

PART II

STANDARD TERMS AND CONDITIONS (COMMERCIAL)

1. Quality and Quantity

- (a) Bulk quantity shall be determined by gauging the Product in the tanks to or from which delivery or pick up ("Delivery") is made, both immediately before and immediately after Delivery, and converting the gauges to volume. Alternately, certified meters may be used where such meters are available. All volume measurements shall be adjusted to 60 degrees F using the Volume Correction Factors prescribed under ASTM D 1250 in its latest version for the Product. If meters are used, built-in temperature compensators may be employed.
- (b) Any claims for shortage in quantity or defects in quality of the Product must be made by written notice to Seller within 30 days after Delivery; otherwise any such claim shall be deemed to have been waived.
- (c) The quality of the Product shall be usual production quality being sold by Seller or Seller's supplier at the time and place of Delivery. The quality of the Product shall be strictly maintained by Buyer and/or its dealer ("Buyer"), and shall not be adulterated, commingled, or blended with any other products or substances in any manner.
- (d) SELLER MAKES NO WARRANTY OF ANY KIND WHATSOEVER, EXPRESSED OR IMPLIED, AND ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND OTHER WARRANTIES OF WHATEVER KIND ARE HEREBY DISCLAIMED BY SELLER AND EXCLUDED. IN NO EVENT SHALL SELLER BE LIABLE FOR CONSEQUENTIAL, INDIRECT OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION EXTRA EXPENSE, LOSS OF PROFITS, LOSS OF USE OF PRODUCT, DELAY OR DAMAGES CONSEQUENTIAL UPON LOSS OF USE WHETHER RESULTING FROM NEGLIGENCE OR BREACH OF THIS CONTRACT BY SELLER AND EVEN IF THE POSSIBILITY OF SUCH DAMAGES IS OR WAS FORESEEABLE BY SELLER.
- (e) Buyer represents that it is familiar with the Product and the characteristics thereof, and subject to section 1(d) herein, assumes all risks whatsoever resulting from Buyer's (or its customers) handling, storage, sales, transportation, use, misuse or disposal of the Product, whether used singly or in combination with other substances or in any process, including but not limited to, liability for environmental violations and employee or consumer health or safety, and Buyer shall indemnify, defend and hold harmless Seller from and against any and all liability occurring or arising therefrom. Buyer agrees that all Product shall be clearly identified, correctly labeled, and resold under their proper grades.
- (f) Disclaimer: Due to uncertainties in the long-term supply situation, Seller may not have sufficient supplies of one or more of the fuels covered by this Agreement to meet full requirements. In the case of partial or total interruption of supply, Seller may allocate deliveries on any basis which in Seller's sole and absolute discretion is fair and reasonable, allowing for such priorities as Seller deems appropriate.

2. Purchase Price and Payment

Buyer agrees to pay Seller the purchase price of the Product immediately upon Delivery, without deduction, setoffs or counterclaims of any kind. Any claims of Buyer against Seller with respect to the Product shall be considered separately from payment of the purchase price. In the event payment is not made on time, time being of the essence in this regard, Buyer shall pay Seller daily interest on the late payment at the rate of 1.5% per month or at the maximum rate permitted by law. Unless and until all payments due under this Agreement have been paid to Seller, Seller shall have no obligation to deliver to Buyer, or allow pick by Buyer of, additional Product, unless Buyer pays for said Product C.O.D. in cash or certified funds.

3. Title and Risk of Loss

Title to and risk of loss for the Product passes from Seller to Buyer at the time and place of Delivery.

4. Delivery

- (a) Delivery occurs when the Product passes from Seller's delivery line into the receiving connection of Buyer's tank or other receptacle (collectively, "Tanks"), Buyer picks up the Product, or the Product is otherwise placed in possession of Buyer or its representatives.
- (b) All Product shall be delivered to Buyer's ship-to or delivery location or picked up by Buyer at Seller's rack or refinery rack. Buyer shall exercise the highest degree of care to avoid any spillage of Product or any injury or harm to any third person or to property. At all times during Delivery or when services are being furnished, an employee or agent of Buyer shall be in charge, custody and control of any Tank of Buyer's being delivered to or serviced by Seller, and Seller shall at no time be considered a bailee of or as having care, custody or control of such Tanks. Buyer shall have qualified personnel or representatives on hand to accept and sign for Delivery.
- (c) It is Buyer's responsibility at all times to ensure that its Tanks have sufficient Product in them for any purpose for which the Buyer uses them or requires the Product, and Seller shall have no liability or responsibility for any claims, damages, or injury whatsoever arising out of or resulting from insufficient Product in any of Buyer's Tanks.

5. Taxes, Tariffs and Fees

All taxes, tariffs and fees, now or hereafter imposed by federal, state, local or foreign governments and regulatory authorities, in respect to or measured by the Product delivered hereunder or the manufacture, importation, storage, delivery, transfer, pipeline throughput, receipt, exchange, measurement or inspection thereof, shall be for the sole account of the Buyer. Buyer shall reimburse Seller upon receipt of invoice for any such taxes or fees legally required to be paid and paid by Seller in respect of the Product delivered by Seller to Buyer.

