



## **Phillips 66 Company Marine Fuels Sales Addendum**

For the sale of all marine fuels subject to this Marine Fuels Sales Addendum, (the “Addendum”) the Phillips 66 Company Products Purchase/Sale Agreement - General Terms and Conditions (“GT&Cs”) are incorporated herein by this reference. In the event of a conflict between the GT&Cs and the terms and conditions set forth in this Addendum, the terms of this Addendum shall prevail. For the sake of clarity, for all Transactions subject to this Addendum, Sections 3 and 4 of the GT&Cs shall not apply and the terms of this Addendum shall govern. Capitalized terms used herein and not otherwise defined shall have the meaning specified in the GT&Cs. Notwithstanding waterborne deliveries, the Phillips 66 Company Marine Provisions shall have no application.

Seller will sell and deliver to Buyer marine fuels on the following terms and conditions. Each Transaction specifically negotiated between Seller and Buyer shall be evidenced by Seller’s Confirmation. In the event of any conflict between these terms and conditions and the terms of the Confirmation, the terms of the Confirmation shall prevail.

### **1. IDENTITY OF BUYER**

- 1.1 This purchase and sale of marine fuels is made by the “Seller” named in the Confirmation to the named Vessel and to the company or person described as the “Buyer” in the Confirmation who warrants having full authority to act on behalf of the named Vessel.

### **2. PRICE**

- 2.1 The price to be paid by Buyer shall be as set forth on the Confirmation. The price is exclusive of Taxes, duties, superfund charges, barging costs and demurrage, wharfage charges, port dues and other charges leviable in respect of marine fuels at the time of delivery, which shall be invoiced and paid by Buyer.
- 2.2 The sales price is valid only if the Vessel arrives at the Delivery Location during the agreed upon delivery window or within seventy-two (72) hours of that date.

### **3. GRADES**

- 3.1 The marine fuels supplied hereunder shall be Seller’s commercial grades offered to customers generally at the time and delivery port. Seller’s fuel grades will conform to ISO 8217 specifications. Other minimum and maximum quality specifications shall be as set forth in the Confirmation. Buyer shall be solely responsible for nominating to Seller the grade of marine fuels for each delivery from among the range of fuels then offered for sale by Seller.

#### **4. NOTICES**

- 4.1 Buyer shall give Seller at least five (5) days' notice of the delivery required, along with Vessel's ETA at the Delivery Location and any special conditions, difficulties, peculiarities, deficiencies or defects in respect of and particular to the Vessel which might adversely affect the delivery of marine fuels to it. Buyer shall give Seller seventy-two (72)-hour, forty-eight (48)-hour and twenty-four (24)-hour notices of Vessel's ETA at the Delivery Location, with its exact geographical location, if other than Seller's terminal.
- 4.2 Any charges (such as barge demurrage or overtime charges) which result from Buyer's or its agent's failure to provide sufficient information, delays caused by the Vessel, loading cancellations, the Vessel's noncompliance with U.S. Coast Guard or pertinent port authority or governmental regulations, or are the result of extraordinary Vessel loading limitations or special directions or orders of the Vessel master or pilot which are not part of this Addendum shall be chargeable to Buyer who expressly agrees to pay any such charges.

#### **5. QUANTITY**

- 5.1 Measurement of quantities actually purchased shall be based upon barge gauges in case of barge deliveries or on shore tanks if no barge gauges are available or if the barge gauges are demonstrably in error. Any deviation of over ten percent (10%) shall be deemed to indicate an error. All measurement & sampling equipment, procedures, calculations, and practices shall be performed in conformance with the most current international measurement, sampling and analysis standards (API Manual of Petroleum Measurement Standards (MPMS), Energy Institute Hydrocarbon Management (EI HM), ISO and ASTM). Volumes shall be adjusted from observed conditions to standard reference conditions (i.e. sixty (60) degrees Fahrenheit/15.56 degrees Celsius, a pressure of one standard atmosphere of 14.696 PSIA etc.) in accordance with the latest revision of API MPMS Chapter 11 (e.g. Table 6B, 54B etc. whichever table is applicable to that commodity).
- 5.2 Seller's measurements shall be final and conclusive on the Parties unless Buyer at the time of delivery gave Seller a written protest as to accuracy. Buyer may employ a mutually agreed upon independent petroleum inspection company to witness the gaging of the quantity delivered from the barge. Unless otherwise specified in the confirmation, the cost of such independent inspection shall be solely for Buyer's account. In the event that it is determined that Buyer did not receive the full contract quantity, Buyer's sole remedy shall be to deduct from the next payment due, the contract price multiplied by the unit quantity not received. If Buyer has paid for the full contract quantity, Seller shall promptly refund to Buyer (if the commercial invoice was paid) of an amount equal to the quantity for which Buyer was invoiced but did not receive delivery.
- 5.3 Buyer shall ensure that the Vessel complies with all customary and normal receiving procedures, including ensuring that the documentation is complete and accurate before signing and that there is a clear factual basis upon which the claim can be substantiated.

