

**George E. Warren Corporation  
3001 Ocean Drive, Suite 203  
Vero Beach, FL 32963-1953, USA  
1-772-778-7100**

## **General Terms and Conditions**

### **For Petroleum Product Purchases and Sales Dated September 1, 2016**

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#### Article 1 General

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##### Section 1.1 Agreements, Priority, Amendments, Incoterms

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These General Terms shall apply to the Specific Terms and Conditions between Seller and Buyer to which these General Terms are attached or incorporated by reference. If there is a conflict between the Specific Terms and Conditions and these General Terms, the Specific Terms and Conditions shall govern.

The Specific Terms and Conditions of each transaction (whether purchase, sale or exchange of Petroleum Products) between George E. Warren Corporation ("Warren") and any other party shall be contained in a confirmation, communicated from Warren to such party by email, FAX, or other mutually acceptable means of communication. Such Specific Terms and Conditions, together with the General Terms and Conditions contained herein, shall constitute the entire valid and binding Agreement between Warren and such party.

The Agreement represents the entire agreement between the Parties with respect to the matters contemplated by the Agreement, and no oral statements or prior written matter not specifically incorporated in the Agreement shall be of any force and effect.

No amendment to the Agreement will be effective unless agreed to by both Parties and confirmed in writing. Whenever Incoterms are used, they shall have meanings given them in the 2010 edition of the Incoterms, subject to any modifications contained elsewhere in the Agreement. Where there is an inconsistency or conflict between Incoterms and the Agreement, the Agreement shall prevail.

##### Section 1.2 Product Balancing for Exchange for Physical (EFP) Transactions

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The volumes sold and purchased by the Parties pursuant to Exchange for Physical (EFP) transactions are intended to be equal. The Parties intend to post an EFP within 24 hours of receipt of notice of actual volume delivered. If the actual volume shipped differs from the number of NYMEX contracts sold/bought under an EFP by an amount greater than 500 barrels, then the Parties shall balance the difference to the nearest 1,000 barrels by posting (within the current month's NYMEX contract) an additional EFP for the amount. If the current month's NYMEX contract has expired at the time that the differing delivery occurs, the Parties shall post and additional EFP in the then current NYMEX month's contract plus or minus a differential to be calculated by taking the average of the spread between the expired month and the current month for the first three (3) of the last four (4) trading days of the expired month.

NYMEX rules impose certain obligations with respect to the submission of transactions for clearing and the timing of such submission. The Parties hereby agree to comply with all applicable NYMEX rules regarding the submission of EFP transactions for clearing.

### Section 1.3 Book Transfers

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On or after the date of an original Agreement, the Parties may agree to a book-out, book transfer, circle-out, or other cancellation of physical delivery ("book transfer"), provided in each case that the Parties will be deemed to confirm that each is a commercial market participant that regularly make or take delivery of the commodity that is the subject of the agreement in the ordinary course of their business, that they have entered into such agreement in connection with such business, and that they reasonably believe the other Party likewise to be a commercial market participant. The Parties agree that the agreement to such book transfer must be confirmed in a separate writing or electronically between the Parties within a reasonable timeframe, and the delivery obligations under the original Agreement will be extinguished (whether in whole or in part) to the extent agreed. The terms and conditions of such a book transfer, including payment timing, quantity as agreed between buyer and seller, or other terms, will be as set forth in the Specific Terms and Conditions. It is understood that such book transfer is contingent upon the timely remittance(s) referenced in the Specific Terms and Conditions.

### Section 1.4 Delivery Period

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Unless otherwise specified in the Specific Terms and Conditions, the time of delivery is to be mutually scheduled within the date range or pipeline cycle specified in the Agreement. For Rack transactions, product is to be lifted within the Agreement date range. For marine deliveries, notwithstanding the delivery period specified in the Specific Terms and Conditions, if a performing vessel tenders NOR within the delivery period, the Buyer and Seller shall complete load/discharge of the product even if completion of load/discharge takes place after the end of the delivery period.

### Article 2 Title and Risk of Loss

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Unless specified otherwise in the Specific Terms and Conditions, title to and risk of loss shall pass from the Seller to the Buyer as follows:

#### Section 2.1 Barge/Vessel Deliveries

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- a) FOB/CFR/CIF Barge/Vessel Deliveries. For FOB, CFR or CIF transactions, title to and risk of loss of the Product shall pass from Seller to Buyer and delivery shall be deemed to be complete as the Product passes the first permanent manifold flange of the performing barge/vessel load hose/manifold at the load port. At that point the Seller's responsibility for the product shall cease, and the buyer shall assume all risk of loss or damage to the product delivered.

If the Specific Terms and Conditions require CIF Vessel delivery, Seller shall only be obligated to procure a negotiable insurance certificate for one hundred ten percent (110%) of the value of the Product based on the price in the Specific Terms and Conditions. Such insurance policy shall (i) provide coverage against ordinary marine risks, including the risk of shortage, leakage and contamination of any causes, subject to a deductible of 0.5% on the full insured value, (ii) cover the cargo from passing the manifold flange connection of the Vessel's delivery hose at the loading terminal to passing the permanent connection of the Vessel's delivery hose at discharge terminal,

(iii) be placed with a first class insurance company, (iv) be in accordance with the provisions of the Institute Cargo Clauses (A) or Institute of London Underwriters Bulk Oil Clauses 273.

For CFR deliveries cargo insurance to be the responsibility of the Buyer.

- b) DDP/DAT/DAP Barge/Vessel Deliveries. For DDP, DAT or DAP transactions, title to and risk of loss of the Product shall pass from Seller to Buyer and delivery shall be deemed to be complete as the Product passes from the delivery Vessel's last permanent discharge flange and into the first flange at the delivery port (terminal, lighter vessel, receiving barge).

