



BRAZOS RIVER FUELING



618 E. 2ND ST.
FREEPORT, TX
(979) 233-4751



These Terms and Conditions shall be valid and binding for all Purchase Orders, offers, quotations, prices, and/or deliveries or Product (as defined herein) or Services (as defined herein) made Kirby Inland Marine, LP in its own name, under the assumed name of “Brazos River Fueling”, or under any other assumed name (the “Company”) on or after August 24, 2021. These Terms and Conditions may also be incorporated by reference to the Company’s website at <http://www.brazosriverfueling.com> under “Terms & Conditions” or <https://kirbycorp.com/wp-content/uploads/2021/10/Fueling-Terms-and-Conditions-2.pdf>, where they are available, without it being necessary to be duplicated in a standard form writing.

TERMS AND CONDITIONS

1. **General.** All Products sold or Services rendered by the Company shall be rendered pursuant to these Terms and Conditions unless the Company agrees otherwise, in a writing, signed by all parties thereto prior to commencement of the services rendered or delivery of the products sold. Acceptance of a Purchase Order by the Company, arrival of the Customer’s Vessel at the Premises to receive Products or obtain Services, or the departure of Company’s vehicle for delivery of Product or Services to a location specified by Customer shall be conclusive evidence of the acceptance of these Terms and Conditions.
2. **Definitions.**
 - (a) “Customer” means the owner and/or operator and/or charterer and/or master and/or representative requesting that the Company provide Services and/or provide Product.
 - (b) “Contract” means the agreement between the Company and the Customer for specific Product to be supplied to or Services to be carried out by the Company.
 - (c) “Marine Fuels” means products derived from crude oil, delivered or to be delivered to a Vessel for consumption by such Vessel.
 - (d) “Premises” means the premises, including the docks and other facilities of the Company.
 - (e) “Product” means any Marine Fuels, lubes, and related products that may be specified from time to time on the Company’s website at <http://www.brazosriverfueling.com> under “Products” or <http://kirbycorp.com/marine-transportation/inland-marine>, or similar items offered by the Company from time to time. Not all Products may be offered by all locations.
 - (f) “Purchase Order” means purchase order, work order, quotation, invoice, and/or any other communication between the parties, including, but not limited to, written, e-mail, and/or oral, which identifies requests by the Customer for Product or Services from the Company.
 - (g) “Services” means dockside delivery of water, fuel, and lube, bilge removal, oil filter and household trash disposal at the Company’s Premises to Customer’s Vessel and, where available, land based deliveries of fuel or lube by Company truck to a location specified by Customer or land based deliveries of fuel and lube to Customer’s truck, tank, or other equipment at the Company’s Premises. Not all Services may be offered by all locations.
 - (h) “Vessel” means any vessel, ship, tug boat, barge, and/or any other watercraft and/or structure.
3. **Applicability.** These Terms and Conditions are paramount and supersede any provisions to the contrary contained in any invitation to bid, instructions, purchase orders, work orders, or other documentation relating to Products or Services. Except as may be mutually agreed in writing by the Company and the Customer, these Terms and Conditions apply to all Contracts between the Company and the Customer for Products and Services. Agreements varying these Terms and Conditions must be in writing and signed by both parties. For the avoidance of doubt, these Terms and Conditions are limited to Products and Services and do not apply in any way to fleeting, towage, or marine transportation services of any type.
4. **Quotations.** All quotations and bid proposals shall be valid for until midnight of from the date provided to the Customer unless otherwise specified in writing by the Company. Prices exclude any clean up, abatement, or disposal of any hazardous materials which require special handling or disposal. If the price is not cited in the applicable purchase order, it is agreed that any Product sold shall be billed at the price last quoted.
5. **Financial Responsibility.** The sale of product to Customer is subject to credit approval by the Company. If the financial condition of the Customer becomes impaired or unsatisfactory in the sole discretion of the Company, advance cash payments, guarantees, a letter of credit, collateral, or other satisfactory security for each delivery shall be given by the Customer upon demand in

writing by Company, and deliveries of Products or provision of Services may be withheld until such payment or security is received. This provision is also applicable in the event Customer's approved credit limit has been exceeded.

