the maximum extent permissible at law, Irving Oil's total liability to Customer in respect of all losses arising as a result of the supplied Product not meeting the relevant Specification, whether in contract, tort (including negligence), breach of statutory duty or otherwise, shall not exceed the difference between the market price and the Contract Price with respect to the relevant quantity of Product or US\$10million, whichever is the lesser. This section 7.0 constitutes Irving Oil's entire obligation with respect to the quality of Product to be delivered and, save to the extent that exclusion thereof is not permitted or ineffective by operation of law, all statutory or other conditions or warranties, express or implied, with respect to the description, merchantability or quality of Product or its fitness for any purpose or otherwise are hereby excluded.
- 8.0 **Payment and Security**
- 8.1 **Time of Payment:** Unless otherwise agreed in writing between the Customer and Irving Oil, the Customer shall pay Irving Oil for each delivery of Product on or before the payment due date specified in the Invoice. If no such due date is specified on the Invoice, the Customer shall pay Irving Oil for each delivery of Product on or before the 15<sup>th</sup> day after the date of invoice..
- 8.2 **Manner of Payment:** Payment for each delivery of Product shall be made by Customer to Irving Oil entirely at Customer's expense by electronic funds transfer of immediately available funds to Irving Oil's bank as designated from time to time by Irving Oil and, failing such designation, to Irving Oil in certified funds by courier to Irving Oil's address set forth in the Invoice, quoting Irving Oil's invoice number and Customer's name. Customer shall remit payment for the full amount payable for each delivery without any set-off, deduction, counterclaim or withholding whatsoever, provided that remittance of payment in full shall not prejudice any rights Customer may have against Irving Oil with respect to any delivery. If payment falls due on a Saturday, Sunday or a bank holiday in the place where payment is to be made, such payment shall be made on the preceding Business Day in such place.

- 8.3 **Interest:** Any amount due by Customer hereunder on any account whatsoever which is not paid by the date on which such payment is due will bear interest from the date on which it became due up to and including the date of receipt of payment by Irving Oil at a rate equal to the lesser of (i) 2% per month, compounded monthly (26.824% compound annual rate), and (ii) the maximum interest permitted under Applicable Laws. The foregoing will not be construed as an obligation on the part of Irving Oil to provide or extend credit as a matter of course or at all and is in addition to any other rights of Irving Oil arising out of such delay in payment.
- 8.4 **Provisional Payment:** In the event the final price is not known in time for payment, Customer shall make provisional payment of an estimated amount in accordance with subsection 8.2 and shall promptly pay any shortfall to Irving Oil when due, and Irving Oil shall promptly remit any overpayment to Customer when final Invoice amount is determined.
- 8.5 **Credit:** Irving Oil may require Customer to provide security acceptable to Irving Oil, and adequate in Irving Oil's sole opinion, to cover the level of credit being made available to Customer. If Customer is unable or refuses to give or procure security in a form and wording acceptable to Irving Oil within Irving Oil's specified time of a written request to do so or, if not specified, within a reasonable period of time or, if Irving Oil is not satisfied as to the creditworthiness of Customer without being required in any way to reveal its reasons for dissatisfaction, or, if Customer fails to achieve volumes which Irving Oil considers appropriate, Irving Oil may withdraw or vary the then existing payment terms forthwith and as it sees fit. If the parties are unable to agree to a change in the credit terms and/or the provision of security Irving Oil may terminate the Agreement by giving 30 calendar days' written Notice to such effect to the Customer.
- 8.6 **Failure to Accept Product or Pay:** If Customer refuses or fails to take delivery of Product in violation of these General Terms and Conditions of Sale, fails to pay in full amounts owed hereunder by the date on which those amounts are due or is otherwise materially in default under these General Terms and Conditions of Sale, Irving Oil may, at its option, regardless of any partial acceptance of any Product or partial payment by Customer, and without written Notice to Customer:
- (a) immediately suspend all or any supply of Product hereunder;
  - (b) immediately treat the Agreement as terminated or terminate the Agreement; and/or
  - (c) exercise any statutory or other right that Irving Oil may have for Customer's breach of these General Terms and Conditions of Sale;
- entirely without prejudice to any rights, remedies or claims of Irving Oil under these General Terms and Conditions of Sale or otherwise at law or in equity.
- 8.7 **Forward Contract:** In the event Customer is in default of these General Terms and Conditions of Sale, Irving Oil may, in addition to Irving Oil's other rights and remedies under these General Terms and Conditions of Sale, at law or in equity, terminate, liquidate, close-out or accelerate the Agreement and any other forward contracts or master netting agreements between the parties, and setoff, net or aggregate, as appropriate, any or all indebtedness or obligation under such agreements, whether matured or unmatured, to a single liquidated amount, which amount Customer shall pay to Irving Oil within 2 Business Days after receipt of invoice.

## 9.0 Lifting Schedules

9.1 **Schedules:** The provisions of this section 9.0 shall apply in respect of the Loading Period. By the 12<sup>th</sup> of each month (or, in circumstances where an Invoice is issued after the 12<sup>th</sup> of the relevant month, as soon as practicable following the issuance of such Invoice), Customer shall notify Irving Oil of its lifting schedule for the following month, specifying as follows:

- (a) In the case of liftings by vessel at the Jetty: Grades and quantities of each Product and a five (5) day range for each shipment; and
- (b) In the case of liftings at the RL Terminal: Grades and quantities of Product to be lifted on a weekly basis throughout the following month.

In addition, the Customer shall provide lifting schedules to Irving Oil in respect of the current month as soon as reasonably practicable after same is requested by Irving Oil (as applicable).

9.2 **Response:** Irving Oil shall promptly respond, accepting or rejecting Customer's proposed lifting schedule provided that Customer's proposed lifting schedule shall not be unreasonably rejected or delayed by Irving Oil. In the event of rejection by Irving Oil of all or any of the liftings in the proposed lifting schedule, Irving Oil and Customer shall agree to an alternative programme as soon as practicable but in any event before the 20<sup>th</sup> of each month.

9.3 **RTV Liftings:** In the case of liftings by RTV, Customer shall provide an estimate to Irving Oil of liftings for each Lifting Period by noon on the last Business Day prior to the Lifting Period.

9.4 **Nominations:** Irving Oil shall issue to Customer each month Nomination References for each Product to be used on all nominations, documentation and Invoices. If Customer does not use a Nomination Reference or uses an incorrect Nomination Reference in any nominations, documentation or invoices made or issued under these General Terms and Conditions of Sale, Irving Oil reserves the right to refuse to load the RTV or vessel and shall so inform Customer.

