

**APEX OIL COMPANY, INC.  
CLARK OIL TRADING COMPANY  
ENJET, LLC**

**MARINE PROVISIONS FOR U.S. DELIVERY AND LOADING**

**EFFECTIVE AUGUST 1, 2010**

**1. General.** This Agreement consists of the Special Provisions, the General Conditions and these Marine Provisions. In the event of any conflict between the Special Provisions and the Marine Provisions, the Special Provisions govern.

**2. Definitions.** As used in these Marine Provisions, in addition to terms defined elsewhere in these Marine Provisions, the following capitalized terms have the following meanings.

“*Cargo*” means the volume of any petroleum products, gas liquids, atmospheric residuum, crude oil or condensate described elsewhere in this Agreement.

“*Inland Barge*” means a United States Coast Guard approved barge, restricted to operations in the inland waterways.

“*Laydays*” means the agreed period of time during which the Vessel is to arrive at the Terminal for loading or discharging as established by a mutual scheduling agreement, provided that such period of time is within the delivery period set forth in this Agreement.

“*Ocean Barge*” means a United States Coast Guard approved barge, having ABS Load Line Certification, permitted to operate in offshore waters.

“*Terminal*” means the refinery or petroleum storage facility delivering or receiving the Cargo referred to in this Agreement.

“*Vessel*” means any barge, tow, ocean-going barge or ocean tanker. The term “tow” includes any combination of tugs or pushboats or barges with the ability to function as a single unit.

“*Vessel Party*” means the party nominating a Vessel to perform under this Agreement.

**3. Pre-Arrival Conditions.**

**3.1. Notice of Arrival Time.** The Vessel Party must notify the Terminal and the other party to this Agreement (normally the Vessel scheduler) by fax or e-mail of the estimated time of arrival (“*ETA*”) at least seven days in advance for tankers or Ocean Barge or three days in advance for Inland Barges, or within 24 hours after the Vessel has departed the last port before arriving at the port designated elsewhere in this Agreement, whichever date is earlier. The Vessel must similarly notify the Terminal and the other parties hereto of the *ETA* 72, 48, 24, and 6 hours before Vessel’s expected arrival. The Vessel must promptly notify the Terminal of the new *ETA* if the *ETA* changes by plus or minus two hours or more following the 24-hour arrival notice. The Vessel must provide the Terminal and the other parties hereto answers to critical pre-berthing questions (available from the Terminal’s operations contact) at least 48 hours prior to the *ETA*. Although the Terminal will endeavor to schedule the berthing of Vessels in rotation based on their arrivals within or outside their *Laydays*, the Terminal reserves the right to berth Vessels out of turn or rotation.

**3.2. Vessel-Related Conditions.**

**3.2.1. Vessel Approval.** The Terminal, in its reasonable judgment, reserves the right for any reason to approve or reject a nominated Vessel without recourse from the Vessel Party. All Vessels nominated by the Vessel Party must meet the general Vessel requirements, including appropriate published or posted Terminal regulations, of the Terminal which receives or delivers the Cargo. Any Vessel not in compliance may not be permitted to dock or may be asked to vacate the berth and any resulting costs or delays are for the Vessel Party’s account. Acceptance or rejection of the nominated Vessel must be communicated to the Vessel Party as soon as possible but always within 24 hours, excluding Saturdays, Sundays and holidays, after receipt of nomination and answers to pre-berthing questions. Acceptance of any Vessel does not constitute a continuing acceptance of such Vessel for any subsequent loading or discharging. Each Cargo loading or discharging requires a new Vessel approval. Failure of any of a Vessel’s critical safety or environmental systems after initial acceptance by the Terminal is cause to immediately reject the Vessel, including notification to vacate the berth until suitable repairs are made to return the critical equipment to good working order. The Vessel must be re-accepted by the Terminal prior to the start or resumption of discharge or loading. Expenses incurred in effecting repairs are for the account of the Vessel Party and delays resulting from such repairs do not count as used laytime or as time on demurrage, even if already on demurrage.

**3.2.2. U.S. Coast Guard Compliance.** The Vessel Party warrants that the Vessel fully complies or holds necessary waivers with all applicable U.S. Coast Guard regulations in effect as of the date Vessel gives its Notice of Readiness (“*NOR*”). Any delay resulting from the Vessel’s non-compliance does not count as used laytime or as time on demurrage, even if already on demurrage.

**3.2.3. Environmental Compliance.** The Vessel Party warrants that the Vessel complies with all local, state and federal environmental laws and regulations while berthed at the Terminal. If the Vessel fails to comply with such laws

and regulations, the Vessel may be required to leave the Terminal at the Vessel's expense. Any delay caused by the Vessel's failure to meet such laws and regulations does not count as used laytime or as time on demurrage, even if already on demurrage.

