

**CHS INC.**  
**General Terms and Conditions for Crude – Canadian Contract**  
**(March 1, 2014)**

**1. Delivery and Title:**

If delivery is via line transfer, delivery of the crude oil and/or condensate ("Product") to the buyer of the Product ("Buyer") shall be effected at the designated pipeline facility. For lease/unit delivery locations, delivery of the Product to Buyer shall be effected as the Product passes the last permanent delivery flange or meter and/or meter connecting the delivery facility designated by the seller of the Product ("Seller") to the Buyer's Carrier. (For the purposes of these General Terms and Conditions ("Agreement"), "Carrier" shall mean a pipeline, truck or other suitable transporter of the Product.) Title to and risk of loss of the Product shall pass from Seller to Buyer upon said delivery.

**2. Measurement and Tests:**

All Product quantities received or delivered shall be determined by calibrated - custody transfer grade meters and/or by gauging and computations from certified tank tables and/or by weighing trucks on certified weigh scales adjusted to a temperature of 15.56 degrees Celsius (60 degrees Fahrenheit) and a pressure of one standard atmosphere (14.7 PSIA) in accordance with the latest revision of American Petroleum Institute ("API") MPMS Chapter 11 Table 54A. All measurements sampling, equipment, procedures, calculations and tests shall be performed in accordance with the latest applicable API or ASTM published methods. Either party shall have the right to have a representative witness all gauges, tests and measurements. In the absence of the other party's representative, such gauges, tests and measurements shall be deemed to be correct.

The conversion factor for heavy crude shall be 6.2898105 and for light crude shall be 6.29287.

**3. Quality:**

Product delivered hereunder shall be merchantable and shall not contain more than such percentage of bottom sediment and water or other impurities as Buyer's Carrier receiving Seller's Product may from time to time prescribe. Such percentage of bottom sediment and water or other impurities shall be determined by the centrifuge method of testing or by such other method as established by Buyer's Carrier. In addition, all Product delivered to Buyer under the Agreement must meet the quality requirements of the applicable transporting pipeline as set out in the applicable tariff/rules and regulations. Buyer may refuse to accept delivery of any quantities of Product that do not satisfy the quality requirements of the applicable transporting pipeline. Full deduction for all free water and S&W content shall be made according to the API/ASTM Standard Method then in effect. Seller warrants that the Product delivered is not contaminated by chemicals foreign to virgin Product including, but not limited to, chlorinated and/or oxygenated hydrocarbons and lead. Buyer may refuse to accept delivery of any quantities of Product which do not conform to the specifications set forth in this Agreement. Buyer additionally may, reject and return any quantities of Product which do not conform to the specifications set forth in this Agreement, even after delivery to Buyer. Seller shall be liable for and indemnify Buyer from and against all costs, damages, losses, claims, liabilities and other expenses incurred by Buyer as a direct result of the delivery of off-spec Product.

Buyer hereby acknowledges receipt of a Material Safety Data Sheet from Seller in respect of the properties and safe handling procedures for the Product. Buyer acknowledged that the Product is a hazardous material and Buyer represents that it is sophisticated and knowledgeable in the storage, handling, transportation and use of the Product.

**4. Quantity:**

The actual volume of Product delivered by Seller in any month shall be deemed not to be "materially less than or greater than the quantity" if such volume (a) is less than one hundred percent (100%) but greater than or equal to ninety-five percent (95%), or (b) is more than one hundred percent (100%) but less than or equal to one hundred five percent (105%) of the quantity. In the event the Product delivered is materially less than or greater than the quantity, Seller shall be liable for and reimburse Buyer in respect of any penalties incurred by Buyer under the non-performance penalty provisions of the rules and regulations of the delivering pipeline, as a result of such shortfall in deliveries by Seller. Seller shall reimburse Buyer promptly after being provided with an invoice and supporting documentation. If Seller's shortfall in deliveries is due to an event of force majeure, Seller shall promptly provide to Buyer appropriate documentation to support a force majeure defense and Buyer shall apply to delivering pipeline for relief from any penalties resulting from such event of force majeure.

