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**Freepoint changes dated March 1, 2023 to BP Global Oil Americas Truck and Rail Provisions, 2020 Edition:**

**Definitions and Interpretations – Applicable to Parts One and Two.**

“GTCs” shall be amended by deleting “(2020 Edition)” and replacing it with “(2015 Edition)”.



## BP Global Oil Americas Truck and Rail Provisions



2020 Edition

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## **BP Global Oil Americas Truck and Rail Provisions**

### **DEFINITIONS AND INTERPRETATIONS - APPLICABLE TO BOTH PARTS ONE AND TWO**

The following terms shall have the meanings specified below when capitalized throughout the Agreement:

**“Agreement”** means the Special Provisions, any applicable Appendices, the GTCs, and these BP Global Oil Americas Truck and Rail Provisions (2020 Edition).

**“Dangerous Goods Regulations”** means any international, federal, state, regional, provincial or local law, statute, regulation, code, ordinance, license, permit, compliance requirement, decision, order, writ, injunction, directive, judgment, policy, decree, and Terminal rules and regulations, and any judicial or administrative interpretations thereof, including, but not limited to the *Transportation of Dangerous Goods Act* (Canada) and the regulations made thereunder and *49 CFR Parts 171 to 180* (United States) relating to the handling, containment and transportation of dangerous goods and hazardous materials by rail, and any amendments and successors to the foregoing, that are applicable to a Party or a Party’s performance under a transaction.

**“FCA”, “DAP”, “DAT” and “DPU”** shall each have the meaning given to it in Incoterms® 2010 or Incoterms® 2020, except as modified by these provisions. Where the Special Provisions refer to DAT or DPU, the provisions herein relating to DAP shall be deemed to apply except as expressly intended by the Parties otherwise.

**“GTCs”** means the BP Global Oil Americas General Terms and Conditions for Purchases and Sales of Crude Oil, Refined Petroleum, and Related Products (2020 Edition).

**“Terminal”** means any facility that provides throughput, storage, loading and/or unloading of Goods to or from the tank truck/rail tank car at a tank truck/rail tank car loading and/or unloading rack.

All other capitalized terms used herein but not defined above or within a Section below shall have the meanings given to them in the GTCs. In the event of an inconsistency between the GTCs and these BP Global Oil Americas Truck and Rail Provisions, these provisions shall prevail for all truck or rail deliveries.

### **PART ONE – APPLICABLE TO TRUCK DELIVERIES DAP, FOB, FCA OR OTHERWISE FROM, OR INTO, A TANK TRUCK**

#### **Section 1. Delivery**

The Goods shall be delivered from the Seller to the Buyer DAP, FOB, FCA or otherwise from, or into, a tank truck, as set out in the Special Provisions.

#### **Section 2. Measurement and Sampling; Independent Inspection**

##### **2.1 Performance of Measurement and Sampling Obligations:**

2.1.1 Subject to Sections 2.1.2 and 2.1.3 of this Part One and unless otherwise mutually agreed by the Parties, Measurements shall be carried out in accordance with Approved Industry Practice. The Parties shall jointly agree to a licensed independent inspector to perform all Measurements. All costs associated with a Measurement shall be shared equally between the Parties. The Parties each agree to instruct the inspector to provide Inspector’s Reports to both Parties. In the event the inspector fails to send the Inspector’s Reports to both Parties, the Party receiving the report shall deliver a copy of the report to the other Party on its request. The Buyer may at its own expense, upon prior reasonable notice to the Seller, require the Seller to use reasonable efforts to allow the Buyer’s representative to witness any Measurements.

2.1.2 Quantity shall be measured using:

- (a) for Goods that constitute refined petroleum products, ethanol, or bio-based liquids:
  - (i) in the case of deliveries DAP:
    - (x) the discharge Terminal's custody transfer meter at the discharge Terminal at the time of discharge or, if none,
    - (y) the discharge Terminal operator's certified weight scale at the discharge Terminal at the time of discharge or, if none,
    - (z) as otherwise agreed between the Parties.
  - (ii) in the case of deliveries FCA or FOB:
    - (x) the load Terminal operator's proven metering device readings at the load Terminal at the time of loading, or, if none,
    - (y) the load Terminal operator's certified weight scale at the load Terminal at the time of loading, or, if none,
    - (z) as otherwise agreed between the Parties.
- (b) for Goods that constitute crude oil:
  - (i) in the case of deliveries DAP:
    - (x) the discharge Terminal's custody transfer meter at the discharge Terminal at the time of discharge, or, if none,
    - (y) the discharge Terminal operator's certified weight scale at the discharge Terminal at the time of discharge, or, if none,
    - (z) as otherwise agreed between the Parties.
  - (ii) in the case of deliveries FCA or FOB:
    - (x) either the load Terminal's custody transfer meter at the load Terminal at the time of loading, or the lease automatic custody transfer unit at the lease location at the time of loading, or, if none,
    - (y) static tank gauge measurements taken immediately before and immediately after loading, or, if none,
    - (z) as otherwise agreed between the Parties.

