

## CUROIL GENERAL TERMS AND CONDITIONS FOR AVIATION FUEL SUPPLY

These General Terms and Conditions for Aviation Fuel Supply (the “General Terms and Conditions”) govern all Aviation Sale Contracts that are concluded between the Seller and the Buyer with regard to everything related to the sale and delivery of the Aviation Fuels, unless the Seller agrees otherwise in writing.

In the event of a discrepancy between these General Terms and Conditions and the Aviation Sale Contract concluded between the parties, the latter shall prevail. Unless otherwise agreed in writing between the Seller and the Buyer these General Terms and Conditions as amended from time to time will supersede any earlier terms and conditions issued by the Seller, shall override any terms and conditions stipulated, incorporated or referred to by the Buyer. All possible general terms and conditions of the Buyer are hereby explicitly rejected.

### DEFINITIONS

The following terms, when capitalised, shall have the meaning defined hereinafter, unless the context otherwise requires:

**Buyer:** means the party, its subsidiaries and affiliates, servants, agents, assigns, subcontractors and other persons instructed by it requesting the Seller either to sell and to deliver to it or to arrange for the sale and the delivery to it of Fuels.

**Curoil or Seller;** means Curaçao Oil (Curoil) N.V., Curoil (Aruba) Freezone N.V. and/or their subsidiaries, affiliates, sister- and group companies (as the case may be).

**Affiliated Companies:** the companies referred to in the relevant paragraph of the Agreement.

**Agreement:** any agreement for aviation fuel supply into which these General Terms and Conditions have been incorporated;

**Airline:** the company Buyer bought Fuel for and into which aircraft the Fuel will be delivered.

**Airline’s Aircraft:** the aircraft owned, leased, operated by or on behalf of Airline or Airline’s Affiliated Companies;

**Deliverer:** the entity in addition to Seller who, on behalf of Seller, performs Seller’s supply and delivery obligations under the Agreement.

**Delivery Note:** a document, produced in writing or by electronic means, accurately and clearly stating the date of receipt, time, registration number of aircraft, flight number, aircraft type, product description, meter readings and quantity delivered in kilograms, litres or gallons, in accordance with Seller’s normal practices, or any additional information the parties may agree upon;

**Fuel:** aviation jet fuel;

**Gross negligence:** any act or omission done or omitted to be done with deliberate or reckless disregard for the reasonably foreseeable consequences of such an act or omission;

**Off-specification Fuel:** Fuel, which is found not to be in accordance with the relevant quality specification set forth in the Agreement.

For the purpose of the Articles 9.1 G, 9.2 B and 19 of these General Terms and Conditions, “Buyer” shall include the officers, directors, employees, servants, agents, subcontractors



and representatives of the person or entity mentioned as such in the heading of the Agreement.

For the purpose of the Articles 9.1 D 11.2 and 14.2 of these General Terms and Conditions, "Seller" shall include the officers, directors, employees, servants, agents, subcontractors, Deliverer and representatives of the person or entity mentioned as such in the heading of the Agreement.

## **SCOPE**

Subject to and in accordance with the conditions set forth in these General Terms and Conditions, Seller agrees to sell and deliver or cause to be sold and delivered and Buyer agrees to purchase, receive and pay for the Fuel for consumption in Buyer's Aircraft or an Airline (as the case may be) as detailed in its sales order.

### **1. PRICES AND PRICE ADJUSTMENT MECHANISM**

Except as otherwise agreed, the following will apply in respect of prices and price adjustments; The Posted Airfield Price will apply, increased by a throughput charge levied by the airport authority of the specific location. Unless otherwise agreed, for General Aviation/ FBO customers coming through the Curacao Jet Centre terminal an additional surcharge is applicable. The Posted Airfield Price is adapted on a weekly basis on Tuesdays and is effective from Tuesday to Monday.

The throughput charge as levied by the airport authority and is subject to change at their sole discretion. Curoil will notify its customers as soon as the information of a price change becomes available and will immediately proceed to charge accordingly.

