

# MEMORANDUM OF AGREEMENT

Dated:

EMPRESA PUBLICA FLOTA PETROLERA ECUATORIANA EP FLOPEC hereinafter called the Sellers, have agreed to sell, and XXXXXXX

hereinafter called the Buyers, have agreed to buy

Name: COTOPAXI / CHIMBORAZO

Classification Society/Class: AMERICAN BUREAU OF SHIPPING -ABS

Built: 1999

By: HYUNDAI HEAVY INDUSTRIES CO

Flag Place of Registry; ECUADOR / GUAYAQUIL

Call Sign: COTOPAXI HCCO - CHIMBORAZO HCCH

Grt/Nrt: COTOPAXI 35,770 / 20,199 - CHIMBORAZO 35,770 / 20,199

Register Number: COTOPAXI IMO N° 9174579 - CHIMBORAZO IMO N° 9174581

hereinafter called the Vessel, on the following terms and conditions:

## Definitions

"Banking days" are days on which banks are open both in the country of the currency stipulated for the Purchase Price in Clause 1 and in the place of closing stipulated in Clause 8.

"In writing or "written" means a letter handed over from the Sellers to the Buyers or vice versa, a registered letter, telex, telefax, e-mails or other modern form of written communication.

"Classification Society" or "Class" mean the Society referred to in Clause 4.

## 1. Purchase Price

The Purchase Price is \_\_\_\_\_ USD.

## 2. Deposit

As a security for the correct fulfilment of this contract, the Buyers shall pay a deposit of 10% - ten per cent – of the Purchase Money, free from bank charges, within three banking days from the date of this agreement. This deposit shall be placed with:

### Intermediary Bank:

Name: Wells Fargo Bank N.A.  
Address: 375 Park Avenue, NY 4080  
New York, USA  
Swift: PNBPUS3NNYC  
ABA: 026005092

### Beneficiary Bank:

Name: BANISI S.A.  
Address: Calle 58 con Calle 50, Obarrio, Bella Vista.  
Panamá, Panamá  
Account: 2000192008374  
Swift: GUAYPAPA

### Beneficiary:

Account number: 100-56-12792  
Beneficiary name: EMPRESA PUBLICA FLOTA PETROLERA ECUATORIANA EP FLOPEC

This memorandum of agreement shall be valid only after Sellers' bank confirmation of the deposit transference to Sellers account. Any fees holding this Deposit shall be borne by the Sellers and any interests generated from this Deposit will remain with the Sellers unless otherwise stated herein.

## 3. Payment

The Purchase Money, and payment for unused lubricants, bunkers and diesel/gas oil as per clause 7 shall be paid in full and free of bank charges on delivery of the vessel, after the Vessel is in every respect physically ready for delivery in accordance with the terms and conditions of this Agreement and Notice of Readiness has been given in accordance with Clause 5.

#### 4. Inspections

The Buyers have inspected and accepted the Vessel and its classification records and/or expressly waive inspecting the vessel and its records. The Buyers have also inspected the Vessel at / in \_\_\_\_\_ and have accepted the Vessel following this inspection and the sale is outright and definite, subject only to the terms and conditions of this Agreement.

Except as may be otherwise specifically set forth in this agreement, Sellers make no warranty or representation with respect to class, condition as to class or condition, either at time of inspection or delivery; nor does Sellers make any express or implied warranty of seaworthiness, fitness or suitability for any purpose whatsoever, either at time of inspection or delivery.

#### 5. Notices, time and place of delivery

a) The Sellers shall keep the buyers well informed of the Vessel's itinerary and shall provide the Buyers with 7/5/3/2/1 days of estimated time of arrival at the intended place of delivery. When the vessel is at the place of delivery and in every respect physically ready for delivery in accordance with this agreement, the Sellers shall give the Buyers a written Notice of Readiness for delivery.

b) The vessel shall be delivered and taken over safely afloat at a safe and accessible berth or anchorage at /in in the Sellers option.

Expected time of delivery: \_\_\_\_\_

Date of cancelling (see Clauses 5c), 6b), (III) and 14): \_\_\_\_\_

c) If the Sellers anticipate that, notwithstanding the exercise of due diligence by them, the vessel will not be ready for delivery by the cancelling date they may notify the Buyers in writing stating the date when that the vessel will be ready for delivery and propose a new cancelling date. The date proposed in the Sellers' notification shall be deemed to be the new cancelling date and shall be substituted for the cancelling date stipulated in 5(c)

This agreement is maintained with the new cancelling date and all other terms and conditions hereof including those contained in clause 5a) and 5c) shall remain unaltered and in full force and effect.

d) Should the vessel become an actual, constructive or compromised total loss before delivery,

the deposit shall be released immediately to the Buyers whereafter this agreement shall be null and void.

#### 6. Drydocking/Divers inspection

The Vessel is to be delivered without dry docking.

