



PETRO-CANADA LUBRICANTS INC.

STANDARD TERMS AND CONDITIONS OF SALE - CANADA

As may be amended without Notice by Petro-Canada Lubricants Inc. ("PCLI")

For use only in Canada

1. INTENT AND REFERENCE

These Terms apply to Product a Marketer purchases from PCLI for resale. Unless a Product purchased by Marketer is covered by a valid Contract between PCLI and Marketer (in which event the terms of the Contract shall apply), Marketer acknowledges and agrees that PCLI shall sell such Product to Marketer and Marketer shall purchase and take Delivery of such Product from PCLI in accordance with these Terms.

MARKETER'S ORDER OR PURCHASE OF PRODUCT SHALL CONSTITUTE ITS ACCEPTANCE OF THESE TERMS IN TOTAL, TO THE EXCLUSION OF ANY CONTRARY OR ADDITIONAL TERMS AND CONDITIONS IN ANY FORM WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, ANY STATEMENT, INVOICE, SALES ORDER, PURCHASE ORDER, OR OTHER DOCUMENT OR RECORD PROVIDED BY MARKETER.

Any action, inaction, negligence or misconduct by a Party's directors, officers, employees, agents, subcontractors or representatives in connection with Marketer's purchase of Product under these Terms shall be deemed to have been committed by that Party. The indemnity to which a Party is entitled in connection with these Terms, as expressly set forth herein, shall include that Party's directors, officers, employees, agents, subcontractors and representatives.

Herein, as appropriate or as required in the context, words importing the singular shall include the plural and vice versa.

2. DEFINITIONS

- (a) **"Additional Charges"**: amounts, excepting Prices, Levies and Taxes, payable by Marketer to PCLI, as agreed by the Parties from time-to-time.
- (b) **"Affiliate"**: any person or entity that directly or indirectly controls, is controlled by, or is under common control with PCLI, or Marketer, as applicable.
- (c) **"Business Day"**: a day other than a Saturday, Sunday or public holiday where a Party performs an activity under these Terms, or as otherwise defined herein.
- (d) **"Contract"**: a signed agreement between the Parties for the sale and purchase of Product.
- (e) **"Days"**: calendar days, unless otherwise stated.
- (f) **"Defect"** (including variants thereof): includes any:
 - i. breach of Product warranty,
 - ii. variance in quality from the Product Specifications,
 - iii. Product packaging damaged before or during delivery (except to the extent caused or contributed to by Marketer's negligence or misconduct) whereby the Product is thereby made unsalable, as determined by PCLI, acting reasonably, or
 - iv. shortage in quantity.
- (g) **"Delivered"** (including variants thereof): Product picked-up by or on behalf of Marketer from PCLI, or shipped by or on behalf of PCLI to Marketer, per Delivery Duty Paid (DDP, Incoterms 2010) in the order confirmation issued to Marketer by PCLI's Customer Order Management department. Delivery occurs when Product passes, enters, or is set at, upon or within, as applicable, the receiving flange, pipe, hose, tank, vehicle, marine or stationary vessel, dock, warehouse, shipping container, railcar, rail spur or siding, other facility or equipment (without limit) (each a "Receiving Equipment"), or otherwise when Marketer or its representative has possession or control of Product.
- (h) **"Government"**: a recognized political division or entity including, but not limited to, national, provincial, territorial, municipal and local governments, and includes governmental agencies and authorities.
- (i) **"Laws"**: Government laws, by-laws, decrees, orders, ordinances, regulations and statutes applicable to these Terms, or to a Party's activities under these Terms.
- (j) **"Levies"**: any current, retroactive or deficit recovery fee, levy, handling charge, operating cost or other financial charge, excluding Additional Charges and Taxes, payable or incurred by PCLI in connection with the sale or supply of Product to Marketer, and which is a consequence of, or related to, any Law in force when Marketer purchases or purchased Product, including, but not limited to, PCLI's obligations to make payments to an organization whose functions are associated with recovering or recycling or reclaiming used Product, its packaging / container, or both ("Used Product Organization"). **Notwithstanding any payments of Levies to PCLI, if Marketer transfers Product between provinces / territories, Marketer may be subject to Laws regarding the Product, which may include or result in a liability to a Used Product Organization within the province / territory into which Marketer transferred the Product.**
- (k) **"Marketer"**: a legal entity to which PCLI Delivers and sells Product pursuant to a Contract or these Terms.
- (l) **"Notice"**: written communication from one Party to the other about any of these Terms.
- (m) **"Party"**: PCLI or Marketer; **"Parties"**: PCLI and Marketer.
- (n) **"PCLI"**: Petro-Canada Lubricants Inc., a corporation incorporated under the Laws of Canada, having an office at 2310 Lakeshore Road West, Mississauga, Ontario, L5J 1K2.
- (o) **"Prices"**: prices for Product exclusive of applicable Supplements, unless otherwise required by Law.
- (p) **"Product"**: lubricants and other products Delivered under these Terms and means a single Product or a collection thereof.
- (q) **"Suncor"** means Suncor Energy Products Partnership (or any of its Affiliates or associated entities).
- (r) **"Supplements"**: Additional Charges, Levies and Taxes, in addition to Prices, applicable, to or associated with, Marketer's purchase of Product under these Terms.
- (s) **"Taxes"**: any taxes including, but not limited to, sales, use, value-added and excise taxes, but excluding income taxes, imposed by a Government, directly or indirectly, in connection with the sale or supply of Product by PCLI to Marketer.
- (t) **"Terms"**: these Standard Terms and Conditions of Sale - Canada.
- (u) **"Wholesale Marketer Agreement"** means the wholesale marketer agreement currently in force by and between Suncor and the Marketer.

