



**ConocoPhillips**  
ConocoPhillips Company  
Its Affiliates and Subsidiaries

**Products Purchase/Sale Agreement  
GENERAL TERMS AND CONDITIONS**

1. DEFINITIONS

- (a) "Agreement" means the contract formed by the Special Provisions set forth in the Confirmation to which these General Terms apply.
- (b) "Affiliate" means a corporation controlling, controlled by or under common control with Seller or Buyer, as the case may be; "control" shall be measured by direct or indirect ownership of at least 50 percent of the shares entitled to vote at a general election of directors.
- (c) "ASTM" means American society of Testing Materials and "API" means American Petroleum Institute.
- (d) "Barrel" or "BBL" means 42 United States gallons measured at a temperature of 60 degrees Fahrenheit (60°F) and an absolute pressure of 29.92 inches of mercury and "Barrels Per Day" or "BBDY" means barrel per Calendar Day".
- (e) "Buyer" means a party obligated to buy Product under the Agreement.
- (f) "Confirmation" means any writing evidencing the Agreement, including without limitation, a contract, letter, telex or electronic data exchange.
- (g) "Cost and Freight" or "CFR" and "Cost, Insurance and Freight" or "CIF" shall have the meanings ascribed to them in Incoterms-2000 Edition, except as otherwise provided in this Agreement.
- (h) "Day" and "Month" mean a calendar day and a calendar month respectively; and "Business Day" means a day on which U.S. Federal Reserve member banks in New York City are open for business.
- (i) "Delivered Ex Ship" or "DES" shall have the meaning ascribed to it in Incoterms-2000 edition, except as otherwise provided in this Agreement.
- (j) "ETA" means estimated time of arrival.
- (k) "Free on Board" or "FOB" shall have the meaning ascribed to it in Incoterms-2000 edition, except as otherwise provided in this Agreement.
- (l) "Metric Ton" means 2,204.62 pounds.
- (m) "Parties" shall mean "Buyer" and "Seller" collectively. "Party" means either Buyer or Seller, individually.
- (n) "Product" means the types and quantities of refined petroleum products which are the subject matter of this Agreement.

- (o) "Regulations" means all federal, state and local laws, ordinances, rules, codes, regulations and lawful orders of any federal, state or local governmental authority applicable to the Product or either Party's performance of the Agreement.
- (p) "Seller" means a Party obligated to sell Product under the Agreement and "Seller's Supplier" means any company or government instrumentality from which Seller contemplates at the time in question obtaining Product from which it is primarily manufactured, directly or indirectly.
- (q) "Special Provisions" means those terms, conditions or provisions set forth in the Confirmation or acceptance of Product to which these General Terms are to any extent incorporated by reference or which is made subject to these General Terms.
- (r) "Terminal Operator" or "Terminal Party" means the party having responsibility for the day to day operations of the terminal, pier, wharf or offshore loading platform where title or custody to the Product may transfer.
- (s) "Ton" means a long ton of 2,240 pounds.
- (t) "Transaction" means the purchase or sale of Products evidenced by the Special Provisions.
- (u) "U.S." means United States of America, and every reference to money or price pertains to U.S. currency.
- (v) "VEF" or "Vessel/Barge Experience Factor" means the factor defined in accordance with API Standard 17.
- (w) "Vessel" means a tankship or barge employed for the purpose of transporting Product.

## 2. TITLE, RISK OF LOSS AND DELIVERY

- 2.1 Seller's Warranty of Title: Seller hereby expressly warrants that it has marketable title free and clear of any liens or encumbrances to Product sold and delivered hereunder, and that Seller has full right and authority to transfer such title and effect delivery of such Product to buyer.
- 2.2 FOB Delivery: Delivery shall be deemed complete and title and risk of loss shall pass from Seller to Buyer as Product passes from the last flange connecting the delivering facilities equipment to the receiving facility's equipment or in the case of vessel deliveries as Product passes the vessel's permanent manifold flange at the load port. Any loss or damage to Product during loading, if caused by the vessel or her officers or crew, shall be for the account of Buyer. Any loss or damage to any property of Seller, Seller's Supplier or Terminal Operator, or any oil pollution caused by the vessel or her officers or crew, shall be allocated according to fault or according to liability as imposed by Regulation.
- 2.3 CFR and CIF Deliveries: Delivery shall be made to Buyer at the discharge port or receiving facility at Seller's expense. Delivery shall be deemed complete and title to and risk of loss of Product shall pass from Seller to Buyer as the Product passes the flange of the receiving facility's equipment or in the case of vessel deliveries as Product passes the vessel's permanent manifold flange at the discharge port.
- 2.4 Delivered Ex-Ship: Delivery shall be made to Buyer at the discharge port at Seller's expense. Delivery shall be deemed complete and title to and risk of loss of Product shall pass from Seller to Buyer as the Product passes the vessel's permanent manifold flange at the discharge port.

## 3. QUALITY, QUANTITY, MEASUREMENT AND INSPECTION

- 3.1 Specifications and Warranty: Seller warrants that the Product(s) delivered hereunder shall conform to the specifications contained in the Special Provisions of the Agreement. There are no guaranties, warranties, or, representations which extend beyond the description of the Product(s) set forth in the Agreement. UNLESS OTHERWISE STATED IN THE AGREEMENT, SELLER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY OR FITNESS OF THE PRODUCTS FOR ANY PARTICULAR PURPOSE, EVEN IF SUCH PURPOSE IS KNOWN TO SELLER.
- 3.2 FOB, CFR and CIF Deliveries - Measurement: For CIF product deliveries, Seller will not provide Buyer a Bill of Lading or issue a Letter of Indemnity. For Product delivered CIF and CFR basis, on loaded quantities as is evidenced by independent inspector's report to be based on shore tank measurements taken prior to and after loading of Seller's vessel according to latest ASTM/API standards. Quality is to be based on shore tank composite samples taken prior to loading. If shore tanks are active at loading, quantity to be determined by vessel figures, i.e. closing ullages less retention on board (ROB) adjusted by vessel experience factor (VEF). Such VEF will be determined in accordance with the latest standards of API. If a VEF is used, such VEF must be verified with Seller's loss control division and consist of five (5) qualified trips. Inspection shall be carried out by a mutually acceptable independent inspection company whose findings, save fraud or manifest error, shall be final and binding on the Parties. Cost of inspection is to be shared equally between Buyer and Seller. When permitted by Terminal Operator, Buyer may also, at its expense, appoint a representative to witness quality and quantity determinations.
- 3.3 Insurance - CIF Deliveries: For Product delivered on a CIF basis, Seller shall obtain cargo insurance such that the Buyer or any other Party having an insurable interest in the cargo, shall be entitled to claim directly from the insurer and Seller shall provide Buyer with the insurance policy or other evidence of insurance cover. Unless otherwise agreed, the insurance shall cover "all risks" of contamination and "all risks" of physical loss or damage to the cargo from any external cause as per Institute Cargo Clauses-A (Institute of London Underwriters) or Bulk Oil Clauses, including shortage and/or leakage in excess of 0.50 percent of the Bill of Lading quantity to the extent covered in Institute Cargo Clauses-A or Bulk Oil Clauses. If required by Buyer, Seller shall provide at Buyer's expense war, strikes, riots and civil commotions risk insurances, if procurable. The insurance shall cover the period of time from when risk passes at the load port until the Product passes the vessel's permanent hose connection at the discharge port, subject to policy terms and conditions. If, and so long as, voyages to any of the ports of loading or discharge under the Agreement or any sea areas through which the vessel has to travel incur additional insurance or war risk insurance premiums (if applicable) in excess of those prevailing on the date of the Agreement for vessel's hull and machinery or cargo, or both, the cost of such additional insurance shall be paid by Buyer to seller in addition to the price stipulated in the Agreement.
- 3.4 Delivery Ex-Ship: As is evidenced by independent inspector's report, quantity to be based on shore tank upgauge measurements taken prior to and after discharge of Seller's vessel according to latest ASTM specifications. Quality is to be based on vessel composite samples taken prior to discharge. Inspection shall be carried out by a mutually acceptable independent inspector appointed by the Seller at the port of discharging for determining outturn quantity and vessel composite quality whose findings, save for fraud or manifest error, shall be final and binding on both parties. Inspection costs shall be shared equally between the Buyer and the Seller. Temperature corrections shall be made in accordance with the latest API/ASTM tables and samples shall be tested using methods listed in ASTM/API/ISO standards. If automatic sampling is used, such samples must be taken by equipment meeting the requirements set forth in API's latest standards. Quantity to be determined by measurements of inactive shore tanks. Such quantity shall be adjusted for any voids in the pipeline between the vessel and shore tanks. The quantity shall not be determined by shore tank measurements when: tanks are active, the product in the tank is non-liquid, or other factors as stated in the API standards impact the accuracy of tank measurements. In such cases the quantity shall be determined by vessel figures, i.e. arrival quantity less remaining on board (ROB) adjusted by vessel experience factor (VEF) which will be

determined in accordance with current API standards. In the event a VEF is used, such VEF must be verified with Seller's loss control division and consist of a minimum of five (5) qualified trips. The quantity so determined shall serve as the basis for the invoice.

- 3.5 Lighterage: Lighterage, if required, shall be for Buyer's account. In the event that a part cargo is lightered from Seller's vessel, that quantity shall be determined from the independent inspector's gauging of the lightering (receiving) vessel's tanks adjusted by its vessel experience factor (VEF). If a VEF is used, such VEF must be verified with Seller's loss control division and consist of a minimum of five (5) qualified trips.
- 3.6 Pipelines: At the time of delivery, the operator shall read meters installed on the pipeline(s) at or near the delivery point(s) to determine the volume(s) of product(s) delivered.
- 3.7 Tank Trucks/Tank Cars: The operator shall read meters located at or near the delivery point(s) to determine Bill of Lading volume(s) for each delivery of Product(s) into tank trucks and/or tank cars. If meters are not available at or near the delivery point(s), the driver shall innage/ullage each tank truck and/or tank car immediately before and immediately after delivery of the Product(s) to determine the volume(s) of Product(s) delivered. These innages/ullages shall be converted to net delivered gallons based on each tank truck's/tank car's official calibration tables.
- 3.8 Measurement - Other: If the applicable measurement method(s) described above is (are) not available, the Parties shall establish another mutually acceptable method for determining the volume of Product(s) delivered. All volumes of delivered Product(s) shall be corrected for temperature to 60 degrees Fahrenheit in accordance with ASTM D-1250, Table 6B in its latest revision. All measurements and/or test shall be made in accordance with the latest standards or guidelines published by the API or ASTM. All meters used for measurements shall be proven within 30 days immediately prior to the time of each delivery. The meter operator shall, upon request, allow the other Party to review and copy relevant meter proving records.
- 3.9 Notice of Claim: Notice of claim as to defect in quantity or quality with respect to any cargo of Product shall be made in writing to Seller immediately after such apparent defect is discovered. Any such notice of claim shall be followed promptly by a formal written claim with all necessary details to properly process such claim. **IF NO FORMAL WRITTEN CLAIM IS RECEIVED WITHIN SIXTY (60) DAYS AFTER DELIVERY OF THE PRODUCT TO THE BUYER, THE CLAIM SHALL BE DEEMED TO HAVE BEEN WAIVED.** Buyer shall only be entitled to recover any costs, losses or damages incurred for shortage in quantity or defect in quality of Product from Seller to the extent that Seller is able to recover such shortage or defect from Seller's Supplier or host country government. Seller shall, however, endeavor in good faith to recover from Seller's Supplier any shortage or defect for which Buyer has presented a claim pursuant to this Section. The date of the completion of loading (all hoses disconnected) shall be deemed the date of delivery.
- 3.9.1 Laytime and demurrage claims, if any, to be submitted in reasonable detail within (90) days from the completion of loading/discharge.

#### 4. PAYMENT

- 4.1.1 Payment for the Product delivered by water-borne transportation shall be made to Seller against Seller's invoice and three of three (3/3) properly issued and endorsed clean original Bills of Lading, certificates of quantity, quality, and origin, or equivalent documents as issued by the loading terminal, or in lieu of temporarily missing documents, Seller's letter of indemnity in form set forth herein in Section 4.4, in U. S. dollars by telegraphic transfer of immediately available funds to Seller at such address or depository as seller may designate in writing. Payment for the Product delivered by pipeline shall be made to Seller against Seller's invoice and a copy of the pipeline meter ticket. If the payment due date falls on a Sunday, or on a Monday which is a bank holiday in the place where payment is to be made, payment shall be made in immediately

available funds to Seller on the next banking day after such payment due date. If the payment due date falls on a Saturday, or on a bank holiday other than a Monday in the place where payment is to be made, payment shall be made in immediately available funds to Seller on the last banking day prior to such payment due date.

- 4.1.2 Rounding conventions shall be as follows:  
Commodity Pricing in Gallons shall be rounded to the nearest fourth decimal place,  
Commodity Pricing in Barrels shall be rounded to the nearest third decimal place,  
All U.S. Dollar amounts shall be rounded to the nearest cent.
- 4.2 Any time prior to commencement of loading or delivery of the Product, Seller shall have the right to require Buyer to pay cash in advance or establish in Seller's favor for any amount of Product either:
- (a) A parent company and/or personal guaranty or assurance in form and substance satisfactory to Seller of the prompt payment, when due, of any and all present or future indebtedness of Buyer as a result of any sale of Product hereunder; or
  - (b) An irrevocable letter of credit in form and substance specified by Seller issued or confirmed by a bank acceptable to Seller and in an amount sufficient to cover the estimated invoice amount of the shipment. All bank charges attendant to such letter of credit shall be for the account of Buyer.