2.1.3 Quality shall be determined:

- (a) in the case of deliveries DAP:
  - (i) by the discharge Terminal's custody transfer meter at the time of discharge, or, if none
- (ii) in accordance with Section 2.1.3(b) below.

- (b) in the case of deliveries FCA or FOB:
  - (i) by the volumetric composite sample drawn or metered at the load Terminal/lease location prior to loading, or if a volumetric composite sample is not available or an independent inspector cannot verify the quality determination, then
  - (ii) in order of priority, by the terminal operator or the carrier at or near the delivery location.

2.1.4 Results of the Measurements set forth in this Section shall be issued in the form of the certificates of quantity and/or quality, bill of lading, meter tickets or weight tickets (as applicable) with respect to the Goods delivered and shall be issued by the terminal operator or the carrier and independent inspector if independent inspection occurs.

## 2.2 Independent Inspector

The Inspector's Reports shall be used to prepare invoices hereunder. For invoicing purposes, all volumes shall be net volumes with full deduction for all BS&W and free water content and shall be made according to Approved Industry Practice. The quantity shall be adjusted to 60 degrees Fahrenheit (or 15.6 degrees Centigrade).

## Section 3. Title and Risk of Loss

Title to and risk of loss or damage to any Goods delivered shall be transferred from the Seller to the Buyer as follows:

- 3.1 in the case of deliveries DAP, at the discharge Terminal as the Goods pass the outlet flange of the tank truck; or
- 3.2 in the case of deliveries FCA and FOB, as the Goods pass the inlet flange of the tank truck at the load Terminal or lease location.

## Section 4. Nominations

In the case of all deliveries, nominations shall be made in accordance with the standard operating procedures at the relevant load or discharge Terminal or lease location.

## Section 5. Acceptance of Tank Trucks

Tank trucks presented by the Buyer for loading in the case of deliveries FCA and FOB, or by the Seller for discharge in the case of deliveries DAP, shall be fit, and in all respects ready to load or discharge the Goods (as the case may be) by the Parties and as required by the relevant Terminal operator.

## Section 6. Ethanol, Gasohol, Natural Gasoline or Gasoline Deliveries by Tank Truck

Where the Goods being transported by tank truck are ethanol, gasohol, natural gasoline, or gasoline ("Approved Commodities"), the Party arranging for transportation of the Approved Commodities shall ensure that the tank truck is in sufficient condition to haul these Approved Commodities without contamination.

**PART TWO – APPLICABLE TO FOB/FCA AND DAP RAIL DELIVERIES****Section 1. Delivery**

The Goods shall be delivered by the Seller to the Buyer FOB, FCA, or DAP at the relevant Terminal.

**Section 2. Measurement and Sampling**

2.1 Quantity measurement and quality sampling and testing of the Goods shall be conducted in accordance with the Approved Industry Practice.

2.2 The quantity of the Goods shall be determined in accordance with the following procedures, in descending order of precedence:

2.2.1 For FOB/FCA transactions:

- (a) Certified calibrated meters proven in accordance with Approved Industry Practice or, if none;
- (b) manual gauging of the static loading tank(s), in accordance with Approved Industry Practice or, failing which;
- (c) rail tank car measurement (manually gauged or weighed using certified calibrated scales) will be used.

2.2.2 For DAP transactions:

- (a) Certified calibrated meters proven in accordance with Approved Industry Practice or, if none;
- (b) manual gauging of the static receiving tank(s), in accordance with Approved Industry Practice or, failing which;
- (c) rail tank car measurement (manually gauged or weighed using certified calibrated scales) will be used, or failing which;
- (d) bill of lading figures which can be verified under API standards at load; provided always that a minimum settling period of four (4) hours after delivery shall be allowed prior to gauging the tank and the discharge Terminal.

2.2.3 The measurement of quantities of sediment and water contained in Goods receipts and deliveries shall be determined by the following methods:

- (a) Sediment – ANSI/ASTM D4807/Alternate – ANSI/ASTM D473 (as may be modified, supplement or replaced from time to time); and
- (b) Water – ANSI/ASTM D4928/Alternate – ANSI/ASTM D4006 (as may be modified, supplemented or replaced from time to time).