- 5.4 The Parties agree that the agreed upon volume specified in a Confirmation, may be modified as follows: (1) increases or decreases of five percent (5%) or less than the original agreed upon quantity are deemed to be operational and may be made upon verbal instructions of the Vessel's agent or master; (2) increases or decreases of more than five percent (5%) of the original agreed upon of the quantity will be mutual agreement of the Parties and shall be confirmed in writing. Any requested increase in quantity shall be subject to availability of Product.

## **6. SAMPLING AND QUALITY**

- 6.1 Unless a mutually acceptable independent inspector is appointed to take samples (whose fees shall be borne equally by Seller and Buyer), Seller shall take no fewer than four (4) identical samples in accordance with its normal sampling procedures at the delivery port. Buyer has a right to have a representative witness such sampling.
- 6.2 Buyer waives any objections to the sampling procedures actually employed unless Buyer had a representative witness sampling and at the time of delivery gave Seller a written protest about the procedures.
- 6.3 The samples shall be sealed and labeled by any one of the barge company representative, Seller's representative or an independent inspector. The chief engineer will acknowledge receipt of the sample delivered to the Vessel by signing and dating either a receipt or the sample label.
- 6.4 Two samples will be given to the Vessel at the time of delivery. At least two (2) samples shall be retained by Seller for at least sixty (60) days, or if Buyer has made a quality claim against Seller until resolution of the dispute, whichever is longer.
- 6.5 In the event quality does not conform to the contractual requirements, Buyer shall notify Seller in writing and accompanied by all then available supporting documents within thirty (30) days of delivery. Claims made after such thirty (30) day period are null and void. Buyer's notice must contain full details including: the quantities and locations of all bunkers on board the Vessel; the rate and quantity of consumption since delivery; the location immediately prior to consumption of bunkers consumed; and for each of the three (3) preceding deliveries to the Vessel, the quantity, quality and specification of Product supplied, the place and date of supply and the name of the supplier.
- 6.6 In the event of a quality claim, the Parties agree to have the sample retained by Seller analyzed by a mutually agreed, qualified and independent laboratory at the port of bunkering. The costs of the analysis shall be borne equally by Seller and Buyer. Buyer may cause the testing of the sample provided to the Vessel at its sole cost and expense; however, dispositive determination of quality of Product delivered shall be based upon the analysis of the sealed and marked samples retained by Seller from the delivery.

