

MINERALS MANAGEMENT SERVICE  
MINERALS REVENUE MANAGEMENT

RIK CRUDE OIL GENERAL TERMS AND CONDITIONS

These General Terms and Conditions constitute the common provisions applicable to all sales agreements for royalty in kind (RIK) crude oil executed by the Minerals Management Service (MMS) with purchasers. Additional sales specific provisions will be identified and incorporated at the time solicitations are posted/issued in individual Invitations for Offer (IFOs) and Transaction Confirmations. Throughout this agreement the term "Seller" refers to the party delivering crude oil, in this case the MMS, and the term "Buyer" refers to the party receiving crude oil.

**1. Transaction Confirmation**

A. Awards made to a Buyer will be confirmed in writing by Seller using the Transaction Confirmation notice (Exhibit I). The Seller will send such notice to the Buyer by facsimile, EDI or other mutually agreeable electronic means by 4 p.m. Mountain Time on the Business Day following the date of oral notification that an award is to be made in response to an RIK purchase offer submitted by Buyer under an individual IFO. A Transaction Confirmation will not be binding until the exchange of non-conflicting Transaction Confirmations or the passage of the Confirm Deadline without objection from the Receiving Party, as provided in 1.B.

B. If a Sending Party's Transaction Confirmation is materially different from the Receiving Party's understanding of the award referred to in 1.A., Receiving Party shall notify the Sending Party via facsimile by the Confirm Deadline, unless such Receiving Party has previously sent a Transaction Confirmation to the Sending Party. The failure of the Receiving Party to so notify the Sending Party in writing by the Confirm Deadline constitutes the Receiving Party's agreement to the terms of the transaction described in the Sending Party's Transaction Confirmation. If there are any material differences between timely sent Transaction Confirmations governing the same transaction, then neither Transaction Confirmation shall be binding until such differences are resolved by the parties. The entire agreement between the parties shall be those provisions contained in both these General Terms and Conditions, the specific IFO governing the sale, and any effective Transaction Confirmation made pursuant to specific IFOs. In the event of a conflict among the terms of (i) a Transaction Confirmation, (ii) the IFO, and (iii) these General Terms and Conditions, the terms of the documents shall govern in the priority listed in this sentence.

**2. Definitions.** When used in this Agreement, the terms listed below have the following meanings:

- A. API means the American Petroleum Institute.
- B. ASME means the American Society for Mechanical Engineers
- C. ASTM means the American Society for Testing Materials

- D. Barrel means 42 U.S. gallons of 231 cubic inches per gallon corrected to 60 degrees Fahrenheit.
- E. Business Day means any day except Saturday, Sunday or Federal Reserve Bank holidays.
- F. Carrier means a pipeline, barge, truck, or other suitable transporter of crude oil.
- G. Confirm Deadline means 5:00 p.m. in the Receiving Party's time zone on the second Business Day following the Day a Transaction Confirmation is received; provided, if the Transaction Confirmation is time stamped after 5:00 p.m. in the Receiving Party's time zone, it shall be deemed received at the opening of the next Business Day.
- H. Contract means the Invitation for Offers (IFO) immediately after it has been fully executed and accepted by the Buyer and Seller, and includes any amendments or revisions thereto, between the Parties, and constitutes an obligation which, with due consideration, is enforceable by law.
- I. Contracting Officer (CO) is the person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes the authorized representative of a CO acting within the limits of his or her authority, as delegated by the CO, except as otherwise provided in this contract.
- J. Crude Oil means crude oil and/or condensate in marketable condition.
- K. Day, month, and year mean, respectively, calendar day, calendar month, and calendar year, unless otherwise specified.
- L. Delivery Ticket means a shipping/loading document or documents stating the type and quality of crude oil delivered, the volume delivered and method of measurement, the API gravity, temperature, and the S&W content.
- M. Irrevocable Letter of Credit (ILOC) means an irrevocable written commitment by a federally insured financial institution to pay all or part of the stated amount of money until the expiration date of the letter upon presentation by the Seller (the beneficiary) of a written demand therefore in the event of default or nonperformance by a party obliged to the beneficiary, said event to be satisfied by the presentation of specified documents.
- N. Marketable Condition means marketable and acceptable in the applicable common or segregated stream of the carriers involved but not to exceed 1% S&W.
- O. Receiving Party means the party receiving a Transaction Confirmation from a Sending Party.
- P. Sending Party means the party sending a Transaction Confirmation to a Receiving Party.
- Q. S&W means sediment and water.

**3. Measurement and Tests.** All measurements hereunder shall be made from static tank gauges on 100 percent tank table basis or by positive displacement meters. All measurements and tests shall be made in accordance with the latest ASTM or ASME-API (Petroleum PD Meter Code) published methods then in effect, whichever apply. Volume and gravity shall be adjusted to 60 degrees Fahrenheit by the use of Table 6A and 5A of the Petroleum Measurement Tables ASTM Designation D1250 in their latest revision. The crude oil delivered hereunder shall be marketable and acceptable in the applicable common or segregated stream of the carriers involved but not to exceed 1% S&W. Full deduction for all free water and S&W content shall be made according to the API/ASTM Standard Method then in effect. Either party shall have the right to have a representative witness all gauges, tests and measurements.

