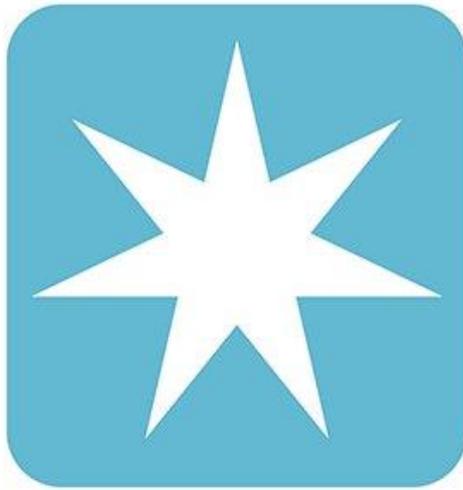


# MAERSK OIL TRADING SALES CONTRACT Trade [....]



[INSERT DEAL CONFIRMATION]

## **MOT FOB Terms**

### **1 Introduction to these MOT FOB Terms**

- 1.1 The Seller and the Buyer as specified in the Deal Confirmation are collectively referred to as the "**Parties**" and individually as a "**Party**" in these MOT FOB Terms.
- 1.2 The BP Oil International Limited General Terms and Conditions for Sales and Purchases of Crude Oil and Petroleum Products (2015 Edition) Version 1.2 (the "**BP GTCs**") shall be deemed incorporated herein to the extent compatible with these MOT FOB Terms. In the event of any conflict between these MOT FOB Terms and the BP GTCs, these MOT FOB Terms shall prevail to the extent of the conflict.
- 1.3 Capitalised terms in these MOT FOB Terms shall have the meaning given to them in the BP GTCs, unless specified herein.

- 1.4 Any reference to a "working day" is a reference to a day which is not a weekend or a public holiday in the specified place.
- 1.5 These MOT FOB Terms together with the Deal Confirmation shall be considered the 'Special Provisions' for the purpose of the BP GTCs.

## **2 Quality**

- 2.1 The product shall be the product specified in the Deal Confirmation (the "**Product**").
- 2.2 Notwithstanding any other provision of this Agreement, any applicable law or industry custom or practice, the Buyer shall have the sole responsibility for the nomination of the grade(s) of the Product. The Seller does not give any guarantee, representation, undertaking or warranty, whether express or implied, as to the Product's merchantability, fitness or suitability for any particular purpose. The conditions in Sections 13 and 14 of the English Sale of Goods Act 1979 that would otherwise be implied into this Agreement are expressly excluded from this Agreement.

## **3 Delivery**

- 3.1 The Buyer shall make and be responsible for all connections and disconnections between the delivery hose and the Vessel/Barge, including ensuring that the delivery hose is properly connected to the Vessel's/Barge's manifold prior to the commencement of loading.
- 3.2 In addition to Sections 5.6.2 and 5.7 of the BP GTCs, if the Buyer is in breach of Section 5.6.1 of the BP GTCs, the Buyer shall indemnify the Seller, its agents, representatives, officers and employees harmless from and against any and all damages, claims and costs arising from such breach.
- 3.3 The Buyer shall notify the Seller in writing of the Vessel's ETA at the Loading Port at least 48 (forty-eight) hours prior to the Vessel's ETA. Following such notice, the Buyer shall keep the Seller advised on any variation to the Vessel's ETA as soon as reasonably possible. Any change to the Vessel's ETA or the delivery location shall be subject to the Seller's agreement in writing. Such agreement shall be in the Seller's sole and unfettered discretion.
- 3.4 If the Vessel arrives outside the delivery period as specified in the Deal Confirmation (the "**Delivery Period**"), the Seller shall be entitled to refuse to deliver the Product. The Seller may, in the Seller's sole and unfettered discretion agree to deliver the Product notwithstanding the Vessel arriving outside the Delivery Period.
- 3.5 If the Product is to be delivered into more than one Vessel, the Buyer shall ensure that the times that NOR is tendered for each Vessel is spread evenly over the Delivery Period.

