

## CALUMET TERMS AND CONDITIONS OF SALE FOR ASPHALT

<http://www.calumetspecialty.com/customer-service/terms-of-sale/>

### ARTICLE 1. DEFINITIONS

The term "Contract" means the written purchase order, contract, or agreement relating to a sale of Products or services from Seller to Buyer. The term "Seller" means Calumet Refining, LLC or its subsidiary(ies) or affiliate(s) providing the Products or services under the Contract. The term "Buyer" means any individual, corporation, government, or other entity that is to purchase the Products or services pursuant to the Contract. The term "Products" means the goods or materials sold by Seller and purchased by Buyer under the Contract. The term "Parties" means the Buyer and Seller.

### ARTICLE 2. CONTRACT CANCELLATION, AMENDMENT

Once Seller has issued a confirmation of an order, the applicable Contract shall not be cancelled or amended by Buyer without prior written notice of such cancellation or amendment to Seller. In the event of cancellation or amendment of a Contract, Seller may charge Buyer a fee for the cancellation or amendment.

### ARTICLE 3. PRICING, PRICE ADJUSTMENTS

Product pricing, freight charges (where applicable), and taxes (where applicable) will be invoiced based on the price set forth in the Contract.

### ARTICLE 4. TAXES

Any tax, excise, or governmental charge imposed upon the value added to or the production, sale, storage, use, or transportation of any Product sold under the Contract, or imposed upon crude oil or any other raw materials from which such Products are made, which Seller may be required to pay, shall be paid by Buyer to Seller if not expressly included in the purchase price for the Product. Buyer shall provide Seller, upon request, with properly completed exemption certificates for any tax from which Buyer claims exemption for which Buyer will indemnify Seller for any inaccuracy therein. Seller may terminate this Contract on thirty (30) days prior written notice if prevented from passing through to Buyer any tax or charge, whether or not of the same class or kind listed above. If Buyer fails to provide the appropriate exemption certificate, Buyer will remain liable for any such taxes.

### ARTICLE 5. REMEDIES

No remedy of Seller against Buyer is intended to be exclusive, but each remedy of Seller shall, to the maximum extent allowed by law, be cumulative and in addition to any other remedy referred to herein or otherwise available to Seller. The exercise or beginning to exercise by Seller of any one or more remedies shall not preclude the simultaneous or later exercise by Seller of other remedies. All remedies of Seller shall, to the maximum extent allowed by law, survive any and all terminations of any agreements between Seller and Buyer. To the maximum extent allowed by law, no delay or failure on the part of Seller in exercising any right, remedy, power, or privilege of Seller shall operate as a waiver thereof.

### ARTICLE 6. PRODUCT SHIPMENTS; INVOICING

- A. Seller will determine the actual quantity of Product loaded in each shipment. Seller will invoice Buyer for the actual quantity of Product loaded in each shipment within thirty (30) days of such shipment. Buyer shall remit payment to Seller in U.S. currency in accordance with the payment term designated in the applicable invoice. If credit is extended, Seller at any time may revoke credit or modify the terms and conditions of future extensions of credit. Buyer agrees to pay all invoices within the terms stated on such invoice and agrees to all terms contained in invoices supplied by Seller, as may be amended from time to time. In the event payment is not timely made, Buyer also agrees to pay a time-price difference charge (service charge) of the lesser of 1 ½ % per month (18 % per annum) or the maximum lawful rate on all overdue amounts commencing the day after the due date and to pay all collection costs incurred by Seller in enforcement of the Contract, including court costs, actual reasonable attorney's fees, and collection agency fees, within the standards of the industry, but not less than 25% of the unpaid amount of principal plus any accumulated service charge, all without relief from valuation and appraisal laws. In addition, in the event Buyer fails

to make timely payment, any or all future shipments of Product by Seller to Buyer may be withheld by Seller without waiving any right, power, remedy, or privilege of Seller. Buyer will also be responsible for any charges applied because of any check, debit, or electronic transfer not honored.

- B. Shipments and deliveries shall be made at such times within the usual business hours of Seller as may be required by the Buyer, provided that reasonable advance notice of each shipment or delivery required has been given by Buyer. At the time of giving such notice, Buyer shall furnish Seller necessary shipping instructions. Seller shall prepare and furnish Buyer with copies of bills of lading and other shipping papers.

