

# CAMIN CARGO CONTROL - TERMS AND CONDITIONS - 2018



Unless otherwise specifically agreed to in writing, Camin Cargo Control (hereinafter called "the Company"), undertakes services in accordance with these general terms, conditions, and provisions (hereinafter called "General Conditions") and accordingly all offers or tenders of service are made subject to these General Conditions. All resulting contracts, agreements, new work orders, or other arrangements will, in all respects, be governed by these General Conditions, except only to the extent that if the law of the place where such arrangements or contracts are made or carried out shall preclude any of the General Conditions then such local law shall prevail, but only to the extent that it contradicts with these General Conditions.

Inspection is the process whereby the Company, using its knowledge and expertise, examines or observes commodities, products, services, procedures, or operations for the purpose of providing information to the Principal and/or the Principal's designees.

All enquiries and orders for the supply of inspection or additive services must be accompanied by sufficient information, product specifications and instructions to enable the Company to evaluate and/or perform the services requested. The Company will provide services in accordance with (i) these terms and conditions, (ii) the Client's specific instructions as confirmed by the Company, (iii) the terms of the Company's standard order form (if applicable), (iv) any relevant trade customer, usage or industry standard and (v) such methods as the Company shall consider appropriate on technical, financial and / or operational grounds.

Services provided by the Company for its clients, including the reports issued, used and/or relied upon by these clients shall be subject to the following terms and conditions:

1. **SERVICES AND DISCLAIMER OF WARRANTIES.** Camin Cargo Control warrants solely to the paying or contracting person or entity, ("Client") exclusively, that its services shall be performed in a workmanlike manner consistent with that level of care and skill ordinarily exercised by other companies providing like services under similar circumstances. The Client is required to ensure that adequate instructions are given to the Company and sufficient information is given in due time to enable the required services to be performed effectively. Special services that exceed the scope of standard services as referred to in the General Conditions will only be undertaken by the Company in accordance with a written agreement evidencing the special service requested, price agreed upon, and any other conditions relevant to the service request.

THE COMPANY MAKES NO OTHER REPRESENTATIONS AND NO OTHER WARRANTIES OR CONDITIONS ON THE PERFORMANCE OF WORK, REPORTS PRODUCED, OR THE PRODUCTS USED. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE COMPANY EXCLUDES AND DISCLIAIMS ALL OTHER EXPRESS AND IMPLIED WARRANTIES, WHATSOEVER, INCLUDING WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, CONDITION, DURABILITY, DESIGN, CAPACITY, OPERABILITY, WORKMANLIKE PERFORMANCE, RESULTS, OR FITNESS FOR A PARTICULAR PURPOSE AND WARRANTY OF RESULTS.

2. **CONTRACTOR.** The Company acts solely as at Contractor in performing services. The Company may be entitled, at its discretion, to delegate the performance of whole or in part of the services contracted for by the Client, to any qualified agent or subcontractor. If the Company elects to utilize a third party agent or sub-contractor, the Company may disclose all information necessary to the agent or subcontractor so that they may perform the contracted Service. When work is subcontracted out, the Client shall indemnify the Company and hold harmless against any costs, losses, damages, fees, expenses, claims, or liabilities, which the Company may incur as a result of, or in connection with any act, or omission, done by a third-party agent or contractor (including those claims arising from negligence) .. The Client agrees that all such Services shall be governed by these Terms and Conditions.

3. **CLIENT RESPONSIBILITY.** Client is responsible for conditions in and about the site and for advising Camin Cargo Control of the same and of all information required to enable Camin Cargo Control to perform its services safely and efficiently. Client should take all necessary steps to remove or cure obstacles and notify Company in advance of any known or latent hazards or dangers associated with any service contracted for.

Client is required to warrant to the Company that all information or documentation provided to Camin Cargo Control in relation to the services provided, is true and complete, and, if samples are submitted by the Client, that such samples are indicative of the whole.

