



**SPRAGUE OPERATING RESOURCES LLC  
GENERAL TERMS AND CONDITIONS FOR DELIVERED SALES  
OF REFINED PETROLEUM PRODUCTS  
EFFECTIVE MARCH 1, 2020**

**1. Application.** These General Terms and Conditions for the sale of refined petroleum products ("**Products**") on a delivered basis shall apply to each and every sale of Products based on Sprague Operating Resources LLC's ("**Sprague**") posted price or price quote for said delivered Products ("**Delivered Sales**"). These terms and conditions are the final and exclusive agreement of the parties with respect to Delivered Sales and shall override any terms or conditions stipulated, incorporated or referred to by Customer whether in any order, in any negotiations, or otherwise and supersede any other oral or written terms and conditions between the parties with respect to Delivered Sales. Customer acknowledges and agrees that, by purchasing Products from Sprague and taking delivery of said Product, such Delivered Sales shall be governed by these General Terms and Conditions. Purchases of Products under a forward contract, including those through Sprague's e-commerce platform, are not governed by these General Terms and Conditions. Under no circumstances shall these General Terms and Conditions be construed as an obligation of Sprague to have Products available for purchase by Customer.

**2. Transportation.** Sprague shall deliver the Product via tank truck to the delivery location agreed upon with the Customer.

**3. Pollution.** In the event of a spill, leakage, escape, or discharge of Product or other product from Sprague's truck or delivery equipment which causes or threatens to cause pollution damage (hereinafter referred to as a "**Spill**"), Sprague shall promptly take whatever measures are necessary to prevent or mitigate such damage. Sprague shall indemnify, defend, and hold Customer harmless from and against any and all claims, costs, expenses, clean up costs, losses, penalties, or other damages incurred by Customer as a result of the Spill to the extent caused by Sprague, its employees' or agents' gross negligent acts or omissions or willful misconduct.

**4. Quality and Quantity.** The Products delivered by Sprague shall meet the applicable specifications for the Product at the time of delivery. Quantity measurement shall be based on the Bill of Lading issued by the loading facility. If any Product delivered hereunder fails to meet the specifications, then Customer shall have the right to reject such Product within fifteen (15) days of delivery; however, in no event shall Sprague be responsible for Product that was contaminated after title passed to Customer and thereafter failed to meet the specification. In the event of rejection of Product by Customer, Sprague shall expeditiously remove any such non-compliant Product from Customer's storage tank(s) or, if possible, otherwise cure such specification defect without removal. Upon removal of any Product, Customer shall allow Sprague a maximum of five (5) days in which to replace the deficient Product. If however, Customer accepts delivery of Product that does not conform to the specifications, Customer and Sprague shall agree on an appropriate discount, if any, for such non-conforming Product. Failure of Customer to observe this provision or any action by Customer which impeded identification of an alleged specification defect shall act as a waiver of Customer's right to make such a claim.



**5. Title and Risk of Loss.** Unless otherwise agreed between Customer and Sprague, possession and title of the Product shall pass from Sprague to Customer as the Product passes the flange connection of the delivery equipment's delivery line to the receiving terminal's receipt hose. Responsibility for and risk of loss shall pass from Sprague to Customer at the time title passes to Customer.

**6. Taxes.** In addition to the purchase price, Customer will be liable for, pay and/or reimburse Sprague for the payment of, any and all taxes, fees (including any Federal Oil Spill Recovery Fee), assessments and other charges ("Taxes"), whether now existing or hereafter arising, which are imposed, levied or assessed by any federal, state or local governmental or regulatory authority with respect to the Products sold and delivered to Customer, the taxable incident of which arises out of or relates to the Products' production, storage, transportation, use, sale, delivery and/or transfer of title to Customer, Customer's payment therefore, or arises after such sale, delivery or title transfer. In the event that Sprague is required to pay any such taxes, fees, assessments or charges directly to the appropriate authority, Customer will promptly upon demand reimburse Sprague for such payments. Customer will furnish Sprague with any exemption or resale certificate or direct pay permit to which Customer may be entitled and will promptly notify Sprague of any change in the validity or scope of the same. If Customer fails to promptly notify Sprague of any change in its licensed status and taxes are subsequently imposed on the Product, Customer shall pay or reimburse Sprague for such taxable amount within two (2) days of receipt of notice from Sprague.

