



U.S. Oil & Refining Co.

**GENERAL TERMS AND CONDITIONS
FOR ASPHALT SALES**

Dated October 1, 2015

Except as otherwise specifically agreed to in writing in the agreement or confirmation to which attached or in which referenced (the "Agreement"), these General Terms and Conditions for Asphalt Sales (the "General Terms"), shall apply to all sales by U.S. Oil & Refining Co. ("Seller") of all emulsion grade asphalts, all roofing asphalts and all paving grade asphalts (collectively hereinafter "Products") to the party identified as Buyer in the Agreement. The Agreement, these General Terms and any Carrier Access and Asphalt Product Loading Agreement (collectively, the "Contract") contain all agreements, arrangements and stipulations between the parties in respect of the sale of Products contemplated herein (a "Transaction") and supersede all prior agreements, arrangements and stipulations in respect of the same subject. Except where otherwise expressly stated in the Agreement, in the case of any conflict between the documents comprising the Contract, the terms of the Agreement shall be given priority over the other portions of the Contract.

1. PRICE AND PAYMENT

(a) The price for Products shall be as set forth in the Agreement.

(b) Buyer shall pay any Taxes, fees or other charges, imposed by any national (or political subdivision thereof) taxing authority on the delivery, sale, inspection, storage and use of Products, except for Taxes on Seller's income or Seller's gross receipts. To the extent Seller incurs any of Buyer's Taxes, Seller's invoice will include such Taxes as payable by the Buyer. Seller has the option of terminating the Contract on 30 days written notice if prevented from passing through Taxes to Buyer.

(c) If Buyer is entitled to purchase any Products free of any Taxes, duties or charges pursuant to local law, Buyer shall promptly, but in any event not later than five (5) business days following completion of delivery, provide to Seller a valid exemption certificate for such purchase. Buyer and Seller agree that invoices shall conform to local laws of the jurisdiction in which the sale is completed. If Buyer fails or is unable to provide appropriate exemption certificates, Buyer will be responsible for all Taxes.

(d) The payment due date shall be as specified in the applicable Agreement.

(e) Any amount payable for any Products or otherwise payable by Buyer to Seller hereunder shall, if not paid when due, bear interest from the due date until the date payment is received by Seller at an annual rate (based on a 360-day year) equal

to: any amount overdue to Seller at the lesser of 1.5% per month (18% per year) or the maximum amount allowed by law, to be prorated daily commencing the day after the due date. Buyer will also be responsible for any charges applied due to any ETF of debit or check not being honored. In the event the Buyer fails to make timely payment, any or all future shipments by Seller to Buyer may be withheld by Seller without waiving any right, power, remedy or privilege of Seller.

(f) Buyer agrees to provide Seller with financial statements upon request. Should the financial position of the Buyer change to where it is unsatisfactory to Seller, advance cash, letter of credit or equivalent security shall be given by Buyer to Seller. Shipments to Seller could be withheld by Buyer until security is received.

2. TITLE, RISK OF LOSS AND DELIVERY

(a) As of the date of each Transaction, Seller hereby expressly warrants that it has marketable title free and clear of any liens or encumbrances to Products sold and delivered hereunder, and that Seller has full right and authority to transfer such title and effect delivery of such Products to Buyer.

(b) Seller shall deliver the Products to Buyer as provided in the Agreement.

(c) The terms "Free on Board" or "FOB," "Cost and Freight" or "CFR," or "C&F," "Cost, Insurance and Freight" or "CIF" and "Delivered Ex Ship" or "DES" shall all have the meaning ascribed to such terms in the Uniform Commercial Code, as adopted by the State of Washington and in effect on the date of the applicable Transaction.

(d) Unless otherwise set forth in the Agreement, title and risk of loss to the Products shall pass from Seller to Buyer at the last permanent flange of the loading facility at the US Oil & Refining Co.

(e) If Seller is freight payer, then the routing and method of delivery shall be at Seller's option.

(f) If product is shipped by rail car, Buyer is responsible for:

(1) Unloading the rail car,

(2) Carrying out all required rail car preparations and inspections,

- (3) Releasing the rail car to the serving railroad,
- (4) Preparing all required bills of lading, certifications and associated documentation and formalities relating to the return of the rail car for transportation, and
- (5) Complying with all applicable laws, rules and regulations in performing such activities.

