

# ***DILSS***

## GENERAL TERMS AND CONDITIONS FOR THE SALE AND PURCHASE OF PETROLEUM PRODUCTS

These general terms and conditions of sale (the **GTCs**) shall apply to and form part of all agreements entered between the Seller as defined in the DILSS Petroleum Limited (the **Seller**) with any buyer (the **Buyer**) with respect to the sale of Products as defined hereunder.

By signing the Agreement or by placing an Order (as defined hereunder) with the Seller, the Buyer is deemed to have accepted without reservations these GTCs. Unless otherwise agreed in advance by the Seller, these GTCs apply to the exclusion of any other terms and conditions set out in the Buyer's Order, its general terms and conditions of purchase, or more generally, in the Buyer's commercial documents, regardless of the date of such terms and conditions or documents.

## 1. DEFINITIONS AND INTERPRETATIONS

### 1.1. Definitions

**"Affiliate"** means any person directly or indirectly controlling, controlled by or under common control with a Party and the word "Affiliates" shall be construed accordingly.

**"Agreement"** means any fuel supply agreement entered between the Seller and the Buyer for the supply of Products, whose terms are incorporated in these GTCs by reference.

**"Business Day"** means any day which is not a Saturday, Sunday or recognized/gazetted public in South Sudan and on which banks are generally open for the conduct of banking business.

**"Collection Terminal"** means the terminal nominated by the Seller from time to time, where the Buyer will collect the Products.

**"Confidential Information"** means these GTCs, the Agreement, all information, documentation, data and know-how, in whatever form, disclosed by a Party to the other, irrespective of whether or not such information is designated as confidential, including intellectual property.

**"Default Rate"** means the rate of 2% per month.

**"Delivery Point"** means each of the Buyer's storage depots as notified to the Seller in writing from time to time.

**"Force Majeure Event"** has the meaning ascribed under Clause 10.

**"Insolvency Event"** means the occurrence of any of the following events in respect of a Party ("Affected Party"), unless such event is capable of being set aside and the requisite proceedings to have it set aside are filed with the appropriate court within sixty (60) days: there is entered against the Affected Party a decree or order by a court adjudging the Affected Party bankrupt or insolvent; or approving, as properly filed by or on behalf of the Affected Party, a petition seeking reorganization, arrangement, or reconstruction; or appointing an administrator, a receiver, liquidator, trustee, sequestrator (or other similar official) of the Affected Party over a substantial part of its property or assets, or ordering the winding up or liquidation of its affairs; or the institution by the Affected Party of proceedings to be adjudicated bankrupt or insolvent; or the consent by it to the institution of bankruptcy or insolvency proceedings against it; or the filing by it of a petition or consent seeking relief from its creditors generally under any applicable law; or the consent by it to the filing of any such petition or for the appointment of an administrator, a receiver, liquidator, trustee, sequestrator (or other similar official) of the Affected Party or any substantial part of its property; or the admission by it in writing of its inability to pay its debts generally as they become due; or any other event shall have occurred which under any applicable law would have an effect analogous to any of the events referred to above.

**"Government"** means the Government of the Republic of South Sudan

**"Governmental Authority"** means any government, legislative organ (either national, state or county), any court, tribunal, any ministry (department or division thereof), any authority or division thereof (including state / county governments and any regional authorities and any implementing executive or other branches of government), parastatals, any authority or division thereof and any agency, entity or other body owned or controlled by any government and having statutory competence to regulate or promulgate rules and regulations governing or touching and concerning matters, transactions and issues contained in the Agreement.

**"Legal Requirement"** means any statute, law, regulation, treaty, policy or other legislation, or any decree, order or written directive of any Governmental Authority, in each case, having jurisdiction in respect of either Party or the Agreement.

**"Party"** means a party to the Agreement and the word **"Parties"** shall be construed accordingly.

**"Payment Due Date"** means the date stated in the Agreement for the settlement of any invoice issued under the Agreement.

**"Payment Undertaking"** means a bank guarantee, standby letter of credit or documentary letter of credit issued by the Buyer's financier to the Seller and for such sum and on terms prescribed by the Seller to guarantee the Buyer's performance of its payment obligations under the Agreement.

**"PFI"** means proforma invoice.

**"PO"** means purchase order issued by the Buyer to the Seller in writing notifying the Seller of the Buyer's fuel requirements.

**"Petroleum Product or Product"** means Automotive Gas Oil (Diesel), Premium Motor Spirit (PMS/ Petrol), Heavy Fuel Oil (HFO) and/or any other petroleum products to be sold and bought under the Agreement and the word **"Products"** shall be construed accordingly.