Failure of Buyer to comply with this Section 4.2 shall be a breach by Buyer entitling Seller to terminate the Agreement and claim damages. If Seller elects to load and/or discharge the cargo, any demurrage resulting from delays to Seller's vessel pending receipt by Seller of required credit document in form and substance acceptable to Seller shall be for account of Buyer.

- 4.3 Interest: Any amount payable for any cargo of Product or otherwise payable by Buyer to Seller hereunder shall, if not paid when due, bear interest from the due date until the date payment is received by Seller at an annual rate (based on a 360-day year) equal to the rate of two (2) percentage points above the prime rate of interest effective for the payment due date as published in the *Wall Street Journal*, but not more than the maximum rate of interest permitted under applicable law. Buyer shall pay such interest within five (5) days following receipt of Seller's invoice for such interest.
- 4.4 Form of Letter of Indemnity:

In consideration of your paying for the cargo of [VOLUME] U.S. Barrels/Metric Tons of [TYPE OF PRODUCT] which sailed from [PORT] on [VESSEL] on [BILL OF LADING DATE] loaded with the cargo when the full set of Bills of Lading and Original Shipping documents for the cargo have not been delivered to you at the time payment is due under our contract dated [CONTRACT DATE].

We hereby warrant to you that at the time property passed as specified under the terms of the contract, we had the right to sell the cargo to you, and we had unencumbered title to the cargo.

We hereby irrevocably and unconditionally undertake to indemnify you and hold you harmless against any claim made against you by anyone as a result of breach by us of any of our warranties as set out above; and all loss, costs (including, but not limited to, costs as between attorney or solicitor and own client), damages, and expenses which you may suffer, incur, or be put to which are not too remote as a result of our failure to deliver the above document(s) in accordance with the contract.

This indemnity shall terminate on delivery by us of the aforesaid document(s) and their acceptance by you.

This indemnity shall be governed by and construed in accordance with New York Law and all disputes, controversies, or claims arising out of or in relation to this warranty or the breach, termination, or validity hereof shall be subject to the exclusive jurisdiction of the New York Courts.

Signed: [NAME] [POSITION]

Company: .....

5. CREDIT

5.1 If pursuant to the Special Provisions hereof, Seller grants credit to Buyer, Seller shall have the right to change terms of such credit if Seller determines Buyer's financial condition warrants such a change. If Buyer exceeds its credit limit with Seller, each payment shall be fully secured, in Seller's sole discretion, by either payment in an amount acceptable to Seller or an irrevocable Letter of Credit opened with all amendments no later than three (3) business days prior to the scheduled delivery date. If (a) Buyer's credit becomes impaired or unsatisfactory to Seller, (b) Buyer fails to make any payment due to Seller, or (c) Buyer defaults in performance of any of its obligations under the Agreement, Seller may suspend deliveries to Buyer until such time as Buyer has made satisfactory credit arrangements with Seller (which may include providing a letter of credit or payment of cash in advance of shipment), all at Seller's discretion, reasonably exercised, and without prejudice to its other legal remedies. Failure by Buyer to open a Letter of Credit, if required for any payment hereunder, shall, notwithstanding anything to the contrary under this Agreement, obligate Buyer to prepay Seller by wire transfer in immediately available funds no later than (2) business days prior to the scheduled delivery date.

6. CONCURRENT TRANSACTIONS - NETTING OF INVOICES

6.1 In the event the Parties agree to net invoices for Product amounts which are due each other on the same date, the Parties shall confirm prior to the due date, orally or written, the invoice amounts and any amounts remaining, if any, after net-out. Any remaining balance after net-out shall be paid by the Party owing such amount to the other Party on the date the gross amounts were due. Any such net-out shall be effective upon receipt of the remaining balance due after net-out to the Party owed such balance. The Parties understand and agree that such netting of invoices is expressly limited to amount owed from purchases and sales from one Party to the other Party and that netting out any other amounts due under this Agreement, for any reason whatsoever, including but not limited to quality claims and demurrage claims, is strictly prohibited unless expressly set forth in this Agreement or otherwise agreed in writing. Nothing herein shall obligate a Party to net invoices under this Agreement and netting of invoices shall be limited to like Products.

7. NONPERFORMANCE AND LIQUIDATION

7.1 Without limiting any other rights that may be available to the liquidating Party (as defined below) (whether under any other agreement or terms and conditions, as a matter of law or otherwise), in the event (each a "default") that a party hereto (the "defaulting party") (a) is the subject of a bankruptcy, insolvency, reorganization or other similar proceeding, (b) fails to pay its debts generally as they become due or otherwise is bankrupt or insolvent, or (c) fails to pay or perform any obligation to the other party (the "liquidating party") and such failure continues for one New York banking day after notice from the liquidating party, then the liquidating party shall have the right, exercisable in its sole discretion and at any time or times, to liquidate this transaction and/or (at the liquidating party's election) any or all other agreements between the parties for the purchase and sale of crude oil, petroleum products, natural gas, natural gas liquids or electricity, swaps with respect to the prices thereof or options on any of the foregoing (collectively, "transactions") then outstanding by closing-out this transaction and any other transactions being liquidated (whereupon they shall automatically be terminated, except for the payment obligation referred to below),

calculating the loss, if any, for each such transaction, and aggregating or netting such amounts and (at the liquidating party's election) any and all other amount owing under this transaction or any other transaction being liquidated to a single liquidated settlement payment that will be due and payable within one New York banking day after the liquidation is completed. "Loss" in respect of each transaction shall be the loss (or gain) to the liquidating party as a result of the liquidation of that transaction (other than consequential damages), including, without limitation, the cost of entering into a replacement transaction and of maintaining, terminating and/or reestablishing any hedge or related trading positions (and discounted to present value or bearing interest, as appropriate), in each case, as determined by the liquidating party in any commercially reasonable manner. In addition, after a default, the liquidating party (at its election) shall have a general right of setoff with respect to any or all amounts owing between the parties (whether under this transaction, under another transaction or otherwise and whether or not then due), provided that any amounts not then due shall be discounted to present value. After a default, the defaulting party is also responsible for any other costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred by the liquidating party in connection with such default.

## 8. FORCE MAJEURE

- 8.1 Subject to Section 8.2 below, no failure or omission by either party to carry out or observe any of the terms or conditions of this Agreement shall give rise to any claim by the other party or be deemed a breach of the Agreement if such failure or omission arises from any cause reasonably beyond the control of the party claiming Force Majeure, to the extent that such failure or delay may be due to:
- (a) Compliance (voluntary or involuntary) with laws, decrees, guidelines, requests, or the like, of any government or person purporting to act therefore, or of international organizations of which the United States is a member including, without limitation, the International Energy Agency.
  - (b) Restriction or cessation of production of Product(s) due to the imposition of conditions or requirements by any government or any person purporting to act under the color or claim of any governmental authority which makes it necessary to cease or to reduce the production of the Product(s).
  - (c) Hostilities of war (declared or undeclared), embargoes, blockades, civil unrest, riots or disorders, terrorism, or sabotage.
  - (d) Fires, explosions, lightning, maritime peril, collisions, storms, landslides, earthquakes, floods, and other acts of nature.
  - (e) Strikes, lockouts, or other labor difficulties (whether or not involving employees of Seller or Buyer).
  - (f) Disruption or breakdown of production or transportation facilities, equipment, labor or materials.
  - (g) Closing or restrictions on the use of harbors, railroads, or pipelines.
  - (h) Any other cause whether or not of the same class or kind, reasonably beyond the control of either party which prevents or interferes with the performance of this Agreement.
- 8.2 Notwithstanding the provisions of Section 8.1 hereof, nothing contained in this Agreement shall relieve Buyer of the obligation to pay in full the purchase price or any other amounts due for the Product(s) actually delivered and received hereunder.

- 8.3 No curtailment or suspension of deliveries or acceptance of deliveries pursuant to this Section shall operate to extend the period of the Agreement or to terminate this Agreement.
- 8.4 Seller's ability to supply Products under this Agreement is dependent on continued availability of necessary raw materials and Products from its usual and anticipated suppliers and continued availability of energy supplies. In the event that such raw materials, Products or energy supplies are not readily available in sufficient quantities to permit Seller to meet its total commitments for Products hereunder, Seller shall have the right to allocate, in a fair and reasonable manner, among its customers and Seller's own requirements, such Products as are available. Seller shall not be obligated to make up deliveries of Products to Buyer which have been prevented by a Force Majeure event.
- 8.5 In the event that either Party must invoke the provisions in this Section, such Party shall use commercially reasonable efforts to give to the other Party in writing, within 48 hours thereof, of the underlying circumstances of the particular cause(s) of Force Majeure, and the expected duration thereof. The party claiming Force Majeure will also use commercially reasonable efforts to give the other Party notice of termination of the events of Force Majeure and the date when performance it expected to resume.
- 8.6 If sales and deliveries are suspended pursuant to this Section 8 and said suspension shall continue in excess of 30 calendar days, the Agreement may be cancelled at the option of the Party invoking Force Majeure by giving notice to the other Party.

#### 9.0 SHORTAGE OF PRODUCTS

- 9.1 Whenever in Seller's reasonable opinion there is a shortage of Product(s) at any one or more of the present or future regular sources of Seller's (or affiliates') supply, to such extent that Seller (or Affiliates) expect that they will not meet their own requirements and their requirements for sales to customers, Seller may reduce sales and deliveries to Buyer to such extent as Seller may see fit during any shortage. Seller shall not be obligated to acquire additional Product(s) or to sell to Buyer any additional Product(s) which Seller may acquire.

#### 10. DEFAULT

- 10.1 Any of the following shall be considered a "Default" if, notwithstanding any other provision of the Agreement, either Party (the "Non-Performing Party") shall (a) fail to make payment in full if not cured within five (5) days; (b) fail to make timely delivery of any Products due and owing the other party under the Agreement; (c) breach of any representation, warranty or any other non-payment obligation under the Agreement, if not cured within forty-eight (48) hours from written notice from Non-Defaulting Party; (d) fail to provide adequate assurances as provided by applicable law; (e) fail to take receipt of any Products sold hereunder in breach of this Agreement; (f) repudiate or wrongfully cancel the Agreement; (g) become bankrupt or insolvent, however evidenced, or be unable to pay its debts as they fall due; (h) file a petition or otherwise commence a proceeding under any bankruptcy, insolvency or similar law, or have any such petition filed or proceeding commenced against it; and/or (i) have a liquidator, administrator, receiver or trustee appointed with respect to it or any substantial portion of its property or assets.
- 10.2 In any such event of Default, the Performing party shall have right on prior notice to the Non-Performing Party (except in the case of default specified in clauses (g-i) Section 10.1 above in which case no notice is required), to:
- (a) suspend performance under this Agreement until such Default is remedied, including but not limited to, withholding any delivery of Products or refusing to load any vessel nominated by Buyer, whether or not such nomination has been accepted;

- (b) terminate the Agreement and/or proceed against Non-Performing Party for damages occasioned by their failure to perform;
  - (c) if the Non-Performing Party is Buyer and Seller has delivered Products to Buyer under the Agreement, the Seller may take possession of the Products and/or collect upon any security provided on behalf of Buyer;
  - (d) in the case of a Default under clauses (g-i) Section 10.1 above, set off or aggregate as appropriate, all other amounts then owing between the Parties hereunder, so that all such amounts are aggregated and/or netted to a single liquidated amount payable by one Party to the other. The net amount due after such liquidation shall be paid by the close of business on the next Business Day.
- 10.3 The Performing Party's rights under this Section shall be in addition to, and not in limitation or exclusion of, any other rights which the performing Party may have (whether by agreement, operation of law or otherwise) including, but not limited to the sale to a third party of the Product which is the subject of the Agreement. The Non-Performing Party shall indemnify and hold the Performing Party harmless from all costs and expenses (including reasonable attorney fees) incurred in the exercise of any remedies hereunder.

## 11. GOVERNING LAW AND SETTLEMENT OF DISPUTES

- 11.1 This Agreement shall be governed by and construed in accordance with the laws of the State of New York without reference to its law on conflicts and the parties hereby submit to the non-exclusive jurisdiction of the New York courts situated in New York City, Borough of Manhattan, and to service of process by certified mail. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall not in any way apply to, or govern this Agreement.
- 11.2 The Parties will attempt in good faith to resolve any controversy or claim arising out of or relating to this Contract promptly by negotiations.

If a controversy or claim should arise, the representatives of the Parties who negotiated the same, or their respective successors ("Principal Contacts"), will meet at least once and will attempt to resolve the matter. Either Principal Contact may request that the other meet within 14 days, at a mutually agreed time.

If the matter has not been resolved within 20 days of their first meeting, the Principal Contacts shall refer the matter to senior executives of their respective companies who shall have authority to settle the dispute (herein called "the senior executives"). Thereupon, the Principal Contacts shall promptly prepare and exchange memoranda stating the issues in dispute and their positions, summarizing the negotiations which have taken place, and attaching relevant documents. The senior executives will meet for negotiations within 14 days of the end of the 21-day period referred to above, at a mutually agreed time. The first meeting shall be held at the offices of the Principal contact receiving the request to meet. If more than one meeting is held, the meetings shall be held in rotation at the offices of each company.

If the matter has not been resolved within 30 days of the meeting of the senior executives (which period may be extended by mutual agreement), the Parties will attempt in good faith to resolve the controversy or claim in accordance with the Center for Public Resources model Procedure for Mediation of Business Disputes.