#### ARTICLE 7. BUYER ARRANGED FREIGHT

In the event that Buyer arranges shipment of the Product, Buyer is responsible, where permitted by law, for ensuring that the vessel is clean and appropriate for transporting the Product, and Buyer shall be fully responsible for the acts and omissions of the freight carrier. Seller shall not be responsible to inspect vessels arranged by Buyer, nor shall Seller be responsible for draining or cleaning vessels arranged by Buyer. Seller reserves the right to reject any vessel that Seller determines is not in proper condition to transport the Product. Seller may charge Buyer for costs incurred to arrange or clean a vessel for shipment.

#### ARTICLE 8. SAMPLES

At Seller's option, Seller may require that sampling and claims for asphalt products listed on a Contract shall be in minimum orders of 1,500 gallons before guarantee of specifications will be made and such guarantee is subject to sample testing and acceptance by an authorized representative of Buyer or contracting agency at the point of origin or destination from truck transport or from other conveyance supplied by or acceptable to Seller.

#### ARTICLE 9. TITLE; RISK OF LOSS

Title, risk of loss or damage, and liability for any Product priced F.O.B. point of origin shall pass to Buyer as follows: when into any transportation equipment, as Product enters the receiving equipment; or, if received by a common carrier, when Product is accepted by the carrier for shipment. Title, risk of loss or damage, and liability for any Product priced F.O.B. Buyer destination shall pass to Buyer as Products are delivered into storage facilities or other equipment at said Buyer's destination.

#### ARTICLE 10. INDEMNIFICATION

Buyer agrees to release, indemnify, and hold harmless Seller from any and all claims and liability for any damage to property or injury to person or persons resulting from, or alleged to have resulted from, Buyer's purchase, use, sale, or distribution of the Product sold by Seller.

#### ARTICLE 11. MEASUREMENT/INSPECTION

- A. The volume of Product transferred to Buyer and subsequent billing for such Product will be based on measurements taken at the Seller's facility.
- B. For railcars, the quantity is calculated following good industry practice based on the API Manual of Petroleum Measurement Standards, Chapters 3, 7, and 8. For trucks, the quantity is measured on a state certified measuring device. For marine shipments, the quantity is based on an independent gauger's inspection report.
- C. The volume and quantity delivered shall be determined with all quantities being corrected for temperature to sixty degrees Fahrenheit (60°F) in accordance with the latest A.S.T.M.I.P. Petroleum Measurement tables. The term "barrel" as used herein shall mean a container of forty-two (42) gallons. The term "gallon" as used herein shall mean a U.S. gallon of 231 cubic inches. The term "tank truck" or "transport truck" as used herein shall mean a truck with a tank capacity of at least 2,500 gallons. The term "ton" as used herein shall mean a U.S. ton of 2,000 pounds.
- D. Any claim for deficiency in quantity or quality of any Product and/or service shall be conclusively waived unless Buyer, within thirty (30) days after Buyer first learns of the deficiency, gives written notice of such claim to Seller at its indicated address; and, where practicable, gives Seller or Seller's agents an opportunity to inspect such Product and/or service. Any claim of any other kind (not relating to quantity or quality) based on or arising out of any transaction hereunder shall be waived conclusively unless Buyer gives written notice to Seller at its indicated address within thirty (30)

days after the event, action or inaction to which such claim relates. Quality disputes will be resolved through a testing method reasonably agreed upon by Seller and Buyer.

