

## ANNEX V – GENERAL TERMS AND CONDITIONS

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## **1. PRODUCT**

### **1.1 PRODUCT CHARACTERISTICS**

1.1.1 The Product Characteristics set out in Annex I (Product Characteristics) as amended or updated in accordance with clause 5 (Product) of the Individual Terms and Conditions, will include:

(a) a material safety data sheet;

(b) a description of the Product including to the extent applicable: nature, type, composition, temperature, flash point, boiling point, melting point, viscosity, density, colour, vapour pressure, UN/LO code and combined nomenclature (CN) code;

(c) information relating to the storage of the Product by Liquin (acting in its capacity as a bonded warehouse operator, if applicable) as required by Applicable Law; and

(d) any other information regarding the Product which is required for the safe and efficient receipt, handling, storage or re-delivery of the Product.

1.1.2 During the Term, Customer will keep Liquin updated with any new and/or additional information required for the safe and efficient receipt, handling, storage or re-delivery of the Product.

### **1.2 CONDITION OF PRODUCT ON ARRIVAL**

1.2.1 As of the Services Commencement Date, Customer is entitled to deliver or procure delivery of the Product to the Terminal.

1.2.2 On arrival and throughout the remainder of the Term, Liquin is entitled to inform Customer as soon as possible if, in the reasonable opinion of Liquin:

(a) the means of transport, packing materials or containers used in the delivery of the Product are not in a sound, clean and/or impermeable condition, are not fit for use in respect of the Product or are not in compliance with Applicable Law;

(b) the Product does not conform with the Product Characteristics;

(c) the Product appears damaged or in a defective condition; or

(d) the Services cannot be performed with respect to the Product in accordance with Applicable Law.

1.2.3 If Liquin notifies Customer of any of the circumstances set out in section 1.2.2, Customer and Liquin will, as soon as reasonably practicable, discuss and agree what action should be taken (and such action will be confirmed in writing to Liquin by the Customer).

1.2.4 Nothing in this section 1.2 shall affect the Customer's liability to pay the Charges.

### **1.3 ARRIVAL OF VESSELS AND VEHICLES AT THE FACILITY**

1.3.1 Mooring of vessels alongside the Facility and admittance of vehicles to the Facility shall be allowed only if prior arrangements have been made by Customer with Liquin.

- 1.3.2 Vessels and vehicles arriving at the Facility shall be discharged and loaded in the order of their arrival in accordance with the 'first come, first served' principle, except where changes to this principle are required due to:
- (a) Applicable Law;
  - (b) an emergency safety situation (or to prevent an emergency safety situation);
  - (c) a slot booking system existing at the relevant Terminal;
  - (d) where reasonably required for the smooth operation of the Facility; or
  - (e) if Liquin does not own the jetty associated with the Terminal and is required to amend any loading or discharging on direction of the owner or operator of the jetty.
- 1.3.3 Liquin shall not be liable for any demurrage including any demurrage resulting from its scheduling (or rescheduling) in accordance with section 1.3.2.

#### **1.4 LOADING AND DISCHARGING OF PRODUCT**

- 1.4.1 Customer shall ensure that on arrival at the Facility the Product is in a condition that it is able to be discharged immediately without delay or restriction.
- 1.4.2 In respect of Product to be discharged or loaded onto a vessel, Customer will ensure that, as soon as the vessel has moored alongside a berth designated by Liquin and Liquin has declared itself ready to receive or deliver the Product, the discharging or loading of the vessel (including the connecting and disconnecting of hoses and taking and analysing samples) shall commence. The discharging or loading of the vessel shall continue in an uninterrupted manner (including during weekends and public holidays) until the Product has been fully discharged or loaded.
- 1.4.3 Notwithstanding section 1.4.2, Liquin will retain the right to stop or pause the discharging or loading of Product from any vessels or vehicles for safety or emergency reasons or otherwise to comply with Applicable Law.
- 1.4.4 Notwithstanding any of the other provisions set out in the Agreement, Liquin will not be obliged to discharge or load the Product unless the required customs information is available and has been completed. Neither Liquin or any Liquin Affiliate will be liable for any delay in the discharging or loading of Product caused by delay in required customs information or incomplete or inaccurate customs information.

#### **1.5 REMOVAL OF VESSELS AND VEHICLES FROM THE FACILITY**

- 1.5.1 Customer will ensure that any vessels or vehicles discharging or loading Product at the Facility are removed from the Facility:
- (a) as soon as these have finished discharging or loading the Product; or
  - (b) if Liquin considers it necessary to request their removal where required:
    - (i) as a result of Applicable Law (including where a vessel is subject to an arrest);
    - (ii) in an emergency situation (or to prevent an emergency situation); or
    - (iii) where the vessel is discharging too slowly, having regard to the technical description of the vessel's equipment and the receiving capacity of the Facility and/or what has been agreed in the Individual Terms and Conditions.

- 1.5.2 If the master of the vessel or driver of the vehicle is notified of an event in accordance with section 1.5.1 and does not remove the vessel or vehicle at Liquin's reasonable request, then Customer shall be liable to Liquin for all costs and consequences arising from the master's or driver's failure to remove the vessel or vehicle and Liquin shall have the right to remove, or procure the removal of the relevant vessel or vehicle at the account and risk of Customer.

