

# **CALTEX TERMS OF SALE**

## **(MARINE MARKETING)**

**Except as otherwise agreed in writing the following terms and conditions shall apply to all sales of Marine Products by Caltex Australia Petroleum Pty Ltd ACN 000 032 128 ("Seller") to the Buyer.**

## **1. PRICES**

The price to be paid for Marine Products shall be Seller's spot or posted price offered for a specific delivery. Spot prices offered are for deliveries made on, before or within 3 days subsequent to vessel's specified ETA as advised by Buyer, if accepted by Seller at time of nomination, prices for delivery beyond this range are subject to amendment at Seller's option. All taxes, duties and additional delivery charges are for account of Buyer. Seller reserves the rights to pass on to Buyer any increase imposed on Seller by any government authority subsequent to date price is offered or delivery is made whether retroactive or not and for this purpose Buyer expressly waives any applicable statute of limitations. The Buyer is responsible for GST in the manner outlined in the clause below under that heading.

## **2. PARTIES OBLIGATED**

- (a) Should Marine Products be ordered by an agent, as well as the principal, shall be bound by, and liable for, all obligations as fully and as completely as if the agent were itself the principal whether or not such agent purports to contract as agent only. Both principal and agent shall be considered Buyer for purposes of this agreement.
- (b) Deliveries of marine fuel made hereunder, if sold on credit basis, are delivered not only on the credit of Buyer, but also on credit of the vessel receiving delivery of marine fuel and it is agreed and Buyer warrants that Seller will have and may assert a lien against the receiving vessel for the amount of the purchase of said marine fuel.

## **3. QUALITY AND WARRANTY**

- (a) Marine Products shall meet specifications that are in effect at the time of delivery otherwise shall be seller's commercial grade of Marine Products generally offered to Seller's customers at time and place of delivery. To the extent not otherwise expressly excluded by the mandatory operation of law the Seller expressly limits its liability for breach of condition or warranty in relation to the Marine Products to (i) in the case of the Marine Products products, any one of the following (at the Seller's election) (1) the replacement of the Marine Products or the supply of equivalent Marine Products; (2) the payment of the cost of replacing the Marine Products or of acquiring equivalent products; or (ii) in the case of services associated with the Marine Products (1) supplying the services again; or (2) the payment of the cost of having those services supplied again. The Seller will not be responsible for any indirect or consequential losses or damages, including without limitation, demurrage claims, loss of contract or loss of profit, incurred by or attaching to the Buyer by reason of any failure on the Seller's part associated with the relationship between the Seller and the Buyer regulated according to these

terms and conditions.

- (b) Buyer shall have the sole responsibility for the selection of proper Marine Products for use in the vessel being supplied.
- (c) Without limiting in any manner the rights, entitlements and obligations of the Seller under section 3(a) above, it is the duty of the Buyer to take all reasonable actions, including retention and burning of fuel, to eliminate or minimise any costs associated with an off- specification or suspected off specification supply. To this end Buyer shall co-operate with the Seller in achieving the most cost effective solution.

#### **4. NOMINATIONS AND DELIVERIES**

- a) Buyer shall nominate vessel at least five (5) working days in advance of expected date of arrival, specifying loading port, ETA, grades and quantities. When such nomination is accepted by Seller, indicated date of arrival shall become the accepted delivery data. Seller reserves the right to cancel any nomination without liability on the part of Seller and without prejudice to any rights Seller may have against Buyer if vessel does not arrive at delivery port and present itself for delivery within three (3) days of the accepted delivery date.
- b) Buyer or vessel's local agent shall give Seller's local representative at the delivery port concerned at least forty eight (48) hours advance notice excluding Sundays and holidays, of each delivery, confirming Marine Products and quantities and other delivery details. Where such delivery date is different from original delivery date then acceptance must be in writing by Seller. Where 48 hours advance notice is not given or where delivery date changed from original delivery date and new delivery date is not accepted by Seller in writing then Seller shall in normal circumstances use reasonable efforts to make delivery in a timely manner.
- c) Where delivery is required during other than regular business hours, and is permitted by applicable regulations, Buyer shall pay all overtime and extra expenses incurred.
- d) Where lighterage is employed, all lighterage charges including overtime and other associated charges shall be for the account of Buyer.
- e) In the event Buyer fails to take delivery, in whole or in part, of the quantities nominated, Buyer shall be responsible for any costs resulting from Buyer's failure to take delivery, as well as for any losses incurred by Seller to downgrade the Marine Products.
- f) Seller shall always use reasonable efforts to adjust to changes in Buyer's schedule however Seller or Seller's supplier shall not be liable for demurrage paid or incurred by Buyer due to delays in furnishing berth or to any delay in

delivery or Marine Products where:

- i) Delivery date was not accepted by Seller's as outlined in sections 4(a) and 4 (b);
- ii) 48 hour notice as defined in section 4(b) was not properly given;
- iii) barge arrived on accepted delivery date and performed properly;
- iv) conditions beyond the control of Seller existed included but not limited to weather, harbour congestion or dredging operations;
- v) delays were not the result of Seller's inability to perform.

