

Tesoro
Marine Fuels – Additional Provisions

The following *Marine Fuels – Additional Provisions* are to be included in all Marine Fuel Sales Agreements. These may be: (i) “cut-and-pasted” into the *Special Provisions* in the section captioned “**ADDITIONAL PROVISIONS**”; or (ii) attached as Appendix 1 to the *Special Provisions* so long as a reference is made in the section captioned “**ADDITIONAL PROVISIONS**” that states: “Appendix 1 – Marine Fuels – Additional Provisions attached hereto is hereby incorporated into these *Special Provisions* by this reference”.

For Marine Fuels:

(i) DEFINITIONS.

“**Delivery Point**” means the place agreed upon as the location for delivery of the Marine Fuel, as set forth in the *Special Provisions*.

“**Master**” shall mean the Master of the Receiving Vessel.

“**Marine Fuel**” means for the Product sold, the grade(s) of marine bunker oil, marine diesel, marine gas oil or heavy fuel oil set forth in the *Special Provisions*.

“**Receipt**” means the document delivered by Seller (or Seller’s Representative) and acknowledged by the Master after the Marine Fuel delivery is completed, to confirm the quantity and quality of the Marine Fuel actually delivered.

“**Receiving Vessel**” means the vessel identified by Buyer to receive the Marine Fuel, as set forth in the *Special Provisions*.

“**Seller’s Representative**” means any one or more persons or entities designated by Seller to perform any or all functions associated with deliveries of Marine Fuel, including without limitation, the operator of any Barge, dock mooring point, wharf or terminal through which deliveries are to be made.

(ii) QUALITY.

(1) Standards. The Marine Fuel sold under each Agreement shall be of a commercial Marine Fuel grade established by Seller generally for the time and delivery location. Buyer shall be solely responsible for selecting and nominating to Seller the proper grade of Marine Fuel for use in the Receiving Vessel, from the range of available Marine Fuel grades then being supplied by Seller. Buyer and the Master shall be responsible for confirming that the Specifications set forth in the Agreement accurately describe Marine Fuel that is suitable for use in the Receiving Vessel. THE MARINE FUEL SHALL CONFORM TO ANY SPECIFICATIONS THAT MAY BE SET FORTH IN THE SPECIAL PROVISIONS AND, UNLESS OTHERWISE SPECIFIED IN WRITING, SHALL CONFORM TO THE SELLER’S USUAL SPECIFICATIONS AT THE TIME OF DELIVERY FOR THE GRADE OF MARINE FUEL SO NOMINATED. **ALL WARRANTIES OTHER THAN THOSE EXPRESSLY STATED IN THIS AGREEMENT ARE EXPRESSLY EXCLUDED. SELLER (AND SELLER’S REPRESENTATIVE) MAKES NO GUARANTIES OR WARRANTIES, EXPRESS OR IMPLIED, OF MERCHANTABILITY, FITNESS OR SUITABILITY OF THE MARINE FUEL FOR ANY PARTICULAR PURPOSE.**

(2) Quality Samples. Seller shall arrange, as necessary, for four (4) identical one (1) liter or quart representative samples of each grade of Marine Fuel to be drawn from the barge during the delivery operation in accordance with Seller’s (or Seller’s Representative’s) customary sampling procedures at the time of delivery onto the Receiving Vessel. Both Seller and Buyer (or their respective representatives) may witness such sampling and the sealing of such samples. The samples shall be drawn from the delivering

Tesoro
Marine Fuels – Additional Provisions

barge. All sampling shall be performed in accordance with *ISO 13739*, latest edition and *MARPOL Annex 6* requirements. The samples shall be securely sealed, labeled with the Receiving Vessel's name, the identity of delivery facility, grade of Marine Fuel, delivery date and place, and seal number (if available) and authenticated with the Receiving Vessel's stamp and signed by Seller (or Seller's Representative) and the Master (or the Master's authorized representative), if they so choose. Two (2) samples shall be retained by Seller for sixty (60) days after delivery of the Marine Fuel to the Receiving Vessel and two (2) sealed samples shall be retained by the Receiving Vessel or Buyer.

(iii) QUANTITY.

- (1) Determination. Buyer may initially nominate a volume of Marine Fuel that Buyer desires to purchase, and if Seller agrees to deliver such nominated volume, then such nominated volume shall be the Quantity set forth in the Special Provisions. Unless otherwise provided in the Special Provisions, Seller will sell and deliver to Buyer, and Buyer shall accept and receive a volume within one-and-one-half percent (+/- 1½%) of the stated Quantity, at the scheduled time and place of delivery.
- (2) Measurement. The volume of Marine Fuel actually delivered under an Agreement shall be determined by Seller (or Seller's Representative) from: (i) the barge tank gauges (in the case of barge delivery); (ii) the onshore storage tank downgauge or pipeline meter from which delivery is made (in the case of pipeline delivery); or (iii) the vehicle meter (if delivery is made by vehicle). Buyer and Seller both have the right to be present or represented when such measurements are taken, and each shall have reasonable opportunity to verify the volume delivered. Unless the Special Provisions provide otherwise, the volume of Marine Fuel delivered shall be measured and calculated in accordance with the latest ASTM or API test methods. All measured volumes shall be adjusted to those conditions in accordance with ASTM test methods and API volume correction tables.