#### 7. Spares/bunkers etc

The Sellers shall deliver the Vessel to the Buyers with everything belonging to her on board and on shore. All spare parts and spare equipment including spare tail end shaft(s) and or spare propeller(s) if any, belonging to the Vessel at the time of inspection, used or unused, on board shall become the Buyers property.

The Sellers are not required to replace spare parts including spare tail end shafts(s) and spares propeller(s) which are taken out of store and used as replacement prior to delivery, but the replaced items shall be the property of the Buyers. The radio installation and navigational equipment shall be included in the sale without extra payment, if the same is the property of the Sellers. Unused stores and provisions shall be included in the sale and be taken over by the Buyer's without extra payment. Library forms etc, exclusively for use in the Sellers' Vessel(s), shall be excluded from the sale without compensation. Captain's, Officers' and Crew's personal belongings including the slop chest are to be excluded from the sale, as well as the following additional items (including items on hire):

The Buyers shall take over remaining bunkers, unused lubricating oils in storage tanks and sealed drums and pay the price on the basis of the last purchase invoices to be provided by The Sellers at the port and date of delivery of the Vessel.

Payment under this clause shall be made at the same time and place and in the same currency as the Purchase Price.

#### 8. Documentation

The place of closing: \_\_\_\_\_

In exchange for payment of the Purchase Money the Sellers shall furnish the Buyers with delivery documents, namely:

a) Legal Bill of Sale in a form recordable in (the country in which the Buyers are to register the Vessel), warranting that the Vessel is free from all encumbrances, mortgages and maritime liens or any other debts whatsoever, duly notarially attested and legalised by the consul of such country or other competent authority.

b) Current Certificate of Ownership issued by the competent authorities of the flag state of the Vessel.

c) Confirmation of Class issued within 72 hours prior to delivery.

d) Current Certificate issued by the competent authorities stating that the Vessel is free from registered encumbrances.

e) Certificate of Deletion of the Vessel from the Vessel's registry or other official evidence of deletion appropriate to the Vessel's registry at the time of delivery, or, in the event that the registry does not as a matter of practice issue such documentation immediately, a written undertaking by the Sellers to effect deletion from the Vessel's registry forthwith and furnish a Certificate or other official evidence of deletion to the Buyers promptly and latest within 6 (six) weeks after the Purchase Price has been paid and the Vessel has been delivered.

f) Any such additional documents as may reasonably be required by the competent authorities or the purpose of registering the Vessel, provided the Buyers notify the Sellers of any such documents as soon as possible after the date of this Agreement.

At the time of delivery the Buyers and the Sellers shall sign and deliver to each other a Protocol of Delivery and Acceptance confirming the date and time of delivery of the Vessel from the Sellers to the Buyers.

At the time of delivery the Sellers shall hand to the Buyers the classification certificate(s) as well as all plans etc which are on board the Vessel. Other certificates which are on board the Vessel shall also be handed over to the Buyers unless the Sellers are required to retain same, in which case the Buyers to have the right to take copies. Other technical documentation which may be in the Sellers possession shall promptly be forwarded to the Buyers at their expense, if they so request. The Sellers may keep the log books, but the Buyers have the right to take copies of same.

## 9. Encumbrances

The Sellers warrant that the Vessel, at the time of delivery, is free from all charters, encumbrances, mortgages and maritime liens or any other debts whatsoever. The Sellers hereby undertake to indemnify the Buyers against proven consequences of claims made against the Vessel which have been incurred prior to the time of delivery.

## 10. Taxes

Any taxes, fees and expenses connected with the purchase and registration under the Buyer's flag shall be for the Buyer's account, whereas similar charges connected with the closing of the Sellers register shall be for the Sellers' account.

## 11. Condition on delivery

The Vessel with everything belonging to her shall be at the Sellers risk and expenses until she is delivered to the Buyers, but subject to the conditions of this contract, she shall be delivered and taken over as she is at the time of inspection, fair wear and tear excepted. However, the Vessel shall be delivered with her class maintained without conditions, free of average damage affecting the Vessel's class, and with her classification certificates and national certificates, as well as all other certificates the Vessel had at the time of inspection, valid and unextended with condition by Class or the relevant authorities at the time of delivery. inspection" in this clause 11, shall mean the Buyer's inspection according to Clause 4a), if applicable, or the Buyer's inspection prior to signing of this Agreement. If the Vessel is taken over without inspection, the date of this Agreement shall be the relevant date.

## 12. Name /markings

Upon delivery the Buyers undertake to change the name of the Vessel and alter funnel markings.

## 13. Buyers' default

Should the deposit not be in accordance with Clause 2, the Sellers have the right to cancel this contract, and they shall be entitled to claim compensation for their losses and for all expenses

incurred together with interest. Should the Purchase Money not be paid in accordance with Clause 3, the Sellers have the right to cancel this Agreement, in which case the amount deposited together with interest earned will be kept by the Sellers. If the deposit does not cover their loss, they shall be entitled to claim further compensation for their losses and for all expenses together with interest.

