

**TransMontaigne Product Services Inc.**  
**GENERAL TERMS AND CONDITIONS FOR MARINE FUEL SALES AGREEMENTS**  
**(December 1, 2008)**

**1. SCOPE.** These General Terms and Conditions are deemed incorporated in each Account/Broker Confirmation of a Marine Fuel Sales Agreement (the "Account/Broker Confirmation"; each such Account/Broker Confirmation, together with these General Terms and Conditions, an "Agreement"), which refers to the TransMontaigne Product Services Inc. General Terms and Conditions for Marine Fuel Sales Agreements. In the event of any discrepancy between these General Terms and Conditions and the terms of the Account/Broker Confirmation, the terms of the Account/Broker Confirmation will control. References to "Party" under these General Terms and Conditions means either TransMontaigne Product Services Inc., as "Seller," or "Buyer," as that party is defined in the Account/Broker Confirmation, and references to "Parties" means both Seller and Buyer.

**2. SALE, DELIVERY AND MEASUREMENT.**

**2.1 Agreement Formation.**

(a) At least forty-eight (48) hours (Sundays and holidays excepted) before Buyer requires delivery of the Product under the Agreement, Buyer shall provide an offer to Seller that includes, in addition to Buyer's name and address: (i) the name and location of the vessel designated by Buyer to receive delivery of the Product ("Receiving Vessel"), (ii) the approximate time of tendering (the "Accepted Delivery Period"), (iii) the type, quantity and specification of the product (the "Product"), (iv) the price, and (v) any other necessary information. Seller shall deliver to Buyer an Account/Broker Confirmation, which shall serve as Seller's acceptance of Buyer's offer. After Seller's delivery to Buyer of the Account/Broker Confirmation, Seller shall sell and deliver, and Buyer shall purchase and accept delivery of, the Product on the terms specified in the Agreement.

(b) Seller's acceptance of Buyer's offer to purchase the Product is conditioned upon Buyer's agreement to the express terms and conditions contained in the Agreement, including, without limitation, those contained in these General Terms and Conditions. Any proposal for additional or different terms, or any other attempt by Buyer to vary in any degree any of the terms of the Agreement in Buyer's purchase order, acknowledgement, confirmation or other offer document submitted to Seller in connection with the Agreement is hereby objected to and rejected by Seller and Buyer's offer is deemed accepted by Seller without any such additional or different terms. Buyer's objection to any terms and conditions of the Agreement shall be deemed to have been waived if written notice of such objection is not received by Seller within forty-eight (48) hours after the date of the Account/Broker Confirmation, or before Seller has delivered the Product, whichever occurs first.

(c) Wherever logical in connection with vessel operations or performance under the Agreement, the Receiving Vessel also includes the Receiving Vessel's owner(s), operator(s), captain or master, pilot(s), tankermen, other officers, and crew, line handlers and agents. If an agent (as Broker or otherwise) purchases the Product on behalf of a principal (whether disclosed or undisclosed), as Buyer, the agent and Buyer will be jointly and severally responsible for all obligations under the Agreement, including, without limitation, payment for the Product delivered.

**2.2 Price.** The price of Product sold and delivered hereunder shall be the price set forth in the Account/Broker Confirmation. Unless otherwise stated in the Account/Broker Confirmation, all prices for Product wherever delivered are exclusive of all taxes, duties, surcharges, fees or other assessments imposed or levied by any government authority (whether at the delivery point or otherwise) or instrumentality thereof and all port charges if any. Where Product intended for export use, imported under bond, or drawback Product manufactured from imported crude oil is delivered for Buyer's account without payment by Buyer of the applicable sales or use tax, customs duty, tariff, fee or other charge thereon, Buyer shall be liable to reimburse Seller for any such tax or charge assessed, including interest and penalties thereon, or for any drawback denied after delivery by reason of failure by Buyer or the Receiving Vessel to qualify therefor or to furnish the necessary proof within the requisite time period specified by applicable regulation or procedure.

**2.3 Delivery Terms.** The Product will be delivered by Seller either on an "FOB, Place of Shipment" basis (as defined in Section 2-319 of the Uniform Commercial Code, as enacted in the State of the applicable law under Section 13 ("UCC")) at Seller's shore terminal or, at Seller's option, on an "FOB, Place of Destination" basis (as defined in Section 2-319 of the UCC) by vessel, barge, truck or other mode of transportation ("Delivery