Production quantity shall be determined by pipeline meter tickets based on calibrated pipeline meters or if such meters are unavailable, by calibrations tables, or based on book, stock, or inventory transfer. Any costs arising from such inspection will be shared equally between Buyer and Seller.

**5. Warranty of Title:**

Seller warrants that it has the right to sell and deliver the Product to Buyer, and that it has the exclusive right to receive payment for all Product sold hereunder. Seller additionally warrants that all Product delivered hereunder is free from all charges, mortgages, liens,

applicable taxes and other encumbrances of any kind. Seller agrees to notify Buyer promptly if any charge, mortgage, lien, applicable tax or other encumbrance of any kind is incurred or created which encumbers or has priority over Seller's interest in the Product delivered hereunder. Buyer may pay or discharge the whole or any portion of any charge, mortgage, lien, applicable taxes or other encumbrance of any kind (unless there is a bona fide dispute as to the validity thereof) that encumbers or has priority over Seller's interest in the Product delivered hereunder. In such an event, Buyer may reimburse itself by applying against the amount so paid by Buyer the sums accruing to Seller under the terms of this Agreement.

## **6. Payment:**

- (i) For deliveries via line transfer, Seller shall invoice Buyer at least three (3) business days before the 25<sup>th</sup> of the month for Product received by Buyer during the previous month, and payment shall be made by Buyer on or before the payment date of the month following delivery. For deliveries via lease/unit delivery locations, payment shall be made by Buyer against the receipt of the relevant shipper's balance statement for Product received by Buyer during the previous month. Payment shall be made by Buyer on the 25<sup>th</sup> of the month following delivery.

If the relevant payment date under the Agreement falls on a Saturday or on a bank holiday other than Monday during which the Toronto Dominion Bank, Main Branch, Calgary, Alberta (the "Bank") is closed for normal business transactions, then payment shall be due on the first previous day on which the Bank is open for normal business transactions. If the relevant payment date falls on a Sunday or a Monday bank holiday, then payment shall be due on the next day which the Bank is open for normal business transactions. Remittance will be made to Seller at the address specified on Seller's invoice by cheque delivered to the offices of Seller or by industry cheque exchange or by wire transfer to Seller's account specified in the invoice on the date for payment. Any payment hereunder not paid when due shall accrue interest calculated daily from the date due until paid at the prime rate for Canadian dollar loans made in Canada by the Bank plus two percent (2%) per annum. Acceptance of payment made after relevant payment date shall not constitute a waiver of rights to interest and shall in no circumstance be considered as an agreement to provide extended credit.

- (ii) If actual data is not available for an invoice issued hereunder, such invoice may be based on reasonable estimates, with appropriate adjustments to be made in the first invoice following the date actual data becomes available. All invoiced amounts must be paid by the due date, even if disputed, and any disputed amounts resolved in favor of the party disputing same will be promptly refunded by the other party with interest. Any dispute of an invoice must be commenced by notice within a period of twenty-four (24) months following the month to which the invoice relates; after such time the invoice will be deemed accurate and correct.
- (iii) At any time up to (but not after) twenty-four (24) months following the month to which the invoice relates, and upon thirty (30) days' prior written notice, either party shall have the right at its sole cost and expense to have a third party auditor, who shall be a member of a national Canadian chartered accountancy firm, audit on that party's behalf the relevant books, accounts and records of the other party to verify the accuracy of any such invoice. All information which an auditor acquires shall be kept strictly confidential. If, as a result of any audit, any adjustment to a payment is deemed necessary, then the party against whom the adjustment was made shall promptly pay to the other party the required amount.

## **7. Netting of Invoices:**

In respect of any month where amounts are due and owing, or past due and owing, under two or more agreements entered into by the parties for the purchase, sale or exchange of Product, the parties *may* net invoices for such amounts. In that case, prior to the due date, the parties shall confirm (telephone acceptable) the invoice amounts and the amount remaining, if any, after net out. Any remaining balance shall be paid by the party owing such amount to the other party on the date the gross amounts were due. Any such net out shall be effective upon receipt of such balance due after net out to the party owed such balance. Notwithstanding the above, payments for any quantity, quality or other claims shall not be included in such netting of invoices.