If the matter has not been resolved pursuant to the aforesaid mediation procedure within 60 days of the commencement of such procedure (which period may be extended by mutual agreement), the controversy shall be settled by arbitration in accordance with the Center for Public Resources Rules for Non-Administered Arbitration of Business Disputes, by a sole arbitrator. The arbitration

shall be governed by the United States Arbitration Act, 9 U.S.C. 1-16, and judgment upon the award rendered by the Arbitrator(s) may be entered by any court having jurisdiction thereof. The place of arbitration shall be New York City, New York.

12. TAXES

- 12.1 Seller shall pay any and all taxes (except for property taxes, which taxes are governed by the state law applicable thereto), fees, or other charges (with the exception of the Product excise taxes noted below in Section 12.3) imposed or assessed by governmental or regulatory bodies, with respect to the Product(s) delivered hereunder, the taxable incident of which occurs before the transfer of title to the Product(s) to Buyer.
- 12.2 Buyer shall pay any and all taxes (except for property taxes, which taxes are governed by state law applicable thereto), fees, or other charges imposed or assessed by governmental or regulatory bodies, with respect to the Product(s) delivered hereunder, the taxable incident of which occurs after transfer of title to the Product(s) Buyer.
- 12.3 Any and all taxes, fees, or other charges imposed or assessed by governmental or regulatory bodies, the taxable incident of which is the transfer of title or the delivery of the Product(s) hereunder, or the receipt of payment therefore, regardless of the character, method of calculation or measure of the levy or assessment, shall be paid by the party upon whom the tax, fee, or charge is imposed by law, except that buyer shall reimburse Seller for all federal, state and local gasoline, motor fuel, sales, use, gross receipt, and other excise taxes, fees, or charges which are imposed by law on Seller.

13. MATERIAL SAFETY DATA SHEETS

- 13.1 Seller has provided or shall provide Buyer upon Buyer's request with Seller's Material Safety Data sheets ("MSDS") for the Product to be delivered hereunder. Nothing herein shall excuse Buyer from complying with all laws, regulations and decrees which may require Buyer to provide its employees, agents, contractors, users and customers who may come into contact with the Product with a copy of the MSDS and any other safety information provided to it by Seller, and/or which require Buyer to ensure that the recommendations relating to the handling of the Product are followed. Compliance with any recommendation contained in the MSDS or other safety information shall not excuse Buyer from complying with all laws, statutes, regulations or decrees of any state or territory having jurisdiction over Buyer.

14. INDEMNITY

- 14.1 Seller and Buyer mutually covenant to protect, defend, indemnify and hold each other harmless from and against any and all claims, demands, suits, losses, expenses (including without limitation, costs of defense, attorney's fees and interest), damages, fines, penalties, causes of action and liabilities of every type and character, including but not limited to personal injury or death to any person including employees of either Party or loss or damage to any personal or real property, caused by, arising out of or resulting from the acts or omissions of negligence or willful acts of such indemnifying Party, its officers, employees or agents with respect to the purchase and sale of Product hereunder. In the event the Parties are jointly and/or concurrently negligent, each Party shall indemnify the other Party to the extent of its negligent acts or omissions or willful acts.

15. LIMITATION OF LIABILITY

- 15.1 Except as provided in Section 16 herein and as otherwise provided in the Agreement, neither party shall be liable for any prospective profits or special, indirect, incidental, consequential, punitive or exemplary damages.

16. COMPLIANCE WITH LAW

- 16.1 Product(s) sold hereunder shall be produced and delivered in full compliance with all applicable governmental laws, regulations and orders. Without limitation to the foregoing, Products shall comply, as applicable with Regulations for (i) gasoline and alcohol blends; (ii) low sulfur diesel; (iii) reformulated gasoline, and (iv) gasoline additives.
- 16.2 For gasoline and alcohol blends, Seller agrees to provide Buyer for each rack, pipeline and marine delivery either a certificate of analysis, a bill of lading, a delivery ticket or a loading ticket that represents the Product to be in compliance at the time of delivery and correctly stating the maximum Reid Vapor Pressure at the time of delivery.
- 16.3 Seller and Buyer shall maintain records that demonstrate compliance with the applicable Regulations and Standards. Seller and Buyer shall have the right to inspect and copy any and all such records of the other Party at any reasonable time or times during normal business hours. This provision shall survive termination of the Agreement for a period of two (2) years.
- 16.4 Octane Certification: In accordance with the Federal Trade Commission's requirements for octane certification under the Petroleum Marketing Practices Act, Seller hereby certifies the accuracy of the octane rating(s) of any automotive gasoline(s) described in the Special Provisions of this Agreement.
- 16.5 California Export: For deliveries out of the State of California, Seller must retain documentation to support the delivery of fuel at an out-of-state location for all exemptions or credits. Documentation may include, but is not limited to, contracts, bills of lading, delivery tickets, or meter tickets, or meter readings. The Buyer has the burden and shall provide Seller with the proper substantiation and documentation to support the exemption or credit. Delivery tickets shall be furnished by the Buyer to Seller's Tax Department within seven days after the end of the month in which the products were purchased showing receipt in a location outside the State of California.

17. NEW OR CHANGED REGULATIONS

- 17.1 It is understood by the Parties that Seller is entering into this Agreement in reliance on the laws, rules, regulations, decrees, agreements, concessions and arrangements (hereinafter called "Regulations") in effect on the date hereof with governments, governmental instrumentalities or public authorities affecting the Product sold hereunder including, but without limitation to the generality of the foregoing, those relating to the production, acquisition, gathering, manufacturing, transportation, storage, export, trading or delivery thereof, insofar as such regulations affect Seller or Seller's Supplier.
- 17.2 In the event that at any time and from time to time any regulations are changed or new regulations become effective, whether by law, decree or regulation or by response to the insistence or request of any governmental or public authority or any person purporting to act therefore, and the material effect of such changed or new regulations (a) is not covered by any other provision hereunder, and (b) has a material adverse economic effect upon Seller, Seller shall have the option to request re-negotiation of the prices or other pertinent terms hereunder. Such option may be exercised by Seller at any time after such changed or new regulation is promulgated, by written notice of desire to re-negotiate, such notice to contain the new prices or terms desired by Seller.
- 17.3 If the Parties do not agree upon new prices or terms satisfactory to both within 30 days after Seller gives such notice, Seller shall have the right to terminate this Agreement at the end of the said 30 day period. Any Product delivered during such 30 day period shall be sold and purchased at the price and on the terms applying hereunder without any adjustment in respect of the new or changed regulations concerned.

18. MARINE PROVISIONS

18.1 If delivery is to be made by water-borne transportation, the attached ConocoPhillips Company's Marine Provisions shall apply.

19. ASSIGNMENT

19.1 This Agreement shall not be assigned by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld; *provided that* either Party may assign this Agreement to any entity that acquires all, or substantially all, of the stock of a Party or which a Party is merged, without the consent of the other Party. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their permitted successors and assigns.

20. NON-WAIVER

20.1 No waiver by either Party of any breach by the other Party of any of the covenants or conditions of this Agreement shall be construed as a waiver of any succeeding breach of the same or of any other covenant or condition hereof.

21. ENTIRE AGREEMENT

21.1 No statement or agreement, oral or written, made prior to or at the signing of this Agreement, shall vary or modify the written terms hereof, and neither party shall claim any amendment to, modification of, or release from any provisions by mutual agreement unless such agreement is in writing, signed by the other Party and specifically states that it is an amendment to, modification of, or release from this Agreement.

22. NOTICE

22.1 All notices, invoices and other communications under this Agreement shall be deemed given on the date of the addressee's receipt thereof and shall be given only in writing by letter, telegram, cable, telex, facsimile or electronic data transmission.

23. MISCELLANEOUS

23.1 Buyer hereby waives all causes of action and remedies to which Buyer is or may become entitled under the Texas Deceptive Trade Practices Act.

If any conflict exists between the terms and conditions of these General Terms and Conditions and those of the Special Provisions of this Agreement, the terms and conditions of the Special Provisions shall control.

23.2 The section headings are for convenience only and shall not be interpreted in any way to limit or change the subject matter of the General Terms and Conditions and the Special Provisions of this Agreement.

23.3 Severability. Should any court of competent jurisdiction hold any terms or condition of this Agreement invalid or unenforceable, the remaining terms and conditions shall remain in full force and effect.

23.4 Recording of Conversations. Each party (i) consents to the recording of telephone conversations between the trading, marketing and other relevant personnel of the parties in connection with this Agreement or any potential Transaction, (ii) agrees to obtain any necessary consent of, and give any necessary notice of such recording to, its relevant personnel and (iii) agrees, to the extent permitted by applicable law, that recordings may be submitted in evidence in any Proceedings.

23.7 Customs Duty Drawback:

Seller reserves the right to claim, to receive, and to retain drawbacks on imported duty-paid merchandise used in the manufacture of Products it delivers. Whenever Products are exported, the Buyer shall promptly notify the Seller and shall, on request, execute claim forms in favor of Seller to enable it to establish its drawback rights under Custom Regulations. When applicable to ConocoPhillips Company produced products, Buyer shall furnish Seller in duplicate with a Notice of Exportation of Articles with benefit of drawback and other forms required by governmental authorities covering each batch of products sold to and exported by Buyer or any of Buyer's subsidiaries or licensees. Each Notice of Exportation of Articles with benefit of drawback shall be fully completed and properly executed by all necessary parties and endorsed to Seller.

- 23.8 Right To Audit: (a) Each Party shall accord the other the right to inspect the other Party's terminal and transportation facilities, during regular business hours and at the expense of the Party conducting the inspection, for the purpose of verifying compliance with the Contract and with applicable laws, rules, and regulations. (b) Each Party and its authorized representative shall have access to the books and records of the other Party relating to performance of the Contract. Each Party shall have the right to audit those records at any reasonable time, but not more than two times per year, during the term of the Contract and for two years thereafter. The audited Party shall fully cooperate with the auditing Party to accomplish the audit as expeditiously as possible. (c) Either Party may retain outside auditors or inspectors whose costs and fees shall be borne by the Party employing the outside auditor or inspector. Each Party agrees to be bound and shall cause any independent auditors or inspectors to be bound by the confidentiality obligations contained herein. Either Party may witness any inspection at its own expense.

24. ATTACHMENTS/ADDENDA

- 24.1 Attached hereto and incorporated by reference herein, are certain addenda providing further terms and conditions as applicable.
- (a) Marine Fuel Purchase/Sale Addendum
  - (b) Coke Purchase/Sale Addendum
  - (c) Fuel Coke Purchase/Sale Addendum
  - (d) Graphite Coke Purchase/Sale Addendum
  - (e) Marine Provisions

# CONOCOPHILLIPS COMPANY

## MARINE FUELS PURCHASE/SALE ADDENDUM

ConocoPhillips' Products Purchase/Sale General Terms and Conditions ("Seller's General Terms and Conditions") are incorporated herein by this reference. In the event of a conflict between Seller's General Terms and Conditions and the following terms and conditions, the terms of the latter shall prevail. Seller will supply or has supplied to Buyer marine fuel or other products on the following terms and conditions. Each transaction specifically negotiated between Seller and Buyer shall be evidenced by Seller's confirmation telex, facsimile or electronic message referred to herein as "Sales Confirmation." In the event of any conflict between these terms and conditions and the terms of the Sales Confirmation, the terms of the latter shall prevail.

### 1. IDENTITY OF BUYER.

THIS SALE OF MARINE FUELS IS MADE TO THE NAMED VESSEL AND TO THE COMPANY OR PERSON DESCRIBED AS THE "BUYER" IN THE SALES CONFIRMATION WHO WARRANTS HAVING FULL AUTHORITY TO ACT ON BEHALF OF THE NAMED VESSEL.

### 2. PRICE.

- A. THE PRICE TO BE PAID BY BUYER SHALL BE AS SET FORTH ON THE SALES CONFIRMATION. THE SALES PRICE IS EXCLUSIVE OF TAXES, DUTIES, SUPERFUND CHARGES, BARGING COSTS AND DEMURRAGE, WHARFAGE CHARGES, PORT DUES AND OTHER CHARGES LEVIABLE IN RESPECT OF MARINE FUELS AT THE TIME OF DELIVERY, WHICH SHALL BE INVOICED SEPARATELY AND PAID BY BUYER.
- B. THE SALES PRICE IS VALID ONLY IF THE VESSEL ARRIVES AT THE DELIVERY POINT ON THE ANTICIPATED DELIVERY DATE OR WITHIN 72 HOURS OF THAT DATE.
- C. UNLESS A DELIVERED PRICE IS SET FORTH IN THE SALES CONFIRMATION, ALL PRICES ARE F.O.B. SELLER'S TERMINAL. BUYER APPOINTS SELLER AS AGENT TO PROCURE BARGE DELIVERY AND AGREES TO REIMBURSE SELLER ACCORDING TO THE BARGE COMPANY'S CURRENT TARIFF OR RATE SCHEDULE.

### 3. GRADES.

- A. THE MARINE FUELS SUPPLIED HEREUNDER SHALL BE SELLER'S COMMERCIAL GRADES OFFERED TO CUSTOMERS GENERALLY AT THE TIME AND DELIVERY PORT FROM TIME TO TIME. SELLER'S

FUEL GRADES WILL CONFORM TO ISO 8217 SPECIFICATIONS. OTHER MINIMUM AND MAXIMUM QUALITY SPECIFICATIONS SHALL BE AS SET FORTH IN THE SALES CONFIRMATION.