### **2. OTHER PRICES**

Prices related to conditions set forth by local government authorities may change on the day the price change becomes effective, provided that Buyer has been notified by Seller as soon as possible, preferably in advance. If Seller so fails to notify Buyer, the price change will become effective as per the date of receipt by Buyer of Seller's notification.

Except as otherwise agreed between the Seller and the Buyer the price to be paid for Fuels delivered hereunder shall be the net price charged by the Seller as this is in effect on the date of delivery as agreed on a spot sale basis.

The prices applicable to the commencement of delivery under a Commitment shall remain effective until the completion of delivery under that Commitment.

### **3. INVOICING AND PAYMENT TERMS**

3.1. Seller shall invoice Buyer after delivery for all Fuel delivered to Buyer. Invoices shall state costs of product, taxes, duties and any other charges.

3.2. Invoices for Fuel delivered to companies for which Buyer is acting as an agent only shall be sent directly to the agreed company without any involvement of Buyer, unless Buyer indicates otherwise in writing.

3.3. Unless otherwise specified on the invoice or the Agreement, invoices shall be issued and payment shall be effected in United States Dollars (USD).

3.4. The payment term is **Prepaid** unless otherwise agreed.

3.5. Payments shall be made to the Seller's bank account at the, Correspondent Bank US\$

Swiftcode : SCBLUS33

Bankname : Standard Chartered Bank



Address : 1 Madison AV. 3<sup>rd</sup> Floor, New York, NY 10010-3603, USA

Beneficiary Bank:

Swiftcode : MCBKBQBN

Bankname : Maduro & Curiel's Bank Bonaire N.V.

Address : Bulevard Gobernador Debrot nr. 70, Kralendijk, Bonaire, CN

Beneficiary:

Curaçao Oil (Curoil) N.V.

Account: 41376603

Address: A.M. Chumaceiro Bulevard 15, Curaçao

quoting Curoil N.V.'s name and the Buyer's name and the Seller's customer and invoice number.

- 3.6 Unless otherwise agreed upon the Buyer shall pay the total of the invoice at the date of invoice, though in any case within fifteen (15) days thereof, and in full without any deduction, withholding, discount or set off whatsoever at the date of the invoice. All bank charges in respect of such payments shall be for Buyer's account. The sale price is immediately payable notwithstanding possible claims of the Buyer against the Seller.
- 3.7 Should any dispute arise between the parties in relation to any item on an invoice under the Agreement, the Buyer will make payment in full as set out above. The dispute will be resolved separately, and the Seller will issue a debit or credit note as appropriate to the Buyer when the dispute is resolved.
- 3.8 At the option of the Seller the invoice may be submitted to the Buyer by registered or regular post, facsimile, e-mail, or telegram.
- 3.9 Any delay or failure to pay the invoice in full shall accrue a delay interest equal to the annual statutory interest rate. Non-payment, partial or late payment after fifteen (15) days of the date of the invoice shall in addition accrue an interest of 1.5 % per month until the date that payment is received.
- 3.10 In the event of any invoice being partially or fully unpaid fifteen (15) days after its due date, the Seller may:
- a.** Refrain from providing new supplies to the Buyer as well as to third parties on its behalf pending presentation and evaluation of Financials for a new credit arrangement
  - b.** Demand immediate payment and recover from the Buyer all the expenses of recovery (including judicial expenses of at least 20% of the principal sum and all reasonable lawyer's fees) of any of the sums aforementioned that will be borne by the Buyer.
- 3.11 In the event of partial payment of an invoice the Seller shall effectively be entitled to full collection of the sums it is owed and the debit balance shall attract interest at the rates mentioned in section 3.9 above. Acceptance of late or partial payment shall not constitute a waiver of rights to interest and shall not be considered as an agreement to provide extended credit.
- 3.12 The Buyer and the Airline company shall be jointly and severally liable for payment of the invoice in case Buyer is a different entity than final consumer. In case the Buyer fails to pay the invoice within the timeframe as laid down in article 3.6 hereof, regardless of the reason therefore, the Seller has the right to demand payment from the Airline company. In case



the Airline company fails to pay the invoice, the Seller may enforce its claim on assets of the Airline company, wherever such assets may be located, including, but not limited to, the Airline company and on the chartered goods accrued thereon, without prejudice to any rights the Seller may exercise against the Buyer.