## Section 2.2 Truck and Railcar Deliveries

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- a) Generally. Seller shall make and Buyer shall receive truck and railcar deliveries at such times within the contract delivery window as specified in the Specific Terms and Conditions. At the time of delivery, Seller shall prepare and furnish Buyer with copies of bills of lading and other shipping documents specified in the Specific Terms and Conditions.
- b) Deliveries Into Truck or Railcar.
- i) FCA. For FCA deliveries into truck or railcar, delivery of the Product shall be made to Buyer at the truck or rail loading terminal designated by Seller. Title to and risk of loss shall pass from Seller to Buyer as the Product passes the last discharge flange of the loading facility designated by Seller and into Buyer's designated truck or railcar. Notwithstanding anything to the contrary expressed or implied elsewhere in the Agreement, Seller shall have the right to refuse, on any reasonable ground, to accept any truck or railcar nominated by Buyer. Seller shall not be liable for any loss or damage, direct or indirect, which Buyer may suffer as a result of Seller exercising such right.
- ii) CPT. For CPT deliveries into truck or railcar, delivery of the Product shall be made to Buyer into Seller's designated truck or railcar at Seller's designated loading facility. Title to and risk of loss shall pass from Seller to Buyer as the Product passes the last discharge flange of Seller's loading facility and into Seller's designated truck or railcar.
- c) Deliveries Via Truck or Railcar. For deliveries via truck or railcar, delivery of the Product shall be made to Buyer at Buyer's designated truck or railcar delivery point designated in the Specific Terms and Conditions. For deliveries by truck, title to and risk of loss shall pass from Seller to Buyer as the Product passes from Seller's designated truck into the first intake flange at the delivery point designated in the Specific Terms and Conditions. For deliveries out of railcar, title to and risk of loss shall pass from Seller to Buyer when the locomotive is disconnected from the railcar at the delivery point designated in the Specific Terms and Conditions.
- d) Additional Requirements for Rack Sales. Buyer shall be solely responsible for ensuring that it or its carrier, as applicable, has entered into all requisite facility access agreements and/or similar agreements required in order for Buyer's (or its carrier's) trucks or railcars to access the loading rack.

### Section 2.3 Pipeline Deliveries

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- a) Generally. Nominations for pipeline delivery shall be given during normal business hours in accordance with the applicable pipeline's policies and time constraints.
- b) Into Pipeline. Title to and risk of loss shall pass from Seller to Buyer as the Product passes the inlet flange of the receiving pipeline.
- c) Via Pipeline. Title to and risk of loss shall pass from Seller to Buyer as the Product passes the outlet flange of the pipeline.
- d) Product Transfer Order (In-line) Pipeline Transfer. For in-line pipeline transfers, title to and risk of loss shall pass from Seller to Buyer at the time of transfer on the agreed date, as evidenced by the PTO (or other acceptable transfer documentation) issued by the pipeline operator that reflects the transfer of title on its books and records.

### Section 2.4 Pumpover Deliveries

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Title to and Risk of Loss shall pass from Seller to Buyer and delivery shall be deemed to be complete, as the product exits sending shore tank or pipeline (delivered FOB, ex-tank) or enters the receiving shore tank or pipeline (delivered DDP, into-tank).

### Section 2.5 Book, Stock

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When delivery of Product is by book or stock transfer, title to and risk of loss of the Product shall pass from Seller to Buyer on the effective date of transfer as specified in the Specific Terms and Conditions.

## Article 3 Quantity, Quality and Inspection

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### Section 3.1 General Provisions Governing All Delivery Methods

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Unless otherwise specified in the remaining Sections of these General Terms or in the Specific Terms and Conditions, the following general provisions shall govern all measurements of quantity and quality, regardless of delivery method:

- a) Quantity. The quantity of the Product shall be determined in accordance with the latest established API/ ASTM standards for the method of delivery. Unless otherwise specified elsewhere in the Agreement, all volumes shall be temperature corrected to 60 degrees Fahrenheit (60°F) or 15 degrees Celsius (15°C) in accordance with table 6-B or 54B of ASTM / IP Petroleum Measurement tables and in compliance with latest API standards in effect at the time of discharge/load. Each U.S. barrel shall contain 42 U.S. gallons adjusted as above.
- b) Quality. The quality of the Product shall be as contained in our Specific Terms and Conditions, determined in accordance with the latest established API/ ASTM standards for the method of delivery.
- c) Location of Measurements. Quantity and quality shall be measured at the location where title to and risk of loss of the Product passes from Seller to Buyer.
- d) Independent Inspector. Where the Agreement calls for the use of an Independent Inspector or in any situation in which the Parties elect to use an Independent Inspector:
  - i) Quantity and Quality of the product shall be determined and certified by a mutually agreed first class independent inspector. Independent inspector's reported findings

shall be final and binding on both Buyer and Seller save for fraud, manifest error and omission.

- ii) The fees and other charges of such Independent Inspector will be shared equally by the Parties.

### Section 3.2 Specific Provisions for Barge/Vessel Delivered FOB/CFR/CIF/"Into")

Whenever Product is delivered into a Vessel, quantity and quality determinations shall be in accordance with the following:

- a) Independent Inspector: The quantities and quality of the Product shall be determined by an Independent Inspector.
- b) Quality: Unless otherwise stated in Specific Term and Conditions, quality to be determined at load port based on shore tank composite sample analysis prior to load.
- c) Quantity:
  - i. Unless otherwise stated in Specific Term and Conditions, quantity of the product shall be determined at the load port using shore tank down gauges (Net barrels at 60 Degrees F in accordance with table 6-B or 54B of ASTM / IP Petroleum Measurement tables) and in compliance with latest API standards in effect at the time of load as certified by the independent inspector of record.
  - ii. Under no circumstances shall the shoretank figures at load port be used if shore tanks are active or the floating tank roofs (if applicable) are not afloat or at least 6 inches clear of the critical zone. If the tanks are active or do not meet the conditions specified above, or the independent inspector cannot verify the shore tank measurement, then loaded quantity shall be based on vessel/barge loaded figures, adjusted for vessel experience factor (VEF) as calculated by the independent inspector.

