

Alaska Tanker Company
Standard Terms and Conditions – Goods and Materials Purchases

1. INTRODUCTION

1.1 These Standard Terms and Conditions – Goods and Materials Purchases (the “Conditions”) shall, unless otherwise agreed in writing, apply to all purchases of goods and materials, including parts, by any authorized employee, member, agent or representative of the Alaska Tanker Company (the “Buyer”) to a Supplier (the “Seller”). Seller’s offers are non-binding until accepted and confirmed by a purchase order (“PO”) issued by Buyer in compliance with these Conditions *and* the PO is acknowledged by Supplier (any such acknowledged purchase order, a “Contract”) promptly thereafter, customarily within twenty-four (24) hours of Buyer’s submittal. These Conditions shall form an integral part of the Contract. Buyer may not change or cancel any purchase order after it has been received by Supplier unless Supplier has agreed in writing to such change or cancellation.

2. DEFINITIONS

2.1 “Buyer” means Alaska Tanker Company (also referred to as “ATC”). “Seller” means the party with whom Buyer is contracting and any reference to “vendor”, “contractor”, “subcontractor” and the like shall also mean “Seller”.

3. INSPECTION, DELIVERY AND PASSAGE OF TITLE

3.1 All references to trade terms shall be interpreted in accordance with Incoterms® 2010.

3.2 All goods and materials ordered shall be subject to inspection or verification by Buyer and/or Buyer’s representative or agent (a) during the period of manufacture, (b) prior to shipment, and/or (c) at final destination, notwithstanding any prior payment, inspection or terms of shipment.

3.3 Inspection by, failure to make adequate inspection by, or acceptance by Buyer and/or its representative or agent shall in no event limit or discharge the obligations of Seller to comply with the provisions of these Conditions and the Contract. Payment for any goods and materials hereunder shall not be deemed acceptance thereof. All risk of loss or damage to the goods will remain Seller’s until delivered to and accepted by Buyer at the time and place of delivery specified in the Contract, unless Buyer and Seller agree otherwise in writing.

3.4 Time is of the essence in the delivery of the goods and materials at the time and in the place stipulated in the Contract.

3.5 Failure of Seller to complete delivery of the goods and materials purchased in the Contract within the time specified, or within a reasonable time if no time is specified, shall, at the option of Buyer, without liability, in addition to Buyer’s other rights or remedies, relieve Buyer of any obligation to accept and pay for any such goods.

3.6 Without prejudice to Seller’s obligation to deliver the goods on time, Seller shall give Buyer notice in writing immediately if any delay is foreseeable. Buyer shall not be required to make any payment in respect of goods and materials shipped by Seller in advance of this specified shipping date until the date specified in the Contract for such goods and materials. The acceptance of late performance with or without objection or reservation shall not waive the right to claim damage for breach nor constitute a waiver of the requirements for the timely performance of any obligation remaining to be performed by Seller.

3.7 If Buyer anticipates that it will be unable to accept the delivery of the goods and materials at the time set forth in the Contract, Buyer shall notify Supplier in writing stating the reason and the time when Buyer anticipates being able to accept the delivery. Buyer shall pay the portion of the Contract price that becomes due at the delivery as if the delivery had taken place. Supplier may by notice require Buyer to accept the delivery within a final reasonable time. Any additional costs related to such delay shall be borne by Buyer.

3.8 Title to the goods and materials shall pass from Seller to Buyer no later than the time and place of delivery specified in the Contract provided that any passing of title shall not prejudice either Buyer’s right to reject Nonconforming Goods or any other right that Buyer may have; and in those instances where advances or progress payments are made, title, but not risk of loss or damage, shall pass to Buyer as soon as items are identified to the Contract. All items so identified shall be adequately marked and recorded as being the property of Buyer. “Nonconforming Goods” shall mean any goods that fail to conform in any respect to one or more of the warranties set forth in these Conditions or any other requirement of the Contract.

3.9 The Buyer has the right to suspend the performance of its obligations under the Contract if it is reasonably clear from the circumstances that Seller will not be able to perform its obligations as stated in the Contract.

4. PRICES, PAYMENTS, CASH DISCOUNT & LATE PAYMENT CHARGES

4.1 Except as provided herein or in the Contract, all prices are firm and shall not be subject to change.

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4.2 Separate numbered invoices are required for each order. Seller shall invoice only for goods and materials delivered unless otherwise agreed in the Contract. Invoices will not be processed for payment nor will the period of computation for cash discount, if applicable, commence until receipt of a properly completed invoice or when invoiced items are received, whichever is later. If an adjustment in payment is necessary due to damage or dispute, the cash discount period shall commence on the date final approval for payment is authorized.

