

## **SPOT PRODUCTS SALE AGREEMENT (BUNKER – TRUCK AND PIPELINE DELIVERIES)**

**WHEREAS** Suncor wishes to supply and the Purchaser wishes to buy Marine Fuel Oil, Marine Diesel Oil, Marine Gas Oil and other petroleum based products (the “**Products**”) from time to time;

**WHEREAS** Suncor and the Purchaser have agreed to identify herein the general terms and conditions (the “**General Conditions**”) which will govern the sale by Suncor and the purchase by the Purchaser of the Products, as will be detailed in spot product sale agreements to be entered into from time to time between Suncor and the Purchaser, which agreements will set forth the specific conditions relating to such sales (the “**Specific Conditions**”).

**NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:**

### **GENERAL CONDITIONS**

#### **1. DEFINITIONS**

**1.1** “**Agreement**” means, collectively, this agreement together with an agreement entered into between the parties regarding the sale of Products setting forth the Specific Conditions of such sale.

**1.2** “**Confidential Information**” means all documents, information or data obtained, prior to or during the performance of the Agreement, by one Party from the other Party. For greater certainty, but without limiting the generality of the foregoing, Confidential Information shall be deemed to include any commercial, financial or technical information, any information regarding performance, sales, marketing, ideas and concepts and programs, software development plans, processes, estimates, customer lists, pricing, promotional activities, advertising activities and any other information relating directly or indirectly to the above-mentioned matters or generally considered by a Party to be confidential. Confidential Information does not include information which, when obtained by a Party, is already in the public domain or is already known to the Party other than as a result of a breach of a confidentiality undertaking given to a Party or a third party.

**1.3** “**Designated Carrier**” means one or several transportation service providers, if any, designated by a Party and acting under its responsibility for the purposes of transporting the Products.

**1.4** “**Dispute**” means any disagreement, breach, litigation, controversy or claim arising out of or resulting from an Agreement or relating thereto, including any Dispute relating to the existence, validity, enforcement, performance, interpretation or expiry of an Agreement.

**1.5** “**Force Majeure**” means a strike, lock-out or other labour dispute, popular uprising, sabotage, act of terrorism, fire, flood, explosion, embargo, an act of any government or governmental agency and any other cause whatsoever beyond the control of one party. Without limiting the generality of the foregoing, the Parties agree that any incapacity of a Party to deliver or purchase the Products, as the case may be, for reasons beyond its control, in whole or in part, due to shipping and navigation limitations, including the loss of all or part of any production facilities, constitutes a case of Force Majeure for the purposes of an Agreement.

The Parties expressly agree that (i) any incapacity by a Party to obtain funds or financing cannot constitute a case of Force Majeure and that (ii) any disequilibrium in the Parties’ respective obligations under an Agreement prior to, during or after the execution of an Agreement shall not, under any circumstances whatsoever, constitute a case of Force Majeure.



**1.6** “**Invoice**” means any invoice or such other documents provided to the Purchaser by Suncor indicating, among other things, any amount to be paid by the Purchaser to Suncor.

**1.7** “**Laws**” has the meaning set forth in Section 11.1.

**1.8** “**Loading Docks**” means the loading docks as specified in the Section “Point of Delivery” of the Specific Conditions.

**1.9** “**Parties**” means the Purchaser and Suncor and “Party” means either of them.

**1.10** “**Point of Delivery**” means the point of transfer at the Loading Docks, as specified in the Specific Conditions.

**1.11** “**Price**” means the amount paid for the acquisition of the Products specified in the Specific Conditions.

**1.12** “**Procedures**” has the meaning set forth in Section 11.1.

**1.13** “**Product(s)**” means the products specified in the Specific Conditions.

**1.14** “**Purchaser**” means the purchaser of the Products specified in the Specific Conditions.

**1.15** “**Quantity**” means the quantity of Products to be purchased by the Purchaser specified in the Specific Conditions.

## **2. STATUS OF THE PARTIES**

**2.1** The Parties are distinct and independent legal entities. Neither Party shall be deemed to be the agent or representative of the other Party with respect to the performance of an Agreement.

