

**TROPIC OIL COMPANY**  
**GENERAL TERMS AND CONDITIONS FOR PETROLEUM PRODUCTS SALES AGREEMENTS**  
**(OCTOBER 2020)**

**1. APPLICATION.** These Tropic Oil Company General Terms and Conditions for Petroleum Products Sales Agreements (the “General Terms and Conditions”) are deemed incorporated in each Order Confirmation of a Petroleum Products Sales Agreement (each an “Order Confirmation”; and each such Order Confirmation, together with these General Terms and Conditions, an “Agreement”), which refers to these General Terms and Conditions. In the event of any discrepancy between these General Terms and Conditions and the terms of the Order Confirmation, the terms of the Order Confirmation will control. References to “Party” under these General Terms and Conditions means either Tropic Oil Company or its counterparty, as “Seller,” or “Buyer,” as that party is defined in the Order Confirmation, and references to “Parties” means both Seller and Buyer.

1.1 DEFINITIONS. In this Agreement, unless otherwise defined herein or the context requires otherwise, the following defined terms have the meanings indicated below:

“Accepted Delivery Period” means the approximate time of tendering as outlined in Section 2.1.

“Agent” means the vessel manager, vessel operator, vessel charterer, vessel master, broker, trader, or otherwise acting for or on behalf of the registered vessel owner or a person authorized by the registered vessel owner.

“Barrel” means a unit volume equal to 42 (forty-two) US gallons at 60 (sixty) degrees Fahrenheit.

“Buyer” means that Party that is so defined in the Order Confirmation.

“DEF” means Diesel Exhaust Fluid.

“EU” means the European Union.

“Governmental Authority” means any federal, state, local, foreign government, any provincial, departmental or other political subdivision thereof, or any entity, body or authority exercising executive, legislative, judicial, regulatory, administrative or other governmental functions or any court, department, commission, board, bureau, agency, instrumentality or administrative body of any of the foregoing.

“IMO” means the International Maritime Organization.

“ISO” means International Organization for Standardization.

“MARPOL” means the International Convention for the Prevention of Pollution from Ships.

“Product” means the type, quantity and specifications of the necessities, herein namely distillate and residual marine fuels, DEF, additives, coolant and lubricants, provided to the vessel and supplied with the recognition that procurement was authorized by the registered owner or a person authorized by the registered owner.

“Receiving Vessel” means the name, IMO number and location of the vessel designated by Buyer to receive delivery of the Product.

“Seller” means that Party that is so defined in the Order Confirmation.

“U.S.” means the United States of America.

“USC” means the United States Code.

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

**2.1 Agreement Formation.**

(a) At least forty-eight (48) hours (Sundays and New York banking holidays excepted) before Buyer requires delivery of the Product under the Agreement, Buyer shall provide a nomination to Seller that includes, in addition to Buyer’s name and address: (i) the name, IMO number 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, quality, quantity and specification of the Product, (iv) Receiving Vessel and Agent contact information and email address, and (v) any other necessary information or information

reasonably required by Seller. Seller shall deliver to Buyer an Order Confirmation with Product price, which shall serve as Seller's acceptance of Buyer's nomination. After Seller's delivery to Buyer of the Order Confirmation, Seller shall sell and deliver, and Buyer shall purchase and accept delivery of, the Product on the terms specified in the Agreement. Any verbal nominations or nominations tendered after normal work hours will be subject to these General Terms and Conditions.

(b) Seller's acceptance of Buyer's nomination 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 nomination document submitted to Seller in connection with the Agreement is hereby objected to and rejected by Seller and Buyer's nomination 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 the Order Confirmation is received by Buyer, 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, charterer, trader 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. Any Product ordered by the Receiving Vessel master, chief engineer, vessel operator, vessel manager, vessel charterer, trader, broker, Agent or otherwise are ordered on behalf of the registered owner of the Receiving Vessel and such registered owner is fully liable for payment of the Product delivered.

**2.2 Price.** The price of Product sold and delivered hereunder shall be the price set forth in the Order Confirmation. Unless otherwise stated in the Order Confirmation, all prices for Product wherever delivered are exclusive of all taxes, duties, surcharges, fees or other assessments imposed or levied by any Governmental 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. Seller reserves the right to claim, receive and retain drawbacks on imported duty-paid feedstocks used in the manufacture of products which it delivers hereunder. Buyer shall on request execute proofs of exportation, drawback claim forms and assignments in favor of Seller to enable Seller to establish its drawback rights under applicable regulations. Prices are effective for the date, time and place agreed in the Order Confirmation and Buyer is responsible to reimburse Seller within two (2) days after receiving notice from Seller if a supplemental charge is tendered after the fuel delivery took place.