**7. Pricing and Billing.**

- a) *Purchase Price.* The purchase price Customer shall pay Sprague for Products shall be Sprague's posted or quoted delivered sales price, as well as any Taxes.
- b) *Billing.* Sprague shall invoice Customer and Customer shall pay Sprague all amounts due Sprague under this Agreement in the manner specified by Sprague for all Products and any services. The method of payment will be by electronic funds transfer unless the parties agree upon another method.
- c) *Interest Rate.* Sprague may charge Customer an interest rate of one and a half percent (1½%) monthly on any late payment or the maximum legal rate, if lower.
- d) *Invoices Presumed Final.* All invoices shall be conclusively presumed final and accurate. Customer shall waive any associated claim for an inaccurate invoice and/or overpayment unless, within two (2) months from the date of the delivery, in good faith, Customer objects to the invoice in writing, including an adequate explanation and supporting industry-acceptable documentation.
- e) *Netting.* The parties shall net all undisputed amounts due and owing, and/or past due, such that the party owing the greater amount shall make a single payment of the net amount to the other party in accordance with this Section 7.

**8. Supply Shortage.** Customer understands that Sprague may not have Products available for Delivered Sales or may limit the Products available for Delivered Sales and that Sprague shall have no obligation to supply any Products to Customer under these General Terms and Conditions. In the event of any curtailment, shortage or cessation in Sprague's existing or contemplated supply of Products, or in the raw materials used to manufacture such Products, irrespective of the cause or



foreseeability of such curtailment, shortage, or cessation, Sprague is further not obligated to purchase the Products in the open or spot market to supplement Sprague's supply of such Products for Delivered Sales.

**9. Notices.** All notices shall be in writing, and shall be signed by an authorized representative of the party giving such notice. Notices directed to either party shall be sent by United States mail, registered or certified, facsimile, electronic mail, a nationally recognized overnight courier service, or hand delivery to the party for whom intended at the address provided by such party or the last address known. Notice shall be deemed given when received on a business day by the addressee. In the absence of proof of the actual receipt date, the following presumptions apply. Notices sent by United States mail, registered or certified, shall be deemed to have been received two (2) business days following the day it was sent or an earlier time if confirmed by the receiving party. Notices sent by facsimile shall be deemed received upon the sending party's receipt of its facsimile machine's confirmation of successful transmission if on a business day and, if not, on the next following business day. Notice sent by electronic mail shall be sent with a request for a reply email and deemed received on the day sent if a business day and, if not, on the next following business day so long as the sending party does not receive notification that the electronic mail did not reach the intended recipient. However, a failure to include the request for a reply email or a failure to send a reply email confirming receipt will not alter the day notice is deemed to have occurred via electronic mail under this Section. Notice by overnight mail or courier shall be deemed to have been received on the next business day following the day it was sent or an earlier time if confirmed by the receiving party.

**10. Credit.** Sprague and Customer agree that Customer's ability to purchase Products from Sprague pursuant to these General Terms and Conditions is conditioned upon Customer meeting Sprague's credit requirements as may be established, and amended, from time to time. Customer agrees to provide such financial information, financial statements, annual reports, securities filings and credit authorizations as Sprague shall reasonably and from time to time request for the purpose of assessing and monitoring Customer's financial condition and credit worthiness. Customer acknowledges and agrees that the price of Products is volatile and these General Terms and Conditions impose an obligation on Customer that Sprague's expectation of receiving payment will not be impaired. Customer therefore agrees that Sprague, in its sole discretion, may at any time, without notice, increase or decrease Customer's credit requirements or prohibit Customer from purchasing Products from Sprague. Customer hereby further agrees to promptly notify Sprague of any change in the Customer's legal name and to give Sprague written notice as soon as reasonably practicable of any pending sale of fifty percent (50%) or more of the Customer's assets to a third party.