## **4 Price**

- 4.1 In the event the density of the Product is below or above the specifications agreed in the Deal Confirmation, the price per unit of measurement for the Product as specified in the Deal Confirmation shall neither be increased nor decreased.

- 4.2 The price of the Product shall be calculated by multiplying the price per unit of measurement for the Product as specified in the Deal Confirmation, by the quantity of the Product as determined in accordance with Clause 6 of these MOT FOB Terms and expressed to:
- 4.2.1 the number of decimal places specified in the Deal Confirmation; or
  - 4.2.2 if the Deal Confirmation does not specify the relevant number of decimal places, three decimal places as follows:
    - 4.2.2.1 if the fourth decimal place is five or greater, the third decimal place shall be rounded up to the next numerical digit; and
    - 4.2.2.2 if the fourth decimal place is less than five, the third decimal place shall remain unchanged.
- 4.3 Volatility in the commodities markets may result in a zero or negative final price between the Seller and the Buyer. In the event the final price for the Product is a value of zero or less than zero:
- 4.3.1 the Agreement will remain valid, and save as set out in this clause, the mutual and respective rights and obligations of each Party will remain unaffected;
  - 4.3.2 the Buyer shall receive the full contracted volume of Product;
  - 4.3.3 the Seller shall in no event be liable to pay an amount assessed by reference to a negative final price to the Buyer; and
  - 4.3.4 the Buyer shall pay a total price for all of the Product of USD1.00 (one United States dollar), exclusive of any VAT, GST or any similar tax. The parties recognise the adequacy of this amount as consideration for the Product.
- 4.4 In all cases, the price of the Product as specified in the Deal Confirmation is exclusive of any duties, fees, taxes, government levies, export duties, cost or payments at the Loading Port including interest and penalties levied as a consequence of non-payment of any of the foregoing and all other charges on the Product, or Vessel or freight charges, all of which are for the account of and shall be paid by the Buyer.

## **5 Payment**

- 5.1 Unless expressly stated to the contrary in the Deal Confirmation, payment shall be made against presentation of the Seller's invoice in United States dollars by telegraphic transfer of same day funds by no later than five (5) working days in New York following the date of the bill of lading for the Product.
- 5.2 Where it is stated in the Deal Confirmation or by virtue of the provisions of Clause 5.6 that prepayment of the price is required, such prepayment shall be made in accordance with the following:

- 5.2.1 The Seller shall issue a provisional invoice to the Buyer, which shall be based on the pricing information available to the Seller at the time it issues the provisional invoice;
- 5.2.2 The Buyer shall make payment in United States dollars by telegraphic transfer of same day funds on the due date specified on the Seller's provisional invoice; and
- 5.2.3 Payment of any balance due by the either Party to the other shall be made within three (3) working days in New York following the receipt of the Seller's final invoice which shall be prepared as soon as practicable after all the relevant pricing and quantity information becomes available to the Seller.
- 5.3 Payment by the Buyer shall be made in full, without set-off, counterclaim, deduction and/or discount, free of bank charges, suspension or withholdings.
- 5.4 The Buyer shall provide the Seller with all necessary information in order to ensure that the Seller's invoice can be issued in good time and in any event prior to the payment deadlines set out in Clause 5.1 or Clause 5.2, as applicable, of these MOT FOB Terms. Such information shall include, but is not limited to, the Buyer's VAT number or equivalent and the Buyer's email address. If the Seller's invoice is not issued in good time due to the Buyer's failure to present the necessary information, the Seller shall be entitled to issue a provisional invoice to the Buyer basis the information available to the Seller and the Buyer shall make payment against that provisional invoice in accordance with this Agreement or if no provisional invoice is issued, the Buyer shall be liable to pay interest in accordance with Clause 5.5 of these MOT FOB Terms for the delay in payment.
- 5.5 If the Buyer fails to make payment to the Seller in accordance with this Agreement, the Seller shall be entitled to charge the Buyer interest at the rate of two (2) per cent per calendar month or three (3) percentage points above the Secured Overnight Financing Rate per calendar month, whichever is higher. The Buyer shall make payment of any interest accrued no later than five (5) working days in New York following the issuance date of the related invoice. Late payments made by the Buyer and received by the Seller to be credited first against any interest owed, and then the balance of payment shall be credited against the principal debt. Section 63.9.2 of the BP GTCs shall apply to this Clause 5.5.
- 5.6 If Credit Support is not already provided for in the Deal Confirmation, the Seller shall be entitled in its sole discretion and at any time to demand that the Buyer (i) makes payment in advance in accordance with Clause 5.2, or (ii) opens or issues a letter of credit (from a first-class international bank), a parent company guarantee, or any other financial guarantee requested by the Seller. Each financial guarantee shall be in a format acceptable to the Seller and shall be opened or issued as soon as reasonably practicable and in any event within two (2) working days in New York following the Seller's request. If for any reason the delivery, loading or discharge of the Product, as the case may be, will not take place within any relevant period which may be referred to in the financial guarantee, the Buyer shall promptly open or issue a new financial guarantee or amend the existing financial guarantee, both in terms acceptable to Seller. The Buyer will remain responsible for payment in the event that payment is not made under a financial guarantee or by prepayment for any reason.
- 5.7 If the Buyer receives any communication purporting to be coming from the Seller, by which Seller's banking details are modified, the Buyer shall exercise best endeavours to validate such

