



## Global Marine Products

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# Terms of Sale

## Terms of Sale for Marine Fuels, July 2007

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Except as otherwise specifically agreed to in writing in the agreement ("Part 1") incorporating these Terms of Sale for Marine Fuels (the "Terms of Sale"), the following terms and conditions shall apply to all sales by Chevron Marine Products LLC ("Seller") or its Affiliates of bunker fuel oil, intermediate bunker fuels, marine diesel oil, and marine gas oil

(collectively hereinafter "Marine Fuels"). Part 1 and these Terms of Sale (collectively, the "Contract") contain all agreements, arrangements and stipulations between the parties in respect of the supply of Marine Fuels contemplated herein and supersede all prior agreements, arrangements and stipulations in respect of the same subject. Except where otherwise expressly stated in these Terms of Sale, in the case of any conflict between the documents comprising the Contract, Part 1 shall be given priority over the Terms of Sale as used in the Contract, "Affiliates" means any legal entity which controls, is controlled by, or is under common control with, another legal entity, and "control" means legal or beneficial ownership of fifty percent (50%) or more of the shares in a legal entity entitled to appoint directors or the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity.

## 1. Prices

(a) The price for Marine Fuels shall be Seller's spot or term price offered in Part 1 for a specific delivery or series of deliveries. Spot prices offered shall be valid for deliveries made on, before or within three (3) calendar days following the Accepted Delivery Date, as defined in Clause 4(a). The four (4) calendar day period comprising the Accepted Delivery Date and the three (3) calendar days thereafter are referred to herein as the "Pricing Date Range." Spot prices for delivery after the Pricing Date Range are subject to change at Seller's sole option.

(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 Marine Fuels, except for taxes on Seller's income and taxes on raw material or Seller's income taxes on the finished product. To the extent Seller incurs any of Buyer's taxes listed in the Contract, Seller's invoice will include such taxes as payable by the Buyer.

(c) If Buyer is entitled to purchase any Marine Fuels 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 country in which the sale is completed.

(d) Any foreign or domestic tax, duty, toll, fee, license, impost, charge or other exaction of any charges whatsoever, including VAT, excise taxes and any similar taxes, or the amount equivalent thereto and any increase thereof, now or hereafter (i) imposed, levied or assessed (but exclusive of taxes based on the Seller's income) by any national (or political subdivision thereof) taxing authority directly or indirectly upon, (1) the Marine Fuels and/or, (2) the production,

manufacture, transportation, storage, sale, use, transfer, delivery and/or other handling of the Marine Fuels and/or, (3) the production, manufacture, transportation, storage, purchase, sale, use, transfer, exportation, importation and/or other handling of any material contained in the Marine Fuels, or any wholly or partly refined or manufactured part thereof, and/or, otherwise (ii) measured by, incident to or as a result of the transaction herein provided for, shall, if collectible or payable by Seller, be paid by Buyer on demand by Seller. Any such payment not included in the Marine Fuels prices otherwise herein provided for, shall be in addition thereto.

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## 2. Parties Obligated

(a) Should Marine Fuels be ordered by an agent, then such 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 such principal is disclosed or undisclosed, and whether or not such agent purports to contract as agent only. Notwithstanding anything to the contrary in this Contract, Principal and agent shall each be deemed to be a Buyer for purposes of this agreement.

(b) Marine Fuels delivered hereunder are sold and delivered on the financial credit of the vessel being supplied (the "Vessel"), as well as on the promise of the Buyer to pay therefore. Buyer warrants that Seller shall have the right to assert a lien against the Vessel covering the Marine Fuels delivered for the purchase price, any extra charges incurred in accordance herewith, any taxes billed on the delivery of Marine Fuels or otherwise, and all associated recovery costs. Such remedy shall be in addition to, and not in limitation of, any other remedies available to it at law or herein.

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## 3. Quality and Warranty

(a) Marine Fuels shall be Seller's commercial grades of Marine Fuels generally offered to Seller's Marine Fuels customers at the time and place of delivery. EXCEPT FOR THIS SECTION 3(A), THE MARINE FUEL IS SOLD "AS IS", AND SELLER OTHERWISE MAKES NO WARRANTIES OF QUALITY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE AND ANY IMPLIED WARRANTIES OR CONDITIONS WHETHER STATUTORY OR OTHERWISE ARE EXPRESSLY EXCLUDED.