- 3.13 The sum owed by the Buyer for payment of the price of the Fuels supplied, plus the interest and expenses accrued, may be compensated with other debts that the Seller has to the Buyer, arising from other commercial transactions with the Buyer, with the exception of debts that do not allow such compensation by mandatory legal provision.
- 3.14 Delivery documents may be provided to the Buyer if requested, but payment shall not be conditional upon the Buyer's receipt of such documents.
- 3.15 The Buyer will execute any documentation required by the Seller in order to allow for an electronic wire payment to be made to the bank account specified on the Seller's invoice and will submit a copy of the payment instructions to the Seller.

#### **4. INSURANCE**

Seller has effected and shall maintain an airline aviation insurance for general third party bodily injury, property damage and personal injury for a combined single limit of USD 500,000,000 for any one occurrence and in aggregate in respect of products liability, with grounding liability limited to USD 125,000,000 for any one occurrence and in the aggregate and with personal injury as per personal injury extension included within the aforementioned sum for a limit of USD 25,000,000 for any one offence and in aggregate overall. In case of any claim by the Buyer that falls under the insurance of Seller, such claim shall be presented to the insurance company of Seller for further handling of the claim. The Buyer shall provide all its reasonable assistance to the insurance company of Seller required in connection with handling of any claim under the insurance policy of Seller.

#### **5. REPRESENTATION**

Buyer contracts hereunder on its own behalf and as agent for its Affiliated Companies in respect of their rights and obligations under the Agreement. Seller agrees to deliver or procure the delivery of Fuel to Buyer's Affiliated Companies, who will in its turn accept delivery from the Seller or its Affiliated Companies.

#### **6. SPECIFICATION**

- 6.1 Seller warrants that the Fuel supplied by it shall meet one of the specifications set forth hereunder (per location, the Agreement may list the particular specification):
- Aviation Fuel Quality Requirements for Jointly Operated Systems (AFQRJOS) commonly known as Joint Fuelling System Check List, for Jet A-1, latest issue;
  - ASTM Standard Specification D 1655 for Aviation Turbine Fuels Jet A / Jet A-1 latest issue;
  - British Ministry of Defence Standard DEF STAN 91-91 Turbine Fuel, Aviation, "Kerosene Type", Jet A-1,, latest issue;

Furthermore, the Fuel shall meet the requirements, if any, set by the governmental regulatory authority with jurisdiction in such a location. Should any such requirement lead to a deviation from the agreed specification, Seller shall notify Buyer in advance and Buyer's prior written permission for delivery of such Fuel shall be required.



6.2 EXCEPT AS SPECIFICALLY PROVIDED IN SECTION 6.1 ABOVE, THERE ARE NO GUARANTEES OR WARRANTIES HEREIN, EXPRESS OR IMPLIED, AS TO THE MERCHANTABILITY, FITNESS OR SUITABILITY OF THE FUEL FOR ANY PARTICULAR PURPOSE OR OTHERWISE.

## **7. QUALITY**

At Buyer's request, Seller shall provide a hydrometer in good functioning condition, for the Buyer to determine the relative density of a sample from a particular fuelling. Seller shall at Buyer's request provide a typical relative density of the fuel being delivered that day, determined and at observed temperature. This value may vary from time to time and Seller accepts no responsibility for any critical calculations based in such a figure, except in the event of Seller's gross negligence and wilful misconduct.

