



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

1. Application. These General Terms and Conditions for the sale of refined petroleum products (“**Products**”) shall apply to each and every sale of Products at the rack based on Sprague Operating Resources LLC’s (“**Sprague**”) posted rack price (“**Rack Sales**”). These terms and conditions are the final and exclusive agreement of the parties with respect to Rack 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 Rack Sales. Customer acknowledges and agrees that, by purchasing Products from Sprague at the rack and taking delivery into trucks, such Rack Sales shall be governed by these General Terms and Conditions. Purchases of Products under a forward contract or 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 at the rack by Customer.

2. Transportation Equipment. Customer shall be responsible for the safe handling of Products and will only use transportation equipment and drivers that comply with all applicable governmental transportation, safety, health and environmental regulations. Sprague may, at its sole discretion and without liability for any loss, cost or delay suffered by Customer as a result thereof, decline to load or permit the loading of any equipment which Sprague, or the delivering terminal’s personnel, reasonably determines is not in such compliance.

3. Terminal Access. When accessing a terminal for the purchase of Products under these General Terms and Conditions, Customer and its employees, agents, common carriers and jobbers (collectively “**Customer’s Personnel**”) shall comply with all operating and safety procedures of the terminal and shall execute and deliver to Sprague such agreements as Sprague may require from time to time in connection with Customer’s access to a terminal owned by Sprague. If the terminal is owned by a third party, Customer’s Personnel shall also comply with all operating and safety procedures of such terminal as may be promulgated from time to time by the terminal and shall execute and deliver such agreements as may be required from time to time in connection with Customer’s Personnel access to such third party’s terminal. Customer’s Personnel will also comply with any federal or state laws and regulations with respect to the use of, and access to, such terminal including, but not limited to, any requirements to provide identification and credentials. In the event Customer is provided access devices that permit entry into a terminal and/or activate delivery of Products at such terminal, Customer will only furnish such devices to Customer’s Personnel who are properly instructed in the safe handling and loading of Products. Customer will be liable for the purchase of all Products delivered utilizing any access device provided to Customer, including without limitation such deliveries that may arise as a result of lost, stolen, misplaced or misused access devices.

4. Pollution. If an escape, spillage or discharge of Product (hereinafter referred to as a “**Spill**”) occurs while Product is being delivered to Customer, Customer will promptly take such action as is reasonably necessary to remove the Product and mitigate the effects of such Spill. However, notwithstanding the cause of such Spill, Sprague is hereby authorized, at its option, upon notice to the Customer, or Customer’s operator or agent, to take such measures, either in cooperation with the Customer, or exclusively as the sole party, and incur such expenses (whether by employing its own resources or by contracting with others) as are reasonably necessary, in the judgment of Sprague, to remove the Product to mitigate the effects of such Spill. If Sprague has exercised its option to remove the Product and mitigate the effect of such Spill, Customer agrees to cooperate and render such assistance as is required by Sprague in the course of such action. Any expenses, damages, costs, fines, and penalties arising from Spill, including costs of collection or legal fees, shall be paid by the party that caused such Spill. If both parties have acted negligently, any expenses, costs, etc., shall be divided between the parties in accordance with their respective degree of



negligence. Customer also agrees to give, or cause to be given, to Sprague, all such documents, and other information concerning any Spill, or any program for the prevention thereof, which are requested by Sprague, or required by law or regulation. If Sprague undertakes such measures Customer hereby waives and agrees not to raise the defense of "volunteer" to a claim for reimbursement of such expenses by Sprague.

5. Quantity and Quality. The Products delivered by Sprague shall meet the applicable fuel specifications. Quantity shall be determined on a gross or net gallon basis, as is Sprague's customary practice for the delivery location, at the time of loading. Customer acknowledges that, when quantity is determined on a net gallon basis, Sprague shall determine net gallons based on the normal temperature of sixty (60) degrees Fahrenheit with gallonage adjustments as provided in Table 6 of the American Edition of the ASTM-IP Petroleum Measurement Tables. Any claim for defect or variance in quality or shortage of quantity shall be made, and Sprague shall be notified and given the opportunity to inspect, prior to the unloading of the Products from Customer's transportation equipment or within three (3) business days in the case of any latent defect being discovered. Failure of Customer to observe this provision or any action by Customer which impeded identification of an alleged defect shall act as a waiver of Customer's right to make such a claim.

6. Title and Risk of Loss. Title to and risk of loss of any Products shall pass from Sprague to Customer as the Product passes the last flange of the delivery terminal's equipment to the loading flange of Customer's transportation equipment. Customer shall be responsible for transportation of Products from delivery points, as well as any and all related costs.

7. Taxes. In addition to the posted rack price for Products, 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, 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 Products, Customer shall pay or reimburse Sprague for such taxable amount within two (2) days of receipt of notice from Sprague.

8. Pricing and Billing.

a) *Purchase Price.* The purchase price Customer shall pay Sprague for Product shall be Sprague's posted rack price for that particular Product in effect at the time the Customer commences to load Product into the Customer's transportation equipment, 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 Sprague has authorized another method of payment.

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. The terminal's meter reading at the time of loading shall control for the purpose of determining an invoice's accuracy. Customer shall waive any associated claim for an inaccurate invoice and/or overpayment unless, within two (2) months from the date of invoice, 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 8.

9. Supply Shortage. Customer understands that Sprague may not have Products available for Rack Sales or may limit the Products available for Rack 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 Rack Sales.

10. 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.

11. Credit. Sprague and Customer agree that Customer's ability to purchase Products at the rack 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 at the rack. 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.

12. Insurance. With respect to Products purchased under this Agreement, but without releasing, waiving, or limiting any obligation of Customer herein, Customer, its agents, contractors, and any subcontractors (collectively referred to as "**Customer's Transporter**") will carry or cause to be carried and maintained at all times the following insurance coverage with insurance companies acceptable to Sprague, the cost of which shall not be Sprague's obligation:



- 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 \$1,000,000, 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, and sudden and accidental pollution;
- 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 \$2,000,000 each occurrence, and annual aggregates of \$2,000,000, for bodily injury and property damage covering excess of Employers' Liability insurance and the insurance described in the above subsections b and c.

In each of the above described policies, Customer's Transporter agrees to waive and will require its insurers to waive any rights of subrogation or recovery they may have against Sprague, its parent, subsidiary or affiliated companies. Under the policies described in the above subsections b, c, and d, Sprague and its parent shall be named as additional insured's, and such insurance will serve as primary non-contributory coverage for Sprague and its parent. Non-renewal or cancellation of policies described above will be effective only after written notice is received by Sprague from the insurance company thirty (30) days in advance of any such non-renewal or cancellation. Prior to picking up Products under these General Terms and Conditions, Customer's Transporter will deliver to Sprague certificates of insurance evidencing the existence of the insurance described above. Sprague may reasonably require additional insurance of Customer as otherwise may be required by any applicable governmental law rule or regulation.

13. 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.

14. 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.

15. 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.

16. 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 Rack 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 Rack 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.

17. 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.

18. Limitation of Liability. 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.

19. 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.

20. 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 that 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.

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.