**ARTICLE 12. LIMITED WARRANTY**

SELLER WARRANTS THAT IT HAS GOOD TITLE TO THE PRODUCTS SOLD HEREUNDER. IN ADDITION, SELLER WARRANTS THAT, AT THE TIME PRODUCT IS LOADED ONTO THE CARRIER'S VESSEL FOR SHIPMENT, PRODUCT SOLD HEREUNDER MEETS THE MUTUALLY AGREED-UPON CURRENT SPECIFICATIONS FOR THE PRODUCT, AS SET FORTH IN THE AGREEMENT OR, IF NO AGREEMENT, IN THE SALES CONFIRMATION. UPON THE EARLIER OF SUCCESSFUL COMPLETION OF OFFICIAL TESTING OF THE PRODUCTS OR 180 DAYS AFTER DELIVERY OF THE PRODUCT, ALL WARRANTIES AND SELLER'S OTHER DUTIES WITH RESPECT TO THE PRODUCTS SHALL TERMINATE AND BE CONCLUSIVELY PRESUMED TO HAVE BEEN SATISFIED, AND ALL LIABILITY HEREUNDER SHALL TERMINATE AND NO ACTION FOR BREACH OF ANY WARRANTY OR DUTY MAY BE COMMENCED. ANY OTHER WARRANTY OR GUARANTEE, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, IS EXPRESSLY DISCLAIMED. ANY WARRANTY OR GUARANTEE IS LIMITED TO REPAIR OR REPLACEMENT OF THE PRODUCTS.

**ARTICLE 13. LIMITATION OF LIABILITY**

Defective or nonconforming Products may be replaced by Seller without additional charges, or in lieu thereof, at Seller's option, Seller may refund the purchase price upon return of the Products at Seller's expense. NOTWITHSTANDING THE ABOVE, REGARDLESS OF THE CIRCUMSTANCES, SELLER'S TOTAL LIABILITY TO BUYER FOR ANY AND ALL CLAIMS, LOSSES OR DAMAGES ARISING OUT OF ANY CAUSE WHATSOEVER, WHETHER BASED IN CONTRACT, NEGLIGENCE OR OTHER TORT, STRICT LIABILITY, STATUTE, BREACH OF WARRANTY OR OTHERWISE, SHALL IN NO EVENT EXCEED THE PURCHASE PRICE OF THE PRODUCTS IN RESPECT TO WHICH SUCH CAUSE AROSE. IN NO EVENT SHALL SELLER BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, LOST PROFITS, LOST SALES, PUNITIVE DAMAGES, INJURY TO PERSONS OR PROPERTY, OR ANY OTHER COMMERCIAL LOSS, DAMAGE OR EXPENSE ARISING OUT OF OR IN CONNECTION WITH THE USE, LOSS OF USE, PERFORMANCE OR REPLACEMENT OF THE PRODUCT. Any cause of action that Buyer may have against Seller which may arise under this Contract must be commenced within one (1) year after the cause of action has accrued. The remedies set forth in this Limitation of Liability section are EXCLUSIVE and no other remedy or remedies are available to Buyer. Buyer and Seller agree that the remedies contained herein are adequate remedies.

**ARTICLE 14. SAFETY AND HEALTH INDEMNITY**

Seller shall furnish to Buyer Material Safety Data Sheets, including warnings and safety and health information concerning the Products sold under this Contract. Buyer agrees to communicate such information to all persons Buyer can reasonably foresee may be exposed to or may handle such Products, including but not limited to Buyer's employees, agents, contractors or customers. If Buyer fails to communicate such warnings and information, Buyer agrees to indemnify, defend, and hold Seller and its officers, directors, employees, agents, and its affiliates harmless against any and all liability arising out of or in any way connected with such failure; provided, however, that if Seller has contributed to such liability, Buyer's indemnity to Seller shall be reduced by the proportion in which Seller contributed.

**ARTICLE 15. CARS, TRUCKS, AND BARGES**

Buyer agrees to unload conveyances furnished by Seller within the free time as follows: trucks within two (2) hours of receipt of conveyance; railroad cars within fifteen (15) days of receipt of conveyance and barges within twenty (20) hours of receipt of conveyance, unless otherwise agreed to in writing by the parties. Buyer agrees to pay, upon receipt of invoice, for any demurrage and detention charges related to the use of railroad cars, trucks, and barges beyond the agreed time. Buyer agrees to pay for any charges for irregular routing due to no fault of the shipper. Seller reserves the right to charge Buyer for use of tank cars held longer than is specified in writing in the most recent freight notification. Buyer assumes full responsibility for use and condition of cars, trucks, and barges while in Buyer's possession and agrees to

(a) compensate Seller for loss or damage to Seller's property, and (b) indemnify, defend, and hold Seller harmless from any loss or damage to property other than Sellers' and from any injuries to persons while such car(s), truck(s), and barge(s) are in Buyer's possession. Buyer further agrees to report to Seller promptly any damage which may be sustained by any car(s), truck(s), or barge(s) in Buyer's possession.