**11. Insurance.** With respect to Product sold under this Agreement, Sprague will carry or cause to be carried and maintained at all times the following insurance coverage:

- a) Workers' Compensation insurance complying with the laws of the State or States having jurisdiction over each employee, and Employer's Liability insurance with limits of \$100,000 each accident, \$100,000 disease each employee, and \$500,000 disease policy limit;



- b) Commercial or Comprehensive General Liability Insurance on an occurrence form with a combined single limit of \$1,000,000 each occurrence, and annual aggregates of \$2,000,000, for bodily injury and property damage, including coverage for blanket contractual liability, broad form property damage, personal injury liability, independent contractors and Products/completed operations;
- c) Automobile Liability insurance with a combined single limit of \$1,000,000 each accident for bodily injury and property damage to include coverage for all owned, non-owned, and hired vehicles with the following endorsement: MCS-90 (Motor Carrier Act of 1980) and CA-9948 (Pollution Liability Broadened Coverage for Covered Autos) or equivalent; and
- d) Excess or Umbrella Liability insurance with a combined single limit of \$1,000,000 each occurrence, and annual aggregates of \$1,000,000, for bodily injury and property damage covering excess of Employers' Liability insurance and the insurance described in the above subsections b and c; and
- e) Pollution Liability insurance with a combined single limit of \$1,000,000.

**12. Warranties.** Except for the warranty of title, no warranty, expressed or implied, whether oral or written, of merchantability, fitness or suitability of the Products for any particular purpose or otherwise is made by Sprague other than that the Products conform, within any tolerances stated, to the applicable specifications for the Products at the time of delivery. Customer assumes all risks and losses that result from the use of the Products whether used singly or in combinations with other substances or in any process. In no event shall Sprague be liable for any consequential, incidental, indirect, remote or special losses or damages including, but not limited to, loss of use, lost profits or any demurrage or detention charges.

**13. Safety Data Sheets.** Sprague will provide, or otherwise make available, to Customer appropriate Safety Data Sheets ("SDS") and any updated information for the Products in accordance with the applicable requirements of the Occupational Safety and Health Administration at or prior to the time of delivery. Customer acknowledges receipt of, or access to, Sprague's SDS and acknowledges that Customer is aware of the hazards and risks associated with the storage, transportation, handling and use of the Products. Customer will advise Customer's Personnel and any third parties who may purchase or come in contact with the Products as to the hazards of the Products, as well as the precautionary procedures for their storage, handling and use which are set forth in such SDS and any supplementary SDS or written warning(s) which Sprague may provide to Customer from time to time.

**14. Laws and Regulations.** These General Terms and Conditions shall be subject to all valid local, state and federal laws and orders, directives, rules and regulations of any governmental body or official having jurisdiction. Each party shall indemnify, defend and hold harmless the other party from any fines, penalties, assessments or liabilities imposed by any governmental authority of competent jurisdiction relating to the failure of such party to comply with any applicable governmental law, rule or regulation.



**15. Indemnification.** Customer shall indemnify, defend and hold Sprague harmless from and against all loss, cost and expense, including court costs and attorney fees, for any claims, suits, judgments, demands, action, penalties or liabilities, including injury to or death of persons, caused by, arising out of or resulting from the negligent, willful or bad faith acts or omissions of the Customer, its officers, employees or agents with respect to Delivered Sales under these General Terms and Conditions or arising while the Product is in Customer's exclusive control and possession. Sprague shall indemnify, defend and hold Customer harmless from and against all loss, cost and expense, including court costs and attorney fees, for any claims, suits, judgments, demands, action, penalties or liabilities, including injury to or death of persons, caused by, arising out of or resulting from the negligent, willful or bad faith acts or omissions of Sprague, its officers, employees or agents with respect to Delivered Sales under these General Terms and Conditions or arising while the Product is in Sprague's exclusive control and possession. Where personal injury, death, or loss of or damage to property is the result of the joint negligence or misconduct of the parties hereto, the parties expressly agree to indemnify each other and save harmless in proportion to their respective share of such joint negligence or misconduct. This indemnity provision shall survive termination of these General Terms and Conditions.