4. **TERMINATION OF SERVICES.** Camin Cargo Control shall be permitted to immediately, without incurring any legal responsibility, delay or terminate services to the Client if (i) the Client fails to act in accordance with any of its obligations under these terms and conditions and such failure is not remedied within 14 days upon notice to the Client, and/or (ii) any delay of payment by the Client, bankruptcy proceedings by the Client, insolvency of the Client, cessation of business by the Client, receivership or changes in creditor arrangement.

In the event of termination of any or all service contracts for the above reasons, Client is responsible to the Company for immediate payment of all of the Company's outstanding invoices plus interest. In addition to any payment owed for services already invoiced, the Client is also responsible to the Company for services it has performed but has not invoiced Client for.



**5. LIMITATION OF USE.** Camin Cargo Control reports are prepared for the sole use of its Clients. These Clients shall be considered to be only those clients being invoiced for our services. Any other party obtaining or relying on a Camin Cargo Control report, other than the Client, does not constitute any representation of facts contained in the report by Camin Cargo Control. Both Camin Cargo Control and Client agree, there are no third party beneficiaries to any contracts between Client and Camin Cargo Control and that the Client is obtaining the services of the Company solely for its own purposes, unless agreed in writing otherwise.

Reports are issued on the basis of information provided and/ or samples provided solely for the benefit of the Client seeking the services. The Company is under no duty to report upon any information or conditions which are outside specific directives received from the client. Neither the Company, nor any of its affiliates, officers, employees, agents or subcontractors shall be liable to Client or any third party for any actions taken or not taken on the basis of such Reports or for any incorrect results arising from unclear, incorrect, ambiguous or false information provided to the Company.

**6. NO GUARANTEES.** Camin Cargo expressly disclaims liability as guarantor of the quality of goods or as insurer against loss or damage, and disclaims all liability in any such capacity. If any of our clients seeking greater protection from loss or damage than is provided for herein should obtain appropriate coverage. If such additional protection is secured, client agrees to obtain a waiver of subrogation against Camin Cargo Control.

If the requirements of the Client(s) necessitate the analysis of samples by the Client(s) or by any other third party laboratory; the Company will pass on the result of the analysis, but without responsibility for its accuracy. Likewise, where the Company is only able to witness an analysis by the Client or by any third party's laboratory; the Company will provide confirmation that the correct sample has been analyzed, but will not otherwise be responsible for the accuracy of any analysis or results. Camin Cargo Control will not be responsible for the condition or operation of equipment, instrumentation or measuring devices.

**7. LIMITATION ON LIABILITY.** The sole and exclusive remedy for any breach of contract or obligation, and for any loss or damage arising from any loss or damage incurred by Client, either directly or indirectly, in contract, tort, warranty, negligence, gross negligence, strict liability, negligence and intentional misrepresentation, or otherwise, against the Company and its officers, employees, agents or sub-contractors, arising out of or in connection with the terms of the Services provided, shall be limited to a sum equal to 10 times the amount the fee paid or charged for the specific item or service which gives rise to such claim, or Ten Thousand Dollars (\$10,000.00), whichever is less. Further, the Company shall incur no liability in respect to claims for indirect, incidental, punitive, or special damages, nor will the Company be responsible for loss of profit, business interruption, loss of business, cancellation of contracts, regardless of whether such loss may arise directly or indirectly,

The limitation on liability set forth in this Section 7 shall remain in place unless Client Requests Company increase the limit of liability prior to Company accepting a Client job, and such request and agreement is evidenced in writing, setting forth the increased liability limit and any negotiated price of services, and is executed by an authorized Company representative.