## 10.0 Provisions in Respect of RTVs

10.1 **Driver Compliance:** It shall be the responsibility of the Customer to ensure that the driver of every RTV into which Product sold to that Customer is loaded and every driver engaged by any Carrier ("**Customer Group's Driver**") complies fully and promptly with the European Communities (Carriage of Dangerous Goods by Road and Use of Transportable Pressure Equipment) Regulations 2011 (S.I. No. 349 of 2011) (as amended or replaced from time to time) ("**SI 349 of 2011**"), the Irving Oil Roadloading Terminal – Rules and Procedures for Safe Loading and / or any other Applicable Law concerning the delivery, receipt, transportation, storage and sale of Product or Irving Oil's procedures and directives as required from time to time by Irving Oil. Customer shall be responsible and liable for and shall indemnify, defend and save harmless Irving Oil and Irving Oil's Affiliates, each of their respective personnel and each of their respective heirs, executors, personal representatives, administrators, successors and assigns, in respect of the failure of Customer, any Customer Group's Driver or Carriers to comply with all such Applicable Laws, directions and with Irving Oil's procedures and directives.

- 10.2 **Driver Training:** Customer shall ensure that Customer Group's Drivers undergo training as required by Irving Oil prior to operating the RL Terminal facilities and thereafter, if so, required by Irving Oil provided that Irving Oil shall not be liable under any circumstances whatsoever for the acts or omissions of Customer Group's Drivers. If Irving Oil, at its sole discretion, determines that any Customer Group's Driver has not satisfactorily completed a training programme or that the conduct of a Customer Group's Driver is prejudicial to the safe operation of the RL Terminal, Irving Oil reserves the right to refuse and/or revoke access to the RL Terminal by such Customer Group's Driver and shall so inform Customer.
- 10.3 **RTV Compliance:** Customer shall ensure that all RTVs conform to the Irish Petroleum Industry Association (IPIA) Safe Loading Pass Scheme, all relevant standards and Regulations issued or imposed by the National Standards Authority of Ireland and the Road Safety Authority and all other Regulations applicable to RTVs. Customer shall demonstrate prior to loading and to the satisfaction of Irving Oil that it possesses all necessary certifications as required by Irving Oil. Acceptance of all such certifications shall be at the sole discretion of Irving Oil. Irving Oil shall be entitled to inspect the RTVs. Without limiting Customer's liability for breach of the Agreement, if Customer's or Carrier's RTV(s) do not comply with safety standards required by Irving Oil, Irving Oil may, in its sole discretion, refuse to supply Product under the Agreement. If Irving Oil does so refuse, it shall so inform Customer and such refusal shall not constitute a breach of the Agreement and Irving Oil shall not be liable to Customer for any actions, claims, costs, damages, demands, expenses or losses suffered or incurred by Customer's Group directly or indirectly as a result of such refusal.
- 10.4 **Additional Agreements:** If requested by Irving Oil by written Notice to Customer, Customer shall promptly enter into agreements in a form specified by Irving Oil covering:
- (a) use of card reading facilities as part of the security arrangements in connection with access to and egress from the RL Terminal by RTVs;
  - (b) provision of additive facilities required by the Customer or requirements relating to such other facilities as Irving Oil may provide in conjunction with the RL Terminal; and
  - (c) utilization of parking facilities.
- 10.5 **RL Terminal Fee:** Customer shall pay a charge to Irving Oil for the use of the RL Terminal as notified by Irving Oil to the Customer. Payment of this charge shall be in addition to the Contract Price and shall be payable in accordance with any payment instructions issued by Irving Oil from time to time.
- 10.6 **Contract for Carriage of Dangerous Goods by Road:** Upon request by Irving Oil, Customer agrees to enter into a standard "Contract for Carriage of Dangerous Goods by Road Agreement" with Irving Oil, in respect of all RTV collections made from the RL Terminal by the Customer's Group. The Contract for Carriage will clearly specify the roles and responsibilities of both parties with regard to fulfilling the obligations set out in European Agreement concerning the International Carriage of Dangerous Goods by Road as amended or replaced from time to time ("**the ADR**") and SI 349 of 2011.
- 10.7 **Access to RL Terminal:** Irving Oil hereby grants to Customer permission for reasonable access in, over and upon each RL Terminal for the purposes of loading and taking delivery of Product

supplied by Irving Oil under these General Terms and Conditions of Sale. Such access shall be restricted to those areas of each RL Terminal where the RTV loading rack(s) are located and related access points. The permission granted to Customer under this section may be extended by the Customer to any Carrier provided that such Carrier agrees to be bound by the terms and conditions of these General Terms and Conditions of Sale that relate to compliance with the relevant RL Terminal's rules and procedures for use and access, including but not limited to the relevant requirements and obligations set out in subsections 10.1 to 10.6 (inclusive), 10.8 and 10.9 of these General Terms and Conditions of Sale (as applicable).

10.8 **RL Terminal Operating Hours:** The access granted hereunder shall be allowed only during the ordinary business hours of the applicable Terminal. Ordinary business hours for any Terminal are those hours communicated to Customer from time to time by Irving Oil, which hours may change on reasonable written Notice to Customer. Customer shall have no right to access a Terminal outside of that Terminal's ordinary business hours.

10.9 **Loss Caused by Customer, Customer Group's Driver or Carrier:** Irving Oil is not liable or responsible for bodily injury to or death of any person whatsoever including employees, personnel, agents, or contractors of Customer, Customer Group or of any Carrier, or loss or damage to any property whatsoever including property of Customer, Customer Group or any Carrier resulting from any breach by Customer of the Agreement or any violation of any Terminal access terms by any Carrier(s), or any intentional or negligent act or omission of Customer, Customer Group or any Carrier(s); and Customer shall indemnify, defend and save harmless Irving Oil and Irving Oil's Affiliates, each of their respective personnel and each of their respective heirs, executors, personal representatives, administrators, successors and assigns, from and against any and all liabilities, losses, claims, damages and/or expenses (including reasonable attorney fees) in respect of same.

#### 11.0 **Provisions in Respect of Vessels**

11.1 **Nomination of Vessels:** Two (2) Business Days prior to the first day of the five (5) day range established in subsection 9.1 above, Customer shall confirm the nomination in writing reducing the spread to three (3) days ("**Laydays**") and giving the name of the vessel, quantities of Product to be shipped in accordance with the lifting schedule, Nomination Reference, ETA at the Jetty, consignee and destination of cargo ("**Nomination**"). Irving Oil shall within twenty-four (24) hours accept or reject the Nomination providing reasonable details of the reason for any rejection provided that such acceptance shall not be unreasonably withheld. Irving Oil shall incur no liability in rejecting any vessel and Irving Oil's acceptance of any vessel shall not constitute a continuing acceptance of such vessel for any subsequent loading. If Irving Oil rejects Customer's nominated vessel, Customer shall promptly issue a revised Nomination proposing an alternative vessel acceptable to Irving Oil.