## **8. Performance Assurance:**

If, in the sole opinion of a party, the ability of the other party to pay or perform any obligation to be paid or performed by the other party under the Agreement is or becomes impaired or in any way unsatisfactory, such party may demand Performance Assurance from the other party, whether or not an Event of Default has occurred, which Performance Assurance shall be provided by the other party by the end of the 2<sup>nd</sup> Business Day after the demand is received. For purposes of this Agreement: (a) "Performance Assurance" means security in the form, amount and term reasonably specified by the party demanding the Performance Assurance including, but not limited to, a standby irrevocable letter of credit, a prepayment or guarantee by an entity acceptable to the party demanding the Performance Assurance; and (b) "Business Day" means any day other than a Saturday, Sunday or statutory holiday in Alberta.

## **9. Event of Default:**

In the event (each an "Event of Default") a party or a guarantor of that party's obligations hereunder (the "Defaulting Party"): (i) fails to provide and thereafter maintain so long as any transactions are in effect, Performance Assurance in accordance with this Agreement within two (2) Business Days of a written request by the other party, (ii) has not paid any amount due the other party (the "Non-Defaulting Party") hereunder on or before the second business day following written notice that such payment is due; or (iii) fails to

perform any other obligation hereunder and such failure results in material consequences and continues for more than five (5) Business Days following receipt of notice describing such failure; then the Non-Defaulting Party shall have the right to, at its sole discretion, suspend its performance under all transactions under the Agreement and/or withhold any amounts owed to the Defaulting Party under the Agreement, any transaction or any other agreement between the parties (whether or not yet due) and set-off against such withheld amounts any amounts owed the Non-Defaulting Party hereunder (whether or not yet due). In addition, upon the occurrence of an Event of Default, the Non-Defaulting Party may, for so long as the Event of Default is continuing or within twenty (20) business days (whichever is less), terminate all transactions then outstanding or not yet commenced by providing notice to the Defaulting Party.

#### **10. Set-Off:**

Upon an Event of Default, the Non-Defaulting Party may, at its sole discretion and without limitation to any other rights or remedies available to it, set-off its, or any of its affiliates', payment obligation to the Defaulting Party against the Defaulting Party's payment obligations to the Non-Defaulting Party, or to any of its affiliates, whether any of the foregoing obligations arise under this Agreement or any other agreement between the parties.

#### **11. Force Majeure:**

Except with regard to a party's obligation to make payment due under this Agreement, neither party shall be liable to the other for failure to perform to the extent such performance is prevented by force majeure. "Force Majeure" means an event or circumstance which prevents the claiming party from performing its obligations under one or more transactions, which event or circumstance was not anticipated as of the date the transaction was agreed to, which is not within the reasonable control of the claiming party, and which, by the exercise of due diligence, the claiming party was unable to overcome or avoid or cause to be avoided. Force Majeure shall include: (i) physical events such as acts of God, landslides, lightning, earthquakes, fires, storms, or storm warnings such as hurricanes, resulting in evacuation of the affected area, floods, washouts, explosions, breakage, accident, or necessity of repairs to machinery, 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) interruption or curtailment of transportation or storage by transporters or storage operators; (iv) acts of others such as strikes, lockouts or other industrial disturbances, riots, sabotage, terrorist acts, insurrections or wars; or (v) compliance with any court order, law, statute, ordinance, or regulation promulgated by a governmental authority having jurisdiction.