Equipment") to the Receiving Vessel. Notwithstanding delivery of the Product "FOB, Place of Destination," all expenses relating to transportation of the Product to the Receiving Vessel will be for the account of and paid by Buyer. At least forty-eight (48) hours prior to the Accepted Delivery Period, Buyer shall, if necessary, advise the Seller in writing of any special condition, peculiarity, deficiency or defect of or with respect to the Receiving Vessel or its equipment (a "Condition") which might delay, hinder or otherwise affect the mooring, unmooring or bunkering of the Receiving Vessel (and any costs relating to addressing a Condition will be for Buyer's account). If the Buyer fails to provide this notice and the Receiving Vessel for whatever reason is unable or refuses to accept delivery on the Accepted Delivery Period, or if the Buyer provides such notice but requests an extension to the Accepted Delivery Period of more than thirty-six (36) hours after twelve (12) noon on the last day of the Accepted Delivery Period, then the Seller may, at its option, deliver the Product to the Receiving Vessel at the requested new delivery time on a best efforts basis, suspend delivery subject to the Buyer's agreement to a new price for the Product, or cancel the delivery altogether. In all such circumstances, (but except as otherwise provided in Section 7) Buyer shall reimburse Seller for all expenses incurred by Seller in connection with modified or failed delivery. Seller reserves the right to cancel any Account/Broker Confirmation without liability on the part of Seller and without prejudice to any rights the Seller may have against Buyer if the Receiving Vessel does not arrive at delivery port and present itself for delivery on the Accepted Delivery Period or if Seller is not able to make the delivery because of a Condition provided that Seller will make a reasonable attempt to address such Condition. The Product is deemed delivered to Buyer and title and risk of loss of the Product shall pass from Seller to Buyer as the Product passes the flange connecting the Delivery Equipment's delivery hose or pipe with the Receiving Vessel's intake hose connection.

**2.4 Delivery Procedures.** With respect to any delivery of the Product "FOB, Place of Destination," Buyer, upon arrival of the Delivery Equipment, must immediately provide, in the case of delivery by vessel or barge, a berth to which the vessel or barge may safely proceed or from which it may depart, and where the vessel or barge may lie safely afloat or, if delivered by truck, shore access alongside the Receiving Vessel. Seller or its carrier may postpone or cancel delivery of the Product if either should determine that clear and safe berth or shore access to the Receiving Vessel is not available or when, for any other reason, delivery of the Product would be unsafe or inadvisable. Under the foregoing circumstances, Buyer will be responsible and reimburse Seller for all costs (including, without limitation, demurrage) incurred by Seller or its carrier. Buyer will be responsible for and must make all connections and disconnections to and from the Receiving Vessel and the Delivery Equipment and shall provide a hose of reasonable size and length to do so. Should the Receiving Vessel require hoses, reducers or flanges that do not comply with the applicable standards therefor as defined by the American National Standards Institute, Buyer will be responsible and reimburse Seller for all costs, delays and demurrage that result from any delays incurred as a result thereof. Buyer will be bound by any and all terms set forth in the tariff applicable to the Delivery Equipment utilized to deliver the Product to the extent that such tariff does not conflict with the other terms of the Agreement. Buyer must also render all other necessary assistance and provide sufficient tanks and equipment to accept delivery of the Product.

**2.5 Rejection.** If the Receiving Vessel remains in the port where the Product is delivered, Buyer has forty-eight (48) hours after delivery of the Product to inspect and either accept or reject the Product. If Buyer (i) retains the Product for a period of forty-eight (48) hours after receipt without rejecting it, (ii) after delivery of the Product, uses or commingles it with other products, or (iii) the Receiving Vessel leaves the delivery port before the aforesaid forty-eight (48)-hour period without rejecting delivery of the Product, then Buyer will be deemed to have accepted delivery of the Product. If Buyer intends to reject the Product, notice must be given to Seller by telephone (followed by written confirmation, that will arrive no later than seventy-two (72) hours after discovery of the defect or nonconformity in the Product, fully specifying all claimed defects and nonconformity). Buyer may not reject shipments that involve Product shortages that are acceptable under normal commercial practice, and the procedure for making any other claims related to Product shortages shall be made in accordance with Section 2.8.

**2.6 Installments.** Unless provided otherwise in the Account/Broker Confirmation, each delivery of the Product is deemed to constitute a single contract. Time is of the essence under the Agreement and if Seller is authorized in the Account/Broker Confirmation to deliver the total quantity of the Product in separate lots, amounts or installments (each an "Installment") at different times during the term of the Agreement and Buyer fails to take delivery of any such Installment, in whole or in part, at the time it is to be delivered, such default in taking timely delivery with respect to such Installment is deemed to impair the value of the whole Agreement and Seller may consider such default a breach of the Agreement and provide Buyer written notice thereof.

**2.7** Measurement. Measurement of the volume of the Product delivered under the Agreement shall be made by Seller using either gauging or meter readings of shore tanks, delivery vessels, barges, trucks or pipelines, as applicable, based upon delivery method. All measurements and gauging under the Agreement shall be made in accordance with the latest approved methods of the American Petroleum Institute ("API") at the time such measurements are made and in accordance with the American Society for Testing and Materials ("ASTM") petroleum measurement tables. Seller's measurement of the volume of the Product delivered shall be conclusive, absent fraud or manifest error. Buyer may have a representative present at the time of delivery of the Product to observe the measurement of the volume of the Product delivered.