With regard to the fuel and suspended water sampling Seller adheres to the Shell Aviation Procedures. The pertaining information is available for review upon request of Buyer

## **8. QUANTITY**

Seller shall be obligated to sell and deliver, or cause to be sold and delivered, and Buyer shall be obligated to purchase and accept delivery of the quantities as agreed upon between the parties.

Conversion rate (Gallons/Litres): 1 USG = 3.7853 LITERS

## **9. DELIVERY**

9.1 Unless otherwise agreed, Fuel shall be delivered into Buyer's Aircraft.

Should the Fuel be delivered by Seller into Buyer's Aircraft tanks ("into-plane delivery"), the following shall apply:

9.1.A Seller shall ensure prompt refuelling of Buyer's scheduled Aircraft and take all reasonable measures not to delay Buyer's Aircraft's departure. If Buyer's scheduled Aircraft arrives ahead of its scheduled time of arrival, or late, or is operating a regular non-scheduled flight, Seller shall endeavour to promptly refuel the Buyer's Aircraft.

9.1.B Title to and risk of loss of the Fuel shall pass to Buyer at the time the Fuel passes the inlet coupling of the receiving aircraft.

9.1.C Seller's measurement shall be accepted as prima facie evidence of the quantities of Fuel delivered, but Buyer shall be entitled to check the accuracy of the instruments used by Seller upon reasonable notice during Seller's normal operating hours in the presence of Seller's representative. Determinations of quantities made in accordance with international industry practice shall be binding.

9.1.D Upon Buyer's request, Seller may provide the most current specific gravity or density measurement of Fuel from airport storage, or provide Buyer with appropriate devices to measure it at the Buyer's Aircraft. Notwithstanding the foregoing, Buyer shall not hold Seller responsible for any claims and expenses related to Seller providing the specific gravity or density measurement or such devices, except to the extent caused by Seller's wilful misconduct or gross negligence.

9.1.E Deliveries shall be made in accordance with all applicable governmental laws and regulations, and the requirements laid down by the airport governing authority. Furthermore, unless otherwise agreed, Seller or its Affiliated Company shall use or



apply their standard quality control and operating procedures (as amended from time to time) or those of the delivering entities utilised by it for deliveries into Buyer's Aircraft, provided however that failure to use or apply such procedures shall not be grounds for termination pursuant to Article 22 A , unless such failure is one affecting safety and/or quality control that has not been cured in the requisite time and which is sufficiently grievous as to amount to a material breach of the Agreement.

- 9.1.F Except as otherwise agreed in writing by Seller or its Deliverer, Seller or its Deliverer shall not be obligated to make delivery unless a representative of Buyer is present. Seller shall provide the number of copies of the Delivery Note as agreed with Buyer and as necessary pursuant to local requirements.
- 9.1.G Any Fuel sold or caused to be sold by Seller under any commitment which is found to be Off-Specification Fuel may be rejected by Buyer, at Buyer's sole discretion. Seller shall indemnify, defend and save harmless Buyer from and against any and all claims, demands, proceedings, damages and liabilities for loss of or damage to property or for death of or injury to any person and against all associated direct costs, losses and expenses resulting from the use, storage or delivery into Buyer's Aircraft of Seller's Off-Specification Fuel, including the costs of replacement of all Fuel contaminated through commingling with Seller's Off-Specification Fuel, except to the extent caused by circumstances that are for the risk and account of Buyer.
- 9.2 Should the Fuel be delivered by the Seller into a fuel facility of an airline consortium or at another point of delivery, the following shall apply:
  - 9.2.A Title to and risk of loss of the Fuel shall pass to Buyer at the point agreed between the parties.
  - 9.2.B Any Fuel sold under the Agreement, which is found to be Off-Specification Fuel may be rejected by Buyer, at Buyer's sole discretion. Seller shall indemnify, defend and save harmless Buyer from and against any and all claims, demands, proceedings, damages and liabilities for loss of or damage to property or for death of or injury to any person and against all associated direct costs, losses and expenses resulting from the use or storage of Off-Specification Fuel, including the costs of replacement of all Fuel contaminated through commingling with Seller's Off-Specification Fuel, except to the extent caused by circumstances that are for the risk and account of.
  - 9.2.C Seller reserves the right to charge Buyer additional costs reasonably incurred by Seller in making deliveries to another point of delivery then to the point of delivery parties agreed upon.

