

MAGELLAN – October 2015
General Terms & Conditions: Petroleum Products Purchase & Sale

1. **Purpose.** These terms and conditions (“Terms”) govern the purchase and sale of petroleum products (“Transaction”) under the confirmation to which they are attached (“Confirmation”).

2. **Definitions:** In addition to the definitions provided elsewhere in these Terms, the following definitions will apply:

2.1 "Barrel" means forty-two (42) Gallons.

2.2 "Business Day" means a day that the New York Stock Exchange is open for business. A Business Day ends at 5:00 PM Central Time.

2.3 "Buyer" means the Party that agrees to purchase Product as set forth in the Confirmation.

2.4 "Delivery Point" means the point(s) for delivery and receipt of Product as set forth in the Confirmation.

2.5 "Fax" means uninterrupted facsimile transmission evidenced by a transmission report to the number set forth for notices.

2.6 "Force Majeure" means any cause beyond the reasonable control of the Party asserting Force Majeure, including acts of God, acts of government, acts of public enemies, acts of terrorists, accidents, explosions, fire, flood, strikes, labor disputes, civil unrest, war, breakdowns of machinery, or shortages of power.

2.7 "Gallon" means 231 cubic inches temperature corrected to 60 degrees Fahrenheit.

2.8 "Law" means any and all laws, regulations, rules, ordinances, codes, orders and decrees of any local, state, federal governmental authority having jurisdiction.

2.9 "LSD" means low sulfur diesel.

2.10 "MTBE" means methyl tertiary butyl ether.

2.11 "MSDS" means material safety data sheet.

2.12 "Product" means the petroleum products that are purchase and sold or exchanged as set forth in the Confirmation.

2.13 "RVP" means Reid vapor pressure.

2.14 "RFG" means reformulated gasoline.

2.15 "Seller" means the Party that agrees to sell Product as set forth in the Confirmation.

2.16 "Special Provisions" means any additional terms and conditions that are set forth in the Confirmation.

2.17 "Tax" means any and all taxes and assessments imposed by any local, state, federal governmental authority having jurisdiction.

2.18 "VOC" means volatile organic compound.

3. **Compensation**

3.1 Purchase and Sale: In each Transaction, Products will be purchased and sold at the price set forth in the Confirmation. In addition to the price and the Taxes as set forth in Section 3.2, Buyer will pay to Seller any charges applicable to the Product under any pipeline tariff specified in the confirmation including, without limitation, transportation charges.

3.2 Taxes: Except as provided in this Section, the Seller will pay all Taxes incident to the possession, transportation, and ownership of the Product before the transfer of title to the Product to the Buyer. Except as provided in Section, the Buyer will pay all Taxes incident to the possession, transportation, and ownership of the Product after the transfer of title to the Product to the Buyer. Any Taxes incident to the transfer of title to the Product, the delivery of the Product, or the receipt of payment for the Product will be paid by the Party upon whom the Tax is imposed by Law, except that the Buyer will reimburse the Seller for all gasoline, motor fuel, sales, use, gross receipt, and other excise Taxes that are imposed by Law on Seller.

4. **Deliveries and Receipts**

4.1 Delivery Point: The Seller will be responsible for all arrangements necessary to deliver Product to the Delivery Point, and Buyer will be responsible for all arrangements necessary to receive Product at the Delivery Point. The Seller will provide the Buyer with reasonable advance notice of each delivery.

4.2 Quality: The Product delivered will meet any specifications stated in the Confirmation. If no specifications are stated in the Confirmation, the Product will meet the latest industry specifications for that Product and contain no contaminants that may make it or its components commercially unacceptable in general industry application.

4.3 Measurement: Product will be measured in Gallons. All measurements will be made in accordance with applicable ASTM and API standards. Measurement will be made as follows:

a. Tanks Cars: The quantity of deliveries to and receipts from railroad cars will be determined by official railroad capacity tables, by meter, or by weighing;

b. Trucks: The quantity of deliveries to and receipts from tank trucks will be determined by meter, static tank gauging, slip tube, rotary gauging, or weighing; and

c. Pipelines: The quantity of deliveries to and receipts from pipelines will be determined by meter.

4.4 Title & Risk of Loss: Title of and risk of loss to Product will pass from Seller to Buyer when delivery is complete. The Delivery Point will be either FOB origin or FOB destination. When the Delivery Point(s) is FOB origin, delivery will be complete: (a) to railroad cars, when the Product passes the last flange of the loading facility; (2) to pipelines, when the product has passed the downstream flange of the meter; and (3) to tank trucks, when the product passes the last flange of the loading facility. When the Delivery Point(s) is FOB destination, delivery will be complete: (a) from tank cars, when tank cars arrive at the unloading facility; (2) from pipelines, when the Product has passed the upstream flange of the meter; and (3) from tank trucks, when the Product has passed the last flange of the tank truck's delivery equipment to the loading facility. When the Delivery is by in-tank



transfer, delivery will be complete when the Confirmation is binding.