**8. INDEMNITY AND HOLD HARMLESS.**

(A) Client releases and shall save, indemnify, defend and hold Company, its employees, officers, directors, agents, affiliates and subsidiaries harmless from and against any and all liabilities, losses, damages, claims, demands, causes of action, suits and associated expenses (including, but not limited to all court costs, expert witness fees, investigative expenses and attorneys' fees) and awards arising in favor of Client or any third party as a result of, and/or in any way occurring, incident to, arising out of, or in connection with the performance of services or production of reports by the Company (*including without limitation personal injury claims, property damage claims, environmental damage claims, negligence claims and acts of omissions of the Company and its employees*) pursuant to this Agreement and/or the transportation, handling, or disposal of Client's Hazardous Materials, to the extent that the aggregate of any such claims relating to any one service exceed the limit of liability addressed in Section 7.

(B) This indemnity shall specifically apply to losses, claims, damages, liabilities, awards, demands, litigation expenses, suits or causes of action of every kind and character arising out of or in connection with the negligence or breach of contract by any indemnified Person, whether actual or alleged, in the performance of services under this Agreement. In no event shall the Company be liable to Client for indirect, punitive, special, incidental, or consequential damages (including, without limitation, loss of profit, delay, loss of future business, cancellation of future or existing contracts, business charges, storage charges, demurrage charges or business interruption). Litigation expenses or other fees (including without limitation, attorneys' fees, court cost, and/or pre- or post-judgment interest), or any other expenses or costs incurred by Client or any other party in any litigation against or involving the Company or any Indemnified Person in connection with this Agreement or any service provide under this Agreement even if Client is the prevailing party, to the extent that the aggregate of any such claims relating to any one service exceed the limit of liability addressed in Section 7.

(C) Client shall further defend, indemnify and hold the Company harmless from and against all claims, cross claims, suits, and liabilities (including without limitation, litigation costs, attorneys' fees, court cost, and/or pre- or post-judgment interest) arising from or related to, whether directly or indirectly, (A) actions by any governmental authority or agency or other for any actual or asserted failure of the Client, or of any party other than the Client who may have taken possession



of or relied upon a Company result, or report, to comply with any ordinance, statute, law, order or territorial regulation; and/ or (B) information or documentation supplied by the Client and relied upon by the Company; and/or (C) claims, suits and liabilities (including without limitation, litigation costs, attorneys' fees, court cost, and/or pre- or post-judgment interest) arising from or related to the unauthorized use or misuse of Company reports.

(D) ADDITIVE LIABILITY AND INDEMNITY. The liability of the Company for additive services are the same as discussed in Section 8 (A) (B) (C) (E) and (F) further if Client is the prevailing party in any action, any reward shall be limited to the extent that the aggregate of any such claims relating to any one service exceed the limit of remedy addressed in Section 7. In addition to the Indemnity provisions above, the following terms and conditions apply to additive jobs:

- i) The Company shall not incur liability for any delay or failure to deliver the additives in accordance with the Client's instructions, if the delay is caused by occurrences outside the control of the Company or its Vendor's (See also Section 18);
- ii) The Company will make every attempt to reasonably identify and recommend the type, quantity and quality of additives required for an additive job, and/or make recommendations regarding additives and the proportion of such additives for blending, however the Client will at all times be responsible for any decision regarding the additive treatment, including what additive is ultimately used, the quality or quantity that is ordered, and the mixture into cargos.
- iii) The Company bears no liability for any undesirable results, in regards to both the Client or Third-Party (such as terminals, or subsequent purchases) related to improper heating, circulation, transfer and mixing of the cargo by tank to tank transfer, or from use of a vessel's tanks, heating, pumps and pipelines.
- iv) The Company shall not incur any liability for any costs, expenses, claims against, damages or losses suffered by the Client or a third party when (i) the additives ordered by the Client are altered or tampered with in any way, or when the additives do not have the desired results when added to specific cargo, (ii) the specific instructions given by the Company regarding mixing, blending or use of the additives have not been explicitly followed by the Client or Third Party, or (iii) when any information given to the Company by the Client is incorrect, misleading, or ambiguous, (iv) when the Client breaches its warranties or obligations (See section 13) or (v) in the event of loss, when the Client or Third Party fails to take reasonable steps to appropriately mitigate any such loss or expense.
- v) Camin Cargo Control shall not incur any liability for indirect or consequential damages (See Section 8(b))

**(E)** Nothing in this Section 8 limits or excludes the responsibility of the Company for liabilities that which cannot be excluded by law, including, (i) personal injury or death resulting from negligence on behalf of the Company, (ii) damages or liabilities incurred by the Client as a result of fraud or fraudulent misrepresentation by the Company.