6. Risk of Loss/Title transfer. Dockside deliveries of Product shall be deemed to be complete and title and risk shall pass from the Company to Customer as the Product passes the flange connecting the delivery facilities provided by the Company with the receiving facilities provided by the Customer. In case of land based deliveries, if the location for delivery is at the Company's Premises, then risk and title shall transfer when the goods are loaded onto the first of the Customer's appointed truck, tank, or equipment. If the location for delivery is other than the Company's Premises, then risk and title shall transfer from the Company to the Customer at the time of arrival of the Company's truck at such location, but before the goods have been off-loaded.
7. Quality and Quantity; Complaints. The Company's measurement of Product shall be accepted as conclusive, but the Customer is at liberty to be represented at the measuring. Should Customer fail to make inspection, it shall accept the Company's inspection and count. Complaints of short delivery of Product shall only be admissible if made to the Company's representative and noted on the delivery receipt at the time of Product delivery and confirmed in writing received by the Company within 5 business days of delivery. All invoice quantities are based on Company meter readings except in the case of deliveries from a Company truck that does not have a meter, and in such case, the invoice quantity shall be based on the meter reading when loading the Company truck prior to the delivery to Customer. Complaints of defect in quality of Product shall be admissible only if made in writing received by the Customer within 5 business days of delivery. Absent manifest error, Seller's weights and measurements shall be final and binding as to quantity and quality.
8. Demurrage. The Company shall not be liable for any demurrage, delay, or loss incurred by the Customer due to Vessel congestion affecting the Premises or for any other reasons.
9. Warranties; Disclaimers. The Customer accepts that the grade of any Marine Fuels or any other Product to be supplied hereunder shall be determined in accordance with ISO 8217 as applicable or as specified in the Purchase Order for the relevant Product being delivered. The Customer shall be solely responsible for nominating to the Company the grade of Marine Fuels or other Product suitable for the Vessel, including determination of compatibility with Marine Fuels on board the Vessel. The Company represents that the Products supplied will conform to the typical characteristics outlined in the Company's current technical literature relating to such goods and that it will convey good title to the Products supplied free of all liens. UPON NOTICE AND VERIFICATION OF A VALID PRODUCT QUANTITY OR QUALITY CLAIM BY THE COMPANY, THE COMPANY AT ITS OPTION, MAY REPLACE THE PRODUCT, REFUND THE PURCHASE PRICE OF THE PRODUCT, OR REFUND THE DIFFERENCE OF THE PURCHASE PRICE OF THE PRODUCT DELIVERED LESS THE FAIR MARKET VALUE OF THE PRODUCT DELIVERED, WHICH SHALL BE THE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY HEREUNDER THEREFOR.

With regard to the Services, the Company will repair or replace without charge at its Premises workmanship or material furnished by it other than Product which proves defective under normal service conditions, provided written notice of the defect is received by the Company within 10 days after departure of the Vessel from the Premises. IN CONSIDERATION OF THE FOREGOING UNDERTAKING, THE CUSTOMER AGREES THAT THE COMPANY'S LIABILITY FOR DEFECTIVE WORKMANSHIP OR MATERIAL OTHER THAN PRODUCT INCLUDED IN THE SERVICES SHALL BE LIMITED SOLELY TO SUCH REPAIR OR REPLACEMENT.