**4. Warranty.** The Seller warrants good title to all crude oil delivered hereunder and warrants that such crude oil shall be free from all royalties, liens, encumbrances, claims, and all applicable foreign, federal, state and local income taxes.

**5. Rules and Regulations.** The terms, provisions and activities undertaken pursuant to this Agreement shall be subject to all applicable laws, orders and regulations of all governmental authorities. If at any time a provision hereof violates any such applicable laws, orders or regulations, such provision shall be voided and the remainder of the Agreement shall continue in full force and effect unless terminated by either party upon giving written notice to the other party hereto. To the extent that a conflict between State and Federal laws, orders and regulations should arise, Federal provisions will take precedence.

**6. Force Majeure.** Either party shall be relieved from liability for failure to perform for the duration and to the extent such failure is occasioned by the following: (i) physical events such as acts of God, landslides, lightning, earthquakes, fires, storms or storm warnings, such as hurricanes, which result in evacuation of the affected area, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery or equipment or lines of pipe; (ii) weather related events affecting an entire geographic region, such as low temperatures which cause freezing or failure of wells or lines of pipe; (iii) any interruption of production or transportation prior to delivery; (iv) any interruption of transportation and/or storage by Buyer's Transporters downstream of the point of delivery; (v) acts of others such as strikes, lockouts or other industrial disturbances, riots, sabotage, insurrections or wars; and (vi) governmental actions such as necessity for compliance with any court order, law, statute, ordinance, or regulation promulgated by a governmental authority having jurisdiction; or any other cause, whether similar or not, that is beyond the reasonable control of such party. Failure to perform due to events of Force Majeure shall not extend the term of this Agreement. In the event that a party is unable to perform hereunder, such party shall promptly notify the other party in writing of the underlying circumstances and the expected duration.

**7. Equal Daily Deliveries.** For pricing purposes only, unless otherwise specified in the Transaction Confirmation, all crude oil delivered hereunder during any calendar month shall be considered to have been delivered in equal daily quantities during such month.

**8. Payment.**

A. Buyer shall make payment to the Seller in accordance with the procedures at 8.B. for all crude oil made available to it at the Point(s) of Delivery. The Buyer is required to make payment to the Seller for all crude oil made available to it by the Seller, whether or not Buyer accepts delivery of such oil. Crude oil made available to Buyer is the Federal royalty portion of lease production allocated and delivered by the lease operator. The Buyer will calculate the amount due each month based on the contract offer price and the crude oil volumes recorded at the Point(s) of Delivery.

B. The Buyer shall remit the total monthly amount due to the Seller by electronic funds transfer (EFT), under procedures outlined in attached "Mailing and Payment Information" (Exhibit II). Payment shall be due by 4 p.m. Mountain Time on or before the 20th day of the month following the month of delivery.

C. The Buyer will provide Seller 3<sup>rd</sup> party source documents (e.g., pipeline statements and quality bank statements) fully supporting the volume basis of monthly payments by close of business on the 20<sup>th</sup> day of the month following the month of delivery. This information will be submitted to the accounting contact specified in the Transaction Confirmation.

D. The Buyer shall not reduce payments due hereunder because of any claim against the Seller arising outside of this sales contract.

E. Payment shall be deemed made on the date that funds are credited to the Seller's account. If a payment date falls on a Saturday, Sunday or any holiday on which the Federal Reserve interbank wire network is closed, payment shall be made on the next business day.

F. If Buyer fails to make payment when due, the Buyer shall pay interest to Seller on the amount of the overdue payment at the rate prescribed in 30 U.S.C. 1721(a) and corresponding regulations at 30 CFR 218.54.

**9. Buyer Liability for Offer Value of Crude Oil.** Notwithstanding the contract termination provision of this Agreement, the Buyer shall be liable for the contract price of one hundred percent (100%) of the crude oil made available to it by the Seller including oil made available but not taken by the Buyer. In the event that any available crude oil not taken is sold to a third party at a price below the Buyer's offer price, the Buyer shall be liable for the difference between the price received by the Seller and the Buyer's offer price. If the oil not taken is not sold during the month of delivery, the Buyer shall be liable for the full offer value of the oil for the month(s) the oil is not taken by the Buyer. Administrative costs and other expenses the Seller incurs as a result of obtaining another buyer for the oil for which the Buyer contracted will also be due to the Seller. The Buyer shall be liable for any pipeline or terminal costs/penalties imposed as a result of the Buyer's failure to take delivery of the full volume of available crude oil. The Buyer shall pay all amounts due within 7 calendar days after notification by the Seller. Any disagreement with respect to the amount of such payment due the Seller will be deemed a dispute and will be decided by the Seller's Contracting Officer.