**(F)** The indemnities in favor of the Company in this section 8 are applicable even if the claims, suits, and liabilities arise, or are alleged to arise from negligence, breach of contract or other legal fault of the Company.

**9. CLAIM REPORTING.** All claims for loss, damage, or expense against Camin Cargo Control will be barred unless they are made in writing within one-hundred and twenty (120) days of the date at which the loss, damage, defect, or alleged non-performance become apparent or ought to have become apparent to the Client. Any legal action must be brought no later than two (2) years from the provision of Services by Camin Cargo Control.

**10. HAZARDOUS SUBSTANCES.** In order for Camin Cargo Control to perform the services requested by Client, Client will provide and Camin Cargo Control will receive sample materials for analyses, or any other hazardous or toxic materials, wastes and substances which are defined, determined or identified as such under any federal, state or local laws, rules or regulations (whether now existing or hereafter enacted or promulgated) or any judicial or administrative interpretation of any thereof (The "Hazardous Materials"). Client understands and agrees that any Hazardous Materials received by Camin Cargo Control from Client or at Client's request shall remain the property of Client and that upon completion of Camin Cargo Control's services, Camin Cargo Control will dispose all unused portions of samples as specified by Client. In the event Client does not specify its preferred method of disposal, Camin Cargo Control will return to Client all unused samples which contain Hazardous Materials, excluding finished gasoline and diesel samples. Camin Cargo Control reserves the right to charge Client for the disposal of unused samples in accordance with Camin Cargo Control's current sample disposal policy.

**11. PRELIMINARY REPORTS.** Any preliminary or incomplete report submitted by the Company to the Client shall be relied on at Client's sole risk, and the Company shall bear no liability regarding the accuracy or deviation between information in a preliminary or incomplete report and a final written report signed by an authorized Camin Cargo Control representative.

**12. ADDITIVE JOBS.** The Terms and Conditions set forth in this document are fully applicable to any additive job Camin Cargo Control is contracted to provide. Further, the following Terms and Conditions are also applicable to Camin Cargo Control Additive Contracts: i) Camin Cargo Control will organize supply and delivery of the specific additives needed by an additive client; ii) Camin Cargo Control will make recommendations regarding the treatment of crude oil and petroleum products, including any recommendations regarding blending of products and inclusion of additives to such products; iii) Camin Cargo Control will conduct trial blends and cargo treatment with additives to help ensure the desired results occur.



It is the Additive Client's responsibility for the following:

- i) Obtain all required licenses, import documentation and Custom requirements in regards to the additive(s) required for the specific job.
- ii) Confirm the additives to be used for a specific job or confirm the additives recommended by the Company are acceptable.
- iii) Client agrees that once Camin Cargo Control places an additive order any material ordered shall become the property of the Client and the Client shall bear all risk relating to transport and delivery of the additive. The Client shall be invoiced accordingly.
- iv) Prior to any additive treatment, the Client is required to supply samples of the cargo to be treated, or make available the cargo to be treated, so the Company may recommend the type and amount of additive appropriate for the job. Should the Client not provide a cargo sample or make available the cargo before treatment, any additives ordered and delivered will be based exclusively on certificates of quality or product specifications provided by the Client. In this situation, the Client is required to draw and retain a sample of the untreated cargo before the additive treatment in order to better resolve any post-treatment issues.
- v) The Client must fully represent to Camin Cargo Control, in writing, any material information relating to the cargo to be treated, including quantity and quality of cargo, make-up of cargo, any prior treatments of the cargo, substances previously added to the cargo, any information regarding contamination, any information provided by other service providers in relation to the cargo, or any other information that may affect the recommendation of additive use and treatment process by the Company.
- vi) Client shall bear all risks, expenses and liabilities, if i) Camin Cargo Control is unable to perform laboratory blending of cargo samples and recommended additives prior to supply, upon which sample blending the Company would provide any recommendation; and/or ii) if the vessel containing the cargo to be treated is unable to heat, circulate, transfer, and mix the cargo by tank to tank transfer, or by using the vessel's tanks, heating pumps, and pump systems.

