



**Marine Provisions for the
Delivery and Loading of
Petroleum Products & Natural
Gas Liquids**

U.S. Oil & Refining Co.

Dated December 1, 2016

U.S. Oil & Refining Co.
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Petroleum Products and Natural Gas Liquids
Tacoma, WA Terminal
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**Marine Provisions for the Delivery and Loading of
Petroleum Products and Natural Gas Liquids**

1. **General:** These Marine Provisions will apply to all petroleum and natural gas liquids purchase and sales transactions taking place at the USOR Tacoma, WA Terminal between USOR and any other party. In the event of any conflict between the terms of the Agreement as defined below and the Marine Provisions, the terms of the Agreement shall govern. In all other cases, these Marine Provisions shall govern.

2. **Definitions:**

- A. "USOR" means U.S. Oil & Refining Company, a Delaware corporation with its headquarters located at 3001 Marshall Ave, Tacoma, WA 98421.
- B. The term "cargo" refers to all crude oil, condensate, feedstock, refined product, gas liquid or additive described elsewhere in this Agreement (collectively the, "Product(s)").
- C. The terms "Buyer" and "Seller" refer to the respective purchaser and seller under the terms of the Agreement.
- D. The term "Agreement" refers to the purchase or sales contract between USOR and any third party, which incorporates these Marine Provisions. The Agreement will specify the quantity, quality, price and other terms and conditions of the purchase or sales transaction.
- E. The term "Vessel" refers to any barge, tow, ocean-going barge or ocean tanker, collectively, carrying cargo under this Agreement.

The term "tow" refers to any combination of towboats and barges with the ability to function as a single unit.

References herein to "Vessel(s) account" and responsibilities, duties, rights and liabilities of the "Vessel" are intended to include not only the Vessel itself, but also the owner, operator, Master, agent, and Vessel party where applicable.

- F. The term "Vessel Party" refers to the party nominating a Vessel to perform under this Agreement.
- G. The term "Terminal" refers to the USOR refinery and/or Terminal facility located in Tacoma, WA.
- H. The term "Terminal Party" refers to USOR.
- I. The terms "laydays" and "contract laydays window" refers to the delivery/receipt period specified in the Agreement or subsequent individual delivery/receipt periods nominated and accepted in writing between scheduling contacts to this Agreement.
- J. The term "allowed laytime" is the number of hours that the Terminal is permitted for all activities associated with loading or discharging a Vessel without paying demurrage.
- K. The term "used laytime" is the number of running hours between the beginning of laytime and the ending of laytime less certain exclusions. In the case of tows, inland barges and ocean-going barges less than 16,000 DWT, laytime generally begins with Notice of Readiness (NOR) and ends when the Terminal releases a Vessel.

In the case of ocean-going barges 16,000 DWT and over and ocean tankers, laytime generally begins six (6) hours after NOR or when a Vessel is all fast to the dock, whichever occurs first, and ends when hoses are disconnected. Exceptions to these beginning and ending points are outlined in Section 6 of these provisions.

- L. The terms “FOB”, “CFR”, “CIF” and any other trade terms referred to in the Agreement shall have the meaning ascribed to these in the Uniform Commercial Code as enacted in the state of Washington (as amended from time to time), except if there is any inconsistency between Incoterms and the Agreement, the Agreement shall govern.

3. Vessel Related Conditions:

- A. Vessel Nomination & Acceptance: All Vessels nominated by the Vessel Party, including each Vessel to be used in cargo loading, discharging, or lightering, shall meet the general Vessel requirements of the Terminal which shall receive or deliver the cargo, including published or posted Terminal requirements. Acceptance or rejection of the nominated Vessel(s) shall be communicated to the Vessel Party as soon as practical after receipt of nomination and answers to any Vessel screening questions. Acceptance of any Vessel shall not constitute a continuing acceptance of such Vessel for any subsequent loading, discharging, or lightering. Unless otherwise agreed to in writing by both parties to this Agreement, all deliveries and loadings shall be on a single Vessel. Once a nominated Vessel is accepted, the use of any other Vessel(s), including lighters, carrying cargo under this Agreement shall be by prior mutual agreement in writing and all expense, risk of loss or liability shall be for the Vessel's account. Agreement for the use of such other Vessel(s) meeting the above requirements shall not be unreasonably withheld.
- B. Eligibility: The Vessel Party warrants that the Vessel is in all respects eligible under applicable laws and regulations for trading to the ports and places specified in the Agreement, and that at all times the Vessel shall have onboard all certificates, records and other documents required for such service.
- C. Estimated Time of Arrival (ETA): Upon acceptance of nomination by the Terminal Party, the Vessel shall immediately advise the Terminal and other parties to this Agreement of its current position/location, status, and ETA by telex, fax, letter, telegram, or electronic mail. The ETA shall be further updated by telex, fax, letter, telegram, or electronic mail as follows:
 - 1) Upon leaving the last port, Terminal or lightering site before the contract port, Terminal or lightering site, or at least seven (7) days in advance, whichever is less;
 - 2) where applicable, at 72, 48, 24, and 12 hours before the Vessel's expected arrival; and
 - 3) Vessel shall promptly notify the Terminal of the new ETA if the ETA changes by plus or minus two (2) hours or more following the twelve (12) hour arrival notice.