**2.8** Quantity Claims. Claims with regard to the failure of Seller to deliver all or part of the agreed upon volume of the Product not rejected by Buyer must be made by Buyer to Seller or its representative at the time of delivery by noting such claims on the Bunker Certificate and formally confirming such claims to Seller in writing within twenty (20) days from the date of delivery. If any claim is not made in accordance with the foregoing procedure, it will be deemed waived by Buyer. Volume determination shall be made in accordance with Section 2.7 above and any claims based upon measurements taken by the Receiving Vessel will not be accepted.

**2.9** Delivery Documentation. Upon Seller's tender of the Product, qualified personnel of the Receiving Vessel must sign a Letter of Introduction, and a Declaration of Inspection letter provided by Seller or its carrier before the Product will be delivered. Upon completion of delivery of the Product and prior to disconnecting the transfer hose, an authorized officer of the Receiving Vessel must sign and will be provided a copy of a Bunker Certificate on behalf of Buyer that shall identify, among other things, the identity and volume of the Product delivered. Except as provided in Section 2.8, the Bunker Certificate may not be altered in any way.

### **3. PRODUCT QUALITY AND WARRANTIES.**

**3.1** Specifications. Seller warrants that the Product delivered under the Agreement meets the specifications for the Product, which are set forth in the Account/Broker Confirmation, subject to variance for repeatability or reproducibility, or as otherwise accepted by Buyer or its representative upon execution of the Letter of Introduction. Any conflict between the specifications set forth in Account/Broker Confirmation, or as may otherwise be accepted by Buyer or its representative upon execution of the Letter of Introduction and any applicable law, will be resolved in favor of the former, it being the responsibility of Buyer to purchase any volume of the Product which comply with the foregoing specifications.

**3.2** Samples. Seller or its authorized representative will collect four (4) samples of the Product delivered. Three (3) of such samples shall be collected for quality purposes and the fourth sample shall be referred to as the MARPOL control sample. One quality sample and the MARPOL control sample shall be given to the master of the Receiving Vessel and the other two quality samples shall be retained by Seller. All samples shall be labeled, sealed and signed by Seller or its authorized representative.

**3.3** Title. Seller warrants title to the Product delivered under the Agreement, free and clear of all security interests, liens, claims, charges or encumbrances.

**3.4** Disclaimer. **SELLER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, OR THAT THE PRODUCT DELIVERED UNDER THE AGREEMENT IS FIT FOR A PARTICULAR PURPOSE, EVEN IF KNOWN TO SELLER.**

**3.5** Quality Claims. All claims regarding the quality of the Product delivered and not rejected by Buyer must be submitted to Seller in writing no later than thirty (30) days after the date of delivery and any claim that is not received by Seller within the aforesaid period will be deemed waived by Buyer. Buyer's written notice regarding a quality claim must include all necessary information for Seller to evaluate Buyer's claim, including, without limitation, any and all analyses made by Buyer of the sample provided to the Receiving Vessel pursuant to Section 3.2 above. Resolution of all claims with regard to the quality of the Product delivered shall be based upon tests of the sample or samples retained by Seller pursuant to Section 3.2 above, such tests to be made as soon as practicable by an independent laboratory mutually acceptable to the Parties. If the Parties are unable to agree upon an independent laboratory to conduct the tests, Seller may select one. The non-prevailing Party in any Product quality dispute will pay the costs for the laboratory analysis of the Product samples. Any claims based on samples other than those taken by Seller pursuant to Section 3.2 above will not be accepted. Buyer shall preserve and make available for inspection and testing by Seller, any parts allegedly damaged by the Product and shall make the Receiving Vessel available for inspection by Seller or its representative within a reasonable period after Seller's

receipt of Buyer's notice of claim. Buyer shall also provide Seller with immediate access to the original Receiving Vessel's logs, computer records, and other pertinent communications and documents for review and copying. Seller shall not be responsible to Buyer for any claim arising from the commingling of the Product with other products or materials by the Receiving Vessel.

#### 4. TAXES.

4.1 Buyer is liable for all taxes imposed on or with respect to Product delivered under the Agreement at the time of or after its delivery to Buyer and all federal, state or local sales, use, gross receipts, consumption, environmental, spill fund, pollution, or other similar taxes, fees or charges that may arise from or be levied upon a sale or delivery of the Product under the Agreement, whether such taxes, fees or charges are in effect on the date of the Agreement or are made effective (or are increased) after the date of the Agreement ("Taxes"). Buyer will indemnify, defend and hold Seller harmless from and against the payment of or liability for any and all Taxes and that indemnification obligation will survive termination of the Agreement. Buyer will provide Seller with any exemption certificate and any other necessary information to allow Seller to make proper and timely payments and to file required returns. Any Taxes not stated on the Account/Broker Confirmation to be included in the price shown thereon are for the account of Buyer shall be in addition to the price of the Product. Notwithstanding the fact that Taxes for which Buyer assumes responsibility may be collectible from a person other than Buyer, Buyer, upon Seller's demand, shall nonetheless be responsible and pay, or cause to be paid, such Taxes.