communication by contacting a telephone number or an email address verified by the Seller, prior to making payment.

- 5.8 If the Buyer fails either in whole or in part to make payment to the Seller in accordance with this Agreement or fails either in whole or in part to provide acceptable Credit Support, such failure shall constitute a material breach of this Agreement. On the occurrence of such breach, the Buyer shall be liable for any and all costs, losses or damage incurred by the Seller as a result of the Buyer's breach. The Seller may, at its sole discretion, without prejudice to its other rights, by and upon notice in writing to the Buyer:

5.8.1 terminate this Agreement, suspend or cancel delivery of the and claim damages; and

5.8.2 without prejudice to terminate this Agreement, terminate any agreement(s) between the Seller and the Buyer concerning the future delivery of any product or suspend delivery under such agreements until further notice.

## **6 Determination of Quality and Quantity**

- 6.1 The quantity and quality of the Product shall be determined by the Seller's shoretank measurement and samples taken at the Loading Port with the results of such analysis to be sent by the Seller to the Buyer. Absent manifest error or fraud, the results of such analysis shall be final and binding for invoicing purposes and as to the delivered quantity and quality of the Product and the Buyer agrees that no sample or measurement from any point prior to or following such analysis may form the basis or be relied on by any party for any quality or quantity claim or dispute, even if such point is prior to the risk and title of the Product passing to the Buyer.

- 6.2 Any complaint pertaining to the quality or quantity of the Product shall be notified in writing to the Seller as soon as possible and in any event within 14 (fourteen) calendar days from the date of disconnection of the loading hoses (the date of disconnection of the hoses to be "day 0") and accompanied by evidence fully supporting the complaint. If the Buyer fails to make such written presentation, within the 14 (fourteen) calendar day period, any liability of the Seller in relation to the quality and/or quantity of the Product shall be extinguished and any claim by the Buyer in relation to the quality and/or quantity of the Product shall be barred and deemed waived.

- 6.3 Any dispute as to quality or quantity of the Product shall be determined finally and conclusively by an independent expert appointed jointly by the Buyer and the Seller. In the case of a quality dispute, such expert shall be requested to analyse one or more of the quality samples taken in accordance with:

6.3.1 the provisions of this Clause 6; or

6.3.2 if the fraud or manifest error relates to the quality samples taken accordance with the provisions of this Clause 6 themselves, -quality samples taken in accordance with good standard practice at the Loading Terminal.

