



## PETRO-CANADA AMERICA LUBRICANTS INC.

### STANDARD TERMS AND CONDITIONS OF SALE – U.S.A.

As may be amended without Notice by Petro-Canada America Lubricants Inc. ("PCA")  
For use only in United States

#### 1. INTENT AND REFERENCE

These Terms apply to Product a Customer purchases for its own consumption and not for resale. Unless a Product purchased by Customer is covered by a valid Contract between PCA and Customer (in which event the terms of the Contract shall apply), Customer acknowledges and agrees that PCA shall sell such Product to Customer and Customer shall purchase and take Delivery of such Product from PCA in accordance with these Terms.

**CUSTOMER'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 CUSTOMER.**

Any action, inaction, negligence or misconduct by a Party's directors, officers, employees, agents, subcontractors or representatives in connection with Customer'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 Customer to PCA, 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 PCA, or Customer, 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) **"Customer"**: a legal entity to which PCA Delivers and sells Product pursuant to a Contract or these Terms.
- (f) **"Days"**: calendar days, unless otherwise stated.
- (g) **"Delivered" and variants**: Product picked-up by or on behalf of Customer from PCA, or shipped by or on behalf of PCA to Customer, per, if applicable, the Incoterms® 2010 in the order confirmation issued to Customer by PCA'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 Customer or its representative has possession or control of Product.
- (h) **"Government"**: a recognized political division or entity including, but not limited to, national, state, 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 PCA in connection with the sale or supply of Product to Customer, and which is a consequence of, or related to, any Law in force when Customer purchases or purchased Product, including, but not limited to, PCA'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.
- (k) **"Notice"**: written communication from one Party to the other about any of these Terms.
- (l) **"Party"**: PCA or Customer; **"Parties"**: PCA and Customer.
- (m) **"PCA"**: Petro-Canada America Lubricants Inc., a Delaware corporation, having an office at 115 North Oak Park Avenue, Suite 1C, Oak Park, IL 60301-1366.
- (n) **"Prices"**: prices for Product exclusive of applicable Supplements, unless otherwise required by Law.
- (o) **"Product"**: lubricants and other products Delivered under these Terms and means a single Product or a collection thereof.
- (p) **"Supplements"**: Additional Charges, Levies and Taxes, in addition to Prices, applicable to, or associated with, Customer's purchase of Product under these Terms.
- (q) **"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 PCA to Customer.
- (r) **"Terms"**: these Standard Terms and Conditions of Sale – U.S.A.

#### 3. PRODUCT, PRICES AND SUPPLEMENTS

PCA 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 Customer upon request and shall be subject to change upon Notice. Unless otherwise agreed by the Parties, Prices for lubricating oils and other fluids shall be "per U.S. gallon" and Prices for greases shall be "per pound".

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

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

PCA warrants to Customer that, upon Delivery, Product conforms to PCA's manufacturing specifications for such Product at its date of manufacture (the "Product Specifications"). Product samples solely exemplify the Product's typical characteristics at the time of manufacture of such sample. Sale is not by sample. The particular characteristics for any Delivery of the Product may not match the particular characteristics for any sample of that Product.

Subject to the other Terms, PCA shall further warrant that a Product is fit for a specific application ("Application"), provided Customer advises PCA, in writing, in advance, of the Application and provided that a PCA technical services advisor approves, in writing, in advance, use of the Product for the Application.



Subject to the other Terms, if PCA Delivers Product which, before or at the time of initial use or application by Customer, is alleged by Customer and is thereafter confirmed by PCA after its investigation to not meet the Product Specifications and to be unusable, through no negligence or misconduct of Customer ("Defective Product"), PCA shall:

- (a) repair damaged equipment or replace damaged equipment parts to the extent caused by Defective Product, provided the Product is used in accordance with the recommendations of the equipment manufacturer and PCA; and
- (b) at its option, replace Defective Product or credit Customer's account for the amount originally billed for Defective Product.