4.2 Notwithstanding Section 4.1, Seller will be liable for the payment of all taxes on Seller's income from the sales of Product under the Agreement and for the privilege of doing business and exercising a franchise in the state in which Product is delivered.

#### 5. PAYMENTS.

5.1 Buyer shall pay Seller for the Product delivered, without discount, offset or counterclaim, at the price and in accordance with the instructions set forth in the Account/Broker Confirmation. In the absence of such payment instructions in the Account/Broker Confirmation, Buyer shall pay Seller for the Product delivered under the Agreement without discount, offset or deduction in U.S. Dollars within thirty (30) days after the date of delivery, notwithstanding any disputes or claims, and Buyer's payment shall be made by electronic wire transfer of immediately available Federal funds, by Automated Clearing House (ACH) transfer, to Seller's designated bank account as indicated on Seller's invoice to Buyer, unless an alternative means of payment is mutually agreed upon between Seller and Buyer. Invoices may be sent by Seller to Buyer via facsimile or electronic mail.

5.2 Late payments will accrue interest from the due date until receipt of payment at a rate equal to the lesser of (i) 2% over the "Prime Rate" of interest for corporate loans posted for large U.S. banks, published under "Money Rates" by The Wall Street Journal on the applicable due date or (ii) the maximum lawful interest rate. Buyer will pay all of Seller's costs (including reasonable attorney's fees and court costs) of collecting past due payments and late payment charges.

5.3 Without prejudice to any other rights of Seller, Seller may apply and offset, in satisfaction of any obligation owing under the Agreement by Buyer, any sums that may then be, or thereafter become, due and owing from Seller to Buyer under any other agreement between the Parties. Buyer does not have the right to offset any claim in connection with a transaction under these General Terms and Conditions against any other purchase or transaction with Seller.

5.4 If payment has been made by Buyer in advance of delivery of the Product, the payment amount shall be adjusted based upon actual delivered volumes of the Product identified on the Bunker Certificate. Any additional payment due from or credit to Buyer shall be made within thirty (30) days of the date of delivery of the Product.

#### 6. MARITIME LIEN; AGENTS; COLLECTION; CREDIT.

6.1 Maritime Lien. Sale of the Product by Seller under the Agreement is based upon the creditworthiness of Buyer, its agent and the Receiving Vessel. The Seller will have and may assert any and all maritime liens available to it against the Receiving Vessel, wherever found, for the full amount of the delivered price of the Product supplied to the Receiving Vessel by the Seller, plus accrued interest and collection costs. Taking of any additional security measures by Seller shall not operate as a waiver of this provision. If, at any time before completion of delivery of the Product to the Receiving Vessel, Seller receives notice of any prohibition against placing liens on the Receiving Vessel, Seller shall have the absolute right, at its sole discretion, either to (a) cancel this contract, without prejudice to Seller's rights against Buyer; (b) delay the delivery of the Product to the Receiving Vessel pending the

provision of financial arrangements acceptable to Seller; or (c) proceed to deliver the Product to the Receiving Vessel. In the event Seller elects to cancel or delay delivery, Buyer shall be solely responsible for all cancellation and/or demurrage charges resulting from the cancellation or delay of delivery, and Seller shall have no liability whatsoever for any costs, expenses, or other damages which might result from the cancellation or delay of delivery.

**6.2 Agents.** If this Agreement concluded between the Seller and an agent (as Broker or otherwise) acting for or on behalf of principal or principals (whether disclosed or undisclosed), as Buyers then such agent shall be jointly and severally liable with the Buyers, and shall be treated as a principal and not as an agent, for the due and proper performance of this Agreement and the prompt and punctual payments of all amounts due hereunder.

**6.3 Credit Limit.** From time to time, Seller will establish and may, in its sole discretion, notify Buyer of any credit dollar amount (the "Credit Limit") applicable to Buyer. The Credit Limit may be in such amount (including no amount) as Seller at its sole option may elect. Seller may change the Credit Limit at any time and provide prompt notice thereof to Buyer. If at any time Buyer's Outstanding Indebtedness (as defined below) exceeds the Credit Limit then in effect for Buyer, Buyer must reduce the Outstanding Indebtedness due Seller to an amount that is less than the Credit Limit then in effect for Buyer by taking any one or more of the following actions:

(i) Pay Seller all or a portion of the Outstanding Indebtedness such that the remaining balance of the Outstanding Indebtedness is less than the Credit Limit, or

(ii) Provide Seller a letter of credit in a form and substance and from a bank reasonably acceptable to Seller, pursuant to which Seller shall be permitted to draw down an amount that is not less than the amount by which the Outstanding Indebtedness exceeds the Credit Limit.