- B. BUYER SHALL BE SOLELY RESPONSIBLE FOR NOMINATING TO SELLER THE GRADE OF MARINE FUELS FOR EACH DELIVERY FROM AMONG THE RANGE OF FUELS THEN OFFERED FOR SALE BY SELLER. SELLER WARRANTS THAT THE MARINE FUELS SUPPLIED HEREUNDER SHALL BE WITHIN THE INDUSTRY STANDARD FOR THE GRADE NOMINATED BY BUYER AND THAT THE MARINE FUELS SUPPLIED SHALL BE OF MERCHANTABLE QUALITY. UNLESS OTHERWISE AGREED IN WRITING BY SELLER, NO OTHER SPECIFICATIONS ARE WARRANTED.
  
- C. **SELLER WILL DELIVER FUEL WHICH WILL MEET THE SPECIFICATIONS AS SET FORTH IN THE SALES CONFIRMATION. HOWEVER, DUE TO THE WIDE VARIETY OF ENGINE AND BOILER REQUIREMENTS ABOUT WHICH SELLER HAS NO KNOWLEDGE, AS WELL AS THE POSSIBLE MIXTURES OF OIL OR OTHER MATERIALS WHICH SELLER HAS NO CONTROL OVER, SELLER DOES NOT REPRESENT OR WARRANT THAT THE FUEL WILL FUNCTION WITHOUT COMPLICATION IN THE SPECIFIC ENGINE OR BOILER(S) OF BUYER'S VESSEL, OR WILL BE COMPATIBLE WITH THE FUEL PRODUCTS ALREADY EXISTING IN BUYER'S TANKS OR FUEL PRODUCTS WHICH ARE LATER COMMINGLED WITH SELLER'S FUEL. UNDER SUCH CIRCUMSTANCE, SELLER MUST LIMIT ITS LIABILITY INASMUCH AS THE FUEL WHICH IT SELLS CANNOT REASONABLY BE EXPECTED TO REACH THE CONSUMING VESSEL'S ENGINE WITHOUT SUBSTANTIAL CHANGE IN THE SPECIFICATIONS WHICH IT HAD WHEN IT WAS IN SELLER'S POSSESSION.**

**ALL OTHER WARRANTIES AND ALL CONDITIONS RELATING TO THE QUALITY, FITNESS FOR PURPOSE, DESCRIPTION OR OTHERWISE, WHETHER EXPRESSED OR IMPLIED BY COMMON LAW, STATUTE, OR OTHERWISE, ARE HEREBY EXCLUDED.**

#### **4. NOTICES.**

- A. BUYER SHALL GIVE SELLER AT LEAST FIVE (5) DAYS' NOTICE OF THE DELIVERY REQUIRED, ALONG WITH VESSEL'S ETA AT THE DELIVERY POINT AND ANY SPECIAL CONDITIONS, DIFFICULTIES, PECULIARITIES, DEFICIENCIES OR DEFECTS IN RESPECT OF AND PARTICULAR TO THE VESSEL WHICH MIGHT ADVERSELY AFFECT THE DELIVERY OF MARINE FUELS TO IT.

- B. BUYER SHALL GIVE SELLER 72-HOUR, 48-HOUR AND 24-HOUR NOTICES OF VESSEL'S ETA AT THE DELIVERY POINT, WITH ITS EXACT GEOGRAPHICAL LOCATION, IF OTHER THAN SELLER'S TERMINAL.
- C. ANY CHARGES (SUCH AS BARGE DEMURRAGE OR OVERTIME CHARGES) WHICH RESULT FROM BUYER'S OR ITS AGENT'S FAILURE TO PROVIDE SUFFICIENT INFORMATION, DELAYS CAUSED BY THE VESSEL, LOADING CANCELLATIONS, THE VESSEL'S NON-COMPLIANCE WITH U.S. COAST GUARD OR PERTINENT PORT AUTHORITY OR GOVERNMENTAL REGULATIONS, OR ARE THE RESULT OF EXTRAORDINARY VESSEL LOADING LIMITATIONS OR SPECIAL DIRECTIONS OR ORDERS OF THE VESSEL MASTER OR PILOT WHICH ARE NOT PART OF THIS AGREEMENT SHALL BE CHARGEABLE TO BUYER WHO EXPRESSLY AGREES TO PAY ANY SUCH CHARGES.

**5. QUANTITY.**

- A. MEASUREMENT OF QUANTITIES ACTUALLY PURCHASED SHALL BE BASED UPON BARGE GAUGES IN CASE OF BARGE DELIVERIES OR TRUCK RACK GAUGES IN CASE OF TANK TRUCK DELIVERIES OR ON SHORE TANKS IF NO BARGE GAUGES ARE AVAILABLE OR IF THE BARGE GAUGES ARE DEMONSTRABLY IN ERROR (SUCH AS A DEVIATION OF OVER 10%). QUANTITIES SHALL BE ADJUSTED FOR GRAVITY AND TEMPERATURE IN ACCORDANCE WITH THE APPLICABLE ASTM-API-IP PETROLEUM MEASUREMENT TABLES.
- B. BUYER MAY EMPLOY AN INDEPENDENT PETROLEUM INSPECTION COMPANY TO MAKE A DETERMINATION OF THE QUANTITY ON BOARD THE BARGE, WHOSE DETERMINATION SHALL THEN BE CONCLUSIVE AS TO THE QUANTITY DELIVERED. UNLESS OTHERWISE SPECIFIED IN THE SALES CONFIRMATION, THE COST OF SUCH INDEPENDENT INSPECTION SHALL BE SOLELY FOR BUYER'S ACCOUNT.
- C. SELLER'S MEASUREMENTS SHALL BE FINAL AND CONCLUSIVE ON THE PARTIES UNLESS BUYER HAD A REPRESENTATIVE WITNESS SUCH MEASUREMENTS AND AT THE TIME OF DELIVERY GAVE SELLER A WRITTEN PROTEST AS TO ACCURACY.
- D. CHANGES IN QUANTITY OF LESS THAN FIVE PERCENT OF THE ORDERED QUANTITY WILL BE MADE UPON VERBAL INSTRUCTIONS OF THE VESSEL'S AGENT OR MASTER. CHANGES IN QUANTITY OF MORE THAN FIVE PERCENT (5%) OF THE QUANTITY ORDERED WILL BE MADE ONLY UPON SELLER'S RECEIPT OF TELEX, FACSIMILE OR

ELECTRONIC INSTRUCTION FROM BUYER OR THE VESSEL'S AGENT. ANY REQUESTED INCREASE IN QUANTITY SHALL BE SUBJECT TO AVAILABILITY OF PRODUCT.

**6. SAMPLING AND QUALITY.**

- A. UNLESS A MUTUALLY ACCEPTABLE INDEPENDENT INSPECTOR IS APPOINTED TO TAKE SAMPLES (WHOSE FEES SHALL BE BORNE EQUALLY BY SELLER AND BUYER), SELLER SHALL TAKE NOT LESS THAN TWO (2) IDENTICAL SAMPLES IN ACCORDANCE WITH ITS NORMAL SAMPLING PROCEDURES AT THE DELIVERY PORT.

BUYER HAS A RIGHT TO HAVE A REPRESENTATIVE WITNESS SUCH SAMPLING.

- B. BUYER WAIVES ANY OBJECTIONS TO THE SAMPLING PROCEDURES ACTUALLY EMPLOYED UNLESS BUYER HAD A REPRESENTATIVE WITNESS SAMPLING AND AT THE TIME OF DELIVERY GAVE SELLER A WRITTEN PROTEST ABOUT THE PROCEDURES.

THE SAMPLES SHALL BE SEALED AND LABELED BY EITHER THE BARGE COMPANY REPRESENTATIVE, SELLER'S REPRESENTATIVE OR INDEPENDENT INSPECTOR, AS THE CASE MAY BE. THE CHIEF ENGINEER WILL ACKNOWLEDGE RECEIPT OF THE SAMPLE DELIVERED TO THE VESSEL BY SIGNING AND DATING EITHER A RECEIPT OR THE SAMPLE LABEL.

- C. ONE SAMPLE WILL BE GIVEN TO THE VESSEL AT THE TIME OF DELIVERY. NOT LESS THAN ONE (1) SAMPLE SHALL BE RETAINED BY SELLER FOR AT LEAST 60 DAYS, OR LONGER IF BUYER HAS MADE A QUALITY CLAIM AGAINST SELLER DURING THAT PERIOD.

**7. CLAIMS**

- A. QUANTITY CLAIMS: WRITTEN NOTICE OF QUANTITY CLAIMS MUST BE PROVIDED TO SELLER NO LATER THAN FIFTEEN (15) DAYS FOLLOWING THE DATE OF DELIVERY, FAILING WHICH ANY SUCH CLAIM SHALL BE DEEMED WAIVED AND ABSOLUTELY BARRED. THE VESSEL MUST COMPLY WITH ALL CUSTOMARY AND NORMAL RECEIVING PROCEDURES INCLUDING ENSURING THAT THE DOCUMENTATION IS COMPLETE AND ACCURATE BEFORE SIGNING AND THAT THERE IS A CLEAR FACTUAL BASIS UPON WHICH THE CLAIM CAN BE SUBSTANTIATED. SELLER WILL NOT ACCEPT A CLAIM FOR SHORT DELIVERY BASED UPON FIGURES OBTAINED BY MEASURING PRODUCT IN THE VESSEL'S TANKS. BUYER'S SOLE REMEDY FOR SHORTAGE SHALL BE DEDUCTION FROM THE

COMMERCIAL INVOICE (IF UNPAID) OR REFUND BY SELLER (IF THE COMMERCIAL INVOICE WAS PAID) OF AN AMOUNT EQUAL TO THE QUANTITY FOR WHICH BUYER WAS INVOICED BUT DID NOT RECEIVE DELIVERY.

- B. ANY CLAIM BY BUYER FOR QUALITY DEFICIENCY OR NONCONFORMITY MUST BE RECEIVED BY SELLER IN WRITING AND ACCOMPANIED BY ALL THEN AVAILABLE SUPPORTING DOCUMENTS WITHIN THIRTY (30) DAYS OF DELIVERY. IT IS A PRE-CONDITION OF SELLER'S CONSIDERATION OF A QUALITY CLAIM THAT AT THE TIME BUYER GIVES SELLER NOTICE, THAT BUYER HAS RETAINED ITS SEALED RETAIN SAMPLE PROVIDED BY SELLER. BUYER'S NOTICE MUST CONTAIN FULL DETAILS INCLUDING: THE QUANTITIES AND LOCATIONS OF ALL BUNKERS ON BOARD THE VESSEL; THE RATE AND QUANTITY OF CONSUMPTION SINCE DELIVERY; THE LOCATION IMMEDIATELY PRIOR TO CONSUMPTION OF BUNKERS CONSUMED; FOR EACH OF THE THREE (3) PRECEDING DELIVERIES TO THE VESSEL, THE QUANTITY, QUALITY AND SPECIFICATION OF PRODUCT SUPPLIED, THE PLACE AND DATE OF SUPPLY AND THE NAME OF THE SUPPLIER; AND THE INFORMATION CONCERNING THE WHEREABOUTS OF BUYER'S SEALED RETAIN SAMPLE.
- C. IF IT IS ALLEGED THAT ANY EQUIPMENT OR MACHINERY HAS BEEN DAMAGED BY DEFECTIVE PRODUCT, FULL DETAILS MUST BE GIVEN TO SELLER AT THE EARLIEST OPPORTUNITY AND THE ITEM MUST BE PRESERVED AND MADE AVAILABLE FOR INSPECTION ON DEMAND AT ANY REASONABLE TIME OR TIMES TO SELLER OR ITS REPRESENTATIVE.
- D. IN THE EVENT OF A QUALITY CLAIM, THE PARTIES AGREE TO HAVE THE SAMPLE RETAINED BY SELLER ANALYZED BY A MUTUALLY AGREED, QUALIFIED AND INDEPENDENT LABORATORY. THE COSTS OF THE ANALYSIS SHALL BE BORNE EQUALLY BY SELLER AND BUYER. BUYER MAY CAUSE THE TESTING OF THE SAMPLE PROVIDED TO THE VESSEL AT ITS SOLE COST AND EXPENSE; HOWEVER, DISPOSITIVE DETERMINATION OF QUALITY OF PRODUCT DELIVERED SHALL BE BASED UPON TEST RESULTS OF AN INDEPENDENT LABORATORY IN THE PORT OF BUNKERING OF THE SEALED AND MARKED SAMPLES RETAINED BY SELLER FROM THE DELIVERY.
- E. OTHER CLAIMS: NOTICE OF OTHER CLAIMS, EXCLUDING QUANTITY AND QUALITY CLAIMS SHALL BE PROVIDED IN WRITING TO SELLER NO LATER THAN FIFTEEN (15) DAYS AFTER THE DATE OF DELIVERY.

**8. LIMITATION OF LIABILITY.**

- A. CLAIMS RELATED TO DELIVERY: IN NO EVENT SHALL SELLER BE LIABLE FOR DEMURRAGE; VESSEL DETENTION COSTS; DIRECT OR INDIRECT DAMAGES OR COSTS ATTRIBUTABLE TO DELAY; CONSEQUENTIAL DAMAGES, SUCH AS LOST FREIGHT, EXTRA DAILY HIRE RATE, BERTH CANCELLATION COSTS OR INCREASED FUEL COST IN OTHER PORTS; DIRECT OR INDIRECT COSTS OR DAMAGES ATTRIBUTABLE TO DELIVERY OF LESS THAN THE ORDERED QUANTITY; OR FOR ANY LOSS WHICH MAY ARISE OWING TO CONGESTION OR ADVERSE CONDITIONS AFFECTING SELLER'S DELIVERY FACILITY, THE UNAVAILABILITY OF BARGES OR TRUCKS, INDEPENDENT ACTS OF THE BARGING OR TRUCKING COMPANIES INVOLVED, OR FOR ANY REASON BEYOND SELLER'S CONTROL.
  