## **10. DEFUELLING**

Buyer may request and Seller may agree upon a defueling of Buyer's Aircraft. The Fuel so removed from Buyer's Aircraft shall be disposed of at Buyer's sole cost and expense. Seller may charge an extra fee for such services.

If, however, defueling of Buyer's Aircraft is necessary due to Seller's fault or negligence (e.g. delivery of Off-Specification Fuel or delivery of a larger quantity than agreed upon), Seller or its Deliverer shall defuel Buyer's Aircraft, at Buyer's request and at Seller's sole cost and expense.



## **11. BUYER'S RESPONSIBILITIES**

- 11.1 Buyer shall have sole responsibility for operating all appropriate aircraft fuelling and defueling switches, valves and pre-set quantities gauges.
- 11.2 In the event Buyer requests Seller to perform the services as described in Article 11.1, or other delivery services in addition to those listed as normal delivery services in the Agreement, and Seller agrees to perform same, Buyer agrees to indemnify, defend and save harmless Seller from and against any and all claims, demands, proceedings, damages and liabilities for loss of or damage to property or to the environment or for death of or injury to any person and against all associated direct costs (including reasonable attorney's fees) losses and expenses, arising out of or related to Seller's action in performing or omission to perform the requested services, except to the extent caused by the gross negligence or wilful misconduct of Seller.

## **12. INSPECTIONS, SAMPLES**

- 12.1 Buyer or its representative shall have the right to perform a (technical) survey or inspection of:
- a) The manual and operating procedures as set forth in Article 9.1.E of Seller or the delivering entity which is an Affiliated Company of Seller;
  - b) Seller's records on quality control and checks of the Fuel, and
  - c) Seller's refuelling services at the aircraft and operational standards of airport storage and airport distribution system.

The issues mentioned under Article 12.1 shall be made available for inspection or survey, as the case may be, by Buyer at the facility where they are utilised for deliveries to Buyer. A (technical) survey or inspection shall be made during normal working hours. Buyer shall give reasonable notice of its intention to perform a (technical) survey or inspection as provided in this Article 12.1, and shall use its best endeavours not to hinder, delay or disrupt Seller's or Seller's deliverer's fuelling activities.

- 12.2 At any given location where Seller and its Affiliated Companies do not themselves have the authority to grant a right to inspect or survey, Buyer's right to inspect or survey shall be subject to approval being obtained from the requisite controlling body. Seller shall use reasonable endeavours to obtain such approval.
- 12.3 Buyer or its representative shall have the right to obtain samples of the Fuel intended to be delivered to Buyer, to be taken by Seller or Seller's representative with Buyer having the right to be present. Buyer shall give Seller reasonable advance notice of its intention to obtain samples. The taking of samples shall take place by a method and at a point to be agreed upon between the parties.

## **13. COMPLAINTS, CLAIMS**

Complaints as to short delivery or delays shall be notified to Seller at the time of delivery, followed by a written claim to be made within 7 calendar days after delivery.

Complaints as to defects in quality or any other matter shall be notified to Seller as soon as practicable, followed by a written claim to be made within 7 calendar days after delivery.

If the claim is not made within the 7 calendar days period it represents a waiver of the right to claim. In no event a waiver of the right to claim is made or implied by a signature or any other statement on the Delivery Note, irrespective of whether or not such Delivery Note contains conditions implying such waiver.