3. PRODUCT, PRICES AND SUPPLEMENTS

Upon Notice, PCLI may, from time-to-time, discontinue the sale of a Product; or change the composition or packaging of a Product; or change, discontinue or replace a Product trademark or a service offered in connection with the Product.

Prices shall be provided to Marketer upon request. In the same manner as is permitted of Suncor pursuant to Section 5.3 of the Wholesale Marketer Agreement, PCLI has the right to change the Price of any Products at any supply point on not less than thirty (30) (or such other number as PCLI may determine, acting reasonably) days' Notice of such Price change to the Marketer.

Unless otherwise agreed by the Parties or required by Law:

- (a) Prices for lubricating oils and other fluids shall be "per litre" and Prices for greases shall be "per kilogram";
- (b) Invoiced Prices for supply of Product outside of Quebec, New Brunswick and Prince Edward Island shall be exclusive of all applicable Supplements;
- (c) Invoiced Prices for supply of Product in Quebec or New Brunswick or Prince Edward Island shall be exclusive of all applicable Supplements except PCLI's



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- Environmental Handling Charges which shall be included in Invoiced Prices;
- (d) Prices and Supplements shall be in Canadian currency.

Marketer shall pay all Supplements directly to PCLI in addition to the Prices, unless and to the extent Marketer provides a valid exemption certificate to PCLI, or unless and to the extent a Supplement is payable by Marketer, by Law or contract, directly to a third party and Marketer provides written evidence of such obligation to PCLI and, if applicable, the Parties agree, in writing, to transfer the obligation from PCLI to Marketer. New, or changes to existing, Supplements shall be reflected on PCLI's invoices as of their effective date.

4. PRODUCT QUALITY; WARRANTY DISCLAIMERS; CLAIMS; EXCLUSIVE REMEDIES

PCLI warrants to Marketer that, upon Delivery, Product conforms to PCLI's manufacturing specifications for such Product at its date of manufacture (the "Product Specifications"). PCLI reserves the right, at its sole discretion, to amend any Product Specifications in such manner and at such times as it deems appropriate and to maintain some or all of the manufacturing specifications confidential. However, upon reasonable request by Marketer, PCLI shall provide Marketer with the typical qualities, characteristics, or values (collectively "Values") for the Product in normal production at the time of publication of the original document containing the Values provided to Marketer. All Values provided to Marketer from time-to-time are subject to change without notice. Samples, if any, are supplied solely to exemplify the typical Values for the Product at the time of manufacture of such sample. Sale is not by sample and no warranty is made that the particular Values for any Delivery of the Product shall match the particular Values for any sample of the same Product.

ANY PRODUCT CLAIMS BY MARKETER FOR DEFECT SHALL BE MADE PROMPTLY BY PHONE, AND THEN BY FACSIMILE OR ELECTRONIC MAIL. PCLI SHALL BE GIVEN A REASONABLE OPPORTUNITY TO INSPECT THE ALLEGED DEFECT. FAILURE BY MARKETER TO NOTIFY PCLI OF SUCH CLAIM WITHIN THREE (3) BUSINESS DAYS AFTER PRODUCT IS DELIVERED IN CASE OF DEFECTS APPARENT ON REASONABLE INSPECTION OR A SHORTAGE IN QUANTITY, OR OTHERWISE WITHIN THE TIME SPECIFIED IN THE APPLICABLE PCLI POLICY OR PROCEDURE, AS AMENDED, AND AS PROVIDED OR OTHERWISE MADE AVAILABLE TO MARKETER FROM TIME-TO-TIME, OR OTHERWISE PROMPTLY UPON MARKETER'S INITIAL KNOWLEDGE OF A POSSIBLE DEFECT, SHALL OPERATE AS A WAIVER OF ANY AND ALL SUCH CLAIMS BY MARKETER.