(iv) CLAIMS AND DISPUTES ABOUT QUANTITY OR QUALITY.

- (1) Quantity Claim. Any claim or dispute concerning the volume of Marine Fuel delivered must be specifically identified by Buyer (or the Master) in a written document delivered to Seller (or Seller's Representative) at the time of delivery. Such written document shall be either the Receipt or the letter of protest referred to in the section captioned "DOCUMENTATION" below, provided however, that within thirty (30) days of the Delivery Date, Buyer may challenge whether Seller accurately calculated, in accordance with proper ASTM and API procedures, the actual delivery volume using the information stated on the Receipt. Any measurement claim or dispute that is not timely identified in such manner is deemed waived and absolutely barred, and measurements and calculations of volume by Seller (or Seller's Representative) shall otherwise be conclusively presumed to correctly set forth the volume of Marine Fuel delivered and sold.
- (2) Quality Claim. Any claim of a defect in the Marine Fuel quality must be identified in a written document delivered to Seller. Such written document shall be either the Receipt or the letter of protest referred to in the section captioned "DOCUMENTATION" below, or, if such quality defect is not identified at the time of delivery, by a document promptly delivered to Seller after the circumstances giving rise to such claim have been discovered. Unless Buyer notifies Seller of a claim concerning a Marine Fuel quality defect and/or any

Tesoro
Marine Fuels – Additional Provisions

alleged breach of warranty within thirty (30) days after the Delivery Date and further provides full details with supporting evidence for the claim within sixty (60) days after the Delivery Date, then it shall be conclusively presumed that there were no defects in the delivered Marine Fuel quality or description, that such Marine Fuel met all contractual Specifications and that all Seller's warranties were correct, and any such claim for defect or breach of warranty is conclusively deemed to be waived and absolutely barred. In the event Buyer timely notifies Seller of a claim or dispute concerning whether any Marine Fuel delivered met the Agreement's Specifications and warranties, the Parties shall have the sample of the Marine Fuel that was retained by Seller analyzed by a mutually acceptable, qualified and independent laboratory. The results of the analysis of Seller's sample shall be used to establish the actual quality of the Marine Fuel delivered. Unless otherwise agreed, the expenses of the analysis shall be borne equally by Seller and Buyer, and the findings of the laboratory shall be presumed correct unless manifest error can be established. In the event of any claim by Buyer concerning the delivered Marine Fuel quality, Seller (and Seller's) Representative have the right to come aboard and inspect the Receiving Vessel and draw additional samples as part of Seller's investigation of such claim. Notwithstanding the preceding, Seller shall never be responsible for any claim arising in circumstances where there is (or has been) commingling of Marine Fuels delivered by Seller with and other fuel or substance aboard the Vessel.

(v) SCHEDULING.

- (1) Advance Notice. If Buyer should desire to purchase Marine Fuel from Seller, Buyer should notify Seller at least five (5) Business Days in advance of the requested delivery date and request that Seller propose Special Provisions under which Seller would be willing to sell such Marine Fuel. If Seller and Buyer agree in writing to a set of Special Provisions, Seller shall sell Marine Fuel to Buyer under the terms of the resulting Agreement. Unless the Special Provisions provide otherwise, Buyer (or Buyer's local agent) shall notify Seller of the Receiving Vessel's status at least seventy-two (72), forty-eight (48), and twenty-four (24) hours in advance of the Receiving Vessel's ETA at the Delivery Point, so as to allow Seller adequate notice of possible delays. The ETA specified in the twenty-four (24) hour notice shall become the "**Delivery Time**".
- (2) Delivery Time. Where the Buyer (or the Master) request a Delivery Time, Seller (and Seller's Representative) shall endeavor to set a Delivery Time occurring as soon thereafter as reasonably practicable, giving due regard to congestion affecting the delivery facilities of the Seller (and Seller's Representative) and the harbor and to prior commitments of facilities, barges, vehicles and the like. Unless mutually agreed between the Parties, the Delivery Date shall not occur on any public, customary or dock holidays where agreements with employee organizations prevent delivery in the ordinary course of business for the Seller (or Seller's Representative).
- (3) Excused Delays. Seller (and Seller's Representative) will use reasonable efforts to accommodate any delay on the part of the Receiving Vessel, considering other delivery commitments of Seller and/or the facility where delivery is to occur, provided, however, should the Receiving Vessel be unable to take delivery within four (4) hours after the Delivery Time, for any reason not due to the fault of Seller (or Seller's Representative) then Seller (and Seller's Representative) will be excused from timely performance hereunder and may make delivery to the Receiving Vessel at any time in their reasonable discretion, and Seller (or Seller's Representative) shall bear no responsibility and/or liability for demurrage or any other