- 6.4 In determining whether a test result meets or exceeds a specification limit, such expert shall utilise the processes contained in the relevant sections of ISO 4259:2006 or ATSM equivalent,

and apply such processes where the test method that was used to determine the quality specification as reported by the Seller at the time of delivery was either ISO or ASTM, respectively and apply such processes to all specification parameters contained within the specification.

## **7 Title and Risk**

- 7.1 Title in the Product shall pass from the Seller to the Buyer at the place of delivery when the product passes the flange connection between the loading hose and the Vessel's/Barge's receiving hose, or on the Buyer's payment to the Seller under Clause 5 of these MOT FOB Terms, whichever is later.
- 7.2 Risk in the Product shall pass from the Seller to the Buyer at the place of delivery as the Product passes the flange connection between the loading hose and the Vessel's/Barge's receiving hose.

## **8 Duties and taxes**

- 8.1 Unless specified otherwise in the Deal Confirmation, the amount of any taxes, duties, imposts, fees, charges and dues of any description imposed or levied by any governmental, local or port authority at the place of delivery or anywhere else arising out of or in connection with the Vessel, the Product or in its export, delivery, transportation, ownership, sale or use, whether in force at the date of the Deal Confirmation or introduced by any applicable legislation, order or other instrument following the date of the Deal Confirmation or howsoever otherwise applicable (collectively referred to as "**Taxes**"), shall be for the account and sole responsibility of the Buyer.
- 8.2 The Buyer shall indemnify, defend and hold the Seller, its agents, representatives, officers and employees harmless from and against any and all claims, costs, fines and expenses related to any and all Taxes.
- 8.3 The Buyer shall be responsible for obtaining customs clearance of the Product at the place of delivery or anywhere else and shall be responsible for and indemnify the Sellers against any customs duties and excise taxes, if applicable, assessed by any custom officials and payable to any governmental authority. In the event that the Seller requests the Buyer to provide any documentation required by any relevant authorities, the Buyer shall provide such documents as soon as reasonably practicable.

## **9 Laytime and Demurrage**

- 9.1 The laytime allowed for the Seller to load the Product shall be as specified in the Deal Confirmation, Saturdays, Sundays and public holidays included ("**Laytime**").
- 9.2 Any NOR tendered by the Vessel shall only be considered valid after the Vessel has berthed at the Loading Terminal and after any deballasting. The Seller has no obligation whatsoever to provide for ballast facilities. All deballasting operations remain under the responsibility of the master of the Vessel.
- 9.3 Save as set out in this Clause 9.3, demurrage shall only accrue if the Vessel tenders a valid NOR on the date that the Buyer has nominated as the Vessel's ETA for the purpose of Section

5.2.1(c) of the BP GTCs or as notified in accordance with Section 5.4 of the BP GTCs (the “**Nominated Loading Date**”), as follows:

- 9.3.1 if the Vessel tenders a valid NOR prior to the Nominated Loading Date, such NOR shall, for the purpose of demurrage, be deemed to have been tendered at 00.01 hours LT on the Nominated Loading Date or on commencement of loading, whichever is the earlier; and
  - 9.3.2 if the Vessel tenders a valid NOR after the Nominated Loading Date, but within the Delivery Period specified in the Deal Confirmation, the Seller will endeavor to arrange to load the Vessel as soon as possible upon its arrival. In this case, Laytime will not run until the commencement of loading of the Product.
- 9.4 If the Vessel arrives and/or tenders NOR outside the Delivery Period as specified in the Deal Confirmation, the Seller shall have the right under Clause 2.3 of these MOT FOB Terms to decline to deliver the Product. However, if the Seller instead chooses to deliver the product, no demurrage shall be payable in any circumstances.
- 9.5 Independent inspectors appointed by and for the account of the Buyer must be present on board the Vessel within one (1) hour of notification. Waiting time for the inspector in excess of one (1) hour will not count as Laytime.
- 9.6 Any claim for demurrage shall be presented to the Seller in writing within 30 (thirty) calendar days from the date of the disconnection of the hoses at the Loading Terminal (the date of disconnection of the hoses at the Loading Terminal to be “day 0”). Such notification must:
- 9.6.1 state in reasonable detail the specific facts upon which the claim is based;
  - 9.6.2 include a calculation of the demurrage due; and
  - 9.6.3 except as set out in Clause 9.9 of these MOT FOB Terms, be accompanied by supporting documentation as set out in Clause 9.7 of these MOT FOB Terms.
- 9.7 For the purposes of Clause 9.6 of these MOT FOB Terms, the supporting documentation which shall be sent to the Seller shall include:
- 9.7.1 a copy of the Buyer’s vessel nomination (evidencing the date and time sent);
  - 9.7.2 a copy of the Vessel owners’ invoice and calculation of time used / time on demurrage;
  - 9.7.3 a copy of the statement of fact (“**SOF**”) at the load port duly signed by Vessel’s Master and if available, the Loading Terminal;
  - 9.7.4 any letters of protest issued by the Vessel’s Master or the Loading Terminal, including any letter of protest issued by the Master in the event that the Loading Terminal refused to sign the SOF; and

9.7.5 any other document which may be reasonably relevant for the computation of the time used/time on demurrage.

9.8 The demurrage claim shall only be considered received for the purpose of Clause 9.6 of these MOT FOB Terms if it is received by the Seller:

9.8.1 before 14:00 CET on the 30<sup>th</sup> day; or

9.8.2 if the 30<sup>th</sup> day falls on a non-working day in the country of incorporation of the Seller before 14:00 CET on the preceding working day in that country.

9.9 If any supporting documentation is not available to the Buyer within the 30-day period expressed above, such documentation must be collected and sent by the Buyer to the Seller within 90 (ninety) days from the date of the disconnection of the hoses (disconnection of the hoses to be "Day 0").

9.10 If the Buyer fails to make the written presentation in accordance with Clause 9.6 of these MOT FOB Terms, including any failure to provide the necessary supporting documentation within the 30 (thirty) or 90 (ninety) calendar day periods set out in Clauses 9.6.3 and 9.9 of these MOT FOB Terms, then any liability of the Seller for demurrage shall be extinguished and any claim by the Buyer for demurrage shall be barred and deemed waived.

9.11 Demurrage will be due only if and to the extent demurrage is due to the owner /operator of the Vessel and be based on the reversible laytime principle. For the purpose of this Clause 9.11, a proof of payment to the Vessel owner / operator of the demurrage due under the terms of the relevant charterparty shall be submitted by the Buyer to the Seller as soon as available.

## **10 Limitation of liability**

10.1 The Seller's total liability to the Buyer for any and all categories of loss and/or damages of whatsoever kind and type shall not exceed the total purchase price of the Product. This exclusion of the Seller's liability to the Buyer shall apply regardless of whether that liability arises in contract, tort or any other way whatsoever.

## **11 Sanctions, Export Controls and Anti-Corruption**

11.1 Each Party represents that in the performance of any transaction of Product that is the subject of this Agreement and in the performance of this Agreement each has and shall undertake all activities in compliance with and not to cause the other Party to be in violation of the economic and trade sanctions and export control laws of the United States, the United Kingdom, the European Union and its member states and as promulgated by the United Nations Security Council ("**Sanctions and Export Controls**").

