

**General Terms & Conditions for Sales and Purchases of Products**

**Chevron Products Company, a division of Chevron U.S.A. Inc.**

**2014 Edition - Version 2.0**

**U.S. Domestic Supplement**

**November 2018**

This U.S. Domestic Supplement ("Supplement") is applicable to purchase and sale transactions that are governed by Chevron Products Company, a division of Chevron U.S.A. Inc.'s General Terms and Conditions for Sales and Purchases of Products dated 2014 ("GTCs") where title transfer occurs in the U.S.

In the event of a conflict between the terms contained herein and the GTCs, the terms of this Supplement shall govern.

**PART ONE – In Respect of FOB Deliveries**

**Section 7 – Laytime, Delays and Demurrage**

**7.4.2 (c)** Delete beginning with "the Worldscale demurrage rate" through the end of the sentence and replace with "then demurrage shall be based upon three independent broker's market assessment of the average rate for the month of loading obtained by the party chartering the Vessel."

**7.4.3** Delete "forty-five (45) and replace with "ninety (90)"

**PART TWO – In Respect of CFR, CIF AND DAP Deliveries**

**Section 16 – Laytime, Delays and Demurrage**

**16.3.2 (c)** - Delete beginning with "the Worldscale demurrage rate" through the end of the sentence and replace with "then demurrage shall be based upon three independent broker's market assessment of the average rate for the month of loading obtained by the party chartering the Vessel."

**PART FIVE – In Respect of Deliveries in Bulk to/by Road Tanker/Rail Tank Cars FCA, CPT, CIP, DAP and DDP:**

**Section 40 – Risk and Title**

**40.2 For DAP or DDP Deliveries**

**40.2.1** Delete in its entirety and replace with the following:

The risk and title in the Product delivered under the Agreement shall pass from the Seller to the Buyer as the Product passes the outlet flange of the road tanker or rail tank car in question at the delivery point.

**Section 43 – Other Terms and Conditions Applicable to Delivery by Rail Tank Car**

**43.1 For FCA Deliveries**

**43.1.1** Delete "seventy-two (72) hours" and replace with "five (5) days".

**43.2 For CPT, CIP, DAP or DDP Deliveries**

**43.2.1** In the first sentence, delete "seventy-two (72) hours" and replace with "five (5) days.

**43.2.1(a)** Delete "locomotive used to transfer the" and replace with "first block of", delete "from the Loading Terminal to the agreed delivery point/frontier is uncoupled from such rail tank cars at the agreed delivery point/frontier, and" and replace with "are Constructively Placed and";

At the end of section (b) add new paragraph: “For purposes of this section, “Constructively Placed” means the placement of a rail tank car where a rail tank car cannot be delivered to the delivery location and where it is held by the railroad awaiting disposition instructions, or released by rail switching provider, or cleared for release or uncoupled from the locomotive”.

**INSERT NEW SECTIONS:**

**43.3 Measurement and Sampling**

43.3.1 Expect as specifically provided in the Special Provisions or unless otherwise agreed, the quantity and quality shall be determined in accordance with the following procedures:

(a) In case of road tanker deliveries, the quantity of Product delivered shall be determined in order of the priority set forth below:

- (i) the relevant load or discharge terminal operator’s proven metering device readings or
- (ii) by certified weight scale at the terminal at the time of loading or discharging as applicable.

(b) In case of rail tank car deliveries, the quantity of Products delivered shall be determined by the relevant terminal operator’s proven metering device readings at the time of loading or discharging.

For FCA, CPT or CIP deliveries, the quality of the Product shall be determined by a volumetric composite sample drawn at the terminal prior to loading each road tanker and rail tank car. For DAP and DDP deliveries, the quality will be based on the composite sample of the road tankers and/or rail tank cars at the terminal prior to discharging. If a volumetric composite sample is not available or an independent inspector cannot verify the quality determination, then the quality shall be determined, in order of preference, by 1) the terminal operator, or 2) the carrier at or near the delivery location.

If the applicable measurement method described in this section is not available, the parties shall endeavor to agree on another mutually acceptable method for determining the quantity or quality of Products delivered. All quantities of delivered Products shall be corrected for temperature to sixty degrees Fahrenheit (60°F). All measurements and tests shall be made in accordance with the test method(s) referred to in the specification of the Product set out in the Special Provisions, or, where no test method is set out, with the most current industry standards such as API, ASTM, EI, GOST, or other internationally recognized measurement standards at the time of delivery.

43.3.2 Certificates of Quantity and Quality

Despite anything to the contrary in the provisions of Section 43.3.1, the certificates of quantity and quality (or such other equivalent documents as may be issued at the terminal company) shall, except in cases of manifest error or fraud, be conclusive and binding on both parties for invoicing purposes but without prejudice to the rights of either party to make any claim pursuant to Section 45 of the GTCs.

43.3.3 Independent Inspections

Either party may appoint an independent inspector at the terminal, subject to the prior agreement of the terminal operator having been obtained where necessary. Such appointment shall be notified in writing to the other party. All charges in respect thereof shall be for the account of the party requiring the independent inspection and the duties of such inspector shall be considered solely as a service to the party requiring the inspection. Where both parties require an independent inspection, then the Buyer and the Seller shall jointly agree upon and appoint an independent inspector. All charges in respect thereof shall be

equally shared between the parties and the inspector's report shall be made available to both parties.

