



2023 Edition

# Dry Bulk Marine Provisions for FOB Purchases and Sales

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# DRY BULK MARINE PROVISIONS FOR FOB PURCHASES AND SALES

## ARTICLE 1. GENERAL

### Section 1.1. Applicability.

These Dry Bulk Marine Provisions apply to any agreement, and subsequent performance, between Buyer and Seller in connection with the purchase/sale/exchange and waterborne delivery of the Cargo set forth in the Agreement.

### Section 1.2. Priority of Terms.

If there is a conflict between the Special Provisions and the General Terms and Conditions or between the Special Provisions and these Dry Bulk Marine Provisions, the Special Provisions govern. If there is a conflict between these Dry Bulk Marine Provisions and the General Terms and Conditions, these Dry Bulk Marine Provisions govern. If one or more provisions of the Agreement are held unenforceable as a matter of law, the remainder of the governing provisions above remain in full force and effect.

### Section 1.3. Rules of Construction.

The following rules of construction govern the interpretation of these Dry Bulk Marine Provisions, except where the context clearly requires otherwise: a) references to “days”, “months”, and “years” mean calendar days, months, and years unless otherwise indicated; b) the word “including” does not limit the preceding word or phrase; c) any reference in these Dry Bulk Marine Provisions to an “Article”, “Section”, or “Subsection” shall be to the corresponding Article, Section, or Subsection of these Dry Bulk Marine Provisions, unless the context requires otherwise; d) any reference to a particular Applicable Law (including conventions), standard, manual, form, or contract will be construed to refer to such Applicable Law (including conventions), standard, manual, form, or contract as the same may be amended, supplemented, restated, or superseded; e) any reference to a particular Governmental Authority will be construed to refer to any successor Governmental Authority; f) Article, Section, and Subsection headings are for convenience of reference only and do not affect interpretation; g) the words “hereof”, “herein”, and “hereunder” and words of similar meaning refer to these Dry Bulk Marine Provisions as a whole and not to any particular provision of these Dry Bulk Marine Provisions; h) the word “shall” means “has a duty to”, the words “must” and “will” mean “is required to” (or word(s) of similar import) unless the context clearly requires otherwise, and each of the foregoing is to be interpreted as mandatory and not permissive; i) no rule of construction interpreting these Dry Bulk Marine Provisions against the drafter will apply; j) words in the singular include the plural and vice versa; k) words denoting gender include all genders; and l) risk of loss includes risk of damage and/or contamination and/or deterioration.

## ARTICLE 2. DEFINITIONS

The following terms have the meanings specified below when capitalized throughout these Dry Bulk Marine Provisions:

**“Affiliate”** means any entity that, directly or indirectly, controls, is controlled by, or is under common control with the referenced entity, including the referenced entity’s parent. In this definition, “control” means the power to direct the management and policies of an entity, directly or indirectly, whether through the ownership of voting securities, by contract, or otherwise.

**“Agreement”** means and includes the following documents in connection with each separate sale/ purchase/ exchange and waterborne delivery of Cargo entered into by and between Buyer and Seller to which these Dry Bulk Marine Provisions are attached or incorporated by reference: a) the Special Provisions (including amendments thereto); b) these Dry Bulk Marine Provisions; and c) the General Terms and Conditions and any addendums thereto, as applicable.

**“All Fast”** means the time at which the Vessel is completely moored, which includes gangway down and secured (for all Vessels other than Inland Barges), at the Cargo Transfer Point. For Inland Barges, “All Fast” means the time at which such Barge (or in the case of multiple Barges, when the first Barge in the string/flotilla) is completely moored.

**“Applicable Law”** means any applicable statute, law, regulation, ordinance, rule, judgment, rule of law, order, decree (including any consent decree), permit, approval, license, requirement, or other governmental restriction or any similar form of decision of, or any provision or condition of any permit, license or other operating authorization issued under any of the foregoing by, or any determination by any Governmental Authority having or asserting jurisdiction over the matter or matters in question, whether now or hereafter (unless otherwise specifically limited herein to those only in effect on the date of the Agreement) in effect and in each case as amended (including all of the terms and provisions of the common law of such Governmental Authority), as interpreted and enforced at the time in question.

**“ASTM”** means ASTM International, formerly known as the American Society for Testing and Materials.

**“Bill of Lading Date”** means the date of completion of loading for the particular shipment in question, which occurs at the time of “stop” or “completion of loading” as recorded on the SOF.

**“Bulk Carrier”** means a ship constructed with a single deck and holds for the bulk carriage of loose dry cargo.

**“Business Day”** means a day on which banks are open for general commercial business in New York, New York.

**“Buyer”** means the Person obligated to buy the Cargo from Seller, or exchange the Cargo with Seller, under the terms of the Agreement.

**“Cargo”** means any Product being sold, purchased, or exchanged by and between Buyer and Seller and delivered via Vessel under the terms of the Agreement.

“**Cargo Quantity**” means the volume or quantity of the Cargo that is loaded at the Cargo Transfer Point and that is specified in the Special Provisions.

“**Cargo Transfer Point**” means the location specified in the Special Provisions where custody of the Cargo is transferred from Seller to either Buyer or Buyer’s designee.

“**CFR**” means the US Code of Federal Regulations.

“**Charterer**” means the Person or entity hiring the performing Vessel.

“**Class Society**” means a classification society which is a member of the International Association of Classification Societies.

“**CLC**” means Civil Liability Convention of 1969.

“**COC**” means Certificate of Compliance.

“**Customary Anchorage**” means a recognized anchorage or waiting place, or as near thereto as is safely practicable under the circumstances, within or near the designated port for the Cargo Transfer Point set out in the Special Provisions.

“**CP**” means charter party for the performing Vessel.

“**Demurrage**” means the period of time from the expiration of Laytime until completion of cargo operations at a particular port, excepting any periods specifically excluded from time on demurrage set forth in these Dry Bulk Marine Provisions.

“**Despatch**” means the excess allowed time not used as Laytime after completion of cargo operations at a particular port, excepting any periods specifically excluded from Laytime set forth in these Dry Bulk Marine Provisions.

“**DHS**” means the US Department of Homeland Security.

“**DOS**” means a Declaration of Security as provided for under the ISPS Code.

“**Dry Bulk Marine Provisions**” means these Dry Bulk Marine Provisions for FOB Purchases and Sales as such may be amended, supplemented, or restated by Valero Marketing and Supply Company from time to time.

“**D&A Policy**” means any applicable drug and alcohol abuse policy.

“**EPA**” means the US Environmental Protection Agency.

“**ETA**” means estimated time of arrival of the Vessel at the load port.

“**Force Majeure**” has the meaning set forth in the Special Provisions or, if not set forth in the Special Provisions, then as set forth in the General Terms and Conditions.

“**General Terms and Conditions**” means, unless otherwise specified in the Special Provisions, Valero Marketing and Supply Company’s General Terms and Conditions for Petroleum Product Purchases and Sales (2014 edition or the edition otherwise specifically set forth in the Special Provisions).

