

CONTRACT No \_\_\_\_\_

London

« » 2019

**PARTIES**

- (1) **[INSERT NAME OF BUYER]**, a company incorporated and existing under the laws of [●] whose registered office is at [INSERT REGISTERED ADDRESS OF BUYER] ("Buyer"); and
- (2) **BNK (UK) Limited**, a company incorporated and existing under the laws of England whose registered address is at Salatin House, 19 Cedar Road, Sutton, Surrey, SM2 5DA, ("Seller");

(together, the "Parties") have concluded the present contract (the "Contract") as follows.

**AGREED TERMS****DEFINITIONS**

For the purpose of the Contract the following terms shall have the following meanings, unless the context otherwise requires:

- a. «banking day» means a day when the banks in the specified place are open for the transaction of normal banking business;
- b. «month M» - month of pricing;
- c. «calendar» means a Gregorian calendar;
- d. «day» means a calendar day;
- e. «metric ton» or «tonne» means a quantity equivalent to a mass of one thousand (1,000) kilograms;
- f. «month» means a calendar month;
- g. «the estimated volume of the monthly Goods lot» – the volume of Goods agreed upon by the Parties of the present Contract suggested for delivery during specified period of time within the frames of the general delivery period;
- h. «the monthly Goods lot» – a specified Goods volume, the pricing of which is formed with application of a special period of time as stipulated by the terms of the Contract;
- i. «the suggested for delivery Goods volume» – a Goods volume suggested by the Seller for delivery under the terms and according to the procedures stipulated by the present Contract as full or partial monthly Goods lot.
- j. «the agreed Goods lot» – a specified Goods volume agreed upon by the Parties for delivery on the basis of one additional agreement;
- k. «a Goods lot» - a specified Goods volume shipped and/or received simultaneously or delivered under one shipping document.

**1. SUBJECT MATTER OF THE CONTRACT**

1.1. The Seller sells, and the Buyer buys during the period from May to December 2019 on the terms **FOB port of Riga, Latvia, AO B.L.B. Baltijas Terminals, segregated storage with color index preservation guaranteed / FOB port of Tallinn, Estonia, Dekoil OU Terminal, segregated storage with color index preservation guaranteed / FOB port of Muuga, Estonia, VOPAK E.O.S. terminal, segregated storage with color index preservation guaranteed / FOB**

port of Riga, Latvia, SIA VLD GROUP terminal, segregated storage with color index preservation guaranteed / FOB port of Sillamae, Estonia, Alexela Sillamae Ltd. terminal, segregated storage without color index preservation guaranteed (according to the Incoterms 2010) Mixed Residual Oil produced by JSC Naftan hereinafter referred to as the «Goods», in the amount up to 65 000 tons +10%/-10% in the Seller's option. The estimated monthly volume of the Goods lot shall make up to 5 000 tons +/-10% in the Seller's option in May 2019 – July 2019, up to 10 000 tons +/-10% in the Seller's option in August 2019, up to 10 000 tons +10/-100% in the Seller's option in September 2019 – November 2019 and up to 10 000 tons +/-10% in the Seller's option in December 2019.

1.2. The quantity of the Goods, the option, delivery period, price, pricing period shall be stipulated by respective additional agreements forming an integral part of the present Contract (hereinafter referred to as “Additional agreement”).

1.3. The volume of the each monthly Goods lot to be shipped may be agreed in several steps: within the period from the 18th day of the month preceding the month of final price formation accepted for a definite monthly lot till the 5th day (inclusive) of the month of final price formation accepted for a definite monthly lot. At the same time the Buyer is not entitled to reject the final Goods volume in case of receiving the notification up to the 5th day (inclusive) of the month of the final price formation.

Should the Seller inform the Buyer on the suggested Goods volume after the 5th day of the month of the final price formation accepted for a definite monthly lot, the Buyer is entitled to reject the acceptance of the suggested Goods volume by written notification to the Seller within 1 (one) business day from the date of information receipt. In case the written refusal is not received until 15.00 (Minsk time) of the day following the date of additional volume confirmation the lot shall be deemed agreed.

In case if a monthly Goods lot is nominated from the first day of the month of final price formation, a quotation period from the date of the Good lot confirmation till the last day of the month of final price formation (inclusive) shall be used for final price calculation.

1.4. Not later than 1 (one) business day from the date of fixing of preliminary Euro \ US Dollar exchange rate, the Seller and the Buyer shall sign a respective additional agreement, subject to the receipt by the Buyer from the Seller a draft of such additional agreement.

1.5. Not later than 2 (two) business days from the date of receipt by the Buyer from the Seller a draft of the additional agreement with final price calculation the Seller and the Buyer shall sign the respective additional agreement.

1.6. In case the nominated volume of oil product is less than the volume of a possible tanker lot which is acceptable for the relevant terminal, the Buyer undertakes to nominate a tanker for a monthly goods lot shipment within the period specified by the Seller for the delivery of the corresponding monthly Goods lot, preventing the storage and accumulation of several monthly Goods lots at the terminal.

## 2. TERMS OF DELIVERY, QUANTITY AND QUALITY OF GOODS

2.1. The Goods shall be shipped by the agreed lots in the volumes up to:

- up to 15 000 mt +/- 10% on the basis FOB port of Riga, Latvia, AO B.L.B. Baltijas Terminals, segregated storage with color index preservation guaranteed, max. vessel length 180 m, draught up to 9 m;

- up to 10 000 mt +/- 10% on the basis FOB port of Tallinn, Estonia, Dekoil OU Terminal, segregated storage with color index preservation guaranteed, max. vessel length 185 m, draught up to 11 m;

- up to 15 000 mt +/- 10% on the basis FOB port of Muuga, Estonia, VOPAK E.O.S. terminal, segregated storage with color index preservation guaranteed, max. vessel length 200 m, draught up to 12,3 m, depth up to 34 m;

- up to 5 000 mt +/- 10% on the basis FOB port of Riga, Latvia, SIA VLD GROUP terminal, segregated storage with color index preservation guaranteed, max. vessel draught up to 7 m;

- up to 15 000 mt +/- 10% on the basis FOB port of Sillamae, Estonia, Alexela Sillamae Ltd. terminal, segregated storage without color index preservation guaranteed, max. vessel length 275 m, draught up to 15,8 m

in the Seller's option unless otherwise agreed by the Parties, by one lot on board the vessel nominated (or replaced) by the Buyer and accepted by the Seller.