Failure to comply with these ETA notifications may result in delays in the Terminal's acceptance of NOR as outlined in Section 5 of these provisions.

- D. Pre-Berthing Questions: The Vessel shall provide the Terminal answers to pre-berthing questions (available from the Terminal's operations contact) at least forty-eight (48) hours prior to the ETA, or after the Vessel nomination and acceptance, whichever is less.

Any Vessel not in compliance with Terminal requirements may not be permitted to dock or may be asked to vacate the berth and any resulting costs and/or delays shall be for the Vessel's account.

Failure of any of a Vessel's safety or environmental systems after initial acceptance by the Terminal is cause to immediately reject the Vessel, including notification to vacate the berth

until suitable repairs are made to return the equipment to good working order. The Vessel must be re-accepted by the Terminal prior to the start or resumption of discharge or loading. Expenses incurred in effecting repairs shall be for the Vessel's account and delays resulting from said repairs shall not count as used laytime nor as time on demurrage.

- E. Legal and Regulatory Compliance: The Vessel Party shall assure that the Vessel is in compliance with all applicable federal, state, and local laws and regulations including but not limited to all applicable federal and state oil spill response plans and financial responsibility requirements. If any Vessel fails to comply with such laws and regulations, the Vessel may be required to leave the Terminal. Any delays due to the Vessel's non-compliance with such laws and regulations shall not count as used laytime nor as time on demurrage. Any delays due to Terminal's non-compliance with such laws and regulations shall count as used laytime and/or time on demurrage. All expenses, losses and delays incurred to obtain or maintain certificates and response plans shall be for the Vessel's account and any delay resulting from the Vessel's non-compliance shall not count as used laytime nor as time on demurrage.
- F. Pollution Cover: In the event of any Cargo spill or discharge or other environmental pollution caused by or in connection with delivery to, or receipt of, Cargo to or from a Vessel, USOR may commence containment or clean-up operations as deemed appropriate or necessary by USOR and shall notify the Vessel and Vessel Party immediately of such operations. To the extent that such spill or discharge is a result of Vessel Fault, Vessel and Vessel Party shall be responsible for the costs of containment or clean-up and any Damages incurred by USOR in connection therewith incurred on account of such Vessel Fault. To the extent that such spill or discharge is the result of USOR Fault, USOR shall be responsible for the costs of containment or clean-up and any Damages incurred by Customer in connection therewith (other than any Damages related to damage to or loss of Cargo). To the extent that such spill or discharge is the result of an event of Force Majeure, USOR shall be responsible for the costs of containment or clean-up, but not any Damages incurred by Vessel. In the event such spill, discharge or other environmental pollution is the result of an act or omission of a third party, including any act or omission of any other customers of USOR, and is not in part the result of Vessel Fault, Vessel shall not be responsible for any costs of containment or clean-up or any Damages incurred by USOR in connection therewith. In the event any such spill or discharge is the result of the acts or omissions of multiple parties (including Vessel, USOR, other customers of USOR and/or third parties), Vessel and Vessel Party shall pay their pro-rata share (based upon the extent to which Vessel Fault was a cause of such spill or discharge) of all costs of containment or clean-up.

For the purposes of the foregoing:

"Vessel Fault" means acts or omissions of Vessel or Vessel Party that are (i) grossly negligent, (ii) in material violation of applicable Law, or (iii) in breach of the Agreement, including the Terminal Procedures.

"USOR Fault" means acts or omissions of USOR or USOR's contractors that are (i) grossly negligent, (ii) in material violation of applicable Law, or (iii) in breach of the Agreement, including the Terminal Procedures.

"Damages" means, and are limited hereunder to, as between the Parties, any and all liabilities, costs, expenses (including reasonable attorneys' fees), losses, damages, claims, demands, judgments, lawsuits and causes of actions.

For the purpose of this Clause, the meaning of the term "Pollution Damage" shall include all damages compensable under applicable U.S. federal, state or local law.

- 1) The Vessel Party warrants that throughout the Vessel's service under this Agreement, the Vessel shall have on board the following certificates:

- a. Certificates issued pursuant to the Civil Liability Convention 1969 ("CLC"), and pursuant to the 1992 protocols to the CLC, as and when in force.
- b. Certificates issued pursuant to Section 1016(a) of the Oil Pollution Act 1990, and Section 108(a) of the Comprehensive Environmental Response, Compensation and Liability Act 1980, as amended in accordance with Part 138 of Coast Guard Regulations 33 CFR

If Buyer's Vessel does not meet any of the above requirements Seller or Seller's Suppliers may refuse to berth or load or continue to load the Vessel with the scheduled loading.

G. Insurance: This provision shall be applicable only between parties hereto and shall not affect any liability of the Vessel to third parties, including but not limited to governments.

- 1) Ocean Tankers and Ocean Barges: The Vessel Party warrants that throughout the Vessel's service under this Agreement, the Vessel shall have full and valid Protection and Indemnity Insurance ("P&I Insurance") and valid Excess Pollution Liability Insurance ("Excess Insurance"), as described below, with the P&I Insurance placed with a P&I Club that is a member of the International Group of P&I Clubs. The P&I Insurance (including P&I U.S. surcharges) and Excess Insurance shall be at no additional cost to the Terminal Party.