For the purposes of this Section 6, "Outstanding Indebtedness" means (a) all amounts due or which will become due to Seller under all agreements where delivery of, but no payment for, Product has been made, including, without limitation, this Agreement, plus (b) the positive sum, if any, of the amounts determined for the remaining terms of all the agreements then in effect as follows:

(x) multiply (A) the remaining quantity under each agreement by (B) the positive or negative result of subtracting the contract price for that agreement from the price which is reasonably expected to be available in the market under a replacement contract for the remaining term under that agreement; and

(y) add the positive and negative results determined for each agreement in the preceding clause (i) to determine any positive sum.

**6.4** If Buyer fails to: (i) pay Seller for any amount when due (whether or not such failure has subsequently been cured), or (ii) otherwise comply with the terms of the Agreement, then in addition to ceasing to deliver the Product under the Agreement, and regardless of any payment terms then in effect for Buyer, Seller may declare all of the Outstanding Indebtedness to be immediately due and payable and terminate the Agreement.

**6.5** If Seller determines that the financial condition of Buyer has become impaired or unsatisfactory, Seller at its sole option, may require Buyer to provide Seller adequate assurances of performance. Seller's requirement for adequate assurances may include modification of the credit terms of the Agreement, in which case Seller may require Buyer to: (i) prepay the full estimated invoice amount under the Agreement at least one (1) business day prior to the Product delivery date by wire transfer or an alternative means of payment that is mutually agreed upon between Seller and Buyer, (ii) post at least two (2) business days prior to the Product delivery date an irrevocable, standby letter of credit, in form and substance reasonably acceptable to Seller, issued or confirmed by a bank reasonably acceptable to Seller, in an amount sufficient to cover the full estimated invoice amount under the Agreement or (iii) deliver to Seller at least two (2) business days prior to the Product delivery date a parent company guaranty in form and substance reasonably acceptable to Seller for the prompt payment, when due, of any and all present or future indebtedness of Buyer as a result of any sale of the Product under the Agreement. Any such modification of the credit terms shall be effective immediately upon Seller's written notice thereof to Buyer. The exercise by Seller of any right under this Section 6.5 is without prejudice to any claim for damages, or any other right Seller may have at law or in equity.

## **7. FORCE MAJEURE.**

**7.1** If an event of *force majeure* renders performance of either Party's obligations under the Agreement (other than the obligation to make payments when due) impossible or commercially unreasonable, in whole or in part, such Party may give the other Party prompt written notice of the *force majeure* with reasonably full particulars

concerning it, whereupon, the obligations of the Parties, so far as they are affected by the *force majeure*, will be suspended during, but no longer than, the continuance of the *force majeure*. The affected Party must use all possible diligence to remove the *force majeure* as quickly as possible and must notify the other Party promptly in writing when the *force majeure* event has terminated.

**7.2** The term *force majeure* as used in this Agreement means (a) hurricanes, floods, earthquakes, storms or other major events of nature; (b) orders, rules, legislation or regulations of any government or agency of such government without regard for the foreseeability of governmental or agency change; (c) compliance with any order, request or directive of any governmental authority or person purporting to act for such government; (d) interruption in, or unavailability or inadequacy of any labor or facility necessary for the production, manufacture, storage, transportation, distribution or delivery of products contemplated by either Party; (e) riots, acts of war or the public enemy, (f) strikes, lockouts or other labor disturbances, (g) fire, explosion or destruction from any involuntary cause (h) or any other cause, either similar or dissimilar to the foregoing, which is beyond the control of the Party failing to perform. Neither Party shall be required to settle any labor dispute against its will.

**7.3** The excuse for performance provided to either Party under this Section is in addition to and not in lieu of the excuse for performance that may be provided to either Party under Section 2-615 of the UCC.