**3.2.4. Oil Pollution Responsibility Certificate.** The Vessel Party warrants that the Vessel complies with the U.S. Federal Water Pollution Control Act and the Oil Pollution Act of 1990, and has secured and carries onboard the Vessel a current U.S. Coast Guard Certificate of Financial Responsibility (Water Pollution). The Vessel must also have onboard any other Federal or State Proof of Financial Responsibility Certificate which may be required at locations where the Cargo is to be loaded or discharged. All expenses, losses and delays incurred to obtain or maintain certificates are for the account of the Vessel Party and any delay resulting from failure to obtain or maintain the certificate does not count as used laytime or as time on demurrage, even if already on demurrage.

**3.2.5. Pollution Prevention and Responsibility.** In the event an escape or discharge of Cargo occurs from the Vessel and causes or threatens to cause pollution damage, the Vessel will promptly take whatever measures are necessary to prevent or mitigate such damage. The Vessel hereby authorizes the Terminal, or its nominee, at the Terminal's option, upon notice to the Vessel, to undertake such measures as are reasonably necessary to prevent or mitigate the pollution damage. The Terminal or its nominee must keep the Vessel advised of the nature and results of any such measures taken and, if time permits, the nature of the measures intended to be taken. Any of the aforementioned measures are at the Vessel Party's expense, provided that, if the Terminal caused or contributed to such escape or discharge, the expense of the aforementioned measures will be borne by the Terminal in proportion to its negligence in causing or contributing to the escape or discharge. If the Vessel determines such measures should be discontinued, the Vessel must so notify the Terminal or its nominee. Thereafter, the Terminal or its nominee has no right to continue such measures at the Vessel's authority or expense. However, the Terminal or its nominee is not waiving its rights to recovery for any continued measures under any applicable law or regulation. This provision is applicable only between parties hereto and does not affect any liability of the Vessel to third parties, including governments.

### **3.2.6. P&I Insurance.**

**3.2.6.1. Ocean Tanker and Ocean Barges.** Each Vessel which uses the Terminal must carry collision liability insurance with a limit equal to or greater than the full market value of the Vessel and P&I Insurance, including coverages for injury to or death of the Vessel's master, mates and crew and liabilities imposed under any applicable compensation act, excess collision liabilities and pollution liabilities imposed by federal and state laws. Limits of liability for sea-going Vessels may not be less than that required under federal and state laws or U.S. \$250 million per occurrence, whichever is greater. The Vessel Party warrants that, throughout Vessel's service under this Agreement, the Vessel will have full and valid P&I Insurance and valid Excess Pollution Liability Insurance ("**Excess Insurance**") as described below, with the P&I Insurance placed with a P&I Club that is a member of the International Group of P&I Clubs. The P&I Insurance and Excess Insurance will be at no additional cost to the other party to this Agreement. The Vessel Party or the P&I Insurance must include coverage against liability for Cargo loss/damage for the full value of the Cargo. The P&I Insurance must also include coverage against liability for pollution for an amount not less than U.S. \$ 1 billion per incident. If requested at any time during this Agreement, the Vessel Party must promptly furnish to the other party reasonable evidence of such P&I Insurance and Excess Insurance. The warranty set forth above is an essential part of this Agreement and the obligations of the other party under this Agreement are conditional on the truth and performance of such warranty. Any breach of the above warranty entitles the other party to whom the warranty is given to terminate this Agreement or to recover any damages allowable in law.

**3.2.6.2. Inland Barges.** Each Vessel which uses the Terminal must carry collision liability insurance with a limit equal to or greater than the full market value of the Vessel and P&I Insurance, including coverages for injury to or death of the Vessel's master, mates, and crew and liabilities imposed under any applicable compensation act, excess collision liabilities and pollution liabilities imposed by federal and state laws. Limits of liability for Inland Barges may not be less than that required under federal and state laws or U.S. \$100 million per occurrence, whichever is greater. The Vessel Party warrants that the Vessel will maintain in full force and effect, throughout the life of this Agreement, the normal and customary P&I coverage, and such P&I policy will include coverage for pollution liability.

**3.2.6.3. Certification of Insurance Carrier.** Applying to both Section 3.2.6.1 and Section 3.2.6.2, upon request, the Vessel owner will have its insurance carriers and or underwriters furnish to the Vessel Party and the other party to this Agreement certified copies of their insurance policies or insurance certificates specifying that no insurance will be canceled or materially changed during the term of this Agreement without 30 calendar days prior written notice to the Vessel Party and the other party. Nothing contained herein limits or waives the Vessel owner's legal or contractual responsibility to the Vessel Party.

**3.2.7. Drug and Alcohol.** The Vessel Party warrants that it has a policy on drug and alcohol abuse ("**Policy**") applicable to the Vessel which meets or exceeds the standards in the Oil Companies International Marine Forum Guidelines for Control of Drugs and Alcohol Onboard Ship, dated June 1995 (OCIMF). The Vessel Party further warrants that this Policy will remain in effect throughout the life of this Agreement and that the Vessel Party will exercise due diligence to ensure compliance with the Policy.