**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 12 ("UCC")) at Seller's warehouse or, at Seller's option, on an "FOB, Place of Destination" basis (as defined in Section 2-319 of the UCC) by tanker truck, box truck, ISO tank loadings 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 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, then the Seller may, at its sole 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 (including reasonable attorney's fees) in connection with a modified or failed

delivery. Seller reserves the right to cancel any Order 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 the 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. Title and risk of loss of Product sold on an "FOB, Place of Shipment" basis shall pass from Seller to Buyer as the Product is either received at Seller's warehouse or as the Product is delivered to the Buyer ex-wharf, whereupon Buyer is solely responsible for all other costs in order to arrange delivery of the Product to the desired final destination.

**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 truck, clear and safe shore access to within one hundred (100) feet alongside the Receiving Vessel. Seller or its carrier may postpone or cancel delivery of the Product if either should determine that shore access to the Receiving Vessel is not reasonably 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 to make connection and disconnection of Seller's delivery hose to and from Buyer's vessel. 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. Buyer agrees the Receiving Vessel will give immediate notice and then forty eight (48), twenty four (24) and twelve (12) hour updated notices on their estimated arrival at the berth and readiness to receive the Product. Buyer must identify the name and location of where the Receiving Vessel will be in position to receive the Product in their estimated arrival notices. Buyer agrees to update the time of their readiness to receive the Product whenever it may change by more than three (3) hours and provide a new readiness time, as appropriate.

**2.5** Rejection. Buyer has forty eight (48) hours after delivery of the Product to inspect and either accept or reject it. If Buyer retains the Product in its possession for a period of forty eight (48) hours or more after receipt without rejecting it, it shall be considered accepted. If at any time after delivery of the Product, Buyer uses or commingles it in whole or in part with other products, this will be regarded as irrevocable acceptance by Buyer of such portion as is used or commingled. 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 2.7.

**2.6** Installments. Unless provided otherwise in the Order 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 Order 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 commercial bills of lading, shore storage tank gauges or meter receipts, truck meter receipts or truck tank measurement and strapping tables, as applicable, based upon delivery method by barge, bunker vessel, pipeline or trucks. 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 receipt provided by Seller to Buyer of the delivery of bunkers (a "Bunker

Delivery Receipt) or a sales order provided by Seller to Buyer (a "Sales Order") and formally confirming such claims to Seller in writing within two (2) days from the date of delivery if Product is delivered in the United States and within ten (10) days from date of delivery if Product is delivered outside of the United States. 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. In the event of Buyer's cancellation following issuance of an Order Confirmation or Buyer not accepting the volume specified in the Order Confirmation, the Seller reserves the right to charge Buyer fees for cancellation, product downgrade, demurrage, back haul, pump back or any other additional fees for any product ordered or delivered however not taken by the Receiving Vessel.

**2.9 Delivery Documentation.** Upon Seller's tender of the Product, qualified personnel of the Receiving Vessel must be immediately available to conduct a pre-transfer conference to review and sign a Declaration of Inspection, and an inspection request voucher (an "Inspection Request Voucher) 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, the person in charge of the Receiving Vessel must sign and affix the ship stamp to the Sales Order or Bunker Delivery Receipt, as applicable. Except as provided in Section 2.8, the Sales Order or Bunker Delivery Receipt may not be altered in any way without the express written consent of Seller.

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

**3.1 Specifications.** Seller warrants that the Product delivered under the Agreement conforms to the minimum/maximum specifications for the Product, which are set forth in the Order Confirmation, subject to the variance for repeatability or reproducibility. Buyer shall have sole responsibility for selection and acceptance of Product, including determination of compatibility with its vessel's equipment and with Product already on board the vessel, for use in the vessel to which it is delivered.

**3.2 Samples.** Seller shall arrange for such number of representative samples of the Product delivered, as are necessary, in accordance with MARPOL regulations unless otherwise directed by local regulations at the port of delivery. Buyer may witness such sampling. All samples shall be labeled, sealed and signed by Seller or its authorized representative. Only these retained samples will be considered as a valid indicator of the quality of Product supplied.

**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 ten (10) days after the date of delivery if Product is delivered in the United States and not later than thirty (30) days after delivery if Product is delivered outside of the United States 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 reasonably necessary information for Seller to evaluate Buyer's claim, including, without limitation, any and all analyses made by Buyer of any sample(s) 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 collected 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, import fees, 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 which 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 Order Confirmation to be included in the price shown thereon that 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 offset, discount or counterclaim, at the price and in accordance with the instructions set forth in the Order Confirmation. In the absence of such payment instructions in the Order 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 of either (i) eighteen percent (18%) on an annual basis or (ii) the maximum rate permitted by applicable law, whichever is less. 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.