2.3 Where a Party requires an independent inspection to determine quality, the inspection shall be made by an independent inspector who is mutually acceptable to both the Seller and the Buyer, and the cost of inspection shall be paid by the requesting Party. In the case where both Parties request an independent inspection, the Parties shall share all inspection charges equally. The independent inspector shall issue a certificate of quality. The certificate of quality and any other testing analysis report produced by the independent inspector shall be made available to both Parties.

- 2.4 Independent inspectors shall conduct tests in accordance with Approved Industry Practice and independent inspector's tests shall be binding on both Parties for quality purposes absent fraud or manifest error.
- 2.5 To the extent there is no independent inspector used, the quality will be determined using test results run on a volumetrically correct composite of samples drawn at the Terminal using Approved Industry Practice prior to load, based on the following methods in descending order:
  - 2.5.1 the relevant Terminal's automatic in-line sampling system, or, if the relevant Terminal's automatic in-line sampling system fails;
  - 2.5.2 the API sampling of the load Terminal's tank prior to loading of the rail tank car.

### **Section 3. Title and Risk of Loss**

- 3.1 Title to and risk of loss or damage to any Goods delivered under this Agreement shall be transferred from the Seller to the Buyer as follows:
  - 3.1.1 FOB/FCA - at the load Terminal as the Goods pass the inlet flange of the rail tank car and;
  - 3.1.2 DAP - at the discharge Terminal as the Goods pass the outlet flange of the rail tank car.

### **Section 4. Nominations and Shipping Instructions**

- 4.1 Nominations and shipping instructions shall be made in accordance with the standard operating procedures for the relevant railroad(s) and Terminal.
- 4.2 Nominations shall be made in a timely manner to allow the Parties to meet any loading, delivery or any other relevant date specified in the Special Provisions.
- 4.3 Applicable only to DAP Transactions in the case where Seller's railcars contain the Goods, Seller may agree, at its sole discretion, to the Buyer's request to divert the Seller's railcars or consign the Seller's railcars to a different routing or to a different destination than the destination specified in the shipping paper. Any additional freight charges and any other cost or expenses incurred by Seller arising from the diversion shall be for the Buyer's account.

### **Section 5. Loading/Unloading/Right to Reject**

- 5.1 Loading of rail tank cars - To the extent the Goods for loading are classed as "Dangerous Goods" or "Hazardous Materials" as such terms are defined in the Dangerous Goods Regulations, the Seller shall or shall ensure that the Terminal operator or its agents shall, load the Goods into rail tank cars at the load Terminal and shall, without limiting its other obligations hereunder:
  - 5.1.1 allow for sampling and testing by Buyer prior to loading upon request;
  - 5.1.2 determine the proper classification of the Goods under the Dangerous Goods Regulations to be loaded into the rail tank cars and provide notice of same to Buyer for its verification;
  - 5.1.3 prepare and provide to the railroad carrier all required shipping documents in accordance with the Dangerous Good Regulations and with Section 7 below;
  - 5.1.4 prepare and display all dangerous good safety markers (placards and labels) as required by the Dangerous Goods Regulations in respect of the Goods to be loaded into the rail tank cars and;



- 5.1.5 inspect all rail tank cars to ensure that such railcars are compliant with the Dangerous Goods Regulations, including ensuring that such rail tank cars are designed, constructed, filled, closed, secured and maintained so that under normal conditions of transport, including handling, there will be no leakage or other mechanical failures.
- 5.2 WITHOUT AFFECTING THE APPLICATION OF THE INDEMNITY PROVIDED IN SECTION 9.2 OF THE GTCS, A PARTY ("INDEMNITOR") WILL BE LIABLE FOR, AND WILL INDEMNIFY, THE OTHER PARTY ("INDEMNITEE") FOR ANY FAILURE TO MEET ITS OBLIGATIONS UNDER THIS SECTION 5 WHICH RESULTS IN: (1) ANY DAMAGE TO PROPERTY OR GOODS OF THE INDEMNITEE; (2) ANY FINES OR PENALTIES ASSESSED AGAINST THE INDEMNITEE ARISING UNDER THE DANGEROUS GOODS REGULATIONS; AND (3) CLAIMS, DEMANDS AND CAUSES OF ACTION ASSERTED AGAINST THE INDEMNITEE BY ANY OTHER PERSON (INCLUDING EMPLOYEES OF EITHER PARTY) FOR PERSONAL INJURY, FOR LOSS OR DAMAGE TO PROPERTY, OR FOR VIOLATIONS OF THE DANGEROUS GOODS REGULATIONS INCLUDING ANY FINES, FEES OR PENALTIES.
- 5.3 Right to Reject a railcar if not fit to load or discharge - Rail tank cars supplied by a Party ("Railcar Party") for the transportation of Goods shall: (i) be in a safe, clean suitable condition for loading and/or unloading; (ii) comply with all applicable Dangerous Goods Regulations; (iii) comply with the specifications set forth in the Casualty Prevention Circular, Association of American Railroad circular letter CPC-1232 or any replacement circular; (iv) comply with all relevant terminal requirements and railroad tariffs; and (v) comply with any other reasonable requirement as notified by the Seller (for any FCA transaction) or the Buyer (for any DAP transaction) in a timely manner prior to delivery. Any damages resulting from the non-compliance of a railcar with the requirements set forth in this clause shall be for the account of the Railcar Party.
- 5.4 The non-Railcar Party, acting reasonably, may reject any railcar, or the entire train containing a railcar, that fails to meet the requirements listed in Section 5.3 above or that is rejected by the railroad or the Terminal operator for non-compliance with the Dangerous Goods Regulations or with the Terminal's rules and regulations. Any damages, costs and expenses arising from the rejection of a railcar, or the entire train, as the case may be, shall be for the account of the Railcar Party.