## 14. FUELLING/DEFUELING WITH PASSENGERS ON BOARD OR EMBARKING OR DISEMBARKING

- 14.1 To the extent permitted by local (airport) regulations, into-plane delivery or removal of Fuel as set forth in Article 10 may be made at Buyer's request when there are passengers or other persons on board the aircraft or embarking or disembarking. In such event, Buyer shall be solely responsible for ensuring that the provisions of the local airport regulations relating to such delivery or removal are carried out, that appropriate instructions are issued by Buyer to its employees for the safety of said persons during such delivery or removal and that such instructions are strictly observed by its employees and said persons.
- 14.2 Buyer shall indemnify, defend and save harmless Seller from and against any and all claims, demands, proceedings, damages and liabilities for death of or injury to any passengers or other persons on board or embarking or disembarking and against all associated direct costs (including reasonable attorney's fees) losses and expenses, caused by or arising out of into-plane delivery or removal of Fuel under this Article 14, unless such injury or death arises from or has been caused by the gross negligence or wilful misconduct of Seller.
- 14.3
- a) Notwithstanding anything to the contrary expressed or implied elsewhere herein, Seller shall not be obligated to fuel any of Buyer's aircrafts, if the respective aircraft is or is reasonably believed to be under the control of hijackers;
  - b) If Buyer requests that a delivery be made by Seller to an aircraft under or reasonably believed to be under the control of hijackers, on the basis that such delivery is required to ensure the safety of the aircraft, its passengers and crew, Seller may but shall not be obligated to call for suitably qualified volunteers from among its employees or otherwise to perform the fueling;
  - c) If sufficient suitably qualified persons volunteer to form the fueling crew in response to such a call of Seller, or if employees of Seller and/or other personnel are required by the police or other authority to form all or part of the fueling crew, thereby enabling Seller to undertake the delivery, Buyer hereby indemnifies Seller and the employees, officers, agents and volunteers of Seller against all claims (including those claimed by third parties), demands, proceedings, damages and liabilities for loss of or damage to any property whatsoever or for injury, including fatal injury or disease to any person whatsoever and against all associated costs (including reasonable legal costs) and expenses that arise out of or are connected with actions or omissions in the performance by Seller or by its employees, officers, agents and volunteers, unless such loss of, or damage to property, or injury to a person is due to the gross negligence or willful misconduct of Seller its employees, officers, agents and volunteers;
  - d) In the event that Seller's equipment is commandeered by the authorities and/or used as cover for military type operations, liability for resulting damage/injuries to Buyer's property/personnel is disclaimed.

## 15. CODESHARE ARRANGEMENTS

Where flight operations involving more than one Airline Company exist, there is an obligation (responsibility) on the Buyer(s) to inform and agree with their respective contracting Suppliers on refuelling arrangements.

Unless otherwise agreed, refuelling of aircraft in these situations will be carried out on the following basis:

**“Operating flight prefix will identify both contracting parties (buyers and sellers)”**



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## **16. DUTIES, TAXES AND CHARGES**

- 16.1 Buyer shall pay any taxes, fees or other charges, imposed by any national or local airport authority on the delivery, sale, inspection, storage and use of Fuel, except for taxes on Seller's income and taxes on raw material. To the extent allowed, Seller shall show these taxes, fees and other charges as separate items on the invoice for the account of Buyer.
- 16.2 Seller shall keep Buyer informed at all times about the taxes, duties and charges existing or to be charged to Buyer. Should Seller, however, in good faith provide inaccurate or incomplete information to Buyer, Buyer shall not be relieved of the obligation to pay. Buyer may, or at Buyer's request, Seller shall, as an applicable nominal party, take all actions necessary to contest the validity, applicability or any other like challenge with respect to the amount or application of such taxes, duties and charges (including but not limited to withholding of any tax) and shall institute actions to recover past or anticipated payments thereof, provided, as to withholding of any tax, that Buyer gives Seller an indemnity which meets any reasonable requirement of Seller. Unless other arrangements are made, all actions taken in this respect shall be at Buyer's sole expense.
- 16.3 If Buyer is entitled to purchase any Fuel sold pursuant to the Agreement free of any taxes, duties or charges, Buyer shall deliver to Seller a valid exemption certificate for such purchase. Seller is entitled to validate such exemption certificate with the corresponding governmental authorities before making any fuel delivery.