## **3. SUPPLY OF THE PRODUCTS**

**3.1** The Purchaser agrees to purchase from Suncor and Suncor agrees to supply to the Purchaser the Products in accordance with the terms and conditions stipulated herein together with those set forth in the Specific Conditions.

## **4. QUANTITIES AND QUALITY OF THE PRODUCTS**

**4.1** Suncor warrants that, at the time of delivery and at the Point of Delivery, the Products will meet the standards and the specifications for the Products set out in the Specific Conditions, if any, and be conveyed with good title and free from any security interest. This limited warranty is the sole warranty with respect to the Products and is made expressly in lieu of and excludes any implied warranty of merchantability and fitness for a particular purpose and all other expressed or implied representations and warranties provided by law or statute.

**4.2** Failure of the Purchaser to give notice to Suncor of any claim concerning a discrepancy as to quality or quantity of Products within twenty-one (21) days of delivery under an Agreement shall constitute unqualified acceptance of Products as invoiced by Suncor. In the event of any such claim by the Purchaser within such twenty-one (21) day period, Suncor shall have the right to obtain relevant samples of the Products in question and shall have all rights of access, inspection and investigation to respond to such claim.



**4.3** Quantities of Products delivered will be measured by calibrated meters, if available, or by terminal tank gauges. Measurement of volumes, with respect to all Products purchased by the Purchaser pursuant to an Agreement, will be adjusted to reflect a temperature of 15 deg. Celsius in Canada, 60 deg. Fahrenheit in the United States of America, upon loading for delivery. If the Parties disagree on whether or not the Product quantities ordered by the Purchaser and the quantities delivered by Suncor correspond or if the Parties disagree on the Product quantities delivered by Suncor, the Parties agree to rely on the measurements taken with Suncor's metering devices at the truck loading ramp for truck deliveries or the Point of Delivery for pipeline deliveries, as recorded by Suncor's employees.

**4.4** Samples of the Products delivered at the Point of Delivery and representing the average composition and quality of the Products delivered shall be taken from Suncor's source tank or from the delivery trucks by Suncor's designated representative while the Products are delivered or during the truck delivery. The sample shall be taken in accordance with the publications and standards of the ISO 8217:2010, or as mutually agreed by the Parties. Without limiting the foregoing, the Parties acknowledge that the following sampling methods used by Suncor in determining the quality of the Products do not fully comply with ISO 8217:2010 and ISO 13739:2010: as flow-proportional or time-proportional automatic samplers and manual valve-setting continuous dip samplers are impractical in obtaining a samples of delivered product, sampler would take a representative and random quantity of product throughout the truck delivery process. The sample shall be accessible to the Purchaser at all times and shall be stored for a minimum period of ninety (90) days. The determination by a mutually agreed designated representative shall be final and shall bind the Parties.

## **5. CONTINUING OBLIGATIONS**

**5.1** The expiry or termination of an Agreement shall not release the Parties from those of its obligations that by their nature are continuing, in particular those referred to in Sections 6, 9, 10, 11, 14, 18 and 22 of these General Conditions.

## **6. PRICE AND OTHER TERMS OF PAYMENT**

**6.1** The Purchaser shall pay the Price to Suncor in accordance with the terms specified in the Specific Conditions.

**6.2** In addition to the Price, the Purchaser shall pay to Suncor all applicable provincial and federal taxes and duties, present and future as well as other financial charges paid or incurred directly or indirectly by Suncor for the purposes of or in connection with the sale of the Products or for the recovery, recycling or reclamation of the Products after their use and arising from any federal, provincial or municipal law, regulation, order, decree or by-law, including any environmental law, regulation, order, decree or by-law that is in force at the time of execution of the Agreement or that comes into force or is amended during the term of the Agreement. Without limiting the generality of the foregoing, this section shall apply to any charge paid to or collected by an organization whose function or one of whose functions is to develop, implement, administer or to contribute financially towards the development, implementation or management of one or several systems or programs to recover, recycle or reclaim used oils, used filters, used containers or other used products after the use of the Products.