### Section 3.3 Specific Provisions for Barge/Vessel Delivered DDP/DAT/DAP/"Via")

Whenever Product is delivered from a Vessel, quantity and quality determinations shall be in accordance with the following:

- a) Independent Inspector: The quantities and quality of the Product shall be determined by an Independent Inspector.
- b) Quality: Unless otherwise stated in Specific Term and Conditions, quality to be determined at discharge port based on vessel composite sample analysis prior to discharge.
- c) Quantity:
  - i. Unless otherwise stated in Specific Term and Conditions, quantity of the product shall be determined at the discharge port using shore tank up gauges (Net barrels at 60 Degrees F in accordance with table 6-B or 54B of ASTM / IP Petroleum Measurement tables) and in compliance with latest API standards in effect at the time of discharge as certified by the independent inspector of record.
  - ii. Under no circumstances shall the shore tank figures at discharge port be used if shore tanks are active or the floating tank roofs (if applicable) are

not afloat or at least 6 inches clear of the critical zone. If the tanks are active or do not meet the conditions specified above, or the independent inspector cannot verify the shore tank measurement, then outturn quantity shall be based on vessel/barge discharge figures, adjusted for vessel experience factor (VEF) as calculated by the independent inspector.

- iii. In the event of lightering operation to barges, outturn quantity shall be based on barge received volumes adjusted for applicable barge experience factor (VEF) as certified by independent inspector of record. If barge VEF is not available, delivering vessel measurement adjusted for an applicable VEF shall apply.
- iv. A full line displacement shall be performed prior to barge's/vessel's commencement of discharge in accordance with API Guidelines and witnessed by the independent inspector. Any volume variances greater than one quarter of an inch in the receiving shore tank strapping shall be aggregated to the total outturn quantity. In the event the shore tank is found to have received less than the amount delivered by the barge/vessel by more than the specified measurement tolerance, a second line displacement shall be performed in order to verify that the line is now in a full condition. Each time a line displacement is performed and the shore line is found to be not full (slack), line displacement's slack line quantity should be added to the receiving shore tank quantity to calculate the final outturn quantity. The line displacement must be performed to the furthest shore tank with volume of at least 120% of the line capacity as per API recommendation.
- v. If performance of any line displacement is not permitted by Buyer or Buyer's designated discharge facility, then barge/vessel ullages with Vessel Experience Factor (VEF) shall be used as determination of the discharged quantity.

d) Discharge Port, Berth, and Facilities (Vessels):

- i. The Buyer shall have the option to nominate alternative or additional discharge port(s) within Vessel party's Charter Party Limits. All additional expenses, including but not limited to, freight differential, interim port costs or Worldscale port costs, incurred by the Seller as a result of the Buyer exercising such option shall be paid by Buyer to Seller per the Charter Party rate, terms and conditions.
- ii. If Seller exceeds maximum draft as specified in Specific Terms and Conditions, lighterage shall be for the Seller's account.
- iii. If Lightering or Ship-to-Ship ("STS") operation is requested by either Buyer or Seller all costs for such lightering or STS operation shall be for the account of the Party requesting such operation. If lightering or STS operation is requested by the terminal party, laytime and time on demurrage will be calculated as per Laytime and Demurrage clause.

Section 3.4 Specific Provisions for Truck and Railcar Deliveries

Seller shall use calibrated and proved meters to measure quantities delivered into truck and railcar, or if such meters are not available, shall use the following (in order of preference): scales located at or near the loading point, manual railcar measurements, or shore tanks located at or



near the Loading Port. Buyer shall use calibrated and proved meters to measure quantities delivered out of truck and railcars, or if such meters are not available, shall use the following (in order of preference): scales located at or near the delivery point, manual railcar measurements, or shore tanks located at or near the Delivery Port.

### Section 3.5 Specific Provisions for Pipeline Deliveries

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Quality of the product shall be in accordance with the specifications set forth by the relevant pipeline.

Quantities delivered into pipeline shall be measured by Seller using calibrated and proved pipeline meters if available, but if not available, then by Seller's down-gauge terminal tank gauges. Quantities delivered out of pipelines (Via) shall be measured by Buyer using calibrated and proved pipeline meters if available, but if not available, then by Buyer's terminal tank gauges. Unless otherwise agreed by the Parties, for all deliveries into or out of pipelines where terminal tank gauges must be used for measurement, the terminal operator shall determine the quantity of Product delivered. Where delivery is made to or received by common carrier pipeline, the pipeline's meters will govern the determination of quantity measurement. Either Party may require the use of an Independent Inspector for measurements, in which case the provisions of Section 3.1 of these General Terms shall also apply.

In the event that Buyer and Seller agree via mutual scheduling that Seller shall deliver product from the relevant Pipeline location other than the Base location, then the increased transportation costs will be paid by Buyer to Seller, for the volume delivered, through Pipeline Tariff differential between the delivery location and the actual delivery point, based on the applicable Pipeline Tariff tables in effect for such pipeline on the date of delivery; alternatively, the decreased transportation costs will be credited to Buyer by Seller, for the volume delivered, on the applicable invoice for such delivery through Pipeline Tariff differential between the delivery location and the actual delivery point, based on the applicable Pipeline Tariff tables in effect for such pipeline on the date of delivery.

### Section 3.6 Specific Provisions for Pumpover

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Quality of the product shall be based on shore tank composite sample or in accordance with the specifications set forth by the relative pipeline prior to pumpover.