## **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. Seller will have and may assert any and all maritime liens, including General Maritime Law of the United States and the Federal Maritime Lien Act, 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. Buyer warrants that the Seller will have and may assert a maritime lien against the Receiving Vessel.

**6.2** Agents. If this Agreement concluded between the Seller and an Agent (as vessel manager, vessel operator, vessel charterer, vessel master, broker, charterer, trader 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. Product supplied in each Agreement are sold and effected on the credit of the Receiving Vessel, as well as on the promise of Buyer to pay for Product delivered. Buyer warrants that Product is ordered on the order of the registered owner or a person authorized by the registered owner.** 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 Breach of Agreement.** 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 any term 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 immediately due and payable and terminate the Agreement.

**6.5 Financial Assurance.** If Seller determines, in its sole opinion, 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.

**6.6 Bankruptcy.** In the event either Party becomes insolvent, makes an assignment or any general arrangement for the benefit of creditors or if there are instituted by or against either party proceedings in bankruptcy or under any insolvency law or law for reorganization, receivership or dissolution, the other Party may withhold deliveries or terminate this Agreement. The exercise by either Party of any right reserved under this section shall be without prejudice to any claim for damages or any other right of such Party under this Agreement or applicable law.

## **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, epidemic or pandemic, 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, terrorism, acts of war or the public enemy, insurrection, piracy; (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. The expression "any other cause, either similar or dissimilar to the foregoing, which is reasonably beyond the control of the Party failing to perform" is deemed to include, without limitation, the failure, cessation, termination or curtailment of any of the existing or contemplated sources of the Products of Seller. Neither Party shall be required to settle any labor dispute against its will. Seller shall not be required to make up any delivery, and Buyer shall not be liable to accept any deliveries of the Product excused due to any event of *force majeure*.

**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 bunkering. Buyer represents and warrants that the Receiving Vessel is properly equipped, maintained and operated so as to avoid the escape, spillage or 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. LIMITATION OF LIABILITY. NO CLAIM SHALL BE MADE AND NO RECOVERY SHALL BE HAD HEREUNDER FOR ANY INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY, INCIDENTAL OR**

**CONSEQUENTIAL DAMAGES, OR FOR LOSS OF ACTUAL, PROJECTED AND/OR PROSPECTIVE PROFITS, ANTICIPATED COST SAVINGS, CONTRACTS OR FINANCIAL OR ECONOMIC LOSS. BUYER'S DIRECT DAMAGES, IF ANY, FOR ANY AND ALL ACTUAL LOSSES OR DAMAGES RESULTING FROM THE SALE OF DELIVERED PRODUCT UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PRICE OF THE PRODUCT SOLD HEREUNDER OR THE PRICE OF THAT PORTION OF SUCH PRODUCT(S) ON WHICH LIABILITY IS ASSERTED, NOT TO EXCEED \$ 250,000.**

**10. NOTICES.** All notices and communications under the Agreement must be in writing, must be made to the addresses, whether physical or electronic, as specified in the Order Confirmation or otherwise provided 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.

**11. DEMURRAGE.** Buyer shall be solely 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.

**12. GOVERNING LAW AND JURY TRIAL.** 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 and the Federal Maritime Lien Act, 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. EACH PARTY HEREIN WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY DISPUTE OR LITIGATION ARISING HEREUNDER, OR IN CONNECTION WITH, THIS AGREEMENT.

**13. 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.

**14. INDEMNIFICATION.**

**14.1** 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.

**14.2** If either Party causes a 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. According to United States Coast Guard (USCG) regulations, both Parties are required to report any spill to the USCG.

**14.3** 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.

## **15. INSURANCE.**

**15.1** Insurance Required by Both Parties. Throughout the term of this Agreement, each Party and its agents shall, at such Party's sole expense, carry and maintain in full force and effect insurance coverages, with insurance companies rated not less than A-, IX by A.M. Best or otherwise reasonably satisfactory to the other Party, of the following types and amounts:

- (a) Workers Compensation coverage in compliance with the applicable law of the states having jurisdiction over each employee and employer's liability coverage, and coverage under the Federal Longshoremen and Harbor Workers' Act, the Jones Act, and the Federal Death on the High Seas Act for all marine and Vessel matters, in a minimum amount of one million dollars (\$1,000,000) per accident, one million dollars (\$1,000,000) disease per employee and one million dollars (\$1,000,000) disease policy limit.
- (b) Automobile liability coverage in a minimum amount of one million dollars (\$1,000,000).
- (c) Comprehensive or commercial general liability coverage and umbrella excess liability coverage in a minimum amount of one million dollars (\$1,000,000), which includes bodily injury, broad form property damage and contractual liability coverages.