THE CUSTOMER ACKNOWLEDGES AND AGREES THAT THE COMPANY SHALL HAVE NO LIABILITY OF ANY KIND TO THE PARTIES AT INTEREST FOR DAMAGES OF ANY NATURE WHATSOEVER, CONSEQUENTIAL, ECONOMIC, COMPENSATORY OR PUNITIVE, WHETHER PAST, PRESENT OR FUTURE, DIRECTLY OR INDIRECTLY CAUSED BY NEGLIGENCE, OMISSION, AND/OR DEFECTIVE WORKMANSHIP OR MATERIAL INCLUDING, BUT NOT LIMITED TO, FAULTY OR NEGLIGENT DESIGN OR MANUFACTURE, DELAY, LOSS OF REVENUE, DETENTION, DEMURRAGE, TUG EXPENSE, PILOTAGE, CREW WAGES, SALVAGE, AND LOSS OF USE. FOR SUCH PRODUCT OR SERVICES CLAIMS, THE CUSTOMER HEREBY WAIVES ANY REMEDIES AVAILABLE AT LAW OTHER THAN THOSE EXPRESSLY PROVIDED FOR HEREIN, INCLUDING BUT NOT LIMITED TO ANY CLAIMS FOR OTHER LOSS OR DAMAGE OF ANY TYPE INCLUDING WITHOUT LIMITATION, LOSS OF PROFITS OR REVENUE, DOWN TIME, DEMURRAGE, LABOR COSTS, REPAIR COSTS, INSTALLATION OR REPLACEMENT OF MATERIAL, INCONVENIENCE, COST OF RENTAL OR REPLACEMENT EQUIPMENT, FAILURE OF EQUIPMENT TO OPERATE, OTHER ECONOMIC LOSS, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES.

THE COMPANY SPECIFICALLY EXCLUDES AND DISCLAIMS ANY AND ALL STATUTORY OR OTHER CONDITIONS AND/OR IMPLIED AND/OR EXPRESS WARRANTIES OR REPRESENTATIONS, INCLUDING WARRANTIES OF WORKMANLIKE SERVICES OR PERFORMANCE, MERCHANTABILITY AND FITNESS FOR ANY PURPOSE, THE DESCRIPTION OR QUALITY OF THE MARINE FUELS OR OTHER PRODUCTS, OR THE ABSENCE OF BIO-COMPONENTS IN THE MARINE FUELS EXCEPT AS SET FORTH ABOVE.

10. Payment/Lien. Except as otherwise specified in writing by the Company, all payment terms are net, due in full immediately upon completion of work and receipt of invoice. Past due charges are subject to a finance charge equal to the lesser of two percent

(2.0%) per month or the then current maximum rate of interest allowed in the State of Texas from date of completion of work until paid. Invoices are payable, in United States funds only, to Kirby Inland Marine, LP or Brazos River Fueling, as applicable, to the account information specified on the invoice. The Customer shall be responsible for applicable sales taxes on Products delivered or Services provided by the Company. The Customer agrees that Products or Services provided to a Vessel hereunder are "necessaries" of the Vessel, and that the Company shall have a lien on any Vessel for all charges which may accrue for work done under these Terms and Conditions and/or any Contract. The Customer represents and warrants to the Company that it is either the owner of the Vessel or is authorized to accept and/or approve Purchase Orders for and on behalf of the owner of the Vessel, incur charges therefor, and to authorize a lien on the Vessel on behalf of the owner of the Vessel. In the event the charges hereunder shall not be paid in accordance with agreed upon terms, the Customer and/or owner of the Vessel shall pay all expenses of collection, including reasonable attorney's fees and interest. Nothing herein shall be deemed to constitute waiver of any maritime lien of the Company against a Vessel.