2.2. The delivery period of the Goods under the present Contract shall be May 2019 – January 2020.

2.3. The Goods quality parameters are in conformity with the Appendix 1.

2.4. The Goods are considered delivered by the Seller and accepted by the Buyer:

a) in respect of quantity – as per Bill of Lading quantity in metric tons in vacuum that shall be final and binding for both Parties.

b) in respect of quality as per quality stipulated in the clause 2.3 and defined at loading port by mutually agreed independent inspector, based on shore tank composite sample.

2.5. The expenses for the inspection incurred as per clause 2.4 above are to be borne by the Parties in equal shares.

2.6. Not later than 10 business days from the date of the resource confirmation for realization the Seller shall be obliged to specify the 5-day loading range for agreed lot to be delivered within the month M in case of 100% prepayment is fulfilled by the Buyer. The Seller shall narrow the 5-day loading range to a 2-day loading window not later than 2 calendar days prior to the first date of estimated loading or in case the narrowed 2-day loading window falls on the first 7 days of the delivery month, the Seller shall narrow the loading range to a 2-day loading window not later than the 27th day of the month M-1.

In case the purchase volume of oil product is less than the volume of a possible tanker lot which is acceptable for the relevant terminal, the Buyer undertakes to nominate a tanker for a monthly goods lot shipment within the period specified by the Seller for the delivery of the corresponding monthly Goods lot, preventing the storage and accumulation of several monthly Goods lots at the terminal.

The Seller reserves the right to fix for the Buyer the tanker nomination period without bearing any responsibility to the Buyer for any potential losses. When selling Goods on FOB delivery basis the Buyer is liable for availability of vessels in the port for the lifting of Goods within the terms agreed with Seller. The vessel is nominated by the Buyer as agreed with the Seller.

In any case the Seller reserves the right to nominate to the Buyer another period of time for tanker nomination without bearing any obligations to the Buyer for any possible losses.

2.7. The date of the delivery of the Goods under the present Contract shall be the Bill of Lading date.

2.8. In case if due to reasons beyond the Seller's control the quantity of Goods of one or more agreed lots delivered within a specified period of time is lower than the volumes stipulated in sub-clause 1.1. then under the Parties agreement the total volume of the Goods to be delivered may be compensated by increasing the volume of successive monthly Goods lots (subject to Goods availability) within the delivery period and/or delivery period prolongation for the period necessary and sufficient for the delivery of the full volume of the Goods stipulated in sub-clause 1.1. of the present Contract subject to the respective changes of quotation periods.

If the Parties do not reach an agreement on delivery period prolongation, the Buyer shall accept the Goods volumes actually dispatched hereunder without claiming from the Seller the deliveries of the Goods quantity in full as stipulated in sub-clause 1.1. hereunder.

Should the capacity of OJSC Naftan be decreased or temporary discontinued the Buyer accepts the factually delivered volume of the Goods without demanding from the Seller the delivery of the full volume of the agreed lot.

2.9. Should it be impossible to deliver the Goods for the reasons beyond the Seller's control or if the Buyer breaches the terms of payment, date of signing of additional agreements (to the Supply contract) on Goods price calculation, terms of tanker nomination, the Seller has the right to reduce the volume of the agreed Goods lot to be delivered without bearing any obligation to the Buyer for any possible losses. The Seller is to undertake all reasonable efforts to perform the agreed monthly deliveries in full.

### 3. THE PRICE AND TOTAL COST OF THE CONTRACT

3.1. The price of the Goods on the basis FOB port \_\_\_\_\_ (terminal \_\_\_\_\_) shall be calculated on the basis of:

**Basic quotations: quotations of Platts agency in its publication Platts European Marketscan - an arithmetic average of the average quotations of a quotation day rounded to the second decimal place**

for the position "VGO 0,5 - 0,6%" published under the heading «Cargoes CIF NWE / Basis ARA» and «Barges FOB Rotterdam».

**The provisional price (Pr(P)) is calculated as follows:**

$$\text{Pr(P)} = (\text{PI(P)} + \text{D}) * 1,1 / \text{K(P)} \text{ EUR/USD},$$

**PI(P)** – average value of the basic quotations for the period from the **1st to 18th quotation day (inclusive) of the month** preceding the month of the final price formation for the agreed Goods lot, given in USD per metric ton for the respective position

**D** – the correction on chosen basis: FOB port of loading offered by the Buyer in the bid, in US dollars per metric ton;

**K(P) EUR/USD** – the official currency rate EUR/USD, fixed by the Bloomberg agency BFIX (14:00 Frankfurt), published on site <http://www.bloomberg.com/markets/currencies/fix-fixings>;

- for the volume (lot) of the Goods confirmed for delivery within the period up to the 18th day of the month preceding the month of the final price formation – on the 19th day of the month preceding the month of the final price formation for the agreed Goods lot;

- for the volume (lot) of the Goods confirmed for delivery within period after the 18th day of the month preceding the month of the final price formation – on the date following the date of confirmation the Goods for realization.

In the event that there is no rate quoted on such day the next following publication shall apply.

**The final price (Pr(F)) of the Goods shall be calculated according to the following formula (variant I):**

$$\text{Pr(F)} = (\text{PI(P)} + \text{D}) / \text{K(P)} \text{ EUR/USD} + (\text{PI(F)} - \text{PI(P)}) / \text{K(F)} \text{ EUR/USD},$$

**PI(P)** – average value of the basic quotations for the period from the **1st to 18th quotation day (inclusive) of the month** preceding the month of the final price formation for the agreed Goods lot, given in USD per metric ton for the respective position

**D** – the correction on chosen basis: FOB port of loading offered by the Buyer in the bid, in US dollars per metric ton;

**PI(F)** – the arithmetic average of basic quotations **throughout all quotation days of the month** of the final price formation for the respective position as per publications of «Platt's» agency in its publication Platt's European Marketscan indicated while confirming a definite Goods lot, in USD per metric ton;

**K(P) EUR/USD** – the official currency rate EUR/USD, fixed by the Bloomberg agency BFIX (14:00 Frankfurt), published on site <http://www.bloomberg.com/markets/currencies/fx-fixings>;

- for the volume (lot) of the Goods confirmed for delivery within the period up to the 18th day of the month preceding the month of the final price formation – on the 19th day of the month preceding the month of the final price formation for the agreed Goods lot;

- for the volume (lot) of the Goods confirmed for delivery within period after the 18th day of the month preceding the month of the final price formation – on the date following the date of confirmation the Goods for realization.