(b) Buyer shall have the sole responsibility for the selection of suitable Marine Fuels for use in the Vessel, and warrants

that the Vessel(s) nominated by Buyer to receive Marine Fuels is/are in compliance with all local, national and international regulations and requirements, as applicable.

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#### 4. Nominations and Deliveries

(a) Nomination. Buyer shall nominate a Vessel in writing at least five (5) Business days (defined as days on which banks are normally open for business at the delivery port or other location where sales hereunder are made) in advance of the Estimated Time of Arrival (the "ETA") proposed by Buyer, specifying delivery port, ETA and grades, specifications and quantities of Marine Fuels required. If such nomination is accepted and confirmed in writing by Seller, the ETA proposed by Buyer (or otherwise agreed between Buyer and Seller) shall become the "Accepted Delivery Date". Unless advised in writing by Buyer and confirmed in writing by Seller, amendments to the Accepted Delivery Date will not be recognized. Seller may cancel any nomination without liability and without prejudice to any rights Seller may have against Buyer if the Vessel does not arrive at delivery port and present itself for delivery on the Accepted Delivery Date. Except where contrary to local governmental or port regulations, all deliveries to Seller's customers will be made on a first come first served basis.

(b) Confirmation. Buyer shall give Seller at least forty-eight (48) hours advance written notice, excluding Sundays and non-Business days confirming type and quantities of Marine Fuels and other delivery details. If such delivery date is not within the Pricing Date Range, then any exception and acceptance must be in writing by Seller. When forty-eight (48) hours advance notice is not given or when the delivery date is not within the Pricing Date Range and the proposed new delivery date is not accepted by Seller in writing, then Seller may deliver or not, in its sole discretion.

(c) When delivery is required other than during normal business hours, and is permitted by applicable regulations, Buyer shall be fully responsible for and pay all overtime and extra expenses incurred by Seller.

(d) When delivery is made by barge, truck or coastal tanker (hereinafter collectively "Seller's delivery vessel"), all delivery charges, including overtime and associated charges, shall be for the account of Buyer. For delay caused by Buyer in the use of Seller's delivery vessel, Buyer shall pay any demurrage or detention charges at such rate as may be invoiced by Seller.

(e) Buyer shall notify Seller, in writing, prior to delivery, of the maximum allowable pumping rate and pressure for the

Vessel and Buyer and Seller shall agree on communication and emergency shutdown procedures.

(f) Buyer shall notify Seller, in writing, prior to delivery of any special conditions, difficulties, peculiarities, deficiencies or defects in respect of or particular to the Vessel that might adversely affect the delivery of Marine Fuels. Buyer shall be responsible for any increased costs incurred by Seller in connection therewith. If in the opinion of Seller, such special conditions, difficulties, peculiarities, deficiencies or defects call into question Seller's ability to make a safe delivery, Seller may cancel the nomination without liability.

(g) When delivery is made by Seller's delivery vessel, the Vessel shall provide a free and safe berth alongside to receive the Marine Fuels and to render all necessary assistance that may reasonably be required to safely moor and unmoor the Seller's delivery vessel or to connect or disconnect the delivery hose(s).

(h) If Buyer cancels, terminates or otherwise fails to take delivery, in whole or in part, of the quantities nominated, Buyer shall be responsible for any costs resulting from such failure, including without limitation, lost profits and any costs and expenses incurred by Seller to downgrade the Marine Fuels.

(i) Seller shall exercise 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 any delay in delivery of Marine Fuels when:

- 1) The delivery date was not within the Pricing Date Range or was not otherwise accepted by Seller as outlined in Sections 4(a) and 4(b).
- 2) Forty-eight (48) hours notice, as defined in Section 4(b), was not given.
- 3) Seller's delivery vessel arrived in a timely fashion and performed according to accepted practice.
- 4) Conditions as set forth in Section 11 below existed.
- 5) Seller was ready and able to perform, or
- 6) Conditions onboard Vessel resulted in failure to receive Marine Fuels.

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## 5. Title

a) Delivery shall be deemed completed and title to and risk of loss of Marine Fuels shall pass to Buyer at the permanent intake connection between Seller's loading hose and the Vessel.

(b) If delivery is made to barge, truck or coastal tanker nominated by Buyer (hereinafter "Buyer's delivery vessel"), delivery shall be deemed completed and title to and risk of loss of the Marine Fuels shall pass to Buyer at the last flange of Seller's or Seller's supplier's loading hose at the loading terminal .