## **7. LIMITATION OF LIABILITY**

- 7.1 **CLAIMS RELATED TO DELIVERY:** IN NO EVENT SHALL SELLER BE LIABLE FOR DEMURRAGE; VESSEL DETENTION COSTS; DIRECT OR INDIRECT DAMAGES OR COSTS ATTRIBUTABLE TO DELAY; CONSEQUENTIAL DAMAGES, SUCH AS LOST FREIGHT, EXTRA DAILY HIRE RATE, BERTH CANCELLATION COSTS OR INCREASED FUEL COST IN OTHER PORTS; DIRECT OR INDIRECT COSTS OR DAMAGES ATTRIBUTABLE TO DELIVERY OF LESS THAN THE ORDERED QUANTITY; OR FOR ANY LOSS WHICH MAY ARISE OWING TO CONGESTION OR ADVERSE CONDITIONS AFFECTING SELLER'S DELIVERY FACILITY, THE UNAVAILABILITY OF BARGES, INDEPENDENT ACTS OF THE BARGING COMPANIES INVOLVED, OR FOR ANY REASON BEYOND SELLER'S CONTROL.
- 7.2 **CLAIMS RELATED TO FUEL QUALITY:** SELLER'S LIABILITY FOR DELIVERY OF FUEL WITH NON-CONFORMING SPECIFICATIONS SHALL BE LIMITED TO THE COSTS INCURRED TO REMOVE THE FUEL FROM THE VESSEL AND TO REPLACE IT TO THE EXTENT SUCH FUEL WAS DELIVERED UNDER THIS AGREEMENT. **SELLER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, BY COMMON LAW, STATUTE, OR OTHERWISE, INCLUDING WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY OR FITNESS OF THE PRODUCTS FOR ANY PARTICULAR PURPOSE, EVEN IF SUCH PURPOSE IS KNOWN TO SELLER. BUYER ACKNOWLEDGES THAT SELLER DOES NOT WARRANT THAT THE FUEL WILL FUNCTION WITHOUT COMPLICATION IN THE SPECIFIC ENGINE OR BOILER(S) OF BUYER'S VESSEL, OR WILL BE COMPATIBLE WITH THE FUEL PRODUCTS ALREADY EXISTING IN BUYER'S TANKS OR FUEL PRODUCTS WHICH ARE LATER COMMINGLED WITH SELLER'S FUEL AND THAT THE FUEL MAY SUBSTANTIAL CHANGE IN THE SPECIFICATIONS FROM WHEN IT WAS IN SELLER'S POSSESSION UNTIL IT REACHES THE CONSUMING VESSEL'S ENGINE. WITHOUT LIMITING THE FOREGOING, SELLER SHALL HAVE NO LIABILITY WHATSOEVER IRRESPECTIVE OF WHETHER THE PRODUCT CONFORMED TO THE AGREED UPON SPECIFICATIONS OR OTHERWISE FOR ANY DAMAGE TO BUYER'S EQUIPMENT, MACHINERY OR THE BUYER'S VESSEL'S ENGINE OR ANY OTHER MACHINERY.**
- 7.3 SELLER SHALL NOT BE LIABLE FOR ANY LOSS OF PROFIT OR ANTICIPATED PROFIT, LOSS OF TIME OR HIRE, OVERHEAD EXPENSES, DEMURRAGE OR LOSS OF SCHEDULE, COST OF SUBSTITUTE VESSEL(S), LOSS RELATED TO LOSS OF OPERATIONAL USE OF VESSEL, PHYSICAL LOSS OR DAMAGE (IN WHOLE OR IN PART) OF OR TO VESSEL OR CARGO, OR FOR ANY LOSS OF CONTRACT(S) OF AFFREIGHTMENT TO THE EXTENT THAT THE FOREGOING OF ANY OF THEM ARE CONSEQUENTIAL, INDIRECT OR SPECIAL LOSSES OR SPECIAL DAMAGES NOR WITHOUT PREJUDICE TO THE FOREGOING FOR ANY OTHER CONSEQUENTIAL, INDIRECT SPECIAL LOSSES OR SPECIAL DAMAGES, ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS AGREEMENT.