**3.2.8. Inert Gas System.** All Vessels fitted with an Inert Gas System ("**IGS**"), regardless of Cargo aboard or Cargo to be loaded, will not be permitted to berth unless the IGS is fully operational and all Cargo tanks are inerted with an oxygen level at or below 8%. Vessels intending to handle products or chemicals which could be adversely affected by inert gas, and such products or chemicals as do not require inert gas blanketing, should request an exemption from this Section at least three business days prior to entering the Terminal. For Vessels engaged in crude oil trade operations, positive inert gas pressure must be maintained on all Cargo and slop tanks throughout the transfer and any Crude Oil Washing ("**COW**") operation. If required and if agreed by the Terminal, manual gauging/sampling of Onboard Quantity ("**OBQ**") or Remaining on Board ("**ROB**") may be accomplished per API MPMS Chapter 17.2. Should the IGS fail after the Vessel has berthed, the Cargo transfer

operation or COW must be terminated immediately and the Vessel may be ordered to clear the berth until the IGS is fully operational and tanks are inerted to the pre-arrival condition. Costs and time associated with Vessel movement for IGS repair are for the Vessel Party's account. The use of temporary or substitute equipment or procedures to correct IGS malfunctions must be accepted by the Terminal prior to readmittance to the Terminal, or for continuation of Vessel loading/discharging at the Terminal. Any Vessel time lost as a result of the Vessel not complying with all of the provisions in this Section does not count as used laytime or as time on demurrage.

**3.2.9. Vessel Connection Construction.** All flanges, fittings, spool pieces and reducers must be of steel construction.

**3.2.10. Florida Strait Transit.** The Vessel Party warrants that any Vessel proposed for acceptance under this Agreement when transiting the Florida Straits - Key Biscayne to the Dry Tortugas, will maintain a distance of not less than ten miles off the outer navigational aids marking the reefs off the Florida coast. It is understood and agreed that any additional costs for Vessel track taken under this Agreement will be for the Vessel Party's account.

**3.2.11. Carrier Alpha Code.** The Vessel Party warrants that the bill of lading issuer will have a standard carrier alpha code required by the U.S. Custom Regulations (19 CFR Part 4), and that the Master of the carrying Vessel will, before issuance, place on each set of bills of lading a unique identifier code and otherwise fully comply with the foregoing regulations. Any delay, expense or other consequence of any failure to comply with the subject regulations is for the Vessel Party's sole account, and the Vessel Party agrees to indemnify the buyer or receiving party for any loss or expense incurred by the buyer, the receiving party or any third party because of such failure. This provision is without prejudice to any other right, defense, remedy or claim that the buyer or receiving party may otherwise have in connection with this Agreement. It is further expressly understood that no delay or other difficulty in performing this Agreement by the Vessel Party which is caused by a failure to comply with such regulations will be considered to be due to force majeure or to any cause beyond the control of the Vessel Party. As used in this provision, the term "carrying Vessel" means the ship that carries the Cargo sold or delivered under this Agreement. The term "bill of lading issuer" means the owner of the carrying Vessel or other entity which will issue bills of lading for the Cargo covered by this Agreement and transported on the carrying Vessel.

**3.2.12. U.S. Customs Compliance.** The Vessel Party warrants that the Vessel fully complies or holds necessary waivers with all applicable U. S. Customs regulations in effect as of the date Vessel berths. The Vessel Party must provide all information required for importation to the other party to this Agreement at least three business days prior to the Vessel's arrival. Any delay resulting from the Vessel Party's non-compliance or lack of information required for importation does not count as used laytime or as time on demurrage. Further, the Vessel Party warrants that, prior to the date the Vessel berths, the Vessel has not been to or from Cuba within the last 180 days.

#### **4. Terminal-Related Conditions.**

**4.1. Safe Berth Availability.** For a Vessel that has been accepted by the Terminal, the Terminal will provide a safe berth to which the Vessel may proceed to or depart from, and where the Vessel can always lie safely afloat. If at the Terminal's discretion in order to maintain a safe berth, hold-in tugs are required, any charges for the hold-in tugs will be for the Terminal's account. The Terminal will provide a berth for the nominated Vessel free of a wharfage fee for normal Cargo transfer. A wharfage fee will be charged for an extended discharge longer than normal laytime as defined in Section 5.3. However, service fees, including mooring, fresh water, steam, use of shore supplied gangway and oily slops receipts, will be charged to the Vessel. In addition, all duties and other charges on the Vessel, including those incurred for tugs and pilots, and other port costs and taxes on freight, will be borne by the Vessel. Notwithstanding anything contained in this Section, the Terminal does not warrant the safety or draft of public channels, fairways, approaches thereto, anchorages or other publicly-maintained areas either inside or outside the port area where the Vessel may be directed.