3. QUANTITY AND QUALITY DETERMINATION

(a) The quantity of Products delivered to Buyer shall be determined and measured at the location where the product is loaded in the transportation means as follows, or as otherwise provided in the Agreement:

- (1) Rail: In the case of delivery into Tank Car, by means of a magnetic gauge rod Slip tube gauging device and applicable outage tables;
- (2) Tank truck: In the case of delivery into a Tank Truck, by means of a weigh scale or metering device (at Sellers' option)

(b) All measurement & sampling equipment, procedures, calculations, and practices shall be performed in conformance with the most current ASTM Standards, API Manual of Petroleum Measurement Standards (MPMS) and/or corresponding International measurement, sampling and testing standards. Volumes shall be adjusted from observed conditions to a standard temperature of 60 degrees Fahrenheit and a pressure of one standard atmosphere (14.696 PSIA) in accordance with ASTM D-4311, Table 7 in its latest revision.

(c) Seller warrants that the Products delivered pursuant to the terms of any Transaction shall conform to the specifications agreed upon in such Transaction and contained in the Confirmation. SUBJECT TO THE FOREGOING, AND UNLESS OTHERWISE EXPRESSLY STATED IN THE CONFIRMATION OF A TRANSACTION, SELLER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY OR FITNESS OF THE PRODUCTS FOR ANY PARTICULAR PURPOSE, EVEN IF SUCH PURPOSE IS KNOWN TO SELLER.

4. CLAIMS. Notice of claim as to defect in quantity or quality with respect to any Products shall be made in writing to Seller immediately after such

apparent defect is discovered. Any such notice of claim shall be followed promptly by a formal written claim with all necessary details to properly process such claim. IF NO FORMAL WRITTEN CLAIM IS RECEIVED WITHIN THIRTY (30) DAYS AFTER DELIVERY OF THE PRODUCTS TO THE BUYER, THE CLAIM SHALL BE DEEMED TO HAVE BEEN WAIVED.

8. FORCE MAJEURE Either Party will be excused from its obligations hereunder to the extent that its performance is delayed, substantially hindered or prevented by circumstances beyond its control (hereafter "Force Majeure") including, but not limited to: acts of God, weather, harbor conditions, fire, explosions, mechanical breakdown, strikes, plant shutdowns, civil disturbances and government regulations. Such Force Majeure shall not excuse Buyer's obligation to make payment for Products received. Seller shall not be liable for any demurrage or other costs resulting from any delay or failure to perform on the part of Seller caused by Force Majeure. The Party declaring Force Majeure shall give prompt written notice and full information on such event to the other Party. The declaring Party shall attempt to remedy the Force Majeure with all reasonable dispatch.

9. DELIVERY AND RECEIPT FAILURES Unless excused by force majeure or the other Party's failure to perform, if Seller fails to deliver or Buyer fails to take delivery of all of the quantity of the Product as required in a particular Transaction during the applicable Delivery Period (the "Non-Performing Party"), the exclusive remedy for the Non-Performing Party's failure shall be as follows:

(a) If Seller is the Non-Performing Party, Seller shall pay Buyer within five Business Days of receipt of notice of the amount due, an amount for each Gallon, Barrel or Ton (as applicable) of the Product of such deficiency equal to (1) the market price at which Buyer, acting in a commercially reasonable manner, is able, or absent an actual purchase, would be able to purchase or otherwise take delivery of Product in a quantity and quality comparable to the deficiency at the Delivery Location as determined by Buyer in a commercially reasonable manner, plus (i) costs reasonably incurred by Buyer in purchasing such substitute Product and (ii) additional transportation charges, if any, reasonably incurred by Buyer as a result of taking delivery of substitute Product at a location other than the Delivery Location, minus (2) the price agreed to for the specific Transaction; except that if such difference is zero or negative, then neither Party shall have any obligation to make any deficiency payment to the other.

(b) If Buyer is the Non-Performing Party, Buyer shall pay Seller within five Business Days of the receipt of notice of the amount due, an amount for each Gallon,

Barrel or Ton (as applicable) of the Product of such deficiency equal to (1) the price agreed to for the specific Transaction, plus any storage, transportation or other costs reasonably incurred by Seller in reselling the Product, minus (2) the market price at which Seller, acting in a commercially reasonable manner, is able, or absent an actual sale, would be able to sell or otherwise dispose of the Product at the delivery location, as determined by Seller in a commercially reasonable manner; except that if such difference is zero or negative, then neither Party shall have any obligation to make any deficiency payment to the other.

11. GOVERNING LAW

(a) These General Terms and each Transaction shall be governed by and construed in accordance with the laws of the State of Washington without reference to its law on conflicts and the Parties hereby submit to the non-exclusive jurisdiction of the Washington courts situated in Tacoma, Pierce County, Washington, and to service of process by certified mail.