**"Prudent Operating Practice"** means in relation to either Party, standards of practice obtained by exercising that degree of skill, diligence, prudence and foresight which could reasonably be expected from a skilled and experienced person engaged in the same type of undertaking under the same or similar circumstances.

**"Specifications"** means the Product specifications as set out in the Agreement.

**"Taxes"** means all forms of taxation, duties, imposts, levies and rates, whenever imposed and applicable.

"Term" has the meaning ascribed in the Agreement.

"VAT" means Value Added Tax.

### 1.2. Interpretation

In these GTCs, unless the context otherwise requires:

- a) references to any Party or any other person shall be construed so as to include its or their successors in title, permitted assigns and permitted transferees.
- b) headings are inserted for convenience only and shall not affect the construction of the GTCs.
- c) reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended, extended or re-enacted.
- d) words in the singular shall include the plural and vice versa.
- e) reference to a clause or paragraph or schedule is to a clause or paragraph of or a schedule to of these GTCs.
- f) A reference to a document or instrument includes the document or instrument as novated, amended, supplemented or replaced from time to time.
- g) the words "include" or "including" are to be construed without limitation.
- h) reference to persons includes bodies corporate, unincorporated associations and partnerships (whether or not any of them has a separate legal personality).
- i) reference to "days" shall be construed as calendar days unless qualified by the word "Business".
- j) unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a Business Day, the next succeeding Business Day.
- k) where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention.
- l) no provision herein shall be construed against or interpreted to the disadvantage of a Party by reason of such Party having or being deemed to have structured, drafted or introduced such provision.
- m) save as provided to the contrary in these GTCs, where an obligation is required to be performed by a specified time and is not so performed, such obligation shall continue until performed notwithstanding that the time specified for its performance has elapsed.
- n) in the event of a conflict arising between these GTCs and the Agreement, the provisions of the Agreement shall take prevail

## 2. SALE AND PURCHASE

- 2.1. The Seller shall sell, and the Buyer shall buy the Products in accordance with the terms of the Agreement.

- 2.2. The Seller shall comply with all applicable Legal Requirements in force from time to time relating to the supply, delivery and storage of the Products.

## 3. NOMINATIONS

### 3.1. Nominations by the Buyer

- a) The Buyer shall notify the Seller of its fuel requirements by issuing a PO which shall identify the type of Product and quantity in litres and/or cubic metres.
- b) The Buyer shall use its reasonable efforts to give the Seller prompt notice of any interruption to its requirements for the Products under these GTCs.

### 3.2. Collection of Products

- a) Save for where Product is to be delivered to the Buyer by the Seller, the Buyer shall collect, from the Collection Terminal, the Products nominated in each PO:
  - (i) within the timelines set out in the PO; or
  - (ii) in the absence of the same being set out in the PO, within the timeframe set out in the Seller's PFI.

### 3.3. Delivery of Products

- a) Whenever notified by the Buyer, the Seller shall deliver the Products to the Delivery Point in accordance with this Clause.
- b) The Buyer shall provide to the Seller all reasonable assistance (including providing all information and granting access to the Buyer's premises) so as to ensure the safe delivery of Products to the Delivery Point.
- c) The Buyer shall, as soon as reasonably practicable after it becomes aware of the same, inform the Seller of any circumstances which affect, or will affect, its ability to receive or collect the Products in accordance with the Agreement.

## 4. SELLER'S RIGHT TO INTERRUPT SUPPLY OF PRODUCTS

- 4.1. Without prejudice to its other rights under these GTCs or the Agreement, the Seller shall be entitled to interrupt the supply of Products to the Buyer where:
  - a) any payments under the Agreement are due and owing to the Seller by the Buyer;
  - b) the Buyer fails to provide a Payment Undertaking as required under the Agreement (as applicable);
  - c) the Buyer fails to satisfy the conditions of any Payment Undertaking issued under the Agreement; or
  - d) the Buyer breaches any provisions of the Agreement.

## 5. QUANTITY OF PRODUCTS

- 5.1. The Seller shall measure the volume of Products delivered in accordance with the Government's approved weights and measures in force from time to time and the Parties shall accept such measurements as conclusive of the volumes, and/or quantities supplied.

- 5.2. The Buyer shall be entitled to attend and witness the measuring of the Products delivered, provided that, if the Buyer does not attend and witness such measurement, it shall be deemed to have attended and witnessed the same and shall not be entitled to raise any objection to its results.

## 6. QUALITY OF PRODUCTS

- 6.1. Subject to Clause 6.2 and applicable Legal Requirements, the Seller warrants that the Product supplied under the Agreement shall conform to the Specifications.
- 6.2. To the extent permitted by law, all other warranties relating to quality of the Products and/ or fitness for purpose, whether express or implied, are hereby excluded from the Agreement.