**4.2. Vacating of Berth.** The Terminal may order the Vessel to vacate its berth if it appears that the Vessel will not, because of the Vessel's disability, be able to complete loading or discharging of Cargo within 36 hours of the Vessel's arrival in berth for ocean tankers or Ocean Barges, and within 24 hours for Inland Barges. The Vessel will not be required to vacate a berth unless that berth is needed to accommodate another Vessel. Upon disconnecting the hoses, laytime ceases, and the Vessel, after tendering notice of readiness to recommence loading or discharging, will be reberthed in order of rotation, unless otherwise agreed by the Terminal, and laytime resumes upon the Vessel's reconnection of hoses.

**4.3. Shifting of Vessels.** The Terminal has the right to shift a Vessel from one berth to another or to anchorage. Expenses incurred in such shifting or anchoring of Vessels are for the Terminal's account, with the time consumed in shifting counted as used laytime or as time on demurrage. Expenses incurred for any shifting of the Vessel within a port by either of the parties hereto for the sole convenience of such party are at such party's expense.

**4.4. Ballast Water.** Any Terminal having ballast water facilities will receive a Vessel's ballast water or Cargo slops up to the maximum capacity available at each location. Any charge for this service is for the Vessel's account. Any delay by the Terminal in furnishing such facilities counts as used laytime or as time on demurrage. If the Vessel must shift to or from such facilities, all time consumed by the Vessel in shifting counts as used laytime or as time on demurrage, and shifting expenses, such as costs for tugs, mooring, pilots, etc., are for the account of the Terminal. However, the Terminal is not responsible for delays or shifting expense if the volume of ballast water or slops on board the Vessel is excessive. Expense of a delivering Vessel taking on ballast is for the account of the Vessel, and the time consumed does not count as used laytime or as time on demurrage, even if already on demurrage. This Section 4.4 applies for domestic and foreign Cargo slops. Foreign Cargo slops are subject to Section 4.5.

**4.5. Foreign Cargo Slop.** The Terminal must be notified at least three business days in advance of discharge when a Vessel has foreign Cargo slop on board which the Vessel desires to discharge. The Terminal may refuse to accept foreign

Cargo slop. Notification must include the contents of the Cargo slop material (what it is), country of origin, estimated value of the Cargo slop and an estimated quantity of the Cargo slop. If advanced notification is not received by the Terminal, any delay in discharging the foreign Cargo slop from the Vessel because of a delay in clearing the Cargo slop through U.S. Customs does not count as used laytime or as time on demurrage, even if already on demurrage. All expenses, including Customs fees, associated with the clearing of foreign Cargo slop through U.S. Customs, the testing of the Cargo slop materials and the removal and proper disposal of the Cargo slop is for the account of the Vessel. The title for foreign Cargo slops passes to the other party to this Agreement at the first permanent flange on shore. The Vessel Party warrants that the foreign Cargo slop does not contain any Vessel-generated waste or contaminants which are not found in the Cargo.

**4.6. Vessel-Generated Waste.** Both the delivering Terminal and the receiving Terminal must possess a valid U.S. Coast Guard Certificate of Adequacy signifying reception facilities are available to assure compliance with the applicable MARPOL Annex. Terminal-assessed fees associated with the testing, removal or reception of Vessel-generated waste, including fuel and lube oil sludge and oil bilge water, are for the account of the Vessel. Any delay by the Terminal in furnishing such facilities counts as used laytime or as time on demurrage, even if already on demurrage. If the Vessel must shift to or from such facilities, all time consumed by the Vessel shifting counts as used laytime or as time on demurrage, and shifting expenses (including costs for tugs, mooring and pilots) are for the account of the Terminal. The Vessel retains title to the waste material until it is tested and commingled with Terminal waste or, alternatively, delivered to a waste disposal company possessing a valid permit.

**4.7. Pollution and Safety Control Representative.** The Terminal may, at its option, place a Marine Representative on board the Vessel to observe loading or discharging of Cargo and related operations during the period the Vessel is in port. In addition, if receiving party is to take title ex-ship from the mother Vessel into one or more lightering Vessels, the receiving party may, at its option, place a Lightering Supervisor on the lightering Vessels. The Marine Representative will render advice to the Master and assist him in avoidance of any type of pollution, unsafe act or violation of Terminal regulations. The Marine Representative will not, however, under any circumstances, order or direct the taking of any particular action or interfere in any way with the Master's exercise of his authority. The responsibility and liability for any pollution, unsafe act or violation of Terminal regulations remains with the Vessel and its Master.

**4.8. Strike.** It is understood that a Vessel will not be required to load or discharge at a port, Terminal, installation or berth which is then the subject of a labor strike or picket.