The P&I Insurance must include coverage against liability for cargo loss/damage for the full value of the cargo. The P&I Insurance must also include coverage against liability for pollution for an amount not less than \$1,000,000,000 (One Billion U.S. dollars) per incident. The Excess Insurance must cover like liability for pollution for an amount not less than 200 million U.S. dollars per incident.

- 2) Inland Barges: The Vessel Party warrants that throughout the Vessel's service under this Agreement, the Vessel shall have full and valid insurance including pollution liability insurance for an amount not less than 100 million U.S. dollars per incident for Vessels carrying a cargo of non-persistent oil as defined by U.S. Oil Pollution Act of 1990. This insurance shall be at no cost to the Terminal Party.

The Vessel Party warrants that throughout the Vessel's service under this Agreement, the Vessel shall have full and valid insurance including pollution liability insurance for an amount not less than 200 million U.S. dollars per incident for the Vessels carrying a cargo of persistent oil as defined by U.S. Oil Pollution Act of 1990. This insurance shall be at no cost to the Terminal Party.

- 3) Hull and Machinery Insurance The Vessel Party warrants that throughout the Vessel's service under this Agreement, the Vessel shall have full and valid Hull and Machinery Insurance to the declared value of the Vessel, including full collision liability for removal of wreck. Where the Vessels engage in towing operations the insurance shall include tower's liability with the sister ship clause un-amended. Above collision liability may alternatively be provided through the Protection and Indemnity insurance. The policy amount shall not be less than 25 million U.S. dollars or the value of the Vessel, whichever is greater.
- 4) Evidence of Insurance: With respect to the requirements of paragraphs G.(1), (2) and (3) above, if requested at any time during this Agreement, the Vessel Party shall promptly furnish to the Terminal Party reasonable evidence of such P&I Insurance, Excess Insurance, and any other required pollution liability insurance. The warranty set forth above is an essential part of this Agreement, and the obligations of the other party under this Agreement are conditional on the truth and performance of such warranty. Any breach of the above warranty shall entitle the other party to whom the warranty is given to terminate this Agreement and/or to recover any damages allowable in law, admiralty or equity.

- H. Drug and Alcohol: The Vessel Party warrants that any Vessel (not otherwise subject to U.S. Department of Transportation drug and alcohol regulations) that is proposed for acceptance under this Agreement must have submitted a valid Drug and Alcohol Policy Blanket Declaration to USOR from the owner or operator of the Vessel warranting that the Vessel is operating under a drug and alcohol policy that meets USOR's standards in effect at the time and meets or exceeds the Oil Companies International Marine Forum (OCIMF) guidelines
- I. Vessel Inert Gas System: All Vessels fitted with an Inert Gas System (IGS), regardless of cargo aboard or cargo to be loaded, will not be permitted to berth unless the IGS is fully operational and all cargo tanks are inerted with an oxygen level at or below 8 percent and a positive gas pressure of at least 100 millimeters (4 inches) of water is maintained on those cargo tanks. Vessels intending to handle cargos which could be adversely affected by inert gas, and such cargos do not require inert gas blanketing, should request an exemption from this clause at least 3 business days prior to entering the Terminal. If required and if agreed by the Terminal, manual gauging/sampling of Onboard Quantity (OBQ) or Remaining on Board (ROB) may be accomplished meeting the guidelines set out in the API Manual of Petroleum Measurement Standards and all applicable API Bulletins and standard publications, and applicable International Safety Guide for Oil Tankers and Terminals (ISGOTT) guidelines. Should the IGS fail after the Vessel has berthed, the cargo transfer operation shall be terminated immediately and the Vessel may be ordered to clear the berth until the IGS is fully operational and tanks are inerted to the pre-arrival condition. Costs and time associated with Vessel movement for IGS repair shall be for the Vessel's account. The use of temporary or substitute equipment or procedures to correct IGS malfunctions must be accepted by the Terminal prior to re-admittance to the Terminal, or for continuation of Vessel loading/discharging at the Terminal. Any Vessel time lost as a result of the Vessel not complying with all of the provisions in this section shall not count as used laytime nor as time on demurrage.
- J. Vessel Connection Construction: The Vessel Party warrants that all piping, valves, spools, reducers and other fittings comprising the Vessels manifold system will be of steel.
- K. Carrier Alpha Code: The Vessel Party warrants that the bill of lading issuer and the Vessel shall comply with all U.S. Customs Regulations concerning carrier alpha codes and that any delay, expense or other consequence of any failure to comply with the subject Regulations shall be for the Vessel's account, and the Vessel Party will indemnify Terminal Party for any loss, expense, cost, penalty or fine incurred by Terminal Party, attributable to such failure. This provision shall be without prejudice to any other right, defense, remedy or claim that Terminal Party may otherwise have. It is further expressly understood that no delay or other difficulty in performing this Agreement by the Vessel Party, which is caused by a failure to comply with said Regulations shall be considered to be due to force majeure or to any cause beyond the control of the Vessel Party.
- L. U.S. Customs Compliance: The Vessel Party warrants that Vessel shall fully comply with or hold necessary waivers for all applicable U. S. Customs Regulations in effect as of the date the Vessel berths. Any delay resulting from the Vessel's non-compliance shall not count as used laytime nor as time on demurrage. The Vessel Party shall provide all information required for the import or export as appropriate of the cargo to the other party to this Agreement at least three (3) business days prior to the Vessel arrival. Any delay resulting from lack of information required of the Vessel Party for import or export as appropriate of the cargo shall not count as used laytime nor as time on demurrage.
- M. Security Regulations: the Vessel Party warrants that the Vessel shall be in compliance with any and all regulations issued by the US Coast Guard pursuant to the Maritime Transportation Security Act of 2002 ("MTSA"). Any delay resulting from the failure of the Vessel Party, Ships Owner or Operator to comply with the MTSA shall not count as used laytime nor as time on demurrage.