- B. CLAIMS RELATED TO FUEL QUALITY: SELLER'S LIABILITY FOR DELIVERY OF FUEL WITH NON-CONFORMING SPECIFICATIONS SHALL BE LIMITED TO THE COSTS INCURRED TO REMOVE THE FUEL FROM THE VESSEL AND TO REPLACE IT TO THE EXTENT SUCH FUEL WAS DELIVERED UNDER THIS AGREEMENT.
  
- C. SELLER SHALL NOT BE LIABLE FOR ANY LOSS OF PROFIT OR ANTICIPATED PROFIT, LOSS OF TIME OR HIRE, OVERHEAD EXPENSES, DEMURRAGE OR LOSS OF SCHEDULE, COST OF SUBSTITUTE VESSEL(S), LOSS RELATED TO LOSS OF OPERATIONAL USE OF VESSEL, PHYSICAL LOSS OR DAMAGE (IN WHOLE OR IN PART) OF OR TO VESSEL OR CARGO, OR FOR ANY LOSS OF CONTRACT(S) OF AFFREIGHTMENT TO THE EXTENT THAT THE FOREGOING OF ANY OF THEM ARE CONSEQUENTIAL, INDIRECT OR SPECIAL LOSSES OR SPECIAL DAMAGES NOR WITHOUT PREJUDICE TO THE FOREGOING FOR ANY OTHER CONSEQUENTIAL, INDIRECT SPECIAL LOSSES OR SPECIAL DAMAGES, ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS AGREEMENT.

**9. DELIVERY.**

- A. SUBJECT TO THE CUSTOM OF THE PORT, DELIVERY OF THE MARINE FUELS SHALL BE MADE DAY AND NIGHT, SUNDAYS AND HOLIDAYS INCLUDED.
  
- B. BUYER WARRANTS THAT THE VESSEL IS IN POSSESSION OF AND HAS ON BOARD ALL CERTIFICATES REQUIRED TO COMPLY WITH ALL RELEVANT REGULATIONS APPLICABLE TO RECEIPT OF MARINE FUELS AT THE DELIVERY POINT, INCLUDING WITHOUT LIMITATION:
  - (i) U.S. COAST GUARD CERTIFICATE OF FINANCIAL RESPONSIBILITY AND
  - (ii) CERTIFICATE OF INSURANCE AS DESCRIBED IN THE 1969

CIVIL LIABILITY CONVENTION FOR OIL POLLUTION DAMAGE AND THE INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR OIL POLLUTION DAMAGE. BUYER WARRANTS THAT THE VESSEL SHALL FULLY COMPLY OR HOLD WAIVERS OF NON-COMPLIANCE WITH ALL APPLICABLE U.S. CUSTOMS REGULATIONS IN EFFECT AS OF THE DATE OF DELIVERY. BUYER WARRANTS THAT THE VESSEL SHALL COMPLY WITH ALL OBLIGATIONS UNDER THE INTERNATIONAL SHIPS AND PORT FACILITY SECURITY CODE AND THE U.S. MARITIME SECURITY ACT OF 2002.

- C. PRIOR TO COMMENCEMENT OF DELIVERY, THE VESSEL SHALL INFORM SELLER ABOUT THE MAXIMUM PUMPING RATE AND PRESSURE AT WHICH THE VESSEL CAN RECEIVE FUEL. BUYER IS RESPONSIBLE FOR ENSURING THAT THE PRODUCT IS DELIVERED AT A SAFE RATE AND PRESSURE AND THAT ALL EQUIPMENT UTILIZED THEREFOR IS IN A SAFE AND SATISFACTORY CONDITION.
- D. FOR BARGE DELIVERY, THE VESSEL SHALL PROVIDE A FREE SIDE TO RECEIVE THE MARINE FUELS AND WILL RENDER ALL NECESSARY ASSISTANCE WHICH MAY REASONABLY BE REQUIRED TO MOOR OR UNMOOR THE BARGE OR TO CONNECT OR DISCONNECT THE DELIVERY HOSES. UNLESS OTHERWISE AGREED IN WRITING, SELLER UNDERTAKES TO PROVIDE BARGE DELIVERY ONLY WITHIN THE LIMITS OF THE DELIVERY PORT. ALL BARGES AND TRUCKS UTILIZED IN THE DELIVERY ARE INDEPENDENT SUBCONTRACTORS AND ARE NOT AGENTS OF SELLER. BUYER SHALL BE BOUND BY THE TERMS SET FORTH IN THE BARGE COMPANY'S OR COMMON CARRIER'S TARIFF, GENERAL TERMS AND CONDITIONS, CONTRACT OF CARRIAGE OR SIMILAR WRITTEN CONTRACTS, AS THE CASE MAY BE.
- E. IF VESSEL ARRIVES AT THE DELIVERY POINT AFTER THE ETA IN ITS 24-HOUR NOTICE, BARGE DEMURRAGE AND SELLER'S DISBURSEMENTS CAUSED BY THE DELAY SHALL BE FOR BUYER'S ACCOUNT.
- F. SELLER SHALL MAKE REASONABLE EFFORTS TO FUEL THE VESSEL AS PROMPTLY AFTER ITS ARRIVAL AT THE DELIVERY POINT AS CIRCUMSTANCES PERMIT. HOWEVER, BUYER'S SOLE REMEDY IN THE EVENT OF DELAY IN DELIVERY OR FAILURE OF SUPPLY SHALL BE TO CANCEL THIS AGREEMENT.

## **10. DOCUMENTATION.**

UPON COMPLETION OF DELIVERY, THE VESSEL SHALL GIVE A SIGNED RECEIPT.

**11. LIENS.**

THIS AGREEMENT IS ENTERED INTO AND THE PRODUCT IS SUPPLIED UPON THE FAITH AND CREDIT OF THE VESSEL. WHEN PRODUCT IS SUPPLIED TO THE VESSEL, IN ADDITION TO ANY OTHER SECURITY FURNISHED BY BUYER, BUYER AND SELLER AGREE AND ACKNOWLEDGE THAT A MARITIME LIEN OVER THE VESSEL, ITS APPURTENANCES AND ACCESSORIES IS THEREBY CREATED IN FAVOR OF SELLER FOR ALL SUMS OWED SELLER UNDER THIS AGREEMENT AND THAT SELLER IN AGREEING TO DELIVER PRODUCT TO THE VESSEL, DOES SO RELYING UPON THE FAITH AND CREDIT OF THE VESSEL. BUYER, IF NOT THE OWNER OF THE VESSEL, HEREBY EXPRESSLY WARRANTS THAT IT HAS THE AUTHORITY OF THE OWNER TO PLEDGE THE VESSEL'S CREDIT AND THAT IT HAS OR WILL GIVE NOTICE OF THE PROVISIONS OF THIS CLAUSE TO THE OWNER. SELLER SHALL NOT BE BOUND BY ANY ATTEMPT BY ANY PERSON TO RESTRICT, LIMIT OR PROHIBIT ITS LIEN OR LIENS ATTACHING TO A VESSEL UNLESS WRITTEN NOTICE CONFORMING TO ALL REQUIREMENTS OF U.S. MARITIME LAW IS DULY RECEIVED BY SELLER *PRIOR* TO SELLER SENDING THE SALES CONFIRMATION TO BUYER.

**12. POLLUTION PREVENTION AND RESPONSIBILITY.**

IN THE EVENT OF AN ESCAPE OR DISCHARGE OF THE MARINE FUELS OR ANY OTHER POLLUTANT AT ANY STAGE DURING THE BUNKERING OPERATION, FROM OR IN THE VICINITY OF THE VESSEL, CAUSING OR THREATENING TO CAUSE POLLUTION DAMAGE, BUYER AUTHORIZES SELLER (REGARDLESS OF WHO MAY BE RESPONSIBLE) TO IMMEDIATELY UNDERTAKE ALL MEASURES AS ARE REASONABLY NECESSARY TO PREVENT OR MITIGATE THE POLLUTION DAMAGE. SELLER SHALL KEEP BUYER AND VESSEL ADVISED OF THE NATURE AND RESULTS OF ANY SUCH MEASURES TAKEN AND, IF TIME PERMITS, THE NATURE OF THE MEASURES INTENDED TO BE TAKEN. ANY OF THE AFOREMENTIONED MEASURES SHALL BE AT BUYER'S EXPENSE, PROVIDED THAT IF SELLER CAUSED OR CONTRIBUTED TO SUCH ESCAPE OR DISCHARGE, THE EXPENSE OF THE AFOREMENTIONED MEASURES SHALL BE BORNE BY SELLER IN PROPORTION TO ITS NEGLIGENCE IN CAUSING OR CONTRIBUTING TO THE ESCAPE OR DISCHARGE. IF BUYER CONSIDERS SAID MEASURES SHOULD BE DISCONTINUED, BUYER SHALL SO NOTIFY SELLER AND THEREAFTER SELLER SHALL HAVE NO RIGHT TO CONTINUE SAID MEASURES AT BUYER'S EXPENSE. THIS PROVISION SHALL BE APPLICABLE ONLY BETWEEN THE PARTIES HERETO AND SHALL NOT AFFECT ANY LIABILITY OF EITHER PARTY TO THIRD PARTIES, INCLUDING BUT NOT LIMITED TO GOVERNMENTS.

**13. TERMINALS.**

IF THE DELIVERY POINT IS A MARINE TERMINAL, FAILURE OF THE VESSEL TO COMPLY WITH THE TERMINAL'S REGULATIONS OR APPLICABLE LOCAL ENVIRONMENTAL LAWS, OR THE BREAKDOWN OF THE VESSEL'S SAFETY OR ENVIRONMENTAL SYSTEMS, SHALL ENTITLE SELLER TO ORDER THE VESSEL TO VACATE THE BERTH, WITH ALL TIME AND EXPENSES TO BE FOR BUYER'S ACCOUNT.

**14. GOVERNING LAW.**

REGARDLESS OF WHERE THE FUEL IS DELIVERED TO THE VESSEL, FEDERAL MARITIME LAW OF THE UNITED STATES OF AMERICA SHALL BE PARAMOUNT IN GOVERNING THE RIGHTS AND DUTIES OF THE PARTIES HERETO. TO THE EXTENT FEDERAL MARITIME LAW DOES NOT PREEMPT OR IS NOT APPLICABLE TO THE SUBJECT MATTER, THIS AGREEMENT SHALL OTHERWISE BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT REFERENCE TO ITS CHOICE OF LAW RULES. THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS SHALL NOT APPLY TO THIS AGREEMENT.

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CONOCOPHILLIPS COMPANY  
MARINE PROVISIONS  
EFFECTIVE JANUARY 1, 2009

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**CONOCOPHILLIPS COMPANY  
MARINE PROVISIONS  
EFFECTIVE JANUARY 1, 2009**

I) **General** - Except where specifically provided otherwise in the "Special Provisions," these Marine Provisions shall govern as to the matters covered herein.

II) **Definitions** - As used in these Marine Provisions:

- 1) "Agreement" means the entire contract between the parties including Special Provisions, the General Terms and Conditions and these Marine Provisions.
- 2) "All Fast" means at such time as the Vessel is completely moored at the Cargo Custody Transfer Point with the gangway, if it is to be utilized, down and secured.
- 3) "Business Day" means a day which is not a Saturday, Sunday or other day on which banking institutions doing business in New York, New York are authorized or obligated by law or by executive order to remain closed.
- 4) "Cargo" means any products, gas liquids, atmospheric residuum, crude oil or condensate as described elsewhere in the Agreement.
- 5) "Customary Anchorage" means a recognized anchorage within the designated port for a Cargo Custody Transfer Point.
- 6) "Cargo Custody Transfer Point" means the location designated in the Agreement where custody of the Cargo is transferred from Terminal Party to Vessel Party or Vessel Party to Terminal Party.
- 7) "Controlled Tonnage" means Vessels that are bareboat or time chartered to the Vessel Party.
- 8) "ETA" means Estimated Time of Arrival.
- 9) "General Terms and Conditions" means the general terms and conditions referenced in the Agreement.
- 10) "Inland Vessel" means a United States Coast Guard-approved or American Bureau of Shipping inspected-tow and/or tank barge and/or a tug that is restricted to operations in the inland waterways of the United States.
- 11) "Delivery Window" means the period set out in the Special Terms or otherwise set out in the Agreement which designates the time period during which the Vessel is to endeavor to present itself at the Cargo Custody Transfer Point, or as near thereto as she may safely get, as established by the Agreement.
- 12) "Non-Controlled Tonnage" means any Vessel that is spot or voyage chartered.
- 13) "NOR" means Notice of Readiness.
- 14) "Ocean-Going Vessel" means an Ocean Tanker or Ocean-Going Barge. An Ocean Tanker refers to any ship, tanker or combination carrier that is certified to operate in offshore waters. An Ocean-Going Barge or an Ocean-Going Tow means a United States Coast Guard-approved or American Bureau of Shipping-inspected tank barge that has an ABS Load Line Certification and is certified to operate in offshore waters.

- 15) "Open Period for Berthing" means a window for berthing, which either has not already been assigned by the Terminal to some other Vessel, or for which some other Vessel cannot claim priority on the basis that her notice of readiness was given earlier than the notice of readiness of the Vessel performing under this Agreement.
- 16) "Special Provisions" means the specific transaction terms and conditions of the Agreement including but not limited to provisions relating to quantity, quality, term, delivery and price and which manifests a contract for sale of a Cargo.
- 17) "Terminal Party" means the party taking delivery from, or making delivery to, a Vessel.
- 18) "Terminal" means any refinery or terminal facility delivering Cargo to or receiving Cargo from a Vessel.
- 19) "Vessel" means any Ocean-Going Vessel or Inland Vessel.
- 20) "Vessel Party" means the party, in agreement responsible for, taking delivery on, or making delivery from, a Vessel.

