

PART II

STANDARD TERMS & CONDITIONS (MARINE)

1. Quality and Quantity

- (a) Bulk quantity shall be determined by gauging the Product either in the tanks or barge compartments to or from which 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.
- (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, and Buyer shall indemnify, defend and hold harmless Seller from and against any and all liability occurring or arising therefrom.
- (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 as specified in Part 1 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 maximum rate permitted by law. ANY FAILURE BY BUYER TO TAKE FULL DELIVERY OF THE NOMINATED PRODUCT QUANTITY AS SPECIFIED IN PART I SHALL RESULT IN AN ADDITIONAL RETENTION CHARGE OF 50% OF THE APPLICABLE UNIT PRICE FOR ALL UNITS NOT DELIVERED LESS APPLICABLE TAXES. IN THE EVENT BUYER CANCELS THE ORDER IN ITS ENTIRETY FOR THE NOMINATED PRODUCT QUANTITY AS SPECIFIED IN PART I, AND SELLER HAS ALREADY SHIPPED PRODUCT FOR DELIVERY TO BUYER, BUYER AGREES TO PAY A CANCELLATION FEE IN THE AMOUNT OF THE UNIT PRICE SPECIFIED IN PART I, LESS APPLICABLE TAXES, FOR ALL SUCH PRODUCTS CANCELED.

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 - Bulk Products

- (a) When the Product is transferred between vessel and shore tankage, or between vessels, delivery of the Product shall occur when the Product passes from the Seller's pipeline, flange or hose.
- (b) When the Product is transferred between a storage tank and a railcar, truck or pipeline, delivery of the Product shall occur as the Product passes into or out of such railcar, truck or pipeline.
- (c) Seller will provide Notice of Readiness to the receiving facility upon arrival at the delivery location. Unless otherwise specified in Part I, Free Time shall be six (6) hours per delivery. Free Time shall commence at Notice of Readiness. Upon expiration of Free Time, should the buyer not be able to take delivery due to the fault of the Buyer, Demurrage, computed to the nearest quarter hour, will be billed to the Buyer for all time thereafter at the rate of \$1,000 per hour for each Tug and Barge Combination. Time is suspended during any time that Seller's equipment is not able to perform for mechanical reasons.
- (d) Vessel operations east of Barrow after September 21st are subject to extreme ice and weather risk for de-mobilization from the arctic. Any operation after September 21st requires the mutual consent of both Seller and Buyer. Should the vessels be frozen in over a winter season, charges shall continue for each vessel (tug and barge set) at the demurrage rate specified in clause 4(c), until the vessel(s) are able to transit west of Pt Barrow.
- (e) For a vessel to shore delivery, seller will provide up to 1500' feet of 4" Angus Off-Shore 850 cargo hose to connect to buyer's receiving pipeline or tankage. To the extent additional or alternative hose is required, any additional expenses shall be at the buyers account.

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

- (a) No delay or failure by Seller 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.

- (b) All transportation of Bulk Petroleum Products to and within the 17th District of the United States Coast Guard require the approval of an Alternate Planning Criteria (APC) to the Oil Pollution Act of 1990. Changes to the approval status of an APC by the United States Coast Guard, including revocation, that results in a delayed or failed delivery shall not be deemed a breach of the contract on the part of the seller.

7. Breach

Damages for breach of this Agreement shall include all provable direct damages, and all costs incurred, including attorney fees, in any action or arbitration proceeding hereunder. The prevailing Party shall be entitled to recover all attorney fees and related cost of litigation.

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. 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, the following terms shall have the following meanings, "ton" – a long ton of 2,240 pounds, "gallon" – a U.S. standard gallon of 231 cubic inches at 60 degrees Fahrenheit, "barrel" – a barrel of 42 U.S. standard gallons at 60 degrees Fahrenheit, and "barrels per day" shall mean barrels per calendar day.
- (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 the 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 the 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 general maritime law of the United States or by the laws of the State of Washington in the event there is no applicable general maritime rule of law. The parties hereby submit to the personal and subject matter jurisdiction of the courts located in Seattle, Washington with respect to any dispute arising out of this Agreement, with the substantially prevailing party in any litigation entitled to recover its commercially reasonable legal fees and costs.
- (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 Sales Confirmation and all of its terms and conditions.
- (h) Conflicting Language: In the event of conflicting language in Part I Fuel Supply Agreement (Marine), Sales Order Confirmation (Booking) and Part II Standard Terms & Conditions (Marine) of this Agreement, the prevailing language will control in the following order: (1) Part I Fuel Supply Agreement (Marine), (2) Sales Order Confirmation (Booking), and (3) Part II Standard Terms & Conditions (Marine).