**ARTICLE 16. SPECIFICATION CHANGES; PRODUCT DISCONTINUANCE**

Seller may at its discretion (a) change or alter the quality or specifications of any of the Products offered, (b) discontinue the manufacture of any such Products, or (c) discontinue the manufacture of any Products at a particular manufacturing or blending facility. If specifications for any Products offered are specifically set forth in this Contract, Seller shall give Buyer prior written notice of any change. If such change would, in the reasonable opinion of Buyer, materially affect the performance of such Product(s), Buyer may terminate this Contract as to such Product(s). Seller shall give Buyer prior written notice of discontinuance of the manufacture of any Product(s) covered under the Contract and the Contract shall terminate as to such Product(s) at the end of such period. If Seller elects at its option to discontinue the manufacturing of any Products at a particular location or blending facility, and Seller is unable to provide comparable Product to Buyer from another facility, then Seller may terminate this sale as to such Product(s) by giving Buyer prior written notice of such termination. However, Seller shall be committed to supply if Seller and Buyer have signed an agreement or Seller has accepted an order in writing.

**ARTICLE 17. FORCE MAJEURE; FAILURE IN PERFORMANCE**

- A. No liability shall result to either Seller or Buyer from delay in performance or non-performance in whole or in part caused by force majeure or circumstances reasonably beyond the control of the Party affected, including, but not limited to, acts of God, fire, flood, war, strikes, explosion, breakdown, or labor trouble; embargoes or other import or export restrictions; shortage or inability to obtain energy, equipment, transportation, Product deliverable hereunder, or crude petroleum or other feedstock from which said Product is derived; or good faith compliance with any regulation, direction, or request (whether valid or invalid) made by any governmental authority or person purporting to act therefor.
- B. Regardless of the occurrence or non-occurrence of any of the causes set forth in paragraph (a) above, if for any reason, supplies of any Product deliverable hereunder or of crude petroleum or other feedstock from which such Product is derived from any of Seller's existing sources are curtailed or cutoff or are inadequate to meet Seller's own requirements and its obligations to its customers, Seller's obligation hereunder during such period of curtailment, cessation or inadequacy shall at its option be reduced to the extent necessary in Seller's sole judgment to allocate among Seller's own requirements and its customers (whether under contract or not), such Product as received and as may be available in the ordinary and usual course of Seller's business from any such existing sources of supply at the location(s) from which deliveries hereunder are normally shipped.
- C. Seller shall not be obligated to purchase or otherwise obtain other supplies of such Product, crude petroleum or other feedstock from which such Product is derived to make up inadequate supplies or to replace the supplies so curtailed or cut off. Seller shall not be obligated to make up deliveries omitted or curtailed under this Article 15 and any such deficiencies in deliveries shall be canceled from the Contract with no liability to either Party therefore.
- D. Notwithstanding the above, a force majeure shall not suspend or excuse the obligation of a party to pay money as and when due hereunder.

**ARTICLE 18. COMPLIANCE WITH LAWS AND REGULATIONS; EXPORT COMPLIANCE**

Each Party agrees to comply with all applicable federal, state, and local laws, ordinances, regulations, rules and orders; all applicable export control laws; and all applicable anti-corruption laws, which may include but are not limited to, Foreign Corrupt Practices Act of 1977 (15 U.S.C. §§ 78dd-1 et seq.) and UK Anti-Bribery Act 2010 (collectively the "Laws"). Each Party shall also comply with Seller's Compliance Requirements, available at <http://www.calumetspecialty.com/customer-service/terms-of-sale> (the "Compliance Requirements"). Each Party agrees to indemnify, defend, and hold the other Party, its officers, directors, employees, agents, and affiliates harmless against all losses, claims, causes of action, penalties, and liability arising out of the Party's failure to comply with any Laws or Compliance Requirements. Unless otherwise agreed in writing by the Parties or Seller's confirmation

indicates delivery of Product by Seller outside of the United States, this sale of Product constitutes a domestic sale within the United States. In the event that Buyer exports Product, Buyer assumes sole responsibility to determine any export license requirements, to obtain any required export license or other official authorization, and to carry out any customs formalities for the export of such Product. Buyer shall be deemed the "U.S. Principal Party in Interest" or "Exporter" for all purposes under applicable law. For routed transactions, Buyer shall comply with the requirements set forth in the Compliance Requirements as to routed transactions.