11.2 **Substitute Vessel:** Customer may substitute another vessel of similar size and characteristics for any vessel accepted by Irving Oil provided Customer gives written Notice to Irving Oil not less than twenty-four (24) hours prior to the vessel's Laydays and Irving Oil has confirmed to Customer that such substitute is acceptable.

11.3 **Vessel Compliance:** The Customer shall ensure that each vessel nominated by the Customer shall conform to Applicable Laws at the Jetty and the Loading Port at the time of delivery.

- 11.4 **ITOPF:** Customer warrants to Irving Oil that any vessel nominated will be owned or demise chartered by a member of the International Tanker Owners Pollution Federation (ITOPF) and entered in a Protection and Indemnity (P&I) Club within the International Group of P & I Clubs.
- 11.5 **Compliance:** Should Customer or Customer's vessel not confirm or comply with the provisions of this section 11.0 or subsection 12.1, Irving Oil may refuse to berth or load the vessel and Irving Oil shall be under no obligation to supply the Product which would otherwise have been deliverable to Customer on such vessel and Irving Oil may sell or otherwise dispose of any such Product as Irving Oil may in its absolute discretion determine. Any resulting delay or expenses shall be for Customer's account and Customer shall indemnify and hold harmless Irving Oil for all reasonably foreseeable costs, losses or damages incurred by Irving Oil as a direct result thereof.
- 11.6 **Laydays:** Laydays shall be the day or range of days (in accordance with the standard practice at the Jetty) either as specified by Irving Oil or as established in accordance with the procedure specified in subsection 11.1. No stipulation as to time of delivery whether as to the Laydays or any other period shall form part of the description of the Product deliverable under the Agreement.
- 11.7 **Vessel loading conditions:**
- (a) Customer shall give seventy-two (72), forty-eight (48) and twenty-four (24) hours' written Notice of the ETA of the vessel to Irving Oil or Irving Oil's agent notified by Irving Oil to Customer in writing. Any change of six (6) hours or more within the seventy-two (72) hour written Notice range shall be advised by Customer to Irving Oil immediately.
  - (b) Upon arrival of the vessel at the customary anchorage for the Loading Port, Customer shall procure that the master or his representative shall tender to Irving Oil NOR to load the Product, berth or no berth.
  - (c) Irving Oil shall exercise reasonable care to provide a safe berth for Customer's vessel. Irving Oil shall not be deemed to have warranted the safety of any such port, berth or terminal and shall be under no liability in respect thereof, except for loss or damage caused by Irving Oil's failure to exercise reasonable care as herein provided and which could not have been avoided by the exercise of due care by one or more of the owner, operator, master, officers and crew of the vessel, the vessel's agent or Customer Group.
  - (d) Irving Oil shall have the right to shift or require Customer to shift vessel from one safe berth to another. All costs, including but not limited to damages for delay, shall be for Irving Oil's account if the shifting is for Irving Oil's purposes or for Customer's account if due to reasons within the control of Customer and/or the vessel.
  - (e) Customer shall ensure that the vessel vacates the loading berth as soon as loading hoses have been disconnected after Completion of Loading and shipping documents have been provided. In the event of failure to do so, other than for reasons associated with weather or safety, Customer shall pay Irving Oil for any resultant direct demurrage, losses, damages, costs or expenses which Irving Oil may reasonably incur, without limitation, including those costs arising out of resulting delay to other vessels awaiting their turn to load.

- (f) All port charges, port dues and other taxes against the vessel at the Jetty and the Loading Port, such as agency fees, towage, pilotage and customs shall be borne by Customer. Customer shall likewise be responsible for payment of any Taxes, duties, imposts, fees, charges and dues of every description on the Product in respect of any stage after Product passes the vessel's permanent hose at the Jetty.

**11.8 Laytime and demurrage:**

- (a) Irving Oil shall be allowed as laytime fifty (50) per cent of the laytime provided in the applicable charter party, subject to a minimum of thirty-six (36) hours Sundays and holidays included or, if vessel's deadweight is less than 14,000 Metric Tonnes, the following laytimes:

VESSEL DEADWEIGHT	LAYTIME
Less than 2,500 dwt	12 hours
2,500 – 3,999 dwt	15 hours
4,000 – 6,499 dwt	18 hours
6,500 – 8,999 dwt	21 hours
9,000 – 13,999 dwt	24 hours

- (b) If Customer tenders NOR within the Laydays, laytime shall commence upon the expiration of six (6) hours after NOR is given or when the vessel is all fast at the berth, whichever first occurs.
- (c) If Customer tenders NOR before the Laydays, laytime shall commence at 0600 hours local time on the first day of the Laydays or when the vessel is all fast at the berth, whichever first occurs.
- (d) If Customer tenders NOR after the Laydays, laytime shall commence when the vessel is all fast at the berth.
- (e) Laytime shall end on disconnection of loading hoses after Completion of Loading.
- (f) Any time consumed due to any of the following shall not count as laytime or, time in respect of which Irving Oil is liable for demurrage (whether or not the vessel is already on demurrage):
- (i) awaiting customs, immigration clearance, free pratique or other local administrative requirements;
  - (ii) delay by the vessel in reaching or clearing the berth caused by conditions beyond Irving Oil's reasonable control;
  - (iii) restrictions imposed by Customer, owner, charter or master of the vessel at the Loading Port or the Jetty prohibiting or restricting loading at any time;