## **1.6 CUSTODY OF THE PRODUCT**

- 1.6.1 The Product shall be deemed to have been delivered to Liquin at the Terminal or removed from the Terminal and redelivered to Customer in accordance with the following:

(a) if the Product is delivered from, or re-delivered to, a vessel, immediately upon the Product passing the connecting flange between the vessel and the Terminal;

(b) if the Product is delivered by, or re-delivered to, a vehicle (including any vehicle travelling by road or rail), immediately upon the Product passing the connection between the vehicle and the Terminal;

(c) if the Product is delivered or re-delivered through a pipeline, other than in the circumstances described in sub-sections (a) or (b), immediately upon the Product passing the valve placed between that pipeline and the pipeline at the Terminal; or

(d) if the Product is delivered by, or re-delivered via other means, including drums or flexibags, immediately after having been discharged from or loaded onto the vehicle (as applicable).

- 1.6.2 Subject to the provisions set out in the Agreement, during the Term, Liquin will only be obliged to release the Product, according to the written instruction of Customer.

- 1.6.3 Liquin will not be obliged to allow the final release of the Product until all Charges (including any taxes, duties or levies prepaid by Liquin) have been paid in full by Customer in accordance with section 3.1 (Invoicing).

- 1.6.4 On re-delivery of the Product, Liquin will not be obliged to request confirmation from the person or Contractor collecting the Product that it is legally entitled to receive the Product.

## **1.7 QUANTITIES OF PRODUCT**

- 1.7.1 Quantities of Product delivered to the Terminal or redelivered from the Terminal to the Customer will be determined by Liquin by means of Tank measurements (once the Product in the Tanks has completely settled or before it is disturbed (as applicable)).

- 1.7.2 Customer may verify the quantities of Product measured in accordance with section 1.7.1 by appointing an independent inspector. The charges for such independent inspector shall be paid by Customer.

- 1.7.3 If Customer does not elect to verify Liquin's measurements, Liquin's measurements shall be accepted as final and binding by Customer.

## **2. FACILITY AND TANKS**

### **2.1 SUITABILITY OF TANKS**

- 2.1.1 Prior to the Services Commencement Date, Customer or its Contractor may inspect the Tanks to be used for the Services to verify their cleanliness, suitability and condition.

2.1.2 If Customer:

- (a) fails to conduct, or have such inspection conducted in accordance with section 2.1.1; or
- (b) consents to the loading of the Product into the Tank without raising an issue,

the Tanks shall be deemed clean and suitable and in good condition for the Product and Customer will accept the Tanks in their "as is" condition.

## **2.2 MAINTENANCE AND REPAIR**

2.2.1 During the Term, Liquin will have the right to carry out inspection, maintenance and repair operations to the Facility where Liquin deems it necessary or advisable to do so or if Liquin is obliged to do so pursuant to Applicable Law.

2.2.2 Any maintenance and repair operations to the Facility which may affect the Services, will be conducted in accordance with the following:

- (a) Liquin will inform Customer of such maintenance and repair operations as soon as possible;
- (b) subject to section 2.2.2(c), all maintenance and repair costs (including any cleaning costs required in accordance with the required maintenance and repair work) will be Liquin's responsibility;
- (c) if maintenance and repair is required due to the Product, then all costs (including any cleaning costs) for maintenance and repair (with the exception of normal wear and tear) will be the responsibility, and on the account of, of Customer;
- (d) where any Tanks used in the provision of the Services are required to be emptied in order to conduct the inspection or the maintenance and repair operations, Customer will fully cooperate with Liquin and discharge the Product from the Tanks in a reasonable period of time, as agreed between the Parties; and
- (e) Liquin will use reasonable endeavours to continue to provide the Services for the discharged Product at a terminal operated by Liquin and to the extent this is not possible, Customer may suspend payment of the directly related Charges until Liquin is able to re-commence providing the Services.

## **2.3 CONDITION OF TANKS AT END OF TERM**

2.3.1 Customer acknowledges that at the end of the Term the Tanks used in the performance of the Services must be in the condition they were as at the Services Commencement Date (with the exception of normal wear and tear). To ensure this, the Parties agree as follows:

- (a) prior to the Services Commencement Date the Parties will agree the likely period of time required to clean the Tanks;
- (b) in accordance with such agreed time period, prior to the expiration or termination of the Agreement, Customer will remove the Product from the Tanks to enable cleaning to commence; and
- (c) if the Tanks cannot be cleaned during the agreed time period and the cleaning time extends (or is likely to extend) beyond the end of the Term, the Parties agree that the Term of the Agreement will be extended until the cleaning is complete. During any cleaning period extension Liquin will keep Customer informed of the expected completion date and the costs involved.

- 2.3.2 The Tanks and Facilities shall, at all times during the Term, remain in the possession and control of Liquin and such possession and control shall not transfer, or shall not be deemed to have transferred to Customer at any time.