## 7. TITLE AND RISK

- 7.1. The Seller warrants that it shall have title to all Products supplied under the Agreement immediately prior to passing title in the same to the Buyer and shall otherwise supply the Products to the Buyer free and clear of all liens, encumbrances and claims whatsoever.
- 7.2. Title in the Products supplied under the Agreement shall pass from the Seller to the Buyer upon receipt of the Buyer's payment in full and cleared funds, to the Seller's bank account.
- 7.3. Risk in the Products supplied under the Agreement shall pass from the Seller to the Buyer once the Products are metered at the Delivery Point or at the Collection Terminal.

## 8. PRICE AND INVOICING

- 8.1. The price of the Products supplied under the Agreement shall be as set out in the Agreement.
- 8.2. The Seller shall issue the Buyer with an invoice for every consignment of Products supplied under the Agreement. Unless otherwise agreed, invoices shall be submitted through any of the means specified in Clause 19 (Notices).
- 8.3. Every invoice shall be accompanied by supporting calculations and/or documents of the amounts claimed, which shall be based on the measurements taken in accordance with Clause 5 (Quantity of Products).

## 9. PAYMENT

- 9.1. The Buyer shall make all payments by electronic funds transfer to the account of the Seller at such bank as may be notified by the Seller to the Buyer from time to time and in the freely transferable currency as specified in the Agreement.
- 9.2. Any amount which is not paid by the Payment Due Date will attract default interest at the Default Rate from and including the date when the amount in question was due until but excluding the date when it is received by the Seller in full and in cleared funds,

accruing on a day-to-day basis and compounded quarterly. Interest shall continue to accrue under this Clause until payment in full, notwithstanding the termination or lapse of the Agreement. The amount of interest payable to the Seller shall be grossed up for withholding tax, if any, such that the net amount received by the Seller after the deduction of any such withholding tax shall be equal to the full amount of interest due.

- 9.3. The Buyer hereby consents that in the event of default in payment as required, the Seller may list or report the Buyer and/or its directors/owners with credit rating agencies operating within the jurisdictions the Buyer operates in, the Buyer's directors are resident in/citizens of and/or any such other jurisdiction as the Seller may in its sole discretion deem necessary.
- 9.4. The Buyer will pay all Taxes applicable to it in accordance with all Legal Requirements and amounts payable under the Agreement be deemed to be exclusive of all such Taxes, including VAT.
- 9.5. The Seller shall be entitled to offset any amount which remains unpaid after the Payment Due Date from the proceeds due to the Buyer under any trade/ agreement.

## 10. FORCE MAJEURE

- 10.1. Save for the obligation to make payment when due, neither Party shall be liable for failure to perform its obligations under the Agreement if such failure is a result of an event of Force Majeure.
- 10.2. For the purpose of the Agreement, a "Force Majeure Event" means any circumstance not within the reasonable control of the Party affected, but only if and to the extent that (i) such circumstance, despite the exercise of reasonable diligence and observing prudent operating practice, cannot be, or be caused to be, prevented, avoided or removed by such Party, and (ii) such circumstance materially and adversely affects the ability of the Party to perform its obligations under the Agreement, and such Party has taken all reasonable precautions, due care and reasonable alternative measures in order to avoid the effect of such event on the Party's ability to perform its obligations under the Agreement and to mitigate the consequences thereof.
- 10.3. Subject to the provisions of Clause 10.2, Force Majeure Events shall include:
- an act of God including lightning, fire, earthquake, volcanic activity, floods and storms, typhoons, cyclones, tornadoes, subsidence, mud flow or other earth or water movements;
  - epidemics, pandemics or plagues;
  - explosions or chemical contamination (other than resulting from an act of war);

- d) strikes, lockouts, work stoppage, labour disputes, and such other industrial action by workers related to or in response to the terms and conditions of employment of those workers or others with whom they are affiliated save when such event is directly related to, or in direct response to any employment policy or practice (with respect to wages or otherwise) of the Party whose workers resort to such action;
- e) closing or obstruction of any harbor, dock, port, access route (including any road bridges) or other material interference (including due to any action or inaction of any Governmental Authority) in respect of any transport or shipping to or from, or within, any such place;
- f) an air crash, shipwreck, train wreck or major failure or stoppage of transportation, objects falling from aircraft or other aerial devices, sonic boom, explosions or chemical contamination;
- g) any act of terrorism or piracy; or
- h) expropriation or compulsory acquisition of all or part of the assets of the Seller or the Buyer,

provided that breakdown of any plant, equipment or vehicles (unless due to a Force Majeure Event) or unavailability of funds shall not constitute a Force Majeure Event.