(c) Buyer shall be responsible for connection of the loading hose to the intake of the Vessel or Buyer's delivery vessel and pumping shall be performed under the direction of Buyer's representative.

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## 6. Inspection and Determination of Quantity and Quality

(a) The quantity of Marine Fuels delivered shall be determined, at Seller's option, by measurements in accordance with either (i) the ASTM Petroleum Measurement Table for Seller's shore tanks or Seller's delivery vessel or (ii) Seller's meters. Buyer will be charged for Marine Fuels on the basis of these measurements. Buyer at its own expense has the right (and is encouraged) to have its representative or an independent inspector present during measurement, but determination of quantity shall be made solely by Seller. All such measurements noted above shall be final and binding save for manifest error.

(b) Sampling by Seller or Seller's supplier shall be accomplished throughout the Marine Fuels delivery process. Seller or Seller's supplier shall take four (4) representative samples of each grade of Marine Fuels to be delivered. Buyer shall have the right (and is encouraged) to have its representative witness the drawing of the samples. The aforementioned samples shall be securely sealed and labeled, numbered and identified by name of the Vessel, delivering facility, Marine Fuel type, delivery date and place of delivery. One (1) sample shall be given to Buyer's representative for MARPOL compliance purposes only; the second sample shall be given to Buyer's representative for quality determination purposes; and the other two (2) samples shall be retained by Seller or Seller's supplier for at least thirty (30) days following the date of delivery in a safe place for subsequent verification of the quality thereof, if required. If Buyer issues a claim regarding the quality of the Marine Fuel within thirty (30) days after the date of delivery in accordance with Section 7(b) below, one (1) of the two (2) remaining samples of Seller together with any other Seller's and Seller's

supplier's representative samples shall be submitted for analysis to a mutually agreed independent laboratory. The independent laboratory's analysis shall be conclusive as to the quality of the Marine Fuel delivered. The analysis shall be established by tests in accordance with ISO 8217 and/or any other specifications agreed to between Buyer and Seller in writing. Unless otherwise agreed, the expenses of the analysis by the independent laboratory shall be borne equally by Seller and Buyer. Any cost associated with the Buyer appointing a representative to witness the sample sealing and/or analysis at the independent laboratory shall be the sole responsibility of Buyer.

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## 7. Claims

(a) Any dispute as to the quantity of the Marine Fuels delivered must be noted at the time of delivery on the bunker delivery receipt or in a letter of protest. Any claim as to short delivery shall be presented by Buyer in writing within fifteen (15) calendar days after the date of delivery, failing which any such claim shall be deemed to be waived and forever barred.

(b) Any claim as to the quality of the Marine Fuels delivered must be submitted by Buyer to Seller in writing within thirty (30) days after the date of delivery, failing which, such claim shall be deemed waived and forever barred. Buyer shall base its quality claim solely on an analysis of the retained sample provided by Seller at the time of the delivery as provided for in Section 6(b) above. Buyer shall promptly furnish Seller the results of testing of the retained sample to enable Seller to properly evaluate the claim.

(c) Despite the provisions of Section 3(a), Buyer shall take all reasonable measures, including retention and burning of Marine Fuels in accordance with Seller's instructions, to eliminate or minimize any costs associated with an off-specification or suspected off-specification supply. Seller's obligation shall not exceed direct expenses incurred for removal and replacement of Marine Fuels. If Buyer removes such Marine Fuels without the consent of Seller, then all such removal and related costs shall be for Buyer's account. Notwithstanding anything in this Contract to the contrary, (i) Seller's obligations or liabilities hereunder shall not include any consequential or indirect damages, including without limitation, deviation costs, demurrage, damage to any Vessels or Buyer's delivery vessels or to their engines or tanks, and any actual or prospective loss of profits, and (ii) other than this Section 3(c) and in the event of personal injury or death, Seller's maximum liability under this Contract shall not exceed the price charged to the Buyer for the Marine Fuels supplied under this Contract. It is a condition precedent to any obligation for payment by the Seller that all sums

due to it from the Buyer shall have first been paid.

(d) Seller shall not be responsible for any claim arising in circumstances where there is or has been commingling of Marine Fuels delivered by Seller with other fuel aboard the Vessel or Buyer's delivery vessel.