Neither party shall be entitled to the benefit of the provisions of the aforementioned clause to the extent performance is affected by any or all of the following circumstances: (i) the claiming party having failed to avoid the adverse implications, or to remedy the condition in accordance and to resume the performance of such covenants or obligations with reasonable dispatch, or to provide timely notification; (ii) economic hardship, including, without limitation, lack of finances, Seller's ability to sell the Product at a higher or more advantageous price than the agreement price, Buyer's ability to purchase Product at a lower or more advantageous price than the agreement price; or (iii) scheduled maintenance by a transporter or storage operator, provided that notice of such scheduled maintenance has been provided by such transporter or storage operator at or prior to the time the parties entered into the transaction. The claiming party shall make commercially reasonable efforts to avoid the adverse impacts of a Force Majeure and to resolve the event once it has occurred in order to resume performance; provided that the parties agree that nothing contained herein shall require: (i) the settlement of strikes, lockouts or other industrial disturbances except in the sole discretion of the party experiencing such disturbance; (ii) the extension of the delivery period of any transaction; (iii) the parties to make up any quantity of Product they would otherwise have been obligated to sell and purchase during any period when Force Majeure was validly claimed; (iv) Seller to deliver, or Buyer to receive, the Product at a point other than the delivery point; or (v) Seller to purchase replacement Product at a price greater than the agreement price.

Any party claiming Force Majeure and seeking the benefit of this section shall give written notice containing full particulars of such Force Majeure to the other party forthwith. Failure to deliver or receive Product by reason of Force Majeure will not extend the term of this Agreement and the quantities of Product to be delivered under this Agreement will be reduced by the quantities affected by the Force Majeure event.

#### **12. Equal Daily Deliveries:**

For pricing purposes only, Product delivered during any given month hereunder shall be deemed to have been delivered in equal daily quantities during such month, unless otherwise specified in this Agreement.

#### **13. Apportionment:**

Should either party, or Carrier designated by either party, at any time during the term of this Agreement be required by governmental regulations or orders or by a shortage of transportation facilities to apportion the use of its facilities or acceptances and/or deliveries of Product, the quantity of Product required to be purchased or delivered under the terms of this Agreement shall be proportionately reduced in a fair and equitable manner. The party and/or Carrier subject to the governmental regulations or orders or shortage of transportation facilities shall have the right to apportion its available transportation facilities and/or Product supplies in any manner it deems fair and equitable.

**14. Taxes, Duties, and Fees:**

(i) Buyer's Responsibilities:

- (a) The amount of any taxes, duties, imposts, fees, charges and dues of every description imposed or levied by any government or local authority in respect of the Product supplied hereunder, or in respect of such Product's export, delivery, transportation, ownership, sale or use, in respect of any stage after risk in respect of such Product has passed to Buyer shall be for Buyer's account, notwithstanding such tax, duty, impost, fee, charge or dues may have been imposed or levied on Seller.
- (b) Buyer shall bear no responsibility for any income, franchise or other type of direct tax that may inure to Seller as a result of this transaction.
- (c) Buyer will bear sole responsibility for all indirect taxes resulting from this transaction, including but not limited to: federal and provincial excise taxes, sales and use taxes [including without limitation the Goods and Services Tax ("GST")], gross receipts taxes, value added taxes, and environmental fees and taxes.
- (d) At time of sale Seller will invoice Buyer for all taxes for which Buyer is responsible; and Buyer will pay Seller the invoiced amount for all such taxes.
- (e) Buyer and Seller shall be responsible for compliance with all export and import requirements and the maintenance of all documentation necessary to assure the appropriate government agencies of such party's compliance with said requirements.
- (f) If Seller is required under applicable law to collect and remit Buyer's taxes, Buyer agrees to make a payment to Seller in respect of such taxes that Seller is obligated to pay on behalf of Buyer, including those taxes of Buyer which Seller discovers subsequent to the time of sale to have been payable at the time of sale, including taxes that are discovered to have been payable as a result of an audit by any taxing authority.

(ii) Seller's Responsibilities: The amount of any taxes, duties, imposts, fees, charges and dues of every description imposed or levied by any governmental or local authority on the Product supplied hereunder, or on its export, delivery, transportation, ownership, sale or use, in respect of any stage prior to risk in such Product passing to Buyer shall be for Seller's account.