If a Product package is damaged by PCA before or during Delivery (except to the extent caused or contributed to by Customer's negligence or misconduct), and the Product is thereby made unsalable, as determined by PCA, acting reasonably ("Damaged Product"), PCA's sole liability shall be, at PCA's option, to replace Damaged Product or credit Customer's account for the amount originally billed for Damaged Product.

Customer's claim for alleged Defective Product or Damaged Product (each a "Defect") shall be made by phone or facsimile or electronic mail as follows.

- (a) Defective Product: Promptly upon Customer's first knowledge of a possible defect in the Product.
- (b) Damaged Product: Within two (2) Business Days after Delivery.

PCA shall be given a reasonable opportunity to investigate the alleged Defect. Customer's failure to comply with the foregoing in this paragraph shall operate as a waiver of any and all claims for Defect.

Notwithstanding any of the other Terms, PCA's liability shall be subject to Customer:

- (a) complying with PCA's written statements about Product handling, storage and shelf life, as provided or otherwise made available to Customer;
- (b) visually inspecting Product before its use (which must occur before expiry of its "shelf life") to identify a reasonably apparent possible Defect;
- (c) not blending or mixing Product with a different product (including, but not limited to, a different type, brand, or grade) without the prior, written approval of a PCA technical services advisor;
- (d) complying with PCA's instructions, if applicable, or otherwise taking reasonable and prudent steps, to prevent or mitigate any loss or damage as a result of an alleged or PCA-confirmed Defect.

Except for the limited warranty set out above in this Section, PCA makes no representations or warranties (express, implied, statutory or otherwise) regarding the Product. To the maximum extent permitted by Law, PCA expressly disclaims all other warranties (express, implied, statutory or otherwise) including, without limitation, warranties of merchantability and, except as expressly stated in paragraph 2 of this Section, fitness for a particular purpose. Notwithstanding any of the other Terms, the remedies provided in this Section shall be Customer's exclusive remedies for any claims for Defect.

#### 5. INDEMNITY AND 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 Customer, except to the extent caused or contributed to by Indemnitee's negligence or misconduct.
- (b) Notwithstanding any of the other Terms, to the maximum extent permitted by Law, the preceding indemnity 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
- (c) Notwithstanding any of the other Terms, and except for a Party's willful misconduct, fraud or breach of Section 15, 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.

#### 6. RESALE OF PRODUCT

Customer shall not resell Product under trademarks, trade names or brands affixed to Product or any other trademarks, trade names or brands owned, or used under license, by PCA. If Customer resells any Product, it does so entirely at its own risk and without benefit of any warranty or representation as to quality or specifications by PCA.

#### 7. PRODUCT MEASUREMENT AND PURCHASE QUANTITIES

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

#### 8. PRODUCT TITLE AND RISK

Risk of loss or damage and title to Product shall pass to Customer upon Delivery in the United States. In case of Defective Product or Damaged Product, risk of loss or damage and title to such Product shall remain with Customer until, if applicable, physical possession of such Product is transferred to PCLI or its designated representative.

#### 9. ORDERS AND DELIVERIES

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

#### 10. CREDIT AND PRODUCT PAYMENT

- (a) From time-to-time PCA may request financial or other information ("Information") from Customer, including, but not limited to, Customer's audited financial statements, to determine whether, to what extent, and on what conditions to continue extensions of credit to Customer. If PCA does not receive such Information within three (3) Business Days after its request, or determines the financial condition of Customer or Customer's guarantor (if any) has become unsatisfactory, or otherwise determines it appropriate, PCA 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, PCA, in its sole discretion, may provide credit if Customer or Customer's guarantor (if any) provides security, at Customer's expense, satisfactory to PCA.
- (b) If Customer's order for Product or other goods or services with PCA or its Affiliates places Customer's account over the credit limit agreed to by PCA from time-to-time, PCA is entitled to require payment in advance.