6. Exceptions

No delay or failure by either party to carry out or to observe any of the terms, provisions or conditions of this Agreement shall be deemed to be a breach of this Agreement if such failure or omission shall be excused by law or if the same shall be caused by or arise out of an event not in the control of Seller including but not limited to war, hostilities, acts of the public enemy or of belligerents, sabotage, blockage, revolution, insurrection, riot or disorder, arrest or restraint of princes, rulers or peoples, expropriation, requisition, confiscation or nationalization, embargoes, export or import restrictions or

rationing or allocation, whether imposed by law, decree or regulation or by voluntary cooperation of industry at the insistence or request of any governmental authority or person purporting to act under some constitution, decree, law or otherwise, act of God, fire, frost or ice, earthquake, storm, lightning, tide, tidal wave or perils of the sea, accidents of navigation or breakdown or injury of vessels, loss of tanker tonnage due to sinking by belligerents or to governmental taking, whether or not by formal requisition, accidents to or closing of harbors, docks, canals, channels or other assistances to or adjuncts of shipping or navigation, epidemic, quarantine, strikes or combination of workmen, lockouts, or other labor disturbances, explosion, accidents by fire or otherwise to wells, pipes, storage facilities, refineries, installations, machinery or other facilities, unavailability of Product or materials or equipment, or any event, matter or thing wherever occurring and whether or not of the same class or kind as those above set forth.

7. Breach

Damages for breach of this Agreement shall include all provable damages, and all costs of suit and attorney fees incurred in any action or arbitration proceeding hereunder.

8. Indemnity

Buyer shall indemnify, defend, and hold harmless Seller, its officers, employees, and agents from and against any claim and/or liability of any kind whatsoever for any injury to or death of any person, or any damage to or destruction of, loss of or delay in delivery of, any property of any person, or any property of Buyer, arising out of or resulting from (a) breach of this Agreement by Buyer, (b) Buyer's negligence or willful misconduct, (c) Buyer's handling, storage, sales, transportation, use, misuse or disposal of the product purchased hereunder, including but not limited to, liability for environmental violations and employee or consumer health or safety, and (d) the furnishing of services by Seller pursuant to this Agreement; provided, however, that the foregoing indemnification shall not apply to any such claim or liability resulting from the gross negligence or willful misconduct of Seller, its officers, agents or employees. Furthermore, Buyer waives any and all rights of subrogation it may have now or hereafter arising out of any claim, dispute or proceeding related to this Agreement. This clause shall survive the term of this Agreement.

9. Pollution Prevention and Responsibility

In the event a spill, escape or discharge of oil or other product occurs during Delivery and causes or threatens to cause pollution damage ("Spill"), Buyer and Seller shall promptly take whatever measures are necessary to prevent or mitigate such damage. Any and all costs or expenses incurred as a result of any measures so taken shall be at the expense of the spilling party. The spilling party shall be responsible to indemnify, defend and hold harmless the other party from any and all claims, costs, expenses, cleanup costs, fines, losses, penalties, damages or other liability incurred by the other party as a result of the Spill. This duty to indemnify, defend, and hold harmless shall be owed to Seller without regard to the negligence or fault of Seller, except to the extent the negligence or other fault of Seller is a proximate cause of the Spill, in which case Seller shall be responsible only for reasonable costs and expenses attributable to that portion of the Spill.

10. Termination

Seller may terminate this Agreement immediately for any of the following reasons: (a) Buyer's failure to comply with any material provision of the Agreement including, but not limited to, Buyer's failure to pay to Seller all sums due; (b) Buyer's bankruptcy or insolvency, Buyer's fraud or criminal conduct related to the operation of Buyer's business, or Buyer's conviction of any felony involving moral turpitude; (c) Buyer's willful adulteration, mislabeling, or misbranding of motor fuels; (d) Buyer's knowing failure to comply with any laws relevant to the operation of Buyer's business; (e) Seller decides to withdraw from marketing of the Product in the area; or (f) any other ground for which termination is otherwise allowed by law or which Seller, in its sole discretion, determines is reasonable under the circumstances.

11. Miscellaneous

- (a) Construction:** No waiver by either party of any breach of any of the covenants or conditions herein contained to be performed by the other party shall be construed as a waiver of any succeeding breach of the same or any other covenant or condition. This agreement cannot be modified in any way except in writing signed by the parties.
- (b) Definitions:** As used in this Agreement, "gallon" shall mean a U.S. standard gallon of 231 cubic inches at 60 degrees Fahrenheit.
- (c) Assignment:** Buyer may not assign this Agreement in whole or in part nor may it cause any or all of its obligations hereunder to be performed by others, without the prior written consent of Seller.
- (d) Performance and Waivers:** Any waiver by either party of strict performance with regard to any of the terms, conditions or provisions of this Agreement must be in writing, executed by such party to be effective, and such waiver shall not be deemed a waiver of such party's rights to insist upon strict performance of all portions of this Agreement not waived, and strict performance thereafter of provisions presently waived.
- (e) Independent Contractor:** Contractor is an independent contractor, and nothing contained in this Agreement shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of partnership, joint venture, or any other association between the parties to this Agreement.
- (f) Governing Law:** This agreement shall be governed by the laws of the State of Alaska and shall have exclusive venue in Anchorage. The non-prevailing party agrees to pay the prevailing party's commercially reasonable legal fees.
- (g) Entire Agreement:** These terms and conditions, and any attachments hereto or referred to specifically herein constitute the entire agreement between the parties with respect to the subject matter hereof and all prior written and oral agreements with respect to the sale of the Product are superseded by and fully integrated into this Agreement. Seller's acceptance of the transaction represented by this Agreement is limited to the terms and conditions hereof. Any written confirmation of this Agreement, or of any oral understanding upon which the sales confirmation is based, containing proposals or terms additional to or different from those set forth herein are not binding on Seller unless Seller expressly agrees to any such proposal or term in writing. Buyer's performance of any of its obligations hereunder shall constitute acceptance by Buyer of this Agreement and all of its terms and conditions.
- (h) Conflicting Language:** In the event of conflicting language between Part I Fuel Supply Agreement (Commercial) and Part II Standard Terms & Conditions (Commercial), the wording of Part I shall control.