## **8. DELIVERY**

- 8.1 Subject to the custom of the port, delivery of the marine fuels shall be made day and night, Sundays and holidays included.
- 8.2 Buyer warrants that the Vessel is in possession of all equipment necessary to receive Product in local port, and has on board all certificates required to comply with all relevant regulations applicable to receipt of marine fuels at the Delivery Location, including without limitation: (a) U.S. Coast Guard certificate of financial responsibility and (b) Certificate of Insurance as described in the 1969 civil liability convention for oil pollution damage and the international convention on civil liability for oil pollution damage. Buyer warrants that the Vessel shall fully comply or hold waivers of non-compliance with all applicable U.S. Customs regulations in effect as of the date of delivery. Buyer warrants that the Vessel shall comply with all obligations under the international ships and port facility security code and the U.S. Maritime Security Act of 2002.
- 8.3 Prior to commencement of delivery, the Buyer shall have the Vessel inform Seller about the maximum pumping rate and pressure at which the Vessel can receive fuel. Buyer is responsible for ensuring that the Product is delivered at a safe rate and pressure and that all equipment utilized therefore is in a safe and satisfactory condition. Buyer shall ensure that the Vessel remains in port for a sufficient period of time necessary to accept the full contract quantity at the actual pumping rate.
- 8.4 For barge delivery, the Buyer shall have the Vessel provide a free side to receive the marine fuels and will render all necessary assistance that may reasonably be required to moor or unmoor the barge or to connect or disconnect the delivery hoses. Unless otherwise agreed in writing, Seller undertakes to provide barge delivery only within the limits of the delivery port. All barges utilized in the delivery are independent subcontractors and are not agents of Seller. Buyer shall be bound by the terms set forth in the barge company's or common carrier's tariff, general terms and conditions, contract of carriage or similar written contracts, as the case may be.
- 8.5 If Vessel arrives at the Delivery Location after the ETA in its twenty-four (24)-hour notice, barge demurrage and Seller's disbursements caused by the delay shall be for Buyer's account.
- 8.6 Seller shall make reasonable efforts to fuel the Vessel as promptly after its arrival at the Delivery Location as circumstances permit. However, Buyer's sole remedy in the event of delay in delivery or failure of supply shall be to cancel the applicable Confirmation.
- 8.7 In the event that Buyer fails to accept the full contract quantity for any reason other than force majeure, Seller shall have the remedies specified in Section 9 of the GT&Cs.

## **9. DOCUMENTATION**

- 9.1 Upon completion of delivery, Buyer shall have the Vessel deliver a signed receipt to Seller.

## **10. LIENS**

- 10.1 In the event that the marine fuel is sold for the purpose to fuel a Vessel, the Buyer acknowledges and agrees that the Transaction is entered into and the Product is supplied upon the faith and credit of the Vessel. When Product is supplied to the Vessel, in addition to any other security furnished by Buyer, Buyer and Seller agree and acknowledge that a maritime lien over the Vessel, its appurtenances and accessories is thereby created in favor of Seller for all sums owed Seller with respect to the affected Transaction and that Seller in agreeing to deliver Product to the Vessel, does so relying upon the faith and credit of the Vessel. If Buyer is not the owner of the Vessel, Buyer expressly warrants that it has the authority of the owner to pledge the Vessel's credit and that it has or will give notice of the provisions of this clause to the owner. Seller shall not be bound by any attempt by any person to restrict, limit or prohibit its lien or liens attaching to a Vessel unless written notice conforming to all requirements of U.S. Federal Maritime Law is duly received by Seller *prior* to Seller entering into the Transaction.

## **11. POLLUTION PREVENTION AND RESPONSIBILITY**

- 11.1 In the event of an escape or discharge of the marine fuel or any other pollutant at any stage during the bunkering operation, from or in the vicinity of the Vessel, causing or threatening to cause pollution damage, Buyer authorizes Seller (regardless of who may be responsible) to immediately undertake all measures as are reasonably necessary to prevent or mitigate the pollution damage. Seller shall keep Buyer and Vessel advised of the nature and results of any such measures taken and, if time permits, the nature of the measures intended to be taken. Any of the aforementioned measures shall be at Buyer's expense, provided that if Seller caused or contributed to such escape or discharge, the expense of the aforementioned measures shall be borne by Seller in proportion to its negligence in causing or contributing to the escape or discharge. If Buyer considers said measures should be discontinued, Buyer shall so notify Seller and thereafter Seller shall have no right to continue said measures at Buyer's expense. This provision shall be applicable only between the Parties hereto and shall not affect any liability of either party to third Parties, including but not limited to governments.

## **12. TERMINALS**

- 12.1 If the Delivery Location is a marine terminal, failure of the Vessel to comply with the terminal's regulations or applicable local environmental laws, or the breakdown of the Vessel's safety or environmental systems, shall entitle Seller to order the Vessel to vacate the berth, with all time and expenses to be for Buyer's account.

## **13. GOVERNING LAW**

- 13.1 Regardless of where the fuel is delivered to the Vessel, U.S. Federal Maritime Law shall be paramount in governing the rights and duties of the Parties hereto. To the extent U.S. Federal Maritime Law does not preempt or is not applicable to the subject matter, this Agreement shall otherwise be governed and construed in accordance with the laws of the State of New York without reference to its choice of law rules. The United Nations Convention on contracts for the international sale of goods shall not apply to this Agreement.