Quantity shall be measured based on Seller's shore tank downgauge (delivered FOB, Into - if not otherwise specified)/Buyer's shore tank upgauge (delivered DDP, VIa) , unless sending/receiving shore tanks are active or dynamic, have been stripped prior to receiving the product, floating roof is at or below critical zone, crusted shore tanks or shore tank measurements are not in accordance with ASTM/API standards, which in those events, Seller's shore tank downgauge measurements shall apply.

### Section 3.7 Specific Provisions for Stock Transfer

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For stock transfers, quantities shall be as mutually agreed according to the Specific Terms and Conditions or stock transfer letters of the Parties.

### Section 3.8 Laytime and Demurrage (Marine Deliveries)

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#### *Laytime*

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The Laytime allowed to the Seller for loading the Cargo (FOB) or to the Buyer for discharging the Cargo (CIF/CFR/DAP/DDP) shall be as agreed between the Parties in the Specific Terms and Conditions.

## Demurrage

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Marine equipment shall be handled promptly by both parties Demurrage will be payable per running hour and pro-rata for parts of an hour for all time that used laytime exceeds the allowed laytime at the demurrage rate specified in the Charter Party agreement.

Demurrage claims with supporting documentation to be submitted within ninety (90) days after completion of cargo operations or will be deemed as waived ("Time Bar"). If the Time Bar date falls on a Saturday or Sunday, claims must be submitted by 17:00 Eastern prevailing time on the preceding Friday, or will be deemed as waived. If the last day of submission falls on a New York banking holiday, claims must be submitted by 17:00 Eastern prevailing time on the preceding business day or will be deemed as waived.

Demurrage claims shall be supported by the following documents:

1. Notice of Readiness
2. Statement of Facts
3. Discharge pressure Logs (where applicable)
4. Charter party or fixture recap for spot chartered vessels
5. Invoice presented to the vessel party for demurrage incurred or invoice presented by the lightering company supporting overtime incurred
6. Bills of lading or inspection reports to substantiate pro-rations.

## Article 4 Invoicing, Payment

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### Section 4.1 Invoicing

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Invoice and documentation must be received by 12:00 Noon U.S. Eastern prevailing time to be considered received on that working day. Documents received after 12:00 Noon Eastern prevailing time will be considered received the following working day. Day of receipt of payment documents shall equal day zero (0) when calculating payment due date for payment terms of "receipt of invoice and supporting documentation".

### Section 4.2 Payment Terms

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Any payments shall be made to Seller pursuant to the payment terms set forth in the Specific Terms and Conditions. All payments shall be made In US Dollars by telegraphic transfer of same day usable funds without deduction, offset, withholding or counterclaim to Seller's designated bank as indicated on the Seller's commercial invoice on or before the payment due date.

### Section 4.3 Provisional Invoicing

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In the event payment due date comes before the final price or the final quantity is known, or if discharge is delayed by Buyer, payment shall be made against a provisional invoice and any relevant Payment Documents as referenced in Specific Terms and Conditions.. The Provisional invoice will be based on confirmed quantity as per measurement terms (if such not available, on Bills of Lading quantity) and provisional price calculated based on the price terms using all quotations available (or the latest available quotation in the case the pricing period has not begun) at the time of issuance of Provisional invoice. Payment of the balance due by the Buyer to the Seller or the refund due by the Seller to the Buyer shall be made within two (2) New York banking days upon receipt of the Seller's Final invoice, which shall be issued as soon as possible after the final price and/or final quantity become available to Seller.



#### Section 4.4 Split Weekend Clause

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In the event payment due date falls on a Saturday or Non-Monday banking holiday in New York, payment shall be due on the immediately preceding New York Banking day. In the event payment due date falls on a Sunday or Monday banking holiday in New York, payment shall be due on the following New York banking day.

#### Article 5 Representations and Warranties

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##### Section 5.1 Title, Warranties

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Seller represents and warrants that it has full legal title to the product free and clear of all liens, claims, encumbrances and security interests and that it has full right and power to convey such title to Buyer. Seller makes no condition or warranty, express or implied, that the products sold hereunder will be merchantable or fit for a particular purpose, or that they will meet specifications other than those expressly provided herein. All other conditions, warranties or other terms whether express, implied or which would otherwise be imposed by statute, with respect to quality, satisfactory quality, suitability or fitness for any purpose whatsoever of the product are hereby excluded. Any claims that the material delivered hereunder does not conform to the description set forth herein are waived unless presented in writing by Buyer within thirty (30) days after delivery thereof.

##### Section 5.2 Product Specifications

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Product sold or transferred under the Agreement shall, at the time that title passes to Buyer, conform to the specifications set forth in the Specific Terms and Conditions, taking into account any stated tolerances. Whether set forth in the Specific Terms and Conditions or elsewhere in the Agreement, no reference to Typical or to time of delivery shall ever form a part of the Product's specifications or operate or be construed as a warranty of any sort. Unless otherwise specified in the Specific Terms and Conditions, Product delivered by pipeline shall conform to the transporting pipeline's specifications.

