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ICE Futures Europe (“the Exchange”)

Decision of the Delivery Panel (“the Panel”)

regarding a dispute in relation to the delivery of gasoil under the ICE Futures Europe Gasoil Futures Contract (“the Contract”) arising during the February 2010 delivery.

February Delivery Dispute (“the Fatima Dispute”)		
Delivery Month:	ICE	February 2010
Clear Europe Selling Clearing Member:		Newedge Group (UK Branch)
Client:		Vitol SA
ICE Clear Europe Buying Clearing Member:		JP Morgan Securities Limited
Client:		Noble Clean Fuels Limited
Location:		Amsterdam
Installation:		Eurotank
Delivery Range:		24-28 February 2010
Vessel(s):		Fatima
No. of lots:		33
Nature of dispute:		Quality of product

The Fatima Dispute is one of ten matters that have been considered by the Delivery Panel.

The Delivery Panel issued determinations in relation to all ten matters on 7 July 2010 and requested, in respect of the Fatima Dispute, that the Buyer make a further submission to the Delivery Panel illustrating the relevant loss that the Buyer incurred in respect of the Seller’s sale of off-spec Product in relation to the relevant market price, including relevant demurrage and other costs, as appropriate.

The Buyer provided submissions in relation to this request on 27 October 2010. A subsequent submission in response was received from the Seller, followed by a further response from the Buyer. The exchange of submissions was concluded on 16 December 2010.

The Delivery Panel will provide directions in relation to each Head of Loss, as identified by the Buyer, below using the relevant headings for ease of reference:

A. Spot Purchase

The Delivery Panel directs that no award is to be made to the Buyer in respect of the spot purchase. The Buyer has submitted a claim highlighting costs in relation to a spot purchase. However, there has been no submission in respect of the disposal or otherwise of the off-spec product on the Fatima which was not discharged on 1 March 2010, other than the fact that the Fatima subsequently discharged at BP, Amsterdam on 5 March 2010 according to the Trendco Demurrage Invoice 0000722449 addressed to Noble Clean Fuels Ltd. The Delivery Panel feels that ample opportunity has been provided during which such details might have been submitted. An assessment of loss cannot be made without confirmation of such detail.

The Delivery Panel further notes that subsequent to 10.48 on 1 March 2010, when the Seller confirmed that the delivered product was off-spec, and thereafter during the amicable settlement period, it would appear on the basis of the evidence submitted that two separate offers were available to the Buyer. The Seller offered the Buyer a discharge of the off-spec product to be followed by a reload of on-spec product, and subsequently, as an alternative,

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Seller offered the Buyer a discount of USD\$2.00 to the contract price in respect of the off-spec product. The submissions do not contain any evidence or analysis of the fact that the above referenced offers of the Seller were unreasonable, or would have disadvantaged the Buyer.

B. Barge Costs in Providing Replacement Cargo

The Delivery Panel directs that the Buyer has no entitlement to the recovery of any costs in relation to the replacement cargo. The Delivery Panel has concluded that the Buyer's course of action in rejecting the Seller's offers was not appropriate nor reasonable in the circumstances on the basis of the submissions received.

C. Inspection Costs

The Delivery Panel directs that the Seller shall meet the inspection costs of USD\$1,455.35 in accordance with the terms of Rule J.10.(e) and J.10.(f).

D. Demurrage on the Fatima

The Delivery Panel notes that the demurrage under consideration has been limited to the loadport since, as per section A above, no submission in respect of the disposal or otherwise of the off-spec product on the Fatima which was not discharged on 1 March 2010 have been provided to the Delivery Panel.

The Delivery Panel directs that the costs of Demurrage on the Fatima should be borne between the Seller and the Buyer as follows:

- i. demurrage incurred in respect of the Fatima up until 11.00 on 1 March 2010 demurrage should be borne by the Seller;
- ii. that demurrage incurred in respect of the Fatima between 11.00 on 1 March 2010 and the Fatima's sailing on 5 March 2010 to be shared equally between the Buyer and the Seller. During the period 1 March 2010 – 2 March 2010 the Buyer was encountering problems securing the release of the second sample from the Seller, though the Seller had confirmed that the product was in any event off-spec on 1 March 2010. During the period 3 March 2010 – 5 March 2010 it appears that attempts were made at coming to a negotiated resolution between the parties.

The Delivery Panel therefore directs that the total demurrage for the Seller's account shall be: €5688.58 + €6912.00 = €12600.58, based upon calculations that are outlined below.

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Demurrage on Fatima Calculations based upon submissions received by the Delivery Panel.

The Delivery Panel calculates the actual demurrage costs as follows:

- i. Demurrage for the Seller's account:

The Fatima was at loadport as follows:

Period at loadport	Total hours
From 0130 on 27.02.10 until 2400 on 27.02.10	22.5 hours
28.02.10	24 hours
0000 on 1.03.10 until 1100 on 1.03.10	11 hours

Therefore, the Fatima was at loadport for 57.5 hours, less permitted loading time of 18 hours, which results in a total demurrage claim for 39.5 hours (1.646 days).

Since the demurrage rate is quoted as €1.00 per tonne per day, pro rata for part days, on full deadweight, the demurrage solely for the Seller's account shall be 1.646 days x 3456 tonnes x €1.00 per tonne = €5688.58.

- ii. Demurrage for the Seller's and Buyer's account:

Period at loadport	Total hours
From 1100 on 1.03.10 until 1100 on 5.03.10	4 days

Therefore, the total demurrage claim in respect of this period at the loadport is 4 days x 3456 tonnes x €1 per tonne = €13824.00.

The Delivery Panel has directed that this demurrage amount is to be shared equally between the Buyer and the Seller and hence the liability of each party for this demurrage amount is 6912 euros.