**4.9. Hoses.** For tankers, hoses for loading or discharging, as the case may be, will be furnished by the Terminal and will be connected and disconnected at the option of the Vessel, by the Terminal, at the Vessel's risk and expense. For barges, local Terminal regulations will apply concerning which party's hoses are to be used. Flanges for hose connections should be at or near the Vessel's dockside manifold. Crossover hoses between barges will be furnished and connected by the barge at the barge's risk and expense.

**4.10. Wharf Damage.** The Vessel Party assumes full responsibility for any damage sustained by wharves, berths, dolphins, breasting clusters or docks owned or maintained by the Terminal arising out of the negligent or improper operation of any waterborne craft, either owned or operated by the Vessel Party or being operated by subcontractors or agents of the Vessel Party. The Vessel Party will fully and completely indemnify the Terminal for any such damages.

**4.11. Crude Oil Washing.** The Vessel Party certifies that the Vessel is equipped for, and is otherwise capable of crude oil washing all Cargo tanks. The Vessel Party further certifies that the Vessel complies with all international, national and local requirements applicable to crude oil washing. The number of tanks to be crude oil washed must be limited to the minimum required by law, unless the Terminal agrees otherwise. In the event crude oil washing operations occur, the maximum warranted pumping time will be increased by eight hours if all Cargo tanks are crude oil washed, or by the pro rata portion based on number of tanks thereof if fewer than all Cargo tanks are crude oil washed.

**4.12. Pumping.** In loading a Vessel, the Cargo will be pumped into the Cargo tanks of the Vessel by the Terminal and at the Terminal's expense. Such pumping will be at the Terminal's risk and peril only to the point at which the Vessel's hoses are attached to the Terminal's lines or, if the Vessel's hoses are not used, to the permanent hose connections on the Vessel receiving such Cargo. In unloading a Vessel, the Cargo will be pumped into the storage tank of the receiving Terminal by the Vessel and at the Vessel's expense. Such pumping will be at the Terminal's risk and peril from the point at which the Vessel's hoses are attached to the Terminal's lines or, if the Vessel's hoses are not used, to the permanent hose connections of such Vessel.

## **5. Notice of Readiness, Lightering and Calculation of Laytime**

**5.1. Notice of Readiness.** After the Vessel has arrived at the customary anchorage at the load or discharge location, and in all respects is ready to proceed to the berth to commence loading or discharging the Cargo, the Master or his agent must give the Terminal and the other parties hereto notice by fax, e-mail, radio or telephone that the Vessel is ready to load or discharge the Cargo, as the case may be, berth or no berth. If notice is given verbally, confirmation in writing must be made within 12 hours. For any additional loading or discharging location within the same port, NOR for the subsequent Terminal will be effective as the hose disconnect time at the then unloading/loading location.

**5.2. Vessel In-Harbor Lightering.** In-harbor lightering is not permitted without prior approval from the receiving party, which approval may not be unreasonably withheld, delayed or conditioned. In-harbor lightering performed is at the delivering party's sole expense and risk unless otherwise agreed in writing by the parties hereto. The Vessel Party must indemnify and hold harmless the other party to this Agreement and the Terminal for any loss or liability resulting from in-harbor lightering. Any costs, including standby spill response readiness and standby tug assistance to perform lightering, will be borne by the receiving party.

**5.3. Laytime.** Total laytime consists of the time allowed to provide adequate berth and to prepare for loading or discharging plus the time allowed for loading or discharging, day or night, Saturdays, Sundays and Holidays not excepted.

**5.3.1. Inland Barges.** Laytime for Inland Barges does not commence prior to the start of Laydays except with the approval of the Terminal. If NOR is tendered before Laydays, laytime begins at the beginning of Laydays unless the Vessel is sooner berthed, in which event laytime starts when the Vessel is all fast to the dock. Laytime for a Vessel arriving within its Laydays begins when the Vessel arrives and NOR is tendered. Laytime for a Vessel arriving after its Laydays begins when the Vessel is all fast to the dock. Allowed laytime for Inland Barges with a cargo of up to 14,999 barrels will be based on the Inland Barge charter party terms. In the absence of Inland Barge charter terms, allowed laytime will be ten hours for loading and ten hours for discharging. Allowed laytime for Inland Barges with a cargo of 15,000 barrels or more will be three hours plus one hour for each 3,000 barrels loaded or three hours plus one hour for each 2,500 barrels discharged. Laytime ceases when the Vessel is released by Terminal.