#### Article 6 Taxes; Customs

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##### Section 6.1 Responsibility for Payment

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- a) Unless otherwise specifically provided in the Agreement: (i) Seller shall be liable for any and all Taxes with respect to the Product delivered hereunder, the taxable incident of which occurs before the transfer of title to the Product to Buyer; (ii) Buyer shall be liable for any and all Taxes with respect to the Product delivered hereunder, the taxable incident of which occurs after transfer of title to the Product to Buyer; and (iii) any and all Taxes the taxable incident of which is the transfer of title, regardless of the character, method of calculation or measure of the levy or assessment, shall be paid by the Party upon which the Tax is imposed by the applicable taxing authority, provided, however, if such Taxes are payable by Seller, Buyer shall promptly reimburse Seller upon demand.
- b) With respect to rack sales of any Product, any and all Taxes, and any and all increases thereon, which are now or hereafter imposed, levied or assessed directly or indirectly by any Governmental Authority on or as a result of the transfer or sale contemplated by the Agreement is strictly for Buyer's account and shall, if collectible or payable by Seller, be paid or reimbursed by Buyer on demand by Seller, and incorporated as an additional charge on Seller's invoice. Buyer specifically agrees to hold Seller harmless from, and indemnify Seller against, any such imposts, including any interest and penalties thereon. If Buyer claims exemption from any of the above imposts, then Buyer must furnish Seller with a properly

completed and executed exemption certificate, in the form and within the time limit prescribed by the appropriate taxing authority in lieu of payment or reimbursement of such imposts to Seller.

- c) With respect to any Product imported into the US or a foreign jurisdiction, the importer of record as set forth in the Incoterms of the Specific Terms and Conditions shall be responsible for all import arrangements and customs requirements, including all Taxes, customs, duties, fees and related costs in respect of importing the Product, such as superfund tax, environmental spill tax, harbor maintenance fee, etc..

## Section 6.2 Tax Reimbursement

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To the extent a Party (herein referred to as “**Party X**”) is required by Applicable Law or otherwise under the Agreement to pay or remit certain Taxes on behalf of the other Party (herein referred to as “**Party Y**”) or Party X otherwise pays Taxes for which Party Y is liable, Party Y shall reimburse Party X to the extent Party X paid such Taxes. Party Y’s reimbursements of Taxes to Party X shall be grossed up as necessary to return to Party X, after payment of any Taxes thereon, the amount actually paid by Party X. A Party shall not be responsible for any penalties or interest related to the obligations of the other Party in respect of Taxes to the extent such penalties or interest accrue based on the actions or inactions of the other Party.

## Section 6.3 Property Taxes

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If any ad valorem, personal property or similar Taxes are assessed against Product sold hereunder, the Party having title to the Product at the time such tax liability is assessed shall be responsible for all administrative compliance and payment of such Taxes.

## Section 6.4 Tax Withholding

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- a) Each Party shall provide to the other Party a properly executed IRS Form W-8 or W-9 (or successor form), or such equivalent form as may be appropriate under Applicable Law to enable the recipient to determine if it must withhold any Taxes from payments made by it hereunder. Such forms shall be delivered upon the execution of the Agreement and subsequently if the information in such form becomes materially inaccurate or such form expires or becomes obsolete. Each Party further agrees to promptly deliver to the other Party any other tax form or certificate reasonably requested by the other Party, including certifications of federal and state registration.
- b) Each Party shall use all reasonable efforts to reduce required tax withholding on payments made to the other Party hereunder. Notwithstanding such efforts, if payor reasonably concludes that tax withholdings under Applicable Laws are required with respect to payments made hereunder, it shall withhold the required amount and pay it to the appropriate Governmental Authority, and shall promptly provide the other Party with original receipts or other evidence reasonably required and sufficient to allow the other Party to document such tax withholdings adequately for purposes of claiming foreign tax credits and similar benefits.

## Section 6.5 Tax Licensing, Certificates

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Both parties represent that, for the purposes of applicable Federal and State laws, rules, and regulations, including tax-related provisions, they possess such licenses, permits or similar authorizations relating to the importation, distribution or exportation of petroleum products as may be required in order to complete the subject transaction in accordance with the terms of

this agreement in the state in which the title to the product is to pass from Seller to Buyer and/or the state of final destination, if applicable. Buyer or Seller, as the case may be, shall provide the other with such certificates as may be requested to evidence the necessary basis for exemptions from applicable taxes, fees or similar charges.

For New York state deliveries, Seller certifies that it will pay the required Motor Fuel Tax and Prepaid Sales Tax, and that it will supply Buyer with evidence of the amount paid in a manner acceptable to the New York State Department of Taxation and Finance.

### Section 6.6 Exemptions

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In the event there is an eligible exemption from the imposition of Taxes under Applicable Law, Buyer will provide Seller with the applicable documentation necessary to perfect the exemption. If Buyer does not furnish such exemption documentation or the Agreement is subject to tax under Applicable Law, upon receipt of Seller's invoice, Buyer shall reimburse and indemnify Seller for all Taxes paid or incurred by Seller, together with all penalties and interest thereon. Buyer's obligation to reimburse Seller includes any Taxes that Seller is assessed due to subsequent discovery of taxability or under audit by any taxing authority until expiration of the relevant statute of limitations.

### Section 6.7 Duty Drawback

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Exporter of record ("exporter") reserves the right to claim, receive and retain Drawbacks on Product it delivers hereunder which subsequently qualify for Drawback treatment under Applicable Law. Counterparty shall in a timely fashion upon request by exporter execute proof of exportation, Drawback claim forms, and assignments in favor of exporter to enable exporter to establish its Drawback rights under Applicable Law. Counterparty further agrees to cooperate in good faith to provide any other additional information that may be necessary to perfect exporter's Drawback claims.

### Section 6.8 Importer of Record

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The importer of record as determined by the Incoterms of the Specific Terms and Conditions shall be responsible for all import arrangements and customs requirements.

### Section 6.9 Exporter of Record

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Exporter of record as determined by the Incoterms of the Specific Terms and Conditions shall be solely responsible for compliance with all relevant Export Laws and Regulations.

## Article 7 ISPS Compliance for Barge/Vessel Deliveries

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### Section 7.1 CFR/CIF/DAP/DAT/DDP/DDU Provisions

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Vessel Party shall procure that the Vessel shall comply with the requirements of the International Code for the Security of Ships and of Port Facilities and the relevant amendments to Chapter XI of SOLAS ("ISPS CODE") and where the discharge port is within the USA and US territories or waters, with the US Maritime Transportation Security Act 2002 ("MTSA").