“**Governmental Authority**” means any federal, state, local, foreign government, any provincial, departmental or other political subdivision thereof, or any entity, body or authority exercising executive, legislative, judicial, regulatory, administrative or other governmental functions or any court, department, commission, board, bureau, agency, instrumentality or administrative body of any of the foregoing having authority over the Parties, the Vessel, its crew, the load port, or the Cargo as applicable.

“**HMAA**” means Houston Maritime Arbitrators Association.

“**IMO**” means the International Maritime Organization.

“**Inland Barge**” means a USCG, American Bureau of Shipping, or other Class Society inspected and approved Dry bulk cargo barge that is restricted to operations in the inland waterways of the US.

“**ISPS Code**” means the International Code for Security of Ships and Port Facilities, as set forth in Title 33, CFR Chapter I (Subchapter H) and relevant amendments to Chapter XI-2 of the International Convention for the Safety of Life at Sea, 1974 (SOLAS).

“**Laycan Window**” means the period of time during which the Vessel is to present itself at the Cargo Transfer Point, as established by the Special Provisions, and is within the date range set forth in the Agreement.

“**Laytime**” means the amount of time allowed to load the Cargo based on the applicable load rate specified in the Agreement.

“**Load Line Certification**” means the certification of a Vessel that meets the requirements of the International Maritime Organization’s International Convention on Load Lines.

“**Marine Claims**” means any dispute or claim concerning, involving, or relating to a marine vessel arising under US maritime law, other applicable maritime law, or these Dry Bulk Marine Provisions, including a Demurrage-claim dispute.

“**Marine Incident**” means any breakdown that is expected to delay the Vessel in excess of twelve (12) hours, reportable spill, personal injury of a crew member, passenger or invitee, fire, grounding, allision, collision, security issue, vessel seizure, or any event that generates or is expected to generate significant media attention or governmental inquiry, and, in any case, any incident or event that requires reporting to the applicable Governmental Authority, but does not include delays during normal Vessel operations.

“**Marine Spill**” has the meaning specified in Section 3.8.

“**Maritime Security Regulations**” means, collectively, the ISPS Code and the MTSA, if and when such are applicable.

“**MTSA**” means the US Maritime Transportation Security Act of 2002, as codified under 46 US Code, Chapter 701.

“**NOR**” means proper and valid Notice of Readiness, as further set forth in Section 5.1.

“**OFAC**” means the US Department of Treasury, Office of Foreign Assets Control.

“**Ocean Barge**” or “**Ocean-Going Barge**” means a USCG, American Bureau of Shipping, or other Class Society inspected and approved tank barge that has an ABS or other Class Society Load Line Certification and is certified to operate in offshore waters.

“**Ocean Vessel**” means any dry bulk cargo vessel, ship, or combination carrier that is certified to operate in offshore waters.

“**OCIMF**” means the Oil Companies International Marine Forum.

“**OPA**” means the (US) Oil Pollution Act of 1990.

“**P&I**” means Protection and Indemnity.

“**Parties**” means Buyer and Seller, collectively.

“**Party**” means either Buyer or Seller, as the context requires.

“**Person**” means an individual, corporation, limited-liability company, partnership (general or limited), trust, business trust, unincorporated association, joint venture, joint-stock company, or any other entity of whatever nature.

“**Product**” means the refined-petroleum dry bulk product (e.g., petroleum coke or prilled yellow sulfur) or other product that is identified in the Special Provisions as being the subject of the sale, purchase, exchange or other transaction between the Parties.

“**Responsible Party**” has the meaning specified in §2701(32) of the OPA.

“**Running Hour(s)**” means time credited to Laytime, Demurrage, or Despatch, as applicable.

“**Sanctions**” means any Applicable Law of the US, European Union, any European Union member state, the United Nations, Canada, Mexico, or Peru applicable to the Parties relating to trade sanctions, embargoes, foreign trade controls or restrictions, export controls, non-proliferation, anti-terrorism, or any similar law, regulation, or executive order.

“**Seller**” means the Person obligated to sell the Cargo to, or exchange the Cargo with, Buyer under the terms of the Agreement.

“**Shore Facilities**” means any refinery, terminal, storage, or port facility taking deliveries of the Cargo from, or making deliveries of the Cargo to, a Vessel. For the avoidance of doubt, “Shore Facilities” do not include divisions, departments, groups, or units that perform administrative, back office, or similar type support to such Shore Facilities, including any groups engaged in vetting.



“**SOF**” means statement of facts.

“**Special Provisions**” means the specific terms, fixture, and/or confirmation for a particular Transaction agreed to between the Parties that incorporate the General Terms and Conditions and/or these Dry Bulk Marine Provisions to form the Agreement for the Transaction.

“**Spot (Voyage) Chartered Equipment**” means when the owner or disponent owner of the Vessel places the Vessel and its crew at the disposal of the Charterer for a single voyage, with such owner being responsible for the operation of the Vessel.

“**Term Chartered Equipment**” means when the owner of the Vessel charts or leases the Vessel and its crew to the Charterer for a stipulated period; provided, however, under any such charter or lease, the Charterer pays for the bunkers and port charges in addition to the charter hire.

“**Terminal Party**” refers to the Party nominating the designated Shore Facilities at which the Vessel will load under the terms of the Agreement. Depending upon the nature of the sale, the Terminal Party may be either Buyer or Seller.

“**Tow**” means any combination of tugs, push boats, and barges with the ability to function as a single unit.

“**Transaction**” means an agreement to sell, purchase, exchange Product and/or for the waterborne delivery of Product between the Parties.

“**UK**” means the United Kingdom of Great Britain and Northern Ireland.

“**US**” means the United States of America.

“**USCG**” means the US Coast Guard.

“**USCBP**” means the US Customs and Border Protection agency.

“**Valero**” means Valero Marketing and Supply Company or any of its Affiliates.

“**Vessel**” includes any tug, Tow, Inland Barge, Ocean-Going Barge, or Ocean Vessel, or other marine vessel carrying the Cargo under the Agreement. Any references herein to the responsibilities, duties, rights, and/or liabilities of the “Vessel”, whether generally or specifically, are intended to include not only the Vessel itself, but also the owner, operator, master, or agent of such Vessel, where applicable.

“**Vessel Party**” means the Party nominating and providing or otherwise making the arrangements for the Vessel that will carry the Cargo under the terms of the Agreement. Depending upon the nature of the sale, Vessel Party may be either Buyer or Seller.