- (iv) breakdown, inefficiency or other cause attributable to the vessel or failure to comply with the requirements of the Jetty or Loading Port with respect to equipment aboard or any other matter causing delay or restriction to loading operations;
  - (v) cleaning and inspection of the vessel's cargo tanks;
  - (vi) delays in handling ballast, oil residues, bilges, slops or other substances or bunkering unless concurrent with cargo loading operations;
  - (vii) adverse weather or sea state which either affect Customer's vessel directly or indirectly because of delay to other vessels which arrived prior to Customer's vessel;
  - (viii) any other delay attributable to the vessel, Customer or agents of Customer;
  - (ix) any onboard strike by members of the crew; or
  - (x) as a result of Force Majeure.
- (g) Except as hereinafter provided, for all time used in excess of allowed laytime, Irving Oil shall pay demurrage to Customer at the rate specified in the applicable charter party.
- (h) In the event Customer and Irving Oil cannot agree on a demurrage rate, Irving Oil shall seek the opinion of the London Tanker Broker's Panel as to the appropriate demurrage rate for the size of vessel. The decision of the Panel shall be final and binding on both parties and the cost for the Panel's determination shall be shared equally between the parties.
- (i) Notwithstanding the provisions of subsection 11.8(g):
- (i) No demurrage whatsoever shall be payable in the event that Irving Oil is prevented from or delayed in delivering all or part of the Product by any reason of Force Majeure.
  - (ii) Irving Oil shall in no event be liable for demurrage unless Customer has notified the demurrage claim to Irving Oil in writing, within sixty (60) calendar days of the bill of lading date for the cargo (with bill of lading date being day zero), with complete supporting documentation provided with ninety (90) calendar days of the bill of lading date for the cargo.
  - (iii) Irving Oil's demurrage liability shall not exceed that which Customer has incurred under the terms of the applicable charter party.

## 12.0 **FOB ISPS**

- 12.1 **Vessel Requirements:** Customer shall ensure that the vessel shall comply with the requirements of ISPS as amended from time to time. The vessel shall when required submit a Declaration of Security (DoS) to the appropriate authorities prior to arrival at the Loading Port.



12.2 **Failure to Comply:** Notwithstanding any prior acceptance of vessel by Irving Oil, if at any time prior to the passing of risk and title in the Product the vessel ceases to comply with the requirements of ISPS:

- (a) Irving Oil shall have the right not to berth or load or continue to load such nominated vessel and all time lost or spent as a result thereof shall not count against laytime, or if the vessel is on demurrage, for demurrage; and
- (b) Customer shall be obliged to substitute such nominated vessel with a vessel complying with the requirements of ISPS.

12.3 **Irving Requirements:** Irving Oil shall ensure that the Loading Port shall comply with the requirements of ISPS. Any costs or expenses in respect of the vessel including demurrage or any additional charge, fee or duty levied on the vessel at the Loading Port and actually incurred by Customer resulting directly from the failure of the Loading Port to comply with ISPS, shall be for the account of Irving Oil, including but not limited to the time required or costs incurred by the vessel in taking any action or any special or additional security measures required by ISPS. Irving Oil's liability to Customer under the Agreement for any costs, losses or expenses incurred by the vessel, the charters or the vessel owners resulting from the failure of the Loading Port to comply with ISPS shall be limited to the payment of demurrage and costs actually incurred by Customer in accordance with the provisions of this section 12.0.

### 13.0 **Interference With Performance**

13.1 **Force Majeure:** Irving Oil is not obliged to sell or supply and Customer is not obliged to purchase or receive Product hereunder to the extent that any one or more of the following events prevents, curtails, hinders, restricts or delays the party's performance under the Agreement:

- (a) compliance with or observance of, voluntarily or involuntarily, any Applicable Law, regulation, order, direction, policy or request of any government or any international, national, transportation, local or other authority, body or agency or any person purporting to act with or on behalf of such authority;
- (b) total or partial expropriation, nationalization, confiscation, requisitioning or abrogation or breach of a government contract or concession;
- (c) accident, fire or explosion;
- (d) closing or restriction on the use of a port, refinery or pipeline (including the Loading Port, the Refinery and the RL Terminal);
- (e) hurricane, storm, earthquake or flood;
- (f) hostilities or war (declared or undeclared), embargo, blockade, riot, civil unrest, sabotage, terrorism, revolution or insurrection;
- (g) strike or other labor difficulty (whomsoever employees are involved), even though the strike or other labor difficulty could be settled by acceding to the demands of a labor group;

- (h) any curtailment, failure or cessation of supplies of crude oil, feedstock or other product to or from any of Irving's or Irving's supplier's sources of supply (whether in fact sources of supply for the purposes of the Agreement or not);
- (i) lack of availability of any crude product, feedstock or other product required by Irving Oil or any of its suppliers to manufacture, refine or otherwise produce or process Product, whether deliverable under the Agreement or not, or the normal means of transport of such crude product, feedstock, other product or Product is prevented, curtailed, hindered, restricted or delayed;
- (j) inability or failure of Irving Oil to obtain or of any governmental or other authority to issue, or the revocation or cancellation of authorisations, permits, licences, certificates or other documents required to enable Product to be sold hereunder or loaded into tank trucks;
- (k) loss, breakdown or shortage of manufacturing, producing, refining, delivery, loading or transportation facilities, equipment, labor or material caused by circumstances beyond the reasonable control of the party affected; or
- (l) any act of God or other event reasonably beyond the control of the party affected, whether or not similar to those listed above.

In any such event, Irving Oil is at liberty to withhold, reduce or suspend the supply of Product hereunder to such extent as Irving Oil in its absolute discretion may determine, and Irving Oil is not bound to purchase or otherwise make good shortages of Product resulting from any such event. This section does not apply to amounts owed by a party under the Agreement, the payment of which will not be excused under this section. For the avoidance of doubt, an inability of Customer to pay shall not constitute Force Majeure under these General Terms and Conditions of Sale.

13.2 **Material Changes in Supply:** Without limiting any other provision in these General Terms and Conditions of Sale, Customer acknowledges that material changes in refining specifications, market conditions, Product availability and/or other external factors (collectively, a "**Material Change**") may from time to time necessitate discontinuation of and/or changes to the types, grades or Specifications of, and/or the prices and fees applicable to, Product offered by Irving Oil for sale to its customers generally. In the event of a Material Change, Irving Oil may, with written Notice to Customer, elect to renegotiate the terms of the Agreement. If Irving Oil elects to renegotiate the Agreement in accordance with this section and the parties have not agreed upon revised terms of the Agreement within 30 calendar days after Irving Oil gives its renegotiation Notice, then Irving Oil may, on 5 calendar days' prior written Notice to Customer, elect to cancel that part of the Agreement as it relates to any Product affected by the Material Change.

#### 14.0 **Distribution Facilities**

14.1 If at any time(s), Irving Oil, in its sole discretion, determines that it is or will be unable or unwilling to utilize Product distribution facilities situated within area(s) serving Terminal(s) with respect to any Product (including, without limitation, any reduction or change in the volume of any product available to Irving Oil at such distribution facilities, whether or not such product constitutes Product under these General Terms and Conditions of Sale), then in such case(s) Irving Oil may, after providing at least thirty (30) calendar days' prior Notice to Customer, terminate any further

requirement hereunder on its part to supply the affected Product, or any further Product, to Customer from Terminal(s), as Irving Oil may determine. In all other respects, all of the provisions of these General Terms and Conditions of Sale shall remain in full force and effect as regards the supply, purchase and sale of Product.