**5.3.2. Ocean Barges.** Laytime for Ocean Barges does not commence prior to the start of Laydays, except with the approval of the Terminal. If NOR is tendered before Laydays, laytime begins at the beginning of Laydays unless the Vessel is sooner berthed, in which event laytime starts when the Vessel is all fast to the dock. Laytime for a Vessel arriving within its Laydays begins when the Vessel arrives and NOR is tendered. Laytime for a Vessel arriving after its Laydays begins when the Vessel is all fast to the dock. Allowed laytime for Ocean Barges will be determined by the table below for either loading or discharging:

<b>Cargo Quantity to be Discharged</b>	
<b>Gross Standard Volume</b>	<b>Laytime</b>
Up to 19,999 barrels	12 hours
20,000-29,999 barrels	13 hours
30,000-39,999 barrels	14 hours
40,000-49,999 barrels	15 hours
50,000-59,999 barrels	16 hours
60,000-69,999 barrels	17 hours
70,000-79,999 barrels	18 hours
80,000-89,999 barrels	19 hours
90,000-99,999 barrels	20 hours
100,000-109,999 barrels	21 hours
110,000-119,999 barrels	22 hours
120,000-149,999 barrels	23 hours
150,000-179,999 barrels	24 hours
180,000-199,999 barrels	27 hours
200,000-219,999 barrels	30 hours
220,000 barrels or more	36 hours

**5.3.2.1. Lightering.** In the event lightering is required prior to berthing at any discharge port, the lightering point will neither be considered to be a second berth nor second discharge port. Laytime for the lightering commences as above, except that when NOR allowance for the Vessel to be lightered has not expired, time starts when the lightering Vessel is all fast alongside. Time moving from lightering point to berth does not count as used laytime.

**5.3.2.2. Discharge Capabilities.** The Vessel Party warrants that the Vessel will expeditiously discharge its Cargo to the extent allowed by the operation directed by the Terminal or as mutually directed by the parties to this agreement. Where discharge is not restricted by such factors as physical facilities, unwillingness of the Terminal to receive multiple grades simultaneously, or similar circumstances, the Vessel Party warrants that the Vessel will be capable of discharging its Cargo within 24 hours or within the laytime allowed, less three hours, whichever is less, or will maintain 100 PSI at the Vessel manifold (except during stripping only operations for which a maximum of two hours is allowed, except during Vessel to Vessel transfers, and except as adjusted for COW in Section 4.11) provided the shore facility can accept. Any delays due to the Vessel's inability to discharge within the time allowed or to maintain 100 PSI at the Vessels manifold will be for Vessels Party's account and will not count as used laytime or time on demurrage, even if already on demurrage. Where discharge is restricted by such factors as physical facilities, unwillingness of the Terminal to receive multiple grades simultaneously or similar circumstances, thereby causing the Vessel to be unable to meet the pressure or pumping time requirements above, the Vessel Party warrants only that the Vessel will utilize available pumps, pipes, manifolds and other equipment to expeditiously discharge the Cargo, and only delays due to the Vessel's failure to expeditiously discharge the Cargo will be for the Vessel Party's account and will not count as laytime or time on demurrage, even if already on demurrage.

**5.3.2.3. Cessation of Laytime.** Laytime ceases when the last hose or loading arm is disconnected after all of the Cargo has been discharged or loaded. If shore authorities or the inspector do not release the Vessel within three hours after disconnection, laytime begins again and accrues against the party at fault for the delay. Such laytime then continues until the shore authorities or inspector release the Vessel. The Vessel must expeditiously vacate the berth.

**5.3.3. Ocean Tankers.** Laytime for Ocean Tankers does not commence prior to the start of Laydays, except with the approval of the Terminal. If NOR is tendered before Laydays, laytime begins six hours after the beginning of Laydays unless the Vessel is sooner berthed, in which event laytime starts when the Vessel is all fast to the dock. Laytime for a Vessel arriving within its Laydays begins six hours after NOR is tendered or when the Vessel is all fast to the dock, whichever occurs first. Laytime for a Vessel arriving after its Laydays begins when the Vessel is all fast to the dock. Allowed laytime is 36 running hours for either loading or discharging, as the case may be, for a full Cargo, and a volumetric pro rata thereof for part Cargo. With respect to a Vessel of a 30-35,000 dwt size or smaller, such pro ration for a part cargo is to be based on the volume actually delivered divided by the Vessel's full Cargo volume (determined by the bill of lading volume for deliveries to a

Terminal). With respect to Vessels greater than a 35,000 dwt size, such pro ration for a part cargo is to be based on the volume actually delivered divided by the full cargo volume of a 35,000 dwt Vessel. However, the minimum allowed laytime will be 12 hours for a part Cargo, irrespective of the size of the Vessel.

**5.3.3.1. Lightering.** In the event lightering is required prior to berthing at any discharging port, the lightering point will neither be considered to be a second berth nor second discharge port. Laytime for the lightering commences as above, except that when NOR allowance for the Vessel to be lightered has not expired, time starts when the lightering Vessel is all fast alongside. Time moving from lightering point to berth does not count as used laytime.