## ARTICLE 3. VESSEL-RELATED CONDITIONS

### Section 3.1. Vessel Nominations and Acceptance.

- a) All Vessels nominated by Vessel Party and each Vessel to be used in connection with the loading, of the Cargo under the Agreement must meet all applicable Vessel requirements set forth in the Agreement and of the designated Shore Facilities receiving or delivering such Cargo, including i) safety instructions and mooring equipment requirements; ii) restrictions with respect to the Vessel, including maximum draft, air draft, length, deadweight, displacement, age, flag, and Sanctions status; iii) restrictions with respect to Vessel operations, such as bunkering or receiving provisions, stores, or equipment; and iv) ETA requirements at certain Shore Facilities located in Mexico, if applicable. Vessel Party shall be responsible for compliance with the foregoing, and all delays and attendant costs relating to a failure to comply with same are for Vessel Party's account. If the Vessel does not comply with the requirements of the designated Shore Facility (including the size and fit of the Vessel), then such Shore Facility may reject, expel, or refuse to berth or load the Vessel, in which case all attendant delays, damages, and expenses are for Vessel Party's account. It is the sole responsibility and duty of the Vessel and/or Vessel Party to contact the designated Shore Facilities to obtain any and all requirements related to berthing or docking at such facilities (including the size and fit of the Vessel) and to comply with such requirements. At the request of the designated Shore Facilities or the Terminal Party, the nominated Vessel must promptly complete a vessel questionnaire provided by such Shore Facilities or such Terminal Party, and advise concerning: the grade and approximate quantity of Product to be loaded; ETA of the Vessel at the load Terminal; destination of the Vessel prior to its arrival at the load Terminal; full written instructions regarding the particulars and destination of the bills of lading and such other customary loading Terminal documentation which may be required; and full details of any Cargo on board if loading a partial Cargo. Acceptance of any Vessel by such Shore Facilities does not constitute a continuing acceptance of such Vessel for any subsequent loading. Unless otherwise agreed to by the Parties, all deliveries and loadings of the Cargo in accordance with the terms and conditions of the Agreement will only involve a single voyage.
- b) Once a nominated Vessel is accepted by the designated Shore Facilities to receive or deliver the Cargo, the use of any other Vessel(s), carrying the Cargo under the Agreement will only be permitted by prior, written mutual agreement, and all expense, risk of loss, and liability associated with such activity or activities will be for Vessel Party's account. Any written permission or consent of or by such Shore Facilities allowing the use of such other Vessel(s) will not be unreasonably withheld, delayed, or conditioned.
- c) Notwithstanding anything to the contrary expressed or implied elsewhere herein, Valero has the right to:
- i) reject any nomination made on any reasonable ground; and/or
  - ii) refuse to accept for loading, on any reasonable ground, any Vessel nominated; and/or

- iii) reject the Vessel in question, notwithstanding any prior acceptance of such Vessel (whether named in the Special Provisions or nominated or substituted), on any reasonable ground if such Vessel is involved in any Marine Incident or casualty, suffers a breakdown en route that results in a delay in the Vessel's scheduled arrival beyond the Laycan Window, such Vessel suffers a breakdown en route that results in the failure of a material Vessel component, system, or equipment (regardless whether a delay occurs), such Vessel fails to comply with the requirements of Section 3.7, or more recent information regarding such Vessel becomes available to Valero indicating that the information relied upon by Valero in previously accepting the Vessel was materially incorrect or incomplete.

Without derogating from any other reasonable grounds that may be available to Valero, it will be a reasonable ground for Valero to reject or refuse a Vessel pursuant to this Section 3.1 c) if the Vessel, either at the time of nomination or at any time subsequently, is not approved, or is determined to be unacceptable, by any vessel vetting system operated by or vetting policy adhered to by Valero, the designated Shore Facilities, or one of the oil majors.

### Section 3.2. Substitution.

If a Vessel is rejected by Valero or the designated Shore Facilities, Vessel Party must nominate a suitable substitute Vessel within twenty-four (24) hours of such rejection for acceptance by Valero and such Shore Facilities. If Vessel Party fails to nominate a suitable substitute Vessel, then Valero has the right to terminate the Agreement for cause.

### Section 3.3. Consequences of Rejection.

In the event a rejection, delay, or other restriction of a Vessel occurs as a result of any action or inaction pursuant to Section 3.1, Section 3.2, or as a result of the application of any Applicable Laws, then: a) Valero will have no liability for the consequences of such rejection, delay, or restriction and any time consumed as a result thereof will not count as used Laytime or, if the Vessel is on Demurrage, as time on Demurrage; b) Vessel Party shall be liable for all costs or damages incurred by Valero: i) arising out of any such rejection, delay, or restriction; and/or ii) resulting from any delays in loading Product due to any failure by Vessel Party to comply with the requirements of this Article in a timely manner; and c) Vessel Party's obligations under the Agreement to nominate a suitable Vessel and to ensure that it tenders NOR at the Shore Facilities will be unaffected.

### Section 3.4. Eligibility.

Vessel Party represents and warrants that: a) the nominated Vessel is, in all respects, eligible under and in compliance with all Applicable Laws, including the Maritime Security Regulations, with respect to entering, docking, hoteling, loading, and unloading at or within the designated port or other places specified in the Agreement, and b) at all times the Vessel has on board and readily available for inspection all certificates, security plans, declarations, records, and other documents required by Governmental Authority or Applicable Law for such service.

### Section 3.5. Estimated Time of Arrival.

Upon acceptance of the Vessel nomination by the Terminal Party under the Agreement, either the Vessel or Vessel Party shall immediately advise the designated Shore Facilities and other Party(ies) to the Agreement of the Vessel's current position/location in terms of latitude and longitude, operational status, and ETA, by electronic mail, or any other means deemed necessary or appropriate under Applicable Law, including the Maritime Security Regulations. The ETA must be promptly updated by electronic mail or other written electronic means as follows:

- a) upon leaving the last port, terminal, or lightering site before sailing to the designated Shore Facilities or lightering site (including the Cargo Transfer Point), or at least seven (7) days in advance of tendering NOR, whichever is more;
- b) at seventy-two (72), forty-eight (48), twenty-four (24), and twelve (12) hours before the Vessel's expected arrival at the designated Shore Facilities or lightering site specified in the Agreement; and
- c) the Vessel will promptly notify the designated Shore Facilities and Terminal Party of the new ETA if the ETA changes by plus or minus two (2) hours or more following the twelve (12) hour arrival notice.

Failure to comply with these ETA notifications may result in delays in the acceptance of the NOR by the designated Shore Facilities as outlined in Article 5 of these Dry Bulk Marine Provisions.

### Section 3.6. Laycan Window.

Terminal Party shall provide a seven (7) day Laycan Window no later than thirty (30) days (or as early as practicable) prior to the commencement of the Laycan Window. Fifteen (15) days prior to the commencement of the Laycan Window, Vessel Party shall narrow the Laycan Window to five (5) days, and five (5) days prior to the commencement of the Laycan Window, Vessel Party shall narrow the Laycan Window to three (3) days. If such Laycan Window is not provided or narrowed, the three (3) day Laycan Window will consist of the last three (3) days of any previously narrowed Laycan Window.