4.3 Unless otherwise provided in the Contract, standard payment terms shall be net thirty (30) days following receipt of Seller's documented invoice by Buyer. Payment shall be made either by bank remittance via electronic funds transfer ("EFT") in the currency and to the bank account set forth in Supplier's invoice or by check via mail. Progress payments, if agreed to in the Contract, are subject to the condition that payment will be made when items have been indicated to the Contract and title has passed to Buyer, free from any third party claims. If Buyer fails to make timely payment, Seller may invoice for one percent (1%) per month on the amount overdue. Payment shall not be considered late if a check or warrant is available or mailed within the time specified, or if no terms are specified.

5. GOODS AND MATERIALS ASSURANCE

5.1 Infringements

5.1.1 Seller agrees to protect and save harmless the Buyer against all claims, suits or proceedings for patent, trademark, copyright, or franchise infringement arising from the purchase, installation, or use of goods and materials ordered, and to assume all expenses and damages arising from such claims, suits or proceedings.

5.2 Specifications

5.2.1 When a specific brand, model and/or technical specification are named in the Contract it shall be interpreted narrowly, indicating the standard of quality, performance, or use described, and shall not be substituted by Seller without the prior consent of Buyer. Brands of equal quality, performance and use shall be considered, provided Seller specifies the brand and model and submits descriptive literature, when available, in advance, for Buyer's review and consideration. Any bid containing a brand which is not equal quality, performance, or use specified must be represented as an alternate and not as an equal and failure to do so shall be sufficient reason to disregard the bid and/or return the good and material to Seller at Seller's expense.

5.3 Packaging

5.3.1 In accordance with "best commercial practices" all goods and materials must be packaged with suitable protection against corrosion, contamination, deterioration, spillage or other spoilage so as to prevent damage through handling, transit, and from environmental, magnetic, and electrical damage during handling and subsequent storage prior to usage. The use of eco-friendly packaging of recycled, post-consumer, recyclable and/or biodegradable content, including corrugated boxes, mailers, sealing tapes, packaging papers, void-fill cushioning materials, and the like, are encouraged whenever possible.

5.3.2 Antistatic ESD (electrostatic discharge) packaging (plastic bags, etc.) and desiccant must be used for sensitive electronic components and/or moisture sensitive devices.

5.3.3 Machined parts shall be wrapped individually to prevent damage from contact with each other. The part may be wrapped in cushioning wrap, foam, and/or heavy duty zip lock plastic bags. They may be placed in individual small containers. Screws, bolts, nuts, washers and the like need not be individually wrapped.

5.3.4 The use of asbestos, wood excelsior, newspaper or shredded paper (all types including computer paper and similar hygroscopic material) is prohibited. In addition, loose fill polystyrene (i.e. packing peanuts) is prohibited.

5.3.5 Wood packaging material such as pallets, crates, boxes, skids and pieces of wood used to support or brace cargo being imported into the United States shall be properly heat treated or fumigated with methyl bromide and include the International Plant Protection Convention (IPPC) stamp, pursuant to the U.S. Department of Agriculture's (USDA) Animal and Plant Health Inspection Service (APHIS) import regulation for wood packaging, 7 CFR 319.40, as amended. Additional information on the enforcement of the wood packaging material (WPM) regulations is available through the U.S. Customs and Border Protection (CBP) Web site at www.cbp.gov. Paper certificates of treatment are no longer required or accepted. In the event of noncompliance, which may give cause to Buyer's termination of the Contract, the WPM and accompanying goods and materials are subject to immediate export by the CBP. All costs and expenses in obtaining regulatory compliance or re-export and re-import, including but not limited to fines, penalties, disbursements, storage/logistic services and Buyer damages, shall be borne by Seller.

5.3.6 Unless otherwise provided in the Contract, all containers and packing supplied by Seller shall be considered

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as nonreturnable and their cost shall be included in the price.

5.4 Shipping

5.4.1 Unless otherwise specified in the Contract, all goods and materials are to be shipped prepaid, FOB destination. When shipping addresses specify suite, unit or room numbers, Seller shall make the specified delivery without additional charge.

