

**WESTPORT PETROLEUM, INC.**  
**TERMS AND CONDITIONS FOR BUNKER SALES**

This is a statement of the terms and conditions applicable to and incorporated into all contracts to sell Marine Fuels entered into by Westport Petroleum, Inc. (hereinafter the "Seller"). The contracts of sale to which these Terms will apply shall be constituted by the Seller's acceptance in writing (including facsimile or telex) of the Buyer's order. No variation of these Terms of Sale shall be valid unless expressly agreed in writing by Seller.

1. **Quantity:** Seller shall deliver such quantity (ies) of bunker fuel, and/or intermediate bunker fuel and/or marine diesel and/or gas oil (hereafter individually and collectively Marine Fuels) as is indicated in Seller's acceptance of Buyer's order.

2. **Quality and Limitations:**

(a) The Marine Fuels shall be the quality offered generally by Seller at the time and place of delivery for the particular grade(s) sold hereunder.

(b) The selection and acceptance of a particular grade of Marine Fuels, including determination of compatibility with other marine fuel already on board Buyer's vessel, shall be Buyer's responsibility.

**(c) The Seller undertakes no responsibility for the quality of the goods except as otherwise provided in this contract, and Seller assumes no responsibility that the goods will be fit for any particular purpose for which Buyer may be buying these goods, except as otherwise provided in the contract. All such implied warranties of merchantability and/or fitness for a particular purpose are expressly excluded from this contract.**

(d) The certificate provided by Seller pursuant to MARPOL ANNEX VI, Regulation 18 is solely a certification that the fuel oil sold meets the requirements of regulations 14 and 18, and specifically that no added substance or chemical waste has been added to the fuel oil which, to Seller's knowledge, jeopardizes the safety of the ships or adversely affects the performance of the machinery, or is harmful to personnel, or contributes overall to additional air pollution. This certificate does not constitute a general warranty of merchantability or fitness for a particular purpose of the fuel oil.

3. **Price:**

(a) The price for Marine Fuels shall be such price as agreed by telephone, telex or facsimile quotation and as set out in Seller's acceptance of Buyer's order. Unless otherwise agreed, the price shall apply to deliveries made at Seller's terminal into Buyer's vessel or barge for a 5-day period beginning 2 days before and ending 2 days after the delivery date indicated in Seller's acceptance of Buyer's order (hereinafter the delivery date range).

(b) Without prejudice to Clause 9 hereof, in the event that delivery does not take place at the agreed location or during the delivery date range, Seller shall have the right to adjust the price to take account of the change of location and/or any market fluctuations since acceptance of the order.

(c) Buyer shall, in addition to the price, pay all applicable mooring and unmooring charges, port dues, tolls, fees, barging and delivery charges and all duties.

(d) Unless otherwise specifically provided elsewhere in this Agreement, or required by law, Buyer or receiving party shall pay (or reimburse Seller or delivering party for its payment of) any foreign or domestic taxes, fees or other similar levies which are now or hereafter imposed, levied or assessed upon

the purchase, exchange, importation, use, resale, transportation or handling of the products (hereafter "taxes"). Such taxes include, but are not limited to, federal manufacturers excise taxes, federal and state environmental taxes (except those based on the alternative minimum taxable income of Seller or delivering party), state and local sales and use taxes, "oil company gross receipt or franchise taxes (except those based on or measured by the net income or net worth of Seller or delivering party), business and occupation taxes, state and local product taxes, state and local inspection fees, and state and local oil spill taxes or fees. Whenever any amount of taxes for the account of Buyer is collectible from any person other than Buyer, Buyer shall pay it on demand. Any such payments shall be in addition to the prices otherwise herein provided for.

If Buyer or receiving party claims exemption from any of the aforesaid taxes, then Buyer or receiving party must furnish Seller or delivering party with a properly completed and executed exemption certificate in the form prescribed by the appropriate taxing authority in lieu of payment of such taxes or reimbursement of such taxes or reimbursement of such taxes to Seller or delivering party.