4. Terminal Related Conditions:

- A. Safe Berth Availability: The Terminal shall provide a safe berth to which Vessels may proceed and from which they may depart and where the Vessel can always lie safely afloat. Notwithstanding anything contained in this provision, the Terminal shall not warrant the safety nor draft of public channels, fairways, approaches thereto, anchorages, or other publicly-maintained areas either inside or outside the port area where the Vessel may be directed. The Terminal shall not be liable for any loss, damage, injury or delay to the Vessel resulting from the use of such public waterways. If hold-in tugs are required because the Vessel does not meet Terminal's minimum mooring requirements any charges for hold-in tugs shall be for the Vessel's account.

The Terminal shall provide a berth for the nominated Vessel free of a wharfage fee for normal cargo transfer. Dockage and service fees, including mooring, fresh water, steam, and oily slops receipts will be for the Vessel's account. In addition, all duties and other charges on the Vessel, including, without limitation, those incurred for tugs and pilots, and other port costs, including fleeting, and taxes on freight shall be for the Vessel's account.

- B. Vacating of Berth: The Terminal may order Vessel to vacate its berth if it appears that the Vessel will not, because of the Vessel's disability, be able to complete loading or discharging of cargo within twenty-four (24) hours (pro-rata for part cargo) of the Vessel's arrival in berth. The Vessel shall not be required to vacate a berth unless that berth is needed to accommodate another Vessel. Upon disconnecting the hoses, used laytime shall cease, and the Vessel, after tendering NOR to recommence loading or discharging, shall be re-berthed in order of rotation, unless otherwise agreed by the Terminal, and used laytime shall resume upon the Vessel's reconnection of hoses. Expenses incurred for vacating the berth or re-berthing shall be for the Vessel's account.
- C. Shifting of Vessels: The Terminal shall have the right to shift a Vessel from one berth to another or to anchorage. Expenses incurred in such shifting or anchoring of Vessels shall be for the Terminal's account, with the time consumed in shifting counted as used laytime or as time on demurrage.

Expenses incurred for any shifting of the Vessel within a port requested by the Vessel or Vessel Party shall be for the Vessel's account, and the time consumed in shifting shall not be counted as used laytime nor as time on demurrage.

- D. In-Harbor Lightering: In-harbor lightering shall not be permitted without the prior approval of the Terminal. In-harbor lightering shall be performed at the Vessel Party/Buyer's sole expense and risk. The Vessel Party/Buyer shall hold the Terminal and/or Seller harmless for any loss or liability resulting from in-harbor lightering.
- E. Terminal's Environmental/Safety Observer: The Terminal may, at its option, place an observer on board the Vessel to observe loading and/or discharging of cargo and related operations during the period the Vessel is in port. This observer will observe operations and provide advice to the Master and assist in avoidance of any type of pollution, unsafe act, or violation of Terminal requirements. The observer will not, however, under any circumstances, order or direct the taking of any particular action or interfere in any way with the Master's exercise of authority. Neither the Terminal or the observer shall be responsible for the consequences of any actions taken or not taken based upon any advice provided by the observer, and the Master and the Vessel shall be solely responsible for all such actions or omissions. The responsibility and liability for any pollution, unsafe act, or violation of Terminal requirements remains with the Vessel and its Master.

- F. Hoses: Unless Terminal requirements provide otherwise, hoses/loading arms for loading or discharging, as the case may be, shall be furnished by the Terminal and shall be connected and disconnected by the Terminal, or at the option of the Terminal, by the Vessel, at the Terminal's risk and expense. Flanges for hose connections shall be at the Vessel's dockside rail. Crossover hoses between barges shall be furnished and connected by the barge at the barge's risk and expense.
- G. Wharf Damage: The Vessel Party assumes full responsibility for any damage sustained by wharves, berths, or docks owned or maintained by the Terminal attributable to the negligent or improper operation of any waterborne craft, either owned or operated by the Vessel Party or being operated by subcontractors of the Vessel Party. The Vessel Party will fully and completely indemnify the Terminal for any such damages. This provision between the parties is without prejudice to any other rights, remedies, claims, causes of action or defenses thereto which may exist.