Tesoro
Marine Fuels – Additional Provisions

costs or expenses of Buyer. Buyer's rights to cancel or delay deliveries pursuant to Force Majeure are expressly conditioned upon Buyer providing adequate notice of any anticipated delays.

(vi) DELIVERY.

- (1) Requirements for Receiving Vessel. For deliveries into the Receiving Vessel, Buyer and the Master shall be responsible for providing and enabling clear safe reception of the full Quantity at the Delivery Point, without risk to Seller (or Seller's Representative), the barge or other contractor, their servants and agents, or their property. Buyer shall notify Seller in writing prior to delivery of: (i) the maximum allowable pumping rate and pressure for the Vessel, (ii) the manifold configuration on the Receiving Vessel and (iii) all such other information regarding the Receiving Vessel as Seller may reasonably require. If Buyer fails to provide to Seller the aforementioned information in a timely manner (as reasonably determined by Seller), then Seller may deem Buyer's failure to be the cause of an "Excused Delay" as described above. Buyer and Seller shall also agree on communication and emergency shutdown procedures. Deliveries shall take place within normal harbor limits, and the Receiving Vessel shall provide a free side for receiving Barge deliveries. Unless otherwise agreed by the Parties and allowed by the U.S. Coast Guard, Buyer shall not be entitled to receive Marine Fuel into any tanks other than those normally used to store fuel bunkers for the Receiving Vessel. The Receiving Vessel shall make all connections and disconnections between the delivery hoses and the Receiving Vessel's intake flange, and shall render all other assistance and provide sufficient tankage and equipment to receive promptly all deliveries hereunder. The provision of any services by Seller (or Seller's Representative) and/or any assistance offered by Seller (or Seller's Representative) shall in no way relieve Buyer of any obligation or liability hereunder.
- (2) Rejection Costs. Should the Receiving Vessel reject and/or otherwise refuse and/or be unable to receive the full Quantity of Marine Fuel ordered, Buyer shall pay any and all domestication fees and taxes, any costs of redelivery by barge and/or otherwise, any expenses incurred in removing Marine Fuel from the barge, pumping fees, pump back fees, barge demurrage, and any and all other costs incurred by Seller (and Seller's Representative) as a result of the decreased Quantity.
- (3) Adverse Conditions. Seller (or Seller's Representative) need not make delivery when, in their reasonable opinion(s), a clear and safe berth (including, but not limited to, the conditions of the Receiving Vessel, mooring, harbor, wharf, weather and/or seas) is not available alongside the Receiving Vessel. If, upon Buyer's (or Master's) request, a barge makes reasonable effort to deliver the Marine Fuel but is not able to do so due to conditions of the Receiving Vessel, mooring, harbor, wharf, weather and/or seas, or any other cause/condition beyond Seller's (or Seller's Representative) reasonable control, Buyer shall reimburse Seller for any costs related to the attempted delivery.

(vii) DOCUMENTATION.

After the Marine Fuel delivery is completed and quantities measured, Seller's Representative shall present the Master with a Receipt, which shall set forth measurements and Product specifications required by MARPOL, shall be signed and stamped by the Master (or Master's representative) and shall be returned to Seller (or Seller's Representative) as acknowledgment of the delivery. A duplicate copy of the Receipt shall be retained by the Master. The signature and stamp of the Master (or Master's representative) shall acknowledge only the Master's acceptance of the accuracy of the volume and the

Tesoro
Marine Fuels – Additional Provisions

delivery temperature stated on the Receipt. If the Master disagrees with (or challenges the accuracy of) the Receipt as to either the volume delivered or the delivery temperature, the Master must place appropriate written annotations on the Receipt, which either detail the challenge or refer to a separate letter of protest to be issued and delivered by the Master (or the Buyer) immediately. The Master must also annotate the Receipt to note any purported quality defects of the Marine Fuel delivered, based upon the information known to the Master at the time of delivery. Buyer shall waive any such questions or challenges that are not identified on the Receipt and detailed either on the Receipt itself or in a separate letter of protest issued and delivered by the Master (or the Buyer) immediately after the delivery, provided however, that Buyer shall not waive any other claims concerning quality that might be identified by subsequent analysis of the Receiving Vessel's and Seller's retained samples.

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