## 15.0 **Suspension and Termination of Agreement**

15.1 **Suspend or Terminate:** Irving Oil may in its sole discretion, and in addition to any other rights, remedies or claims it may have under these General Terms and Conditions of Sale or otherwise, forthwith either suspend deliveries of Product or terminate the Agreement in any of the following events:

- (a) Customer for any reason whatsoever fails to make any payment due to Irving Oil pursuant to these General Terms and Conditions of Sale;
- (b) Customer fails to purchase and take delivery of Product in accordance with the Agreement or otherwise fails to observe, perform or comply with any of its obligations under these General Terms and Conditions of Sale;
- (c) Customer or any of its Holding Company goes into liquidation (other than voluntary solvent liquidation for the purpose of bona fide corporate reorganization or reconstruction), or if an examiner, receiver, liquidator, trustee, sequestrator or similar official or representative of the undertaking and assets (or any part thereof) of Customer or any of its Holding Company is appointed, or if an encumbrancer takes possession of the whole or any significant part of the undertaking and assets of Customer or any of its Holding Company, or if Customer or any of its Holding Company becomes bankrupt or insolvent or threatens so to become or exhibits an intention so to become, enters into a deed of arrangement, proposal, plan, composition or arrangement for the benefit of its creditors, seeks or attempts to seek the benefit of any insolvency statute or law, or does or suffers any equivalent act or thing under any Applicable Laws in any jurisdiction;
- (d) Customer does not pay or is, in Irving Oil's reasonable opinion, expected to be unable or unwilling to pay its debts generally when they fall due;
- (e) there is a major change in the direct or indirect ownership of Customer; or
- (f) Customer or any of its Holding Company(ies) ceases or threatens to cease to carry on its business or a major part thereof or a distress, execution or other process is levied or enforced or sued out upon or against any significant part of its assets or undertaking which is not discharged within 14 calendar days.

If Irving Oil suspends deliveries of Product as a result of any of the events referred to in Paragraphs 15.1(a) to 15.1(f) above, Irving Oil may, so long as such event continues, in addition to any other rights, remedies or claims it may have under these General Terms and Conditions of Sale or otherwise, forthwith terminate the Agreement.

15.2 **Additional Right to Terminate:** Irving Oil may, in its sole discretion and in addition to any other rights, remedies or claims it may have under these General Terms and Conditions of Sale or

otherwise, terminate the Agreement following at least 30 calendar days' prior written Notice to Customer.

- 15.3 **Suspension and Termination Without Prejudice:** If pursuant to the provisions of this section 15.0 and/or other provisions of these General Terms and Conditions of Sale, Irving Oil suspends deliveries of Product under or terminates the Agreement, such suspension or termination is entirely without prejudice to the rights, remedies and claims of Irving Oil, and obligations of Customer, under these General Terms and Conditions of Sale or otherwise.
- 15.4 **Impaired Financial Responsibility:** At Irving Oil's option, if any event referred to in subsection 15.1 should occur, or if at any time the reliability or financial responsibility of Customer should in Irving Oil's reasonable opinion be or become impaired or unsatisfactory, Irving Oil may require advance cash payment for Product to be made, or, at Irving Oil's further option, other security satisfactory to Irving Oil will be given by Customer at its sole cost and expense to Irving Oil on demand and after such demand Irving Oil may withhold the supply of Product, or any portion thereof, until such payment or security has been received. If Customer fails to provide such payment or security within a period of two (2) Business Days after such demand is made, Irving Oil may forthwith withhold, reduce or suspend deliveries of Product hereunder or terminate the Agreement, entirely without prejudice to any rights, remedies or claims of Irving Oil, and obligations of Customer, under these General Terms and Conditions of Sale or otherwise. Any delay or costs associated with such delay shall be for the account of the Customer.
- 15.5 **No Obligation to Re-Supply:** If pursuant to the provisions of this section 17.0 Irving Oil withholds, reduces or suspends deliveries of Product, Irving Oil is under no obligation to make up any quantity of Product which would have been delivered to Customer but for such withholding, reduction or suspension.
- 15.6 **General:** Irving Oil will be entitled to request from Customer adequate assurance or other collateral as specifically provided in these General Terms and Conditions of Sale.
- 16.0 **New or Changed Regulations, Taxes, Levies, Etc.**
- 16.1 **New or Changed Regulations:** The Customer acknowledges that Irving Oil is entering into the Agreement in reliance upon the Regulations in effect as of the date of the Agreement. In the event that, at any time and from time to time, any Regulations are changed or amended 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 Regulations (i) is not covered by any other provision of these General Terms and Conditions of Sale and/or (ii) has an adverse effect upon Irving Oil, Irving Oil has the option to request renegotiation of the prices of the affected Product or other pertinent terms of the Agreement. Such option may be exercised by Irving Oil at any time after such changed, amended or new Regulation is promulgated, by Notice of desire to renegotiate, such Notice to contain the new prices or terms desired by Irving Oil. If the parties do not agree upon new prices or terms satisfactory to both parties within five (5) Business Days after Irving Oil gives such Notice, Irving Oil has the right to terminate the Agreement at the end of such five (5) Business Day period. Any Product delivered during such five (5) Business Day period will, subject to subsection 16.3 hereof, be sold and purchased at the price and on the terms applying hereunder without any adjustment in respect of the new, amended or changed Regulations concerned.

16.2 **Quality Changes:** If any governmental or public authority, and/or the operator of any relevant Product loading terminal, facility, or pipeline makes or mandates changes in the quality of Product and Irving Oil is unable or unwilling to supply Product that complies with those changes or if the parties are unable to agree upon any requested amendments to the Agreement to address those changes in quality, then either party may, on thirty (30) calendar days' prior written Notice, cancel that part of the Agreement as it relates to the affected Product. Irving Oil has no obligation under the Agreement to supply Product of a Specification not then available from Irving Oil's suppliers.