In the event that there is no rate quoted on such day the next following publication shall apply.

**K(F) EUR/USD** – Euro/US Dollar foreign exchange rate of Bloomberg agency BFIX 14:00 Frankfurt available on the following link: <http://www.bloomberg.com/markets/currencies/fx-fixings> **on the date of the second quotation publication** by Bloomberg agency BFIX 14:00 Frankfurt available following the final quotation day of the month of final price formation.

**The final price (Pr(F)) of the Goods shall be calculated according to the following formula (variant II):**

**Pr(F)=(PI(F) + D)/ K(F) EUR/USD**, where

**PI(F)** – the arithmetic average of basic quotations rounded to the second decimal place **throughout all quotation days of the month** of the final price formation for the Goods lot for the respective position;

**D** – the correction on chosen basis: FOB port of loading offered by the Buyer in the bid, in US dollars per metric ton;

**K(F) EUR/USD** – the average EURO\ USD fixed by the Bloomberg agency BFIX (14:00 Frankfurt) and published on the site <http://www.bloomberg.com/markets/currencies/fx-fixings> throughout all days of the month of the final price formation when BFIX (14:00 Frankfurt) exchange rates are published.

In case of the Seller's confirmation of the volume (lot) of the Goods made during the period up to the last day (inclusive) of the month preceding the month of the final price formation in respect of a definite agreed Goods lot, **the Buyer is entitled to choose the variant of final price calculation until the 1st day of the month** of the final price formation in respect of a definite agreed Goods lot by sending to the Seller a respective notice. In case this information is not submitted the Seller shall apply the formula variant that was applied for final price calculation of the last confirmed lot of the Goods of the previous month of final price calculation.

In case of the Seller's confirmation of the volume (lot) of the Goods made within the period starting with the 1<sup>st</sup> day of the month of the final price formation in respect of a definite agreed Goods lot **the Buyer is entitled to choose the variant of final price calculation until the moment of Euro/US Dollar FOREIGN EXCHANGE REFERENCE RATE publication made by Bloomberg agency** on its web site (**K(P) EUR/USD**) on the date following the date of confirmation the Goods for realization, by sending to the Seller a respective notice. In case this information is not submitted the Seller shall apply the formula variant that was applied for final price calculation of the last confirmed lot of the Goods of the previous month of final price calculation.

For the first delivery under the Contract the Buyer is entitled to choose the variant of final price calculation until the 1<sup>st</sup> day of the month of the final price formation by sending to the Seller a respective notice. In case of the Seller's confirmation of the volume (lot) of the Goods made within the period starting with the 1<sup>st</sup> day of the month of the final price formation the Buyer is entitled to choose the variant of final price calculation until the moment of Euro/US Dollar FOREIGN EXCHANGE REFERENCE RATE publication made by Bloomberg agency on [www.bloomberg.com](http://www.bloomberg.com) (**K(P) EUR/USD**) on the date following the date of confirmation the Goods

for realization, by sending to the Seller a respective notice. In case this information is not submitted within the stipulated period the Seller shall apply the second formula variant of the final price calculation.

3.3. When the preliminary and final price is calculated the average of each section of a quotation day and the average of the average quotations of all quotation days are rounded to the second decimal place and the following rules shall be applied for the calculation:

- should the third decimal equals to five (5) or more, in this case the second decimal is to be rounded to the next number.
- should the third decimal equals to four (4) or less, in this case the second decimal shall remain unchanged.

Should Platt’s publish corrections to the previously published quotations, the updated calculation for the margin of any existing value shall be applied and work retroactively from the date of publication. Thereby the Platt’s corrections published not later than 3<sup>rd</sup> day of the month following the delivery month of the agreed lot of the Goods shall be applied for the calculation.

3.4. The final price of the 1<sup>st</sup> monthly volume is calculated throughout all quotation days of May 2019 (estimated period of shipment ex-refinery May 2019 – June 2019);

.....  
The final price of the 8<sup>th</sup> monthly volume is calculated throughout all quotation days of December 2019 (estimated period of shipment ex-refinery December 2019 – January 2020);

**4. VESSEL NOMINATION AND TERMS OF GOODS LOADING**

4.1. The Buyer duly and as per order established hereunder nominates the vessel and the Seller accepts or declines the vessel for the Goods loading. The acceptance of the nomination could not be unreasonably delayed by the Seller and the nomination can not be declined by the Seller without reasonable grounds.

4.2. Unless agreed otherwise the Buyer not later than 5 (five) working days prior to the first day of the agreed loading range shall advise the Seller on the name and deadweight of the nominated vessel and the expected time of its arrival at the loading port, as well as inform the Seller on any other vessel data necessary for the Contract to be fulfilled. The Seller is entitled either to decline any vessel nominated by the Buyer or to reject the acceptance of the vessel for loading on some sufficient grounds stating the reasons therefore, by submitting an official notification within 24 (twenty four) hours on working days from the moment of the vessel nomination receipt. Should the vessel be declined the Buyer shall promptly nominate another vessel to be accepted or declined in the same order by the Seller; should the latter be the case the Parties shall negotiate on a mutually acceptable vessel nomination.

4.3. Buyer’s nomination shall be consistent with the loading port authority requirements and shall include, among others, the vessel’s name, flag, crew nationality, capacity, length, beam, summer deadweight and draught together with the quantity and quality of the grade(s) of oil products to be loaded. If any of this information is unknown at the time of nomination then such missing information shall be advised no later than three (3) working days prior to the first day of the agreed loading date range.

4.4. The Buyer may, or if necessary to perform its obligations hereunder must, with Seller’s prior written agreement, substitute any vessel by another vessel which is similar in all material respects to the vessel so replaced but not later than 2 (two) calendar days prior to the first day of the agreed loading range. The Buyer may also, with Seller’s prior written agreement and by giving to the Seller a reasonable notice, amend in other respects any vessel nomination or series of vessel nominations. If such amendment is rejected by Seller, the Parties shall negotiate a mutually acceptable alternative vessel nomination. The Buyer shall not, unless otherwise agreed, be relieved of its responsibility to perform the agreed loading.