### III) Nominations and Pre-Arrival Conditions

- 1) Vessel Nomination. Unless otherwise agreed in writing, not less than four (4) days before a tow's arrival at the Cargo Custody Transfer Point, nor less than seven (7) days before arrival of any other type of Vessel at the Cargo Custody Transfer Point, the Vessel Party shall nominate for acceptance by the Terminal Party a suitable Vessel which is proposed to perform under the Agreement. The Vessel Party shall furnish, as required by the Terminal Party, data about the Vessel's dimensions, equipment, winches and lines, and such other data or documents as the Terminal Party may reasonably require.
- 2) Vessel Clearance. Each Vessel to be nominated under these provisions shall always be of an acceptable standard and each party involved in the commercial transaction, including the Terminal(s), reserves the right to inspect (or not to inspect) and approve the Vessel(s) nominated. The Vessel(s) nominated must be approved (accepted) in all respects before officially tendering its valid Notice of Readiness. The acceptance or rejection of the Vessel will not be unreasonably withheld and shall be communicated to the other party within twenty-four (24) hours after receipt of nomination with all required vetting data or within timely response in the case of towboats and/or barges. An acceptance of a Vessel will not constitute a continuing acceptance of the Vessel for any subsequent loading or discharging operations. The Terminal reserves the right, but not the duty, to have a representative(s) attend onboard the Vessel at any loading and/or discharging location at their expense and the Master, Owners, operators, managers and/or agents shall cooperate to facilitate the attendance.
- 3) Vessel Substitution. If a Vessel nomination is rejected by the Terminal Party, the Vessel Party must promptly nominate another, suitable Vessel for acceptance by the Terminal Party. If a Vessel nomination is accepted by the Terminal Party, the Vessel Party may substitute another suitable Vessel by nominating it for acceptance by the Terminal Party. Unless otherwise agreed in writing, nomination of a substitute Vessel shall be made not later than four (4) days before the Vessel's arrival at the Cargo Custody Transfer Point or four (4) days before the first day of the Load window, whichever is earlier. A Vessel nomination that has been accepted by the Terminal Party is not superseded until the Terminal Party has accepted a substitute Vessel nomination. Tug substitution must be done within twenty-four (24) hours notice and only after Vessel clearance as above. A twelve (12) hour notice period would be considered for inland and cross harbor movements. Tugs must be of the same size, power, crew, etc., and meet the Oil Companies International Marine Forum (OCIMF) requirements for the anticipated tow.
- 4) ETAs.
  - A) At no time shall the ETA constitute an agreement to alter the Delivery Window, or any other documentation provided different than this Agreement.

- B) Unless otherwise agreed in writing, the Vessel Party shall give notice in writing to the Terminal Party of the Vessel's ETA at the Cargo Custody Transfer Point. Where applicable, such notice must be received by the Terminal Party at least four (4) days in advance of such arrival by a tow, and at least seven (7) days in advance of such arrival by any other Vessel. Where applicable, such notice shall be actually received by the Terminal Party 72, 48, 24 and 6 hours before Vessel's expected arrival at the Cargo Custody Transfer Point.
- C) The Vessel Party shall promptly notify the Terminal Party in writing about a new ETA if the ETA advances or recedes by two (2) hours or more after the twenty-four (24) hour ETA notice has been given.
- D) Any delay whatsoever attributable to the failure of the Vessel to give notice of its ETA in accordance with Clause III. 4, shall not count as used laytime or as time on demurrage.
- 5) Pre-Arrival Information. The Vessel Party shall furnish, as reasonably requested by the Terminal Party, additional data in writing, about the Vessel's dimensions, seaworthiness, equipment, and certificates, as well as the nature and estimated duration of the Vessel's anticipated Cargo handling and other operations at the Cargo Custody Transfer Point, such information to be actually received by the Terminal Party not later than forty-eight (48) hours before the Vessel's arrival at the Cargo Custody Transfer Point.
- 6) Terminal Regulations. If the Cargo Custody Transfer Point is a marine Terminal, a Vessel must comply at all times with the applicable Terminal regulations. Copies of such regulations shall be provided by the Terminal Party on request.

#### IV) Vessel Requirements

- 1) U.S. Coast Guard Compliance. The Vessel Party warrants that, throughout the Cargo transfer operation, the Vessel shall fully comply, or hold authorized waivers for non-compliance, with all applicable U.S. Coast Guard regulations in effect as of the date Vessel berths. All expenses and time lost during any period when this warranty has been breached shall be for Vessel Party's account.
- 2) Environmental Compliance.
  - A) The Vessel Party warrants that the Vessel shall comply with all applicable local, state and Federal environmental laws and regulations covering water, air and land pollution while at the place(s) of the Cargo Custody Transfer Point. If the Vessel fails to comply with such laws and regulations, the Vessel may be required to vacate her berth and proceed to the Customary Anchorage or waiting place. All expenses and time lost during any period when this warranty has been breached and until the Vessel reberths and is found to be in compliance with the aforementioned laws and regulations shall be for Vessel Party's account.
  - B) The Vessel Party must have current hydrogen sulfide (H<sub>2</sub>S) and benzene policies and procedures for handling excessive levels of H<sub>2</sub>S and benzene. It must be recognized that petroleum products have the potential to contain H<sub>2</sub>S and/or benzene. Neither party warrants the levels of H<sub>2</sub>S and/or benzene in the Cargo.
- 3) Oil Pollution Responsibility Certificate. The Vessel Party warrants that the Vessel shall comply with the U.S. Federal Water Pollution Control Act, as amended, the U.S. Federal Oil Pollution Control Act of 1990 (OPA 1990), and regulations issued pursuant thereto effective during the term of this agreement, and have a secure and carry onboard the Vessel a current U.S. Coast Guard Certificate of Financial Responsibility (COFR) (Water Pollution). Vessels shall also have onboard any other Federal and/or state Proof of Financial Responsibility Certificate that may be required at the Cargo Custody Transfer Point.
- 4) P&I Insurance. For Ocean-Going Vessels, the Vessel Party warrants that:
  - A) For each Vessel nominated to carry Cargo, the Vessel is owned or demise chartered by a member of the International Tanker Owners Pollution Federation Limited (ITOPF).

- B) (i) The Ocean Tanker carries on board a valid certificate of insurance as described in the 1969 Civil Liability Convention for Oil Pollution Damage and the International Convention of Civil Liability for Oil Pollution Damage 1992 and (ii) the Vessel has in place insurance coverage for oil pollution no less in scope and amounts than the highest available under the Rules of the P&I Clubs which are members of the International Group of P&I Clubs. The warranty set forth above is an essential part of this Agreement and the obligations of the Terminal Party under this Agreement are conditioned on the truth and performance of such warranty. Any breach of the above warranty shall entitle the Terminal Party to terminate this Agreement without limiting its right to recover damages.
- 5) Vessel Connection Construction. Vessel Party warrants that all piping, valves, spools, reducers and other fittings comprising that portion of the Vessel's manifold system outboard of the last fixed rigid support to the Vessel's deck and used in the transfer of Cargo, bunkers or ballast, will be made of steel or nodular iron. The fixed rigid support for the manifold system must be designed to prevent both lateral and vertical movement of the manifold. Vessel Party further warrants that no more than one reducer or spool piece (each American National Standards Institute "ANSI" standard) will be used between the Vessel's manifold valve and the Terminal hose or loading arm connection and this cantilever length should not be more than 84 inches.
- 6) Carrier Alpha Code. Where bills of lading are issued, the Vessel Party warrants that the Bill of Lading issuer shall have and use a standard carrier alpha code (SCAC) required by the U.S. Customs regulations.
- 7) U.S. Customs and Border Protection Compliance. The Vessel Party warrants that the Vessel shall fully comply or hold waivers for non-compliance with all applicable U.S. Customs regulations in effect as of the date Vessel berths. The Vessel Party shall provide all required Customs information to the U.S. Customs and/or the Terminal Party prior to Vessel arrival. Without limitation, Vessel Party warrants that the Vessel shall comply with all obligations imposed upon it or its owners under the International Ships and Port Facility Security Code and the U.S. Maritime Transportation Security Act of 2002 (collectively, the "Security Regulations"). Terminal Party warrants that the discharge Terminal shall comply with any obligations imposed upon it or its owners under the Security Regulations.
- 8) Drug and Alcohol.
- A) Owners of barges, and US flag Vessels, warrant that they have in force a Drugs and Alcohol Policy that meets or exceeds the standards set forth by the U.S. Coast Guard Regulations, and any other applicable federal, state or local laws, and that such a policy includes: Pre-hire, Random/Unannounced, and Post-incident testing adequate to act as an effective abuse deterrent. Owner warrants that this policy will remain in effect during the term of this Charter, and that the Owner shall exercise due diligence to ensure that such a policy is complied with.
- B) Owners of non US Flag barges and ships warrant that they have in force a Drugs and Alcohol Policy that meets or exceeds the standards set forth by their flag state and also meets or exceeds the Standards set in the most recent edition of the "Guidelines for the Control of Drugs and Alcohol on Board Ship" as published by the Oil Companies International marine Forum (OCIMF). Owner warrants that this policy will remain in effect during the term of this Charter, and that the Owner shall exercise due diligence to ensure that such a policy is complied with.
- 9) Incident Notification. In the event of an incident: spills to deck or water, groundings, collisions, allisions, fires, explosions, loss of propulsion or steering, fatalities or serious injuries (emergency evacuations from the Vessel or man overboard), or any incident that results (or may result) in media coverage, immediately call the Commercial Marine Emergency Notification Line 281-293-COP1 (2671) within the United States or 001-281-293-COP1 (2671) from outside the United States. Upon calling this number, some basic questions will be asked about the Vessel and nature of the incident, as well as a contact name and number for further detail.

## V) Delivery Window / Berthing

- 1) Delivery Window. The Delivery window in the Special Provisions constitute the period during which the Vessel shall endeavor to tender NOR at the Cargo Custody Transfer Point or the Customary Anchorage for the Cargo Custody Transfer Point.
- 2) Priority in Berthing.
  - A) Subject to subparagraph B. of this Paragraph V.2., priority in berthing shall be given to a Vessel that tenders NOR within her agreed Delivery window over a Vessel that tenders NOR outside her agreed Delivery window.
  - B) Vessels will be accorded priority in berthing in the order in which each Vessel's valid NOR is received by the Terminal, provided NOR is tendered within the agreed Delivery window. The Terminal Party reserves the right to berth Vessels consistent with its operating and Terminal requirements.
- 3) Anticipated Tardy Arrival Outside Reservation Window. If the Terminal operates a system of advance reservations for berthing some or all types of Vessels, and the Terminal has assigned a reservation window for a Vessel, she may lose her place in the queue and the Terminal may assign her the next available Open Period for Berthing as a new reservation window whenever the Vessel's revised ETA or actual arrival is later than her assigned reservation window.
- 4) Arrival of Vessel Outside Agreed Delivery Window. If the Vessel arrives after its Laydays, but within 5 days after the last day of the Laydays, Terminal Party shall endeavor to accept the Vessel for loading at the earliest practicable time. If the Vessel arrives more than 5 days after the last day of its Laydays, the Terminal Party may refuse to deliver or accept the Cargo, as applicable, without prejudice to any other rights which the Terminal Party may have pursuant.

## VI) Vessel at the Berth / Cargo Transfer Operations

- 1) Non-Compliance with Terminal Regulations or Breakdown of Vessel Safety or Environmental Systems. The Terminal Party may instruct the Vessel to vacate her berth if (i) it appears that the Vessel will not, because of disability or any other cause on the part of the Vessel, be able to complete loading or discharge within the "allowed laytime"; (ii) if the Vessel fails to comply with the Terminal's regulations or (iii) there is a deficiency in the Vessel's safety or environmental systems, processes or management.

Upon receipt of instructions from the Terminal Party that the Vessel is to vacate the berth, laytime or demurrage shall cease. The Vessel, after tendering Notice of Readiness to recommence loading or discharging, shall be reberthed in accordance with Terminal Party's assignment. Laytime or demurrage will only resume counting upon the recommencement of Cargo operations. If the Vessel does not vacate the berth following said instructions, the Vessel Party agrees to reimburse the Terminal Party for any consequential demurrage claims received from other parties.

- 2) Pollution Prevention and Responsibility. In the event an escape or discharge of Cargo or bunkers, or risk of escape or discharge of Cargo or bunkers occurs from the Vessel and causes or threatens to cause pollution damage, the Vessel will promptly take whatever measures it determines are necessary to prevent or mitigate such damage. The Vessel Party hereby authorizes the Terminal Party, at the Terminal Party's option and upon notice to the Vessel Party, to undertake such measures as are reasonably necessary to prevent or mitigate the pollution damage. The Terminal Party shall keep the Vessel advised of the nature and results of any such measures taken, and, if time permits, the nature of the measures intended to be taken. Any of the aforementioned measures shall be at the Vessel Party's time and expense, provided that if the Terminal caused or contributed to such escape or discharge, the expense of the aforementioned measures shall be borne by the Terminal Party in proportion to its negligence in causing or contributing to the escape or discharge. If the Vessel Party considers said measures should be discontinued, the Vessel Party shall so notify the Terminal Party and thereafter the Terminal Party shall have no right to continue said measures at

the Vessel Party's expense. This provision shall be applicable only between the parties hereto and shall not affect any liability of either party to third parties, including, but not limited to, governments.