## **5. TITLE & RISK**

Delivery shall be deemed completed and title and (subject as may otherwise be expressly provided herein) risk in the Marine Products will pass to Buyer at the permanent intake connection of Buyer's vessel. Buyer shall be responsible for connection to intake of Buyer's vessel, barge or truck and pumping shall be performed under the direction of the receiving vessel, barge or truck.

## **6. INSPECTION AND DETERMINATION OF QUANTITY AND QUALITY**

- a) The quantity of Marine Products delivered shall be determined by measurements in accordance with the ASTM Petroleum measurement tables of shore tanks and lighters; or meters at Seller's option, and Buyer will be charged on the basis of these measurements. Buyer has a right to have its representative or at his own expense an independent inspector present during measurement but determination of quantity shall be made solely by Seller, and such determination shall be conclusive. In the event of delivery to Buyer's barge or barge nominated by Buyer, the amount of Marine Products delivered shall be determined by measurements of shore tanks or meters at the point of delivery to the barge, at Seller's option, and the amount so determined shall be conclusive. No objection will be taken by the Buyer where the actual quantity delivered is within plus or minus twenty (20) percent of Buyer's order quantity, and the Buyer shall pay for the actual delivered quantity.
- b) Sampling by Seller or Seller's supplier shall be done prior to Marine Products leaving either shore tanks, tank truck or barge. Buyer, at his own expense, shall have the right to appoint an approved petroleum inspector to witness the drawing of the sample and perform subsequent testing of the Marine Products. Seller or Seller's supplier shall take two representative samples of each grade of marine fuel(s) to be delivered. One sample shall be given to the Master of the vessel receiving the marine fuel; the other sample shall be retained by Seller or Seller's supplier for at least 30 days from the date of delivery in a safe place for verification of the quality thereof, if required. If Buyer makes a claim or complaint within 30 days of date of delivery, the sample retained by Seller or Seller's supplier shall be submitted for analysis to an independent laboratory. The analysis from the independent laboratory shall manifest the quality of the Marine Products delivered.

## **7) CLAIMS**

Any claim as to shortage in quantity must be noted on delivery receipt signed by

the Buyer or his representatives at time of delivery and presented by Buyer in writing to Seller within 15 days thereafter. No objection will be taken by the Buyer where the actual quantity delivered is within plus or minus ten percent of Buyer's order quantity. Any other claims by Buyer including deficiency in quality of Marine Products delivered by Seller must be made as soon as possible, and in no event shall Seller be responsible for claims more than 30 days from date of delivery. Buyer must furnish necessary details required by Seller to satisfactorily evaluate claim. Seller shall not be responsible for any claim arising in circumstances where there is or has been a contamination of fuel delivered by Seller with other fuel aboard Buyer's vessel.

## **8) PAYMENT**

- (a) Payment shall be made by Buyer, in Aust. dollars/U.S. dollars, without discount, offset or deduction upon receipt by Buyer of written, telegraphic or other notification of quantities delivered and amounts due. Subsequent adjustments, if any, will be made upon receipt by Seller of marine delivery receipt. Any deduction for claims related to such delivery shall be a breach of the Buyers obligation hereunder and all reviews/discussions/settlements on such claims shall be suspended until the Buyer makes payment in full for the quantity delivered as notified by Seller. Seller may immediately recover any amount withheld from the full payment and Buyer agrees that any claims related to the delivery do not constitute a valid defence against owner's claim to the withheld amount.