### **3. CHARGES, COSTS AND PAYMENTS**

#### **3.1 INVOICING**

- 3.1.1 Customer shall commence paying the Charges in accordance with Annex III (Storage and Handling Services and Charges) from the Services Commencement Date and will continue to pay the Charges until the end of the Term.
- 3.1.2 Liquin will invoice Customer in accordance with Annex III (Storage and Handling Services and Charges) as follows:
- (a) for all Fixed Charges at the start of each month; and
  - (b) for all Variable Charges in arrears.
- 3.1.3 Liquin will provide Customer with invoices that identify the Services provided on a monthly basis and conform with Applicable Law.
- 3.1.4 All Charges mentioned in Annex III (Storage and Handling Services and Charges) are exclusive of VAT or any other applicable taxes, duties or levies imposed by any governmental bodies, including but not limited to port dues, wharfage fees and customs and import duties.
- 3.1.5 Subject to section 3.4 (Accelerated Payment), Customer will pay undisputed Charges to Liquin within the timeframe set out in clause 6.2 of the Individual Terms and Conditions, with the exception of customs and import duties or costs which Liquin may pay to any Regulator on behalf of Customer, which are immediately reimbursable by Customer.
- 3.1.6 In accordance with Applicable Law, if Customer fails to pay any undisputed sum by the relevant due date for payment, as set out in section 3.1.5, Liquin may charge Customer interest, at the rate set out in clause 6.3 of the Individual Terms and Conditions, in respect of the period from the due date until the date the outstanding sum is paid in full (whether before or after judgement). Any interest payable shall accrue daily and will be calculated on the basis of the actual number of days elapsed, over a 365 day year, together with any reasonable costs incurred by Liquin in enforcing such payment.
- 3.1.7 If Customer wishes to dispute the whole or any part of an invoice, then, provided that Customer has notified Liquin of the disputed amount and the nature of the dispute prior to the due date for payment of the relevant invoice, Customer may withhold payment of the charges in dispute provided such amounts are disputed in good faith, but shall pay the undisputed portion on the due date. The Parties agree to use Commercially Reasonable Efforts to resolve any disputed invoices promptly and any amount resulting from the settlement of the dispute will be promptly paid by Customer.

### **3.2 COSTS OF CLEANING TANKS**

Subject to any cleaning costs which are deemed to be the responsibility of Liquin in accordance with section 2.2.2(b) (Maintenance and Repair), Customer acknowledges and agrees that it shall be responsible for all costs (including costs associated with the disposal of waste water, Product remnants, any chemical or other waste and any applicable administration charge) that are incurred during the Term and on expiration or termination of the Agreement in connection with the cleaning of the Tanks.

### **3.3 WITHHOLDING TAX**

Where any payments by Customer to Liquin for the provision of Services are, in accordance with Applicable Law, subject to any withholding tax, Customer will pay Liquin such additional amounts as are necessary to ensure receipt by Liquin of the full amounts which would have been received by Liquin but for any withholding tax deduction.

### **3.4 ACCELERATED PAYMENT**

Notwithstanding Liquin's right to terminate the Agreement in section 10.1.1(b) (Termination for Insolvency), where an Insolvency Event occurs, Liquin may, to the extent permitted under Applicable Law, request that all the Fixed Charges for the remainder of the Term (or any part thereof) become immediately payable by Customer on receipt of an invoice.

## **4. TAXES, CUSTOMS AND EXCISE DUTIES**

Customer will be responsible for paying (whether or not in advance and irrespective of whether the Product is still at the Facility or has left the Facility):

- 4.1.1 all freight, applicable taxes, duties or levies, contributions, fines, amounts to be collected on delivery and/or other charges or costs whatsoever with respect to or related to the Product; and
- 4.1.2 any assessment on the Product and on the handling, transportation or use thereof which Liquin may be required to pay or collect under any Applicable Law.

## **5. RIGHT OF LIEN AND/OR RETENTION**

- 5.1.1 Liquin shall have a right of lien and/or retention over the Product and all sums, documents and valuables which Liquin holds or will hold on behalf of Customer to secure the payment of all amounts due to Liquin by Customer and to secure performance by Customer of all its obligations to Liquin under this Agreement or under any other agreement between Customer and Liquin. Liquin may enforce such rights in any manner permitted by Applicable Law.
- 5.1.2 Subject to section 5.1.3, to the extent permitted under Applicable Law and in accordance with Liquin's right of lien and/or retention referred to in section 5.1.1, Liquin may retain possession and/or dispose of the Product in such manner and at such price as Liquin thinks reasonably fit and apply the proceeds from any disposal towards any outstanding Charges, interest or other amounts owed by Customer.
- 5.1.3 Liquin may only enforce its rights under section 5.1.2 in accordance with the following:
  - (a) amounts will only be regarded as due by Customer to Liquin in accordance with the timeframes set out in sections 3.1 (Invoicing) or 3.4 (Accelerated Payment); and
  - (b) prior to disposing of the Product, Liquin must issue Customer with a Formal Notice stating its intention and allow Customer five (5) days to pay any amounts due.

## **6. INTELLECTUAL PROPERTY**

- 6.1.1 Nothing in the Agreement will operate to transfer ownership of any Intellectual Property Rights belonging to a Party or its Affiliates or developed by a Party or its Affiliates during the Term ("**Proprietary Intellectual Property**").
- 6.1.2 Customer hereby grants Liquin, and its Affiliates and Contractors, a non-exclusive, royalty free and non-transferable licence to use, copy, store or otherwise deal with its Proprietary Intellectual Property in any jurisdiction only to the extent necessary to perform the Services and to comply with Liquin's obligations set out in the Agreement. Liquin, its Affiliates and Contractors will comply with all reasonable restrictions on the use of any Customer licensed Proprietary Intellectual Property where such restrictions are notified to Liquin by Customer in writing.