#### **4. Payments and Financial Responsibility:**

(a) Terms of sale are net cash - no discount. Unless otherwise expressly agreed by Seller, payment of all sums due in respect of Marine Fuels delivered hereunder shall be made in full to Seller, without any offset, deduction or counterclaims whatsoever, against seller's Invoice, telegraphic report or other notice of quantity delivered and/or amount due (seller's Invoice), in U.S. dollars, by telegraphic transfer of funds immediately available to Seller. Seller's invoice may be based upon telegraphic advice of delivery details in lieu of delivery documents. Payment shall not be conditioned upon Buyer's receipt of delivery documents.

(b) Payment shall be made at Seller's designated bank.

(c) Payment shall be credited to the Seller's account for value not later than the due date which, except as provided otherwise in sub-clause (f) hereof, shall be the 30th calendar day after the date of completion of delivery. If due date falls on a Saturday, Sunday or a California bank holiday, payment shall be made so as to reach Seller's above account not later than the last California banking day prior to the due date.

(d) In the event that all or part of the payment is not made on or before the due date, the balance outstanding shall bear interest from and exclusive of due date until the date payment is received by Seller, at a rate equal to the lesser of (one) 1 percentage point above the Prime Rate in effect at the opening of business on the due date at Bank of America's principal office in Brea, California, and (ii) the maximum rate of interest permitted under applicable law. Invoices for interest are payable upon receipt.

(e) Sales shall be made on the credit of the receiving vessel, as well as on the credit of Buyer, and the amount due shall become a maritime lien against the vessel immediately on each delivery to the extent permitted by applicable law.

(f) Notwithstanding the foregoing, at any time and from time to time, Seller may, if Seller considers that it would be inadvisable to make deliveries to Buyer on credit, request that Buyer pay cash in advance or put up security acceptable to Seller, and in such event, until Seller is satisfied that Buyer has fully complied with the Seller's request, Seller shall be under no obligation to make, or arrange for the making of, any delivery hereunder. Should delivery take place without the payment of cash or posting of security in advance, contrary to Seller's request, the due date shall be the date of completion of delivery.

#### **5. Deliveries:**

(a) Deliveries shall be made to Seller's option into (i) Buyer's vessel or barge at a terminal of Seller, or (ii) into Buyer's vessel via Seller's barge where barging facilities satisfactory to Seller are available to Seller.

(b) Buyer shall give Seller notice at least 5 days prior to the estimated delivery date of the estimated quantity (ies) and grade(s) of Marine Fuels required together with the location and method of delivery and any other relevant data. Buyer's locally appointed agent shall give Seller at least 48 hours notice exclusive of Saturdays, Sundays and public holidays (unless otherwise agreed to by Seller) of the exact time and location and method of supply that is required together with confirmation of quantity (ies) of the grade(s) of Marine Fuels ordered. Notwithstanding the foregoing, Buyer shall be liable for any cost and expense incurred by Seller resulting from the failure of Buyer to take delivery of or rejecting in part or in full the quantity of Marine Fuels ordered by Buyer and accepted by Seller.

(c) A notice under Clause 5(b) above shall be invalid if the estimated arrival date given in it is later than 3 calendar days beyond the delivery date and shall be deemed canceled if vessel has not arrived within 3 calendar days after the said estimated arrival date.

(d) Delivery shall be made during ordinary business hours at the place of delivery, unless otherwise agreed by Seller and permitted by port regulations, in which event Buyer shall pay any extra expense incurred. Buyer shall make all connections and disconnections of delivery hose to Buyer's vessel or barge.

(e) For deliveries into Buyer's vessel or barge at the terminal, the following shall also apply: deliveries need not be made whenever, in Seller's opinion, a clear and safe berth for the vessel or barge is not available. Delivery shall be complete, and title and risk of loss shall pass to Buyer, at the point at which the Marine Fuels pass the flange connecting the shore-loading arm with the permanent loading connection of Buyer's vessel or barge. Deliveries shall be made on a first come, first served basis, subject to priority to tankers working cargo at the port and the usual priority of passenger and mail vessels, and to priority to any other vessels which arrive by the delivery date(s) in their relative contracts. Seller shall not be liable to Buyer for any loss or demurrage due directly or indirectly to weather (whether or not unusual), congestion of the port, or any force majeure contingency (as defined in Clause 9). Buyer shall receive Marine Fuels into the Buyer's vessel or barge and then withdraw the vessel or barge from the terminal berth. For delay by Buyer in the use of delivery facilities or in vacating berth, Buyer shall pay any demurrage or detention charges incurred by Seller.