- 10.4. If a Party wishes to claim protection in respect of a Force Majeure Event, it shall as soon as possible be following the occurrence or date of commencement of such Force Majeure Event, notify the other Party of the nature and expected duration of such Force Majeure Event and shall thereafter keep the other Party informed until such time as it is able to perform its obligations.
- 10.5. The Parties shall use their reasonable endeavours to:
- a) overcome the effects of the Force Majeure Event as soon as practicable;
  - b) mitigate the effect of any delay occasioned by any Force Majeure Event; and
  - c) to ensure resumption of normal performance of the Agreement as soon as reasonably practicable and shall perform their obligations to the maximum extent practicable,

provided that neither Party shall be obliged to settle any strike, lock out, work stoppage, labour dispute or such other industrial action by its employees.

- 10.6. A Party may terminate the Agreement in case an event of Force Majeure continues for a consecutive period of sixty (60) days.

## 11. LIABILITY AND INDEMNITY

- 11.1. The Buyer shall be responsible for any third-party claim for any injury to or loss or damage to property of any person (including legal fees) arising out of the

transfer, storage or use of the Products at the Delivery Point.

- 11.2. The Buyer shall also be responsible for all actions, claims, demands, proceedings, costs and damages including without limitation, legal and debt recovery costs, currency fluctuation/devaluation arising from non-payment by the Buyer of any payments to the Seller.
- 11.3. The Buyer shall fully indemnify and hold the Seller, its Affiliates, officers, employees, contractors and agents harmless in respect of claims, arising from a breach of this Clause.

## 12. CONFIDENTIALITY

- 12.1. Save as required by any Legal Requirement, no Confidential Information shall be made to the public, the press or otherwise unless in a form agreed by the Parties.
- 12.2. Each Party shall keep confidential all Confidential Information and matters relating to the same and shall use all reasonable endeavours to prevent its officers, employees and agents from making any disclosure to any person of any Confidential Information.
- 12.3. Clause 12.2 shall not apply to any information which is:
- a) publicly available or becomes publicly available otherwise than as a result of a breach of this Clause.;
  - b) disclosed to that Party by a third party which did not acquire the information under an obligation of confidentiality; or
  - c) required to be disclosed by any Legal Requirement.
- 12.4. Nothing in the Agreement shall affect any rights a Party may have over the Confidential Information.
- 12.5. The restrictions contained in this Clause 12 (Confidentiality) shall continue to apply after termination of the Agreement without limit in time.

## 13. COMPLIANCE WITH ANTI CORRUPTION AND RELATED LAWS

- 13.1. The Seller declares and affirms that it has not paid nor has it undertaken to pay any commission, bribe, pay-off or kick-back and that it has not in any other way or manner paid any sums, in any currency, and whether in its country of incorporation or abroad, or in any other manner given or offered to give any gifts and presents in its country of incorporation or abroad, to any person and generally has not made any payment or accepted any gift or in any way whatsoever acted in breach of any obligation, prohibition or requirement of any Anti-Corruption and Anti Bribery laws applicable to it, to procure the Agreement, and the Seller undertakes not to engage in any such or similar acts during the Term of, and relative to the Agreement.

13.2. The Buyer declares and affirms that it has not paid nor has it undertaken to pay any commission, bribe, pay-off or kick-back and that it has not in any other way or manner paid any sums, in any currency, and whether in its country of incorporation or abroad, or in any other manner given or offered to give any gifts and presents in its country of incorporation or abroad, to any person and generally has not made any payment or accepted any gift or in any way whatsoever acted in breach of any obligation, prohibition or requirement of any Anti-Corruption and Anti Bribery laws applicable to it, to procure the Agreement, and the Buyer undertakes not to engage in any such or similar acts during the Term of, and relative to the Agreement

#### 14. CHILD LABOUR

14.1. The Buyer undertakes that it will not make use of child labour (as may be defined in any Legal Requirement) and will take all appropriate measures to ensure that no child labour occurs in the performance of its obligations under the Agreement or in any other manner in the conduct of its business.

#### 15. DEFAULT AND TERMINATION

15.1. The Agreement may be terminated upon the occurrence of any of the following:

- a) a Party breaches the Agreement which breach has been notified to the other Party and not remedied within thirty (30) days of notification;
- b) an Insolvency Event occurs in respect of a Party;
- c) the Buyer ceasing to hold any applicable licence, permit or consent, necessary to enable it carry on its business in its country of incorporation or operations; and
- d) either Party gives the other at least ninety (90) days written notice of termination.