**ARTICLE 19. BUSINESS STANDARDS**

Buyer shall prevent its employees, agents, or representatives from making, providing, or offering gifts, entertainment, payments, loans, or other consideration to employees, agents, or representatives of Seller for the purpose of influencing those persons to act contrary to the best interests of Seller. This obligation shall apply to the activities of the employees of Buyer in their relations with the employees of Seller and their families and/or third parties. In addition, upon request, each Party shall make known to the other its current policies on ethics and conflicts of interest and other policies, and shall be expected to conduct its activities in compliance with its own policies.

**ARTICLE 20. CONFIDENTIALITY**

Buyer agrees to treat as confidential any proprietary or confidential information disclosed to it by Seller, including the contents of the Contract and the pricing of the Product, and except as necessary for the performance thereof, or as required by law, shall make no disclosures with respect to such matters without the express written consent of Seller.

**ARTICLE 21. INCOTERMS**

A Contract for the sale of Products shall be governed by Incoterms 2010. Provided, however, to the extent the terms set forth in Incoterms 2010 are inconsistent with these Terms and Conditions of Sale for Asphalt or the terms of the Contract itself, the Terms and Conditions of Sale for Asphalt or the terms of the Contract shall govern.

**ARTICLE 22. AMENDMENT OF THESE TERMS AND CONDITIONS OF SALE FOR ASPHALT**

Seller may revise these Terms and Conditions of Sale for Asphalt at any time by posting the revised Terms and Conditions of Sale for Asphalt on Seller's web site. The revised Terms and Conditions of Sale for Asphalt shall be effective for the sale of all Products subject to confirmations issued the day following the posting of the revised Terms and Conditions of Sale for Asphalt on Seller's web site and all future sales. Buyer agrees that it is responsible to review the then-current Terms and Conditions of Sale for Asphalt prior to placing an order.

**ARTICLE 23. MODIFICATION**

No modification of a Contract shall be of any force or effect unless such modification is in writing and signed by the Parties and no modification shall be effected by the acknowledgment or acceptance of purchase order forms containing terms or conditions at variance with those set forth herein. With respect to these Terms and Conditions of Sale for Asphalt, none of the terms set forth herein may be modified, except as permitted herein, without Seller's signature.

**ARTICLE 24. ASSIGNMENT**

Seller may assign its rights and obligations hereunder to any corporation, subsidiary of or affiliated with Seller or any buyer that buys all or substantially all of the assets related to the performance of this Contract. Buyer shall not assign this Contract in whole or in part without the prior written consent of Seller.

**ARTICLE 25. WAIVER**

No waiver by either Party of any breach of any of the terms and conditions herein contained shall be construed as a waiver of any succeeding breach of the same or any other term or condition.

**ARTICLE 26. CHOICE OF LAW AND JURISDICTION**

This Contract shall be construed and enforced under the laws of the State of Indiana, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. The Parties

submit to the exclusive personal jurisdiction of the courts of Marion County, Indiana, with respect to any matter or thing arising out of this Contract or pursuant thereto.

**ARTICLE 27. ENTIRETY OF AGREEMENT**

Except to the extent Buyer and Seller have both signed a separate document governing the sale of Products or provision of the services (including a Buyer's Credit Application and Open Account Agreement), these Terms and Conditions of Sale for Asphalt constitute the sole and exclusive agreement between Seller and Buyer for the purpose stated herein. If such a separate agreement signed by both Parties exists and any of these Terms and Conditions of Sale for Asphalt are inconsistent with the terms of that agreement, the terms of that agreement shall govern. Should any provision of the Terms and Conditions of Sale for Asphalt be determined to be inconsistent with or contrary to applicable law, such provision will be deemed amended or omitted to conform without affecting any other provision or the validity of the Terms and Conditions of Sale for Asphalt. Any document incorporating or otherwise accepting these Terms and Conditions of Sale for Asphalt, whether signed manually or with an electronic signature, and transmitted to Seller in electronic format by electronic transmission, shall be deemed to have the same legal effect as an original signed copy.