

# New West Oil Company LLC – Credit Application

## TERMS AND CONDITIONS OF RECEIVING CREDIT

Any and all purchases by Applicant/Customer shall be subject to the following terms and conditions:

1. **Payment Terms:** Payment terms are displayed on each invoice:

- **Fuel invoices are Net 10 Days**
- **All Other (lubricants, filters, chemicals, etc.) are Net 30 Days**

Because industry payment terms for **Fuel** are strictly enforced by suppliers, **Fuel Due Dates** are computed using the **Delivery Date** as the starting point for Net Days Due.

If payment is not made when due, New West Oil Company, its affiliates, successor, subsidiaries and assigns (Seller) may impose a monthly finance charge at a rate equal to the lesser of 1 ½% or the maximum rate permitted by law, on all past due invoice balances per month, commencing thirty (30) days after the due date. If an account is referred for collection, Seller shall also be entitled to its cost of collection, including reasonable attorney's fees if required. Acceptance of such finance charge by Seller shall not constitute a waiver of any rights Seller may have against the Customer.

2. **Taxes:** Customer agrees to pay all federal, state, city and local use, sales, excise, receipts, and similar taxes applicable to the sale or use of the products sold to Customer. If applicable, Customer shall provide to Seller a copy of its resale certificate and any other form in support of Customer's non-taxable status.

3. **Delivery:** Customer understands and agrees that petroleum products are delivered provisionally conditioned upon final payment being received from Customer. Customer understands that it will be fully liable for all deliveries made at its request even in the event that none of its employees are available to sign the delivery tickets for such deliveries. When any method of shipment other than Seller's regular method is used at the request of Customer, the freight and delivery charges shall be paid by Customer. Special handling charges by carrier shall be paid by Customer.

4. **Delays:** Seller will not be liable for any delay in the performance of orders received from Customer, or in the delivery of shipment of products, or for any damages suffered by the Customer by reason of such delay.

5. **Delay in Payment:** In the event of any default or delay in payment of Customer's obligations under any Seller's invoice or in the payment of any obligations under other agreements with Seller, or whenever in the judgment of Seller Customer may be unwilling or unable to make timely payment to Seller, or if Seller in good faith believes that the prospects of payment or performance by Customer is impaired, then all obligations incurred by Customer may, at the option of Seller, become immediately due and payable. Failure by Seller to assert this right will not be a waiver thereof.

6. **Seller Security Interest:** As security for the prompt payment and performance of all indebtedness and any other liabilities or obligations of the Customer to Seller, direct or indirect, absolute or contingent, whether now or hereafter arising, regardless of the form of such indebtedness, together with interest thereon and any renewals or extensions thereof, and whether such indebtedness is from time to time reduced and thereafter increased, or entirely extinguished and thereafter re-established, together with any costs and expenses of enforcement and attorneys' fees and costs and expenses relating to any of the foregoing, Customer hereby grants to Seller a continuing security interest in all of the following personal property: All of Customer's petroleum products, inventory and other goods manufactured, distributed, consigned or sold by, or bearing the trademark of Seller, wherever located, now owned, held or hereafter acquired, and all proceeds therefrom. Customer hereby authorizes Seller: to prepare and/or file and/or add additional information as it becomes available, or otherwise transmit any and all records, which Seller in its sole discretion shall deem necessary to create and perfect a security interest consistent with this grant of security interest or with any future grant of a security interest by Customer.

7. **Electronic Funds Transfer:** Customer's execution of this Agreement shall serve as Customer's consent and authorization following default in any payment when due, for Seller to effect a direct, Electronic Funds Transfer from any bank, savings and loan, or other account under the control of Customer directly to Seller's bank. By execution of this Agreement, Customer agrees to indemnify and hold harmless any depository holding funds under the control of Customer which transfers funds to Seller.

8. **Limited Warranty:** To the extent permitted under the original manufacturer's warranty, if any, Seller hereby transfers and assigns such original manufacturer's warranty of any Seller's merchandise sold, delivered or consigned by Seller to Customer. Seller's obligation under this warranty shall be limited to replacing merchandise or crediting Customer pursuant to Seller's current credit and return policies. Under no circumstance shall Seller be obligated for consequential or other damages, losses, or expenses in connection with such defective merchandise.

**THE WARRANTY CONTAINED HEREIN IS EXCLUSIVE AND EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, WRITTEN, ORAL, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO EXPRESS OR IMPLIED WARRANTIES OR MERCHANTABILITY OR OF FITNESS. IN ADDITION, SELLER SHALL NOT BE LIABLE FOR LOSS, DAMAGE OR INJURY OF ANY NATURE, WHETHER DIRECT OR INDIRECT, CONSEQUENTIAL OR INCIDENTAL, IN CONNECTION WITH OR RESULTING FROM USE OF MERCHANDISE OR PRODUCTS.**

Customer shall not be permitted to extend Seller's warranty contained herein to any person on Seller's behalf, and Seller assumes no obligation or liability, and authorizes no other person to assume for it any obligation or liability, other than its obligation to Customer contained herein.

9. **Controlling Provisions:** The terms and conditions contained herein and in Seller's invoices shall supersede any provisions, terms and conditions contained on any confirmation order, purchase order or any other writing the Customer may give, and the rights of the parties shall be governed exclusively by the provisions, terms and conditions hereof. No agent, salesperson or any other person has any authority to obligate Seller with regard to any terms or conditions not contained herein. No terms and conditions contained herein may be modified, changed or amended, or any provision waived by Seller, unless in writing duly signed by an authorized officer of Seller. Any terms and conditions not contained herein or in Seller's invoices, whether contained on any confirmation order, purchase order, or any other writing the Customer may give, unless agreed to in writing signed by an authorized officer of Seller, shall be deemed to be void and of no force and effect. The parties agree that this Agreement shall be governed by and construed in accordance with the laws of the state of Arizona, without regard to choice of law principles of that or any other jurisdiction.

10. **Cancellation:** An order once placed with and accepted by Seller can be cancelled only with Seller's written consent. Seller may elect to cancel any order or portions thereof, although previously accepted by Seller.

11. **Returned Merchandise:** Any returns will only be accepted in accordance with Seller's return policies.

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Customer

By

Title

Date