

COLONIAL OIL INDUSTRIES, INC.

1301 Riverplace Blvd., Suite 2646

Jacksonville, Florida 32207

904-396-1388

Fax: 904-858-6699

TERMS AND CONDITIONS OF SALE

1. Terms of Sale:

These terms apply to any fuel delivery contracted with Colonial Oil Industries.

2. Price:

(a) Prices quoted are exclusive of transportation charges.

(b) Quoted prices are valid for only the 5-day range of 2 days before and 2 days after the vessels earliest estimated lifting date. Seller shall have the right to amend the price or upon notice to the Buyer or Buyer's representative, terminate the contract, when lifting would occur outside the 5-day range.

3. Grades and Nominations:

Buyer's representative shall confirm to Seller at least 48 hours notice exclusive of Saturday, Sunday, and holidays, of the exact time and location at which delivery is required and confirmation of the quantity of each grade ordered. The notification by Buyer's representative to Seller's delivery agent of an intention to take delivery of smaller quantity than originally nominated does not absolve Buyer from any liability.

4. Reception Liability:

(a) Buyer shall be responsible for providing safe reception for the full quantity of oil bunkers ordered and for any damage to Seller's or their suppliers property, i.e.: hoses, flanges, reducers, valves, etc.; except only for that directly resulting from negligence by Seller's or suppliers agents.

(b) Buyer shall be responsible for all costs incurred by Seller in the event that Buyer cannot receive the full quantity of the oil bunkers ordered. These costs may include but are not limited to: additional barge/truck freight, fuel downgrade charges, terminal throughput charges, labor, and overtime charges.

(c) Buyer shall be responsible for hose connection to receiving vessel. Seller's Barges and Trucks are equipped with A.N.S.I. standard 150 lb. Flanges. Vessels must be prepared to furnish suitable adapters/reducers if equipped with non-standard flanges. Seller will, upon request by Buyer's vessel having Non-Standard Flanges arrange for the fabrication of suitable reducer/adapters. Buyer agrees to pay all fabrication charges including but not limited to labor, cost of materials, transportation of personnel and materials, and demurrage of delivering equipment at the applicable rate while detained.

5. Barging:

(a) In the event of a vessel requiring delivery by barge, the Seller only, undertakes to provide this service within normal harbor limits and delivery shall be subject to the availability of the necessary facilities.

(b) The Vessel shall provide a free side and steam if required.

(c) Buyer shall pay current barging rates at the port concerned, and any other charges incurred in connection with such barging, including but not limited to, demurrage and tug standby charges if required.

6. Road Delivery:

If a vessel requires delivery by road vehicle, Buyer shall notify Seller, when making the inquiry on which seller's quotation is to be based. Seller's performance shall be subject to availability of the necessary facilities. Buyer shall provide safe and prompt passage between the public roadway and the actual point of unloading and shall take prompt delivery of the oil bunkers. The cost of any delay to Seller's vehicles not caused by Seller shall be for the account of Buyer. In the case of additional charges incurred by the road vehicle, cost shall be for the Buyer's account.

7. Delays:

Seller shall not be liable for any demurrage or loss incurred by Buyer due to congestion affecting Seller's delivery facilities, or to the prior commitment of bunkering barges or other delivery vehicles.

8. Overtime:

Charges of \$50.00 per hour (3 hour minimum) shall apply for all recognized holidays. This will include overtime hours daily between 1700 and 0800 hours and from 1700 hours Friday through 0800 hours Monday.

9. Measurement of Quantity and Complaints:

(a) Seller's measurements shall be accepted as conclusive but Buyer may be represented at the measurement by making arrangements through the local agent. Complaints of short delivery shall only be admissible if made to the Seller's representative and noted on the delivery receipt at the time of delivery and confirmed in writing.

(b) Complaints of quality defects shall be admissible only if Seller is notified in writing within 14 days of delivery and supported by evidence, including full details of any claim to be made by Buyer. Seller will provide Buyer with samples representative of the delivered product. Samples taken in a manner outside the control of Seller are not recognized as representative of the delivery.

(c) Buyer's remedies shall be limited exclusively and solely to replacement of nonconforming products. In no event shall Seller be liable for special, incidental, consequential or exemplary damages.

10. Title and Risk:

Title and risk of loss for each petroleum product supplied shall pass to Buyer as the product passes the end of the barge/truck hose. In the event that Seller agrees to deliver product ex pipeline to Buyer's

vessel, title and risk of loss shall pass to Buyer as the product passes the end of Seller's permanent flange.

11. Payment Terms (unless otherwise agreed):

- (a) Payment of delivery and other charges payable shall be made in full (without any set off or counterclaim) in U.S. dollars, within 30 days (unless otherwise agreed) of the date of commencement of loading. Buyer shall notify (or instruct its bank to notify) as soon as payment has been made, quoting the date on which payment was made, the amount, the name of the bank effecting payment, and details of the invoice to which payment relates. Such notification shall be sent by facsimile machine to the attention of Mr. Michael Rochfort at (912) 235-3868.
- (b) Seller's invoice (which may be sent by telegraph, telex, or other devices) shall be based on telegraphic, telex, or other advise of the quantity delivered and any other charges incurred, and payment made pursuant to (a) above shall be subject to such subsequent adjustments on receipt by Seller of further details or as may be agreed by the parties.
- (c) If Buyer's credit is deemed to be impaired or unsatisfactory, Seller may (without prejudice to its other rights) require Buyer to pay cash before delivery or to provide security satisfactory to Seller. In the event of failure by Buyer to comply with Seller's requirement, Seller shall have no obligation to make the delivery and may terminate the contract on giving notice to Buyer or Buyer's representative.
- (d) If Buyer has not paid by the due date any amount due to Seller in respect of any other delivery of bunkers to Buyer, Seller in addition to and without prejudice to any other rights it may have, shall have the right: (1) if the delivery has been made, notwithstanding the credit period referred to above, to notify the Buyer that the amount is immediately due and payable whereupon it shall be so paid, and (2) if the delivery whereunder has not been made, to terminate immediately the contract for such delivery upon notice to Buyer.
- (e) Without limitation to the foregoing or Seller's other rights under the contract or otherwise, Seller shall have the right to require, in respect of any payment not made by the due date, payment of interest by Buyer at the rate of 1½ % per month.