## **17. FORCE MAJEURE**

- 17.1 In addition to any other excuses (arising out of the same or other causes) provided by law, no failure or omission by either party to carry out or observe any of the provisions of the Agreement (except for Article 17.5 hereunder) shall give rise to any claim against that party, or be deemed to be a breach of the Agreement, if the same shall arise out of Force Majeure, which is hereinafter defined as any cause not reasonably within the control of that party, whether or not foreseen, including (without limitation) such causes as labour disputes, strikes, governmental intervention, or the party's response to the insistence of any governmental instrumentality or person purporting to act therefore, wars, civil commotion, hijacking, fire, flood, accident, storm or any act of God.
- 17.2 Notwithstanding the provisions of Article 17.1 hereunder, neither party shall be relieved of any accrued obligation to make payment under the Agreement.
- 17.3 The party delayed or prevented by Force Majeure shall use all reasonable endeavours to remove such reasons or mitigate the effects thereof, and upon removal and remedying of such reason said party shall promptly resume the performance of its obligations, provided, however, that a party in removing such reasons or mitigating such efforts shall not be required to settle strikes or lockouts or government claims by acceding to any demands when, in the discretion of that party, it would be inappropriate to do so.
- 17.4 In the event deliveries are delayed, hindered or prevented due to Force Majeure on Seller's part, Buyer shall be free to purchase Fuel from third parties; during such period Buyer has to commit itself towards said third parties.
- 17.5 If there is such shortage of Fuel at any location specified in the Agreement that Seller is unable to meet its own requirements and those of its Affiliated Companies for sales to customers then under agreement at that given location, due to Force Majeure on Seller's part, Seller shall, in consultation with said customers, make a fair allocation of Fuel among these customers.



- 17.6 Force Majeure on the part of either party's Affiliated Companies or subcontractors at any given location shall, as to that specific location, be considered Force Majeure of that party.

## **18. INDEMNITY**

The Buyer will indemnify the Seller against any claims, losses, costs (including costs as between Attorney or Solicitor and Client), damages, liabilities, fines, penalties and expenses incurred or sustained arising out of or in connection with the delivery of Fuels under a Commitment except to the extent that such claims, losses, costs, damages, liabilities and expenses arise through the gross negligent act or gross omission of the Seller.

## **19. LIABILITY**

- 19.1 Except to the extent otherwise provided in these General Terms and Conditions or the Agreement, Seller shall indemnify, defend and save harmless Buyer from and against any and all claims, demands, proceedings, damages and liabilities for loss of or damage to property or for death of or injury to any person and against all associated direct costs, losses and expenses, insofar this is covered under Seller's insurance and caused by or the Seller's performance of or omission to perform the Agreement, except to the extent caused by the gross negligence or wilful misconduct of Buyer.

In order to extend the benefit of any indemnity provided in this Article 19 and the Articles 9.1.D, 9.1.G, and 14.2 of these General Terms and Conditions to the officers, directors, employees, servants, agents, subcontractors and representatives of the party so indemnified, the indemnified party will be deemed to have acted as agent or trustee for and on behalf of its officers, directors, employees, servants, agents, subcontractors and representatives.

- 19.2 Notwithstanding anything to the contrary in these General Terms and Conditions or the Agreement, no claims shall be made by Buyer under the Agreement for indirect or consequential damages.

## **20. COMPENSATION**

Notwithstanding the foregoing, in the event that the Seller is found to be liable to the Buyer, the total amount payable by way of compensation other than in respect of personal injury or death shall not exceed the price charged to the Buyer for Fuel supplied under the Agreement. It is a pre-condition to the payment of any compensation by the Seller that all sums standing due to the Seller from the Buyer are first paid and settled.