## **7. LIABILITY AND INDEMNITIES**

### **7.1 LIMITS OF LIABILITY**

- 7.1.1 Liquin shall not be liable for damage to, or loss of, the Product caused before the Product is delivered to the Facility, or after the Product is redelivered in accordance with section 1.6 (Custody of the Product).
- 7.1.2 Liquin shall only be liable for any loss of, or damage to, the Product, to the extent such loss or damage is caused by wilful misconduct (*opzet*) or gross negligence (*bewuste roekeloosheid*) of Liquin.
- 7.1.3 Notwithstanding section 7.1.2, Liquin shall not be liable for loss of Product due to evaporation, shrinkage, line clingage and/or line flushings.
- 7.1.4 Except as set out in section 7.1.7, neither Party will be liable for any punitive, special, incidental, indirect and/or consequential losses. In no event will either Party be liable, whether arising from breach of contract, tort, breach of statutory duty or otherwise, for loss of profits, loss of revenue, loss of business or goodwill and/or loss due any business interruption.
- 7.1.5 Except as set out in section 7.1.7, Liquin's and its Affiliates' total liability per occurrence or series of connected occurrences whether based on a Claim in contract, tort, breach of statutory duty or otherwise arising out of or in relation to the Agreement, will be limited to 5,000,000 EURO.
- 7.1.6 Nothing in the Agreement will limit or exclude either Party's liability in case of wilful misconduct (*opzet*) or gross negligence (*bewuste roekeloosheid*) of Liquin's senior management.
- 7.1.7 Without prejudice to any other provision agreed between the Customer and Liquin, it is understood that neither Liquin nor any of its Affiliates will be liable for any damages, costs, expenses, fines, claims, penalties and/or any other losses suffered by the Customer or any of its Affiliates arising from:
- (a) non-performance of an obligation to the Customer pursuant to section 12.6;
  - (b) the Customer's failure to timely notify Liquin of any Claim in accordance with section 7.3.1, to the extent that those have been caused or aggravated by said failure; and/or
  - (c) termination of this Agreement pursuant to section 10.1.3.



## **7.2 RECOVERY OF THIRD PARTY LOSSES**

Save for the Affiliates of either Party, nothing in the Agreement will confer upon any third party any right or benefit.

## **7.3 TIME-BARRING OF CLAIMS**

7.3.1 In accordance with the following timeframes, Customer shall notify Liquin in writing of any Claim (and provide all available details) with respect to the Product:

(a) while the Product is still located at the Facility, as soon as the Customer becomes aware of a defect (or suspected defect) in the Product; or

(b) after the Product has been removed from the Facility, as soon as the Customer becomes aware of a defect (or suspected defect) and in any event within thirty (30) days following the removal of the Product.

7.3.2 Customer will not be entitled to pursue any Claim (unless otherwise provided by Applicable Law without the possibility of contractual waiver or limitation) against Liquin after a period of twelve (12) months has expired from the day that the Product is removed from the Facility or after Liquin has been notified of a Claim (or should have been notified) in accordance with section 7.3.1, whichever of these events is earlier.

## **7.4 INSURANCE**

Customer acknowledges and agrees that Liquin's liability in respect of the Agreement is limited in accordance with sections 7.1 (Limits of Liability) and 7.3 (Time-barring of Claims) above. Customer is responsible for obtaining and maintaining appropriate insurance (including self insuring) to cover its liability arising under the Agreement, including in respect of damage to, or loss of, the Product. Customer shall at the request of Liquin provide Liquin with evidence that the aforementioned insurance is in force.

## **7.5 INDEMNITIES**

7.5.1 Without prejudice to any other remedies available under this Agreement, each Party will indemnify, defend and hold harmless, the other Party, the other Party's Affiliates and each of their respective officers, directors, employees, Contractors, successors and assigns from any Indemnified Losses arising in relation to, or in connection with, any Claims that the use of the Party's Proprietary Intellectual Property in accordance with the terms of the Agreement infringes or misappropriates any Intellectual Property Rights of any third party.

7.5.2 Without prejudice to any rights of recovery or any other remedies available under this Agreement, Customer will indemnify, defend and hold harmless Liquin, any of Liquin's Affiliates and each of their respective officers, directors, employees, Contractors, successors and assigns from any Indemnified Losses arising in relation to, or in connection with, any of the following:

(a) customs duties and taxes payable as a result of providing the Services and any customs services provided by Liquin or a Liquin Affiliate;

(b) any third party Claims in respect of any damage resulting from and/or related to the Product;

(c) any fines or other penalties imposed by a court of competent jurisdiction or by a Regulator on Liquin or any of its Affiliates to the extent caused by Customer's (or any of its Contractors' or Affiliates') failure to perform its obligations, and exercise its rights, pursuant

to the Agreement in accordance with all Applicable Laws; and

(d) any Claims caused by Customer's prospective, current or former Contractors in connection with the performance of the Services or otherwise in connection with the Agreement, where such Indemnified Losses would exceed the cap on Customer's liability, as set out in section;

(e) the breach of any of the representations and warranties in section 8.2 or any of the obligation as referred to in section 12.3 or 12.6; or

(f) any misrepresentation made and/or any material omission, incorrectness or incompleteness of information provided or requested pursuant to section 12.4.