The performing Vessel shall, when required, submit a Declaration of Security ("DOS") to the appropriate authorities prior to arrival at the discharge port.

Notwithstanding any prior acceptance of the performing Vessel by Terminal Party, if at any time prior to the passing of Risk and Title the vessel ceases to comply with the requirements of the ISPS Code or MTSA:

- Terminal Party shall have the right not to berth such nominated vessel and any demurrage resulting not be for the account of the Terminal Party
- Vessel Party shall be obliged to substitute such nominated Vessel with a Vessel complying with the requirement of the ISPS Code and which is acceptable to Terminal Party. If Title and Risk to the cargo on board the Vessel substituted pursuant to this clause has already passed to Terminal Party, such Title and Risk shall be deemed to have reverted to Vessel Party.

Any costs, liabilities or expenses in respect of the performing Vessel including demurrage or any additional charge, fee or duty levied on the Vessel at discharge port and incurred by Vessel Party resulting directly from the failure of the discharge port to comply with the ISPS Code and if located within the USA and US Territories, with the MTSA, shall be for the account of Terminal Party, including but not limited to the time required or costs incurred by the performing Vessel in taking any action or any special or additional security measures required by the ISPS Code or MTSA.

Save where the Vessel has failed to comply with the requirement of the ISPS Code and/or MTSA, Terminal Party shall be responsible for any demurrage actually incurred by Vessel Party arising from delay to the performing Vessel at the discharge port resulting directly from the performing Vessel being required by the Port Facility or any relevant authority to take any action or any special or additional security measures or undergo additional inspections by virtue of the performing vessel's previous ports of call.

Terminal Party's liability to Vessel Party under the agreement for any costs, losses or expenses incurred by the Vessel, the Charterers or the Vessel owners resulting from the failure of the discharge port / terminal/ installation to comply with the ISPS code and where the discharge port is within the USA and US Territories or waters, with the MTSA, shall be limited to the payment of demurrage and costs actually incurred by the Vessel Party in accordance with the provisions of this clause.

### Section 7.2 FOB Provisions (Seller = Terminal Party, Buyer = Vessel Party)

Vessel Party shall procure that the Vessel shall comply with the requirements of the International Code for the Security of Ships and of Port Facilities and the relevant amendments to Chapter XI of SOLAS ("ISPS CODE") and where the load port is within the USA and US territories or waters, with the US Maritime Transportation Security Act 2002 ("MTSA").

The performing Vessel shall, when required, submit a Declaration of Security ("DOS") to the appropriate authorities prior to arrival at the load port.

Notwithstanding any prior acceptance of the performing Vessel by Terminal Party, if at any time prior to the passing of Risk and Title the vessel ceases to comply with the requirements of the ISPS Code or MTSA:

- Terminal Party shall have the right not to berth such nominated vessel and any demurrage resulting not be for the account of the Terminal Party
- Vessel Party shall be obliged to substitute such nominated Vessel with a Vessel complying with the requirement of the ISPS Code and which is acceptable to Terminal Party. If Title and Risk to the cargo on board the Vessel substituted pursuant to this clause has already passed to Terminal Party, such Title and Risk shall be deemed to have reverted to Vessel Party.

Terminal Party shall procure that the loading port / terminal / installation shall comply with the requirements of the International Ship and Port Facility Security Code and the relevant

amendments to Chapter XI of SOLAS ("ISPS CODE") and if located within the USA and US Territories, with the US Maritime Transportation Security Act 2002 ("MTSA")

Any costs, liabilities or expenses in respect of the performing Vessel including demurrage or any additional charge, fee or duty levied on the Vessel at load port and incurred by Vessel Party resulting directly from the failure of the load port to comply with the ISPS Code and if located within the USA and US Territories, with the MTSA, shall be for the account of Terminal Party, including but not limited to the time required or costs incurred by the performing Vessel in taking any action or any special or additional security measures required by the ISPS Code or MTSA.

Save where the Vessel has failed to comply with the requirement of the ISPS Code and/or MTSA, Terminal Party shall be responsible for any demurrage actually incurred by Vessel Party arising from delay to the performing Vessel at the load port resulting directly from the performing Vessel being required by the Port Facility or any relevant authority to take any action or any special or additional security measures or undergo additional inspections by virtue of the performing vessel's previous ports of call

Terminal Party's liability to Vessel Party under the agreement for any costs, losses or expenses incurred by the Vessel, the Charterers or the Vessel owners resulting from the failure of the load port / terminal/ installation to comply with the ISPS code and where the load port is within the USA and US Territories or waters, with the MTSA, shall be limited to the payment of demurrage and costs actually incurred by the Vessel Party in accordance with the provisions of this clause.

#### Article 8 Failure to Deliver or Accept the Product

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Unless excused by an event of force majeure or other party's failure to perform, if a party (the "Failing Party") fails to deliver or accept all or part of the quantity of the product as required during the applicable delivery period, the parties will negotiate in good faith to agree promptly to a resolution for such failure within two (2) business days. If the parties fail to agree to a resolution of the failure during the two-business day period, the remedies described below in paragraph (a) and paragraph (b) will apply, which remedies shall be a party's exclusive remedies for the other party's failure to deliver or accept the product as required by this Agreement absent the parties' agreement to different remedies.