**6.3** Any payment of the Price of the Product shall be made to Suncor by irrevocable wire transfer.

**6.4** Unless as otherwise specified in the Specific Conditions, all sums in arrears shall bear interest at a monthly rate of two percent (2%) compounded monthly (26.3% per annum nominal), from the due date of such payment until payment has been made in full, before and after judgment.

**6.5** Notwithstanding anything specified in the Specific Conditions, the modalities of payment under an Agreement may be amended by Suncor, in its sole discretion, from time to time. Without limiting the generality of the foregoing, the total balance of all amounts outstanding and remaining unpaid from time to time under an Agreement together with interest thereon, fees and related expenses thereto shall become due and payable upon written demand of Suncor.



**6.6** In order to secure the payments of any amounts due under an Agreement, the Purchaser agrees to provide and put in place letters of guarantee or any other form of guarantees or security as may be required by Suncor from time to time. If any such guarantees or security is required, the Purchaser acknowledges that Suncor has entered into an Agreement subject to the Purchaser providing and maintaining such guarantees or security.

**6.7** Without limiting the generality of Sections 16, 17 and 18, Suncor shall have the right to suspend or terminate the supply and delivery of the Product if the Purchaser fails to pay the Price of the Products in whole or in part, in accordance with the terms and conditions set forth in an Agreement, without prejudice to Suncor's other rights and remedies in the circumstances. The books and records of Suncor and its Invoices shall, in the absence of manifest error, constitute sufficient evidence of the amounts due by the Purchaser under an Agreement.

## **7. DELIVERY AND TRANSPORTATION**

**7.1** The Party responsible for transportation and delivery of the Products may retain the services of a Designated Carrier for this purpose. No agreement between the Purchaser or Suncor and a Designated Carrier pursuant to an Agreement shall affect the other Party's obligations pursuant to an Agreement or create obligations for such Party. The Party engaging the Designated Carrier shall at all times be liable for the acts and omissions of its Designated Carrier.

**7.2** The Purchaser shall take delivery of the Products, directly or through a Designated Carrier, at the Point of Delivery.

**7.3** For purposes of an Agreement,

- (a) delivery to the Purchaser of a Product in a tanker shall be made at the Point of Delivery at the vessel flange at the time and place of connection;
- (b) delivery to the Purchaser of a Product via pipeline shall be made at the Loading Dock at the time and place of coupling, for purposes of delivery of such Product, of the end of Suncor's reticulated loading arm to the Purchaser's ship's flexible hose or fixed piping.

**7.4** For the purposes relevant to an Agreement, both Parties agree to take every reasonable precaution (and cause their Designated Carriers) to avoid a Product spill and shall maintain an emergency response plan to deal with any spill or dangerous occurrence, which may occur. Each Party shall ensure that all of its employees, agents and representatives who will handle Products are familiar with and comply with the emergency response plan.

**7.5** A Party (the "Responsible Party") shall be responsible for and shall pay for damages, expenses and losses (collectively, the "Damages") that the other Party incurs as a result of a Product spill caused by the Responsible Party, except that the Damages shall be mitigated, in whole or in part, where the Damages are caused in whole or in part by the negligence of such other Party.

**7.6** Either Party may at any time prohibit the other party (or such Party's Designated Carrier) from accessing a Point of Delivery, if circumstances so warrant, in particular to prevent bodily injury or property or environmental damage.

**7.7** Each Party shall be liable for any damage caused to the other Party or to third parties due to the fault or negligence of its employees, agents and representatives or arising from any default under an Agreement or failure to comply with the law, including any damage resulting from the handling, loading, spill, delivery or transportation of Product.



## **8. TRANSFER OF OWNERSHIP AND RISKS**

**8.1** Ownership of and title to the Products shall be transferred to the Purchaser at the time of delivery and at the Point of Delivery.

**8.2** Notwithstanding any other provision of an Agreement, all risks and responsibility for loss, costs and damages related to the supply of the Products and to an Agreement, including risks of pollution, pass from Suncor to the Purchaser at the time of delivery and at the Point of Delivery.

## **9. HEALTH AND SAFETY**

**9.1** Each Party agrees to observe all safety requirements necessary to protect the employees and property of the other Party and third parties. Each Party shall adequately protect all persons and the property of the other Party and third parties from injury or losses arising from an Agreement.