12. Health and Safety:

It shall be the responsibility of Buyer to comply and advise it's customers to comply with health and safety requirements applicable to the product being supplied whereunder both during and after delivery and to ensure so far as possible that any user of such products avoids without limitation any frequent or prolonged skin contact with the product. Seller accepts no responsibility for any consequences arising from such contact. Buyer shall protect, indemnify, and hold harmless Seller against any claims or liability incurred as a result of Buyer or it's customers failing to comply with the health and safety requirements.

13. Force Majeure:

Except for payment and other financial obligation of the Buyer, the obligations of the parties to deliver and receive product shall be suspended and excused if Seller is prevented from or delayed in purchasing, transporting or delivering in its normal manner the product whereunder or the materials from which such product is manufactured because of acts of God, earthquake, fire, flood, or the elements, malicious mischief, riots, strike, lockouts, boycotts, picketing, labor disturbances, war, compliance with any

directive, order or regulation or any government authority or representative thereof acting under claim or color of authority, loss or shortage of any part of Seller's own or customary transportation or delivery facilities, or for any reason beyond either parties reasonable control, whether or not similar to the foregoing.

14. Liability For Obligations:

- (a) If the delivery is contracted for by an agent for Buyer or by Buyer on behalf of a principal, disclosed or undisclosed, such agent or Buyer, as the case may be, shall be jointly and severally liable with such principal for the due and proper performance of the contract.
- (b) Seller warrants that each grade of marine fuel supplied whereunder shall be of merchantable quality. All other conditions or warranties in respect of such marine fuel relating to quality, fitness for purpose or otherwise, whether express or implied, by statute, common law or otherwise are hereby excluded.
- (c) Buyer shall indemnify Seller against any liability incurred by Seller in respect of Buyer's failure to comply with Government or local regulations at the port, such as those related to fire or in respect of any loss of bunkers or damage to any property caused by Buyer's vessel during berthing, bunkering and unberthing.
- (d) Except as expressly provided in the contract, Seller shall not be liable for any consequential, indirect or special losses or special damages of any kind arising out of or in any way connected with, the performance of or failure to perform, the contract.

15. Assignment and No Waiver:

Buyer shall not assign the contract or any of its rights and obligations thereunder. No waiver by either party of any provision of the contract shall be binding unless made expressly and expressly confirmed in writing; further, any such waiver shall relate only to such matter, non-compliance or breach as it expressly relates to and shall not apply to any subsequent or other matter, non-compliance or breach.

16. Termination:

Notwithstanding anything to the contrary or implied elsewhere herein, Seller (without prejudice to its other rights) may at its sole discretion terminate the contract forthwith on notifying Buyer or Buyer's agent either orally (confirming such notification in writing) or by notice in writing.

17. Product Shortages:

In the event of product shortages, Seller reserves the right to reduce the volumes of product available among its customers in any reasonable way according to Seller's sole judgment.

18. Attorney's Fees and Administrative Costs:

- (a) If any action, at law or in equity is brought by Seller, either to interpret the provisions of these Terms of Sale or to enforce Buyer's contractual obligations arising or to enforce Buyer's contractual obligations arising from the transaction referenced hereby, Seller, should it prevail in such action, shall be entitled to recover its reasonable attorney's fees from Buyer in the principal action or in a related action brought specifically for the purpose in addition to any other relief to which Seller may be entitled.

(b) In the event Seller initiates legal action for payment withheld by Buyer on its obligations, Seller shall be entitled to receive from Buyer an “internal administrative fee” in the fixed amount of \$5,000.00 per invoice in compensation for processing and handling the claim by Seller. Said amount is agreed between the parties to be in the nature of liquidated damages and due immediately, per banking instructions.

19. Notices:

Any communication (including without limitation invoices) by either party to the other shall, unless otherwise provided herein, be sufficiently made if sent by post (by airmail where airmail is possible), postage paid or by telegraph, telex or facsimile transmission to the address of the other party and shall unless otherwise specified, but not less than 15 days notice in writing by Seller to Buyer, the address of Seller to which communication shall be sent by post shall be:

Colonial Oil Industries, Inc.
P.O. Box 576
Savannah, Georgia 31402-0576

20. Law and Arbitration:

The construction, validity and performance of the contract shall be governed by the law of the State of North Carolina, South Carolina, Georgia or Florida.

21. Entire Agreement:

There are no oral understandings, representations or warranties affecting this contract. Seller is not bound by any terms on purchase order forms which attempt to impose any conditions of Sale which are included herein or stated on Seller’s invoices and technical sheets. Seller’s failure to object to provisions contained in such form shall not be deemed a waiver of the provisions of the Sellers Terms and Conditions.