##### A) Seller failure to deliver

If Seller is the Failing Party, Seller shall pay to Buyer, on the date payment would otherwise be due in respect of the month in which the failure occurred, an amount for each gallon or barrel (as applicable) of the product of such deficiency equal to (1) the market price at which buyer, acting in a commercially reasonable manner, is able, or absent an actual purchase, would be able to purchase or otherwise accept comparable supplies of the product of comparable quality delivered to the delivery location as determined by Buyer in a commercially reasonable manner, plus (a) costs reasonably incurred by buyer in purchasing such substitute product and (b) additional transportation charges, if any, reasonably incurred by Buyer as a result of taking delivery of substitute product at a location other than the delivery location; minus (2) the price agreed to in the Specific Terms and Conditions; provided that if such deficiency amount is zero or negative, then neither party shall have any obligation to make any deficiency payment to the other party

##### B) Buyer Failure to accept



If Buyer is the Failing Party, Buyer shall pay to Seller, on the date payment would otherwise be due in respect of the month in which the failure occurred, an amount for each gallon or barrel (as applicable) of the product of such deficiency equal to (1) the price agreed to in the Specific Terms and Conditions plus any storage, transportation or other costs reasonably incurred by seller in reselling the product minus (2) the market price at which seller, acting in a commercially reasonable manner, or absent any actual sale, would be able to sale or otherwise dispose of the product at the delivery location as determined by seller in a commercially reasonable manner; except that if such deficiency amount is zero or negative, then neither party shall have any obligation to make any deficiency payment to the other party.

Failure to pay any amount due pursuant to paragraph (A) and paragraph (B) above will be deemed an event of default under "Default, Termination and Liquidation" if such failure is not cured within two (2) business days following receipt of written notice of such failure from the other party.

### Article 9 Default, Termination and Liquidation

Any of the following actions by either party (the "Defaulting Party") shall be considered a defaulting event:

- 1) Default in the payment or performance of any obligation to the other party under this or any specified agreement
- 2) Becoming insolvent, unable to pay its debts or admit in writing its inability generally to pay its debts as they become due
- 3) Files a petition or otherwise commences or authorizes the commencement of a proceeding or case under any bankruptcy, insolvency, reorganization, or similar law for the protection of creditors, or has any such petition filed or proceeding or case commenced against it and it is not successful in having such petition, proceeding, or case dismissed within 60 days
- 4) Be dissolved (other than pursuant to a consolidation, amalgamation or merger)
- 5) Have a liquidator, administrator, receiver or trustee appointed with respect to it or any substantial portion of its property or assets
- 6) Propose or make a general assignment or an arrangement or composition with or for the benefit of its creditors
- 7) Fail to provide adequate assurance of its ability to perform all of its obligations under this agreement or any other agreement between the parties within 48 hours of a reasonable request to such party's performance.

If any such event occurs, without limiting any other rights that may be available, the party other than the Defaulting Party (the "Non-Defaulting Party") shall have the right, exercisable in its sole discretion immediately and at any time(s), to liquidate this agreement and any or all other agreements then outstanding between the parties, but excluding this or any other agreement in respect of which Seller has assigned all or a portion of its rights to receive and obtain payment thereunder. A settlement amount shall be calculated in a commercially reasonable manner for each such liquidated and terminated agreement and be payable by one party to the other. Settlement amount shall mean, with respect to an agreement and the non-defaulting party, the losses and costs (or gains) expressed in U.S. Dollars, which such party incurs as a result of the liquidation, including losses and costs (or gains) based upon the then current replacement value of such agreement together with, at the Non-Defaulting Party's election but without duplication or limitation, all losses and costs which such party incurs as a result of maintaining, terminating, obtaining or re-establishing any hedge or related trading position. Such settlement amounts shall be netted to a single liquidated amount payable by the



party with the payment obligation to the other within one (1) business day of the liquidation. Notwithstanding anything to the contrary in this agreement or any other agreement between the parties, the Non-Defaulting Party shall set off or aggregate as appropriate, the settlement amount and (at the election of Non-Defaulting Party) any or other amounts due and outstanding under this agreement or any other agreement between the parties, provided that any amounts not then due shall be discounted to present value. The Non-Defaulting Party's rights under this clause shall be in addition to, and not in limitation or exclusion of, any other rights which the Non-Defaulting Party may have (whether by agreement, operation of law or otherwise). After a default, the Defaulting Party shall indemnify and hold the Non-Defaulting Party harmless from all costs and expenses (including, without limitation, reasonable attorney's fees and disbursements) incurred by the Non-Defaulting Party in the exercise of the remedies hereunder.

#### Article 10 Governing Law and Jurisdiction

Where no governing law is specified in the Specific Terms and Conditions, this Agreement is governed by, and must be interpreted in accordance with general Maritime Law, where applicable, and the laws of the State of New York without regard to any choice of Law rules. Notwithstanding anything to the contrary, this agreement must not be interpreted or applied so as to require either party to do, or to refrain from doing, anything that constitutes a violation of any law or regulation.

Each Party hereby submits itself to the exclusive jurisdiction of any federal court of competent jurisdiction situated in the Borough of Manhattan, State of New York or, if any federal court declines to exercise or does not have jurisdiction, in any New York state court in the Borough of Manhattan, State of New York. Each Party hereby irrevocably waives, to the fullest extent permitted by Applicable Law, any objection to the jurisdiction of any such court or to the venue therein or any claim of inconvenient forum of such court. Each Party waives, to the fullest extent permitted by Applicable Law, any right to have a trial by jury in respect of any proceedings related to this Agreement.

The United Nations Convention on Contracts for the International Sale of Goods 1980 shall not apply to or govern this Agreement.

#### Article 11 Disputes/Conflicts

In the event of any dispute or conflict between the contract (as contained in our Specific Terms and Conditions together with these General Terms and Conditions) and any other written agreement or oral understanding between the parties, the Terms and Conditions of the contract shall govern.