PCLI'S LIABILITY SHALL IN NO EVENT EXCEED THE PURCHASE PRICE OF THE PARTICULAR DELIVERY OF PRODUCT WITH RESPECT TO WHICH CLAIM IS MADE AND PCLI SHALL HAVE THE OPTION OF REPLACING THE DEFECTIVE PRODUCT RATHER THAN MAKING PAYMENT OR CREDITING THE MARKETER'S ACCOUNT IN RESPECT OF THE AMOUNT ORIGINALLY BILLED FOR THE PARTICULAR PRODUCT. HOWEVER, PCLI SHALL REPAIR DAMAGED EQUIPMENT OR REPLACE DAMAGED EQUIPMENT PARTS RESULTING FROM A FAILURE DUE TO DEFECTS IN THE PRODUCT, PROVIDED, HOWEVER THAT THE PRODUCT IS USED IN ACCORDANCE WITH THE RESPECTIVE RECOMMENDATIONS OF THE EQUIPMENT MANUFACTURER AND PCLI. SUBJECT TO SECTION 5, THE REMEDIES PROVIDED IN THIS SECTION SHALL BE MARKETER'S EXCLUSIVE REMEDIES FOR ANY CLAIMS FOR DEFECT.

NOTWITHSTANDING ANY OF THE OTHER PROVISIONS OF THESE TERMS, PCLI'S LIABILITY SHALL BE SUBJECT TO MARKETER:

- (a) COMPLYING WITH PCLI'S STATEMENTS ABOUT PRODUCT HANDLING, STORAGE AND SHELF LIFE, AS PROVIDED OR OTHERWISE MADE AVAILABLE TO MARKETER;
- (b) TAKING REASONABLE STEPS TO VISUALLY INSPECT AND IDENTIFY ANY POSSIBLE DEFECT BEFORE RE-SELLING PRODUCT OR PUTTING PRODUCT INTO SERVICE (EACH OF WHICH MUST OCCUR BEFORE THE EXPIRY OF THE PRODUCT'S "SHELF LIFE");
- (c) TAKING REASONABLE STEPS TO PREVENT OR MITIGATE ANY LOSS OR DAMAGE INCURRED BY MARKETER OR MARKETER'S CUSTOMER AS A RESULT OF ANY POSSIBLE DEFECT AFTER PRODUCT IS PLACED IN-SERVICE.

PCLI MAKES NO REPRESENTATIONS OR WARRANTIES (EXPRESS, IMPLIED, STATUTORY OR OTHERWISE) OTHER THAN THE EXPRESS WARRANTY SET OUT ABOVE IN THIS SECTION. TO THE MAXIMUM EXTENT PERMITTED BY LAW, PCLI EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES (EXPRESS, IMPLIED, STATUTORY OR OTHERWISE) INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NOTWITHSTANDING ANY OF THE OTHER TERMS, THE REMEDIES PROVIDED IN THIS SECTION SHALL BE MARKETER'S EXCLUSIVE REMEDIES FOR ANY CLAIMS FOR ANY DEFECT.

Nothing in these Terms shall be deemed to relieve either Party from any duty to mitigate any loss or damage incurred by it as a result of any breach of these Terms by the other Party or as a result of any claim made by a third party directly or indirectly in relation to Marketer's purchase of Product.

Marketer shall inform PCLI promptly of any customer complaint in respect of any Product, and shall consult with and keep PCLI informed of the progress of resolving any such complaint.

