



SOUND REFINING, INC.

2628 Marine View Drive, Tacoma, WA 98422
P.O. Box 1372, Tacoma, WA 98401
Tele. (253) 272-9348 Fax (253) 272-5686

PRODUCT RACK LOADING AGREEMENT

This Product Loading Agreement for the Tacoma, Washington facility (the "Agreement") is made by and between Sound Refining, Inc. ("SRI") and _____ ("Customer").

RECITALS

SRI operates a product loading facility at 2628 Marine View Drive and 1601 Taylor Way in Tacoma, Washington with an Automated Loading System. The Automated Loading System permits authorized Customers to load and remove products from the facility. Collectively, the loading facility and the automatic loading system will be referred to as the "ALS".

In consideration of the mutual benefits to be derived hereunder, the parties agree as follows:

AGREEMENTS

1. Operation of ALS: Upon the signing of this Agreement by Customer and SRI, the Customer will be allowed to load products using the ALS and to remove the products from the facility. Customer will provide to SRI authorization for each driver ("Driver") it wishes to use the ALS. SRI agrees to assign to each individual Driver authorized by Customer a unique driver number ("Driver Number"). Each Driver will select a personal identification number ("PIN") upon first use by the Driver of the ALS. These two numbers ("Driver Identification Numbers") will give the Driver access to and the ability to operate the ALS. These Driver Identification Numbers may be used only by the Driver to whom they are assigned to physically access the ALS.
2. Non-liability of SRI: SRI will not be liable to Customer directly or indirectly, for:
 - (a) Any demurrage resulting from Customer's inability to load or delay in loading that occurs at the ALS as the result of any cause whatsoever, including but not limited to any denial of loading on account of Customer credit situations, any facility closing, equipment failure, or SRI's suspension or termination of the right of the Customer to use the ALS;
 - (b) Any liability, damages, costs, and other expenses, including attorney's fees, imposed upon, incurred by or asserted against Customer in connection with or as

a result of any claim alleging damage, loss or injury to person or property caused by or related in any way to Customer's presence at or use of the ALS, except to the extent any damage, loss or injury is caused by the negligence or intentional acts or omissions of SRI; or

- (c) SRI's failure to assist in or supervise the use of the ALS.

In no event will SRI be liable or responsible for any special, incidental or consequential damages under any theory of liability.

3. Indemnification of SRI: Customer agrees to indemnify SRI and its members, managers, officers, directors, employees, contractors and agents ("Indemnified Persons") for and hold all Indemnified Persons harmless from:

- (a) All liability, damages, costs or other expenses, including attorney's fees, that may be claimed against, imposed upon or incurred by any Indemnified Persons in connection with or as the result of any claim asserted by any third party, including Customer personnel, for loss, damage or injury to person or property caused by, resulting from or related in any way to the presence at or use of the ALS by Customer and/or its transportation of product dispensed from the ALS, except to the extent any damage, loss or injury is caused by the negligence or intentional acts or omissions of SRI; and
- (b) All loss, injury or damage to SRI's property, or the property of Customer in the care, custody or control of SRI that is caused by, results from or is related in any way to a breach of this Agreement by Customer or to the negligence or intentional acts or omissions of Customer personnel. Provided, this duty to indemnify SRI will not apply to liability for damages to property to the extent caused by or resulting from the negligence or intentional acts or omissions of SRI. Customer's obligation to indemnify SRI under this section includes the obligation to indemnify for losses to SRI resulting from death or injury to Customer's employees, and Customer specifically and expressly waives any immunity that may be granted to it by or under the Washington State Industrial Insurance Act, RCW Title 51 (the "Act") or any comparable law. This Waiver is for the exclusive benefit of SRI and is not intended and may not be construed to be for the benefit of Customer's employees.
- (c) All liability, damages, costs, fines, or other expenses arising from a spill or release of product at the ALS. Provided, this duty to indemnify SRI will not apply to liability, damages, costs, fines, or other expenses to the extent they are caused by or resulting from the negligence or intentional acts or omissions of SRI.

4. Obligations of Customer. Customer agrees with and warrant to SRI as follows:

- (a) Customer acknowledges that the ALS may be operated without the presence of any SRI employee and that previous users may have left the ALS in an unsafe

- condition. It is the responsibility of Customer to observe apparent or reasonably discoverable safety hazards and either correct them or immediately report them to SRI and refrain from using the ALS until such safety hazard is removed or remedied.
- (b) At the time of each loading, the Driver is solely responsible for selecting the correct Customer account on the ALS data screen .
 - (c) Customer acknowledges that each PIN has been selected by the authorized Driver and not by SRI and that each Driver is solely responsible for the selection, use, and protection of the security of such PIN. Customer assumes full responsibility for assuring that each authorized Driver uses the Driver Identification Numbers and obtains products only for the account of a Customer who has agreed with SRI to pay for the products. Customer assumes full responsibility for and will pay posted market price plus applicable taxes for all products obtained through the use of Driver Identification Numbers of Customer, including those that were not authorized and purchased by a Customer, such as fraudulent loadings or any unintended loadings resulting from the incorrect operation of the ALS. Provided, however, that Customer will not be liable to SRI for unauthorized use of any Driver Identification Numbers that occur more than one day after SRI's receipt of Proper Notice in accordance with Paragraph 9 from a Customer withdrawing authorization of any Driver to access the ALS. Customer agrees to require that when any Driver knows or suspects that the confidentiality of his or her PIN has been violated, the Driver will immediately contact SRI to have his or her PIN changed.
 - (d) Customer warrants that the Drivers it has authorized to access the ALS have, and will continue to have, valid commercial drivers licenses appropriate for the type of transport vehicles that the Drivers operate in the SRI facility. Customer further warrants that authorized Drivers have received, and will in the future be provided with, copies of and are familiar with SRI's ALS regulations and procedures; are able to read the warning and instructional signages posted at the SRI facility; and are sufficiently fluent in English to verbally communicate in English with SRI employees. Customer further warrants that authorized Drivers and any other personnel have completed training and demonstrated competence in the use and operation of the ALS.
 - (e) Customer warrants that all transport equipment used by Drivers or other personnel in connection with the ALS system will be clean and suitable for service, free from any material defects, will comply with all federal, state and local laws, regulations and rules applicable to such equipment and the operation thereof and will be suitable in all respects for loading and transportation of the product(s) loaded at the ALS.
 - (f) Customer will abide by and follow and ensure that all Drivers abide by and follow all current operating and safety procedures ("Procedures") that are contained in