**15.2** Insurance Required by Seller. In addition to the insurance required pursuant to Section 15.1, Seller shall provide comprehensive or commercial general liability coverage and umbrella excess liability coverage in a minimum amount of twenty-five million dollars (\$25,000,000), and a separate "sudden and accidental pollution" liability coverage in a minimum amount of twenty million dollars (\$20,000,000) (excluding events that result in acidic deposition).

**15.3** Marine Insurance Required By Buyer. Buyer shall ensure that the owner of each Receiving Vessel that is used to receive any materials in connection with this Agreement maintains the following insurance on the Receiving Vessel:

- (a) Hull and Machinery insurance, to the market value of the Receiving Vessel;
- (b) P&I insurance (including pollution liability but not tower's liability covering cargo) including full mutual entry in an international or American Group P&I Club with IGA pooling, or alternatively maritime liability coverage evidenced on the SP-23 form or its equivalent, including collision liability, tower's liability except cargo, and liability for seepage, pollution, containment and cleanup, with extensions for marine contractual liability with a minimum liability limit of five hundred million dollars (\$500,000,000) for an ocean-going tanker or barge and a minimum liability limit of three hundred million dollars (\$300,000,000) for an inland barge; and
- (c) coverage under the Federal Longshoremen and Harbor Workers' Act, the Jones Act, the Federal Death on the High Seas Act and general maritime remedies of seamen including transportation, wages, maintenance and cure whether the action is in rem or in personam.

### **15.4** Additional Insurance Requirements.

(a) Each Party shall cause its insurance carriers to furnish to the other Party insurance certificates, in a form reasonably satisfactory to the other Party, evidencing the existence of the coverages required pursuant to Sections 15.1, 15.2 and 15.3. Each party shall endeavor to provide renewal certificates within thirty (30) days of expiration of the previous policy under which coverage is maintained.

(b) The foregoing policies shall include an endorsement that the underwriters agree to waive all rights of subrogation to the extent of each Party's obligations. Further, each Party shall be named as an additional insured under the other Party's policies, to the extent of the indemnities required under this Agreement.

(c) The mere purchase and existence of insurance coverage shall not reduce or release either Party from any Liabilities incurred or assumed under this Agreement.

## **16. MISCELLANEOUS.**

**16.1** 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.

**16.2** 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.

**16.3** 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.

**16.4** 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.

**16.5** 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.

**16.6** 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.

**16.7** Equal Opportunity and Affirmative Action. As applicable, the Parties must comply with the following regulations: Equal Opportunity Clause, 41 C.F.R. §60-1.4(a); Equal Opportunity for Special Disabled Veterans and Veterans of the Vietnam Era, 41 C.F.R. §60-250.5(a); Equal Opportunity for Workers With Disabilities, 41 C.F.R. §60-741.5(a); all other applicable Sections of 41 C.F.R. Ch. 60; and all other applicable requirements for contracting with any agency of the U.S. government

**16.8** Relationship of the Parties. The Parties are independent entities, and nothing contained in this Agreement shall be deemed or construed as creating a relationship of partnership, association, principal and agent or joint venture by or between the Parties. The Parties shall have no right or authority to assume or create any obligation or responsibility on behalf of the other Party or to bind the other Party in any manner whatsoever.

**16.9** Export Regulations. The Product(s) described in this Agreement are subject to all applicable laws and regulations, including, without limitation, U.S. import and export laws and regulations. Buyer acknowledges that any product(s) exported must be exported from the U.S. in accordance with U.S. export regulations. Buyer agrees that any re-export, diversion, transshipment or use of any product contrary to U.S. law is prohibited and will result in Seller's right to terminate this Agreement immediately and to seek any other remedies to which it may be entitled to hereunder and under applicable law.

**16.10** Commissions and Gifts. No director, officer, employee, or agent of either Party or its direct or indirect parents, subsidiaries, or affiliates shall give or receive any commission, fee, rebate, gift, or entertainment of significant value or cost in connection with this Agreement. Further, neither Party nor its direct or indirect parents, subsidiaries, or affiliates, shall make any commission, fee, rebate, gift, or entertainment of significant value or cost to any governmental official or employee in connection with this Agreement.

**16.11** Audit. Each Party and its duly authorized representatives shall have access during customary business hours to the accounting records and other documents maintained by the other Party which relate to this Agreement and shall have the right, upon giving the other party reasonable notice thereof, to audit such records at any reasonable time or times within two (2) years after the delivery/receipt of product provided for in this Agreement. However, a Party may only conduct one (1) audit per year, and records pertaining to the same year may not be re-audited. The Party conducting an audit pursuant to this section shall bear the costs and expenses incurred in such audit.

**16.12** Headings. Section headings herein are included herein for convenience of reference only and shall not constitute as part hereof for any other purpose or be given any substantive effect.

**END OF GENERAL TERMS AND CONDITIONS**