5. LIABILITY AND INDEMNITY; DISCLAIMER OF LIABILITIES

- (a) Each Party (as "Indemnitor") shall indemnify and save the other Party (as "Indemnitee") harmless from and against any and all losses, costs, damages, claims, fines, penalties, liabilities and expenses, including, but not limited to, those related to or associated with death, personal injury or damage to property or the environment, which Indemnitee may sustain, incur, suffer or have asserted against it as a result of Indemnitor's negligence or misconduct, including, but not limited to, leaking or otherwise faulty Receiving Equipment provided by or on behalf of Marketer, except to the extent caused or contributed to by Indemnitee's negligence or misconduct.
- (b) With respect to claims against PCLI by third parties arising in respect of Product, and except to the extent such claim is caused or contributed to by PCLI's negligence or misconduct, Marketer shall defend, indemnify and hold harmless PCLI from and against all claims, losses, damages, liabilities and expenses, including reasonable legal fees, resulting in each case from Marketer's transportation, loading, unloading, storage, management, handling, packaging, repackaging, promotion, advertising, sale, supply, recommended application or delivery of Product.
- (c) With respect to claims against Marketer by third parties arising in respect of Product, and except to the extent such claim is caused or contributed to by Marketer's negligence or misconduct, PCLI shall indemnify and hold harmless Marketer from and against all claims, losses, damages, liabilities and expenses, including reasonable legal fees, resulting in each case from PCLI's manufacture, transportation, loading, unloading, storage, handling, promotion, advertising, sale, supply, or recommended application, of Product. These obligations of PCLI shall survive the termination or expiry of these Terms.
- (d) Notwithstanding any of the other Terms, to the maximum extent permitted by Law, the indemnities prescribed by this Section and any other remedy expressly stated in these Terms shall be a Party's sole and exclusive remedies for monetary damages for any breach of these Terms by the other Party, to the exclusion of any additional or substitute remedies available at law or in equity which each Party expressly disclaims; provided, however, that the foregoing shall not limit a Party's right to seek specific performance or injunctive or similar non-monetary relief for a breach of these Terms by the other Party relating to fraud or the improper disclosure of confidential information.



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- (e) Notwithstanding any of the other Terms, and except for a Party's wilful misconduct, fraud or breach of Section 24, to the maximum extent permitted by Law, neither Party shall be liable to the other Party for any loss of production, loss of revenue, loss of profits, loss of any business or contract, or for any incidental, consequential, indirect, special or punitive damages, arising out of or in connection with these Terms.
- (f) Nothing in these Terms shall exclude or limit the liability of either Party for fraud or death or personal injury resulting from the negligence of that Party, nor shall it operate to exclude or limit any statutory rights which cannot be legally excluded or limited, including the statutory rights of a consumer.

6. PRODUCT MEASUREMENT AND PURCHASE QUANTITIES

The quantities of Product Delivered to Marketer shall be determined by the methods of measurement normally used by or on behalf of PCLI for bulk Deliveries, or, for packaged Product, by the actual number of containers Delivered. Bulk Deliveries within ten percent (10%) of amounts ordered shall be deemed sufficient; though Marketer shall only pay for actual amounts Delivered. However, if PCLI provides specialty bulk services to Marketer (by example, if Product is decanted from drums for Marketer or Product is subject to a minimum size order), Marketer shall pay for all Product ordered and made available, even if it exceeds the amount Marketer is able to receive on the scheduled Delivery date.

7. PRODUCT TITLE AND RISK

Risk of loss or damage to and control of Product, and title to Product, shall pass to Marketer upon Delivery in Canada. In the event of Defective Product, risk of loss or damage to and control of Product, and title to such Product, shall remain with Marketer until, if applicable, physical possession of such Product is transferred to PCLI or its designated representative.

8. PRODUCT MANAGEMENT AND PACKAGING BY MARKETER

Marketer shall receive, store, handle, move, package, repackage, transport and deliver Product in accordance with these Terms, PCLI's applicable work instructions, if any, and / or written approval, as amended, and as provided or otherwise made available to Marketer in writing from time-to-time, and otherwise and at all times in accordance with these Terms, applicable law and in such manner so as to preserve the integrity and quality of the Product.

Marketer shall not alter in any way any Product Delivered by PCLI, nor blend or mix a Product with other Product or with product of another supplier, including Marketer, nor package or repackage Product, other than and at all times in strict compliance with these Terms, PCLI's applicable work instructions and, at PCLI's discretion, its written permission, and applicable laws. If any Product is altered, blended, mixed, packaged or repackaged other than in strict compliance with the requirements set out in the preceding sentence, Marketer shall (i) be fully liable for any resulting claims, including, but not limited to, losses, damages, liabilities, expenses, compensation, fines or other penalties, by any party, without limitation, (collectively, the "Consequences") and (ii) indemnify and hold harmless PCLI from any and all of the Consequences and PCLI's reasonable legal expenses in connection therewith.

Marketer expressly agrees that all of the terms and conditions in this Section shall apply to Marketer's sub-distributors and that a breach thereof by a sub-distributor shall be considered a breach by the Marketer.

9. RETURN OF PRODUCT; PRODUCT HANDLING FEE REIMBURSEMENT

(a) In this Section:

- i. "Customer": a PCLI customer, to which Marketer has been appointed by PCLI to Ship Product on behalf of PCLI.
- ii. "Ship" (including variants thereof): physical transfer of Product from Marketer to Customer, including all necessary and reasonable associated activities, including, but not limited to, receipt and processing of Product orders from Customer and/or from PCLI on behalf of Customer.
- iii. **Handling Fee Reimbursement ("HFR")**: Compensation paid to Marketer to Ship Product, on behalf of PCLI, to Customer. Subject to Section 9(b)vii, HFR equals the total of:
 - A. Marketer's purchase price for Product Shipped to Customer ("**Purchase Price**"),
 - B. Product-related freight Marketer paid PCLI ("**Applicable Freight**"),
 - C. handling fee for Shipping Product to Customer ("**Handling Fee**"), and
 - D. repackaging fee, if applicable.
 For each of (A) through (D) above, the applicable "price", "rate", or "fee" shall be that in effect on the date of Shipment.