5.4.2 When shipment is specified FOB origin, Seller agrees to prepay all shipping charges, route as instructed and, if instructions are not provided, route by most economical common carrier and to bill Buyer as a separate item on the invoice for shipping charges.

5.4.3 The parties agree that the goods and materials shall be delivered subject to all applicable import and/or export controls or restrictions imposed on technology and products by any country or organization or nation which are enforceable in the jurisdiction country of Seller, the United Nations, the European Union and the United States of America.

5.4.4 Should the goods and materials ship by ocean freight and if the Seller is the importer of record, then Seller agrees to comply with all “Importer Security Filing and Additional Carrier Requirements” rules, regulations, information requirements and filings as enacted and enforced by the U.S. Customs and Border Protection (CBP).

5.4.5 If shipping charges are expected to exceed \$150.00, Buyer shall have the option of determining whether shipping shall be prepaid by Seller, billed directly to Buyer or collected by Buyer on a Will Call basis ex-FOB origin. Seller’s invoice for shipping charges shall include copy of the freight bill showing that payment for shipping charges has been made. Buyer reserves the right to refuse COD shipments.

5.5 Identification

5.5.1 All invoices, packing lists, packages, shipping notices, instruction manuals, certificates, and other written documentation affecting this order shall contain Buyer’s name, vessel name and purchase order number. Two (2) priced & detailed packing lists specifying the contents therein must accompany all boxes and packages, one (1) interior and (1) exterior.

5.6 Certificates of Origin

5.6.1 In accordance with U.S. bilateral free-trade tariff agreements, and depending on the destination of the goods and their nature, Seller, as product manufacturer, distributor and/or exporter, is to provide Buyer with Certificates of Origin (COO) attesting that all purchased goods in any particular export shipment have been wholly produced, manufactured or processed in a particular country. As used herein, the term “origin” does not refer to the country where the goods were shipped from but to the country where they were made. In the event the products were manufactured in two or more countries, origin is obtained in the country where the last substantial economically justified working or processing is carried out.

5.7 Hazardous Material, Material Safety Data Sheets (MSDS) and Hazardous Material Declarations

5.7.1 To meet various requirements of Buyer’s stakeholders and the product material content restrictions imposed by numerous international conventions, organizations and regulating bodies, including but not limited to SOLAS (International Convention for the Safety of Life at Sea), MARPOL (International Convention for the Prevention of Pollution from Ships), the IMO (International Maritime Organization) and the IACS (International Association of Classification Societies), as well as numerous country laws and regulations, Buyer must evidence material composition data (i.e. hazardous substances) on the goods and materials it procures. Seller recognizes and agrees to comply with Buyer requests for data about regulated hazardous substance content of goods and materials sold by Supplier, including but not limited to asbestos-free product declarations, in order to trade in legal compliance. Said material declarations and asbestos-free product declarations shall be provided in a form and in a time to Buyer’s satisfaction as stipulated in the Contract. This includes goods and materials procured on Seller’s behalf by third parties, such as contact manufactures, distributors, and third-party logistics suppliers, as well as materials used in the packaging of the purchased goods and materials.

5.7.2 Seller warrants that all goods manufactured in or for delivery to the United States of America or its territories are in full compliance with all applicable hazardous materials/toxic substance laws and regulations, and shall be properly labeled, packaged, transported and otherwise handled or processed. Seller shall not ship to Buyer or bring onto Buyer’s premises any materials which are classified by the U.S. Environmental Protection Agency (“EPA”) as a hazardous substance or that will generate a hazardous waste without the prior written approval of Buyer.

5.7.3 Seller shall fully comply with the U.S. Occupational Safety and Health Administration’s Hazardous Material Communication Standard and SOLAS VI/5-1 and shall make available to Buyer copies of Material Safety Data

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Sheets (“MSDS”) for all items Seller sells and ships to Buyer. Copies of the MSDS shall also accompany the initial shipment. Seller represents on a continuing basis that its operating facilities in the U.S.A. or its territories are not designated as Clear Air/Clean Water Act violating facilities by the EPA.