- 3) Inert Gas System. Unless the Terminal prohibits Vessels from arriving with Cargo tanks inerted, a Vessel fitted with an inert gas system ("IGS") will not be permitted to tender Notice of Readiness or berth for loading or discharge of any Cargo unless the IGS is fully operational and all Cargo tanks are inerted with an oxygen level at or below eight (8) percent. For a Vessel intending to handle Cargoes that could be adversely affected by inert gas or that do not require inert gas blanketing, at least three (3) Business Days prior to the Vessel's arrival at the Cargo Custody Transfer Point the Vessel Party may request from the Terminal Party an exemption from this clause, which exemption shall not be unreasonably withheld. For a Vessel engaged in crude oil trade operations, positive inert gas pressure at or below eight (8) percent oxygen content shall be maintained on all Cargo and slop tanks throughout the transfer and any Crude Oil Washing ("COW") operation. All measurement equipment, procedures, calculations, and practices performed while Vessel is inerted shall conform to the most current API Manual of Petroleum Measurement Standards (MPMS), to the satisfaction of the IIC.

Should the IGS fail after the Vessel has berthed, Cargo handling shall be terminated immediately and the Vessel may be ordered to vacate the berth until her IGS is fully operational and tanks are inerted to the requisite pre-arrival condition. Temporary or substitute equipment or procedures to correct IGS malfunctions may not be used without the Terminal Party's approval. All expenses during IGS failure and between berthings in connection with IGS failure are for Vessel Party's account. Laytime or demurrage shall cease counting upon the stoppage of Cargo operations as a result of IGS failure and will only resume counting upon the recommencement of Cargo operations.

- 4) Shifting of Vessels. Unless otherwise dictated by the Agreement, all expenses and time during any warping or shifting of the Vessel shall be for the Vessel Party's account unless done at the request of the Terminal Party. The Terminal Party may, at its option, warp or shift the Vessel within a berth or between berths, as well as to and from the anchorage. Expenses and time lost during such activities shall be for the Terminal Party's account.
- 5) Ballasting and Cargo Slops.
- A) If the Cargo Custody Transfer Point has ballast water and/or slops handling facilities, the Vessel may discharge ballast water and/or Cargo slops up to the maximum capacity available. Unless concurrent with Cargo handling, all time used during ballasting, deballasting or offloading slops, (any charges for these services), and any delay due to waiting for service facilities shall be for the Vessel Party's account. If the Vessel must shift to and/or from such facilities, all time used by the Vessel in shifting as well as the shifting expenses shall be for Vessel Party's account. Title to Cargo slops shall pass to the Terminal Party at the first permanent flange on shore. Vessel Party warrants that the Cargo slops do not contain any Vessel-generated waste.
- B) Vessel Party will or will cause Vessel to minimize the loading of ballast into Cargo tanks previously containing crude oil (dirty ballasting) at discharge Terminal. When ballasting is conducted simultaneously with discharge operations, Vessel will maintain at least double valve segregation. During dirty ballast operations, vapor balancing must be utilized between dirty ballast loading compartments and discharging Cargo compartments, thereby eliminating emission of Cargo vapors to the atmosphere. All delays, losses and expenses incurred due to Vessel's non-compliance will be for Vessel Party's account.
- 6) Special Provisions for Foreign Cargo Slops. Terminal Party shall be notified at least three (3) Business Days in advance of discharge when a Vessel desires to discharge foreign Cargo slops. Such notification shall include identity, description, or chemical properties of components; country of origin; estimated value; and estimated quantity. If advance notification is not received by Terminal Party, any time lost in discharging Cargo slops from the Vessel because of a delay in securing government clearance shall be for Vessel Party's account. Additionally, regardless as to when notification of the Vessel's desire to discharge foreign Cargo slops was received, all expenses, including but not limited to customs fees, chemical analysis, removal and proper disposal of Cargo slops shall be for the account of the Vessel Party.

- 7) Vessel-Generated Waste. Fees associated with the testing, removal or reception of Vessel-generated waste, including fuel and lube oil sludge and oil bilge water, shall be for the account of the Vessel Party. Any waiting for reception facilities at a Terminal for Vessel-generated waste shall be for Vessel Party's account. If the Vessel must shift to and/or from such facilities, all time consumed by the Vessel shifting as well as shifting expenses for tugs, mooring line handlers, and pilots shall be for Vessel Party's account. The Vessel Party shall retain title to the waste material until it is tested and commingled with Terminal waste or, alternatively, delivered to a waste disposal company possessing a valid permit.
- 8) Crude Oil Washing ("COW"). If Vessel is equipped to crude oil wash, the Vessel Party warrants that the Vessel is capable of crude oil washing all Cargo tanks. The Vessel Party further warrants that the Vessel complies with all international, national and local requirements applicable to COW and will perform all COW operations in accordance with the Vessel's approved COW manual. The Vessel must inform the Terminal Party of its intention to COW at least forty-eight (48) hours prior to berthing. The number of tanks to be crude oil washed shall be limited to the minimum required by law, unless the Terminal Party agrees or orders otherwise.

## VII) Terminal-Related Conditions

- 1) Safe Berth Availability and Charges.
  - A) The Terminal Party shall exercise due diligence to provide a safe berth to which the Vessel may proceed to, lie at, and depart there from always safely afloat. However, if the Vessel cannot, in the Terminal Party's sole opinion, maintain its moor safely at the dock, then the Terminal Party at its sole discretion may order hold-in tugs, and the cost of such tugs shall be for Vessel Party's account. The Terminal Party shall provide a safe berth for the Vessel free of wharfage fees for normal Cargo transfer. The Terminal Party shall be entitled to charge a wharfage fee for Vessels that cause or otherwise contribute to unreasonable delays or expenses while in port. Dockage and service fees, including mooring, booming, fresh water, steam and oily slops receipts will be charged to the Vessel Party. In addition, all duties and other charges on the Vessel, including, without limitation, those incurred for tugs and pilots, and other port costs shall be for the Vessel Party's account.
  - B) Notwithstanding anything contained in this clause or the Agreement, the Terminal Party does not warrant the safety or draft of public channels, fairways, approaches thereto, anchorages or other publicly-maintained areas either inside or outside the port area where the Vessel may be directed. Terminal Party shall not be liable for (i) any loss, damage, injury or delay to Vessel resulting from the use of such waterways not caused by the Terminal Party's fault or negligence or which could have been avoided by the exercise of reasonable care on the part of the Vessel or its master, or (ii) any damage to Vessels at the Terminal caused by other Vessels passing in the waterway.
- 2) Representative. Terminal Party may, at its option, place a Representative or Representatives on board the Vessel to observe loading and/or discharging of Cargo and related operations during the period after the Vessel has arrived at a Port. In addition, Terminal Party may, at its option, place a Representative or Representatives on any Vessel involved in a ship-to-ship loading/discharge operation. The Representatives will advise the Vessel Master(s) or Mooring Master about avoidance of pollution, unsafe acts, or violation of Terminal regulations. The Representatives will not order or direct the undertaking of any particular action or interfere in any way with the Master's exercise of authority. The Representative shall not be responsible for, or create, liability for the Terminal Party.
- 3) Hoses and Simultaneous Discharge.
  - A) Hoses between the tanker and the shore flanges shall be furnished by the Terminal Party. Flanges for hose connections should be at or near the Vessel's dockside rail and should comply with OCIMF recommendations. Crossover hoses between barges, or hoses at crossover offshore manifolds of Vessels (i.e., "jumpers"), shall be furnished and connected by the Vessel at the risk and expense of the Vessel Party.

- B) Vessel's Cargo hoses, including marine vapor recovery ("MVR") and offshore manifold crossover hoses (or jumpers), must be tested annually and be in service for less than five years. Documentation of annual hydrostatic testing and service age must be aboard the Vessel and available to the Terminal Party on request. Any delay arising from Vessel's failure to provide aforementioned complete and up to date documentation shall not count as used laytime or as time on demurrage.
- C) If requested by the Terminal Party, Vessel shall load or discharge Terminal Party's grades simultaneously whenever the Cargo Custody Transfer Point allows. Any delay arising from Vessel's failure to work Terminal Party's grades simultaneously shall not count as laytime or as time on demurrage.
- 4) Damage to Terminal Party's Property. Vessel Party shall be liable for any damage sustained by wharves, berths, docks, tugs, or Vessels owned or maintained by the Terminal Party, or for which the Terminal Party is responsible, arising out of the negligent or improper operation of the Vessel or any other waterborne craft ordered by, or being operated for the account of, the Vessel Party. The Vessel Party will indemnify the Terminal Party for any such damages.
- 5) Shore Lines. If requested by the Vessel Party at least three (3) Business Days prior to the Vessel's arrival, the Terminal Party shall use best efforts to perform a line press or line displacement prior to load or discharge to determine status of shorelines and ensure accuracy of Cargo measurement.
- 6) In-Harbor Lightering. In-harbor lightering shall not be permitted without prior approval of the Terminal Party. In-harbor lightering shall be performed at Vessel Party's sole expense, time and risk. Terminal Party's approval shall not relieve Vessel Party of the obligation to indemnify and hold the Terminal Party harmless for any loss or liability arising from or attributable to Vessel Party's fault or negligence.

**VIII) Notice of Readiness, Lightering and Calculation of Laytime**

1) Notice of Readiness ("NOR").

- A) After the Vessel has arrived at the Customary Anchorage for the Cargo Custody Transfer Point and is in all respects, at the immediate and effective disposition of the Terminal Party, ready to proceed to the berth and to commence loading or discharging the Cargo, the Vessel Party shall tender Notice of Readiness by electronic mail, fax, letter, telegraph, wireless, radio telephone or telephone, berth or no berth. Unless otherwise agreed, the Customary Anchorages for the following Cargo Custody Transfer Points shall be deemed to be as indicated and all other Customary Anchorages and Cargo Custody Transfer Points shall be provided upon request:

Cargo Custody Transfer Point	Anchorage
Bayway Refinery / Linden, NJ	Stapleton/Bay Ridge/Gravesend Bay
Port Jefferson Terminal/PJ, NJ	Off Port Jefferson
Riverhead Terminal/Riverhead, NJ	Off Riverhead

- B) If Notice of Readiness is tendered orally by an Ocean Tanker or Ocean-Going Barge, confirmation in writing shall be made within twelve (12) hours when required.
- C) NOR may not be tendered until the tanker or Ocean-Going Barge has a current and valid Tank Vessel Examination ("T.V.E.") or Certificate of Compliance ("COC").
- D) If, immediately prior to giving NOR, at hoses off, the Vessel is discharging or loading other Cargo in a berth at the Port wherein the Cargo Custody Transfer Point is located, or waiting at a layberth there, NOR may be tendered at such berth, but time used in shifting from such berth to the anchorage or to the loading berth shall not count as laytime or time on demurrage.

2) Laytime.

A) Allowed Laytime.

(i) Ocean Tanker. Unless otherwise provided in the Agreement, thirty-six (36) running hours shall be permitted to the Terminal Party as laytime at the Cargo Custody Transfer Point(s) for a full Cargo and pro rata thereof for part Cargo based on the total barrels of Cargo carried by the Ocean Tanker on that voyage. However, the minimum laytime will be twelve (12) hours for a part Cargo.

(ii) Ocean-Going Barge.

(a) Unless otherwise provided in the Agreement, laytime shall be the number of hours as specified in the table below shall be permitted to the Terminal Party as laytime at the Cargo Custody Transfer Point(s) for a full Cargo and pro rata thereof for part Cargo based on the total barrels of Cargo carried by the Ocean-Going Barge on that voyage. However, the minimum laytime will be twelve (12) hours for a part Cargo.

Cargo Quantity (Net Standard Volume)	Laytime
Up to 49,999 barrels	12 hours
50,000 - 59,999 barrels	14 hours
60,000 - 69,999 barrels	15 hours
70,000 - 79,999 barrels	16 hours
80,000 - 89,999 barrels	17 hours
90,000 - 99,999 barrels	18 hours
100,000 - 109,999 barrels	19 hours
110,000 - 119,999 barrels	20 hours
120,000 - 129,999 barrels	21 hours
130,000 - 139,999 barrels	22 hours
140,000 - 149,999 barrels	23 hours
150,000 - 179,000 barrels	24 hours
180,000 or more	36 hours

(iii) Inland Vessel.

(a) Allowed laytime for any Inland Vessel having or containing a Cargo Quantity of 24,999 barrels or less shall be twelve (12) hours.

(b) Allowed Laytime for an Inland Vessel shall commence, berth or no berth, upon tender of NOR, at the Customary Anchorage or fleet, within agreed Delivery Window.

(c) Allowed laytime for any Inland Vessel having or containing a Cargo Quantity of 25,000 barrels or more shall be based on the applicable charter party terms for such Inland Barge. If not otherwise specified in the contract or charter party agreement, allowed laytime shall be calculated as follows

Loading: 3 hours plus 3,000 Bbls/Hour  
Discharging: 3 hours plus 2,500 Bbls/Hour

In no event shall allowed laytime be less than twelve (12) hours, which includes three (3) hours of free time.

(d) If more than one barge is utilized, barges will be expected to load and/or discharge simultaneously.

- 1 If the designated Shore Facilities require barges to berth individually, time consumed in shifting the barges shall count as used laytime or demurrage, if on demurrage.
- 2 If the Tow required barges to berth individually, time consumed in shifting the barges shall not count as used laytime or demurrage, in on demurrage.