**5.3.3.2. Discharge Capabilities.** The Vessel Party warrants that the Vessel will expeditiously discharge its Cargo to the extent allowed by the operation directed by the Terminal or mutually directed by the parties to this Agreement. Where discharge is not restricted by such factors as physical facilities, unwillingness of the Terminal to receive multiple grades simultaneously or similar circumstances, the Vessel Party warrants that the Vessel will be capable of discharging its Cargo within 24 hours or within the laytime allowed, less three hours, whichever is less or will maintain 100 PSI at the Vessel manifold (except during stripping only operations for which a maximum of two hours is allowed, except during Vessel to Vessel transfers, and except as adjusted for COW in Section 4.11) provided shore facility can accept. Any delays due to the Vessel's inability to discharge within the time allowed or to maintain 100 PSI at the Vessel manifold will be for Vessel Party's account and will not count as used laytime or time on demurrage. Where discharge is restricted by such factors as physical facilities, unwillingness of the Terminal to receive multiple grades simultaneously or similar circumstances, thereby causing the Vessel to be unable to maintain 100 PSI or discharge within 24 hours, the Vessel Party warrants only that the Vessel will utilize available pumps, pipes, manifolds and other equipment to expeditiously discharge the Cargo, and only delays due to the Vessel's failure to expeditiously discharge the Cargo will be for the Vessel Party's account and will not count as laytime or time on demurrage, even if already on demurrage.

**5.3.3.3. Cessation of Laytime.** Laytime ceases when the last hose or loading arm is disconnected after all of the Cargo has been discharged or loaded. If shore authorities or the inspector do not release the Vessel within three hours after disconnection, laytime begins again and accrues against the party at fault for the delay. Such laytime then continues until the shore authorities or inspector release the Vessel. The Vessel must expeditiously vacate the berth.

**5.4. Laytime Exclusions.** The following is a partial list of situations for which time consumed will neither count as laytime or as time on demurrage, even if already on demurrage:

- (i) any delay due to inability of the Vessel's facilities to safely discharge or receive Cargo within the time allowed;
- (ii) any time consumed in interruption of transfer operations due to the Vessel requiring separate or additional shore tank gauges for any reason or the Vessel's failure to comply with published or posted Terminal regulations; this includes interruption of transfer operations as a result of the Vessel Party's requests for line fill checks by comparing intermediate ship and shore gauges;
- (iii) delay due to prohibition of Cargo transfer at any time by the Vessel, including inerting, the owner or operator of the Vessel or by port authorities -- unless such prohibition is caused by the Terminal's failure to comply with applicable laws or regulations;
- (iv) failure to have the required certificate of financial responsibility, or failure to be in compliance with United States Coast Guard regulations (or hold the necessary waiver if not in compliance), or failure to have the certificate of responsibility required by a state, or failure to have other required documentation; time for Coast Guard inspection does not count as laytime;
- (v) awaiting Customs and Immigration clearance and pratique, if applicable;
- (vi) any delay caused by strike, lockout, stoppage or restraint of labor of the Master, officers and crew of the Vessel or towboat or pilots;
- (vii) any delay for which the Vessel, her Master or crew is responsible;
- (viii) any delay incurred in bunkering a Vessel, taking on or discharging ballast water or discharging slops or Vessel-generated wastes;
- (ix) after the Terminal notifies the Vessel to proceed in, or after disconnection of hoses or Vessel release, any delay in reaching or clearing the berth caused by conditions not reasonably within the Terminal's control, including channel blockage, or awaiting daylight, pilots, tugs, and tide;
- (x) passage time of the delivery Vessel, including lightering Vessel, from the customary anchorage to all fast at the berth;
- (xi) NOR/laytime is not valid if the Vessel is rejected by inspectors prior to loading; demurrage laytime will not begin until the Vessel is all-fast, has been re-inspected and approved for loading; and
- (xii) delay caused by US Coast Guard Vessel/Port Clearance/Inspection for Entry.

## 6. Demurrage

**6.1. Rate Determination.** Demurrage is payable by the responsible party for all time that used laytime exceeds the allowed laytime at the appropriate rate determined as follows.

**6.1.1. Demurrage Rate.** The demurrage rate is:

- (i) the demurrage rate agreed upon under the Special Provisions; or
- (ii) if no rate is stated under Special Provisions:
  - (a) the demurrage rate specified in the Charter Agreement for the Vessel; or
  - (b) in the instance in which the Vessel is term chartered, but not bareboat chartered, a rate equal to the daily hire rate plus in-port fuel cost; or
  - (c) in instances in which the Vessel is owned or bareboat chartered, a rate based on Worldscale Rate or American Tanker Rate for the size of Cargo times the market rate stated in percent of Worldscale or ATRS in "Platt's Oilgram Price Report" for similar size Cargoes, in similar service on a similar trade route for the nearest date before the bill of lading date for the Cargo.