## **7.6 DEFENCE OF CLAIMS**

7.6.1 The Indemnified Party will notify the Indemnitor as soon as reasonably practicable upon becoming aware of any Claim in respect of an indemnity given pursuant to the Agreement. The notification will be provided in accordance with section 12.17 (Notices) and will include reasonable details (which are known to the Indemnified Party) in respect of the Claim and its nature.

7.6.2 The Indemnitor may, at its own expense, elect to assume control of the defence and settlement of the Claim, provided however that the Indemnified Party will have the right to:

(a) at its own cost, participate in any defence and settlement;

(b) approve the terms of any settlement (such approval not to be unreasonably withheld) and reasonably veto any proposed admission of liability by the Indemnitor; and

(c) join the Indemnitor as a defendant in legal proceedings arising out of the Claim.

7.6.3 If the Indemnitor assumes control of the Claim, the Indemnified Party will not make admissions (except under compulsion of Applicable Law), agree to any settlement or otherwise compromise the defence or settlement of the Claim without the prior written approval of the Indemnitor (which will not be unreasonably withheld) and give, at the Indemnitor's request and cost, all reasonable assistance in connection with the defence and settlement of the Claim.

7.6.4 If the Indemnitor does not elect to defend the Claim or does not actively defend the Claim, then the Indemnified Party will have the right to defend or settle the Claim in the manner it considers appropriate, at the cost of the Indemnitor and the Indemnitor will give, at the Indemnified Party's request, all reasonable assistance in connection with the conduct of the defence and settlement of the Claim at the cost of the Indemnitor.

## **7.7 FORCE MAJEURE**

7.7.1 Neither Party will be liable for any delay or failure in the performance of any of its obligations pursuant to the Agreement to the extent that the same results from a Force Majeure Event and the Party affected by the Force Majeure Event ("**Affected Party**"):

(a) could not have prevented the delay or failure by using reasonable precautions;

(b) as soon as reasonably practicable following becoming aware of the occurrence gives notice of the Force Majeure Event to the other Party by telephone (and confirms the same in writing within twenty four (24) hours); and

(c) uses reasonable endeavours to commence performing such obligations as soon as possible or otherwise mitigates the effect of the Force Majeure Event by finding a work around to perform the obligation despite the Force Majeure Event.

7.7.2 On the occurrence of a Force Majeure Event, the corresponding obligations of the other Party will be suspended to the same extent as those of the Affected Party.

## **8. REPRESENTATIONS AND WARRANTIES**

### **8.1 MUTUAL REPRESENTATIONS**

Each Party represents and warrants to the other Party that as of the Effective Date:

8.1.1 it has the capacity and authority to enter into the Agreement;

8.1.2 the Agreement and the obligations created hereunder are binding upon it and enforceable against it and will not violate the terms of any other agreement, or any judgment or court order, to which it is bound; and

8.1.3 there is no proceeding pending or threatened, or any other circumstance which to the Party's knowledge, challenges or may have a material adverse impact on the Agreement.

### **8.2 CUSTOMER REPRESENTATIONS AND WARRANTIES**

8.2.1 The Customer represents and warrants that:

(a) as of the Effective Date neither the Customer nor any of its shareholders, its beneficial owners, its Affiliates, Contractors or any of the other parties controlling it is:

- (i) a Sanctioned Party;
- (ii) affiliated with a Sanctioned Party; or
- (iii) acting on behalf of any Sanctioned Party;

(b) no Sanctioned Party or party affiliated with or acting on behalf of any Sanctioned Party will have any interest of any nature whatsoever (present, future, contingent, direct, or indirect) in any Product offered or consigned for storage and/or for other Services pursuant to this Agreement;

(c) any vessel delivering the Product to Liquin (if applicable), shall:

- (i) not be sailing under the flag of any country subject to Economic Sanctions restricting any dealings with, or servicing of, such vessels in any way relevant to this transaction;
- (ii) not be owned, leased, chartered or operated by any Sanctioned Party, or any party affiliated with, or operating on behalf of any Sanctioned Party.

## **9. CONFIDENTIALITY**

9.1.1 Each Party ("**Recipient**") undertakes to the other Party ("**Discloser**") to:

(a) hold all Confidential Information of Discloser which it obtains in relation to the Agreement, in strict confidence;

(b) not use, or authorise use of Discloser's Confidential Information for any purpose other than the performance of Recipient's obligations or the exercise of its rights or the receipt of any benefits pursuant to the Agreement;

(c) not disclose, or authorise use of, Discloser's Confidential Information to any third party other than pursuant to this section 9.1.1; and

(d) promptly notify Discloser of any suspected or unauthorised use or disclosure of Discloser's Confidential Information of which Recipient becomes aware and promptly take all reasonable steps that Discloser may require in order to prevent, stop or remedy the unauthorised use or disclosure.

9.1.2 Each Party may disclose the other Party's Confidential Information to its Affiliates and their respective officers, directors, employees, Contractors, advisors and Auditors provided that such persons need to know the Confidential Information disclosed to them and comply with the terms of the Agreement in respect of the Confidential Information disclosed to them.