16.3 **New, Additional or Increased Levies, Etc.:** In the event of any new, additional or increased charges, levies or taxes, other than Taxes, whether imposed or incurred retroactively or not, imposed by any governmental or public authority after the date of the Agreement on the import, export, production, manufacture, transportation, sale, delivery or use of any Product which directly or indirectly increases the cost to Irving Oil of such Product, Irving Oil, at its option, and upon written Notice to Customer, may increase the price of the affected Product by the amount of any such new, additional or increased charge, levy or tax, as the case may be, or by the amount of such increase in cost, whichever is higher, and such increased prices will be applicable to all deliveries of Product to which such increased burden or cost is applicable, whether imposed or incurred retroactively or not. Upon receipt of such Notice, Customer will promptly pay Irving Oil the aggregate amount of the retroactive increase in price so specified in such Notice and Customer may, if Customer deems any such new, additional or increased charge, levy or tax prohibitive, not later than ten (10) calendar days after Irving Oil's Notice, elect to terminate the Agreement within five (5) calendar days as to any affected Product or Terminal, whereupon, unless Irving Oil elects to assume or waive such new or additional charge, levy or tax, the Agreement will terminate as to the amount of any affected Product remaining to be delivered from any applicable Terminal. Any such termination does not affect the obligation of Customer to pay Irving Oil any and all amounts due and unpaid (including the increase hereunder leading to such termination and the aggregate amount of any retroactive increase in price) for Product delivered hereunder prior to the date of Customer's written Notice of termination, nor does it affect Customer's obligations to continue to purchase and take delivery of Product not specified by such termination Notice.

## 17.0 **Insurance and Limitation of Liability**

17.1 **Indemnity:** Customer shall defend, indemnify and hold harmless Irving Oil Group from and against any and all Claims incurred by Irving Oil Group resulting from personal injury to any Customer Group personnel irrespective of whether such personal injury is caused by Irving Oil Group. This subsection 17.1 shall continue in effect and shall survive, notwithstanding any termination or expiry of the Agreement for all occurrences prior to the effective date of termination or expiry of the Agreement and whether or not the effects of such occurrence only arise or manifest themselves after such effective date. The benefit of the indemnity and the exclusion of liability under this subsection 17.1 shall be held by Irving Oil for itself and as agent and trustee for its employees, officers, directors and agents and for the members of Irving Oil Group (other than Irving Oil). The rights of such Beneficiary Third Parties shall not prevent the exercise of any right Irving Oil may have to vary and/or terminate the Agreement, even if that results in the rights of such Beneficiary Third Parties being varied. For the purpose of this subsection 17.1, "**Beneficiary Third Party**" means any member of Irving Oil Group (other than Irving Oil) to whom the benefit of the indemnity under this subsection 17.1 has been extended in subsection 17.1.

- 17.2 **Insurance:** The Customer, at its sole cost and expense, shall, and shall ensure that all of its relevant contractors shall, put in place and maintain the following insurances third party indemnity, public liability (at a minimum level of €10,000,000 for each and every claim), employer's liability (at a minimum level of €13,000,000 for each and every claim), products and pollution liability (at a minimum level of €10,000,000 for any one claim in the aggregate for any one period) with a specific indemnity to Irving Oil and motor insurance including third party property damage (at a minimum level of €10,000,000 in respect of third party property damage and unlimited in respect of bodily injury in respect of any one claim) and to provide evidence of the insurance cover if requested by Irving Oil. The Customer shall, and shall ensure that all of its relevant contractors shall, renew the coverage and limits of the above stipulated insurance policies required on a yearly basis and shall furnish suitable evidence of such insurances to Irving Oil. Such insurance shall contain an endorsement for pollution coverage and loading/unloading risks and all such policies will name Irving Oil as an additional insured. Insurance shall be written or endorsed such that the insurers waive rights of subrogation against the contracting parties and any of their Affiliates.
- 17.3 **Limit:** Notwithstanding anything to the contrary contained in these General Terms and Conditions of Sale and to the maximum extent permissible under Applicable Laws but without limiting subsection 17.2, in the event of breach by Irving Oil of any provision of these General Terms and Conditions of Sale, Customer may in no event recover damages from Irving Oil under these General Terms and Conditions of Sale, if any and howsoever arising, in excess of the difference (if any) between the then market price for an equivalent quantity and quality of the Product which is the subject matter of the breach and the selling price under the Agreement of the Product which is the subject matter of the breach. Without limiting the preceding sentence and to the maximum extent permissible under Applicable Laws, under no circumstances shall Irving Oil be liable under these General Terms and Conditions of Sale for any economic loss, loss of profits or prospective profits, loss of sales or business, loss of agreements or contracts, wasted expenditure, loss of anticipated savings, loss or damage to goodwill, business interruption or indirect, special, consequential, incidental, punitive or general damages or loss of any kind arising, directly or indirectly, from (i) any breach by Irving Oil of any provision of these General Terms and Conditions of Sale or (ii) any negligence or willful misconduct of Irving Oil, whether any such losses or damages arise from contracts, at law, in tort or otherwise howsoever arising. The limitations of Irving Oil's liability under this section are absolute and apply regardless of any negligence or fault of Irving Oil and regardless of the foreseeability of Customer's losses or damages. The limitations of Irving Oil's liability under this section constitute a material inducement for Irving Oil to enter into the Agreement and are in consideration for the prices for Product under the Agreement, it being acknowledged by Customer that Irving Oil would charge higher prices for Product under the Agreement absent the limitations of liability set forth in this section.
- 17.4 **Notice by Customer of Alleged Breach:** Notwithstanding any other provision of these General Terms and Conditions of Sale, in the event Customer believes Irving Oil may have breached any provision of these General Terms and Conditions of Sale, Customer will give Irving Oil immediate Notice of such alleged breach, which Notice will contain all such necessary information and details as will enable Irving Oil to properly and fully assess such claim. If no detailed Notice of such alleged breach by Irving Oil is received within 90 calendar days after the date of delivery of the Product(s) which are the subject matter of the breach or the first date of the alleged breach, whichever shall first occur, any and all claims of Customer with respect to such alleged breach are deemed to have

been waived, entirely without prejudice to Irving Oil's rights, remedies and claims under these General Terms and Conditions of Sale or otherwise.

## 18.0 Confidentiality

18.1 **Agreement Confidential:** Customer acknowledges the confidential nature of the Agreement, including all terms and conditions hereof, and agrees to maintain the same in the strictest confidence.

18.2 **Relationship with Irving Oil:** Customer will not, except solely to the extent required by law or as necessary to fulfill its obligations under the Agreement, disclose to any person, corporation, firm or other entity whatsoever, the existence of the Agreement or the fact that Irving Oil is supplying Product to or otherwise dealing with Customer. Furthermore, Customer will not advertise, publish, promote or otherwise market, directly or indirectly, in any manner whatsoever, the existence of the Agreement or the fact that Irving Oil is supplying Product to or otherwise dealing with Customer without the prior written consent of Irving Oil.