**6.1.2. Reduction to Demurrage Rate.** The demurrage rate will be reduced to one-half the rate specified in Section 6.1.1 if the demurrage is incurred by reason of adverse weather occurring while laytime is accruing except during lightering operations, which impacts either the Terminal or the Vessel's ability to continue operations, or by reason of a force majeure event at the Terminal. A force majeure event is defined in the General Provisions applicable to this Agreement. The one-half rate of demurrage applies, beginning at the time of initiation of the event, to any Vessel that has prior to the event tendered valid NOR to the Terminal within the laydays nominated and accepted and has not completed discharge at the time of the event. The one-half rate of demurrage also applies to any Vessel that tenders valid NOR to the Terminal within 168 hours after the time of initiation of the event. The demurrage rate will be reduced to one-half the rate specified in Section 6.1.1 if the demurrage is a result of a delay caused by action or inaction of Coast Guard or other security agency over which neither the Vessel Party nor the Terminal party has control. Any delay due to failure of the Vessel Party to timely comply with Coast Guard or other security agency regulations is the responsibility of the Vessel Party and will not count as laytime or demurrage.

**6.1.3. Fleeting Charges.** Fleeting charges may be applicable at the rate and time billed by the Vessel owner.

**6.2. Documentation and Filing of Demurrage Claims.** Demurrage claims must be accompanied by such supporting data as may reasonably be required to confirm charges paid or due to third parties and to document times, events, schedules, pumping rates, pressures or other matters concerning the claim. Any demurrage claim by the Vessel Party must be submitted in writing, with supporting documentation, within 90 calendar days after laytime has ended. No claim will be paid that is received more than 90 days after laytime has ended. Demurrage charges will be due within 60 calendar days from receipt of invoice and supporting documents. The fact that the owing party has not collected demurrage from a third party is not an excuse or defense to a claim for payment by the owed party. Demurrage payable to the Vessel Party may not exceed actual demurrage paid to the Vessel owner. The Vessel Party is required to provide all necessary documents supporting/confirming payment to the Vessel owner.

## 7. Quantity and Quality Determination.

**7.1. Independent Inspection.** The quantity and quality of the Cargo delivered to or from Vessels hereunder will be determined by a mutually agreed upon independent, licensed petroleum inspector. Either party may arrange for the inspector and the cost of the inspection service will be shared equally between both parties. All measurements must meet the guidelines set out in the API's Manual of Petroleum Measurement Standards Chapter 17 - Marine Measurement, and all applicable API Bulletins and Standard publications. The inspector's determination as to quantity and quality is conclusive and binding upon both parties for invoice purposes, but without prejudice to the right of either party to pursue a claim. Time waiting for the inspector is counted as used laytime, or as time on demurrage.

**7.2. Oil Loss Representative.** One oil loss representative from the Vessel Party will be allowed to witness the inspection. However, the Vessel Party must provide a three-day written notice to the Terminal and the other party hereto prior to the Vessel's arrival stating the representative's name, company affiliation, company representing and telephone contact. The oil loss representative must adhere to the Terminal's safety procedures.

**7.3. Notification of Claims.** Any claim as to a shortage in quantity or defect in quality must be made in writing to the delivering party within 30 calendar days from the date of completion of delivery, defined as disconnection of hoses, of the Cargo involved.

## 8. Other Items.

**8.1. Ocean Tankers and Ocean Barges.** Provisions of industry Standard Tanker Voyage Charter Party form, code word "ASBATANKVOY" and as amended directly below, apply when not in conflict with any of the above-written provisions. To the extent not in conflict herewith, York/Antwerp Rules 1990 shall apply to this Agreement. Any payment made by the Cargo owner to the Vessel owner with respect to the Vessel or owner's liability for oil pollution damages will not be

deemed by General Average sacrifices or expenditures unless such spill or pollution resulted from a genuine General Average sacrifice.

**8.2. American Tanker Rate Schedule/Worldscale Reference.** All terms, conditions and differentials as set forth in the current revised American Tanker Rate Schedule/Worldscale Reference on the date of the Vessel's loading or discharging, as applicable, and amendments thereto, apply insofar as they are not in conflict with any of the above-written provisions.

**8.3. Gangways.** The Vessel must furnish its own gangway, unless the Terminal agreed in advance to furnish the gangway. If the Terminal furnishes the gangway, a fee may be charged to the Vessel. Any operational delays resulting from the Vessel not providing a safe gangway will not count as laytime, or time on demurrage.

**8.4. Average Most Probable Discharge Coverage.** USCG Regulations, covering lightering operations, require the Vessel Party to ensure the availability of, through contract or other approved means, response resources that will respond to an Average Most Probable Discharge ("**AMPD**"). The Terminal, as charterer or receiver of the Cargo, at its expense, has the right to provide such AMPD coverage for the Vessel to comply with these regulations. Should a spill occur, the Vessel Party has the right to call out the AMPD response resources as provided by the Terminal. By providing this coverage, the Terminal is not and will not be liable of the costs of the spill response and demurrage arising therefrom.