11. Indemnity and Limitation of Liability. Charges for Product to be delivered and/or Services to be performed by the Company are based the allocation of risk set forth in these Terms and Conditions being applicable in lieu of any other liability or implied and/or express warranties, including warranties of workmanlike services or performance, merchantability and fitness for any services. The Company's aggregate liability, directly or indirectly, to the Customer, Customer's employees, invitees, contractors, subcontractors, or the employees of such subcontractors or invitees and/or any and all third parties, for any claims for personal injury, or death of an individual, or loss or damage to the Vessel, its equipment, or other property, or any other property, or timeliness of completion of the work, howsoever caused, shall in no event exceed the total sum of the specific Contract price. THE CUSTOMER AGREES TO INDEMNIFY, DEFEND AND HOLD THE COMPANY HARMLESS WITH RESPECT TO ALL LIABILITIES OF EVERY KIND AND CHARACTER EXCEEDING THE TOTAL SUM OF THE CONTRACT PRICE, WITHOUT LIMIT AND WITHOUT REGARD TO THE CAUSE OR CAUSES THEREOF OR THE NEGLIGENCE OR FAULT (ACTIVE OR PASSIVE) OF ANY PERSON OR ENTITY (INCLUDING THE SOLE, JOINT OR CONCURRENT NEGLIGENCE, GROSS NEGLIGENCE, OR FAULT OF THE COMPANY, COMPANY'S EMPLOYEES, INVITEES, CONTRACTORS, SUBCONTRACTORS, OR THE EMPLOYEES OF SUCH CONTRACTORS OR INVITEES ON ANY THEORY), ANY THEORY OF STRICT LIABILITY, ANY DEFECT OF PREMISES, OR THE UNSEAWORTHINESS OF ANY VESSEL (WHETHER OR NOT PREEXISTING THE DATE OF THESE TERMS AND CONDITIONS), BROUGHT BY THE CUSTOMER, CUSTOMER'S EMPLOYEES, INVITEES, CONTRACTORS, SUBCONTRACTORS, OR THE EMPLOYEES OF SUCH SUBCONTRACTORS OR INVITEES AND/OR ANY AND ALL THIRD PARTIES.

In the event of personal injury or death, or any loss or damage to the Vessel or any other property, the Customer agrees that the Company shall be liable only for damages affirmatively proven to have been caused by sole negligence of the Company or its employees, limited in amount as set forth above.

The Customer shall ensure that the Vessel follows all applicable environmental laws, regulations, or orders, including reporting of spills to the National Response Center, the Texas General Land Office, or any other governmental entities to whom such notice is required to be provided. The Customer shall and shall cause the Vessel to indemnify and hold the Company harmless from any liability for environmental pollution attributable to the Vessel, and any costs, disbursements and attorney fees attendant thereto incurred by the Company. For any Vessel required by size to have a valid FMC Certificate of Responsibility (Water Pollution), the Customer and other parties in interest warrant that the Certificate will be kept in force at all times while the Vessel is located in the Premises or while the Company is providing services or delivering Product or other supplies to it.

The Company does not agree to the accident, indemnity and insurance provisions, if any, contained in any invitation to bid or specifications, relating to Company's liability for death or personal injury, and in such cases the Company accepts only liability as is imposed upon on it by law. Different or more extensive liabilities will be accepted by the Company only if an agreement in writing between the Company and the Customer stating the nature and extent thereof is entered into before the Vessel enters the Premises or Product or supplies are delivered to it, whichever first occurs, and if the price of the work is adjusted accordingly.

12. Risk and Insurance. The Customer shall have and maintain at its sole cost and expense:

(a) Hull and Machinery Insurance:

- i For commercial Vessels: for services and supplies provided to Vessels, in an amount not less than the fair market value of the Vessel, under the American Institute Tug Form (towing vessels), American Institute Hull Clauses (non-towing vessels), or equivalent, including sufficient cover for all costs for salvage and wreck removal.
- ii For noncommercial Vessels: for services and supplies provided to Vessels, in an amount not less than the lower of the fair market value of the Vessel or \$500,000.