(b) At any time and from time to time, PCLI may appoint Marketer to Ship Product, on behalf of PCLI, to a Customer. Marketer agrees to accept such appointment and to Ship Product from Marketer's inventory to such Customer in accordance with the following terms and conditions:

- i. Marketer shall Ship Product, on behalf of PCLI, to such Customer, to such location(s) and at such time(s) as PCLI may specify, and Marketer shall provide PCLI with all documentation in connection with each Shipment as PCLI may require. Each Shipment shall be made in accordance with PCLI's applicable policies and work instructions, as amended, and as provided or otherwise made available to Marketer.
- ii. Risk of loss or damage to and control of Product shall pass from Marketer to Customer where Shipment is made when Product passes, enters into or is set upon or within, as the case may be, the receiving flange, pipe, hose, tank, vehicle, marine or stationary vessel, loading or unloading dock, warehouse, other facility or equipment provided by Customer. Title to Product shall pass from Marketer to PCLI and then from PCLI to Customer simultaneously with transfer of risk of loss from Marketer to Customer. Marketer must obtain from Customer a signed delivery ticket or other proof of Shipment acceptable to PCLI.
- iii. **PCLI AND MARKETER EXPRESSLY AGREE THAT, FOR ALL PURPOSES, THE AFOREMENTIONED PASSAGE OF TITLE TO PRODUCT FROM MARKETER TO PCLI SHALL IN ALL CASES BE RECORDED BY THE PARTIES AS A "RETURN OF PRODUCT BY MARKETER TO PCLI" AND NOT A "SALE OF PRODUCT BY MARKETER TO PCLI"**.
- iv. Marketer shall Ship Product to Customer in such manner as to promote goodwill between Marketer and Customer and between Customer and PCLI.
- v. **MARKETER ACKNOWLEDGES AND AGREES THAT, WITH RESPECT TO CUSTOMER'S REQUIREMENT FOR PRODUCT (OR ANY COMPETITOR'S EQUIVALENT THERETO), MARKETER'S RELATIONSHIP WITH SUCH CUSTOMER SHALL BE SOLELY THAT OF A REPRESENTATIVE OF PCLI. MARKETER SHALL NOT SELL PRODUCT (OR ANY COMPETITOR'S EQUIVALENT THERETO) TO CUSTOMER ON MARKETER'S OWN ACCOUNT WITHOUT PRIOR WRITTEN CONSENT OF PCLI. MARKETER CONFIRMS AND ACKNOWLEDGES THAT CUSTOMER IS A CUSTOMER OF PCLI AND NOT OF MARKETER.**
- vi. PCLI may, at any time and for any reason and upon written notice, rescind Marketer's appointment to Ship Product to Customer. Thereafter, PCLI shall only be liable to Marketer for HFRs for Product Shipped on or before the date PCLI rescinded Marketer's appointment.
- vii. Shipment Confirmation and HFR claim process:
 - A. Within three (3) Business Days after any Shipment, Marketer shall confirm Shipment by submitting batches to PCLI using Suncor's WTBS system or through other approved processes. Each Shipment confirmation shall include: (i) Customer's account number, (ii) Customer's purchase order number, (iii) date of Shipment and (iv) name(s) and quantity of each Product Shipped.



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- B. HFR payments shall be in the form of a monetary credit to Marketer's account.

10. INSURANCE.

With respect to the liabilities assumed and indemnities provided by Marketer pursuant to these terms, Marketer covenants and agrees to: (a) obtain and maintain all insurance liability policies prescribed by the Wholesale Marketer Agreement; and (b) designate PCLI (and any other party designated by PCLI) as an additional insured under such policies and ensure that such policies contain cross liability and severability of interest provisions and shall be primary to any policies maintained by PCLI. Marketer shall, for itself and all of its respective agents and employees, waive all rights of subrogation, and cause each insurer to waive their rights of subrogation as to PCLI (and any other party designated by PCLI). Consistent with its obligations to Suncor under the Wholesale Marketer Agreement, Marketer shall provide PCLI with certificates of insurance evidencing the insurance required to be obtained by the Marketer including the coverage pursuant to this Section and shall promptly provide PCLI with copies of any renewals and any notices of cancellation of such insurance received by the Marketer from any insurers.