6. WARRANTIES

6.1 Seller warrants that goods and materials supplied under the Contract conform to the specifications, are free from defect in material or workmanship, are merchantable and are fit for the purpose for which such goods are ordinarily employed, and if a particular purpose is stated in the Contract or in other representations from Seller upon which Buyer has relied, the goods and materials are also fit for that particular purpose. Seller shall repair or replace, at its sole discretion, any defect in the goods and materials which appears during the warranty period stated in Seller’s quotation, bid and/or the Contract as a result of defective material or workmanship. Any replaced good and material shall upon Seller’s request be returned to Seller at Seller’s cost. Replaced goods and materials shall become Seller’s property. The warranty for any repaired or replacement good and material shall be subject to the same terms, conditions and limitations of liability as those applicable to the originally supplied good and material. Delivery of replaced or repaired goods and materials shall be made in accordance with the Contract’s original delivery terms unless otherwise instructed by Buyer.

7. TAXES, DUTIES, ETC.

7.1 Seller’s price includes all payroll and/or occupational taxes, any value added tax that is not recoverable by Buyer and any other taxes, fees and/or duties applicable to the goods and materials purchased under the Contract; provided, however, that any state and local sales, use, excise and/or privilege taxes, if applicable, will not be included in Seller’s price but will be separately identified on Seller’s invoice. If Seller is obligated by law to charge any value added and/or similar tax to Buyer, Seller shall ensure that if such value added and/or similar tax is applicable, that it is invoiced to Buyer in accordance with applicable rules so as to allow Buyer to reclaim such value-added and/or similar tax from the appropriate government authority. Neither party is responsible for taxes on the other party’s income or the income of the other party’s personnel or subcontractors. If Buyer is required by government regulation to withhold taxes for which Seller is responsible, Buyer will deduct such withholding tax from payment to Seller and provide to Seller a valid tax receipt in Seller’s name.

7.2 Buyer certifies that the tangible personal property purchased from Seller will be for use in connection with Buyer’s business of operating as a private carrier by water in interstate and/or foreign commerce; that all watercraft are components thereof, to be constructed, repaired, cleaned, maintained, operated, altered or improved by Buyer; will be used in conducting interstate and foreign commerce; and that such purchases by Buyer are entitled to exemption from such state sales or use taxes as appropriate. No charge by Seller shall be made for federal excise taxes. Buyer agrees to provide exemption certificates when required for state or federal sales, use or excise taxes, as applicable.

7.3 Notwithstanding the above, and unless specifically expected otherwise in the Contract, Buyer shall pay, where applicable, all duties, customs fees and charges and all charges and fees by a classification or inspection society. All such documentation or approvals which are required by applicable laws, and any applicable modifications of such laws, shall be the responsibility of and paid for by Buyer.

8. LIENS

8.1 Seller warrants and represents that all the goods and materials furnished pursuant to these Conditions and the Contract are free and clear of all liens, claims or encumbrances of any kind. Seller waives and relinquishes all liens and claims, statutory or otherwise, which Seller now has or may hereafter have as a result of labor done and goods and materials furnished by Seller in performance of these Conditions and the Contract.

8.2 If (a) any laborers’, material men’s or mechanics’ lien or other claim is filed for or on account of the goods or materials herein (each, a “Lien”), and (b) Seller neither causes such Lien to be released and discharged, nor files a bond in lieu of such Lien, within ten (10) days after the filing of such Lien, Buyer will have the right (but not the obligation) to pay all sums necessary to obtain the release of such Lien and, at its option, (x) deduct all amounts so paid from amounts due to Seller under the Contract, or (y) require immediate cash reimbursement from Seller.

9. TERMINATION

9.1 In the event of breach by Seller of any of the provisions of these Conditions and/or the Contract, the Buyer reserves the right to terminate this contract immediately upon giving oral or written notice to Seller. Seller shall be liable for damages suffered by Buyer resulting from Seller’s breach of contract.

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10. CLAIMS VENUE

10.1 If any arbitration or litigation is instituted arising out of or to interpret, enforce, or rescind the Contract, including but not limited to any proceeding brought under the United States Bankruptcy Code, the prevailing party on a claim will be entitled to recover with respect to the claim, in addition to any other relief awarded, the prevailing party's reasonable attorney's fees and other fees, costs and disbursements specified in ORCP 68 A(2) incurred in connection with the arbitration, the litigation, any appeal or petition for review, the collection of any reward, or the enforcement of any order, as determined by the arbitrator or court. The Seller agrees that the state courts of the State of Oregon shall have jurisdiction over any litigation, with venue in Washington County.

11. RIGHT TO SET OFF

11.1 Seller authorizes Buyer, to the extent permitted by applicable law, to charge or set off any and all claims which Buyer may have against Seller, including any and all sums due and owing Buyer by Seller, against any and all accounts which Seller has or may have in the future with Buyer.