4.5 Inspection: Each Party may have its representatives present during loadings, unloadings, gauging, sampling, and testing associated with delivery of Product. Each Party may, at its own expense, hire independent inspectors to perform gauging, sampling and testing.

4.6 Non-Conforming Product: The Buyer may reject Product that does not conform to the applicable specifications, representations, or warranties. Title to Product that is rejected will not pass to the Buyer, and the Seller will have the risk of loss of rejected Product. The Buyer will comply with the Seller's instructions regarding the return of rejected Product, and the Seller will pay for the return of rejected Product. ***Any claim for deficiency in Product quantity or quality will be deemed waived if the Buyer does not provide the Seller with notice of the claim within thirty (30) days of delivery.***

4.7 Information and Documentation: The Seller will, at the request of the Buyer, provide the Buyer with: (a) any documentation required by Law for the transfer of the Product including bills of lading, RVP, VOC, RFG, LSD, and octane certification, and MSDS; and (b) any information regarding the Product required by Law for the transfer of the Product.

4.8 Law. The Parties will comply with all Law applicable to the delivery, receipt, storage, transportation, handling, and transfer of Product.

5. Representations and Warranties

5.1 Title: The Seller represents and warrants that title to Product will be transferred to the Buyer free and clear of all liens, claims, and other encumbrances.

5.2 Regulations: The Seller represents and warrants that the Product transferred to the Receiving Product is in compliance with all applicable Law including applicable RVP and VOC standards

5.3 Alcohols and Oxygenates: The Seller represents and warrants that conventional gasoline delivered to the receiving party will: (a) contain less than 1.0% by volume total alcohols; (b) not contain more than 0.3% by volume methanol; (c) not contain oxygenates other than aliphatic ethers such as MTBE; and (d) not contain oxygenates in excess of 2.7% by weight. If the Confirmation designates that the gasoline delivered will be blended with oxygenates after receipt, the Seller represents and warrants that the gasoline delivered does not contain oxygenates.

5.4 Octane Certification: As required by the Federal Trade Commission's requirements for gasoline octane certification under the Petroleum Marketing Practices Act, the Seller certifies that the octane ratings stated in the Confirmation are accurate for the gasoline delivered to the Buyer.

5.5 Disclaimer: ***Except as expressly provided in these Terms or in the Confirmation, neither Party makes any express or implied warranties regarding the Product. Each Party expressly disclaims any implied warranty of merchantability and any implied warranty of fitness for a particular purpose.***

6. Invoicing and Payment

6.1 Invoicing and Payment: Seller will invoice the Buyer after delivery for all amounts due for the Transaction. The amount of each invoice will be paid by wire transfer or ACH credit within three (3) days of the receipt of the invoice. Any amount not paid when due will accrue interest until paid at the lesser of the then

effective Prime Rate as published by the *Wall Street Journal* plus two percent (2%) or the maximum rate allowed by Law. Invoices will be in writing either delivered by U.S. Mail to the relevant address set forth below or sent by Fax to the number set forth in the Confirmation. Either party may change their invoice address and fax number upon notice to the other party at least ten (10) days in advance of the effective date of the change.

6.2 Audit: Each Party may audit the books records of the other Party as necessary to verify the accuracy of invoices billed and quantities delivered. Audits will occur at the offices of the Party being audited during its normal business hours. The auditing Party will provide the party being audited with reasonable advance written notice of the audit, and the auditing Party will pay for the audit. Each Party will retain its books and records related to amounts invoices for a period of two (2) years from the date of the invoice.

6.3 Default: A Party will be in default if it: (a) fails to pay any amount when due; (b) breaches these Terms or the Confirmation; (c) becomes insolvent; or (d) files or has filed against it a petition in bankruptcy, for reorganization, or for appointment of a receiver or trustee. In the event of default, the non-defaulting Party may: (e) suspend additional deliveries of Product; and (f) terminate the Confirmation upon notice to the other Party.

7. Liability and Indemnification

7.1 Indemnification. ***Buyer will indemnify, defend, and hold harmless Seller, its parents and affiliates, and its and their respective officers, directors, employees, agents, and other representatives from and against any claims, actions, judgments, liabilities, losses, costs, damages, fines, penalties and expenses ("Claims") arising out of: (a) the breach of these Terms or the Confirmation by Buyer; and (b) injuries to person (including death) and damage to property in connection with the receipt, delivery, shipment, storage, or handling of Product while in the custody of Buyer, except to the extent any such claims are due to the gross negligence or willful misconduct of Seller.***

Seller will indemnify, defend, and hold harmless Buyer, its parents and affiliates, and its and their respective officers, directors, employees, agents, and other representatives from and against any claims, actions, judgments, liabilities, losses, costs, damages, fines, penalties and expenses ("Claims") arising out of: (a) the breach of these Terms or the Confirmation by Seller; and (b) injuries to person (including death) and damage to property in connection with the receipt, delivery, shipment, storage, or handling of Product while in the custody of Seller, except to the extent any such claims are due to the gross negligence or willful misconduct of Buyer.