**8. SAFETY AND ENVIRONMENTAL PROTECTION.** Buyer represents and warrants that the Receiving Vessel is familiar with the health effects related to the Product supplied hereunder and with relevant protective safety and health procedures for the handling and use of such Product. Buyer shall adhere to such safety and health procedures while using or handling Seller's Product. Buyer shall also facilitate the dissemination of health and safety information to all employees, users, and others potentially exposed to the Product sold hereunder. Buyer shall be responsible for compliance by its employees, agents, and other users with all health and safety requirements or recommendations related to the Product supplied hereunder and shall exert its best efforts to assure that any of its employees or agents, users, and others avoid frequent or prolonged contact with or exposure to the Product both during and subsequent to delivery. Seller accepts no responsibility for any consequence arising from failure by Buyer, its employees or agents, any users, or any other party to comply with relevant health and safety requirements or recommendations relating to such contact or exposure. Buyer warrants that the Receiving Vessel is in compliance with all applicable national and international laws and regulations. The Receiving Vessel is subject to Seller's acceptance and will not be supplied fuel unless free of all conditions, difficulties, peculiarities or defects which, in Seller's reasonable opinion, might impose hazards in connection with its mooring, unmooring or bunkering. Buyer represents and warrants that the Receiving Vessel is properly equipped, maintained and operated so as to avoid the escape, spillage of discharge of oil (a "spill") at the time of all deliveries of Product hereunder. If a spill does occur while Product is being delivered by the Seller to the Buyer and/or the Receiving Vessel, then Buyer shall promptly take such action as is reasonably necessary to remove the oil and mitigate the effects of such spill. However, notwithstanding the cause of such spill, Seller is hereby authorized, at its option, to take such measures and incur such expense (whether by employing its own resources or by contracting with others) as Seller reasonably believes are necessary to remove the oil and mitigate the effect of such spill, Buyer agrees to cooperate and renders such assistance as is reasonably required by Seller. Any expenses, damages, costs, fines and penalties arising from a spill or any pollution caused thereby shall be paid by the Party that caused such spill by a neglecting act or omission. If both Parties have acted negligently, then expenses, etc. shall be divided between the Parties in accordance with the respective degree of negligence. Buyer shall give the Seller all documents and other information concerning any spill, or any program for the prevention thereof that is reasonably required by the Seller, or required by any law or regulation applicable at the delivery point on the date of delivery.

**9. LIQUIDATED DAMAGES.** In the event Buyer defaults in its obligation to take delivery of the Product under the Agreement, in whole or in part, Seller, in lieu of seeking other damages or remedies under the Agreement or at law or equity, may require Buyer to pay liquidated damages in full and final settlement of all of Seller's claims against Buyer arising from Buyer's breach of the Agreement in the amount equal to the greater of \$5,000.00 or ten percent (10%) of the total dollar amount of the volume of the Product to be delivered under the Agreement. Upon Buyer's payment of such liquidated damages to Seller, Buyer shall have no further obligation to Seller and Seller agrees to release Buyer with regard to such claims. Both Parties acknowledge that it would be impracticable or difficult to determine the actual amount of damages that could arise out of Buyer's breach of the Agreement and that the liquidated damages are a reasonable estimate of what such damages could be and are not a penalty. Buyer will be responsible for payment of a minimum pump back charge at current applicable rates or at the demurrage rate, whichever is greater for any product ordered or delivered however not taken by the Receiving Vessel.

**10. LIMITATION OF LIABILITY AND ACTIONS.**

**10.1** IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR, AND EACH OF THE PARTIES WAIVES ITS RIGHT TO SEEK, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY KIND. BUYER'S EXCLUSIVE REMEDY FOR ANY AND ALL LOSSES OR DAMAGES RESULTING FROM THE SALE OF THE PRODUCT DELIVERED UNDER THE AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY ALLEGATION OF BREACH OF WARRANTY OR BREACH OF CONTRACT OR NEGLIGENCE OR STRICT LIABILITY, IF SUCH TORT ACTIONS ARE PERMITTED UNDER APPLICABLE LAW, SHALL BE LIMITED TO THE REPLACEMENT OF THE PRODUCT FOR WHICH A CLAIM IS SUBMITTED. IF SELLER FAILS TO DELIVER THE PRODUCT, BUYER'S EXCLUSIVE REMEDY FOR ANY AND ALL LOSSES OR DAMAGES UNDER THE AGREEMENT SHALL BE LIMITED TO PAYMENT OF THE POSITIVE DIFFERENCE, IF ANY, BETWEEN (I) THE MARKET VALUE OF THE PRODUCT WHEN IT WAS TO BE DELIVERED, AS REASONABLY DETERMINED BY SELLER, AND (II) THE PRICE SET FORTH IN THE AGREEMENT.

**10.2** A PARTY MUST COMMENCE ANY ACTION FOR BREACH OF THE AGREEMENT BY THE OTHER PARTY WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION HAS ACCRUED.

**11. NOTICES.** All notices and communications under the Agreement must be in writing, must be made to the addressee, whether physical or electronic, as specified in writing by each Party to the other from time to time, and will be deemed given to a Party, (i) if delivered by hand or sent by overnight carrier, on the day of receipt by the receiving Party, (ii) if sent by registered or certified mail return receipt requested, on the date of receipt, or (iii) if transmitted by electronic mail or facsimile, at the time of confirmation of transmission.

**12. DEMURRAGE.** Seller shall be responsible for all reasonable demurrage costs incurred by Buyer or the Receiving Vessel proximately caused by Seller or the Delivery Equipment with respect to the delivery of the Product under the Agreement. Buyer shall be responsible for all reasonable demurrage costs incurred by Seller or the Delivery Equipment proximately caused by Buyer or the Receiving Vessel with respect to the receipt of the Product under the Agreement.