12. COMPLIANCE

12.1 Seller, and all goods and materials provided hereunder, shall comply with all applicable laws and regulations including, without limitation, all nondiscrimination, health, safety and environmental laws and regulations, as well as any specific Buyer safety, health, environmental and security requirements. Employees, representatives or agents of Buyer shall have the right but not the obligation to review Seller's facilities and operations to ensure the required standards of safety, quality and workmanship are being met by Seller. Such review shall not relieve Seller of any of its obligations hereunder. Any Seller who is in violation of such laws, affirmative action programs, regulations and/or requirements may be barred from receiving awards of any purchase order from Buyer unless a satisfactory showing is made that discriminatory practices or noncompliance has terminated and that a recurrence of such acts is unlikely.

13. FORCE MAJEURE

13.1 Neither Buyer nor Seller shall be liable for any failure or delay in performing its obligations hereunder, or for any loss or damage resulting therefrom, caused by or arising from an event of force majeure ("Force Majeure"), which includes without limitation, acts of God, wars whether declared or not, any events involving armaments of war, civil wars, hostilities, public disorder, acts of terrorism and severe threat of terrorism, embargos, acts of civil or military authorities, fire, flood, accidents, strikes, failure of a subcontractor or sub-supplier to provide manpower, materials or goods caused by an event that qualifies under this Clause, epidemics, unusually severe weather affecting either party, or causes beyond their control.

14. CONFIDENTIALTY AND INTELLECTUAL PROPERTY

14.1 Information of commercial, sensitive or proprietary nature shall be treated as confidential information by both parties. Neither party shall copy or disclosure to a third party any materials, including but not limited to any data, designs, drawings, blueprints, contracts, agreements, communications or other information, provided by one party, without the prior written consent of the other party. Nor shall such confidential information be used for purposes other than those for which they were provided. Intellectual property rights associated with the goods and materials, or any document or data provided by one party to the other in connection herewith, shall remain the property of the party providing such goods and materials, documents or data. Each party shall defend, indemnify and hold harmless the other against all claims, losses and damages, including reasonable attorneys' fees, arising out of or resulting from any reuse, modification, reproduction or publication of the other party's intellectual property documents or data.

15. PROPER BUSINESS PRACTICES

15.1 Seller shall act in a manner consistent with all laws concerning improper or illegal payments, gifts or gratuities (including without limit the U.S. Foreign Corrupt Practices Act) and agrees not to pay, promise to pay or authorize the payment of any money or anything of value, directly or indirectly, to any person for the purpose of illegally or improperly inducing a decision or obtaining or retaining business in connection with these Conditions and any additional agreed terms of the Contract.

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16. INDEPENDENT CONTRACTOR

16.1 Nothing in these Conditions shall constitute either party the agent or legal representative of the other, and no partnership or joint venture shall be created thereby. Seller shall at all times remain an independent contractor for all purposes.

17. ASSIGNS

17.1 Subject to the limitations on assignment stated herein these Conditions, plus any additional agreed upon terms of the Contract, shall inure to the benefit of and be binding upon the parties hereto, their successors and assigns.

17.2 The provisions or monies due under the Contract shall only be assignable with prior written consent of the Buyer. Shipment and billings made under any name other than Seller's must indicate that shipment is being made through, and is subject to, all instructions, terms and conditions of the Contract.

18. ENTIRE AGREEMENT

18.1 These Conditions, plus any additional agreed upon terms of the Contract (relating only to price, availability, time and location for delivery, technical specifications, packaging and shipping, quantity of goods and materials to be delivered, and any other specific or unique condition agreed by Buyer and Seller) contain the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersede all prior agreements and understandings relating to such subject matter. Any service work to be provided by Supplier to Buyer shall be in accordance with Buyer's Standard Terms and Conditions – Service Work. If a provision of these Conditions is at variance with necessary requirements of applicable law, then these Conditions shall be deemed to be amended to the minimum extent necessary to comply with such applicable law. The invalidity, in whole or in part, of any Clause or paragraph of these Conditions shall not affect the remainder of such Clause or paragraphs or any other Clause or paragraphs of these Conditions, which shall continue in full force and effect. No terms, conditions, representations, amendments, warranties or covenants contained in any correspondence, catalogue, or in any other form shall be applicable unless incorporated herein by express written agreement of the parties hereto.

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