(b) Commercial General Liability Insurance:

- i For commercial Vessels other than fishing Vessels: in an amount not less than \$5,000,000 any one accident or occurrence, including comprehensive form, broad form contractual liability, independent

- contractors, broad form property damage, personal injury, blanket waiver of subrogation, blanket additional insured (for the Company, its parent, affiliates, and any subsidiaries), and sudden and accidental pollution.
- ii For fishing Vessels: in an amount not less than \$1,000,000 any one accident or occurrence, including comprehensive form, broad form contractual liability, independent contractors, broad form property damage, personal injury, blanket waiver of subrogation, blanket additional insured (for the Company, its parent, affiliates, and any subsidiaries), and sudden and accidental pollution.
- (c) Where the Customer will take delivery at the Company's Premises other than by dockside deliveries, automobile Liability Insurance: in an amount not less than \$1,000,000 any one accident or occurrence.
- (d) Pollution Insurance:
 - i For commercial Vessels other than fishing Vessels: covering all watercraft owned or operated by the Customer, coverage must be written on the Water Quality Insurance Syndicate policy form, or equivalent, and must include bodily injury. Limits of liability will be in accordance with OPA90, but will be not less than USD \$10,000,000 each occurrence. The vessel owner or operator must also have Certificate of Financial Responsibility pursuant to OPA90, Coast Guard Regulations and if applicable any statutory equivalents.
 - ii For fishing Vessels: covering all watercraft owned or operated by the Customer, coverage must be written on the Water Quality Insurance Syndicate policy form, or equivalent, and must include bodily injury. Limits of liability will be in accordance with OPA90, but will be not less than USD \$1,000,000 each occurrence. The vessel owner or operator must also have Certificate of Financial Responsibility pursuant to OPA90, Coast Guard Regulations and if applicable any statutory equivalents.
 - iii For noncommercial Vessels: coverage for the subject Vessel owned by Customer, in an amount not less than the lower of the fair market value of the Vessel or \$500,000 or such greater amount as may be required by applicable law.
- (e) For Customers who have employees, Workers' Compensation Insurance/Employer's Liability Insurance: Statutory Workers' Compensation insurance fully complying with the laws of the state in which work is performed. Employer's Liability in an amount not less than \$1,000,000 each accident/each person or the maximum required by law, whichever is greater, including Longshore and Harbor Workers' Compensation Act Endorsement, Maritime Employer's Liability Endorsement, and Alternate Employer endorsement, stating that a claim brought against one party by an employee of the other party as a borrowed servant will be treated as a claim against the party by whom the person is actually employed.
- (f) Marine Liability Insurance:
 - i For commercial Vessels other than fishing Vessels: in an amount not less than \$10,000,000 any one accident or occurrence, including protection and indemnity per SP-23 Form or equivalent, collision liability/tower's liability (unless covered by hull and excess coverages up to protection and indemnity limit), marine contractual liability, and crew liability. Any "as owner" or "other than owner" limitations of liability are to be deleted or amended not to apply to the Company.
 - ii For fishing Vessels: in an amount not less than \$1,000,000 any one accident or occurrence, including protection and indemnity per SP-23 Form or equivalent, collision liability/tower's liability (unless covered by hull and excess coverages up to protection and indemnity limit), marine contractual liability, and crew liability. Any "as owner" or "other than owner" limitations of liability are to be deleted or amended not to apply to the Company.
 - iii For noncommercial Vessels: For noncommercial Vessels: in an amount not less than the lower of the fair market value of the Vessel or \$500,000 any one accident or occurrence.

For commercial Vessels, prior to the commencement of the services, the Customer shall, to the extent of the liabilities assumed by it hereunder, procure from each of its insurers, rated at A- or greater by S&P or AM Best, the insurance required herein. For noncommercial Vessels, prior to the commencement of the services, the Customer shall, to the extent of the liabilities assumed by it hereunder, procure from each of its insurers, rated at B+ or greater by S&P or AM Best, the insurance required herein. Upon request, the Customer shall provide evidence of such insurance to the Company.