#### **43.4 Diversion**

- 43.4.1 To the extent Seller's rail tank cars contain the Product, Buyer will not, without obtaining prior express written consent from Seller, divert Seller's rail tank cars or consign them to any other routing or to any other destination other than those set out in the bill of lading. Notwithstanding any such consent, any and all diversion charges, additional freight charges and any other costs or expenses incurred, sustained or paid by Seller resulting from such diversion shall be for the account of Buyer.

### **PART SIX – Applicable to Each of Parts One, Two, Three, Four and Five**

#### **Section 58 Arbitration and Small Claims**

- 58.1.1. Delete in its entirety and replace with the following:

The Parties shall exclusively and finally resolve any dispute between them using direct negotiations, mediation, and then arbitration as set out in this section. If a dispute arising out of this Agreement is not resolved by direct negotiations, either Party may initiate mediation by giving notice to the other setting out the disputed issues and the value of the claim. If the Parties fail to resolve the dispute within 60 days from notice of mediation, either Party may initiate binding arbitration by giving notice to the other Party. The place of arbitration must be Houston, Texas. One arbitrator (or 3 arbitrators if the monetary value of the dispute is more than US\$5,000,000 or its currency equivalent, or if there is a dispute whether the monetary value exceeds the US\$5,000,000) will conduct the arbitral proceedings in accordance with the International Institute for Conflict Prevention and Resolution ("CPR") Rules. To the extent of any conflicts between the Act or the CPR Rules and the provisions of this Contract, the provisions of this Contract prevail. The CPR is the appointing authority. The maximum number of witnesses each Party may call to give evidence is 3 witnesses of fact and 1 expert witness. The arbitration award is final and binding. Regardless of which Party prevails, all arbitration fees and costs must be paid equally and each Party shall bear its own attorneys' fees and costs in connection with such arbitration. The Parties waive irrevocably their right to any form of appeal, review, or recourse to any court or other judicial authority under any applicable law, to the extent that such waiver may be validly made. Proceedings to (1) preserve property or seek injunctive relief, or (2) enforce an award under this section, may be brought in any court of competent jurisdiction.

#### **INSERT NEW SECTIONS:**

#### **59.15 Bankruptcy Acknowledgement**

- 59.15.1 The parties intend that each transaction hereunder shall constitute a "forward contract" under § 101(25) and a swap agreement under § 101(53b) of Title 11 of the United States Code, 11 U.S.C. §§ 101 et seq., as amended from time to time (the "Bankruptcy Code"), and that the Agreement constitutes a "master netting agreement" under § 101(38a) of the Bankruptcy Code. Further, the parties intend that each party shall be a "forward contract merchant" under § 101(26) and a "master netting agreement participant" under § 101(38B), for purposes of the Bankruptcy Code.

#### **59.16 Disclaimer of Warranty**

- 59.16.1 **OTHER THAN THE WARRANTY OF TITLE SPECIFIED IN SECTION 59.12, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, SELLER MAKES NO OTHER REPRESENTATION OR WARRANTY, WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY THAT THE PRODUCTS WILL BE MERCHANTABLE OR FIT OR SUITABLE FOR A SPECIFIC PURPOSE, EVEN IF SUCH PURPOSE IS KNOWN TO SELLER, UNLESS OTHERWISE**

**STATED IN THE CONFIRMATION FOR A PARTICULAR TRANSACTION. SELLER EXPRESSLY DISCLAIMS ANY WARRANTY AGAINST INFRINGEMENT OF ANY PATENT, TRADEMARK OR COPYRIGHT.**

**59.17 Right to Audit**

59.17.1 Each party and its duly authorized representatives shall have access to the accounting records and other documents maintained by the other party which relate to materials being sold or delivered to the other party under the Agreement and shall have the right to audit such records at any reasonable time or times within three years after the termination of the Agreement.

**59.18 Conflict of Interest**

59.18.1 Except as otherwise expressly, provided herein, no director, employee or agent of either party, its subcontractors or vendors, shall give or receive from any director, employee or agent of the other party or any affiliate, any commission, fee, rebate, gift or entertainment of significant cost or value in connection with the Agreement. In addition, no director, employee, or agent of either party, its subcontractors or vendors, shall enter into any business arrangement with any director, employee, or agent of the other party or any affiliate who is not acting as a representative of such party or its affiliate without prior written notification thereof. Any representative(s) authorized by either party may audit the applicable records of the last three years of the other party for the sole purpose of determining whether there has been compliance with this paragraph.

**Section 60 Applicable Law:**

60.1.1 Delete in its entirety and replace with:  
The Agreement is governed by and interpreted under the laws of New York, without regard to its choice of law rules, except that the substantive and procedural rules of the Federal Arbitration Act, 9 U.S.C. §§ 1-16 ("the Act") govern any arbitration proceeding commenced pursuant to the Agreement.