### Section 3.7. Vessel Compliance Matters.

- a) Vessel Party represents and warrants compliance and shall require the Vessel to comply with all Applicable Laws, including all environmental, health, and safety rules and regulations; all federal and state emissions requirements and oil spill response plans; financial responsibility requirements; applicable Maritime Security Regulations; and applicable Sanctions.
- i) Vessel Party specifically warrants and guarantees that: 1) neither the Vessel nor any crew member of the Vessel is identified on the OFAC Specially Designated Nationals and Blocked Persons List; and 2) the Vessel is not flagged, registered in, used, leased, or chartered, in whole or in part, by or on behalf of or for the benefit of a Person in or connected to, or a Person designated or blocked pursuant to, any Sanctions. **VESSEL PARTY AGREES TO INDEMNIFY, DEFEND, AND HOLD VALERO HARMLESS FROM ANY LOSSES, WHETHER OR NOT RESULTING**

**FROM VALERO'S NEGLIGENCE OR ANY THIRD-PARTY CLAIMS, ARISING OUT OF OR IN CONNECTION WITH A BREACH OF THE FOREGOING WARRANTY AND/OR GUARANTEE.**

This indemnity will survive the expiration or termination of the Agreement.

- ii) In the event the Vessel is not in compliance with any of the requirements in this Section 3.7 a), the Vessel may not be permitted to dock and, if previously docked, may be required to promptly vacate the designated berth at the Shore Facilities.
  
- b) Failure of any of the Vessel's operational, safety, or environmental systems or equipment, or the failure to possess or comply with the Shore Facilities' or Vessel's own security plan, even if after initial acceptance by the designated Shore Facilities, or the failure to comply with other Shore Facilities' requirements constitutes grounds for such facilities to immediately reject the Vessel, including notification to vacate the berth until either i) suitable repairs are made to return the affected systems or equipment to good working order, or ii) the Vessel and requirements for its crew are brought into compliance with the applicable Vessel or Shore Facilities' requirements. Under such circumstances, the Vessel must be re-accepted by the designated Shore Facilities prior to the start or resumption of loading of the Cargo under the terms of the Agreement.
  
- c) In the event the Vessel is not in compliance with the requirements of Section 3.7 a) or b) above, any resulting delays will not count as used Laytime or as time on Demurrage, and any attendant costs, expenses, losses or damages, including those suffered by Terminal Party and delays incurred to obtain or rectify the necessary certificates, Vessel security plan, declaration(s), response plan(s), etc., are for Vessel Party's account. Further, expenses incurred in making any necessary repairs or bringing the Vessel or its crew into compliance with the applicable requirements will be for Vessel Party's account and Laytime will not commence, run or count, until the Vessel is in full compliance and all applicable documents have been submitted to the appropriate party or parties, and the Vessel has been revetted and reapproved.

### Section 3.8. Pollution Prevention and Responsibility.

- a) For the purpose of this Section 3.8, the term "Pollution Damage" includes all damages that are compensable under the CLC and OPA, as well as any Applicable Law.
  
- b) In the event an escape, release, or discharge of the Cargo occurs on or from the Vessel and causes or threatens to cause Pollution Damage ("**Marine Spill**"), the Vessel will promptly take whatever measures are necessary to prevent or mitigate such damage or remove the threat. Vessel Party hereby authorizes the designated Shore Facilities, or its nominee, upon notice to the Vessel, to undertake, at the option of such Shore Facilities, such measures as are reasonably necessary to prevent or mitigate the Pollution Damage or remove the threat. Under such circumstances, the designated Shore Facilities or its nominee must keep the Vessel advised of the measures intended to be taken. Any of the aforementioned measures will be for Vessel Party's account, provided that if the designated Shore Facilities caused or contributed to such escape, release, or discharge, the expense of the aforementioned measures will be borne by such facilities in proportion to its percentage of negligence

in causing or contributing to the escape, release, or discharge. If Vessel Party reasonably considers that said measures should be discontinued, Vessel Party shall promptly notify the designated Shore Facilities or its nominee in writing and thereafter, such Shore Facilities or its nominee will have no right to continue said measures at Vessel Party's authority or expense, save for demobilization expenses, unless directed to do so by a Governmental Authority having or purporting to have proper jurisdiction over i) the Vessel or its crew, ii) the clean-up, remediation, mitigation, and/or disposal of any Pollution Damage, or iii) the repair, replacement, or removal of the designated Shore Facilities or any associated equipment being or needing to be undertaken. This Subsection b) will be applicable only between the Parties and will not affect any liability of the Vessel to third parties including any Governmental Authority.

- c) Vessel Party warrants that throughout the Vessel's service under the Agreement, the Vessel has on board the following certificates, as applicable:
  - i) certificates issued pursuant to the CLC, and pursuant to the 1992 protocols to the CLC, if and as amended, as and when in force;
  - ii) certificates issued pursuant to Section 1016(a) of OPA, and Section 108(a) of the Comprehensive Environmental Response, Compensation and Liability Act 1980, as amended in accordance with Part 138 of Coast Guard Regulations set forth in Title 33, US Code of Federal Regulations; and
  - iii) certificates issued or required by any Governmental Authority having proper jurisdiction over the operation of the designated Shore Facilities.
- d) Vessel Party shall be responsible for immediately notifying the applicable Government Authority and the Terminal Party of any Marine Spill. In addition to all other reporting requirements the Parties and Vessel may have under the Agreement and under Applicable Law, all Parties are responsible for promptly notifying Valero Central Monitoring of each Marine Incident by calling (866) 565-5220 or (210) 345-5399. This monitoring system has been setup to accept calls twenty-four (24) hours per day, seven (7) days per week.
- e) Should a pollution discharge emanate from the Shore Facilities, such Shore Facilities will be responsible to satisfy all obligations of the Responsible Party.

### Section 3.9. Insurance.

The provisions set forth in this Section are applicable only between the Parties and do not affect any liability of the Vessel to third parties, including any Governmental Authority.

- a) **Ocean Vessels, Bulk Carriers and Ocean Barges.** If the Vessel is an Ocean Vessel, a Bulk Carrier or an Ocean-Going Barge, Vessel Party warrants that throughout the Vessel's service under the Agreement, the Vessel has full and valid P&I Insurance, placed with a P&I club that is a member of the International Group of P&I Clubs. The P&I Insurance (including P&I US surcharges) is at no additional

cost to the Terminal Party. The P&I Insurance must also include coverage against liability for pollution, for the maximum amount available through the International Group of P&I Clubs.

- b) **Inland Barges.** If the Vessel is an Inland Barge, Vessel Party warrants that throughout the Vessel's service under the Agreement, the Vessel has, at no cost to the Terminal Party, full and valid insurance, including pollution liability insurance for an amount not less than:
  - i) one hundred million US dollars (\$100,000,000) per incident for Vessels carrying a cargo of non-persistent oil as defined by OPA; or
  - ii) two hundred million US dollars (\$200,000,000) per incident for the Vessels carrying a cargo of persistent oil as defined by OPA.
- c) **Evidence of Insurance.** With respect to the requirements of Subsections a) and b) of this Section 3.9, if requested at any time during the Agreement, Vessel Party shall promptly furnish to the Terminal Party reasonable evidence of such P&I Insurance and any other required insurance. The warranties set forth in Subsections a) and b) of this Section 3.9 are an essential part of the Agreement, and the obligations of the other Party under the Agreement are conditional on the truth and performance of such warranties. Any breach of the above referenced warranties will entitle the other Party to whom any such warranty is given to terminate the Agreement and/or to recover damages allowable in law, admiralty, or equity.