9.1.3 Section 9.1.1 will not apply to Confidential Information to the extent that:

(a) such Confidential Information has been placed in the public domain other than through the fault of Recipient;

(b) Discloser has approved in writing the particular use or disclosure of the Confidential Information; or

(c) such Confidential Information was already known by Recipient prior to the disclosure without an obligation of confidentiality.

9.1.4 Each Party may disclose the other Party's Confidential Information if, and to the extent that, it is required to do so by a Regulator, a relevant stock exchange or otherwise by Applicable Law or a court of law in the relevant jurisdiction.

9.1.5 The obligations with respect to Confidential Information will survive until three (3) years after the end of the Term.

## **10. TERMINATION**

### **10.1 TERMINATION BY EITHER PARTY**

10.1.1 Subject to section 10.1.2, a Party may only terminate (*opzeggen*) the Agreement in whole or in part, with immediate effect, on providing notice to the other Party if any of the following occur:

(a) the other Party commits a material breach of the Agreement, which breach is either:

(i) not capable of being remedied; or

(ii) the other Party has not commenced taking reasonable steps to remedy the breach within thirty (30) days or not remedied the breach within ninety (90) days, after notice of the breach is given by the terminating Party;

(b) without prejudice to section 3.4 (Accelerated Payment), if the other Party suffers an Insolvency Event;

(c) in accordance with section 12.2 (Change in Applicable Law); or

(d) a Force Majeure Event affecting the other Party continues for more than ninety (90) days.

10.1.2 In addition to the termination rights set out in section 10.1.1, Liquin may, by giving notice to Customer, terminate (*opzeggen*) the Agreement in whole or in part, with immediate effect, if Customer fails to pay any undisputed Charges by the due date, where Liquin gives Customer:

(a) a notice of default relating to such non-payment (the “**Initial Notice**”);

(b) a further notice no earlier than fifteen (15) days following the Initial Notice; and

(c) Customer fails to pay the aggregate amount demanded in the Initial Notice within thirty (30) days following the Initial Notice.

10.1.3 In case of:

(a) a breach of any of the representations and warranties in section 8.2 or any of the obligations as referred to in section 12.3 or 12.6;

(b) any misrepresentation and/or any material omission, incorrectness or incompleteness of information provided or requested by Liquin pursuant to section 12.4; or

(c) performance of Liquin's obligations to the Customer being restricted by Economic Sanctions as referred to in section 12.5,

Liquin may by giving written notice to the Customer, terminate (*opzeggen*) this Agreement with immediate effect, in which case the Customer will be obliged to collect and take back all Products by and at Liquin at the first request of Liquin without undue delay. In case of a termination pursuant to this section 10.1.3, section 7.1.7(b) will apply.

## **10.2 CONSEQUENCES OF EXPIRATION OR TERMINATION**

10.2.1 The expiration or termination of the Agreement will not affect:

(a) any accrued rights of either Party, including any right to receive any payments due but unpaid before expiration or termination; or

(b) sections 2, 5, 6, 7, 8, 9, 10.2.1, 12.2, 12.4, 12.5 and 12.6, together with any other provisions of the Agreement which are expressed to survive expiration or termination or which are required to give effect to such expiration or termination.

10.2.2 Upon expiration or termination of the Agreement, Customer shall:

(a) if they are aware of any defect (or suspected defect), notify Liquin in accordance with section 7.3.1 (Time-barring of Claims) and to the extent Liquin is notified, allow Liquin to perform at its discretion any reasonable testing or sampling of the Product before removing the Product;

(b) be responsible for the cost of cleaning the Tanks in accordance with section 3.2 (Costs of Cleaning Tanks) and continue to pay the Charges for the period of cleaning;

(c) ensure that all outstanding invoices (including any taxes, customs duties or levies prepaid by Liquin) or accelerated payments pursuant to section 3.4 (Accelerated Payment) are settled before final release of the Product; and

(d) subject to sections 5 (Right of Lien and/or Retention) and 10.2.2(c), remove the Product from the Facility.

## **11. ACCESS AND AUDITS**

### **11.1 ACCESS**

11.1.1 Customer will, and will procure that its personnel or Contractors, act in accordance with all Applicable Laws and Liquin standards and policies in force at the relevant Terminal from time to time.

11.1.2 Liquin reserves the right to refuse to admit and/or to remove Customer, or any of its personnel or Contractors, which Liquin considers to be a risk to the safety or security of the Terminal. Liquin will notify Customer immediately after it has refused entrance of personnel of Customer or any of its Contractors. Access to the Facility is at Customer's or any of its personnel or Contractor's own risk.

### **11.2 AUDITS**

11.2.1 Liquin will provide Customer, Customer's auditors and Regulators ("**Auditors**") access to inspect the Tanks and parts of the Facility directly related to the performance of the Services provided to the particular Customer ("**Audit**").

11.2.2 Customer will, at its own cost, be permitted to conduct one Audit per Contract Year. Before conducting such Audit, Customer will provide Liquin with reasonable notice. Customer will only be permitted to conduct an Audit during normal business hours and in a manner so as to not interfere with Liquin's performance of the Services or Liquin's performance of services to other customers.

11.2.3 While conducting the Audit, the Customer will procure that the Auditors comply with Liquin's safety, security and confidentiality requirements.