## **Section 6. Delays**

- 6.1 If the Goods are not loaded or discharged (as the case may be) within the time allowed in accordance with the Special Provisions, the following shall apply:
- 6.1.1 For FOB/FCA transactions - For the purpose of detention, time shall start when the railcars are actually placed or constructively placed, whichever is earlier, in an accessible position for loading at the Terminal and time shall end when all loaded railcars are physically returned to the railroad for rail carrier transportation on behalf of the Buyer. The Seller shall be responsible for actual demurrage charges incurred (as evidenced by an invoice from the railroad under the applicable railroad tariff) and actual detention charges (as evidenced by an invoice from the load Terminal at a rate shown by the applicable terminal services contract between the Seller and the Terminal) to the extent the Seller delays the loading of railcars. To the extent actual demurrage or detention charges are caused by the actions of the Buyer, the Buyer shall pay such portion of such charges for which it is responsible.

- 6.1.2 DAP transactions - For the purpose of detention, time shall start when the railcars have completed discharge and are actually placed or constructively placed, whichever is earlier, and available for release to the rail carrier, and time shall end when all empty railcars are physically released to the railroad for rail carrier transportation on behalf of the Seller. The Buyer shall be responsible for actual demurrage incurred (as evidenced by an invoice from the railroad under the applicable railroad tariff) and detention charges (as evidenced by an invoice from the discharge Terminal at a rate shown by the applicable terminal services contract between the Buyer and the Terminal) to the extent it delays the railcars discharge. To the extent actual demurrage or detention charges are caused by the actions of the Seller, the Seller shall pay such portion of such charges for which it is responsible.
- 6.1.3 Any claim for detention charges must be made within 90 days of receipt of invoice from Terminal. Demurrage claims must be made within 90 days of receipt of the invoice from the railroad.
- 6.1.4 In the event that the Seller is obligated in the Special Provisions to provide ratable delivery and fails to do so, such failure shall result in the payment by Seller of all subsequent demurrage and detention charges.
- 6.1.5 Any and all diversion charges, additional freight charges and any other costs or expenses incurred, sustained or paid by a party resulting from the other party's requested diversion shall be for the account of the party requesting the diversion.

## **Section 7. Shipping Paper**

- 7.1 FOB/FCA Transactions - The Seller shall ensure that: (i) the loading Terminal will prepare the shipping paper required by the Dangerous Goods Regulations; (ii) the loading Terminal will certify to the proper loading of the railcar in accordance with Dangerous Goods Regulations; (iii) that the Seller or the loading Terminal will be listed as 'shipper' or 'consignor' in the shipping paper, unless otherwise required by the Dangerous Goods Regulations; (iv) the Buyer shall be listed as the 'account of' party; and (v) if required by the Dangerous Goods Regulations, the Buyer's emergency response assistance plan reference number and/or the telephone number to call to activate the plan when an emergency response assistance plan is required provided by Buyer are included on the shipping paper.
- 7.2 DAP Transactions - The Buyer shall only be listed as the consignee on the shipping paper, unless otherwise required by the Dangerous Goods Regulations.

## **Section 8. Insurance**

Each Party shall maintain insurance as required by Applicable Law. The policy limits of such insurance shall not limit or reduce each Party's liability and indemnity obligations under this Agreement.