4.5. Notwithstanding any prior acceptance of the vessel, the Seller shall have the right to reject the vessel if the loading terminal rejects the vessel; or on any reasonable ground if the vessel is involved in any incident or more recent information regarding the vessel becomes available to the Seller at any time after such prior acceptance.

4.6. The Buyer hereby warrants and undertakes:

4.6.1. to comply with the latest vessel size restrictions, including but not limited to, deadweight, draught, beam and overall length limitations of the loading port and will not nominate a vessel exceeding such limitations;

4.6.2. to comply with, and shall cause the vessel to comply with, all applicable regulations in force at the loading port, including, but not limited to, those relating to fires on board vessels; and

4.6.3. to procure that each vessel nominated hereunder shall, at the time of loading:

4.6.3.1. comply with all applicable rules, regulations and directions of governmental, local and port authorities (and of the loading terminal) and shall conform in all respects to all relevant international regulations and agreements;

4.6.3.2. have hull, machinery, boilers, tanks, equipment and facilities which are in good order and condition, in every way fit for the service required and fit to load and carry the cargo specified;

4.6.3.3. have a full and efficient complement of master, officers and crew; and

4.6.3.4. be owned or demise chartered by a member of the International Tanker Owners Pollution Federation Limited (“ITOPF”).

If Buyer’s vessel does not meet any of the above mentioned requirements the Seller or Seller’s suppliers may refuse to berth or load or continue to load the vessel with the scheduled loading.

4.7. Buyer’s nominated vessel shall provide ETA (estimated time of arrival) 72, 48, 24 hours prior to arrival at the loadport. The Buyer not later than 2 (two) working days before the first day of the agreed laycan is to provide the Seller with following information:

4.7.1. laycan, that could not be longer than 2 days and should be agreed with the Seller;

4.7.2. vessel’s ETA (estimated time of arrival);

4.7.3. vessel deadweight capacity;

4.7.4. the volume of the Goods to be loaded (only one volume is to be provided);

4.7.5. the distance between the loading manifold and the water surface at the time the vessel arrives for loading;

4.7.6. vessel draught at full load, length and width of vessel, description of freight of 3 foregoing trips;

4.7.7. laytime as per “Charter Party”;

4.7.8. ship agent of the vessel for the voyage;

4.7.9. loading conditions: full cargo/part cargo/fraction cargo, segregation conditions;

4.7.10. the instructions needed to the Seller to issue documents in accordance with regulations, including any export regulations in force, including but not limited to, an Accompanying Administrative Document (“AAD”) where relevant;

4.7.11. all other necessary information for the Seller in respect of nominated vessel;

4.7.12. no changes or amendments will be accepted less than one working day before vessel’s loading.

4.8. If, while the Vessel nominated by the Buyer is approaching, entering or departing from the loading Terminal, or is present in the Loading Terminal, the length, draught or other dimensions of such Vessel shall exceed the length, draught or other dimensions so ascertained for the Loading Terminal in question for whatever reason, the Seller shall not be liable for any loss or damage caused as a result thereof and the Seller shall not be obliged to commence or continue loading.

4.9. If the Buyer fails to notify the loading information in compliance with the notice period as specified above, the Seller shall use reasonable efforts to obtain acceptance of such late notification (and of vessel’s nomination referred to in the clauses 4.2, 4.3, 4.4 and 4.7 above) by the loading terminal or Seller’s supplier. Notwithstanding the above, the Buyer shall be liable for all costs

resulting from any delays in loading the Goods under the Contract due to failure by the Buyer to supply the loading information in a timely manner, and any such delays shall not count as used laytime.

4.10. Except for unfavourable weather the Buyer is responsible for the vessel departure from the berth within 3 (three) hours after the loading is accomplished (the countdown starts after the loading time given in TIME SHEET/STATEMENTS OF FACTS to be signed by authorized representative of the vessel, agent and terminal shift foreman) or earlier, if Seller requires, due to objective cause provided the ship master obtained the set of transport documents.

4.11. Should the payment conditions and (or) due date stipulated in the present Contract or the time of additional agreement signing be violated the tanker nominating period is postponed in proportion to the time transfer of the final performance of obligations by the Buyer.

4.12. Should the Buyer may need to change the time of vessel approach and/or port/terminal/berth in lieu of agreed, this is to be agreed by Parties, all the incurred costs hereto (including but with no limitation for shipment and transshipment) are to be at Buyers' expense.

4.13. All duties, fees, taxes, quay dues and other charges, whether similar to the foregoing or not and without limitation, due in respect of the Vessel as well as pilotage, mooring and towage expenses incurred at the Loading Terminal shall be borne by the Buyer.

4.14. The Buyer shall use his best efforts to appoint ESTMA Ltd. on competitive basis as shipping agents for vessels loading.

## **5. LAYTIME AND DEMMURAGE**

**5.1** Laytime starts in six (6) hours after the Master of the ship submits a notice on readiness for loading (N.O.R.) received by the Seller or the third party appointed by the Seller (N.O.R. can only be submitted after the vessel's arrival to a usual berth or waiting place of the nominated port) or from the time of berthing whichever occurs first. The Buyer shall ensure that by no later than 24.00 (local time) on the last day of the Loading range:

- 1) the Vessel nominated by the Buyer hereunder shall arrive at port, complete all formalities and is all fast alongside berth; and
- 2) Valid NOR has been tendered.

**5.1.1** If the vessel arrives before the first day of the agreed 2 days loading range nominated and accepted, laytime shall not commence until 06.00 a.m. on the first day of the agreed loading date range or the time loading commences whichever is the earlier; or

**5.1.2** If the vessel arrives after the last day of the agreed 2 days loading range nominated and accepted, laytime shall commence at the time loading commences. In this case the vessel shall be berthed in turn.

If the rules and procedures of the port stipulate observance of special requirements for vessel entering the port, piloting or similar actions the laytime starts from berthing.

If the vessel is loaded with several lots, including the Seller's lot the laytime for the Buyer starts/stops with the beginning/completing of loading the Goods from the Seller.

**5.2.** The time to process the vessel loaded under the present Contract with the Goods volume up to \_\_\_\_\_ metric tons is restricted with \_\_\_\_ (\_\_\_\_\_) hours pro rata to the cargo parts in excess of \_\_\_\_\_ metric tons (in favourable weather conditions, Sundays and days off inclusive provided that the loading on the above mentioned days is not statute-banned or prohibited by norms and regulations at the loading port); for the purpose of all reports a full cargo shall be considered a total amount loaded on board the vessel as per Bill of lading. Should the loading be suspended due to unfavourable weather the suspended time is not included to laytime.