11. ORDERS AND DELIVERIES

All Product orders, Deliveries and returns shall be subject to these Terms and to PCLI's applicable written policies and procedures, as amended, and as provided or otherwise made available to Marketer. PCLI shall use commercially reasonable efforts to meet the Delivery schedule requested by Marketer or proposed by PCLI, but shall not be liable (in contract, negligence or otherwise) for any loss or damage resulting from its failure to do so, howsoever caused.

12. CREDIT AND PRODUCT PAYMENT

- (a) From time-to-time, PCLI may request financial or other information ("**Information**") from Marketer, including, but not limited to, Marketer's audited financial statements, to determine whether, to what extent, and on what conditions to continue extensions of credit to Marketer. If PCLI does not receive such Information within three (3) Business Days after its request, or determines the financial condition of Marketer or Marketer's guarantor (if any) has become unsatisfactory, or otherwise determines it appropriate, PCLI is entitled to withdraw or revise existing credit terms at any time, acting reasonably. If credit is withdrawn, payment terms shall be prepaid Deliveries. Alternatively, or in addition, PCLI, in its sole discretion, may provide credit if Marketer or Marketer's guarantor (if any) provides security, at Marketer's expense, satisfactory to PCLI.
- (b) If Marketer's order for Product or other goods or services with PCLI or its Affiliates places Marketer's account over the credit limit agreed to by PCLI from time-to-time, PCLI is entitled to require payment in advance.
- (c) Marketer agrees to ensure PCLI receives full payment of invoices per the terms as advised by PCLI from time-to-time and by the date indicated on its invoices ("**Due Date**"). At PCLI's discretion, taking account of Marketer's payment record, overdue amounts shall be subject to a late payment interest charge ("**LPIC**"), at the lesser of (i) 24% per annum (daily rate 0.06575%) or (ii) the maximum amount or rate permitted by Law, from the Due Date until payment is made in full. The LPIC may be altered from time-to-time by PCLI, but shall not exceed the maximum amount or rate permitted by Law. No LPIC shall apply if Marketer's delay of payment is due to an incorrect PCLI invoice, provided such delay is limited to that part of an invoice which Marketer reasonably believes is incorrect ("**Disputed Charge**"), and provided Marketer makes prompt payment of the Disputed Charge upon its correction or resolution, as applicable.
- (d) If Marketer fails to make full payment of an invoice by the Due Date, excepting a Disputed Charge, PCLI is entitled to suspend Product Deliveries until all outstanding amounts have been received from Marketer. PCLI is entitled to set off any amounts owing by PCLI or its Affiliates to Marketer, against any amounts owing by Marketer to PCLI or its Affiliates, under any agreements between such parties.
- (e) Any monies owing by Marketer under these Terms shall be payable immediately if PCLI suspends or terminates Deliveries because of Marketer's default per Section 13(a).

13. BREACH OR DEFAULT OF TERMS AND TERMINATION

- (a) PCLI may suspend or terminate Deliveries of Product to Marketer immediately and without Notice if Marketer:
- commits a material breach of these Terms and fails to remedy such breach to PCLI's satisfaction within fifteen (15) Days from notification in writing, or, as to any failure to pay amounts hereunder when due, fails to make such payment in full within five (5) Days from written demand for payment; or
 - becomes bankrupt or insolvent, seeks the benefits of, or is the subject of, any voluntary or involuntary petition for relief as a debtor under the Bankruptcy and Insolvency Act, the Companies' Creditors Arrangement Act or under any other act at the time in force regarding bankrupt or insolvent debtors, or makes any assignment for the benefit of its creditors or any proposal to its creditors for compromise or relief from debts; or
 - breaches, or fails to comply in any material respect with, any Law or regulation applicable to it or its business or operations; or
 - in PCLI's judgment, engages or has engaged in a fraudulent, unsafe, or deceptive business practice; or
 - acts or has acted in a manner PCLI determines, acting reasonably, to be detrimental to its image; or
 - enters into any contract or obligation on behalf of, or that would obligate, PCLI without its prior written authorization.
- (b) The Terms of this Section are cumulative of other Terms regarding rights of termination and do not limit, nor are they limited by, such other Terms.

14. TERMINATION RIGHTS AND OBLIGATIONS

The termination of Product Deliveries ("**Termination**") for any reason shall be without prejudice to, and shall not relieve either Party of, any rights or obligations it acquired under these Terms before Termination, including, without limitation, (a) PCLI's right to (i) payment for Delivered Product, including applicable Supplements (collectively "**Full Payment**"), and (ii) payment for or recovery of any other costs or expenses incurred by PCLI to exercise its right to Full Payment; and (b) Marketer's right to payment of any outstanding HFRs. Any right or obligation of a Party which is capable of having effect after Termination shall survive and remain in full force and effect after Termination for any reason, including, without limitation, those set out in Sections 4, 5, 6, 7, 11, 12, 14 and 21 through 27. Upon Termination for any reason, PCLI is entitled to cancel any non-completed Deliveries. Neither Party shall be liable to pay goodwill or other compensation because of Termination.