(iv) Pumping Warranties.

- (a) Ocean Tanker or Ocean-Going Barge over 16,000 DWT will maintain an average of 100 psi at Vessels manifold or discharge its entire Cargo within twenty-four (24) hours.
- (b) Ocean-Going Barge or Inland Vessel under 16,000 DWT will maintain an average of 100 psi at Vessels manifold.

Any time consumed due to the inability of the Vessel to Discharge the Cargo throughout the bulk discharge, within the specified warranties listed above, shall not count as laytime or time on demurrage, provided that the designated Shore Facilities are capable of receiving the same.

B) Laytime Counting.

(i) Ocean-Going Vessels.

(a) If an Ocean-Going Vessel tenders NOR within the agreed Delivery window, then:

- 1 Laytime shall commence for Ocean Tankers, berth or no berth, six (6) hours after tender of NOR, or when All Fast, whichever occurs first.
- 2 Laytime shall commence for Ocean-Going Barges, berth or no berth, after tender of NOR, or when All Fast, whichever occurs first.

(b) Laytime shall not commence for:

- 1 Ocean Tankers prior to 0600 on the first day of the agreed Delivery window, except that if the Ocean-Going Vessel is berthed prior to such date with the Terminal Party's consent, laytime commences when All Fast.
- 2 Ocean-Going Barges prior to 0001 on the first day of the agreed Delivery window, except that if the Ocean-Going Vessel is berthed prior to such date with the Terminal Party's consent, laytime commences when All Fast.
- 3 Laytime for an Ocean-Going Vessel which tenders NOR after expiration of the agreed Delivery window, shall commence only when All Fast.
- 4 Laytime Ends
  - a. For Ocean Tankers, laytime shall run until the Cargo hoses have been finally disconnected upon completion of loading or discharging, provided always that if the Vessel is detained solely for the purposes of awaiting Cargo documents at loadport for more than three (3) hours beyond the final disconnection of Cargo hoses, laytime shall recommence after such three (3) hours and terminate upon completion of Cargo documentation. If after completion of loading the Vessel is required to proceed to an anchorage for the Vessel Party's purposes, then the time spent moving from the berth to the anchorage shall not count as part of the three (3) hours referred to above or as laytime.
  - b. For Ocean-Going Barges, used laytime shall cease when the vessel is released by the Terminal and/or the Cargo Inspector.

- 5 Loading Into or Discharging From Other Vessels Ordered by the Terminal Party. In the event Terminal Party orders the Ocean-Going Vessel to deliver into or receive from another Vessel or Vessels any or all of the Cargo at a Cargo Custody Transfer Point in or near a port, or at a customary lightering position or anchorage for a port, or otherwise at sea within 100 miles of a port where a Cargo Custody Transfer Point ashore is located, the place of such operations shall not count as a separate port or separate berth. Laytime shall commence upon tender of NOR at a lightering location and continue until Cargo hoses are disconnected from last lightering Vessel.
- 6 Shared Delays. Time lost due to any of the following shall count as one-half laytime or, if the Ocean-Going or Inland Vessel is on demurrage, then as one-half time on demurrage: Any time lost or spent by the Ocean-Going or Inland Vessel in reaching a berth due to conditions not reasonably within the Terminal Party's control, including but not limited to weather delays, ice, fog, frost, surf swell, bore tides, or channel blockage. One-half of laytime or time on demurrage shall also count for any time lost due to a force majeure event as described in the General Terms and Conditions, weather and/or sea conditions, acts of God, torts of third parties, fire, explosion or strike, lockout, restraint of labor, or breakdown of machinery or equipment in or about the installation, facility, Terminal, or plant of charterer, supplier, shipper or consignee of the Cargo.
- 7 Laytime Exclusions. Time shall not count as laytime or time on demurrage if lost or spent due to:
  - a. Inward passage from a lightering or waiting area to the Customary Anchorage or berth, even if lightering has taken place; or proceeding from the Customary Anchorage to the berth, such time commencing at the earlier of pilot on board or anchor aweigh and ending at All Fast.
  - b. Awaiting daylight, pilots, tugs or tide.
  - c. Inability of the Vessel's facilities to discharge or receive Cargo safely within the time allowed.
  - d. The Vessel requiring separate and/or additional shore tank gauges for any reason, or the Vessel's failure to comply with terminal regulations.
  - e. Prohibition of Cargo transfer at any time by the Vessel, or the Vessel Party or port authorities, unless such prohibition is caused by the Terminal Party's failure to comply with applicable laws or regulations.
  - f. Vessel Party's failure to have required documentation on board.
  - g. Awaiting customs or immigration clearance, or free pratique.
  - h. Strike, lockout, stoppage or restraint of labor of the Master, officers and crew of the Vessel or towboat or pilots.
  - i. Any delay for which the Vessel Party, the Vessel (including breakdown or inefficiency of the Vessel), her Master or crew is responsible, including without limitation, any delays occasioned by any failure of the Vessel to meet the requirements of these Marine Provisions or the Agreement.
  - j. Bunkering, Ballast, or Cowing unless concurrent with loading or discharging of Cargo.

- k. A result of a labor boycott arising in connection with the business of the Vessel or Vessel Party, the terms or conditions of employment of the Vessel or Vessel Party's servants, or employment, trades, or Cargoes of the Vessel.
  - l. Restraint or interference in the Vessel's operation by any governmental authority in connection with the ownership, registration, or obligations of the Vessel Party or the Vessel, or in connection with stowaways or with smuggling or other prohibited activities of the Vessel's or Vessel Party's servants.
  - m. Cargo contamination or damage caused by unseaworthiness or negligence of the Vessel or, servants of the Vessel or Vessel Party.
  - n. The Vessel's unclean tanks, or inability to maintain heating or pumping warranties, or the need for Vessel repairs.
  - o. Any delay caused by the Vessel Party's failure to comply with financial and/or credit responsibilities to this agreement.
- 8 Pro Rata Part Cargo Apportionment. Whenever this Agreement covers Cargo which is among other Cargoes to be loaded or discharged by the Vessel at the same port, and the Vessel is waiting to berth or is diverted for other risks for which diversion is authorized, then laytime and time on demurrage during the delay shall be apportioned on the basis of the ratio of the barrels of this Cargo to the total barrels of all such affected Cargoes. All time used in loading or discharge of other Cargoes shall be excluded from laytime and time on demurrage for this Cargo. Laytime and time on demurrage during periods of concurrent Cargo handling shall be apportioned based on the ratio of the barrels of this Cargo to the total barrels of all such Cargoes subject to concurrent Cargo handling.

If as a result of such causes and events the Vessel loses her turn to berth, laytime and demurrage shall be suspended until All Fast to the dock or alongside a lighter. If such causes or events occur while the Vessel is in berth, extra expenses thereby incurred by the Terminal Party in connection with the Vessel remaining at the berth shall be for Vessel Party's account, and the Terminal Party shall also have the option to order the Vessel out of berth, with the cost of unberthing and reberthing for this purpose to be for Vessel Party's account. Upon receipt of instructions from the Terminal Party that the Vessel is to vacate the berth, laytime or demurrage shall cease. The Vessel, after tendering Notice of Readiness to recommence loading or discharging, shall be reberthed in accordance with Terminal Party's assignment. Laytime or demurrage will then only resume counting upon the commencement of Cargo operations.

(ii) Inland Vessels.

(a) Commencement of Laytime:

- 1 If an Inland Vessel tenders NOR prior to the commencement of the Delivery window, laytime shall commence at 0001 hours local time on the first day of the Delivery window or upon All Fast, whichever occurs first.
- 2 Laytime shall commence upon NOR when tendered within the Delivery window, berth or no berth.
- 3 If an Inland Vessel tenders NOR after the end of the Delivery window, laytime shall commence when the Inland Vessel is All Fast.

(b) Laytime Ends: Used laytime shall cease when the Inland Vessel is released by the Terminal and/or the Cargo inspector.

(c) Shared Delays/Laytime Exclusions/Part Cargo Apportionment. Section VIII. 2. B. (i). (b). 6, 7 and 8 as written above for Ocean-Going Vessels also apply to Inland Vessels.

(d) If more than one barge is utilized, barges will be expected to load and/or discharge simultaneously.

- 1 If the Cargo Custody Transfer Point require barges to berth individually, time consumed in shifting the barges shall count as used laytime or as time on demurrage.
- 2 If the Tow requires barges to berth individually, time consumed in shifting the barges shall not count as used laytime or as time on demurrage.

C) Cargo Sampling and Analysis. If the quality of the Cargo is called into question (for example, quality as determined by independent certified laboratory is evaluated as not meeting the applicable specifications for the Cargo loaded or to be loaded as specified in the sale/purchase agreement) prior to delivery, any delays, including but not limited to, re-sampling and/or analysis, shall be for the account:

- (i) of the Seller, should the Cargo in question fail to meet the applicable specifications as per the Agreement; or
- (ii) of the Buyer, should the Cargo in question be in compliance with the applicable specifications as per the Agreement.

Any delay attributed to additional sampling and/or testing shall be for the Party requesting same, and will count as laytime or as time on demurrage.

D) Unless negotiated and documented in the Agreement, laytime shall commence at a public dock as per Section VIII. 2. B.

## IX) Demurrage

1) Rate Determination. Demurrage shall be payable by the Terminal Party for all time that used laytime exceeds allowed laytime at the following demurrage rates:

A) For Controlled Tonnage:

- (i) The demurrage rate will be as stipulated within the nomination for bareboat or time chartered barges only.
- (ii) Should the demurrage rate not have been stipulated within the nomination, then for Vessels owned, time chartered, bareboat chartered, or for any other reason for which demurrage rate cannot be provided by the Vessel Party, the rate shall be established by mutual agreement.
- (iii) Should the demurrage rate not be established by mutual agreement, then a mutually agreed upon shipping broker shall determine the rate.
- (iv) Should the parties not mutually agree upon a shipping broker, then each party shall refer the matter to an independent shipping broker active in the relevant spot market. Each broker so designated shall submit a written quote on the spot market level in effect on the date of the Agreement, and the rate used shall be the arithmetic mean of the two quotes, based upon current market rates. Broker assessment costs will be split equally between the Vessel and Terminal Party.

B) For Non-Controlled Tonnage:

- (i) The demurrage rate will be stipulated as per the charter party rate.

- 2) Documentation and Filing of Demurrage Claims. Demurrage claims on Ocean-Going Vessels shall be accompanied by:
- A) A laytime statement,
  - B) Owner's demurrage invoice and calculations,
  - C) Copy of the Vessel's NOR document(s),
  - D) Vessel's Statement of Facts (SOF) or, signed copy of the SOF by Master and seller's or buyers agents representative by request,
  - E) Vessel pumping logs if claim is for a discharge,
    - (i) Pumping logs required for Tankers, signed by or on behalf of Master and Terminal
    - (ii) Pumping logs provided upon request for Ocean-Going Barges,
  - F) Charter party if applicable,
  - G) Bill of Lading if the claim is for a pro rata portion,
  - H) Letters of Protest (if applicable) signed by or on behalf of Master and Terminal,
  - I) Such other supporting documentation as reasonably may be requested by the Terminal Party.
  - J) In the case of an Inland Vessel and tow, a copy of the relevant boat and tug log, and owner's demurrage invoice and calculations will be required. Such other supporting documentation as reasonably may be requested by the Terminal Party.

Any demurrage claim by the Vessel Party must be in writing and actually received by the Terminal Party with all supporting documentation within ninety (90) days from the time of completion of loading or discharging. IF THE APPROPRIATE DOCUMENTATION IS NOT ACTUALLY RECEIVED BY THE TERMINAL PARTY WITHIN THE SPECIFIED TIME, THE CLAIM WILL BE DEEMED TO BE WAIVED. For a voyage chartered Vessel, in no instance will demurrage be claimed in excess of the amount actually paid by the Vessel Party.

3) Claims Processing.

- A) Address: 600 N. Dairy Ashford, Houston, TX 77079, email: DemurrageClaims@concocophillips.com, send fax-copy of receipt notice to: 918-662-6193 – before 1200 noon on the last Business Day prior to the ninety (90) day timebar.
- B) For the purpose of calculating demurrage, all calculated formulas shall be rounded to 3 decimal places when rounding up where the next decimal place is "5" or greater.

**X) Miscellaneous**

- 1) Compliance with Law. Vessel Party and Terminal Party shall be in full compliance with all applicable governmental laws, regulations, and orders, and shall maintain records that demonstrate compliance with the applicable regulations and standards. Vessel Party and Terminal Party shall have the right to inspect and copy any and all such records of the other party at any reasonable time or times during normal business hours. This provision shall survive termination of the Agreement for a period of two (2) years.
- 2) INTERPRETATION. IRRESPECTIVE OF ANYTHING IN THE AGREEMENT TO THE CONTRARY, THESE MARINE PROVISIONS AND ANY OTHER DOCUMENT CONSTITUTING A PART OF THE AGREEMENT SHALL NOT BE INTERPRETED OR APPLIED SO AS TO REQUIRE VESSEL PARTY OR TERMINAL

PARTY TO DO, OR REFRAIN FROM DOING, ANYTHING THAT WOULD CONSTITUTE A VIOLATION OF, OR RESULT IN A LOSS OF ECONOMIC BENEFIT UNDER, UNITED STATES LAWS OR REGULATIONS, INCLUDING WITHOUT LIMITATION, UNITED STATES ANTI-BOYCOTT LAWS AND REGULATIONS.

- 3) The Section headings are for convenience only and shall not be interpreted in any way to limit or change the subject matter of the Agreement.