11.2 Further, each Party represents and warrants that:

11.2.1 it is not, either at the date of the Deal Confirmation or at the time of any future transaction between the Parties, a person or entity within any category of persons or entities subject to any sanction, asset blocking restriction or prohibition or any

other restriction or prohibition on commercial transactions as prescribed by Sanctions and Export Controls, including but not limited to any list of specifically designated nationals or blocked persons or other entities subject to Sanctions and Export Controls (a "**Sanctioned Party**");

11.2.2 it has not within the five (5) years prior to the date of the Deal Confirmation nor at the time of any future transaction between the Parties, been convicted or otherwise penalized for any violation of Sanctions and Export Controls;

11.2.3 no Sanctioned Party has, either at the date of the Deal Confirmation or at the time of any future transaction between the Parties, any interest of any nature whatsoever in either Party or in any right arising out of or relating to, either directly or indirectly, any transaction between the Parties;

11.2.4 it shall not take any action to cause the other Party to perform any activity for the benefit of, either directly or indirectly, any Sanctioned Party or otherwise in violation of Sanctions and Export Controls; and

11.2.5 it has obtained all necessary sanctions, export, re-export and/or import licenses or permits for the Product subject to the Deal Confirmation and that the Product will not be for the use of any Sanctioned Party or in violation of Sanctions and Export Controls.

11.3 The Parties represent and undertake that in the performance of this Agreement and any other transaction between the Parties, each and all of its directors, officers or sub-contractors will comply in all material respects with all applicable laws relating to anti-corruption.

11.4 For the purpose of clarity, each Party will not give, promise or attempt to give or approve the giving of anything of value to any person, for illegal purposes or for improperly obtaining or retaining business.

11.5 The Parties have each implemented procedures relevant to the representations and warranties of this Clause 11 and Sections 71 and 72 of the BP GTCs and will consistently apply those procedures to ensure the representations and warranties of this Clause 11 and Sections 71 and 72 of the BP GTCs remain true and correct at all times.

11.6 Each Party agrees to immediately notify the other Party in writing if any of the representations, warranties or covenants set forth in this Clause 11 and Sections 71 and 72 of the BP GTCs are no longer true or have been breached or if such Party has a reasonable basis to believe that they may no longer be true or have been breached.

11.7 If any of the representations, warranties or covenants set forth in this Clause 11 and Sections 71 and 72 of the BP GTCs are no longer true or have been breached, notwithstanding any other provision in this Agreement or any other agreements between the Parties providing for material breach, such shall be considered a material breach of this Agreement. Upon such material breach, the non-breaching Party shall have the ongoing right to terminate this Agreement with immediate effect without incurring any liability whatsoever to the Party in breach.

11.8 Each Party expressly agrees to indemnify the other Party against any and all claims, judgments, demands, liabilities, fines, penalties, charges, costs and expenses of whichever nature (including legal costs) arising out of or caused by any breach by such Party of this Clause 11 and Sections 71 and 72 of the BP GTCs.

## **12 Confidentiality**

12.1 The Parties agree that the existence of this Agreement and its contents shall be kept confidential.

## **13 Assignment**

13.1 The Buyer shall not be entitled to assign the Agreement or any rights or obligations hereunder without the written consent of the Seller. The Seller shall be entitled, in their sole discretion, to refuse to provide such written consent or to require that the Buyer's assignee guarantee the Buyer's performance of the Agreement a form acceptable to the Seller, prior to giving consent.

13.2 In the event that the Buyer assigns this Agreement (in accordance with Clause 13.1 of these MOT FOB Terms), the Buyer and the assignee shall be jointly and severally liable for proper performance of all of the Buyer's obligations under this Agreement, including but not limited to the Buyer's payment obligations.

## **14 Notice**

14.1 The Buyer shall give any notice required under this Agreement to the Seller by email to the relevant email address specified in the Deal Confirmation. The Seller shall be entitled to send any notice required under this Agreement to the Buyer by email to any email address of the Buyer provided in the Deal Confirmation and/or such other email that the Parties agree in writing. Any notice sent other than in accordance with this Clause 14.1 shall be deemed to have not been received and shall have no legal or contractual force or effect.

14.2 No notice from the Buyer to the Seller arising out of or in connection with this Agreement shall be effective unless or until it has been received by the Seller within office hours, being 08:30 CET to 17:30 CET on a working day in Copenhagen or the country which the communication is being received. Any notice received after 17:30 CET shall be deemed to have been received at 08:30 CET on the next working day in Copenhagen or the country which the communication is being received.