15. FORCE MAJEURE

A "**Force Majeure**" event includes, but is not limited to, a strike; lock-out; work stoppage or slow down or other labour dispute; popular uprising; sabotage; riot; rebellion; seizure; insurrection; act of terrorism; act of God; fire; storm; flood; war; accident; embargo; hostilities; explosion; perils of navigation; breakdown, closure or loss of use of, or damage to, or an unsafe condition involving, any facilities, machinery or equipment (for any reason whatsoever) used to manufacture, obtain, store, distribute or receive Product; a reduced or inadequate supply of raw materials or services to PCLI or its Affiliate (for any reason whatsoever, including PCLI's or its Affiliate's inability to acquire same on economically reasonable terms); an act of any Government or other authority; or any other event beyond the reasonable control of a Party (individually or collectively "**Event**"). However, lack of finances shall not be considered an event beyond the reasonable control of a Party, and nothing herein shall relieve Marketer of its obligation to pay for Delivered Product.



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Excluding payment obligations, neither Party shall be liable, in damages or otherwise, for any non-performance, omission or delay (individually or collectively "Delay") in performing its obligations under these Terms to the extent and for the time its Delay is directly or indirectly attributable to an Event. The Party claiming Force Majeure shall notify the other Party of the situation as soon as possible, shall communicate all reasonable details to the other Party, and shall, as soon as possible, remedy the cause and consequences of the Event insofar as it is able to do so. However, terms of settlement of any strike, lock-out or other labour dispute (individually or collectively, "Dispute") shall be at the discretion of the Party claiming Force Majeure and such Party shall not be bound to settle the Dispute merely to remedy the Event.

16. PCLI'S RIGHT TO ALLOCATE SUPPLY

If for any reason PCLI's supplies of Product are curtailed or cut off, or are otherwise inadequate to meet its customers' needs, PCLI shall allocate the available supply as PCLI considers appropriate, and such allocation shall not be a breach of PCLI's obligations under these Terms.

17. NO AGENCY/WARRANTIES

Except as specifically provided in Section 9(b), neither these Terms nor the relations between the Parties shall constitute or create the relationship of principal and agent or of partnership or of joint venture between the Parties. Neither Party is authorized to create or incur any obligation on behalf of the other Party and shall not make any representation, express or implied, that it has such authority. Neither Party, unless having given its express prior written authorization to the other Party, shall be responsible for any debts, contracts or obligations incurred, made or entered into by or on behalf of the other Party.

Each Party warrants it is duly organized, validly existing and in good standing under the Laws of its respective jurisdiction, and has the power and capacity to enter into, execute and perform its obligations under these Terms, and that the execution of these Terms shall not result in a breach by such Party of any other agreement by which it is bound.

18. COOPERATION AND ASSISTANCE

Each Party shall execute and deliver, or cause to be executed and delivered, all documents, and do, or cause to be done, any further and other acts or things, necessary to implement and carry out the intent of these Terms.

19. HEADINGS

The headings herein are for convenience only and shall not be considered when interpreting these Terms.

20. HAZARDOUS SUBSTANCES; ASSUMPTION OF RISK

The material used to produce the Products includes derivatives of crude oil and may include other products or chemicals that contain or that may be found to contain substances hazardous to the health and safety of persons and property. Upon Delivery, Marketer shall undertake and assume full responsibility to maintain, observe, and communicate adequately to Marketer's agents, employees, customers, and contractors any and all health and safety warnings, procedures, standards, rules, and regulations supplied to Marketer by Government, or by PCLI, including, but not limited to, a Product's "Safety Data Sheet", as part of or in connection with Marketer's receiving, storing, handling, testing, using, processing, shipping, or disposing of a Product.

21. COMPLIANCE WITH APPLICABLE LAWS

Marketer shall comply with all Laws relating to the receiving, storing, handling, testing, using, processing, shipping, or disposing of the Products. Without limiting the generality of the foregoing, Marketer shall (a) not export, re-export, or otherwise transfer, directly or indirectly, the Products in violation of Law, (b) be responsible for obtaining any necessary Government authorization required to ensure compliance with Law, excepting such authorizations which, by Law, are PCLI's responsibility, and (c) contact the applicable domestic or foreign Government authorities to the extent Marketer needs guidance as to applicable licensing requirements and other restrictions to meet its obligations hereunder.