(e) Any claim involving demurrage incurred by the Buyer's receiving vessel must be submitted by Buyer to Seller in writing within 30 days of the date of delivery. If Buyer fails to submit a demurrage claim within (30) days after the date of delivery, any such claim shall be deemed to be waived and absolutely barred.

(f) Seller shall respond promptly to any complaint or claim by Buyer and the parties shall further endeavor to resolve the matter one way or the other within forty-five (45) days of receipt of claim. Where Buyer and Seller cannot come to agreement on such claim within ninety (90) days, either party may invoke the dispute resolution procedures in accordance with the provisions of Section 14 below. However, nothing in this Section 7 shall relieve the Buyer of its obligation to make payments in full when due as provided herein.

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## 8. Payment

(a) Payment shall be made by Buyer, in U.S. dollars, without discount, offset or deduction prior to the time specified in Section 8(b) and in accordance with Seller's written, telegraphic or other notification of invoice specifying quantities of Marine Fuels delivered and amounts due. Seller may make subsequent adjustments to invoiced amounts based upon information contained in the relevant bunker delivery receipt. Buyer's failure to make payment in full of the amount noted by Seller shall be a breach of Buyer's obligations hereunder; moreover, any claims related to the delivery of Marine Fuels shall not relieve Buyer from paying Seller in full. Payment made by telegraphic transfer or by bank draft shall be forwarded to the address noted in Part 1 of the Contract.

(b) Payment shall be considered past due if not received by Seller within thirty (30) days after the date delivery of Marine Fuels commences. Overdue payments shall be subject, at Seller's sole discretion, to a service charge at the rate of two percent (2%) per thirty (30) day period or the maximum rate permitted under applicable law, whichever is less. 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 before delivery and Seller may declare any amount then



outstanding from Buyer to be immediately due and payable.

(c) The Buyer shall periodically provide to Seller that financial information or security deemed necessary by Seller to support any credit extension. If during the life of this Contract, the financial capacity of Buyer becomes impaired or unsatisfactory to Seller in the sole judgment of Seller, advance cash payment or security satisfactory to Seller shall be given by Buyer on demand by Seller and shipments/deliveries may be withheld until such payment or security is received.

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## 9. Safety and Environmental Protection

(a) Buyer is familiar with the health effects related to the Marine Fuels supplied hereunder and with relevant protective safety and health procedures for the handling and use of such Marine Fuels. Buyer shall adhere to such safety and health procedures while using or handling Seller's Marine Fuels. Buyer shall also facilitate the dissemination of health and safety information to all employees, users, and others potentially exposed to the Marine Fuels 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 Fuels supplied hereunder and shall exert its best efforts to assure that any of its employees or agents, users, and others avoid frequent or prolonged contact with or exposure to the Marine Fuels both during and subsequent to delivery. Seller or Seller's supplier accepts no responsibility for any consequence arising from failure by Buyer, its employees or agents, any users, or any other party to comply with relevant health and safety requirements or recommendations relating to such contact or exposure.

(b) If a spill occurs while Marine Fuels are being delivered, Buyer and Seller shall promptly take such action as is reasonably necessary to remove the spilled Marine Fuels and mitigate the effects of such spills. Seller is hereby authorized, at its option and at the expense of Buyer, to take such measures and incur such expenses (whether by employing its own resources or contracting with others) as are reasonably necessary in the judgment of Seller to remove the spilled Marine Fuels and mitigate the effects of such spills. Buyer shall cooperate and render such assistance as is required by Seller in the course of such action. All expense, claims, loss, damage, liability and penalties arising from spills shall be borne by the party that caused the spill. If both parties are at fault, all expense, claims, loss, damage, liability and penalties shall be divided between the parties in accordance with the respective degrees of fault.

(c) In the event of a spill during fueling, Buyer shall provide Seller with such documents and information concerning the spill and any programs for the prevention of spills as may be required by Seller or by law or regulations applicable in the port where the spill occurred.

(d) Buyer warrants that the Marine Fuels purchased hereunder shall be used for the operation of the nominated Vessel and that Vessel only.

(e) Buyer warrants that the Vessel is in compliance with all applicable national and international laws and regulations. The Vessel is subject to Seller's acceptance and will not be supplied Marine Fuels unless free of all conditions, difficulties, peculiarities, deficiencies or defects that might impose hazards in connection with its mooring, unmooring or bunkering.