**10. Indemnification.** Buyer agrees to indemnify Seller and save Seller harmless from all claims, from any and all persons, arising from or out of claims regarding payment, personal injury or property damage from said crude oil after title passes to Buyer.

**11. Financial Responsibility.** When reasonable grounds for insecurity of payment arise, Seller may demand adequate assurance of performance. Adequate assurance shall mean sufficient security in the form and for the term reasonably specified by the Seller, including, but not limited to, a standby irrevocable letter of credit, a prepayment, a security interest in an asset acceptable to the demanding party or a performance bond or guarantee by a creditworthy entity or other instrument acceptable to the Seller. In the event Buyer shall (i) make an assignment or any general arrangement for the benefit of creditors; (ii) default in the payment obligation to the Seller; (iii) file a petition or otherwise commence, authorize, or acquiesce in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors or have such petition filed or proceeding commenced against it; (iv) otherwise become bankrupt or insolvent (however evidenced); or (v) be unable to pay its debts as they fall due; then the Seller shall have the right to either withhold and/or suspend deliveries or payment, or terminate the Contract without prior notice,

in addition to any and all other remedies available hereunder. Seller may immediately suspend deliveries to Buyer hereunder in the event Buyer has not paid any amount due Seller hereunder on or before the second day following the date such payment is due.

**12. Withholding of Deliveries and Termination for Buyer Default.**

A. The Seller may terminate this contract in whole or in part as pertains to each respective interest, by written notice to the Buyer effective upon such notice being delivered to any authorized representative of the Buyer, being deposited in the United States Postal Service, or with an overnight delivery service addressed to the Buyer at the address stated in the sales contract, or by electronic means which can convey a signature in the event:

1. The Buyer fails to pay, when due, any payment required under this contract, if such failure is not remedied within five (5) business days after written notice of such failure;
2. Buyer fails to take delivery in accordance with the terms of this contract;
3. Buyer does not meet the requirements set forth in Section 11 above;
4. There are instituted by or against Buyer proceedings in bankruptcy or other insolvency law; or
5. Buyer fails to comply with any other term or condition of this contract within 48 hours after the Seller gives written notice.

B. Nothing herein will limit the Seller in the enforcement of any legal or equitable remedy, which it might otherwise have, and a waiver of any particular cause for termination will not prevent termination for the same cause occurring at any other time or for any other cause.

**13. Disputes**

- A. If a dispute arises, the Buyer may submit a claim to the Seller's Contracting Officer, who will issue a written decision on the dispute. A "claim" is a written request submitted to the Contracting Officer for payment of money, adjustment of contract terms, or other relief requiring a Contracting Officer's decision.
- B. Should the Contracting Officer's decision be unacceptable to the Buyer, the matter may be referred to the Bureau Procurement Chief within 90 days of the decision for review and reconsideration. This step will be considered a form of alternative dispute resolution and will not be considered a form of binding arbitration.
- C. Requests for reconsideration of the Contracting Officer's decision, and the subsequent determination by the Bureau Procurement Chief shall not otherwise abridge or modify the rights of review or appeal available to the Buyer. These rights will be detailed at the time the Contracting Officer renders their decision.
- D. Buyer shall comply with any Contracting Officer's decision, and at the Contracting Officer's direction will diligently perform under this contract pending final resolution of any claim, appeal, or action related to this contract.

**14. Delivery, Title, and Risk of Loss.** Delivery, title, and risk of loss shall pass from the Seller to the Buyer at the Delivery Points specified in the Transaction Confirmation.

**15. Governing Law.** Applicable Federal Law shall solely govern this Agreement and any disputes arising hereunder.

**16. Necessary Documents.** Upon request, each party agrees to furnish all substantiating documents incident to the transaction, including a Delivery Ticket for each volume delivered.

**17. Waiver.** No waiver by either party regarding the performance of the other party under any of the provisions of this Agreement shall be construed as a waiver of any subsequent performance under the same or any other provisions. All waivers shall be in writing and signed by a Government Contracting Officer and a corporate official legally authorized to bind the company.

**18. Assignment.** Neither party shall assign this Agreement or any rights hereunder without the written consent of the other party, such consent not to be unreasonably withheld.

**19. Gratuities.** These General Terms and Conditions, the IFO's, and the Transaction Confirmations are subject to the statutes, public laws, regulations and Executive Orders governing the conduct of Federal employees and contractors.

**20. Entirety of Agreement.** Each individual IFO and resulting Transaction Confirmation and these General Terms and Conditions contain the entire Agreement of the parties: there are no other promises, representations or warranties. Any modification of these General Terms and Conditions shall be by written instrument.

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BUYER	SELLER
_____	_____
(Party Name)	(Party Name)
By_____	By_____
Title_____	Title_____