

## **ISOBunkers LLC – Land Based Deliveries**

### **General Terms and Conditions; Refined Products Purchase and Sale Agreements, effective from March 1, 2007**

#### **A. Measurement and Tests**

Measurement of deliveries shall be by mutually acceptable gauging devices. A barrel shall consist of 42 U.S. gallons and a U.S. gallon shall contain 231 cubic inches.

#### **B. Warranty**

Seller warrants good title to all refined products delivered hereunder, the right to deliver the same and that such refined products shall be free from all liens and encumbrances. Seller agrees to indemnify, defend and hold Buyer harmless from and against any loss, claim or demand by reason of any failure of such title or breach of this warranty.

#### **C. Delivery, Title and Risk of Loss**

Deliveries shall be made within the delivery terminal's usual business hours and at such times as may be required by Seller or Terminal Operator, provided that reasonable advance notice of each delivery has been given to the delivery terminal. At the time of giving notice, Buyer shall furnish Seller necessary shipping instruction and Seller shall prepare and furnish Buyer with copies of bills of lading and other shipping papers. Title to, and all risk of loss of damage of any product delivered shall pass as follows: (1) when by or into any vessel, at the flange between the vessel's permanent hose connection and the shore line; (2) when into any truck, tank car or pipeline, as the product enters the receiving equipment, or, if received by common carrier, when accepted by the carrier for shipment, and (3) when into storage at the same terminal, as the product enters the storage tank.

#### **D. Taxes**

Any tax, duty, toll, fee or other charge now or hereafter imposed, levied or assessed by any governmental authority upon, measured by or otherwise as a result of the transaction herein proved for (excluding income taxes), or the transportation, importation, production, manufacture, use or ownership of the products, shall, if collectible or payable by Seller, be paid by Buyer on demand by Seller. Notwithstanding the foregoing, it is understood and agreed that any personal property taxes levied or assessed by any governmental authority upon the value of the products covered by this Agreement shall be paid by the party having title thereto at the time of such assessment.

#### **E. Hazard Communication**

Seller shall provide its Material Safety Data Sheet ("MSDS") to Buyer. Buyer acknowledges the hazards and risks in handling and using refined products. Buyer shall read the MSDS and advise its employees, its affiliates, and third parties, who may purchase or come into contact with such refined products, about the hazards of refined products, as well as the precautionary procedures for handling said refined products, which are set forth in such MSDS, any supplementary MSDS or written warning(s) which Seller may provide to Buyer from time to time.

#### **F. Force Majeure**

Except for payment due hereunder, either party hereto shall be relieved from liability for failure to perform hereunder for the duration and to the extent such failure is occasioned by war, riots, insurrections, fire, explosions, sabotage, strikes, and other labor or industrial disturbances, acts of God

or the elements, governmental laws, regulations, or requests, disruption or breakdown of production or transportation facilities, delays of pipeline carrier in receiving and delivering refined products tendered, or by any other cause, whether similar or not, reasonably beyond the control of such party. Any such failures to perform shall be remedied with all reasonable dispatch, but neither party shall be required to supply substitute quantities from other sources of supply. Failure to perform due to events of Force Majeure shall not extend the terms of this Agreement.

#### **G. Payment**

Buyer agrees to make payment against Seller's invoice for the refined products purchased hereunder to a bank designated by Seller in US dollars in immediately available funds. Payment shall be deemed to be made on the date good funds are credited to Seller's account at Seller's designated bank. In the event that Buyer fails to make any payment when due, Seller shall have the right to charge interest on the amount of the overdue payment at a per annum rate which shall be two percent per month from the date payment was due.

#### **H. Financial Responsibility**

Buyer agrees to furnish Seller its financial information on request. Notwithstanding anything to the contrary in the Agreement, should Seller reasonably believe it necessary to assure payment, Seller may at any time require, by written notice to Buyer, advance cash payment or satisfactory security in the form of a Letter or Letters of Credit at Buyer's expense in a form and from a bank acceptable to Seller to cover any or all deliveries of refined products. If Buyer does not provide the Letter of Credit on or before the date specified in Seller's notice under this section, Seller or Buyer may terminate the Agreement forthwith. However, if a Letter of Credit is required under the Agreement and Buyer does not provide same, then Seller only may terminate the Agreement forthwith. In no event shall Seller be obligated to schedule or complete delivery of the refined products until said Letter of Credit is found acceptable to Seller.