**13. GOVERNING LAW.** Except (i) with regard to and to the extent that the Parties acknowledge and agree that Seller shall have a valid maritime lien, superior in priority to other liens, mortgages, or encumbrances against the Receiving Vessel and Buyer and its agents represent and warrant that they are authorized to so encumber the Receiving Vessel, and (ii) as to other matters, if any, under the Agreement that involve vessels, harbors, seamen, or marine affairs or commerce generally, which matters shall be governed by the General Maritime Law of the United States, the Agreement will be governed and construed in accordance with the laws of the state in which delivery of the Product is made, unless the Product is delivered in multiple states or the State of Louisiana, in which case the law of the State of Florida will govern, without regard to choice of laws of any such state that would require the laws of another jurisdiction to govern.

**14. ASSIGNMENT.** Neither Party may assign its rights or delegate its performance under the Agreement without the prior written consent of the other Party, which consent will not be unreasonably withheld, conditioned or delayed. Any assignment made without obtaining such prior approval shall be void and of no effect. The other Party's consent shall not be required for the assigning Party to transfer its interest in the Agreement to a parent or affiliate by assignment, merger or otherwise. Upon any transfer and assumption of the Agreement by either Party, the transferring or assigning Party shall not be relieved of or discharged from any obligations under the Agreement unless the assignee or transferee (i) has assumed in writing all of the obligations of the transferring Party and (ii) provides the consenting Party evidence of financial responsibility at least equal to that of the transferring Party.

**15. INDEMNIFICATION.**

**15.1** Each Party (the "Indemnitor") agrees to indemnify, defend and hold harmless the other Party (the "Indemnitee") from and against any penalties, fines, liabilities, claims, expenses (including attorney's fees and costs of defense), losses and damages (i) caused by the negligence or willful misconduct of the Indemnitor, its officers, employees, agents, representatives or subcontractors, including, without limitation, those of the Receiving Vessel and the Delivery Equipment, in the course of its performance of the Agreement and (ii) failure of the Indemnitor, its officers, employees, agents, representatives or subcontractors to comply with all applicable laws, ordinances, rules and regulations of any government or agency having jurisdiction, except to the extent caused by the negligence, willful misconduct or omission of the Indemnitee, its officers, employees, agents, representatives and

subcontractors. In addition to the other obligations that a Party may assume under the terms of the Agreement, each Party shall obtain insurance covering its indemnity hereunder to the extent permitted by law.

**15.2** If either Party causes the spill of Product in the course of its performance of this Agreement, then that Party has the authority, and assumes full and complete responsibility, for on-site clean up at its expense.

**15.3** Buyer represents that the Receiving Vessel is seaworthy, safe and in good condition and is capable of receiving the Product without leakage or spillage. Should the Receiving Vessel fail to comply with the foregoing representation, Seller may suspend the delivery of the Product until such time as Seller has received evidence satisfactory to Seller, in its sole discretion, that the Receiving Vessel adequately complies with these representations. If the Receiving Vessel is unable to comply with such requirements, Buyer shall be deemed in breach of the Agreement and Seller may declare a default thereunder and terminate the Agreement.

## **16. DISPUTE RESOLUTION.**

**16.1** Covered Disputes. Any dispute, controversy or claim (whether sounding in contract, tort or otherwise) arising out of or relating to this Agreement, including without limitation the meaning of its provisions, or the proper performance of any of its terms by either Party, its breach, termination or invalidity, except any proceeding initiated by or other claim by Seller to collect money due under this Agreement, (“Dispute”) will be resolved in accordance with the procedures specified in this Section, which will be the sole and exclusive procedure for the resolution of any such Dispute, except that a Party, without prejudice to the following procedures, may file a complaint to seek preliminary injunctive or other provisional judicial relief, if in its sole judgment, that action is necessary to avoid irreparable damage or to preserve the status quo. Despite that action the Parties will continue, subject to Section 16.7, to participate in good faith in the procedures specified in this Section.

**16.2** Initiation of Procedures. Either Party wishing to initiate the dispute resolution procedures set forth in this Section with respect to a Dispute not resolved in the ordinary course of business must give written notice of the Dispute to the other Party (“Dispute Notice”). The Dispute Notice will include (i) a statement of that Party’s position and a summary of arguments supporting that position, and (ii) the name and title of the executive who will represent that Party, and of any other person who will accompany the executive, in the negotiations under the next Section.

**16.3** Negotiation Between Executives. If one Party has given a Dispute Notice under the preceding subparagraph, the Parties will attempt in good faith to resolve the Dispute within 45 calendar days of the notice by negotiation between executives who have authority to settle the Dispute and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement or the matter in Dispute. Within 15 calendar days after delivery of the Dispute Notice, the receiving Party will submit to the other a written response. The response will include (i) a statement of that Party’s position and a summary of arguments supporting that position, and (ii) the name and title of the executive who will represent that Party and of any other person who will accompany the executive. Within 45 calendar days after delivery of the Dispute Notice, the executives of both Parties will meet at a mutually acceptable time and place, and thereafter, as often as they reasonably deem necessary, to attempt to resolve the Dispute.