22. ANTI-CORRUPTION WARRANTY

Marketer warrants, in connection with the Products, that Marketer and its employees, contractors, representatives and agents have not, directly or indirectly, offered, promised, made, encouraged, permitted or facilitated, and will not, directly or indirectly, offer, promise, make, encourage, permit or facilitate, the making of payments to Government officials or officials of a public organization as are prohibited by applicable anti-corruption Laws including, but not limited to, *Canada's Corruption of Foreign Public Officials Act, the U.S. Foreign Corrupt Practices Act ("FCPA")*, *the U.K. Bribery Act 2010*, and *the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*.

23. RECOVERY OF ENFORCEMENT COSTS

If a Party is required to take any action to enforce these Terms, it shall be entitled to recover from the other Party (i) reasonable payments to external: legal counsel, consultants, expert witnesses and other professionals; (ii) reasonable collection costs and (iii) interest at the statutory rate on any unpaid amount from the date due.

24. SECRECY

The Parties may exchange proprietary and other confidential information, including, but not limited to, Prices. Neither Party shall divulge to any third party any such information supplied by the other Party without the prior written consent of the other Party, unless required by Law. Marketer shall not attempt, nor cause or participate in an attempt, to decompile Product. Information shall not be considered confidential to the extent, but only to the extent, that such information: (i) is already known to the other Party free of any restriction; (ii) is or becomes publicly known or available through no wrongful act or breach of these Terms; (iii) is rightfully received from a third party without restriction; or (iv) is required to be disclosed by Law and is not covered by a protective order or otherwise given confidential treatment. For any breach of this Section by either Party, the other Party shall be entitled to seek temporary, preliminary or permanent injunctive relief.

25. SEVERABILITY AND WAIVER

Should anything herein be found to be illegal or unenforceable, it shall be severed from these Terms, without affecting the enforceability of the balance of these Terms. A Party's failure, in one (1) instance or more, to (a) take action in response to the other Party's breach of any Term ("Breach"), or (b) enforce any Term, or (c) exercise any right, shall not be deemed to excuse or waive such Breach, Term or right, nor shall it thereafter limit, impair or extinguish a Party's right to take action in response to any Breach, or to enforce or exercise any Term or right.

26. ENTIRE AGREEMENT

These Terms and the payment terms, as may be amended by PCLI, that are separately provided to Marketer by PCLI's Credit department, constitute the Parties' entire agreement. All representations, conditions, understandings and warranties regarding the subject matter of these Terms, whether past or contemporaneous, are merged herein or superseded hereby. Other than the payment terms, no contrary or additional terms and conditions in any form whatsoever shall apply to these Terms, notwithstanding any oral or written statement made or provided by either Party, including, but not limited to, any statement, invoice, sales order, purchase order, or other document or record.

27. GOVERNING LAW



PETRO-CANADA LUBRICANTS INC.

These Terms shall be governed by and construed under the Laws of the Province of Ontario, including the Laws of Canada of general application therein (individually or collectively "**Governing Law**"), without regard to conflicts-of-laws principles that would require the application of any other law. Any action arising out of or relating to these Terms shall be brought in the appropriate Ontario court in the City of Toronto ("**Court**"). The Parties agree to irrevocably attorn to the exclusive jurisdiction of such Governing Law and Court. The Parties exclude application of the United Nations Convention on Contracts for the International Sale of Goods, or any local legislation implementing such Convention.

28. NOTICES

A Notice shall be deemed properly given if in writing and (a) delivered by hand (including commercial delivery service), (b) sent by facsimile ("**fax**") or electronic mail ("**email**"), or (c) sent by mail, to the other Party's address or fax number or email below or as otherwise provided by that Party.

- To Marketer: To the address or fax or email provided by Marketer.
- To PCLI: By hand or mail: Petro-Canada Lubricants Inc., 2310 Lakeshore Road West, Mississauga, ON, L5J 1K2. By fax: 905-804-3617. By email: as provided to Marketer.

Notice served by hand or fax or email shall be deemed to have been given one (1) Business Day after the date on which it is served, provided, if service is by fax or email, sender has proof of successful transmission to the other Party. Notice served by mail shall be deemed to have been given five (5) Business Days after the date on which it is postmarked. If there is an anticipated or actual postal disruption, Notice shall only be given by hand or fax or email. Either Party may at any time change its address for service by giving Notice in accordance with this Section. For the purpose of this Section, "**Business Day**" means a Day which is not a Saturday, Sunday or public holiday in the jurisdiction where a Party receives a Notice.

29. LANGUAGE

The Parties confirm they wish these Terms to be in English. Les parties aux présentes confirment que c'est leur volonté que les présentes conditions soient rédigées en anglais seulement.