**5.3** Should the vessel placed by the Buyer for loading need preparation (cleaning) of tanks or any other activities that affect the beginning/duration of loading and lay period, and the Buyer has not



claimed the necessity of the above activities at vessel nomination, the Seller has the right to accept the vessel as soon as it becomes ready in the nearest free turn with no liability for the demurrage.

**5.4** If the whole vessel is loaded with goods, purchased from the Seller, laytime shall cease on disconnection of cargo hoses on completion of loading. In case of multiple or part cargo loading laytime shall cease on the completion of loading of the Seller's parcel.

**5.5** The demurrage of the vessel shall be paid by the party responsible for appearance thereof on a basis of rates of charter-party of the vessel to be shipping the Goods. Should the demurrage rate be not set in charter-party, the demurrage shall be calculated on a basis of London Tanker Brokers' Panel ('LTBP') that should correspond to vessel shipping the Goods hereunder. The appraisal cost of LTBP is to be paid by the Buyer.

**5.6** Time shall not count against laytime, or if the vessel is on demurrage, for demurrage when spent or lost:

- time spent by the vessel moving from anchorage to the designated berth after it tenders its NOR, including without limitation any time spent on mooring operations and/or waiting for the port pilot, an additional tug boat and on placing gangway; or
- whilst the vessel is handling or preparing to handle ballast or bunkers, unless this is carried out concurrent with loading or other normal cargo operations such that no loss of time is involved, or is carried out to comply with shore restrictions; or
- by any delay due to fault, failure or inefficiency of the vessel; or
- awaiting tide, tug boats, pilot, convoy, daylight or moderation of weather prior to berthing, ice and for immigration, inward clearance, customs or pratique (inward clearance), sanitary formalities and safety (key) meeting; or
- as a result of strike, lockout, stoppage or restraint of labour; or
- time lost inspecting the vessel, surveyor and cargo calculations or as a result of vessel's preparing to loading or for its failure to load the Goods with prompt loading rate and efficiency including delays arising from any breakdown or incapacity of vessel's facilities; or
- prohibition of night time loading or berthing due to Buyer's or vessel owner's instructions or port and terminal regulations; or
- any delay or curtailment of the loading operations attributable to the vessel's agents, master, officers, crew, the Buyer, vessel's owner or operator; or
- time needed to amend the documents after loading has completed under the Buyer's request.

**5.7** If the laytime allowance as provided hereunder is exceeded the Seller shall, except as hereinafter provided in this Clause, pay to the Buyer demurrage for all such excess time at the full rate specified in Clause 5.5 hereunder. In any case the Buyer is not to claim more than that paid out by the Buyer.

If however all or part of such demurrage is incurred due to force majeure circumstances as specified by Clause 11 of the present Contract, the rate of demurrage shall be reduced to one half of the established demurrage rate.

**5.8** A demurrage claim will only be considered by Seller provided that a fully documented claim submitted together with the following documentation:

- a) Buyer's invoice for demurrage; demurrage claim of the vessel's owner with the calculation;
- b) Buyer's detailed calculation of the amount claimed;
- c) Copy of statements of facts/time sheet, letters of protest;
- d) Copy of C/P or freight agreement

is received within 45 (forty five) days from the date on which notice of readiness to load (N.O.R.) is given. The claims for the amounts less than 1000 (one thousand) US dollars shall not be considered and paid.

**5.9** If the vessel concerned loads oil products purchased by the Buyer from the Seller as well as other oil products at the same loading port, the Seller's liability to the Buyer for demurrage under the foregoing provisions shall be limited by the demurrage, actually caused by the Seller.

**5.10** Payment of due demurrage shall be made on Buyer's demand and shall be paid in EURO to Buyer's account with a bank nominated by the Buyer or in such other manner as may be agreed between the Seller and the Buyer.

**5.11** Any claim to the Seller in connection with damage caused to the terminal equipment at the loading port due to the vessel's fault as nominated by the Buyer shall be for the Buyer's account.

## **6. TERMS OF PAYMENT**

6.1. The payment is effected as 100% advance payment of the agreed Goods lot within 2 (two) banking days from the date of issuance of a respective invoice by the Seller. Above mentioned payment is subject to the mutually signed Additional agreement being in Buyer's disposal.

The estimated date of invoicing is not later than 1 (one) business day from the date when the preliminary EUR \ USD (Euro \ US Dollar) exchange rate is fixed.

6.2. The payment should be effected against the Seller's invoice.

6.3. Should final cost of the shipped Goods be less or more than the sum of the advance payment, received by the Seller the Parties shall effect final settlement by bank remittance within 2 banking days from the date of invoicing with specifying the final price and the cost of Goods – provided the Reconciliation report signed by Parties is available.

6.4. All the penalties hereunder are to be paid by the Party in fault to the other Party within 10 (ten) banking days from the receipt of the claim (invoice).

6.5. The currency of payment is euro.

6.6. All bank commissions and charges at Beneficiary's (Seller's) Bank are for Beneficiary's account, all bank commissions and charges at Applicant's (Buyer's) Bank are for Applicant's account.

6.7. The date of payment is the date of debiting (crediting) of the money from (to) the account of the Seller.

6.8. The payment amount is the amount received to the account of the Seller.

6.9. The Buyer and the Seller make all payments through accounts and correspondent accounts exclusively in the European banks.

6.10. If the delivery of the Goods lot or its part is impossible in all cases including but not limited by force-majeure, the Seller is obliged under the Buyer's request to return the Buyer's advance payment or its corresponding part within 5 (five) banking days from the date of receipt of the Buyer's written request on such money funds return, but only after and under the final price calculation.

6.11. For payments of claims or expenses where Euro to US Dollars exchange rate fixing is not defined in the present contract payments shall be done using the exchange rate of the Bloomberg agency BFIX (14:00 Frankfurt), published on site <http://www.bloomberg.com/markets/currencies/fx-fixings> as of the date of the invoice (if no quotation is available of this date – the next available quotation to be used). This clause does not apply to refunds of deposits or advances given in Euros.