### Section 3.10. Drug and Alcohol.

Vessel Party shall cause the owners of the Vessel to have a D&A Policy applicable to the Vessel that meets or exceeds the standards in the Oil Companies International Marine Forum Guidelines for the Control of Drugs and Alcohol Onboard Ship. Vessel Party is responsible for ensuring such D&A Policy is in place. Under the D&A Policy, alcohol impairment is defined as a blood alcohol content of 40 mg/100 ml or greater; the appropriate seafarers to be tested will be all Vessel crew; and the drug/alcohol testing and screening will include unannounced testing in addition to routine medical examinations. An objective of the D&A Policy must be that the frequency of the unannounced testing be adequate to act as an effective abuse deterrent, and that all Vessel officers be tested at least once a year through a combined program of unannounced testing and routine medical examinations. Vessel Party further warrants that the D&A Policy will remain in effect during the term of the Agreement and that Vessel Party shall exercise due diligence to ensure compliance with the D&A Policy. Upon Terminal Party's request, Vessel Party shall provide Terminal Party with a copy of the D&A Policy applicable to the Vessel. Absence of a D&A Policy or failure to deliver a copy of the D&A Policy within a reasonable time after Terminal Party's request is grounds for Terminal Party to reject or withdraw acceptance of the Vessel.

### Section 3.11. US Customs and Border Protection.

Vessel Party represents and warrants that the Vessel and any cargo loaded thereon at the designated Shore Facilities fully complies with, or Vessel Party shall timely secure and submit, all necessary waivers required under all applicable USCBP rules and regulations in effect as of the date the Vessel berths at

such Shore Facilities. Laytime will not commence until the Vessel has been fully approved by the USCBP and all USCBP and related personnel have disembarked and meets all other requirements in Section 5.1. Any delays waiting for, or because of, the USCBP, or resulting from the Vessel's non-compliance with USCBP regulations, will not count as used Laytime or as time on Demurrage. Vessel Party shall provide all information required for exportation of the Cargo being sold/purchased/exchanged and loaded under the Agreement to the other Party at least five (5) Business Days prior to the Vessel's arrival at the designated Shore Facilities. Any delay resulting from lack of information required for exportation of the Cargo will not count as used Laytime or as time on Demurrage.

### Section 3.12. DHS; USCG; or Other Governmental Authority.

Vessel Party represents and warrants that the Vessel fully complies with, or possess all necessary waivers, certificates, or other documents that are required under, each Applicable Law implemented and enforced by a Governmental Authority, the DHS, the USCG, and any applicable port authority and/or the designated Shore Facilities, including the Maritime Security Regulations, which in all cases are in effect when the Vessel a) navigates within any waters that are subject to the jurisdiction of the Governmental Authority or the US, as applicable, or b) berths at Shore Facilities. Upon request, Vessel Party shall promptly provide to the designated Shore Facilities and/or Terminal Party, as appropriate, complete copies of all certificates, declarations, letters of approval or acknowledgment, and other compliance documentation (excluding the Vessel's security assessment and security plan) that are required under the Maritime Security Regulations. Any delay resulting from the Vessel's non-compliance will not count as used Laytime or as time on Demurrage against the designated Shore Facilities or Terminal Party, and all direct costs, expenses, losses, and damages related thereto are for Vessel Party's account.

## ARTICLE 4. RELATED CONDITIONS AT SHORE FACILITIES

### Section 4.1. Port Charges.

- a) The designated Terminal Party shall provide a berth for the nominated Vessel free of port charges, except for those being for Vessel Party's account and as set forth as follows: i) all dockage and service fees, including mooring, fresh water, steam, and oil slops receipts; and ii) all duties and other charges assigned to the Vessel, including those incurred for Tows, pilots, and other port costs as well as fleeting and taxes on freight and wharfage.
- b) Notwithstanding anything in the Agreement to the contrary, the designated Shore Facilities do not warrant the safety, draft, or clearance of any berth, port, anchorage, or place, or any public channels, fairways, or approaches thereto, or other publicly-maintained areas, either inside or outside the port area, where the Vessel may be directed. The designated Shore Facilities will not be liable for any loss, damage, injury, or delay to the Vessel resulting from the use of private or public waterways. If hold-in tugs are required for the Vessel, any charges for such hold-in tugs will be for Vessel Party's account. Vessel Party shall be responsible for any and all other Shore Facility fees or charges.



## Section 4.2. Vacating of Berth.

- a) The designated Shore Facilities may order any Vessel to vacate its berth at such facilities as it deems reasonably necessary. For the purposes of this Section 4.2 a), “reasonably necessary” includes the following circumstances:
- i) the Vessel has entered such Shore Facilities, or docked/hotelled at the facilities, in violation of any Applicable Law and/or requirement of the Shore Facilities, or is in violation of the requirements of Section 3.7;
  - ii) severe weather dictates the need to vacate the berth; or
  - iii) it appears that the Vessel will not be able to complete loading of the Cargo within twenty-four (24) hours (pro rata for part Cargo) of the Vessel’s arrival in berth or maintaining an average load rate as specified in the Special Provisions, except that the Vessel will not be required to vacate a berth as a result of the inability to complete loading operations under this clause unless:
    - 1) that berth is needed to accommodate another Vessel, or
    - 2) the DHS, USCG, or any other law enforcement authority or agency having proper jurisdiction over the designated Shore Facilities mandates that the Vessel vacate such berth.
- b) Upon ceasing of cargo operations or completion of loading, used Laytime or time on Demurrage will cease. After tendering NOR to recommence loading at the designated Shore Facilities in accordance with the Agreement, each Vessel will be re-berthed in order of rotation, unless otherwise directed by such Shore Facilities in its sole discretion, and used Laytime will resume upon the Vessel’s commencement of loading. Any delay resulting from the Vessel’s non-compliance will not count as used Laytime or as time on Demurrage against the designated Shore Facilities or Terminal Party, and all direct costs, expenses, losses, and damages related thereto are for Vessel Party’s account. Under any such circumstances, any delays will not count as used Laytime or as time on Demurrage against the designated Shore Facilities or Terminal Party, and all direct costs, expenses, losses, and damages related thereto, including vacating the berth or reberthing, are for Vessel Party’s account.

## Section 4.3. Shifting of Vessels; Failure to Berth When Berth Available.

- a) The designated Shore Facilities have the right to shift the Vessel from one berth to another within its facility or to anchorage. Unless otherwise provided in the Agreement, all expenses incurred in such shifting or anchoring of Vessel are for the account of the designated Shore Facilities and Terminal Party, with the time consumed in shifting counted as used Laytime or as time on Demurrage.
- b) All expenses incurred where the shifting of the Vessel within a designated port is directed or mandated by any Person or Governmental Authority (including the USCG, USCBP, applicable port authority, or other Governmental Authority having proper jurisdiction over either the Vessel or its crew) other than the designated Shore Facilities or Terminal Party will be for Vessel Party’s account. Any time consumed in shifting will not be counted as used Laytime or as time on Demurrage.