5. Notice Of Readiness (NOR):

- A. Tendering of NOR: After the Vessel has arrived at the customary anchorage for Tacoma, WA, and in all respects is ready to proceed to the berth to commence loading or discharging the cargo, the Master/Captain, or the Masters agent/Barge representative shall give the Terminal and the other parties hereto notice by fax, letter, telegraph, wireless, radio telephone, or telephone that the Vessel is ready to load or discharge the cargo, as the case may be, berth or no berth. If notice is given verbally, confirmation in writing shall be made within twelve (12) hours, failing which the Terminal's record of the receipt of NOR shall control.

The Terminal shall not be required to accept NOR before the contract laydays window as specified in the Agreement. If, however, the Terminal, at its sole discretion, agrees to accept NOR before the contract laydays window, such agreement must be in writing, and pricing/commencement of used laytime shall be as outlined in section B. below and in Section 6 of these provisions. NOR shall not be tendered until all required information and/or documentation required for the import/export of cargo has been furnished to the Terminal and/or appropriate governmental agencies, including but not limited to U.S. Customs. Delays associated with securing and providing the required import/export information shall not count as used laytime nor as time on demurrage.

NOR shall not be tendered until the Vessel Party has complied with all the financial and credit responsibilities specified in this Agreement. Delays associated with the Vessel Party complying with financial and/or credit responsibilities shall not count as used laytime or as time on demurrage

- B. Pricing Based on NOR: If a Vessel tenders NOR prior to the commencement of the contract laydays window, then the official NOR date for pricing shall be the first day of the contract laydays window. If a Vessel tenders NOR after the contract laydays window, then the official NOR date for pricing shall be the date when the Vessel is all fast to the dock.

6. Allowed and Used Laytime:

- A. Tows, Inland Barges and Ocean-Going Barges less than 16,000 DWT
 - 1) If the Vessel tenders NOR prior to the commencement of the contract laydays window, used laytime shall commence at 00:01 hours local time on the date of commencement of the contract laydays window unless the Vessel is berthed prior to this time with Terminal's written consent, in which event used laytime commences when the Vessel is all fast to the dock.

For NOR tendered within the contract laydays window, used laytime shall commence upon receipt of the Vessel's NOR, berth or no berth.

For Vessels tendering NOR after the end of the contract laydays window, used laytime shall commence when the Vessel is all fast to the dock.

- 2) Allowed laytime for loading or discharging shall be based on charter party terms (when one exists), but shall never be less than twelve (12) hours.
- 3) If the Vessel is owned equipment or not covered by a charter party agreement, allowed laytime shall be calculated based on the tables below.

<u>Tows and Inland Barges</u>		<u>Allowed Laytime</u>	<u>Corresponding Minimum Load/Discharge Rates (Bbls/Hour)</u>
<u>Clean</u>			
	Loading:	3 hours plus 0.33 hours/kB	3,000 Bbls/Hour
	Discharging:	3 hours plus 0.40 hours/kB	2,500 Bbls/Hour
<u>Dirty</u>			
	Loading:	3 hours plus 0.33 hours/kB	3,200 Bbls/Hour
	Discharging:	3 hours plus 0.40 hours/kB	2,500 Bbls/Hour
<u>Crude</u>			
	Loading	3 hours plus 0.33 hours/kB	6,000 Bbls/Hour
	Discharge	3 hours plus 0.33 hours/kB	8,000 Bbls/Hour

<u>Ocean Going Barges Less than 16,000 DWT</u>		
<u>Cargo Size</u>	<u>Allowed Laytime</u>	<u>Corresponding Minimum Load/Discharge Rates (Bbls/Hour)</u>
Up to 40,000 Bbls	12 hours/Kb**	
40,000 to 50,000 Bbls	** plus .33 Hours/KB	3,000 Bbls/Hour
50,000 to 60,000 Bbls	** plus .25 Hours/KB	4,000 Bbls/Hour
60,000 to 90,000 Bbls	** plus .22 Hours/KB	4,500 Bbls/Hour
90,000 to 120,000 Bbls	** plus .17 Hours/KB	6,000 Bbls/Hour
120,000 to 180,000 Bbls	24 Hours	6,250 Bbls/Hour
More than 180,000 Bbls	30 Hours	6,000 Bbls/Hour

- 4) Vessels must either meet the above minimum discharge rates, provided the Terminal is capable of receiving such, or maintain a minimum back pressure of 100 psi at the Vessel's rail, provided the Terminal is capable of receiving such. In the event the Vessel fails to meet either of the aforementioned criteria, any time consumed in pumping cargo in excess of allowed laytime as specified in the charter party terms or as calculated from the above tables shall not count as used laytime or time on demurrage.

Terminal must meet the above minimum load rates provided the Vessel is capable of receiving such. If the Vessel is not capable of receiving such, any time consumed in pumping cargo in excess of allowed laytime as specified in the charter party terms or as calculated from the above tables shall not count as used laytime or time on demurrage.

- 5) Used laytime shall cease when the Vessel is released by the Terminal and/or cargo inspector

B. Ocean Tankers and Ocean-Going Barges 16,000 DWT and Over

- 1) If the Vessel tenders NOR prior to the commencement of the contract laydays window, used laytime shall commence at 0600 hours local time at the customary NOR location on the date of commencement of the contract laydays window unless the Vessel is berthed prior to this time with the Terminal's consent, in which event used laytime commences when the Vessel is all fast to the dock.