## **12. MISCELLANEOUS**

### **12.1 COMPLIANCE WITH APPLICABLE LAW**

12.1.1 Each Party will, and will procure that each of its Affiliates and Contractors:

(a) obtain all necessary regulatory approvals, licenses or consents in connection with this Agreement; and

(b) perform its obligations and exercise its rights pursuant to the Agreement, in

accordance with all Applicable Laws.

12.1.2 If either Party receives any communication from a Regulator of the other Party which relates to the Agreement or the Services then, to the extent permitted by the Regulator, that Party will notify the other Party of the same as soon as reasonably practicable.

### **12.2 COMPLIANCE WITH ECONOMIC SANCTIONS**

12.2.1 Without prejudice to section 12.1, the Customer will, and will procure that each of its Affiliates and Contractors is, and will be, compliant with all laws and regulations relating to Economic Sanctions in connection with the storage, transport, import, export or sales of any Product offered or consigned for storage pursuant to this Agreement.

12.2.2 The Customer shall assist Liquin with such Economic Sanctions compliance measures as requested by Liquin.

12.2.3 Notwithstanding any obligation in this Agreement, neither Liquin, nor the Customer shall take or be required to take any action that is prohibited or penalized under the laws of the EU, US, or any other applicable jurisdiction

### **12.3 UNDERTAKING NOT TO DISPOSE OF THE PRODUCT IN VIOLATION OF ECONOMIC SANCTIONS**

12.3.1 The Customer agrees that it shall not -- directly or indirectly -- store or offer for storage, import, export, re-export, transfer, divert, transport, sell, or otherwise dispose of the Product whether alone or commingled or blended with other products:

(a) from, to or via any person, firm or entity, subject to Economic Sanctions, or acting on behalf of any person, firm or entity, subject to Economic Sanctions, unless authorized under Applicable Law;

(b) from, to or via any country or countries, subject to Economic Sanctions, which would restrict the export or re-export of the Product to such countries, including entities or persons in or acting on behalf of such countries; or

(c) for any activity or use prohibited by Economic Sanctions, without obtaining prior authorization from the competent government authorities as required by the relevant Economic Sanctions.

### **12.4 RIGHT OF INFORMATION**

12.4.1 The Customer acknowledges that Liquin has the right to undertake such due diligence it deems appropriate to ensure compliance with applicable Economic Sanctions laws and any of the Customer's obligations related thereto provided in this Agreement, including without limitation requesting information or representations or both from the Customer;

(a) before discharging any Product for storage as to the origin of the Product; and

(b) before loading the Product for collection by or on behalf of the Customer as to the destination(s) and the recipient(s) of the Product.

12.4.2 Liquin will not be obliged to discharge or load the Product unless the Customer has provided detailed information on the origin, destination(s) and/or recipient(s) of the Product and all other relevant information as well as appropriate representations in order to comply with Economic Sanctions. Neither Liquin nor any Liquin Affiliate will be liable for any delay in the discharging or loading of the Product caused by delay in the information required in order to comply with Economic Sanctions or incomplete or inaccurate information provided to it.

### **12.5 PERFORMANCE RESTRICTED BY ECONOMIC SANCTIONS**

12.5.1 In case Liquin believes or is otherwise directed by any competent government authority that it would be prohibited under any applicable Economic Sanctions from:

(a) handling, loading or discharging the Product;

(b) storing or continuing to store the Product or any other products stored for the Customer at Liquin; or

(c) performing any other obligation to the Customer under the Agreement; then Liquin shall be excused of performing such obligation to the Customer under the Agreement, in which case section 7.1.8(a) will apply.

## **12.6 OBLIGATION TO COLLECT**

12.6.1 In a case referred to in clause 12.5.1(b) the Customer shall be obliged to collect and take back the Product and/or other products stored for the Customer by and at Liquin at the first request of Liquin without any undue delay.

## **12.7 CHANGE IN APPLICABLE LAW**

12.7.1 If there is a change in Applicable Law, excluding, for the avoidance of doubt, a change in Economic Sanctions, that requires changes to the Agreement, including changes to the Services, then:

(a) a Party will notify the other Party as soon as reasonably practicable upon becoming aware of such change in Applicable Law or potential change;

(b) the Parties will work together to identify the impact of such change in Applicable Law and subject to section 12.7.2 agree any changes necessary to implement the change; and

(c) to the extent technically possible, any required change will be implemented by the effective date of such Applicable Law.

12.7.2 The Parties will promptly agree how the change in Applicable Law as referred to in 12.7.1 will be incorporated into the Agreement and how the Charges will be adjusted to reflect the cost of implementing the change in Applicable Law.

12.7.3 If the Parties cannot agree how to implement the change in Applicable Law (including the appropriate adjustment to the Charges) in accordance with section 12.7.2, either Party may terminate the Agreement on reasonable written notice.

## **12.8 FURTHER ASSURANCE**

Each Party will do and execute, or arrange for the doing and executing of, each necessary act, document and thing reasonably within its power to implement and give effect to the Agreement.

## **12.9 CONTRACTORS**

12.9.1 If either Party uses a Contractor to act on its behalf under the Agreement, then that Party will:

(a) procure that the Contractor complies with that Party's rights, responsibilities and obligations set out in the Agreement;

(b) be liable for the acts and omissions of the Contractor under the Agreement; and

(c) remain the single point of contact for the other Party with respect to the Contractor, provided that the other Party will have the right to contact the relevant Contractor directly for operational purposes.