## **10. PROTECTION OF CONFIDENTIAL INFORMATION**

**10.1** Each Party acknowledges that Confidential Information may be disclosed to it by the other Party in the course of performing an Agreement and agrees that such Confidential Information shall be used solely for purposes of an Agreement.

**10.2** It is agreed that such Confidential Information may not, without the disclosing Party's prior written authorization, be disclosed, communicated or otherwise revealed to third parties by the receiving Party, except to its employees on a need-to-know basis with a view to performing an Agreement. Each Party agrees to cause its employees to respect the confidentiality of such Confidential Information.

**10.3** Each Party agrees that the confidentiality covenants stipulated in this Section shall enure to the benefit of all persons with whom the other Party is bound by confidentiality agreements pursuant to which Confidential Information is communicated to such other Party. Each Party agrees to comply with the requirements of such persons as indicated in such agreements to allow the other Party to disclose such Confidential Information to the receiving Party for purposes of performance of an Agreement.

**10.4** It is expressly agreed that each Party shall retain sole ownership of its Confidential Information and such Confidential Information, together with all copies that may have been made thereof, shall be delivered to the disclosing Party upon written request, unless the Parties agree otherwise in writing.

## **11. COMPLIANCE WITH APPLICABLE LAWS**

**11.1** Each Party agrees to keep informed of and to comply with all laws, regulations, orders, decrees and orders in council, present or future, relating in any manner to the performance of an Agreement (the "Laws") as well as all posted or published site and safety regulations, rules or procedures at the Point of Delivery (the "Procedures"). Each Party further agrees to comply with and cause its employees, suppliers and authorized subcontractors (including Designated Carriers) and any other person under its direction or control to comply with the said Laws and Procedures. Without limiting the generality of the foregoing, each Party shall comply with federal, provincial or municipal environmental laws and regulations and with the policies of the Provincial Department of the Environment applicable to the safe handling, storage, use and disposal of the Product. More particularly, each Party shall ensure that the Product is transported in compliance with the legislation and the standards in force.

**11.2** Each Party attests and certifies that it and its Designated Carriers hold all the required permits and licenses, including accreditations of the Provincial Department of the Environment, and that they have paid all fees required for the performance of an Agreement and undertake to maintain such permits, licenses and accreditations in force during the performance of an Agreement.

**11.3** Each Party undertakes to indemnify and hold the other Party harmless with respect to any liability arising from any infringement by its employees, Designated Carriers, suppliers or authorized subcontractors, of such Laws and Procedures.



## **12. ASSIGNMENT AND SUBCONTRACTING**

**12.1** The Purchaser may not assign, transfer or subcontract its obligations under any Agreement, in whole or in part, without the prior written consent of Suncor, which consent may be withheld on grounds, inter alia, that the assignee may not have the required financial stability or resources for purposes of an Agreement in Suncor's opinion. Any assignment, transfer or subcontract made without the prior written consent of Suncor is null and without legal effect.

**12.2** Use of subcontractors by a Party shall not in any way affect an Agreement or create any privity between a Party and such subcontractors and shall not in any way release the Party subcontracting from its obligations and such Party shall remain liable to the other Party for the performance of an Agreement.

## **13. FORCE MAJEURE**

**13.1** Except as regards to any obligations for the payment of monies due, neither of the Parties shall be liable for any non-performance, omission or delay in the performance of its obligations pursuant to the Agreement if such non-performance, omission or delay is attributable to an event of Force Majeure.

**13.2** If, due to such an event of Force Majeure, either of the Parties is unable to perform its obligations pursuant to an Agreement, the performance of the said obligations, except as regards to any obligations for the payment of monies due, to the extent it is affected by the event of Force Majeure, shall be suspended for the duration of the event of Force Majeure only. Any party that is prevented from performing any undertaking on grounds of an event of Force Majeure shall notify the other party of the situation as soon as possible and shall also communicate all reasonable details to the other party.