- c) In the event the Vessel fails to berth when given an order to proceed to berth for any reason, including as a result of any cause attributable to the Vessel or its personnel, the failure to have a proper COC (where applicable), equipment or machinery failure, Laytime/Demurrage will not accrue until the Vessel commences loading at the berth.

#### Section 4.4. Ballast Water and/or Cargo Slops.

- a) Any designated Shore Facilities having reception facilities for oil or noxious liquid substances may agree to receive the Vessel's oil ballast water and/or Cargo slops up to the maximum available capacity at the specified Cargo Transfer Point.
- b) At least five (5) Business Days prior to the Vessel's arrival at the specified Cargo Transfer Point, the Vessel must notify the designated Shore Facilities, in writing, of the Vessel's intention to discharge any ballast or slops, and the volume of such ballast or slops to be discharged.
- c) The designated Shore Facilities will confirm ballast or slops availability within two (2) Business Days after receiving such notification. All charges for this service are for the Vessel Party's account. All expenses of a delivery Vessel taking on ballast will be for Vessel Party's account (if not paid for by the Vessel), unless concurrently performed with Cargo operations.

#### Section 4.5. Shore Facilities' Environmental/Safety Observer.

The designated Shore Facilities may, at its/their option, place an observer on board the Vessel to observe loading of the Cargo, and related operations, during the period the Vessel is in port. The responsibility and liability for any pollution, unsafe act, or violation of the requirements of such Shore Facilities remains with the Vessel.

#### Section 4.6. Wharf Damage and Indemnity.

**VESSEL PARTY ASSUMES FULL RESPONSIBILITY FOR AND WILL FULLY AND COMPLETELY RELEASE, DEFEND (UPON THE REQUEST OF THE DESIGNATED SHORE FACILITIES), INDEMNIFY, AND HOLD SUCH SHORE FACILITIES, THE OWNER AND OPERATOR OF SUCH SHORE FACILITIES, AS WELL AS THE PARENT ENTITY, SUBSIDIARIES, AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, CONTRACTORS, SUBCONTRACTORS, AND OTHER REPRESENTATIVES OF SUCH ENTITY OR ENTITIES, HARMLESS FROM AND AGAINST ANY LOSS, DESTRUCTION, OR DAMAGE SUSTAINED TO WHARVES, BERTHS, OR DOCKS OWNED OR MAINTAINED BY THE DESIGNATED SHORE FACILITIES IF AND TO THE EXTENT SUCH DAMAGE RESULTS FROM, ARISES OUT OF, OR IS CAUSED BY THE NEGLIGENT OR IMPROPER OPERATION OF ANY WATERBORNE CRAFT, EITHER OWNED OR OPERATED BY VESSEL PARTY, OR BEING OPERATED BY SUBCONTRACTORS OF VESSEL PARTY; EVEN IF CAUSED BY THE CONCURRENT NEGLIGENCE OF THE SHORE FACILITIES OR TERMINAL PARTY. THIS PROVISION BETWEEN THE PARTIES IS WITHOUT PREJUDICE TO ANY OTHER RIGHTS, REMEDIES, CLAIMS, CAUSES OF ACTION, OR DEFENSES THERETO WHICH MAY EXIST.**

## ARTICLE 5. NOTICE OF READINESS

### Section 5.1. Tendering a Valid NOR.

- a) If the Vessel is ordered to anchor, a NOR will only be considered valid from the time such Vessel is anchored at the Customary Anchorage and in accordance with the following in this Section 5.1.
- b) After the Vessel has arrived at the Customary Anchorage or other customary place of waiting as required by the designated Shore Facilities, issuance of the NOR shall mean that the Vessel has obtained all requisite governmental approvals, inspections and clearances, including those required by the USCG and is, in all respects, ready and suitable to receive the Cargo in all holds to be loaded and to proceed to the berth to commence loading the Cargo in accordance with terms of the Agreement (including having a valid COC, if applicable), the master, captain, master's agent, or barge representative shall promptly give such Shore Facilities and the other Parties hereto a NOR by electronic mail, letter, any form of wireless radio or satellite communication available, or telephone. For Ocean Vessels, if an NOR is given verbally, confirmation in writing will be made within twelve (12) hours after such verbal notification is given. For voyages to or from the US, a NOR tendered before the Vessel holds a valid COC is ineffective and does not constitute Vessel readiness for loading the Cargo. Even if a valid COC exists, the NOR tender before an annual COC examination is complete is ineffective unless the USCG grants the Vessel a waiver to commence loading the Cargo without delay.
- c) Any proper NOR submitted before the applicable Laycan Window will become effective as set forth below in Article 6.1.
- d) Notwithstanding anything herein to the contrary, if a NOR is tendered prior to meeting all of the above criteria in this Section 5.1, such NOR will automatically and retroactively be deemed invalid and not properly tendered, the date and effective time of the NOR will be deemed ineffective, and a NOR must be retendered, approved and in compliance with this Section 5.1. Any delays as a result will not count as used Laytime or as time on Demurrage against the designated Shore Facilities or Terminal Party, and all direct costs, expenses, losses, and damages related thereto are for Vessel Party's account.
- e) Notwithstanding anything herein to the contrary, if an Ocean Vessel or Bulk Carrier is allowed to berth and partially load Cargo in available holds deemed suitable to load Cargo when the Vessel is not in all respects ready to load Cargo in all holds, such NOR will automatically and retroactively be deemed invalid and not properly tendered, the date and effective time of the NOR will be deemed ineffective, and a NOR must be retendered, approved and in compliance with this Section 5.1. Any delays as a result of any holds not passing inspection and deemed unsuitable for Cargo until properly cleaned and reinspected will not count as used Laytime or as time on Demurrage against the designated Shore Facilities or Terminal Party, and all direct costs, expenses, losses, and damages related thereto are for Vessel Party's account. Laytime will not begin until commencement of loading at any designated Shore Facility.

## ARTICLE 6. ALLOWED AND USED LAYTIME

### Section 6.1. Laytime.

- a) If the Ocean Vessel or Bulk Carrier tenders NOR prior to the commencement of the applicable Laycan Window, Laytime will commence at 1200 hours, local time, at the specified location on the commencement date of such Laycan Window or upon commencement of loading, whichever occurs first, unless otherwise specifically agreed and documented in advance of docking at the designated Shore Facilities.
- b) If the Ocean Vessel or Bulk Carrier tenders NOR within the applicable Laycan Window, Laytime will commence upon the expiration of twelve (12) hours after NOR is tendered or upon commencement of loading, whichever occurs first.
- c) If the Ocean Vessel or Bulk Carrier tenders NOR after the end of the applicable Laycan Window, Laytime will commence at commencement of loading.
- d) Notwithstanding anything herein to the contrary, Laytime will cease at the completion of loading.