13. **CONFIDENTIALITY.** Camin Cargo Control reserves the right to use any and all Client information, including but not limited to records, instructions, samples or other related documents, within Camin Cargo Control's control, for the purpose of offering any necessary defense against any legal controversy that a Client or any other third party may be a party to when the Client or third party relies on or uses Camin Cargo Control's work product or report as part of their claim.

14. **PRICES.** Unless otherwise agreed to in writing, Client shall pay Camin Cargo Control in accordance with the Company's applicable Schedule of Rates in effect as of the date the services are rendered. The Schedule of Rates are subject to change at any time without notice. In the event that any unforeseen problems or expenditure arise in the course of carrying out any of the contracted services, the Company shall be entitled to make additional charges to cover additional time and cost necessarily incurred to complete the service.

The Principal shall not be entitled to retain or defer payment of any sums due to the Company on account of any dispute, cross claim or set off which it may allege against the Company.

15. **TAXES.** Any tax or levy, whether now in force or enacted or levied in the future, except a tax based on Camin Cargo Control 's net income, based on or measured by the charges for the services furnished hereunder shall be in addition to the charges specified in the Schedule of Rates and shall be paid by Client. All taxes, duties, or other governmental charges assessed outside the United States shall be reimbursed by Client.

16. **ACCEPTANCE.** Acceptance of a Client's request for service is expressly limited to acceptance of these General Terms and Conditions and any attached Provisions. Camin Cargo Control agrees to provide Service under these terms and conditions only. These Terms and Conditions shall prevail over any other terms proposed or submitted by Client at any time (including service agreements, purchase orders, instructions, nominations or other documents). Any additional terms submitted by the Client are expressly rejected and shall be of no effect unless agreed upon, in writing, as discussed in Section 22.

17. **SEVERABILITY.** Should any provision of the General Conditions be held invalid, illegal or unenforceable, such action shall not affect any other provision of the General Conditions.

18. **REFORMATION.** If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part were deleted, that provision will apply with what alterations are necessary to make it valid, enforceable and legal.

19. **FORCE MAJEURE.** Camin Cargo Control shall not be responsible for delay or failure to perform the services pursuant to this Agreement due to causes beyond its control.

20. **ENTIRE AGREEMENT.** The General Conditions and any applicable Schedule of Rates represent the entire Agreement of the parties. Camin Cargo Control shall not be bound by any prior or contemporaneous oral or written understanding, agreement or Client purchase orders with respect to the service to be performed pursuant to this Agreement.



21. **AGREEMENT MODIFICATIONS.** Changes, modifications, amendments or waivers to the General Conditions shall be effective only if in writing and executed by an officer of Camin Cargo Control and by the Client's authorized representative.

22. **LEGAL WITNESS PROCEEDINGS.** Should Camin Cargo Control or any of its employees be called to testify (whether at a trial, deposition, administrative proceeding, or other use), participate in discovery, or otherwise assist in any dispute between Client and any third party with respect to Camin Cargo Control 's work or services, and whether or not Camin Cargo Control or its employees shall have been subpoenaed to testify or assist, Client shall pay Camin Cargo Control's then current applicable rates, charges and other fees for such services.

23. **JURISDICTION & GOVERNING LAW.** These terms and conditions are governed by and shall be construed in accordance with the laws of the State of Texas, without regard to its conflict of laws rules. All disputes arising out of this or in connection with this Agreement shall be submitted to the exclusive jurisdiction of the Courts of Harris County.