- (c) Customer agrees to ensure PCA receives full payment of invoices per the terms as advised by PCA from time-to-time and by the date indicated on its invoices ("Due Date"). At PCA's discretion, taking account of Customer'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 PCA, but shall not exceed the maximum amount or rate permitted by Law. No LPIC shall apply if Customer's delay of payment is due to an incorrect PCA invoice, provided such delay is limited to that part of an invoice which Customer reasonably believes is incorrect ("Disputed Charge"), and provided Customer makes prompt payment of the Disputed Charge upon its correction or resolution, as applicable.
- (d) If Customer fails to make full payment of an invoice by the Due Date, excepting a Disputed Charge, PCA is entitled to suspend Product Deliveries until all outstanding amounts have been received from Customer. PCA is entitled to set off any amounts owing by PCA or its Affiliates to Customer, against any amounts owing by Customer to PCA or its Affiliates, under any agreements between such parties.
- (e) Any monies owing by Customer under these Terms shall be payable immediately if PCA suspends or terminates Deliveries because of Customer's default per Section 11 (a).

#### 11. BREACH OR DEFAULT OF TERMS AND TERMINATION

- (a) PCA may suspend or terminate Deliveries of Product to Customer immediately and without Notice if Customer:
  - i. commits a material breach of these Terms and fails to remedy such breach to PCA'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
  - ii. 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 federal Bankruptcy Code or under any other state or federal statute, law or 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
  - iii. breaches, or fails to comply in any material respect with, any Law; or
  - iv. in PCA's judgment, engages or has engaged in a fraudulent, unsafe, or deceptive business practice; or
  - v. acts or has acted in a manner PCA determines, acting reasonably, to be detrimental to its image; or
  - vi. enters into any contract or obligation on behalf of, or that would obligate, PCA 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.

#### 12. 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. 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, 8, 9, 10, 12 and 18 through 25. Upon Termination for any reason, PCA is entitled to cancel any non-completed Deliveries. Neither Party shall be liable to pay goodwill or other compensation because of Termination.

#### 13. FORCE MAJEURE

A "Force Majeure" event includes, but is not limited to, a strike; lock-out; work stoppage or slow down or other labor 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 PCA or its Affiliate (for any reason whatsoever, including PCA'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 Customer of its obligation to pay for Delivered Product.

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 labor 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.

#### 14. PCA'S RIGHT TO ALLOCATE SUPPLY

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

#### 15. NO AGENCY/WARRANTIES

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.

#### 16. 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.

#### 17. HEADINGS

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

#### 18. 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, Customer shall undertake and assume full responsibility to maintain, observe, and communicate adequately to Customer's agents, employees, customers, and contractors any and all health and safety warnings, procedures, standards, rules, and regulations supplied to Customer by Government, or by PCA, including, but not limited to, a Product's "Safety Data Sheet", as part of or in connection with Customer's receiving, storing, handling, testing, using, processing, shipping, or disposing of a Product.



**19. COMPLIANCE WITH APPLICABLE LAWS**

Customer 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, Customer 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 PCA's responsibility, and (c) contact the U.S. Departments of Commerce, State and Treasury and applicable foreign Government authorities to the extent Customer needs guidance as to applicable licensing requirements and other restrictions to meet its obligations hereunder.

**20. ANTI-CORRUPTION WARRANTY**

Customer warrants, in connection with the Products, that Customer 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*.

**21. 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: attorneys, 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.

**22. 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. Customer 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.

**23. 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.

**24. ENTIRE AGREEMENT**

These Terms and the payment terms, as may be amended by PCA, that are separately provided to Customer by PCA'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.

**25. GOVERNING LAW**

These Terms shall be governed and enforced in accordance with the Laws of the State of New York, without regard to its conflict of laws principles. Venue for any suit, action or proceeding arising out of or related to these Terms shall be in New York County, New York, and each Party irrevocably submits to the exclusive jurisdiction of the state and federal courts located in New York County, New York with respect to the same. The Parties exclude application of the United Nations Convention on Contracts for the International Sale of Goods, or any local legislation implementing such Convention.

**26. 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 Customer: To the address or fax or email provided by Customer.
- To PCA: By hand or mail: Petro-Canada America Lubricants Inc., 115 North Oak Park Avenue, Suite 1C, Oak Park, IL 60301-1366. By fax: 708-948-7529. By email: as provided to Customer.

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.