Subject as provided below, payment shall be considered past due if not received by Seller within thirty (30) days from date of invoice ("due date"). Where the due date after calculating the period of thirty (30) days from invoice fall due on a Saturday or Sunday( which shall not be counted as workdays) or a public holiday, the due date in those circumstances will be deemed to be the immediately prior workday. If at any time Seller considers Buyer's financial condition inadequate to meet Buyer's obligation hereunder, cash payment in advance or security acceptable to Seller may be required by the Seller before delivery and Seller may declare any amount than outstanding from Buyer to be immediately due and payable. If the Buyer fails to pay the Seller money owed under these terms, the Seller will be entitled to recover the money as a debt together with interest. The Buyer agree to pay the Seller interest at the rate equivalent to the current maximum overdraft rate being applied by the Commonwealth Trading Bank of Australia (or any successor) at the due date plus two percent (2%) per annum on any monies unpaid by the due date by the Buyer to the Seller on any account whatsoever hereunder (whether or not any formal or legal demand for the money owed has been made). Such interest is to be calculated on the sum of the debt from the due date for payment until payment of the debt in full. The Seller may at any time withhold and retain any monies due or owing to the Buyer by the Seller and apply this money in reduction of money due or owing by the Buyer to the Seller. The Buyer will not be entitled to withhold any monies due or owing to the Seller by the Buyer. Further, the Buyer may not plead any set-off, defence or counterclaim or otherwise attempt to reduce the Buyer's liability to make

payments hereunder. The Buyer's failure to pay will be a breach of these terms giving the Seller the right to terminate.

A certificate signed by any manager or nominated representative for the time being of the Seller and stating the balance of sums due by the Buyer to the Seller hereunder will be prima facie evidence of the amount of the Buyer indebtedness to the Seller at the date of the certificate and of all particulars contained in such certificate.

## **9. SAFETY & ENVIRONMENTAL PROTECTION**

- (a) Buyer is familiar with the health effects related to the Marine Products supplied hereunder and with appropriately protective safety and health procedures for handling and use of such Marine Products. Buyer shall adhere to such safety and health procedures while using or handling Seller's Marine Products. Buyer shall also facilitate the dissemination of such health and safety information to all employees, users, and others potentially exposed to the Marine Products sold hereunder. Buyer shall be responsible for compliance by its employees, agents, and other users with all health and safety requirements or recommendations related to the Marine Products supplied hereunder and shall exert its best efforts to assure that any of its employees or agents, users, and others potentially exposed avoid frequent or prolonged contact with or exposure to the marine fuel, both during and subsequent to delivery. Seller or Seller's supplier accept no responsibility for any consequence arising from failure by Buyer, its employees or agents, any users, or any other party to comply with such health and safety requirements or recommendations or arising from such contact or exposure.
- (b) In the event of spill during fuelling, Buyer shall promptly take, and/or shall assist and cooperate with Seller or Seller's supplier in taking any necessary action to remedy or mitigate the consequences thereof. Any of the measures taken by Seller, Seller's supplier or its designee shall be deemed taken on Buyer's authority, and shall be at Buyer's expense, except to the extent that such escape or discharge was caused or contributed to by Seller or Seller's supplier; provided that if Buyer considers that such measures should be discontinued, and any governmental authorities having jurisdiction concur, Buyer shall so notify Seller, and thereafter neither Seller nor its designee shall have any right to continue such measures under the provisions of this article.
- (c) Buyer shall supply Seller with all such documents and information concerning any escape or spillage or any program for the prevention thereof as are required by Seller or are required by law or regulations applicable to the Contract Port.
- (d) Buyer warrants that the Marine Fuel purchased hereunder is for the operation of the nominated vessel and that vessel only.
- (e) Buyer warrants the vessel nominated is in compliance with all notional regulations. Vessel to be bunkered is subject to Seller's acceptance and will not be moored at wharf or alongside other marine loading facilities of Seller or Seller's Supplier unless free of all conditions, difficulties, peculiarities, deficiencies or defects which might impose hazards in connection with the mooring, unmooring

or bunker of vessel.

#### **10. INDEMNITY**

Buyer shall indemnify and hold Seller and Seller's Supplier harmless from and against any and all claims, demands, suits or liability for manage to property, or injury or death or any person, or for a non-compliance with any requirement of any government arising out of or in any way connected with fault of Buyer or its agents or servants or other third parties in receiving, using, storing or transporting Marine Products delivered thereunder or due to exposure thereto.

#### **11. FORCE MAJEURE**

Buyer or Seller will be excused from its obligation hereunder to the extent that performance is delayed or prevented by circumstances beyond its control including, but not limited to, acts of God, weather, fire, explosions, mechanical breakdown, strikes, plant shutdowns, civil disturbances and government regulations. Such Force Majeure shall not include Buyer's obligation to make payment for the Marine Products received and Seller shall not be liable for any demurrage or other costs resulting from any such delay or failure to perform on part of Buyer.