(f) For deliveries into Buyer's vessel via Seller's barge, the following shall also apply: deliveries need not be made whenever, in Seller's opinion, a clear and safe berth for Seller's barge is not available. Delivery shall be complete, and title and risk of loss shall pass to Buyer, at the point at which the Marine Fuels pass the flange connecting the barge's loading arm or hose with the permanent loading connection of Buyer's vessel. Seller's barge shall be loaded as if delivery were being made at the terminal on a first come, first served basis, subject to priority to tankers working cargo at the port and the usual priority of passenger and mail vessels. Seller shall not be liable to Buyer for any loss or demurrage due directly or indirectly to weather (whether or not unusual), congestion of the port, prior commitments of available barges, or any force majeure contingency (as defined in Clause 9). For delay by Buyer in the use of barging facilities, Buyer shall pay any demurrage or detention charges at such rate as may be invoiced by Seller.

(g) Deliveries shall otherwise be on terms customary in the trade.

## **6. Quantity Determination and Adjustments:**

(a) Determination: Quantity shall be determined as Seller may elect. Such quantity determination shall be final and binding, and Buyer shall have the right to be represented at the time of measurement.

(b) Adjustments:

(i) Invoiced quantity shall exclude all water and non-petroleum sediments in excess of 1% in Marine Fuels delivered.

(ii) The quantity delivered shall be adjusted to metric tons at 60 °F or 15°C, as Seller may elect, using the following, then current, joint API-ASTM-IP Petroleum Measurement Tables designated API-D2540, ASTM D-1250, IP 200/52:

- (A) Temperature adjustment: °F to/from °C, Table 2.
- (B) Adjustment to metric tons at 60 °F: volume at delivery temperature to volume at 60 °F, Table 6B; volume at 60 °F to metric tons at 60 °F, Table 13.
- (C) Adjustment to metric tons at 15 °C: volume at delivery temperature to volume at 15 °C, Table 54B; API gravity at 60 °F to density at 15 °C, Table 3.

(c) Definitions: A barrel is 42 U.S.A. gallons at 60 °F or 15 °C. A ton is a metric ton of 2,204.6 pounds.

**7. Claims:**

(a) Unless otherwise notified by Seller in its acceptance of the Buyer's order, any claim in relation to the quality of the Marine Fuels shall be waived and absolutely barred unless (i) within 21 days after delivery, Seller receives from Buyer written notice of such claim and, (ii) within 45 days after delivery, Buyer submits to Seller a detailed written claim and all documentary evidence relied upon by Buyer [including an analysis report prepared by independent inspectors/laboratory of only the sealed retained representative sample of the Marine Fuels delivered as defined in Clause 15 which will be considered as basis of discussion on quality claims.] Further, the Seller shall, at all times, have the right to arrange for surveyors to board the vessel and they shall have the right to inspect all parts thereof and to take such samples as they may reasonably require. If Seller or any servant, agent or surveyor of Seller inspects Buyer's vessel or analyzes any Marine Fuels delivered by Seller, or gives any advice for solution of the Buyer's problem, whether at the request of Buyer or otherwise, such inspection or analysis or advice shall be entirely without any obligation on Seller to consider any claim or complaint by Buyer and shall be entirely without prejudice to Seller's position.

(b) Claims of short delivery shall be waived and absolutely barred unless written notice of shortage is made by the vessel or Buyer at the time of delivery by either notation on the delivery receipt or by letter handed to the delivering personnel.

(c) Nothing in this Clause 7 shall relieve Buyer of its obligation to make payment in full when dues as provided herein.

(d) The right of either party to require strict performance shall not be affected by any prior waiver or course of dealing. All rights and remedies are cumulative, and election of one remedy shall not exclude another. In no event shall Seller be liable to Buyer for any special, indirect or consequential losses of any kind whatsoever, including, without prejudice to the generality of the above, any actual or prospective loss of profits. Seller shall be entitled to apply in any obligation owing hereunder by Buyer, the amount of any moneys that may be or thereafter become owing from Seller to Buyer.