#### 14. Sellers' default

Should the Sellers fail to give Notice of Readiness in accordance with Clause 5 a) or fail to be ready to validly complete a legal transfer by the date stipulated in 5 b) the Buyers shall have the option of cancelling this Agreement provided always that the Sellers shall be granted a maximum of 7 banking days after Notice of Readiness has been given to make arrangements for the documentation set out in Clause 8. If after Notice of Readiness has been given but before the Buyers have taken delivery, the Vessel ceases to be physically ready for delivery and is not made physically ready again in every respect by the date stipulated in this agreement and new Notice of Readiness given, the Buyers shall retain their option to cancel. In the event that the Buyers elect to cancel this Agreement the deposit shall be released to them within 3 banking days.

#### 15. Buyer's representatives

After this agreement has been signed by both parties and the deposit has been lodged, the Buyers have a right to place two representatives on board the Vessel at their sole risk and expense upon arrival at \_\_\_\_\_ or on about. These representatives are on board for the purpose of familiarisation and in the capacity of observers only, and they shall not interfere in any respect with the operation of the Vessel. The Buyers' representatives shall sign the Sellers' letter of indemnity prior to their embarkation and the Buyers hereby hold harmless and release the Sellers from any and all claims, damages and liability regarding their representatives embarkation, including but not limited to injury, death, damage caused or property lost arising out of the boarding and stay of Buyers' representatives on the vessel. This obligation to defend and indemnify shall survive the closing and delivery of the vessel.

#### 16. Arbitration

This contract shall be governed by and construed in accordance with English Law and any dispute arising out of or in connection with this contract shall be referred to arbitration in London

in accordance with the Arbitration Act 1996 or any statutory modification or reenactment thereof save to the extent necessary to give effect to the provisions of this Clause.

The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) terms current at the time when the arbitration proceedings are commenced.

The arbitration shall be in accordance with English Law and shall be heard and determined by a sole arbitrator. A party wishing to refer a dispute to arbitration shall send its notice of appointment of the sole arbitrator providing the names of a minimum of 3 arbitrators to enable the other party to confirm its agreement to one of the aforesaid arbitrators as the sole arbitrator within 28 calendar days of that notice. If the other party does not confirm its agreement to one of the three arbitrators as the sole arbitrator within the 28 days specified, at request of any of the parties, the London Maritime Arbitrators Association (LMAA) shall appoint the sole arbitrator who shall be a full member of the association, provided that such member shall be other than those arbitrators included by the party wishing to refer a dispute to arbitration in its notice of appointment of the sole arbitrator.

The award shall be final and binding.

The sole arbitrator shall decide the parties dispute in accordance with the law or rules of law chosen by the parties as applicable to the merits of their dispute.

The parties shall pay, by equal parts, the fee of the sole arbitrator. Both parties shall also pay, by equal part, the administrative charges incurred in the arbitration. Nevertheless, the sole arbitrator shall in its own criteria condemn the losing parties to pay the fees, costs and redeem the charges that the arbitration proceeding could demand, as considered convenient.

#### 17. Broker Commission

Brokerage commission of 1% (one percent), payable to \_\_\_\_\_, of the purchase price, shall be for sellers account and settled directly by them. All local taxes, fees and charges on this Commission to be for Broker's account and retained by Sellers if applicable

#### 18. Buyers' Documentation

Buyers to Deliver the Following Document at the time of closing and provide fax copies for

review in advance of closing, if possible:

- a) Certified True Copy of the Articles of Incorporation of the Buyers;
- b) Notarily Attested Resolutions of the Buyers' Board of Directors and Shareholders authorising the purchase of the vessel and confirming the authority of the signatory to sign any documents and take all necessary actions involved in the purchase of the vessel, including payment;
- c) Notarily attested Power of Attorney issued pursuant to the resolution of the Board of Directors;
- d) A Certificate of Good Standing Confirming that the Buyers are a validly existing legal entity in the jurisdiction where incorporated;
- e) Acceptance of Sale

All documents must be in English, or with certified translation into the English language.

#### 19. Private and Confidential

All Details of this negotiation and sale are to be kept strictly private and confidential by both parties concerned.

#### 20. Notices

All notices and advices hereunder shall be in writing and shall be addressed as follows:

To Sellers \_\_\_\_\_

To Buyers \_\_\_\_\_

Signed by..... Signed

by.....

for and on behalf of the Sellers for and on behalf of the

Buyers

Signature.....

Signature.....

Witness.....

Witness.....

Occupation.....

Occupation.....

Address.....

Address.....

Signature.....

Signature.....

Copies

1) Sellers

2) Buyers

3) Brokers

-----