## 19.0 Compliance

19.1 **Anti-Boycott:** None of the provisions of these General Terms and Conditions of Sale are intended, nor shall be construed, as an agreement by either party to comply with any international boycott if compliance or agreement to comply therewith would violate anti-boycott laws or regulations applicable to a party or its Affiliates.

19.2 **Export Compliance and Sanctions:** Neither party shall be obliged to perform any obligation otherwise required by these General Terms and Conditions of Sale (including without limitation an obligation to (i) perform, deliver, accept, sell, purchase, pay or receive monies to, from or through a person or entity, or (ii) engage in any other acts) if this would be in violation of, inconsistent with, or expose such party or any one or more of its Affiliates to punitive measure under Applicable Laws, Regulations, decrees, ordinances, orders, demands, requests, rules or requirements applicable to such party or its respective Affiliate(s), relating to trade sanctions, foreign trade controls, export controls, non-proliferation, anti-terrorism and similar laws including but not limited to those of the European Union, any EU member state, the United States of America, Canada or the United Nations or, in such party's reasonable judgment, such circumstances exist (the "**Trade Restrictions**").

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

- (a) to immediately suspend the affected obligation (whether payment or performance) until such time as the obligation is no longer affected; and/or
- (b) where the obligation continues to be affected (or is reasonably expected to continue to be affected) until the end of the contractual time for discharge thereof, to a full release from the affected obligation, provided that where the relevant obligation relates to payment for

goods which have already been delivered, the affected payment obligation shall remain suspended (without prejudice to the accrual of any interest on an outstanding payment amount) until such time as the payment obligation is no longer affected; and/or

- (c) where the obligation affected is acceptance of the vessel, to require the other party to nominate an alternative vessel,

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

Nothing in this section shall be taken to limit or prevent the operation, where available under the governing law of these General Terms and Conditions of Sale, of any doctrine analogous to the common law doctrine of frustration.

19.3 **Anti-Corruption:** The parties represent, warrant and undertake to each other on a continuous basis that they shall comply with all applicable anti-bribery and anti-money laundering laws, rules and regulations of the United States, Canada, European Union or any member state of the European Union, the United Kingdom, and any other similar laws in all applicable jurisdictions. In addition, the parties represent, warrant and undertake to each other on a continuous basis that they shall each respectively take no action which would subject the other to fines or penalties under such laws, regulations, rules or requirements. Either party may terminate the Agreement forthwith upon written Notice to the other at any time, if in its reasonable judgment, the other is in breach of any of the representations, warranties or undertakings in this anti-corruption section.

19.4 **Destination:** It is a condition of these General Terms and Conditions of Sale that Product shall not be imported (by Customer or others), directly or indirectly and irrespective of means, to any destination which is at the time of such import either prohibited under the law of the country where such Product was produced or contrary to any Applicable Laws, Regulations or guidelines applied by the government of that country or any relevant agency thereof. Customer shall keep informed as to such Applicable Laws, Regulations and guidelines and shall ensure that they are complied with. Customer shall exercise reasonable efforts to ensure that Product shall not by Customer:

- (a) be exported to any Restricted Jurisdiction (as hereinafter defined);
- (b) be sold or supplied to any natural or legal persons in any Restricted Jurisdiction; or

be sold or supplied to any natural or legal person for the purposes of any commercial activity carried out in or from any such Restricted Jurisdiction.

For the purposes of this subsection “**Restricted Jurisdiction**” shall mean any country, state, territory or region against which there are sanctions imposed by the European Union, any EU member state, the United Kingdom of Great Britain and Northern Ireland, the United States of America, Canada or the United Nations, or any other sanctions which prohibit the shipment thereto of petroleum products (including any Product to be delivered hereunder).

19.5 **Sovereign Immunity:** Each party represents and warrants to the other party that it has entered into these General Terms and Conditions of Sale in a commercial capacity and that with respect to these General Terms and Conditions of Sale it is in all respects subject to civil and commercial law.



Each party hereby consents generally in respect of any legal action, arbitration or other proceedings arising out of or in connection with these General Terms and Conditions of Sale to the giving of any relief or to the issue of any process in connection with such action, arbitration or proceedings irrespective of the jurisdiction in question. Each party hereby irrevocably and unconditionally and to the fullest extent permitted by Applicable Law waives any rights of sovereign immunity which it may now have or which it may subsequently acquire in respect of its position or any property and/or assets (presently owned or subsequently acquired and wherever located) belonging to it.

## 20.0 **General Provisions**

- 20.1 **Waiver:** No waiver by either party of any provision of these General Terms and Conditions of Sale or of any breach of any provision of these General Terms and Conditions of Sale takes effect or is binding upon the party unless in writing and signed by the party. Unless otherwise provided therein, such waiver will not limit or affect the rights of the party with respect to any other, continuing or subsequent provision or breach. Rights and remedies hereunder are cumulative to any other rights and remedies which may be granted or allowed by law or in equity.
- 20.2 **Further Assurances:** Irving Oil and Customer will, at any time and from time to time, each do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, all such further documents, assurances or things, and secure all necessary consents, as may be reasonably required for the more perfect observance and performance by Irving Oil and Customer of the terms of the Agreement.
- 20.3 **Governing Law:** These General Terms and Conditions of Sale and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of Ireland. Each party irrevocably agrees that the courts of Ireland shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with these General Terms and Conditions of Sale or its subject matter or formation.
- 20.4 **Severability:** The invalidity or unenforceability of any provision of these General Terms and Conditions of Sale or of any document or certificate given pursuant hereto, or part thereof, does not affect the validity or enforceability of any other provision hereof or contained in such document or certificate, or part thereof; and these General Terms and Conditions of Sale and such document or certificate will, provided that these General Terms and Conditions of Sale remains capable of completion in all material respects as contemplated hereunder, be construed as if such invalid or unenforceable provision was omitted.
- 20.5 **Trademarks, Etc.:** Nothing in these General Terms and Conditions of Sale confers any right or license upon Customer or any of its employees, agents, contractors, distributors, dealers or customers to apply or use, and consequently Customer shall not, directly or indirectly, in any manner whatsoever, apply, use or refer to, any trademark, copyright, business name or style or similar right, any promotion or marketing program or any additive ingredient (including any additive ingredient package) which is owned or enjoyed by Irving Oil or any of Irving Oil's Affiliates.
- 20.6 **Advertising, Promotion, Etc.:** Customer shall not and shall cause each of its employees, agents, contractors, distributors, dealers and customers to not advertise, promote or otherwise market, directly or indirectly, in any manner whatsoever which represents, indicates or suggests that the

quality Specifications of any Product exceed the quality Specifications applicable to such Product as communicated to the Customer by Irving Oil, provided, however, Customer shall be entitled to advertise, promote or otherwise market, if applicable, the fact that Product sold by Customer contains particular additive(s) supplied by Customer and to which Customer has proprietary rights and interests (but which, for certainty, does not include any additive(s) supplied or added to the Product by Irving Oil).