24. **PROVISIONS.** Any Provisions listed overleaf are to be considered part of these Terms & Conditions.

25. **CONFLICTING TERMS.** In the event of any conflict between these terms and conditions and any Client instruction, terms and conditions, payment terms or other attachments, then these terms and conditions will control over the conflicting terms. Any conflicting term, provision or instruction in Client documentation, nomination, or other document are objected to and explicitly rejected.

## CAMIN CARGO CONTROL - PROVISIONS - 2018



1. Our services are performed according to current API / ASTM guidelines as well as standard operating procedures consistent with governmental regulations and industry protocols. Refer to Section II.A – Inspection Services for further description of our services.
2. Customer and Third Party language in sales contracts, which reflect commercial decision's regarding "billable quantities", are not the responsibility of Camin Cargo Control. In case of contractual differences, all quantities will be reported on the final summary report. Contractual differences may include, but are not limited to, the following: product level in shore tank below critical zone, product level in shore tank in critical zone, inability to strike actual gauge height, inability to confirm fullness of terminal lines, unslotted gauge pipes, gains and losses, VEF application, etc.
3. Camin Cargo Control has no authority over terminal operational procedures and does not assume any liability for their decisions or actions. Our ability to operate in these locations is governed by individual terminal procedures and directives. Mitigating Factors may include, but are not limited to, the following: use of shell correction factors, accuracy of shore tank calibration tables, water and snow on external floating roof, bottom flexing, unslotted gauge pipes, inability to confirm fullness of terminal lines, inability to climb shore tanks due to unsafe conditions, etc. Camin Cargo Control does not act as mediator for any third party wishing to release or detain vessels.
4. Camin Cargo Control does not assume any responsibility or liability for testing performed on samples obtained from a closed system sampling device, bleeders or spigots. Samples obtained by these methods may not constitute representative samples.
5. If requested, Camin Cargo Control performs "stop gauge calculations" for comparison purposes only. Responsibility is limited to reasonable care. The terminal and/or vessel is responsible for the calculation and observation of the "stop gauge" measurement, pumping, stopping and valve setting.
6. Stated product identification in any Camin Cargo Control report is based solely on information supplied by the Customer and Camin Cargo Control disclaims any responsibility for the accuracy of the information. Testing is performed as per Customer supplied instructions and not to determine the marketability of the product.
7. In the event of a quality dispute, ASTM D-3244 will be the reference for compliance specification.
8. For Quality Control and Conformance to Specifications purposes, samples are tested according to the most current standard laboratory test method available at time of testing unless stated otherwise.
9. Multiple measurements of the same property of a specific sample by a given test method rarely give identical results. Each result, however, has equal validity and cannot be arbitrarily discarded. If more than one result is obtained for the same property of a specific sample by a given test method, then Camin Cargo Control will apply sound scientific principals in order to determine the reportable result. International standards such as ISO 4259, ASTM D-3244, IP-367, etc. can also be used in case of dispute between buyer and seller should the process be agreed to by the parties.
10. In case of equipment malfunction or if a particular Camin Cargo Control laboratory does not have the necessary equipment to run a specific test, the samples may be sent at the client's cost to a different laboratory for testing.
11. If the Customer request the analysis of samples by a third party or the Customer's own laboratory, Camin Cargo Control will pass on the results without any responsibility for their accuracy.
12. If Camin Cargo Control is unable to provide all or part of the contracted services for any cause whatsoever outside the Company's control, the Company shall be entitled to partial payment of (i) the amount of all non-refundable expenses incurred by the Company and/or (ii) a portion of the contract price equal to the proportion of the services actually performed.
13. All reports will be maintained for a period of five (5) years, unless otherwise required.
14. Payments are due within 30 days of the date of the invoice. Customer agrees that each of its past due accounts shall be charged a monthly Finance Charge equivalent to the highest legal applicable rate. Customer further agrees that if any of its accounts are placed for collection, Camin Cargo Control shall be entitled to collect reasonable collection fees and court cost from Customer.