13. **Force Majeure.** If, because of force majeure, either party hereto is unable to carry out any of the obligations under a Contract, other than the obligations to pay money due thereunder, and if such party promptly gives to the other party hereto written notice of such force majeure, then the obligations of the party giving such notice shall be suspended to the extent made necessary by such force majeure and during its continuance, provided that the party giving such notice shall use its best efforts to remedy such force majeure insofar as possible with all reasonable dispatch. The term "force majeure" as used herein shall mean acts of God, acts of public enemy, insurrections, riots, strikes, lockouts, labor disputes, accidents, fires, explosions, floods, breakdowns or damage to plants, equipment or facilities, embargoes, orders, or acts of civil or military authority, or other causes

of a similar nature which are beyond the reasonable control of the party affected thereby. Upon the cessation of the force majeure event, the party that had given original notice shall again promptly give notice to the other party of such cessation.

14. Law and Dispute Resolution.

- (a) These Terms and Conditions and/or any Contract shall be governed and construed in accordance with the General Maritime Law of the United States to the extent applicable and otherwise by the law of the State of Texas, except the law of conflicts of such state. In the event that either party shall institute an action in connection with any claim against the other party arising under these Terms and Conditions and/or any Contract or to enforce any provision thereof, the parties hereby agree that the venue for such action shall be in a court of competent jurisdiction in Harris County, Texas, or in the United States District Court for the Southern District of Texas, Houston Division, and that each party waives any objections as to jurisdiction or venue of these courts. In any action to enforce any provision of these Terms and Conditions and/or any Contract, the prevailing party shall be entitled to recover reasonable attorneys' fees and expenses from the non-prevailing party.
- (b) Notwithstanding anything to the contrary herein, and without prejudice to any rights or remedies otherwise available to the Company, by receiving Product, other supplies, or services, provided to a Vessel, or by its accepting these Terms and Conditions, the Customer expressly authorizes the Company to arrest the Vessel, or attach any other Vessel owned and operated and/or managed by the Customer, in any competent jurisdiction, as security for the obligations of Customer. Any costs or expenses of whatsoever kind incurred by the Company in respect of such arrest, including but not limited to attorney fees, legal representative fees, and all legal costs whatsoever will be added to the claim for which arrest is made and will be recoverable to the Company.

15. Waivers/Severability.

- (a) Failure by the Company at any time, or from time to time, to enforce any of the terms, provisions or conditions of these Terms and Conditions and/or any Contract shall not constitute a waiver by the Company of a breach of any such terms or provisions and shall not affect or impair such terms or provisions in any way or the right of the Company at any time to avail itself of rights or remedies as it may have at any time. No waiver by the Company of any of these Terms and Conditions and/or of any Contract shall be enforceable against the Company unless said waiver shall be in writing and signed by an authorized officer of the Company.
- (b) Customer and the Company agree that if any court construing these Terms and Conditions and/or any Contract shall determine that any provision thereof is inconsistent with or contrary to any applicable law, statute, code, rule, or regulation, said provision shall be deemed to be modified to the extent required to comply with such law, statute, code, rule, or regulation, and these Terms and Conditions and/or any such Contract, shall remain in full force and effect.
- (c) Customer and the Company agree that if any court construing these Terms and Conditions and/or any Contract shall determine that any provision thereof is unenforceable or void as contrary to law or public policy, then such provision shall be deemed severed therefrom without affecting any remaining provisions thereof.

16. Notices. All notices required under these Terms and Conditions and/or any Contract shall be in writing and shall be effective upon receipt if delivered to the party entitled to receive same by hand, facsimile, or the U.S. Mail addressed to each party at the address set forth below:

TO: Kirby Inland Marine, LP
618 E. 2nd St
Freeport, Texas 77541
Attention: General Manager of Brazos River Fueling

TO: Customer - At the address provided by the Customer in the Purchase Order or otherwise.

With a copy to:
Kirby Inland Marine, LP
55 Waugh St, Ste 1000
Houston, Texas 77007
Attention: Vice President, General Counsel, and Secretary

17. Assignment. The Customer may not assign a Contract without the written consent of the Company.

18. Paragraph Headings. All paragraph headings used are for the convenience of the parties only and shall not be considered a part of these Terms and Conditions nor used to interpret or construe the intent of the parties hereunder.