(b) The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods and INCOTERMS shall not in any way apply to, or govern any Transaction hereunder.

(c) EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY SHALL BE LIABLE FOR ANY PROSPECTIVE PROFITS OR SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES.

12. MATERIAL SAFETY DATA SHEETS Seller has provided or shall provide Buyer upon Buyer's request with Seller's Material Safety Data Sheets ("MSDS") for the Products to be delivered hereunder. Nothing herein shall excuse Buyer from complying with all laws, regulations and decrees which may require Buyer to provide its employees, agents, contractors, users and customers who may come into contact with the Products with a copy of the MSDS and any other safety information provided to it by Seller, and/or which require Buyer to ensure that the recommendations relating to the handling of the Products are followed. Compliance with any recommendation contained in the MSDS or other safety information shall not excuse Buyer from complying with all laws, statutes, regulations or decrees of any state or territory having jurisdiction over Buyer. The MSDS covering the Products can be obtained at www.usor.com.

13. INDEMNITY AND LIMITATION OF LIABILITY

(a) Seller and Buyer mutually covenant to protect, defend, indemnify and hold each other harmless from and against any and all claims, demands, suits, losses, expenses (including without limitation, costs of defense, attorney's fees and interest), damages, fines, penalties, causes of action and liabilities of every type and character, including but not limited to personal injury or death to any person including employees of either Party or loss or damage to any personal or real property, to the extent caused by, arising out of or resulting from the acts or omissions of negligence or willful acts of such indemnifying Party, its officers, employees or agents with respect to the purchase and sale of Products hereunder. In the event the Parties are jointly and/or concurrently negligent, each Party shall indemnify the other Party to the extent of its negligent acts or omissions or willful acts.

14. MISCELLANEOUS

(a) No Transaction shall be assigned by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Each assigned Transaction shall be binding upon and shall inure to the benefit of the Parties and their permitted successors and assigns.

(b) No waiver by either Party of any breach by the other Party of any of the covenants or conditions of these General Terms or any Transaction shall be construed as a waiver of any succeeding breach of the same or of any other covenant or condition hereof.

(c) No oral agreement shall vary or modify the written terms hereof, and neither Party shall claim any amendment to, modification of, or release from any provisions by mutual agreement unless such agreement is in writing, signed by the other Party.

(d) All notices, invoices and other communications under these General Terms and any Transaction shall be deemed given on the date of the addressee's receipt thereof and shall be given only in writing by letter, telegram, cable, telex, facsimile or electronic data transmission.

(e) If any conflict exists between the terms and conditions of these General Terms and those of the Agreement, the terms and conditions of the Agreement shall control. The section headings are for convenience only and shall not be

(f) Should any court of competent jurisdiction hold any terms or condition herein invalid or unenforceable, the remaining terms and conditions shall remain in full

force and effect.

15. DEFINITIONS The following terms, not otherwise defined herein shall have the meanings ascribed to them below:

(a) "ASTM" means ASTM International, f/k/a American Society for Testing and Materials and "API" means American Petroleum Institute.

(b) "Barrel" means 42 United States Gallons measured at a temperature of 60 degrees fahrenheit (60°F) and an absolute pressure of 29.92 inches of mercury. "Gallons" means 231 cubic inches of liquid.

(c) "Business Day" means a day on which banks in Seattle, Washington are open for business.

(d) "Buyer" means a Party obligated to buy Products under the terms of a Transaction.

(e) "Taxes" means any and all federal, state and local, statutory, governmental, impositions, duties, tariffs, levies, fees and charges of every description, including all aviation fuel, special fuel, diesel, excise, environmental, spill, gross earnings, gross receipts, sales and use taxes, in each case, wherever imposed, and all penalties, charges, costs and interest payable in connection with any failure to pay or delay in paying them and any deductions or withholdings of any sort, provided, however, that Taxes shall not include (i) property taxes, which taxes are governed by the state law applicable thereto, (ii) taxes based on or measured by the income, gross receipts or net worth of either Party), and (iii) fees, imposts or charges of whatsoever nature (including rates, tolls, and dues of every description) in respect of a Vessel entering or leaving the loading or discharge port and approaching and leaving Seller's or Buyer's facilities, including charges imposed by fire boats, tugs and escort or other support vessels, the applicable coast guard, linesmen, a pilot, and any other person assisting a Vessel to enter or leave the loading discharge port and approaching and leaving Seller's or Buyer's facilities.

(f) "Ton" means a short ton of 2,000 pounds.