If NOR is tendered within the contract laydays window, used laytime shall commence six (6) hours after receipt of the Vessel's NOR or upon its being all fast to the dock, whichever occurs first.

In the event lightering is required by the Terminal prior to berthing, the lightering point shall not be considered a second discharge berth or second discharge port. Used laytime for the lightering point shall commence six (6) hours after receipt of NOR at the customary anchorage or other place of waiting, or when the lighter makes fast alongside, whichever occurs first, and continue until hoses are disconnected. In the event the berth is not then available, the Terminal is entitled to the six (6) hours tendering allowance, or unused remainder thereof, if any. Lightering for any other purpose shall be for the Vessel's account.

For Vessels arriving after the end of the contract laydays window, used laytime shall commence when the Vessel is all fast to the dock.

- 2) Allowed laytime for loading or discharging shall be based on charter party terms if nonreversible, otherwise, thirty-six (36) running hours shall be permitted as allowed laytime for either loading or discharging, as the case may be, for a full cargo, and a volumetric pro rata thereof for part cargo based on the volume actually delivered divided by the Vessel's full cargo volume (determined by the bill of lading volume for deliveries to a Terminal). However, the minimum allowed laytime will be twelve (12) hours for a part cargo.

The Vessel Party certifies that the Vessel is capable of discharging the entire cargo at the Terminal within twenty-four (24) hours, or maintaining 100 psi at the ship's rail as measured hourly (except during use of shoreside assisted pumps or during stripping-only operations for which a maximum allowance of two (2) hours is made) provided shore facilities permit. In the event the Vessel fails to meet the aforementioned criteria, any time consumed in pumping cargo in excess of twenty-four (24) hours shall not count as used laytime.

- 3) Used laytime shall cease upon disconnection of hoses after all cargo has been discharged or received. If the Vessel is delayed by the Terminal and/or cargo inspector in excess of two (2)

hours after disconnection of hoses, used laytime shall be deemed to have continued from the disconnection until the termination of such delay.

- C. Used Laytime Exclusions: The following is a partial list of situations where time consumed berthing/loading and/or discharging shall not count as used laytime nor as time on demurrage for all Vessels:
- 1) passage time of the delivery Vessel, including lightering Vessels, from the customary anchorages or other place of waiting, to the berth
 - 2) any delay due to the inability of the Vessel's facilities to safely discharge or receive cargo within the time allowed;
 - 3) any time consumed in interruption of transfer operations due to the Vessel's requiring separate and/or additional shore tank gauges for any reason or the Vessel's failure to comply with published or posted Terminal requirements. This would include interruption of transfer operations as a result of the Vessel Party requests for line fill checks by comparing intermediate ship and shore gauges;
 - 4) delay due to prohibition of cargo transfer at any time by the Vessel, Vessel Party, or the owner of the Vessel, or by governmental authorities, unless such prohibition is caused by Terminal's failure to comply with applicable laws or regulations;
 - 5) failure to have the required certificate of financial responsibility, or failure to be in compliance with United States Coast Guard Regulations (or hold the necessary waiver if not in compliance), or failure to have other legally required documentation;
 - 6) any delay caused by strike, lockout, stoppage or restraint of labor of the Master, officers and crew of the Vessel or towboat or pilots or other subcontractors under the Vessel Party's control;
 - 7) any delay incurred for the Vessel's account including but not limited to bunkering a Vessel, reconfiguring barges in a tow or cleaning Vessel compartments;
 - 8) after the Terminal notifies the Vessel to proceed in, or after disconnection of hoses or Vessel release per the paragraph below, any delay in reaching or clearing the berth caused by conditions not reasonably within the Terminal's control, including but not limited to weather delays, (including but not limited to lightning, storm, wind, waves, swells, and fog) channel blockage, or awaiting daylight, pilots, tugs, and tide;
 - 9) any delay caused by the Vessel Party's failure to comply with all financial and/or credit responsibilities of this Agreement; and
 - 10) any delay for which the Vessel, the Vessel's Master, or crew is responsible.

7. **Demurrage**: Demurrage shall be payable for each running hour and pro rata for each part of an hour that used laytime exceeds the allowed laytime rounded to the nearest tenth of an hour.

A. Rate Determination:

- 1) For chartered equipment, the rate shall be based on the rate specified in the Vessel's transportation contract. For demurrage purposes, all barges or tows operating as a unit shall be considered collectively as one barge or tow.
- 2) For owned equipment, the rate shall be based on a mutually agreeable rate between the parties. In the event the parties are unable to agree on a rate, then each party shall refer the matter to an independent shipping broker active in the relevant spot market ("broker(s)"). Each broker so designated shall give a written opinion on the spot market level, and the rate used shall be based on the arithmetic mean of the two levels, provided the two levels do not differ by more than 20 percent.

In the event the two levels specified by the brokers differ by more than 20 percent, each party shall refer the matter to another broker. Each such additional broker shall give a written opinion on the spot market level, and the rate used shall be based on the arithmetic mean of the two new levels, provided these levels do not differ more than 20 percent.