#### **I. Governing Law**

This Agreement and any disputes arising hereunder shall be governed by the laws of the Commonwealth of Virginia.

#### **J. Rules and Regulations**

The terms, provisions and activities undertaken pursuant to this Agreement shall be subject to all applicable laws, orders and regulations of all governmental authorities. If at any time a provision hereof violates any such applicable laws, order or regulations, such provisions shall be voided and the remainder of the Agreement shall continue in full force and effect unless terminated by either party upon giving written notice to the other party hereto. If applicable, the parties hereto agree to comply with all provisions (as amended) of the Equal Opportunity Clause prescribed in 41 CFR 60-1.4; The Affirmative Action Clause for disabled veterans and veterans of the Vietnam Era prescribed in 41 CFR 60-741.4; 48 CFR Chapter 1 Subpart 19.7 regarding Small Business and Small Disadvantaged Business Concerns; 48 CFR Chapter 1 Subpart 20.3 regarding Utilization of Labor Surplus Area Concerns; Executive Order 12138 and regulations thereunder regarding subcontracts to women-owned business concerns; Affirmative Action Compliance Program (41 CFR 60-1.40); and the Fair Labor Standards Act of 1938 as amended, all of which are incorporated in this Agreement by reference.

#### **K. Waiver**

No waiver by either party regarding the performance of the other party under any of the provisions of the Agreement shall be construed as a waiver of any subsequent performance under the same or any other provisions.

**L. Assignment**

Neither party shall assign this Agreement or any rights hereunder without the written consent of the other party unless such assignment is made to a person controlling, or controlled by or under common control of assignor, in which even assignor shall remain responsible for nonperformance.

**M. Audit and Conflict of Interest**

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 products and documentation being delivered to the other party under these General Terms and Conditions and shall have the right to audit such records at reasonable times during normal business hours within two years after the termination of this contract. No officer, director, employee or agent of either party shall give or receive any commission, fee, rebate, gift or entertainment of significant cost or value in connection with any transaction under these General Terms and Conditions. Either party may audit the applicable records of the other at reasonable times during normal business hours for the sole purpose of determining whether there has been compliance with this paragraph.

**N. Entirety of Agreement**

These General Terms and Conditions contain the entire Agreement of the parties; there are no other promises, representations, or warranties. Any modification of the Agreement shall be by written instrument.

**O. Notice**

Notice to Seller must be sent by certified mail or confirmed facsimile to the following address:

ISObunkers LLC  
C/O ISOindustries, Inc.  
5353 East Princess Anne Road, Suite F  
Norfolk, Virginia 23502  
United States  
Phone: (757) 855-0900  
Fax: (757) 855-6200

**P. Definitions**

- "API" means the American Petroleum Institute.
- "ASME" means the American Society of Mechanical Engineers.
- "ASTM" means the American Society for Testing Materials.
- "Barrel" means 42 U. S. gallons of 231 cubic inches per gallon correct to 60 degrees Fahrenheit.
- "Carrier" means a pipeline, barge, truck or other suitable transporter.
- "Day", "month", and "year" mean, respectively, calendar day, calendar month and calendar year, unless otherwise specified.

- “Delivery Ticket” means a shipping/loading document or documents stating the type and quality of refined products delivered, the volume delivered and method of measurement, the corrected specific gravity or API gravity), temperature, and S&W content.
- “Invoice” means a statement setting forth at least the following information: The date(s) of delivery under the transaction; the location(s) of delivery; the volume(s); price(s); the specific gravity or API gravity and the gravity adjustments to the price(s) (where applicable); and the term(s) of payment.
- “Refined Products” or “Products” means products refined from crude oil such as heating oil, diesel fuel, unleaded gasoline, aviation fuel and kerosene.
- “S&W” means sediment and water.