- 20.7 **Relationship of Parties:** Irving Oil and Customer are, and will at all times remain, independent contractors; and neither party will make, condone or acquiesce in any representation, or take, condone or acquiesce in any act, which could establish any apparent relationship of agency, joint venture, partnership, employment or master/servant with the other party.
- 20.8 **Time of Essence:** Except where expressly otherwise provided, time is of the essence in respect of the Agreement, and no extension or variation of the Agreement operates as a waiver of this section.
- 20.9 **Survival:** All covenants, warranties or obligations of either party which expressly or by their nature survive termination or expiration of the Agreement continue in full force and effect subsequent to, and notwithstanding, such termination or expiration until they are satisfied or by their nature expire.
- 20.10 **Entire Agreement:** Unless otherwise agreed in writing between the Customer and Irving Oil, these General Terms and Conditions of Sale and the Invoice contain and constitute the entire agreement between Irving Oil and Customer with respect to the subject matter hereof, and all proposals, negotiations, commitments, warranties, assurances, communications and representations of any kind with reference hereto, whether oral or written, express or implied, which are not expressly set forth in these General Terms and Conditions of Sale and / or the Invoice are cancelled, null and void.
- 20.11 **Binding Effect:** The Agreement inures to the benefit of and is binding upon Irving Oil, its successors and assigns. No reorganization, conversion of Irving Oil from one form of entity to another or change of jurisdiction of formation for Irving Oil shall have any effect on the Agreement. The Agreement inures to the benefit of and is binding upon Customer and Customer's successors.
- 20.12 **Currency:** Unless expressly stated otherwise in these General Terms and Conditions of Sale, all sums of money to be calculated or paid under these General Terms and Conditions of Sale shall be calculated and paid in Euro.
- 20.13 **Assignment:** Customer shall not assign, novate or otherwise transfer the Agreement, in whole or in part, nor any of its rights hereunder. Any purported assignment, novation or transfer by Customer shall be void. Irving Oil may, without Customer's consent, transfer its rights and obligations under the Agreement.
- 20.14 **Recourse Limited to Contracting Parties:** No one other than a party to the Agreement, their successors and permitted assignees, shall have any right to enforce any of its terms. All liabilities, whether arising in contract or in tort, in law or in equity, or by statute, that may be based upon or in respect of, that may arise under, out of or by reason of, that may be connected with, or that may relate in any manner to, the Agreement or the negotiation, execution, performance or breach of the Agreement, including any representation or warranty made in, in connection with, or as an inducement to, the Agreement (collectively, "**Liabilities**"), are those solely of the entities identified

as parties to the Agreement (the “**Contracting Parties**”). No person or entity who is not a Contracting Party, including, without limitation, any director, officer, employee, incorporator, member, partner, manager, stockholder, affiliate, agent, attorney or representative of, or any financial advisor or lender to, a Contracting Party, or any director, officer, employee, incorporator, member, partner, manager, stockholder, affiliate, agent, attorney or representative of, or any financial advisor or lender to, any of the foregoing (each, a “**Nonparty**”), will have any liability, whether in contract or in tort, in law or in equity, or under statute, for any Liabilities, and, to the maximum extent permitted by law, each Contracting Party hereby waives any right it may have to pursue Liabilities against any Nonparty(ies) and hereby releases the Nonparties from all Liabilities. Without limiting the foregoing provisions of this section, to the maximum extent permitted by law, (i) each Contracting Party hereby waives and releases any and all rights, claims, demands, or causes of action that may otherwise be available at law or in equity, or granted by statute, to avoid or disregard the entity form of a Contracting Party or to otherwise impose liability of a Contracting Party on any Nonparty, whether granted by statute or based on theories of equity, agency, control, instrumentality, alter ego, domination, sham, single business enterprise, piercing the veil, unfairness, undercapitalization, or otherwise; and (ii) each Contracting Party disclaims any reliance upon any Nonparty(ies) with respect to the performance of the Agreement or any representation or warranty made in, in connection with, or as an inducement to the Agreement. The Nonparties constitute express third party beneficiaries of this section. Notwithstanding anything contained in this section to the contrary, this section does not affect the validity of any written guaranty or similar written assurance of performance given by a Nonparty on behalf of a Contracting Party.

- 20.15 **Performance:** Irving Oil shall be entitled to perform any of the obligations undertaken by it and to exercise any of the rights granted to it under these General Terms and Conditions of Sale through any Affiliate, subcontractor or agent and any act or omission of any such Affiliate, subcontractor or agent shall for the purposes of these General Terms and Conditions of Sale be deemed to be the act or omission of Irving Oil.
- 20.16 **Conflicts of Interest:** Except as otherwise provided herein, each party shall not (and each party shall procure that its employees and officers shall not), directly or indirectly pay salaries, commissions or fees to employees or officers of the other party, or designees or agents of such employees or officers, or make to or receive from any employee or officer of the other party, or designees or agents of such employee or officer, any payments or rebates, or favor employees or officers of the other party, or designees or agents of such employees or officers, with gifts or entertainment of significant cost or value, or with services or goods sold at less than full market value, unless such employees or officers are acting as representatives of that other party.
- 20.17 **Notices:** Any Notice required or permitted to be given by one party to the other party under the Agreement shall be given in writing (except where otherwise herein expressly provided) and delivered personally or by registered mail (postage prepaid), courier (courier prepaid ) or by e-mail addressed to such other party or delivered to such other party using the addresses and contact details and / or addresses specified in respect of each party on the Invoice or at such other or amended address as may be given by a party to the other in accordance herewith. A Notice will be deemed to have been received when delivered or, if mailed, on the 7th Business Day after the mailing thereof or, if sent by courier, on the 2nd Business Day after the couriering thereof or, if sent by e-mail, on the day of transmission if sent prior to 3:00 p.m. (Irish time) on a Business Day and if not then on the next Business Day. In the event of disruption of postal or courier service in any

relevant location prior to giving any Notice, the Notice-giving party will not give the Notice by such service.