**8. Indemnity:** Buyer shall indemnify Seller for and in respect of any and all expense, claim, loss, damage and liability relating to or arising out of (a) Buyer's receipt, use, storage or transportation of Marine Fuels delivered hereunder, unless the same be due in its entirety to Seller's negligence, or (b) Buyer's failure to take delivery of the full quantity ordered or tendered, whichever is less. This clause is without prejudice to Clause 10.

In the event that any employee, servant or agent of Seller boards Buyer's vessel for purposes of conducting sampling required by MARPOL ANNEX VI, then in such an event Buyer hereby agrees to accept full and complete liability for any personal injuries, death, property loss and/or damage which arises, or is alleged

to arise from, such sampling or the boarding or presence on board Buyer's vessel of any employee, servant or agent of Seller. Without limiting the generality of the foregoing, Buyer further agrees to defend, hold harmless and indemnify Seller from all suits, claims, demands, settlements and /or recoveries that arise from , relate to, or are alleged to arise from or relate to, the sampling or the boarding or presence on board Buyer's vessel of any employee, servant, or agent of Seller.

**9. Force Majeure and Contingencies:**

(a) Seller shall not be in breach of its obligation hereunder to the extent that performance is prevented, delayed or (in the sole but reasonable judgment of Seller) made more expensive to Seller by more than 5% of the price, as a result of any force majeure or contingency, including (without limitation to the generality of the foregoing):

- (i) Any acts of God, acts of war, fires, embargoes, perils of the sea; or
- (ii) strikes, lockouts, or labor disputes whether involving the employees of Seller or otherwise, and regardless whether the dispute could be settled by concessions by either of the disputing parties; or
- (iii) compliance with any request, act, or order of any governmental authority or person purporting to act therefore; or
- (iv) shortage or unavailability of raw material, transportation, manufacturing capacity, etc., or of Marine Fuels or any grade thereof from the source of supply thereof contemplated by Seller at the time of acceptance of Buyer's order, or generally, not demonstrated by Buyer to be due to Seller's lack of diligence; or
- (v) weather conditions; or
- (vi) any other cause beyond the reasonable control of Seller rather or not similar to the causes herein specified.

(b) Whenever performance is prevented or delayed by such a contingency, Seller may reduce or reschedule delivery in such manner as it may, in its sole discretion, determine or may withdraw from the contract without further obligation to Buyer.

(c) Whenever performance is made more expensive to Seller by 5% or more of the price by such contingency, Seller shall have the option (i) to reduce or reschedule delivery as provided in sub-clause (b) above or (ii) to perform the contract at an increased price (which includes the increase in cost to the Seller) payable by Buyer, or (iii) to withdraw from the contract without further obligation to Buyer.

(d) Seller shall not be liable for demurrage or delay resulting from such a contingency.

(e) Performance shall be excused as provided herein even though the occurrence of the contingency in question may have been foreseen at the time of contracting or may subsequently have become foreseeable.

(f) Quantities not delivered due to the occurrence of such a contingency need not be made up later.

(g) Nothing in this Clause 9 shall excuse Buyer from its obligations to make payments in full when due as provided herein.

**10. Environmental Protection:** If a spill occurs while Marine Fuels are being delivered, Buyer and Seller shall promptly take such action as is reasonably necessary to remove the spilled Marine Fuels and mitigate

the effects of such spills. Seller is hereby authorized, at its option and at the expense of Buyer, to take such measures and incur such expenses (whether by employing its own resources or by contracting with others) as are reasonably necessary in the judgment of Seller to remove the spilled Marine Fuels and mitigate the effects of such spills. Buyer shall cooperate and render such assistance as is required by Seller in the course of such action. All expense, claims, loss, damage, liability and penalties arising from spills shall be borne by the party that caused the spill. If both parties are at fault, all expense claims loss, damage, liability and penalties shall be divided between the parties in accordance with their respective degrees of fault. Buyer shall give Seller, as soon as possible, all documents and other information concerning any spill, or any program for the prevention thereof, as may be required by Seller, or as required by law or regulation applicable at the time and place of delivery.