7.2 Insurance. Each Party will obtain and maintain in full force and effect commercial or comprehensive general liability insurance on an occurrence form with a combined single limit of \$2,000,000 each occurrence, and annual aggregates of \$2,000,000, for bodily injury and property damage, including coverage for blanket contractual liability, broad form property damage, personal injury liability, independent contractors, products/completed operations, and sudden and accidental pollution, and, the explosion, collapse, and underground exclusion will be deleted. The insurance policy will waive subrogation rights against the other Party to the extent of the insured's indemnification obligations under these Terms. Upon request, a Party will provide the other Party with a certificate showing evidence of the required insurance coverage. The required limits are minimum limits and will not be construed to limit either Party's liability. The cost of the required insurance will be borne by the insured.

7.3 Consequential Damages: *Except as expressly provided in these Terms, neither Party will be liable for other Party's lost profits, lost business opportunities, or other indirect, special, incidental, punitive, or consequential damages in connection with these Terms or the Confirmation. The Seller's liability for delivering Product that does not conform to applicable specifications, representations, or warranties will not exceed the market value of Product that conforms to applicable specifications, representations, and warranties. The Seller's liability for the failure to deliver Product will not exceed the market value of the Product.*

8. **Force Majeure.** Neither Party will be in default or be liable for any failure to perform that is caused by Force Majeure; provided, however, that Force Majeure will not excuse the failure to pay any amount when due. In exchange Transactions, if Product has been delivered to the party claiming Force Majeure, the party claiming Force Majeure will pay for the Product delivered at the current market price. The Party not claiming Force Majeure may suspend performance until the Party claiming Force Majeure resumes performance.

9. Miscellaneous

9.1 **Notices.** Any notice made under these Terms will be in writing either delivered by overnight courier to the relevant address set forth in the Confirmation or sent by Fax to the number set forth in the Confirmation.

9.2 **No Waiver.** No waiver by either party of any right under these Terms or the Confirmation at any time will serve to waive of the same right at any future date.

9.3 **Amendment.** No amendment to these Terms or the Confirmation will be effective unless made in writing and signed by both parties.

9.4 **Severability.** If any provision of these Terms or the Confirmation is partially or completely unenforceable pursuant to Law, that provision will be deemed amended to the extent necessary to make it enforceable, if possible. If not possible, then that provision will be deemed deleted. If any provision is so deleted, then the remaining provisions will remain in full force and effect.

9.5 **No Third Party Beneficiary.** Nothing in these Terms or the Confirmation is intended to provide legal rights to or create any liability for anyone not a party hereto.

9.6 **Assignment.** Neither party may assign the Confirmation, in whole or in part, without the prior written consent of the other party. Any purported assignment in violation of this provision will be void.

9.7 **Governing Law.** *These Terms and the Confirmation will be governed and construed in accordance with the laws of the State of Oklahoma, without reference to the choice of law principles thereof. Disputes between the Parties arising out of or in connection with the Confirmation will be subject to the exclusive jurisdiction of the state and federal courts in and for the county of Tulsa, Oklahoma.*

9.8 **Entire Agreement.** These Terms and the Confirmation represents the entire agreement of Buyer and Seller with respect to the matters addressed therein.

9.9 **Miscellaneous.** References to "days," "months" or "years" will mean to calendar days, months and years unless otherwise indicated. The word "including" does not limit the preceding words or terms. All section titles and headings are merely for

convenience, and will not limit the interpretation of these Terms or the Confirmation. No provisions of these Terms or the Confirmation will be construed against or interpreted to the disadvantage of any party by reason of such Party's having drafted such provision. The remedies provided in these Terms and in the Confirmation are cumulative, not exclusive, and in addition to all other remedies in either party's favor at law or in equity.

9.10 Each Party warrants and agrees that, in connection with this Agreement: (i) it has and will comply with all applicable laws, regulations, rules and requirements, including those relating to anti-bribery or anti-money laundering; (ii) it has not and will not offer, promise or make, directly or indirectly, any facilitation payment, and (iii) it has, and will maintain and enforce, a code of business conduct and ethics or similar policy during the Term.

9.11 To the extent the Transaction is a commodity option:

(a) The seller of the option represents to the buyer of the option that in connection with this Transaction, the seller of the option is either (i) an eligible contract participant as defined in section 1a(18) of the Commodity Exchange Act ("Act"), as further jointly defined or interpreted by the Commodity Futures Trading Commission ("CFTC") and the Securities Exchange Commission or expanded by the CFTC pursuant to section 1a(18)(C) of the Act (an "ECP"), or (ii) a producer, processor, commercial user of or a merchant handling the commodity that is the subject of this Transaction, or the products or by-products thereof, and is offering or entering into this Transaction solely for purposes related to its business as such.

(b) The buyer of the option represents to the seller of the option that in connection with this Transaction the buyer of the option is a producer, processor, commercial user of or a merchant handling the commodity that is the subject of this Transaction or the products or by-products thereof and is offering or entering into this Transaction solely for purposes related to its business as such.

(c) Both Parties hereby confirm to each other that this Transaction is intended to be physically settled so that, if exercised, the option would result in the sale of an exempt commodity for immediate or deferred delivery.