SRI's training materials for drivers. Customer acknowledges Drivers have been trained in these Procedures. SRI may amend or supplement these Procedures from time to time and will post notice of such changes at locations readily visible to Drivers. Revisions to the Procedures will be effective upon such posting. SRI will notify Customer of these changes, when appropriate, by mail or such other means agreed to jointly.

- (g) In its discretion, SRI may decline to give approval for, or may withdraw its approval of, the use of the ALS by any Customer, Contractor or its personnel at any time. In such a case and when practical, SRI will advise Customer of such action first by telephone at the telephone number listed below for Customer and then in accordance with the provisions of Section 9.

5. Insurance of Customer: For the duration of this Agreement, Customer agrees to maintain, at its own expense:

- (a) Workers' Compensation Insurance (including Employer's Liability, if provided) complying with all requirements of applicable Federal or State Law; and

- (b) Public Liability Insurances, provided by insurers satisfactory to SRI consisting of:

- (i) Commercial General Liability, including (A) Personal Injury; (B) Contractual Liability; (C) Broad Form Property Damage; and (D) Products & Completed Operations;

- (ii) Commercial Automobile Liability insuring all vehicles owned, leased, hired or used by Customer and including, where applicable, Endorsement Form MCS-90;

- (iii) Such Excess (or Umbrella) insurance as will, in combination with (b)(i) and (b)(ii) above, provide a total limit of liability of \$1,000,000 for any one accident or occurrence in respect of bodily injury or death, personal injury and/or damage to property, and \$1,000,000 aggregate in respect of any coverage having an Aggregate Limit of Liability.

Each such Public Liability Insurance will:

- (iv) name SRI as an additional insured with respect to activities of the Customer; and

- (v) provide that such insurance is primary (not subject to Other Insurance provisions) with respect to SRI. All policies will provide that the insurance may not be non-renewed, cancelled or materially changed without first giving SRI 30 days' prior written notice of the non-renewal, cancellation or material change. Customer, for the duration of this

Agreement, will provide to SRI certificates of insurance evidencing the Public Liability Insurances specified in this Section 5.

6. **Term:** This Agreement will continue in effect until terminated by one of the parties. Either party may terminate this Agreement with 30 days written notice to the other party. This termination will not in any respect release or discharge Customer from, or impair or affect, any obligations, indebtedness or liabilities of Customer to SRI arising under or existing pursuant to this Agreement before the termination.

7. **Relationship:** Nothing in this Agreement will be deemed to create the relationship of principal and agent, employer and employee, lessor and lessee, partnership, joint venture or any other relationship between SRI and Customer except as specified in this Agreement. Customer and its employees, contractors, and agents will in no respect be deemed to be the agents, employees or servants of SRI.

8. **Arbitration:** Any controversy or dispute arising under or in relation to this Agreement between the parties that cannot be resolved by the parties themselves will be settled by arbitration in Tacoma, Washington in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The prevailing party in the proceeding will be entitled to recover all of its costs and expenses, including its reasonable attorney's fees.

9. **Form of Notices:** Except as provided in Section 4(g), any notice will be by registered or certified mail (return receipt requested) addressed to the addresses below and by facsimile to the numbers below:

SRI
Sound Refining, Inc.
P.O. Box 1372
Tacoma, WA 98401

Customer

Telephone: 253-272-9348
Facsimile: 253-272-5686

10. **Miscellaneous:** This Agreement is binding upon and inures to the benefit of the parties and their respective successors, assigns and legal representatives. This Agreement will be governed by and construed under Washington law. This Agreement constitutes the entire agreements between the parties with regard to the use of the ALS and may be altered or amended only by duly executed written agreement of the parties. The signatories to this Agreement warrant that they have the authority to bind the parties to this Agreement.

This **PRODUCT LOADING AGREEMENT**

has been executed by Sound Refining, Inc., and _____

Sound Refining, Inc.

Company

By

By

Print Name

Print Name

Title

Title

Date

Date

**Department of Transportation, 49 CFR Part 172
Hazardous Materials: Security Requirements for
Offerors and Transporters of Hazardous Materials;**

COMPLIANCE STATEMENT

Company Name: _____

Address: _____

_____I, the **Customer** have a security plan in place in accordance with the Department of Transportation, 49 CFR Part 172, Hazardous Materials: Security Requirements for Offerors and Transporters of Hazardous Materials; Final Rule.

_____I, the **Customer**, do not transport hazardous materials to or from SRI facility and therefore are not required to have a security plan in accordance with the Department of Transportation, 49 CFR Part 172, Hazardous Materials: Security Requirements for Offerors and Transporters of Hazardous Materials; Final Rule.

Signature: _____ Date: _____

Print
Name: _____

Title: _____