In the event the new levels specified differ more than 20 percent, the arithmetic mean of the middle two of the four specified levels shall be used.

- 3) In the event loading or discharging is terminated prematurely as the result of a force majeure situation, used laytime shall cease at the time the incident causing the termination of the operation commences.

Demurrage incurred in port at the Terminal by reason of fire, explosion, adverse weather or by strike, lockout, stoppage or restraint of labor or by breakdown of machinery or equipment in or about the Terminal shall be paid for at one-half (1/2) the rate otherwise provided for demurrage.

- 4) In the event of a part-cargo situation, the demurrage rate shall be a volumetric pro rata rate based on the actual volume discharged divided by the full cargo loaded as determined by the bill of lading.

- B. Documentation and Filing of demurrage Claims: Demurrage claims must be submitted in writing with supporting documentation, to the address specified in the Special Provisions, within ninety (90) calendar days from the date of completion of loading or discharging, defined as the disconnection of hoses. **IF THE SUPPORTING DOCUMENTATION IS NOT PROVIDED WITHIN THE SPECIFIED TIME, THE CLAIM WILL BE DEEMED TO BE WAIVED.**

Demurrage claims shall be accompanied by supporting documentation, including an invoice, copy of the Vessel's port and pumping logs signed by the Master, a copy of the charter party and/or third party invoice, NOR document and used laytime statement as well as such other supporting data as may be reasonably requested. The Terminal party shall not be obligated to pay demurrage in excess of the amount actually incurred by the Vessel party. **NO CLAIMS FOR SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES OF ANY NATURE SHALL BE MADE BY EITHER PARTY RELATING TO DEMURRAGE.**

Undisputed demurrage claims will be due the Vessel Party to this Agreement no later than ninety (90) calendar days from receipt of invoice and supporting documents. Demurrage charges shall be presumed to be valid if not disputed in writing by the Terminal Party to this Agreement within ninety (90) calendar days from receipt of invoice and supporting documentation. **FAILURE TO DISPUTE A CLAIM AND TO PROVIDE SUPPORTING DOCUMENTATION FOR SUCH DISPUTE WITHIN THE SPECIFIED TIME SHALL BE CONSIDERED A WAIVER OF ANY DISPUTE AS TO THE AMOUNT OF THE DEMURRAGE CLAIM AND WILL REQUIRE FULL AND TIMELY PAYMENT OF THE DEMURRAGE CLAIM BY THE TERMINAL PARTY.** This provision of the Agreement between the parties does not affect any rights, defenses, liabilities or duties of the parties as to third parties. The fact that the Terminal Party has not collected demurrage from a third party shall not be an excuse or defense to a claim for payment by the Vessel Party.

8. Risk and Title:

- A. Loaded: Title to and risk of loss or damage to any Product(s) loaded under this Agreement shall be transferred from Seller to Buyer at the Terminal as the Product passes the Vessel's permanent hose connection.
- B. Delivered: Title to and risk of loss or damage to any Product delivered under this Agreement shall be transferred from Seller to Buyer at the Terminal as the Product passes the Vessel's permanent hose connection.

9. Quantity and Quality Determination:

- A. Measurement: Unless otherwise specified, quantities delivered into or from Vessels and barges shall be measured by shore tank gauges; in the event that shore tank gauges are determined to be moving and it is mutually agreed that accurate shore measurements are not available, then Vessel gauges shall be used. All measurement practices must conform to guidelines set out in the current API Manual of Petroleum Measurement Standards and all applicable API Bulletin and API Standards Publications.
- B. Independent Inspection: The quantity and quality of the cargo delivered to or from Vessels hereunder shall be determined by a mutually agreed upon independent, licensed petroleum inspector. The cost of the inspection service shall be shared equally between both parties unless otherwise agreed to in writing by the parties hereto. All measurement practices must meet the guidelines set out in the API's manual of Petroleum Measurement Standards and all applicable API Bulletins and API Standards publications. The inspectors determination as to quantity and quality shall be conclusive and binding upon both parties for invoice purposes, but without prejudice to the right of either party to pursue a claim. Demurrage incurred for time waiting for inspector shall be paid at half rate.

All quality inspections for certifying deliveries into marine Vessels shall be based on a shore tank sample prior to loading. All quality inspections for certifying deliveries from marine Vessels shall be based on a composite Vessel sample prior to discharge.

During loading or discharging, a proportionate line composite sample may be collected at the point of custody transfer between the Vessel and the Terminal (i.e. a point between the first unblinded connection on the Vessel and the first unblinded connection on the shore line). If a quality discrepancy exists between the shore tank and Vessel composite samples and a line composite sample has been collected, the line composite sample results will be the official referee for determination of quality.

Vessels are responsible for compartment cleanliness, and are subject to inspection prior to loading, including Vessels equipped with inert gas systems, where non-visual methods may be utilized. Delays associated with cleaning the Vessel shall not count as used laytime or as time on demurrage.