12.9.2 Unless the context requires otherwise, references to a Party will, to the extent that Contractors are performing that Party's obligations under the Agreement, include the Contractors.



## **12.10 NO SUB-USE**

- 12.10.1 Customer acknowledges and agrees that it is not permitted to allow the Tanks or any part of the Tanks used in the performance of the Services to be used by any Affiliate or other third party.
- 12.10.2 If during the Term Customer does not require the use of any Tank for a period of time, Customer may request that Liquin take back the use of the Tank in order to release it to a third party for the period of time it is not required by Customer. The terms under which Customer may return a Tank to Liquin shall be agreed between the Parties at such time. If Liquin agrees to take back the use of a Tank, Liquin will enter into a storage and handling agreement directly with the relevant third party and will not be liable to Customer for any loss or damages suffered by Customer where the third party does not return the respective Tank within the agreed time period.

## **12.11 ASSIGNMENT/NOVATION**

- 12.11.1 Neither Party may assign or transfer (by way of novation) its rights or obligations set out in the Agreement without the prior approval of the other Party.
- 12.11.2 The Agreement will be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

## **12.12 WAIVER**

Subject to section 7.3 (Time-barring of Claims):

- 12.12.1 a failure by either Party to exercise or delay in exercising a right or remedy provided by the Agreement or by Applicable Law does not constitute a waiver of the right or remedy or any other rights or remedies; and
- 12.12.2 a waiver (whether express or implied) of a breach of any of the terms of the Agreement does not constitute a waiver of any other breach of the Agreement.

## **12.13 CUSTOMS REPRESENTATIVE**

- 12.13.1 Where Liquin or its Affiliate provides customs related services in a relevant country and where permitted by Applicable Law, Liquin or its Affiliate (as applicable) may agree, solely in accordance with the terms and conditions set out at Annex VI (Customs Proxy and Procedures), to be appointed as Customer's direct representative for customs related activities regarding the Product stored at the Terminal.
- 12.13.2 If Liquin or its Affiliate agrees to be appointed as Customer's direct or indirect representative for customs related activities, Customer will complete and return a duly executed proxy in the form set out in Annex VI (Customs Proxy and Procedures) and will provide Liquin or its Affiliate (as applicable) reasonably in advance, with all information and documents required to enable Liquin or its Affiliate to make the appropriate declarations to customs authorities or to facilitate Liquin's or its Affiliate's dealings with such customs authorities.

## **12.14 NO PARTNERSHIP, AGENCY OR LEASE**

- 12.14.1 Nothing in the Agreement creates a joint venture or partnership between the Parties. Except as expressly authorised in the Agreement, the Agreement will not create an agency relationship between the Parties and neither Party has any authority to, and will not, act, make representations or contract on behalf of the other Party.

12.14.2 Nothing in the Agreement shall be interpreted to pertain to a lease or rental agreement.

#### **12.15 AMENDMENTS TO THE AGREEMENT**

Subject to any amendment of the Charges in accordance with clause 6 (Charges) of the Individual Terms and Conditions, no amendment to the Agreement shall be binding on the Parties unless set out in writing and signed by authorised representatives of each of the Parties.

#### **12.16 COUNTERPARTS**

The Agreement may be executed in any number of counterparts, each of which is an original and all of which evidence the same agreement between the Parties.

#### **12.17 NOTICES**

12.17.1 Any notice to be given pursuant to the Agreement will be in writing (including by email) sent to the designee detailed in clause 9 (Address for Contact) of the Individual Terms and Conditions and left at or sent in the manner set out in section 12.17.2.

12.17.2 Where a Party is required or permitted to give notice to the other Party, such notice (including Formal Notices) will be deemed to be received:

(a) if left at the recipient's address with the receptionist between 9 a.m. to 5 p.m. (in the time zone of the recipient) on a business day, on the date of delivery;

(b) if sent by an express courier with a reliable system for tracking delivery, on the date of delivery to the recipient if delivered between 9 a.m. to 5 p.m. (in the time zone of the recipient) on a business day; and

(c) if sent by facsimile between 9 a.m. to 5 p.m. (in the time zone of the recipient) on a business day, on the date sent or, if outside such period, then at the beginning of the next business day.

#### **12.18 SEVERABILITY**

If any term of the Agreement is held by a court of competent jurisdiction to be contrary to Applicable Law, then the remaining terms of the Agreement will not be affected and will be valid and enforceable to the extent granted by Applicable Law.

#### **12.19 ENTIRE AGREEMENT**

Subject to section 7.1.7(a) (limit of liability for fraud and fraudulent misrepresentation) of the General Terms and Conditions:

12.19.1 the Agreement constitutes the entire agreement, and supersedes any previous verbal or written understandings between the Parties relating to the Services;

12.19.2 each Party acknowledges that in entering into the Agreement it has not relied on any representation, warranty or other assurance (except those set out in the Agreement) and waives all rights and remedies which, but for this section 12.19, might otherwise be available to it;

12.19.3 all Services provided by Liquin pursuant to the Agreement will be subject only to the terms of the Agreement and no other terms shall apply; and

12.19.4 any order forms, bills of lading or other correspondence that the Parties may use for the ordering of Services or otherwise administering the Agreement will be for administrative convenience only and terms and conditions included on such forms will apply only to the extent that they are consistent with the Agreement.