**16. Waiver and Severability.** The waiver by either party of a breach of any provision contained herein shall be in writing and shall in no way be construed as a waiver or any subsequent breach of such provision or the waiver of the provision itself. Should a court of competent jurisdiction hold any provision of these General Terms and Conditions invalid, illegal or unenforceable, that provision shall be eliminated or limited to the minimum extent necessary so that these General Terms and Conditions shall otherwise remain in full force and effect and enforceable.

**17. Limitations.** EXCEPT TO THE EXTENT PROVIDED HEREIN, A PARTY'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY AND NEITHER PARTY SHALL BE LIABLE FOR SPECIFIC PERFORMANCE, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE.

**18. Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of New Hampshire, excluding its conflicts and law of principles. The parties consent to the jurisdiction of the New Hampshire courts to resolve any disputes under this Agreement and hereby waive any right to a jury trial.

**19. Supplier – Purchaser Relationship.** Sprague and Customer expressly acknowledge and agree that these General Terms and Conditions do not establish or create a long-term supplier/purchaser relationship and Sprague has no obligation to sell Delivered Products to Customer. Sprague specifically reserves the right to modify, alter, or terminate these General Terms and Conditions at any time upon notice to Customer. In the event any applicable government laws, rules or regulations would have the effect of imposing any such continuing relationship, each of Sprague and Customer will take such actions and file such notices as the other party may reasonably require in order to terminate the applicability of the General Terms and Conditions.



**20. Force Majeure.** Except with regard to a party's obligation to make payment(s) due, neither party shall be liable to the other for failure to perform an obligation; to the extent such failure was caused by Force Majeure. "Force Majeure" shall include occurrences beyond the affected party's control (and in the case of Sprague, occurrences affecting Sprague's supplier or suppliers), but not be limited to the following: (i) physical events such as acts of God, landslides, lightning, earthquakes, fires, storms or storm warnings, such as hurricanes, which result in evacuation of the affected area, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery or equipment or lines of pipe; (ii) weather related events affecting an entire geographic region, such as low temperatures which cause freezing or failure of wells or lines of pipe; (iii) acts of others such as strikes, lockouts or other industrial disturbances, riots, sabotage, insurrections, acts of terrorism or wars; and (iv) governmental actions such as necessity for compliance with any court order, law, statute, ordinance, regulation, or policy having the effect of law promulgated by a governmental authority having jurisdiction. Sprague and Customer shall make reasonable efforts to avoid the adverse impacts of a Force Majeure and to resolve the event or occurrence once it has occurred in order to resume performance. Neither party shall be entitled to the benefit of this Section 20 to the extent performance is affected by any or all of the following circumstances: (i) the party claiming excuse failed to remedy the condition and to resume the performance of such covenants or obligations with reasonable dispatch; or (ii) economic hardship, to include, without limitation, Sprague's ability to sell Product at a higher or more advantageous price, Customer's ability to purchase Product at a lower or more advantageous price, or a regulatory agency disallowing, in whole or in part, the pass through of costs resulting from this Agreement; (iii) the loss of Customer's market(s) or Customer's inability to use or resell Products purchased hereunder, except, in either case, as provided in this Section; or (iv) the loss or failure of Sprague's oil supply or depletion of reserves, except, in either case, as provided in this Section. Notwithstanding anything to the contrary herein, the parties agree that the settlement of strikes, lockouts or other industrial disturbances shall be within the sole discretion of the party experiencing such disturbance. The party whose performance is prevented by Force Majeure must provide immediate notice to the other party orally and, as soon as reasonably possible, in writing with reasonably full particulars of the event or occurrence. Upon providing such notice, the party claiming Force Majeure will be relieved of its obligation, from the onset of the Force Majeure event, to make or accept delivery of Product, as applicable, to the extent and for the duration of Force Majeure, and neither party shall be deemed to have failed in such obligations to the other during such occurrence or event.

**21. Headings.** The headings and subheadings contained in these General Terms and Conditions are used solely for convenience and shall not be used to construe or interpret the provisions of these General Terms and Conditions.