(iii) GST:

- (a) The Price does not include any amounts payable by Buyer for the GST imposed pursuant to the Excise Tax Act ("ETA") or any similar or replacement value added or sales or use tax enacted under successor legislation. Notwithstanding anything to the contrary in this Agreement, Buyer will pay to Seller the amount of GST payable for the purchase of Product in addition to all other amounts payable under this Agreement. Seller will collect GST paid by Buyer and will remit such GST as required by law. Buyer and Seller will provide each other with the information required to make such GST remittance or claim any corresponding input tax credits, including GST registration numbers.
- (b) Where Buyer is not registered for GST under the ETA and Buyer indicates to Seller that Product will be exported from Canada, Buyer may request Seller treat such Product as "zero-rated" Product for export within the meaning of the ETA for billing purposes. If Seller, in its sole discretion, agrees to so treat such Product, then Buyer will:
  - (i) export such Product as soon as is reasonably possible after Seller delivers such Product to Buyer (or after such Product is delivered to Buyer after a zero-rated storage service under the ETA) having regard to the circumstances surrounding the export and, where applicable, normal business practice;
  - (ii) not acquire such Product for consumption or use in Canada (other than as fuel to transport such Product by pipeline) or for supply in Canada before export of such Product;
  - (iii) ensure that, after such Product is delivered and before export, such Product is not further processed, transformed or altered in Canada (except to the extent reasonably necessary or incidental to its transportation);
  - (iv) maintain on file, and provide to Seller, evidence satisfactory to the Minister of National Revenue of the export of such Product by Buyer; and
  - (v) comply with all other requirements prescribed by the ETA for a zero-rated export of such Product.
- (c) Where Buyer is registered for GST under the ETA and Buyer indicates to Seller that Product will be exported from Canada, Buyer may request Seller treat such Product as "zero-rated" Product for export within the meaning of the ETA for billing purposes and Buyer hereby declares, represents and warrants to Seller that Buyer intends to export such Product by means of pipeline or other conduit in circumstances described in Sections (b)(i) to (b)(iii) above. Buyer indemnifies Seller for any GST, penalties and interest and all other damages and costs of any nature arising from breach of the declarations, representations and warranties contained in Sections (b)(i) to (b)(iii) or otherwise from application of GST to Product declared, represented and warranted by Buyer to be acquired for export in

Canada. In the event that any amount is payable pursuant to this Agreement as a result of a breach, modification or termination of this Agreement, the amount payable shall be increased by any applicable taxes or GST remittable by the recipient in respect of that amount.

**15. Indemnity:**

EACH PARTY TO THE AGREEMENT SHALL INDEMNIFY, DEFEND AND HOLD THE OTHER HARMLESS FROM ALL CLAIMS, DEMANDS AND CAUSES OF ACTION ASSERTED AGAINST THE OTHER BY ANY OTHER PERSON (INCLUDING, WITHOUT LIMITATION, EMPLOYEES OF EITHER PARTY) FOR PERSONAL INJURY, LOSS OF OR DAMAGE TO PROPERTY (INCLUDING, AND EXCEPT AS PROVIDED ELSEWHERE IN THIS AGREEMENT, THE PROPERTY OF EITHER PARTY), OR FOR VIOLATIONS OF LAW (INCLUDING, BUT NOT LIMITED TO, THE LAWS REFERENCED IN SECTION 23) RESULTING FROM THE WILLFUL OR NEGLIGENT ACTS OR OMISSIONS OF THE INDEMNIFYING PARTY. WHERE PERSONAL INJURY, DEATH OR LOSS OF OR DAMAGE TO PROPERTY IS THE RESULT OF THE JOINT NEGLIGENCE OR MISCONDUCT OF THE PARTIES HERETO, THE PARTIES EXPRESSLY AGREE TO INDEMNIFY EACH OTHER IN PROPORTION TO THEIR RESPECTIVE SHARE OF SUCH JOINT NEGLIGENCE OR MISCONDUCT.