**16.4** Mediation. If the Dispute has not been resolved by negotiation under the preceding Section within 45 calendar days of the Dispute Notice, and only in such event, either Party may initiate the mediation procedure of this Section by giving written notice to the other Party (“Mediation Notice”). The Parties will endeavor to settle the Dispute by mediation within 90 calendar days of the Mediation Notice under the then current Center for Public Resources (“CPR”) Model Mediation Procedure for Business Disputes. If the Parties have not agreed upon a mediator within seven calendar days after the Mediation Notice, either Party may request CPR assistance in the selection of a mediator under its guidelines. The mediator will establish rules for an expedited discovery procedure and will resolve all disputes with regard to discovery between the Parties. If the mediator has not already done so during the mediation process, at least seven calendar days before the end of the 90-day mediation period, the mediator, if he or she believes that they are qualified to do so, will provide to each Party a written summary of the mediator’s conclusions regarding the outcome of the Dispute if it is submitted to arbitration under the following subparagraph.

**16.5** Arbitration. If the Dispute has not been resolved by mediation under the preceding Section within 90 calendar days of the Mediation Notice, and only in such event, either Party may initiate the arbitration procedure of this Section by giving written notice to the other Party (“Arbitration Notice”). The Dispute will be finally resolved by binding arbitration in accordance with the then current Arbitration Rules of the American Arbitration Association

("AAA") by a single arbitrator, chosen by mutual agreement of both Parties. If the Parties cannot select an arbitrator within 30 calendar days of the Arbitration Notice, the arbitrator will be selected by the AAA. The arbitration will be governed by the United States Arbitration Act, 9 U.S.C. Sec. 1-16, as amended ("the Act"), and to the extent not inconsistent with the Act, the Colorado Uniform Arbitration Act of 1975, Sections 13-22-201 through 13-22-223. Judgment upon the award rendered by the arbitrator may be entered by any court of any state having jurisdiction. The statute of limitations of the State of Colorado for the commencement of a lawsuit will apply to the commencement of an arbitration under this Agreement, except that no defenses will be available based upon the passage of time during any negotiation or mediation called for by this Section. The arbitrator will award pre-judgment interest in accordance with the law of Colorado and will require the non-prevailing Party to pay the other Party's reasonable attorney fees, expert witness costs and the costs of the arbitration. The arbitrator may not award punitive damages. The arbitration will take place in Denver, Colorado.

**16.6** Reservation of Maritime Rights. Notwithstanding Section 16.5, Seller retains the right to exercise its rights under Supplemental Admiralty and Maritime Claims Rule B & C, 28 U.S.C. to arrest a vessel or freeze assets in any U.S. District Court in order to enforce its rights.

**16.7** Tolling and Performance. Except as indicated in the preceding subparagraph with regard to the commencement of arbitration, all applicable statutes of limitation and defenses based upon the passage of time will be tolled while the procedures specified in this paragraph are pending. The Parties will take any action required to effectuate that tolling. Each Party is required to continue to perform its obligations under this Agreement pending final resolution of any Dispute, unless to do so would be impossible or impracticable under the circumstances.

## **17. MISCELLANEOUS.**

**17.1** Severability. If any provision of the Agreement is determined to be invalid, void or unenforceable by any court having valid jurisdiction, such determination shall not render invalid, void, or render unenforceable any other provision, agreement or covenant of the Agreement.

**17.2** Waiver. No waiver of or failure to enforce any breach of or performance required by the Agreement shall be deemed to constitute a waiver of any other or subsequent breach or required performance under the Agreement.

**17.3** Amendment. No amendment or modification of any of the terms of the Agreement shall be enforceable unless reduced to writing and executed by both Parties.

**17.4** Compliance with Law. Each Party shall undertake such action as may be necessary to assure that it and all of its employees, agents and independent contractors comply with all applicable laws, ordinances, rules and regulations promulgated by any government entity or agency having jurisdiction with regard to such Party's performance under the Agreement.

**17.5** Entire Agreement. The Agreement constitutes the entire agreement between the Parties regarding the subject matter thereof and supersedes and renders void any and all prior representations, statements, and proposals by or discussions, negotiations and agreements, whether written or oral, between the Parties with respect to the subject matter of the Agreement.

**17.6** Confidentiality. The terms of the Agreement and the samples taken by Seller pursuant to Section 3.2 above and any related tests of such samples are deemed proprietary to Seller and shall not be disclosed to any third party by Buyer, its agents, employees or representatives unless agreed to in writing by Seller, or as required by applicable law, regulations, rule or order of any competent court or governmental authority having jurisdiction.

## **END OF GENERAL TERMS AND CONDITIONS**