## **7. RISKS AND TITLE**

**7.1.** The property right in the Goods delivered under the present Contract and all risks connected herewith pass from the Seller to the Buyer at the time the Goods cross the ship joining flanges at the port of loading.

**7.2.** Any loss of or damage to the Goods during loading, if caused by the vessel or her officers or crew, shall be for the account of Buyer.

## **8. SUPPLY AND TEST METHOD**

### 8.1. Method and Rate of Supply

The Goods shall be supplied by Seller to Buyer, free of expense, in bulk free on board vessel provided or procured by Buyer at a loading port(s) as agreed.

### 8.2. Measurement Sampling and Testing

An independent inspection shall be carried out at the loading port by an independent inspector who is mutually acceptable to both Buyer and Seller. Seller and Buyer shall jointly appoint an independent inspector and all inspection charges shall be shared equally by both Parties and the inspector's report shall be made available to both Parties.

The quantity of the Goods in each cargo shall be determined by measurement, sampling and testing in the manner customary at the loading port *ex shore tanks*. The quality is to be based on samples drawn *ex shore tanks*.

The certificates of quantity and quality issued by the independent inspector with respect to the cargo loaded shall, except in cases of manifest error or fraud, be conclusive and binding on both Parties for invoicing purposes but without prejudice to the rights of either party to file a claim for quantity and/or quality.

8.3. A sufficient quantity of the relevant representative samples shall be correctly taken at each loading port and kept in accordance with internationally recognized methodology and practice.

## 9. LIABILITIES OF THE PARTIES

9.1. The Parties acknowledge that the Seller has a legitimate interest in ensuring prompt payment under the Contract. Should the Buyer breach the terms of payment stipulated in Clause 6 of the Contract and corresponding additional agreements, the Buyer shall pay to the Seller liquidated damages of 0.05% of the amount outstanding per full calendar day of the payment delay. Should the Buyer fail to make 100% payment of Goods cost within 2 days of the time stipulated for payment, the Seller has the right, at its sole discretion, to terminate the Contract by written notice to the Buyer and without further liability upon the Seller.

Should the Buyer breach the terms of signing of additional agreements both on provisional price and on final one, and the terms of fulfillment of final settlement, indicated in cl.6.3, the Seller reserves the right at its sole discretion, not to nominate the future Goods lots with further postponement of the delivery or decrease of the whole amount under the current Contract and / or to terminate the Contract without further liability upon the Seller.

The Seller and the Buyer are relieved from any responsibility for the partial or complete default of their obligations under the Supply Contract, if they prove by the documents that proper fulfillment of their obligations became impossible due to shut-down, unscheduled repairs of JSC Naftan OR facilities or due to force-majeure occurrence.

The Parties shall bear no responsibility for the failure to properly fulfil their obligations under the Contract by virtue of provisions of law or other laws and regulations (other documents binding for the Seller / consignor) currently in force that prevent the Contract fulfilment, adopted by the respective state authorities or organizations and Belarusian State Concern of Oil and Chemistry (Belneftekhim concern) in particular, in case they were adopted (published) after the Contract signing and directly affect its fulfillment.

9.2. The Parties acknowledge that the Seller has a legitimate interest in ensuring prompt and full loading of the stipulated quantity of Goods and that any failure of the Buyer to load the full quantity of Goods at the time specified in the Contract could cause the Seller significant loss and inconvenience. In particular, the Buyer understands that any such failure may cause the Seller to incur costs including, but not limited to, terminal storage charges, railway demurrage and / or infrastructure charges, and / or vessel demurrage in respect of other vessels. Accordingly, should the Buyer fail to load the full quantity of Goods at the time specified in the Contract:

9.2.1. the final price (Pr(F)) of the Goods shall be increased by 0,05% of the Contract value of the unlifted goods, per full calendar day of delay in lifting; and

9.2.2. the Seller shall have the right, at its sole discretion, to cancel the delivery of the unlifted Goods and / or to terminate the Contract without further liability upon the Seller.

9.2.3. Compensates to the Seller losses suffered, including, but not limited to the following: charges of the Seller for storage of the Goods in the tanks of the terminal and in tanks of park of Ministry of Railways, charges of the Seller for using an infrastructure of the railways, other connected with this charges including demurrage claims of other vessels.

9.3. The Buyer shall exercise reasonable efforts to ensure that:

9.3.1. for vessels carrying persistent oil products as cargo, the vessel carries on board a certificate of insurance as described in the Civil Liability Convention for Oil Pollution Damage; and

9.3.2. the vessel has in place insurance cover for oil pollution no less in scope and amounts than available under the Rules of P&I Clubs entered into the International Group of P&I Clubs.

9.3.3. the vessel shall comply with the requirements of the International Ship and Port Facility Security Code and the relevant amendments to chapter XI of SOLAS (ISPS Code).

9.4. The Seller shall procure that the loading port/terminal/installation shall comply with the requirements of the International Ship and Port Facility Security Code and the relevant amendments to Chapter XI of SOLAS (ISPS Code).

## **10. SETTLEMENT OF DISPUTES, ARBITRATION**

10.1. Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the LCIA Rules, which Rules are deemed to be incorporated by reference into this clause.

10.2. The number of arbitrators shall be three. The seat, or legal place, of arbitration shall be London, United Kingdom. The language to be used in the arbitral proceedings shall be English. The governing law of the contract shall be the substantive law of England.

## **11. FORCE MAJEURE**

11.1. Neither Party shall be liable for any failure to perform any term of the Contract if its performance has been delayed, hindered, or prevented by a "force majeure event". For the purpose of this Contract, a force majeure event shall be any event which is unforeseeable, unavoidable, and is not within the control of the Party affected, notwithstanding the reasonable care of, or the taking of reasonable steps by, the Party affected.