**16. Limitation of Liability:**

NEITHER PARTY SHALL BE LIABLE UNDER OR IN CONNECTION WITH THE AGREEMENT OR UNDER ANY OTHER THEORY OF LAW, WHETHER IN CONTRACT, TORT OR OTHERWISE, FOR ANY INDIRECT, CONTINGENT, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING DAMAGES FOR LOSS OF PROFIT), INCLUDING CLAIMS FOR INDEMNITY UNDER SECTION 15.

**17. Forward Contract:**

This Agreement constitutes a "Forward Contract" within the meaning of the United States Bankruptcy Code and Buyer and Seller are each "Forward Contract Merchants" within the meaning of the United States Bankruptcy Code. The parties also agree that this contract constitutes an "Eligible Financial Contract" within the meaning of the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada) and the *Winding-Up and Restructuring Act* (Canada) as each may be amended, restated, replaced or reenacted from time to time and is to be treated similarly in all proceedings related to any bankruptcy, insolvency or similar law regardless of the jurisdiction of application or competence of such law.

**18. Governing Law:**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Alberta and the parties hereto agree to submit to the jurisdiction of the courts of Alberta. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY TRANSACTION.

**19. Modifications:**

Any modification, alteration, or amendment to this Agreement, or waiver of any of its provisions, shall not be binding upon either party unless the same is in writing and signed by both parties.

**20. Successors:**

This Agreement and everything contained herein shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

**21. Necessary Documents:**

Upon request, each party agrees to furnish the other party all source documents for each volume delivered that are reasonably available to that party for any payment that is due pursuant to this Agreement. However, furnishing source documents shall not be a precondition for payment unless expressly so agreed by the parties. Source documents include delivery tickets, transfer statements, or other shipping/loading documents provided by a pipeline or other carrier indicating the type, quality, volume, and other characteristics of the Product delivered. With respect to purchases at lease/unit locations, Seller additionally agrees to submit to Buyer such documents as the Buyer may reasonably require regarding proof of title to the Product delivered, and Buyer may withhold payment for the Product without interest until Seller has furnished such documents.

**22. Exporter of Record; NAFTA:**

The party that is the exporter of record of the Product received/delivered under the Agreement agrees to fulfill all requirements applicable to the exporter of record, including but not limited to those of the US and Canadian Customs and shall pay any applicable import or export duty or any other applicable fees and fines, penalties or costs. The other party hereto shall provide all information necessary for such importation/exportation in a timely manner. Except where Seller in its sole discretion provides a NAFTA Certificate

of Origin: (a) Seller makes no representations or warranties for favourable treatment under NAFTA; and (b) If Buyer faces additional duties as a result of the Product not being considered eligible for NAFTA preferential duty treatment such costs shall be for Buyer's account.

**23. Confidentiality:**

This Agreement will not be disclosed in whole or in part by either Buyer or Seller to any third party without obtaining the prior written consent of the other party, unless such disclosure is (i) required by law, (ii) necessary to obtain regulatory approval or reporting, or (iii) to a party's employees, affiliates, counsel, accountants, or other agents or representatives on a need to know basis (provided such persons have agreed to keep such terms confidential).

**24. Notices:**

All notices to be given under the Agreement shall be in writing and delivered personally, sent by mail, e-mail, or by facsimile to the appropriate party at the mail address, e-mail address or facsimile specified in the Agreement or the accompanying cover letter as the case may be. Any notice given by mail shall be deemed to have been received seventy-two (72) hours after the mailing thereof; provided that, if there is a disruption, or threatened disruption affecting the delivery of mail, all such deliveries shall be made by hand or facsimile. If delivered personally or transmitted by e-mail or facsimile, then such notice shall be deemed delivered on the first business day following the day such notice was so delivered or transmitted. Either party may change its address for notice upon giving fifteen (15) days notice to the other party.

**25. Assignment:**

Neither party shall assign this Agreement nor any rights hereunder without the written consent of the other party, such consent not to be unreasonably withheld, unless such assignment is made to an entity controlling, controlled by, or under common control of the assignor, in which event no consent is required and the assignor shall be responsible for non-performance by the assignee.