11. **Assignment:** Any assignment of this contract shall only be made upon the prior written consent of the non-assigning party which consent may be granted or withheld in the non-assigning party's sole and absolute discretion. The assigning party shall remain liable for its obligations under this agreement after any assignment, unless released in writing by the non-assigning party.
  
12. **Notices:** Notices hereunder shall be given by letter or any method, including telex or facsimile, that results in a writing. All notices shall be deemed given on receipt. Notices shall be given to such address as appears in Seller's acceptance of Buyer's order or as the relevant party may from time to time designate.
  
13. **Governing Law and Jurisdiction:** The law governing this Agreement and the making thereof shall be the maritime law of the United States and, to the extent not in conflict, the State of California, exclusive of its rules on choice of law, except that a reference to applicable law is a reference to the law that would be applicable in the absence of a choice of law by the parties. Except as otherwise provided herein, the United States District Court for the Central District of California shall have exclusive jurisdiction to entertain actions relating to this Agreement or the making and enforcement thereof, or both, and Buyer and Seller submit to their jurisdiction for such purposes. Any other courts having jurisdiction over a vessel to which the marine fuels have been delivered will have jurisdiction to enforce Seller's maritime lien.
  
14. **Miscellaneous:**
  - (a) The headings of clauses are for convenience and are not to be considered part of these Terms of Sale.
  - (b) Each provision of this Agreement is to be deemed severable and if any provision contravenes any applicable law, the same shall be deemed to be amended so as to conform to such law or to be deleted if it cannot be amended so as to conform.
  - (c)
    - (i) Where the context permits, Buyer shall include the Buyer identified in Seller's acceptance of Buyer's order, its agents, principals (whether or not disclosed and/or identified), its successors in title and the owners, officers, and/or crew of Buyer's barge or vessel.
    - (ii) Buyer's vessel means any vessel owned, operated, time chartered, managed or controlled by Buyer or an affiliate of Buyer, at, or at any time after the date of delivery of the Marine Fuels to Buyer.
    - (iii) Affiliate means a corporation, controlled or under common control with Seller or Buyer, as appropriate.
  - (d) To the extent that the Terms of Sale differ from any particular terms of sale agreed in writing between Seller and Buyer, the latter shall govern.

- (e) To the extent permitted by applicable law, rights and benefits under this Agreement shall not be deemed an asset in, and at the option of a party shall terminate in the event of, any voluntary or compulsory liquidation, receivership, bankruptcy or insolvency proceedings affecting the other party.

**15. Sampling and Sample Retention:**

A "sealed retained representative sample" of the Marine Fuels delivered under this contract will be taken by a professional surveyor. For vessels loading at a terminal of Seller, the "sealed retained representative sample" will be a shore tank composite drawn from, and proportionately combined, as necessary, prior to vessel departing load berth. For vessels loading via Seller's barge, the "sealed retained representative sample" will be a barge composite sample taken prior to the barge departing load berth for delivery to the vessel. Three "sealed retained representative samples" will be taken, and Seller shall retain two samples and one sample shall be given to Buyer's representative for passing to the vessel. The parties hereby stipulate that this "sealed retained representative sample" is the only sample that may be used as between the parties for determination of issues related to the quality of the fuel oil as more specifically provided in paragraph 7 relating to claims.

In the event that a second sample is taken for purposes of compliance with MARPOL ANNEX VI, (herein after "Marpol sample") then as between Seller and Buyer, Marpol sample may only be used for purposes of confirming the sulfur content of the oil and such other matters as are specifically set forth in MARPOL ANNEX VI, Regulation 18. For all other purposes the "sealed retained representative sample" shall be the controlling sample.

Due to safety and environmental concerns, the Marpol sample will not be taken at the ships bunker connection, but rather at the Seller's barge existing contained continuous drip sample station. This existing contained drip sample station is located on the discharge pipeline past the pump and before the flow through boom. The continuous drip sample station is in plain sight and can be seen from ship. The Chief Engineer will be invited to witness the MARPOL sampling and will be asked to sign a document to verify the invitation.