11.2. Where Clause 11.1 applies, the Seller shall not be obligated to sell or deliver nor shall the Buyer be obligated to purchase or receive goods to the extent that a force majeure event prevents, restricts or delays the production, transportation, sale, delivery or receipt of goods, and, in the case of the Seller, whether the force majeure event affects the Seller indirectly by affecting the Seller's suppliers. A force majeure event shall include, but not be limited to:

11.2.1. (compliance with a direction or request of any government or person purporting to act with governmental authority, including without limitation Concern Belneftekhim;

11.2.2. total or partial expropriation, nationalization, confiscation, requisitioning or abrogation or breach of a government contract or concession;

11.2.3. closing or restriction on the use of a port, pipeline or railway;

11.2.4. maritime peril, storm, earthquake, flood;

11.2.5. accident, fire, explosion;

11.2.6. hostilities or war (declared or undeclared), embargo, blockade, riot, civil unrest, sabotage, revolution, insurrection;

11.2.7. strikes (including sympathy strikes), grievances, actions by or among workers or labour groups or lock-outs (whether or not such labour difficulties could be settled by acceding to any demands of any such labour group(s) or individuals);

11.2.8. loss or shortage of producing, delivery or transportation facilities (including transportation to Seller or Seller's supplier and facilities at OJSC Naftan), caused by circumstances beyond the reasonable control of the Party affected; or

11.2.9. any event reasonably beyond the control of the Party affected, whether or not similar to those listed above, including without limitation any failure of Seller's supplier to deliver Goods due to any of the events set forth hereinabove.

11.3. In this Clause 11, "transportation" means transportation of Goods to Seller or to Seller's supplier.

11.4. On the occurrence of any force majeure event, the Party so affected shall:

11.4.1. within five (5) working days give written notice of such event to the other Party. Such notice shall contain an estimate of the expected duration of the force majeure event and the effect it has had on performance of the Contract;

11.4.2. use reasonable endeavours to mitigate the effect of such force majeure event on its performance obligations under the Contract and resume full performance of such obligations as soon as possible

11.4.3. upon request of the other Party, provide evidence of the force majeure event in the form of a certificate issued by the relevant Chamber of Commerce.

11.5. Failure of a Party to comply with the requirements of Clause 11.4 shall make the failing Party responsible for loss and damages that could otherwise have reasonably been avoided had the requirements been complied with.

11.6. If any force majeure event exceeds twenty (20) consecutive calendar days, the Seller and Buyer shall meet and discuss the most appropriate course of action in view of the circumstances. If the Parties do not agree on an appropriate course of action, the Party awaiting the performance subject to suspension due to force majeure shall be entitled to immediately terminate the Contract, by notice of termination which shall take effect on the date of its receipt. Neither Party shall have any further liability to the other Party in respect of such delivery except for the rights and remedies previously accrued. In the event of termination under this Clause, Seller shall be obliged to return to Buyer's nominated bank account the advance payment, net of any amounts owing under the Contract, within ten (10) working days of Buyer's written request to do so.

11.7. The provisions under this Clause 11 shall not relieve the Buyer of any of its obligations to make payments to the Seller due under the Contract.

## **12. LIMITATION OF LIABILITY**

12.1. Except as expressly provided for in the Contract, neither the Seller nor the Buyer will be liable for consequential, indirect or special losses or special damages of any kind arising out of or in any way connected with the performance or failure to perform the Contract.

12.2. The Seller shall in no circumstances be liable for more than the difference between the agreed selling price and the market price of the Product, based on the nearest available market, at the date of any breach of the Contract and will not be liable for any loss of profit, wasted overheads or other loss in whatever form. Claims for damages by the Buyer must be fully documented and received by the Seller within one (1) year from the date of delivery of the Goods.

12.3. The Buyer agrees to indemnify and hold the Seller and its affiliates harmless in respect of any liability, loss, damage or expense of whatsoever nature that the Seller may sustain by reason of a third party bringing a claim against the Seller for personal injury and/or death and/or loss caused by the Product (including but not limited to the handling of the Product) following the passing of risk or title to the Product.

12.4 The Seller and the Buyer are relieved from any responsibility for the partial or complete default of their obligations under the Supply Contract, if they prove by the documents that proper fulfillment of their obligations became impossible due to shut-down, unscheduled repairs of OJSC Naftan facilities or due to force-majeure occurrence.

12.5. The Parties shall bear no responsibility for the failure to properly fulfil their obligations under the Contract by virtue of provisions of law or other laws and regulations (other documents binding for the Seller / consignor) currently in force that prevent the Contract fulfilment, adopted by the respective state authorities or organizations and Belarusian State Concern of Oil and Chemistry (Belneftekhim concern) in particular, in case they were adopted (published) after the Contract signing and directly affect its fulfillment.

### **13. CONTRACT SECURITY**

**13.1.** As a measure of securing the fulfillment of the terms of the present Contract the Parties when concluding an Additional agreement for the delivery of an agreed Goods lot may provide for the Buyer's obligation to transfer to the Seller's account a sum of money (hereinafter referred to as "Contract security").

Contract security shall make 10% of the cost of the maximum monthly Goods lot (nominal quantity without Seller's positive option) calculated at the provisional price of the first agreed monthly Goods lot (Contract security).

The date when the money funds are credited to the Seller's account is deemed the date of Contract deposit payment. To secure the Buyer's performance of its obligations under the Supply contract the Contract deposit shall remain on the Seller's account till their complete fulfillment by the Buyer.

**13.2.** Contract security shall be paid by the Buyer by remitting the sum of money agreed upon by the Parties within 2 (two) banking days from the date of the respective invoice to a Seller's bank account.

Under the Parties agreement the amount of the Contract security may be remitted by a third party as guaranteed security of Buyer's fulfillment of obligations under the present Contract.

The date of the Contract security payment shall be the date of the money funds credited to the Seller's account.

**13.3.** When effecting the payment stipulated by the terms of the Contract and/or Additional agreement the Buyer is obliged to provide for the priority remittance of the Contract security amount. In case the purpose of payment is not defined when the Buyer effects the payment the Seller shall be entitled to credit the amount of Contract security from the total amount of money funds received to its account and to allocate the remaining amount as payment for the Goods to be delivered.

**13.4.** The Parties agree upon and stipulate in the Additional agreement the period of time during which the remitted amount of Contract security shall remain in the Seller's banking account, upon expiry of such period of time the amount of Contract security shall be returned to the Buyer subject to complete and indisputable Parties' reconciliation under the respective additional agreement confirmed by Reconciliation report under the respective additional agreement signed by both Parties.

Date of the Contract security return shall be the date of debiting money funds from the Seller's account.

**13.5.** The return of the Contract Security or its part remaining after repayment of the Buyer's outstanding amount to the Seller under the Contract shall be effected by the Seller within 5 (five) banking days upon receipt of the Buyer's respective written request in case of no amount owed by the Buyer to the Seller on the expiry of the present Contract or at early termination of the present Contract.