### Section 6.2. Loading Rate and Loading Procedure.

- a) Loading rate shall be in accordance with the terms of the Agreement for the designated Shore Facilities.
- b) Loading procedure shall be in accordance with the regulations for the designated Shore Facilities as included in the terms of the Agreement.

## ARTICLE 7. USED LAYTIME EXCLUSIONS

In addition to exclusions to Laytime and time on Demurrage mentioned in other Sections of Agreement, the following will not count as used Laytime or as time on Demurrage even if the Vessel is on Demurrage:

- a) Any time during inward passage from anchorage, designated waiting area or other waiting place from pilot on board or anchor aweigh, whichever occurs first, until Vessel is All Fast at the designated Shore Facility.
- b) Delays in berthing due to waiting on pilots, tugs, tide, or daylight, weather, channel closure and/or river conditions.
- c) Any time consumed in the interruption of loading operations of the Cargo due to the Vessel preparing for and/or shifting at the berth specifically requested or caused by the Vessel, Vessel master, or other Vessel representatives.
- d) Any delay caused by strike, lockout, stoppage or restraint of labor of the master, officers and crew of the Vessel or towboat, or pilot or subcontractor to Vessel Party.

- e) Cleaning of holds, ballasting and/or de-ballasting, bunkering, internal stripping, or for any other purpose of the Vessel, but in each case only to the extent any of the preceding events prevent officers and crew of the Vessel from performing cargo operations.
- f) Any delay caused by Vessel Party's failure to comply with all financial and/or credit responsibilities of the Agreement.
- g) Delay due to prohibition of any cargo transfer at any time by the Vessel, Vessel Party, or the owner of the Vessel.
- h) Any delay caused by Vessel's failure to have the required certificate of financial responsibility, or failure to be in compliance with applicable USCG regulations, including USCG COC exam (as applicable), or the failure to have other legally required documentation.
- i) Any delay by reason of local law or regulations, action or inaction by local authorities (including port, USCG, naval, USCBP, immigration and/or health authorities, including effective one-way traffic restrictions due to the application of pilot guidelines or local regulations) with the exception of port closures due to strikes, weather, and/or sea conditions.
- j) Any delay for which the Vessel, the Vessel's master, or crew is responsible.
- k) Any delay caused by an actual or threatened pollution incident or bunker contamination, or other Marine Incident, regardless of cause.
- l) In the event of Force Majeure, Laytime, Demurrage and/or deviation do not accrue nor recommence, as the case may be, until such time as the Shore Facilities and Vessel are ready to undertake loading operations.
- m) Any delay that co-exists alongside a condition or with any other delay, in which case the delay resulting, arising out of, or related to the Vessel will conclusively be deemed to be the sole cause of the delay regardless whether an act or omission caused the delay independently of the other conditions or could have caused the delay if the other conditions had not co-existed.
- n) Any time consumed in the opening or closing of hatches.
- o) Delays due to weather and/or sea conditions, including lightning, ice, fog, storm, wind, waves and/or swells.
- p) Channel blockage (unrelated to berth congestion or traffic) and/or port closure associated with the designated Shore Facilities.
- q) Breakdown or failure of equipment or machinery in or about the designated Shore Facilities.
- r) Random security inspection pursuant to any of the Maritime Security Regulations.

- s) Any time consumed for draft checks conducted by the Vessel, the Vessel's master, or crew.
- t) Any time consumed to conduct initial, intermediate and/or final draft surveys conducted by a surveyor in excess of three (3) hours combined.
- u) Any delay caused by the stoppage of operations due to passing vessel traffic.
- v) Any other cause beyond the control of Seller.

## ARTICLE 8. MARITIME SECURITY REGULATIONS (ISPS AND MTSa)

- a) Vessel Party shall procure and provide reasonable documentation that the Vessel nominated under the terms of the Agreement is operating in compliance with the applicable requirements of the Maritime Security Regulations.
- b) Vessel Party shall instruct the Vessel, when required, to submit a DOS to the appropriate authorities prior to arrival at the Cargo Transfer Point.
- c) Despite any prior acceptance of the Vessel by the Terminal Party, if at any time prior to the berthing of the Vessel at the designated Shore Facility the Vessel fails to comply with applicable requirements of the Maritime Security Regulations:
  - i) the Terminal Party shall have the right not to berth such nominated Vessel and any delays resulting will be for the account of Vessel Party; and
  - ii) Vessel Party shall be obligated to substitute a Vessel complying with the requirements of the Maritime Security Regulations.
- d) The Terminal Party shall assure that the designated Shore Facilities and its owner/operator are operating in compliance with the applicable requirements of the Maritime Security Regulations.
- e) Any delays, costs or expenses to the Vessel at ports of loading due to the failure of the Vessel to comply with or timely provide information required by the Maritime Security Regulations will be for the account of Vessel Party. Where delays are solely and directly attributable to the Terminal Party's failure to comply with or timely provide information required by the Maritime Security Regulations, the delays will count as Laytime or, if the Vessel is on Demurrage, as time on Demurrage. The Terminal Party's liability to Vessel Party hereunder for all costs, losses or expenses incurred by Vessel or Vessel Party, resulting from the failure of the load port to comply with the Maritime Security Regulations will be limited to the payment for the period of Demurrage actually incurred by Vessel Party in accordance with the provisions of this Article 8 e).
- f) If Demurrage is incurred and a claim for the Demurrage period is paid by Vessel Party and the Vessel has been delayed in berthing and/or loading for any reason attributable to security regulations other than stipulated in Article 8 e) above, such delay will be paid at one-half (1/2) the Demurrage rate. If the

Vessel is on Laytime, one-half (1/2) of the period of delay will count as Laytime. Cost and expenses attributable to such delay will be shared equally.

## ARTICLE 9. DEMURRAGE AND DESPATCH

### Section 9.1. Demurrage/Despatch - Generally.

A claim for Demurrage will be payable or billable for each Running Hour and pro rata for each part of an hour that used Laytime exceeds the allowed Laytime. A claim for Despatch will be payable or billable for each Running Hour and pro rata for each part of an hour that is not used Laytime and does not exceed the allowed Laytime. Despatch will be charged at one half (1/2) of the Demurrage rate.

### Section 9.2. Rate Determination.

Unless otherwise stated in the Special Provisions:

- a) **Spot Charter Equipment.** For Spot (Voyage) Chartered Equipment that is used in connection with the Agreement, the Demurrage rate will be based on the rate specified in the Vessel's CP as specified in the Vessel nomination or in the Agreement. Despatch rate is to be one half (1/2) of the Demurrage rate.
- b) **Term Chartered or Owned Equipment.** For Term-Chartered Equipment or owned equipment that is used in connection with the Agreement, the Demurrage rate will be based on a mutually agreeable rate between the Parties as specified in the Vessel nomination or in the Agreement. This rate will reflect a daily hire rate, plus import fuel cost, and will be specified in the Vessel nomination and agreement indicated by the Vessel's acceptance. Despatch rate is to be one half (1/2) of the Demurrage rate.