(f) Buyer shall comply with all applicable laws and regulations in carrying out its obligations under this Contract, including the ISPS Code and to the extent applicable, MARPOL 73/78 Annex VI. Seller and its duly authorized representatives shall have access to the accounting records and other documents maintained by the other party which relate to the Marine Fuels being delivered under this Contract, and shall have the right to audit such records once a year at any reasonable time or times within twenty-four (24) months of the rendition of any statement or invoice forming the basis of such claim

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## 10. Indemnity

Buyer shall indemnify and hold Seller and Seller's Affiliates and supplier harmless from and against any and all claims, demands, suits or liabilities for damage to property or for injury or death of any person, or for non-compliance with any requirement of any governmental entity arising out of an act or omission of Buyer or its agents or servants in receiving, using, storing or transporting Marine Fuels delivered hereunder, including exposure thereto, unless the same be due to the sole negligence of Seller.

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## 11. 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 Marine Fuels 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 particulars of such event to the other Party. The declaring Party shall attempt to remedy the Force Majeure with all reasonable dispatch, but if such Force Majeure continues beyond the end of the Pricing Date Range, this Contract may be terminated by written notice from either Party. Seller shall not be obligated to make up any deliveries not fulfilled as a result of Force Majeure.

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## 12. Miscellaneous

(a) If performance by Seller becomes impracticable for any reason, including, but not limited to, orders, requests or suggestions by any official body relating to supplies, priorities, rationing or allocations of crude oil from which Marine Fuels are derived or any other petroleum 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 despite that such cause(s) is not attributable to Force Majeure.

(b) Except as otherwise expressly provided herein, no director, employee or agent of Buyer, its subcontractors or vendors, shall give or receive from any director, employee or agent of Seller or any affiliate, any commission, fee, rebate, gift or entertainment of significant cost or value in connection with this Contract. In addition, no director, employee, or agent of Buyer, its subcontractors or vendors, shall enter into any business arrangement with any director, employee, or agent of Seller or any affiliate who is not acting as a representative of Seller or its affiliate without prior written notification thereof. In carrying out its responsibilities under this Contract, Buyer will not pay or agree to pay, directly or indirectly, any funds or anything of value to any public official or official of a public or international organization for the purpose of influencing such person's official acts or decisions. Any representative(s) authorized by Seller may audit the applicable records of the last three years of Buyer for the sole purpose of determining whether there has been compliance with this Section 12(b).

(c) Buyer may not assign its rights or obligations hereunder without the prior written consent of Seller, such consent not to be unreasonably withheld or delayed. Seller may freely assign its rights and obligations hereunder to any third party, in which case such assignee shall become the Seller and assume all of Seller's rights and obligations under this Contract with no further obligation or liability on the party of Chevron Marine Products LLC. No assignment shall require either Party to conduct business with a third party in violation of any applicable laws, rules or regulations, and either Party may terminate this Contract forthwith if any such laws rules or regulations would or could be violated as a result of such assignment.

(d) If any provision or portion of this Contract shall be adjudged invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, such provision or portion of this Contract shall be deemed omitted and the remaining provisions and portions shall remain in full force and effect.

(e) Modifications or amendments to the Contract shall be valid only when expressly agreed upon in writing. The waiver or failure to require the performance of any covenant or obligation contained herein shall not be deemed to constitute a waiver of a similar later breach.

(f) Notices under this Contract shall be made and deemed duly given only when delivered in writing to the other party to the address set forth in Part 1, or such updated address as may be specified by a party from time to time.

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### 13. Governing Law

This Contract shall be governed and construed in all particulars by the laws of the State of New York, United States of America, without regard to those laws that would reference the laws of another jurisdiction.

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### 14. Dispute Resolution

All unresolved disputes and claims arising in connection with the sale of Marine Fuels to which these Terms of Sale apply shall be referred to arbitration conducted in the City of New York in accordance with the Commercial Rules of the American Arbitration Association. For claims stated in an amount of \$10,000 or less, the unsuccessful party shall pay all out-of-pocket arbitration costs. The proceedings and decision of the arbitrator shall be in English, and decision shall be

delivered no later than one hundred twenty (120) days after referral to arbitration or as soon thereafter as possible. Prior to arbitration, should the parties fail to agree on an arbitrator within sixty (60) days of referral to arbitration, either party may request selection of an arbitrator by the American Arbitration Association, which selection shall be accepted by the parties.

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