**13.3** The party seeking the suspension of its obligations shall, as soon as possible, remedy the cause and consequences of the event of Force Majeure described in the said notice insofar as it is able to do so; however, terms of settlement of any strike, lock-out or other labour dispute shall be at the discretion of the party seeking the suspension of its undertakings on this ground and such party shall not be bound to satisfy the demands of its adversaries in connection with strikes, lock-outs or labour disputes merely in order to remedy the event of Force Majeure.

**13.4** In the event of a partial incapacity to supply, and without any obligation on its part, Suncor may, at its discretion, and according to the availability of its Products, establish a Product allocation program among its various clients. The Purchaser recognizes and accepts that the establishment of such an allocation program may take into account all of Suncor's contractual obligations towards all of its clients and that the establishment and application of such a program cannot bind Suncor's liability, or create obligations towards Suncor or the Purchaser. The Purchaser waives any recourse which may flow directly or indirectly from the establishment or application of an allocation program. If a Dispute arises between the Parties with respect to the existence of a case of Force Majeure, it is expressly agreed and accepted by the Parties that any provision, recognition, acceptance and renunciation contained in the present paragraph concerning the establishment and application of an allocation program shall apply in the same manner to circumstances described in the present paragraph and which, under a Dispute resolution process, would not constitute a case of Force Majeure.

## **14. INSURANCE**

**14.1** Each Party undertakes to purchase and keep in force or, in the case of Suncor, self-insured for adequate liability insurance for loss and damage arising out of its acts in relation with an Agreement, on the understanding that such insurance shall not in any way limit such Party's liability pursuant to this Agreement.

## **15. BRANDS**

**15.1** The Purchaser agrees that the Products sold and delivered under an Agreement shall not be resold by it under any trade-marks, trade-names or brands of Suncor.



## **16. DEFAULT**

**16.1** A Party shall be in default under an Agreement if it defaults on any of its obligations pursuant to this Agreement.

**16.2** Without limiting the generality of the foregoing, a Party shall be in default:

- (a) if it, or its parent company, is subject to bankruptcy proceedings or a receivership order, whether such proceedings are instituted by a Party itself or by a third party against a Party or its property;
- (b) if it, or its parent company, becomes insolvent, commits an act of bankruptcy, assigns its property for the benefit of its creditors or acknowledges in writing that it has ceased to meet its obligations generally as they become due;
- (c) if it does not comply with applicable laws and regulations.

## **17. TERMINATION**

**17.1** A Party may terminate an Agreement, at its discretion and automatically, without the necessity of judicial proceedings as provided for in Article 1605 of the Civil Code of Québec and without prejudice to its other rights and remedies, if the other party is in default within the meaning of Section 16.1 and if such default is not cured within seven (7) days following receipt of prior written notice given to the defaulting party in that connection. Without limiting the foregoing, an Agreement shall be automatically terminated without the necessity of judicial proceedings as provided for in Article 1605 of the Civil Code of Québec and without prior notice being required if a Party is in default pursuant to Section 16.2(a), (b) or (c) of these General Conditions.

## **18. LIABILITY AND INDEMNIFICATION**

**18.1** In no event shall Seller or Buyer be liable for indirect or consequential damages or for specific performance.

## **19. NOTICES**

**19.1** Any notice, communication or declaration (a "Notice") necessary or required under an Agreement shall be made in writing and addressed to the Parties' representative. Any notice may be served:

- (a) in person, by delivering it during normal business hours to the party to whom it is addressed at the address provided in Section 19.2. The Notice shall be deemed to have been received at the time of its actual delivery;
- (b) by fax to the address and number specified in Section 19.2. The Notice shall be deemed to have been received at the date of its actual receipt or no later than the start of the business day following its transmission, whichever occurs first;
- (c) by registered mail, messenger or other similar method with proof of receipt. The Notice shall be deemed to have been received on the actual day of its receipt or not later than the start of the second business day following its transmission, whichever occurs first.

**19.2** The addresses and fax numbers of the representatives of the Parties for purposes of this Section are set out in the Specific Conditions.