#### **12. MISCELLANEOUS**

In the event Seller's capacity to perform becomes impracticable for any reason, including, but not limited to, requests or suggestions by any official body relating to supplies, priorities, rationing or allocations of any Marine Products, Seller may reduce or stop deliveries in such a manner as it may in its sole discretion determine and shall be relieved of its obligation to perform hereunder. Seller's right to require strict performance by Buyer of any and/or all obligations imposed upon Buyer by this Agreement shall not in any way be affected by any previous waiver, forbearance, or course of dealing.

#### **13. GOVERNING LAW**

This agreement shall be governed and construed in all particulars by the laws of the State of New South Wales, Australia and the Seller and Buyer each submit to the exclusive jurisdiction of the Courts of that State.

#### **14. GST**

##### **(1).Definitions and interpretation**

For the purposes of this GST Clause, unless the context requires otherwise:

**"Caltex"** means Caltex Australia Petroleum Pty Ltd ACN 000 032 128 and includes its subsidiaries;

**"Caltex Published Price"** means a price in respect of Marine Products (and such other products as Caltex may notify in writing from time to time) published by Caltex either as part of a general price list or publicly displayed by or on behalf of Caltex;

**"GST"** means goods and services tax, value added tax, consumption tax or other similar tax or impost;

**“Input Tax Credit”** means an entitlement to a credit in respect of GST which arises in relation to an acquisition of goods, services, real property or any other thing;

**“supply”** means a supply of goods, services, real property or any other thing; and other grammatical forms of the above terms have corresponding meanings.

## **(2).Payments exclusive of GST**

The following principles apply when determining the amount payable (the **Payment**) for any goods, services, real property or any other thing supplied pursuant to these terms and conditions.

(a) Subject as provided below, but notwithstanding anything otherwise to the contrary in any other provision herein, if GST is payable in relation to the supply of goods, services, real property or any other thing, the Payment will be the consideration specified herein plus GST (if any) calculated at the rate applicable from time to time.

(b) If the Payment is determined by reference to any cost, expense or liability incurred by a party (the **Payee**), the reference to cost, expense or liability incurred means the actual amount incurred by the Payee less the amount of any Input Tax Credit the Payee is entitled to in respect of that cost, expense or liability.

(c) If the Payment is a reimbursement or indemnification of a loss determined by reference to revenue received and costs incurred, the revenue will be the revenue earned net of GST and the costs will be determined in accordance with paragraph (b).

(d) If the Payment arises from a revenue sharing arrangement or an obligation to pay a specified percentage of revenue, the Payment is to be calculated by reference to the relevant revenue net of GST.

(e) If the Payment is determined by reference to any Caltex Published Price, then subject to any express indication by Caltex, or any agreement or understanding, to the contrary, the reference is to an amount inclusive of GST and no further amount of GST is to be added in determining the Payment.

(f) If the Payment is determined by reference to any liability incurred or payment made by a party by way of a government impost in the form of a tax (other than GST) or excise on any thing supplied hereunder (“tax”), applicable at the time of the agreement constituted by these terms, and at the time at which the Payment is determined that tax is for any reason no longer applicable or levied at a lower rate, then the reference to such liability is to be disregarded:

- (i) to the extent that that party is no longer required by law to remit an amount in respect of that tax, or
- (ii) except to the extent that that party is required by law to remit a lesser amount, or
- (iii) to the extent that that party receives or becomes entitled to receive a refund or credit in respect of any amount remitted in respect of it.

(g) If a party sets off an amount otherwise payable hereunder the principles set out above shall be applied to calculate the amount to be set off as if that amount were actually payable.

### **(3).Time for Payment**

If the provisions of the immediately preceding sub-section (2) of this section would require any party hereto to increase the amount otherwise payable by it by reference to GST payable by another party hereto, the amount of the increase shall be paid at the earlier of: the time at which the other party is required at law to remit the GST; and the time at which the amount otherwise payable is payable.

If a supply hereunder imposes a liability to GST upon any party (the *party liable*) but the Payment referable to the supply has been calculated without taking into account that liability, whether through error or because the Payment was made prior to the liability arising or otherwise, the other party shall pay to the party liable upon demand the difference between the Payment so calculated and the Payment determined by the application of the said sub-section (2) of this section.

### **(4).Documentation**

Each party agrees to do all things, including providing invoices or other documentation containing information, that may be required, necessary or desirable to enable or assist the other party to claim any credit, set off, rebate or refund in relation to any GST included in any Payment.