#### Article 12 Arbitration

Any dispute or claim arising between Buyer and Seller in connection with this agreement that is not resolved amicably by or among the Parties, shall be submitted by either Party hereto to three (3) members of the society of Maritime Arbitrators, Inc. at New York, USA. One member is to be appointed by each of the Parties hereto and the third by the two members so chosen. Each Party will bear and pay the costs of the arbitrator appointed by (or for) it and the cost of the third arbitrator shall be borne and paid equally by the Parties. The decision of the arbitrators shall be final, conclusive and binding on all Parties. Judgment may be entered upon any such award in any court within jurisdiction. For disputes of less than USD 25,000, one arbitrator shall be used as agreed by both Parties. If both Parties fail to agree on one (1) arbitrator, the Seller will appoint a suitable arbitrator.

### Article 13 Destination

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Buyer and Seller undertake and warrant that the products delivered hereunder are not supplied, produced, originated or shipped, whether directly or indirectly, by or from any person or country which at the time of delivery is subject to economic sanctions or restrictions imposed under the Laws of the United States, including those administered and enforced by the United States Treasury Department's Office of Foreign Assets Control.

### Article 14 Force Majeure

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Neither Seller nor Buyer shall be liable for losses, damages or otherwise for any failure or delay in performance of any obligations hereunder other than the obligation to make payment and provision of security (including Letter of Credit), where such failure or delay is caused by force majeure. As used in this agreement, force majeure means any event, occurrence or circumstance reasonably beyond the control of the party claiming suspension of its obligations, including without prejudice to the generality of the foregoing, failure or delay caused by or resulting from any curtailment, failure or cessation of supplies of the oil from any of the Seller's or supplier's sources of supply or any refusal to supply oil (whether lawful or otherwise by Seller's supplier(s) and whether or not for the purpose of this contract), acts of God, strikes, labor disputes, fires, floods, wars (whether declared or undeclared), epidemics (including any associated quarantine or other containment measures), riots, destruction of the product, delays or carriers due to breakdown or adverse weather, perils of the seas, embargoes, accidents, restrictions imposed by any governmental authority (including allocations, priorities, requisitions, quotas and price controls). The party whose performance is so affected shall notify the other party hereto within forty-eight (48) hours of the occurrence thereof, stating in reasonable detail the cause of the force majeure and the expected duration thereof. The affected party shall use reasonable diligence to remove the force majeure situation as quickly as possible. However, no party shall be required to settle against its will any strike or labor dispute. The time of the Seller to make or Buyer to receive delivery hereunder shall be extended during any period in which delivery shall be delayed or prevented by reason or any of the foregoing causes, up to a total of thirty (30) days. If any delivery hereunder shall be so delayed or prevented for more than thirty (30) days, either party may terminate this contract with respect to such delivery upon written notice to the other party.

### Article 15 Assignment

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Without the prior written consent of the other party, which consent shall not be unreasonably withheld, neither party may assign its rights or obligations under this agreement in full or in part, except that the Seller and its assigns may without such consent assign all or a portion of their rights to receive and obtain payment under the contract in connection with securitization or bank funding arrangements. Any such assignment will not detract from Seller's obligations under this contract.

### Article 16 Limitation of Liability

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NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THE AGREEMENT: (A) NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL LOSSES OR DAMAGES, LOST PROFITS (WHETHER DIRECT OR INDIRECT), LOST OPPORTUNITIES OR LOSS OF GOODWILL, OR ANY SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, WHICH ARISE OUT OF OR RELATE TO THE AGREEMENT OR THE PERFORMANCE OR BREACH HEREOF,

WHETHER ARISING IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE; AND (B) SELLER'S LIABILITY WITH RESPECT TO THE AGREEMENT OR ANY ACTION WHICH ARISES OUT OF OR RELATES TO THE AGREEMENT OR THE PERFORMANCE OR BREACH HEREOF, WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, SHALL NOT EXCEED THE PRICE OF THE PRODUCT (OR PORTION THEREOF) WITH RESPECT TO WHICH SUCH LIABILITY AROSE. NOTHING IN THIS ARTICLE SHALL PRECLUDE OR OTHERWISE IMPAIR SELLER'S ABILITY TO INITIATE LEGAL ACTION AGAINST THE BUYER TO RECOVER THE PURCHASE PRICE OF THE PRODUCT SOLD TO BUYER BY SELLER IN THE EVENT THE BUYER FAILS TO FULLY PAY FOR THE PRODUCT AS AGREED HEREUNDER.

ADDITIONALLY, WITH RESPECT TO ANY CLAIMS RELATING TO SELLER'S FAILURE TO DELIVER THE AGREED QUANTITY OF PRODUCT, SELLER SHALL IN NO EVENT BE LIABLE FOR MORE THAN THE DIFFERENCE BETWEEN THE PRICE SPECIFIED IN THE AGREEMENT AND THE MARKET PRICE OF SUCH PRODUCT MULTIPLIED BY THE QUANTITY NOT DELIVERED. WITH RESPECT TO ANY CLAIMS RELATING TO VARIATION IN QUALITY FROM THE PRODUCT SPECIFICATIONS, SELLER SHALL IN NO EVENT BE LIABLE FOR MORE THAN THE DIFFERENCE BETWEEN THE PRICE SPECIFIED IN THE AGREEMENT AND THE MARKET PRICE OF THE PRODUCT AS ACTUALLY DELIVERED MULTIPLIED BY THE QUANTITY OF SUCH NON-CONFORMING PRODUCT.

Further, and without limiting any shorter time limitations set out in the Agreement with respect to specific matters (such as, but without limitation, time limits for submission of demurrage claims and claims relating to quantity and/or quality), any actions to enforce any rights or obligations under the Agreement must be filed in court against the other Party no later than one (1) year after the date on which the alleged breach of the Agreement occurred failing which, to the fullest extent permitted under Applicable Law, they shall be time barred.

Regards,  
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