The Contract security shall be returned only in accordance with the Buyer's banking details stipulated in the Contract or in accordance with banking details of a third party having remitted

under the Buyer's agreement the sum of Contract security as guaranteed security of Buyer's fulfillment of obligations under the present Contract.

**13.6.** Under the Parties' agreement and on the basis of the Buyer's written application the Contract security may be used for repayment of Buyer's indebtedness to the Seller under the present Contract.

The Seller may not make any deductions from the remitted sum of Contract security without Buyer's agreement including deductions on account of satisfaction of Seller's claim in regard to fulfillment of contractual obligations accepted by the Buyer. Until the Parties settle such Seller's claims the Contract security shall be blocked in the Seller's account.

**13.7.** Contract security is unconditionally and fully kept by the Seller to his own benefit in the case of the Buyer's refusal including failure to act to fulfill his obligations taken under the terms of the present Contract regarding the payment for the Goods to be delivered and payment of the full cost of the Goods lot to be delivered and the obligations providing for the Goods acceptance on the basis of which the present Contract may be unilaterally terminated by the Seller.

#### **14. ANTI-BRIBERY AND CORRUPTION**

**14.1.** Seller and Buyer respectively warrant and undertake to the other that in connection with this Agreement:

a) it has implemented adequate internal procedures designed to ensure it shall not authorise the giving or offering of any financial or other advantage with the intention of inducing or rewarding an individual or entity to improperly perform an activity undertaken in the course of an individual's employment or connected to an entity's business activities (the "Anti-Corruption Controls"); and

b) it has not authorised and it will not authorise, in connection with the performance of this Agreement, any financial or other advantage to or for the benefit of any public official, civil servant, political party, political party official, candidate for office, or any other public or private individual or entity where such authorisation would violate the Anti-Corruption Controls.

In the event of any breach of the warranties and undertakings in Clauses a) and 1b) above, the non-breaching party may terminate this Agreement with immediate effect upon written notice to the other party. This shall be the sole remedy available for a breach of the warranties and undertakings in Clauses a) and b).

#### **15. OTHER PROVISIONS**

15.1. The validity period of the present Contract shall be from the date of signing until \_\_\_\_\_. Under the Parties mutual agreement the date of concluding the Contract shall be \_\_\_\_\_.

15.2. All additional agreements, Addenda and amendments to the present Contract are valid and form an integral part of the present Contract only if they are made in writing and signed by authorized representatives of both Parties.

15.3. The content of the present Contract, amendments and addendums to it as well as the information concerning its fulfillment by the Parties shall not be disclosed by either of the Party without a written consent from the other Party excluding the cases when this disclosure is required to fulfil the demands of state bodies that are authorized under the law to receive the information from the Parties or connected with court proceedings.

15.4. The present Contract, amendments and Addenda thereto, as well as invoices may be signed by the Parties via telephone by using facsimile or e-mail communication, such documents having the same legal force as the originals. The following exchange of the originals is indispensable.

15.5. The Parties confirm that at the moment of concluding the present Contract they are duly registered and capable legal entities.

15.6. The Parties reciprocally admit that all announcements, notifications and other messages submitted in connection with or for the purpose of execution of the present Contract, all and any addendums and/or amendments thereto shall be considered duly sent and actually delivered official notifications provided that such messages are sent during the business hours (CET+2) via post, e-mail, telephone by using fax machine to the specified addresses recognized by the Parties as official

contacts, with specifying all additional details agreed by the Parties. The technically and/or documentary proved submitting of such notification and the time of sending by one of the Parties of a notification to the address of the officially recognized contact of the other party shall be considered by the Parties as indisputable.

Should the specified details of the officially recognized contact be changed the corresponding Party shall be obliged within 10 (ten) calendar days to officially notify the other Party in writing thereupon; otherwise the other Party is entitled to use the previously recognized details without prejudice to its status.

15.7. The Parties are obliged to submit and shall be liable for the completeness and timeliness of the submitted correspondence referring to the performance of the Contract, by sending this information to the addresses officially provided to each other. The date of receiving such information shall be the date of the postal stamp on the envelope or the date of registration at the forwarder of the place of receiving the correspondence; and in case the correspondence is submitted via facsimile or e-mail communication the date of sending the information shall be defined by the markings notifying the sending and confirming the date and time of the sending of information, fixed by the communication means.

15.8. In case if the calendar day defined for the purpose of the execution of the present Contract falls on a day off, the Parties shall use the calendar day of the next business day.

15.9. The Seller guarantees that the Goods to be delivered are free of any challenges by the third parties, assignment, lien or attachment.

15.10. Without prejudice to other provisions of the present Contract and the order of execution thereof the parties shall reciprocally confirm that the advance payment transferred to the Seller by the Buyer shall not be considered as a commercial loan.

15.11. The Parties exclude the application of UNO Convention on International purchase and sale of Commodities of 1980 in regard to the present Contract.

15.12. No Party of the present Contract is entitled to delegate the rights and duties under the present Contract to the third party (including assignment and delegation of debts) without preliminary written consent of the other Party unless the Buyer concedes the rights under the present Contract to the financing organizations.

15.13. The present Contract has been drawn in two copies, one for each Party, in English, both texts being equally valid.

15.14. The early termination of the Contract under the Parties agreement shall be drawn by signing a respective additional agreement.

15.15. The Parties have defined the following:

to consider the following postal details as their official addresses for the correspondence to be submitted to:

the Seller:

BNK (UK) Ltd  
26-28 Hammersmith Grove  
London W6 7BA,  
Great Britain

the Buyer :

[BUYER'S NAME]

[BUYER'S BUSINESS ADDRESS]

[BUYER'S FAX NUMBER / EMAIL ADDRESS IF TO BE USED FOR FORMAL NOTICES]



**16. NOTICES**

Unless otherwise specifically provided, all notices to be given hereunder by either party to the other shall be sufficiently given if in writing, by telex, cable or facsimile and delivered to the other party at the business addresses of the parties as specified in the agreement

**17. BANKING DETAILS OF THE PARTIES****SELLER:****BNK (UK) Limited**Raiffeisen Bank International AG, Vienna,  
Austria

account No. 1-54.169.941/100 (Euro)

SWIFT: RZBAATWW

IBAN AT303100000154169941

**BUYER:****SIGNATURES OF THE PARTIES**

THE SELLER

Company **BNK (UK) Limited**

THE BUYER

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**A.Dashutin****Director**