## **20. INSPECTION AND VERIFICATION**

**20.1** Each Party shall keep, at the address indicated in the Specific Conditions, technical files and administrative and accounting records with respect to the Products in accordance with generally accepted accounting principles and practices for at least seven (7) years after the date of delivery. Each Party and its designated representatives shall be entitled to verify and copy such files and records with respect to the Products, in whole or in part. Each Party shall give reasonable prior written notice of any such inspection and such inspections shall be made during normal business hours.

**20.2** Any anomaly revealed by or claim arising from such verification shall be submitted in writing to the other Party within a reasonable time following such verification and the Parties shall use reasonable efforts to resolve any such claim or anomaly promptly.

## **21. GENERAL PROVISIONS**

**21.1** No amendment to an Agreement shall be valid unless it is expressly described as an amendment to this Agreement and is approved in writing by the authorized representatives of the Parties.

**21.2** The provisions of an Agreement are separate and severable. If any provision is declared by any court of competent jurisdiction to be void or unenforceable, the other provisions of an Agreement shall not be affected unless they become of no effect or unenforceable as a result.

**21.3** Each party expressly agrees that, in the event of a Dispute, upon request by the other Party, it shall continue to perform the Agreement, on the understanding that such performance shall not constitute a waiver of any rights and remedies that either Party may have.

**21.4** Failure at any time by one of the Parties to an Agreement to insist upon performance by the other Party of any of its obligations under this Agreement shall not constitute a waiver of any subsequent default. In addition, if one of the Parties does not exercise a remedy in the event of a breach of obligations under an Agreement, such failure to exercise its rights shall not be interpreted as a waiver of any such rights in the event of any subsequent breach by the other Party.

**21.5** The Purchaser shall not, in its dealings with Suncor, its employees or representatives, do, omit to do or allow to be done anything that compromises standards of business ethics, and shall not act in such a manner as to put itself or any of its employees, suppliers or subcontractors in a conflict of interest situation vis-à-vis Suncor. The Purchaser agrees to disclose to Suncor any financial interest of any employee or representative of Suncor in the business of the Purchaser before an Agreement is executed or as soon as such financial interest comes to its knowledge during the performance of an Agreement.

**21.6** The Purchaser undertakes not to use Suncor's name in any advertising or promotional document or any publication without the prior written consent of Suncor.

**21.7** The rights and obligations contained in an Agreement shall enure to the benefit of the Parties and their successors and assigns.

**21.8** The Parties acknowledge that they have freely negotiated the terms and conditions of each Agreement, which constitutes a contract by mutual agreement.

**21.9** Each Agreement and all documents and notices relating hereto have been drawn up in English at the express wish of the Parties. A French version of these General Conditions is available upon request. La présente convention ainsi que tous les documents et avis s'y rapportant ont été rédigés en anglais à la volonté expresse des parties. Une version française de la présente convention est disponible sur demande.

**21.10** For avoidance of doubt, in no event shall these General Conditions be deemed to create an undertaking by Suncor to sell or for the Purchaser to purchase the Products, it being understood that it shall only be upon the execution of specific purchase agreements for the Products that Suncor shall be bound to sell and the Purchaser shall be bound to purchase the Products.



**22. APPLICABLE LAWS AND COURTS OF COMPETENT JURISDICTION**

**22.1** The Agreement shall be governed and interpreted in accordance with the laws in force in the Province of Quebec with the exception of the rules of the Quebec Civil Code relating to conflict of laws which shall not receive application.

**22.2** Any Dispute shall be notified in writing to the parties involved. In the event that such Dispute cannot be settled to the satisfaction of the parties following negotiations for a period of not more than ten (10) days following the sending of the above-mentioned notice, the Parties to the Agreement may agree to submit such Dispute to arbitration in accordance with the arbitration rules and procedures contained in the Quebec Code of Civil Procedure. It is agreed, however, that this Section shall not create and may not be interpreted as creating any obligation of any kind to submit a Dispute to arbitration and the Parties shall retain their rights at all times to apply to the courts of civil jurisdiction in connection with the Agreement.

**23. TERM**

**23.1** These General Conditions shall remain in full force and effect for so long as Suncor sells Products to the Purchaser or until such time as the Parties mutually agree otherwise in writing.

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