## **21. EARLY TERMINATION**

Without prejudice to any other rights and remedies, the Seller may by notice to the Buyer terminate any Commitment with immediate effect if:

- a. the Buyer is in breach of any of its obligations under any Commitment and fails to remedy such breach within 30 days after written notice of the existence of such breach;
- b. there is a Change of Control of the Buyer;
- c. the Buyer should go into liquidation, bankruptcy or suspension of payment or should do or suffer any similar act or thing under any applicable law, such as (i) the making of a general assignment for the benefit of creditors by the Buyer; or (ii) the entering into of any arrangement or composition with creditors (other than for the purposes of a



solvent reconstruction or amalgamation); or (iii) the institution by the Buyer of proceedings seeking to adjudicate the Buyer as bankrupt or insolvent, or seeking protection or relief from creditors, or seeking liquidation, winding up, or rearrangement, reorganization or adjustment of the Buyer or its debts (other than for purposes of a solvent reconstruction or amalgamation), or seeking the entry of an order for the appointment of an administrator, a receiver, trustee or other similar official for the Buyer or for all or a substantial part of the Buyer's assets; or (iv) the institution of any proceeding of the type described in (c) above against the Buyer; or

- d. anything analogous to any of the events described in paragraph (c) happens to or in relation to the Buyer in any jurisdiction.

## **22. ASSIGNMENT AND SUBCONTRACTING**

- 22.1 Neither party may assign its obligations under any commitment in whole or in part without prior written consent of the other party and such consent will not be unreasonably withheld. Seller may however assign its obligations to its Affiliated Companies without prior written consent of Buyer.
- 22.2 Seller may, without prior consent of Buyer, subcontract the performance of its obligations under any commitment in whole or in part to a third party. Should, however, this third party be unacceptable for Buyer, Buyer is entitled to terminate the commitment as to the relevant location(s) with immediate effect.

## **23. NON-WAIVER**

No failure or delay of any party (including their employees and agents) to exercise any right or power under any commitment or at law shall operate as a waiver thereof, except as provided in a formal written commitment, nor shall any single or partial exercise of any such right or power preclude any other or further exercise thereof or the exercise of any other right or power under the commitment, and no waiver of any party of any provision or part of any provision of the commitment shall be binding unless expressly confirmed in writing.

## **24. NON-DISCLOSURE**

The information contained in the Agreement is confidential between the parties. Either party may only disclose such information to third parties its own organisation, its Affiliated Companies or Seller's Deliverers to the extent necessary to perform the Agreement and upon the prior written consent of the other party being obtained, which consent shall not unreasonably be withheld. However, each party is allowed to disclose information to any governmental or supranational authority to the extent disclosure is legally compulsory. In this latter case, the party compelled to disclose the information shall notify the other party in writing before disclosing any information in order to enable the non-disclosing party to take any action it might deem necessary, at its own cost and expense, to prevent the disclosure.

## **25. OFFICIAL VERSION**

These General Terms and Conditions and the Agreement shall be executed in the English language and the English language will be the only official language. Translations in any other language may be made for convenience purposes, but those translations shall in no event limit, alter, interpret, define or amend the contents of the English version of the General Terms and Conditions.



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**26. GOVERNING LAW**

The provisions hereof shall be governed by the law of Curaçao and the parties shall submit exclusively to the Court of First Instance of Curaçao. The foregoing is notwithstanding the right of Curoil to take legal action against the Buyer and/or the Airline company before any other court of competent jurisdiction.

**27. GOOD FAITH AND GOOD PRACTICE**

The Buyer shall, in addition to observing and complying with the terms of the Agreement, abide by generally accepted good operating practices.

**28. AMENDMENTS AND VARIATIONS**

These General Terms and Conditions may be amended by Curoil from time to time, provided that no amendment or modification shall be done orally, and no amendment or modification shall be effective unless it is in writing.