- C. Oil Loss Representative: One oil loss representative from the Vessel party will be allowed to witness the inspection; however, the Vessel Party must provide advance written notice to the Terminal and the other party hereto prior to the Vessel's arrival stating the representative's name, company affiliation, company representing, and telephone contact. The oil loss representative must adhere to Terminal safety procedures.
- D. Delivered Volume Tolerance: The Buyer will receive the agreed-to contract quantity plus or minus, at Sellers option, an agreed-to operational tolerance in loading the Vessel. The full mother Vessel's loaded cargo shall be delivered up to the contract maximum volume even if lightering is required at discharge.

In the event the loaded cargo exceeds the maximum contract volume and Buyer receives delivery of only a portion of the cargo via lighter Vessel, the lighter Vessel fully laden to safe arrival draft is to be delivered for Buyers account only up to the contract maximum volume.

E. Notification of Claims

- 1) Quantity: Any claim as to a shortage in quantity of cargo shall be made in writing with supporting documentation to the delivering party within sixty (60) calendar days from the date of completion of delivery (defined as disconnection of hoses) or shall be deemed to have

been waived. The claiming Party may not submit, and no claim shall be allowed, for any shortfall in quantity where the value is less than 5,000 U.S. dollars or;

- a. Tankers and Ocean Going Barges: The difference between the loaded and discharged quantity (with VEF applied) is less than one quarter of one percent (0.25%) of volume.
- b. Inland Barges: The difference between the loaded and discharged quantity is less than one half of one percent (0.50%) of volume.

Claims should include a letter of protest from the independent inspector stating the specific problems encountered during the measurement.

The party receiving the claim shall respond to claims within sixty (60) days of receipt of the claim and supporting documentation.

- 2) Quality: Any claim as to a defect in quality of cargo shall be made in writing to the delivering party within sixty (60) calendar days from the date of completion of delivery (defined as disconnection of hoses) or shall be deemed to have been waived.
- 3) NO CLAIMS FOR SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES OF ANY NATURE SHALL BE MADE BY EITHER PARTY UNDER THIS AGREEMENT.

10. Force Majeure: No failure or omission to carry out or to observe any of the terms, provisions, or conditions of the Agreement shall give rise to any claim by one party hereto against the other, or be deemed to be a breach of this Agreement, if such failure or omission shall be excused by law or, if the same shall be caused by or arise out of (A) war, hostilities, acts of the public enemy or belligerents, sabotage, blockage, revolution, insurrection, riot, or disorder; (B) arrest or restraint of princes, rulers or peoples; (C) expropriation, requisition, confiscation or nationalization; (D) embargoes, export or import restrictions, rationing or allocation, whether imposed by law, decree or regulation or by voluntary cooperation of either party at the insistence or request of any government or government instrumentality, or any person purporting to act therefor; (E) restriction or onerous regulations imposed upon either party by any government or government instrumentality to whose jurisdiction that party is subject that directly affects that party's ability to perform, whether civil or military, whether legal or defacto, or whether purporting to act under some constitution, decree, law or otherwise; (F) failure or refusal of any government or government instrumentality to supply cargo; (G) act of God, fire, frost or ice, earthquake, storm, lightning, tide, tidal wave or perils of the sea, accidents of navigation or breakdown or injury of Vessels; (H) loss of tanker tonnage due to sinking by belligerents or to governmental taking whether or not by formal requisition; (I) accidents to or closing of harbors, docks, canals or other assistances to or adjuncts of shipping or navigation; (J) epidemic or quarantine; (K) strikes, combination of workmen, lockouts, or other labor disturbances; (L) explosion or breakdown from any cause whatsoever or accidents by fire or otherwise, to cargo discharge (Single Buoy Mooring), storage, refinery and Terminal facilities, plus installations, machinery or other facilities; (M) unavailability of material or equipment or (N) any event, matter or thing wherever occurring and whether or not of the same class or kind as those above set forth which by the exercise of due diligence the party concerned is unable to overcome, whether or not said occurrence is reasonably foreseeable. Each party shall promptly notify the other upon the occurrence of any contingency excusing its performance under this provision.

11. Other Items:

- A. American Tanker Rate Schedule/Worldscale Reference: All terms, conditions, and differentials as set forth in the current revised American Tanker Rate Schedule/Worldscale Reference on the date of Vessel loading or discharging, as applicable, and amendments thereto, shall apply insofar as they are not in conflict with any of the above written provisions.

- B. Applicable Law: THIS AGREEMENT SHALL BE INTERPRETED IN ACCORDANCE WITH THE GENERAL MARITIME LAW AND THE STATE OF WASHINGTON LAW WITHOUT REGARD TO ANY CHOICE OF LAW RULES. NOTWITHSTANDING ANYTHING TO THE CONTRARY, THIS AGREEMENT SHALL NOT BE INTERPRETED OR APPLIED SO AS TO REQUIRE EITHER PARTY TO DO, OR TO REFRAIN FROM DOING, ANYTHING WHICH WOULD CONSTITUTE A VIOLATION OF ANY U.S. LAWS OR REGULATIONS.
- C. Arbitration: Should any dispute arise out of these provisions, the Matter in dispute shall be referred to three persons at Tacoma, Washington, one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision or that of any two of them shall be final, and for purpose of enforcing any award, this agreement may be made a rule of the Court. The proceedings shall be conducted in accordance with the Rules of the Society of Maritime Arbitrators, Inc.

--- END OF MARINE PROVISIONS ---