15.2. The rights under Clause 15.1 are without prejudice to any other rights a Party may have at law to terminate the Agreement.

#### 16. CONSEQUENCES OF TERMINATION

16.1. Upon the termination of the Agreement, howsoever occurring, the Buyer shall pay to the Seller all amounts due and payable under the terms of the Agreement.

16.2. Subject as provided in this Clause 16 (Consequences of Termination), and except in respect of accrued rights, neither Party shall be under any further obligations to the other.

#### 17. HEALTH, SAFETY AND ENVIRONMENT

17.1. The Buyer shall provide its employees, agents, contractors, Buyers and other persons involved in the collection of the Products with a copy of a current Material Safety Data Sheet ("MSDS") and all information relating to health, safety and environmental protection.

17.2. The Buyer shall provide its employees with appropriate information and training to enable them to handle and use the Products in a manner which does not endanger their health or safety.

17.3. The Buyer shall be responsible for:

- a) the safety of its employees, agents, sub-contractors and any other person involved in collecting the Products from the Seller;
- b) ensuring compliance with all relevant Legal Requirements in any relevant jurisdiction, whether international or local; and
- c) any consequence of the use of a material safety data sheet or information which differs from the MSDS or the other information provided by the Seller.

#### 18. INDEPENDENT CONTRACTOR

18.1. The relationship between the Parties is that of independent contractors and nothing in the Agreement shall be construed as creating a principal-agent relationship, partnership or any other relationship between the Parties other than that of independent contractors.

#### 19. NOTICES

19.1. Any notice or other communication to be given to a Party under or in connection with the Agreement shall be in writing and shall be delivered by (i) hand; (ii) by pre-paid first-class post or courier; or (iii) email, served at that Party's address that is stated in the Agreement.

19.2. Any notice or communication shall be deemed to have been received:

- a) if delivered by hand, upon delivery;
- b) if sent by pre-paid first-class post or courier, at 9AM on the fifth Business Day after posting;
- c) if sent by email, at the time of transmission if before 5PM on a Business Day or otherwise on the next Business Day.

19.3. A Party shall notify the other of a change to its address for purposes of this Clause 19 (Notices) provided that such notification shall only be effective on the date falling five (5) Business Days after notice of any such change has been given.

19.4. Notwithstanding the above, any notice given in writing in English, and actually received by the Party to whom the notice is addressed, will be deemed to have been properly given and received, notwithstanding that such notice has not been given in accordance with this Clause 19 (Notices).

#### 20. ASSIGNMENT

20.1. These Terms and Conditions shall benefit and be binding on the Parties, their respective successors and any permitted assignee or transferee of all or

some of a Party's rights and obligations under the Agreement.

- 20.2. The Buyer shall not assign or transfer all or any of its rights and obligations under the Agreement to any party without the written consent of the Seller.

## **21. VARIATION**

- 21.1. No variation of the Agreement shall be effective unless it is in writing and signed by the Parties.

## **22. SURVIVAL**

- 22.1. The expiry or termination of the Agreement shall not affect such of its provisions which are expressly provided to operate after any such expiration or termination, or which of necessity shall continue to have effect after such expiration or termination, notwithstanding that the relevant provisions themselves do not provide for this.

## **23. INVALIDITY**

- 23.1. If, at any time, any provision of the Agreement is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction, will in any way, be affected or impaired and the legality, validity and enforceability of the remainder of the Agreement shall not be affected. The Parties shall enter into good faith negotiations to replace the invalid, illegal or unenforceable provision with a view to obtaining the same effect as the Agreement would have had if such provision had been legal, valid and enforceable.

## **24. COSTS**

- 24.1. Each Party shall bear its own costs arising out of or in connection with the preparation and negotiation of the Agreement.

## **25. DISPUTE RESOLUTION**

- 25.1. The Parties shall seek to resolve any disagreement, dispute, controversy or claim arising out of or in relation to or in connection with the construction,

interpretation or validity of the Agreement or the alleged breach thereof amicably and in good faith through discussions between the senior executives of each Party. If the matter is not resolved through discussion of such individuals within thirty (30) days of delivery of a written notice of dispute in accordance with Clause 19, the aggrieved Party initiate the dispute resolution mechanism stated in the Agreement.

## **26. PREVAILING LANGUAGE**

- 26.1. These GTCs are drawn up in the English language and may at the discretion of the Seller be translated into other languages.
- 26.2. The English language version of these GTCs shall prevail in case of any inconsistencies with translated versions, if any. Any other language versions of these GTCs are provided for convenience only and shall have no legal force or effect.