### Section 9.3. Claims.

#### a) Demurrage/Despatch Claims Processing.

- i) Demurrage or Despatch claims arising at the designated Shore Facilities must be submitted in writing with all required supporting documentation listed in Section 9.3 b) and received by Terminal Party within ninety (90) days from the Bill of Lading date after loading of the Cargo is completed. When Valero is the Terminal Party, claims will be sent by one or more of the following means:

- 1) E-mail to: [DryBulkDemurrage@Valero.com](mailto:DryBulkDemurrage@Valero.com)  
Demurrage@Valero.com

- 2) Federal Express to:  
**Valero Marketing and Supply Company**  
**Attention: Demurrage Department**  
**One Valero Way**  
**San Antonio, Texas 78249-1112**

- 3) United States Postal Service to:  
**Valero Marketing and Supply Company**  
**Attention: Demurrage Department**  
**P.O. Box 696000**  
**San Antonio, Texas 78269-6000**

When Valero is the Terminal Party, a Demurrage or Despatch claim sent to any address other than those set forth in this Section 9.3 a) i) will not be considered received for the purposes of this Section 9.3.

- ii) Claims received after 1800 hours Central Prevailing Time will be deemed to have been received on the next Business Day. If the claim and all required supporting documentation listed in Section 9.3 b) are not provided within the specified time, the claim will be deemed to be waived for all purposes. If a dispute arises as to the receipt of the Demurrage or Despatch claim within the ninety (90) day time deadline, written documentation of the receipt of the Demurrage or Despatch claim in question will be required before the claim will be considered. When Valero is the Terminal Party, the only acceptable written documentation of receipt is the e-mail confirmation received from Valero's Demurrage department confirming receipt of the Demurrage or Despatch claim within the ninety (90) day time deadline.
- iii) Vessel Party must provide proof of payment of Demurrage to recover any Demurrage from Terminal Party. The Demurrage payable by Terminal Party will not exceed the amount of Demurrage actually paid by Vessel Party. Terminal Party assumes no obligation to pay Demurrage to Vessel Party. The Demurrage obligations hereunder are independent of any Demurrage obligations under the CP, except as otherwise provided herein.
- iv) **THE PARTIES AGREE TO WAIVE THE RIGHT TO RECOVER AGAINST EACH OTHER ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY OR PUNITIVE DAMAGES OF ANY KIND WHATSOEVER, INCLUDING LOST PROFITS (WHETHER DIRECT OR INDIRECT), LOST REVENUE, LOST BUSINESS OPPORTUNITIES, LOST CONTRACTS, LOST PRODUCTION, LOSS OF GOODWILL, AND LOSS OF USE.**

b) **Demurrage Documentation.**

- i) Tows and Inland Barges. Claims must include Laytime calculation, daily boat logs, and applicable supporting documentation for the Demurrage rate set forth in Section 9.2.
- ii) Ocean-Going Barges. Claims must include Laytime calculation, SOF, and applicable supporting documentation for the Demurrage rate set forth in Section 9.2. Part Cargo calculations must be supported by inspector draft survey reports reflecting volume.
- iii) Ocean Vessel or Bulk Carriers. Claims must include Laytime calculation, agent's SOF, and any letters of protest. Such claims must also be supported by documentation for the Demurrage rates



set forth in Section 9.2. Part Cargo calculations must be supported by bill(s) of lading, if available, or inspector draft survey reports reflecting volume.

- c) **Operational Claims (Non-Demurrage).** Claims that do not constitute Demurrage and are for other operations, including shifting, deviation, detention, interim-port charges, bunker charges, port charges, or any other expense must be submitted in writing with supporting documentation within ninety (90) days from the Bill of Lading Date. When Valero is the Terminal Party, claims must be submitted to the applicable Valero operations scheduler and include Valero reference number. Claims received after 1200 hours Central Prevailing Time will be deemed to have been received on the next Business Day. If the claim and supporting documentation are not provided within the specified time, the claim will be deemed to be waived for all purposes. If a dispute arises as to the receipt of the claim within the ninety (90) day time deadline, written documentation of the receipt of the claim in question will be required before the claim will be considered.

## ARTICLE 10. GOVERNING LAW; OTHER ITEMS

### Section 10.1. Governing Law.

The Agreement will be interpreted in accordance with, and all Marine Claims will be governed by, US General Maritime Law and Texas law, if and where US General Maritime Law is not applicable, in either case, without regard to any choice of law rules. The prevailing party in any dispute hereunder will be entitled to recover its reasonable attorney's fees, costs and expenses.

### Section 10.2. Violation of Applicable Law.

Notwithstanding anything to the contrary, the Agreement will not be interpreted or applied so as to require either Party to do, or to refrain from doing, anything which would constitute a violation of any Applicable Law of the US.

## ARTICLE 11. JURISDICTION AND VENUE; SMALL CLAIMS

### Section 11.1. Jurisdiction and Venue.

Notwithstanding anything to the contrary contained in any other Section of these Dry Bulk Marine Provisions, but subject to Section 11.2 below, the sole jurisdiction and exclusive venue for any and all Marine Claims will be the US District Court for the Southern District of Texas, Houston Division, to which the Parties expressly consent.

### Section 11.2. Small Claims.

The Parties agree that where the total amount claimed by either Party for one or more Marine Claims is equal to or is less than one hundred thousand US dollars (\$100,000), exclusive of interest on the sum claimed, costs of arbitration, and legal expenses, such claim(s) will be referred to arbitration in the City of Houston, Texas, pursuant to US General Maritime Law and the Federal Arbitration Act and governed by the Rules of the HMAA for Fast Track Arbitration in effect at the commencement of the arbitration.

- a) Subject to Section 9.3 a) iv) of these Dry Bulk Marine Provisions, the arbitrator(s) may grant any relief that the arbitrator(s), or a majority of them in the case of a panel of arbitrators, deem(s) just and equitable and within the scope of the Agreement as it relates to the Marine Claims, including specific performance. An arbitration award made pursuant to this Section may include reasonable costs and expenses, including attorneys' fees and/or arbitrators' fees.
- b) In each matter arbitrated under this Section, any decision of the arbitrator(s), or a majority of them in the case of a panel of arbitrators, will be final and binding. Judgment upon any arbitration award may be entered by any court of competent jurisdiction. Any Party may bring a legal action to compel arbitration of any claim to which this arbitration clause applies in any court of competent jurisdiction.

## ARTICLE 12. RIGHTS OF THIRD PARTIES.

Nothing expressed or implied in the Agreement should be considered or constructed as conferring any rights, interests, obligations or benefits under the Agreement to a Person other than Buyer, Seller, their respective successor and permitted assigns, and the Shore Facilities.

## ARTICLE 13. CONDUCT GUIDELINES FOR BUSINESS PARTNERS.

Valero is committed to the highest ethical and legal standards in the conduct of its business and expects all its business partners, including suppliers, vendors, contractors, subcontractors, and representatives, with which Valero conducts business to become familiar with and abide by the policies and principles set forth in Valero's "Conduct Guidelines for Business Partners" available at [www.valero.com](http://www.valero.com).

