

**PHILLIPS 66 COMPANY**  
**GENERAL TERMS AND CONDITIONS**  
for

Compliance Instruments under the California Cap-and-Trade Program  
Effective November 1, 2012

These General Terms and Conditions are incorporated by reference into any transaction with Phillips 66 Company for the purchases and sale of Compliance Instruments, as defined below.

**1. Definitions**

As used in these General Terms and Conditions:

Allowance shall mean, as defined in §95802(a)(8) of the Regulation, a limited tradable authorization to emit up to one metric ton of carbon dioxide equivalent, and issued by CARB.

Buyer shall mean Phillips 66 Company.

CARB shall mean the California Air Resources Board.

CITSS shall mean Compliance Instrument Tracking System Service.

Compliance Instruments shall have the meaning specified in § 95802(a)(53) of the Regulation and shall include an Allowance and certain offsets.

Offset Credit shall have the meaning specified in §95820 of the Regulation and as agreed upon in Transaction.

Product Transfer Document means a document, provided by Seller prior to executing a sale of Compliance Instruments, which includes all the necessary information for completing the Transaction.

Seller shall mean the party selling Compliance Instruments to Buyer.

Transaction means the agreement for the purchase and sale of a Compliance Instrument. A Transaction shall be a binding obligation of the parties when the material terms have been agreed upon and may be evidenced with a Confirmation.

Regulation shall mean Subchapter 10, Article 5, §§95800 et seq., Title 17, of the California Code of Regulations.

## **2. Compliance with Regulation**

- (a) The parties shall comply with the Regulation, and any other applicable laws and regulations. Failure to do so shall be deemed to be a breach of a representation.
- (b) With respect to all purchases and sales of Compliance Instrument between the parties, Seller and Buyer both shall be registered with and approved by CARB to buy and sell Compliance Instruments, regardless of intent to take ownership of such Compliance Instruments. Each party shall provide the other with its CITSS Holding Account Number.

## **3. Offset Credits**

With respect to any Transaction for Offset Credits, Buyer shall have the right at any time to conduct a due diligence review and Seller shall cooperate in such review. Based on such review or for any other reason, Buyer has the right in its sole discretion to determine that any Offset Credit is a Defective Compliance Instrument, as such term is defined below.

## **4. Procedure for Transfer**

- (a) Promptly after entering into a Transaction and prior to submitting a transfer request to CARB, Seller shall provide a Product Transfer Document to Buyer, in a format acceptable to Buyer, containing all pertinent information relating to the trade, including all information listed under §95921(b). Seller shall submit the transfer request to CARB only after receiving Buyer's acknowledgement that the information contained in the Product Transfer Document is correct. Seller shall notify Buyer on the day that the transfer request is submitted to CARB.
- (b) Buyer shall pay Seller within three days after transfer of the Compliance Instruments.

## **5. Failure to Transfer**

In the event that Seller fails to transfer title to any Compliance Instrument pursuant to a Transaction with Buyer or breaches any of Seller's representations as set forth herein (each such purchased Compliance Instrument not transferred or subject to a breach of representation hereinafter referred to as a "Defective Compliance Instrument"), Seller shall at the direction of Buyer and at Seller's sole expense, take one or more of the following actions:

- A. Transfer to Buyer a volume of valid Allowances equal to the volume of the Defective Compliance Instruments and of the same Vintage Year, as such term is defined in the Regulation, within ten business days (10) days from notice of discovery of the Defective Compliance Instruments.

- B. Reimburse Buyer its costs and expenses incurred in connection with Buyer obtaining a volume of valid Compliance Instruments within ten (10) business days of receiving Buyer's invoice. Seller's cost reimbursement shall include, without limitation (i) the difference between the cost of the replacement Compliance Instruments purchased by Buyer and the unit price multiplied by the number of such replacement Compliance Instruments purchased by Buyer plus (ii) Buyer's expenses including reasonable consultant and attorneys fees incurred in connection with obtaining such replacement Compliance Instruments; or
- C. Reimburse Buyer, within ten (10) business days of Seller's receipt of Buyer's invoice for such Compliance Instruments, in an amount equal to the unit cost of each Defective Compliance Instrument which was not replaced plus Buyer's expenses including reasonable consultant and attorneys' fees incurred in connection with attempting to obtain such replacement Compliance Instruments.

## **6. Representations**

Seller represents and warrants to Buyer as of the date it enters into a Transaction and as of the time of transfer and delivery of the Compliance Instruments:

- A. The Compliance Instruments sold, delivered and transferred to Buyer pursuant to any Transaction were properly generated in accordance with the Regulation and were purchased by and transferred to Seller in accordance with the Regulation;
- B. Any Offset Credits sold, delivered and transferred to Buyer pursuant to any Transaction are valid and are not subject to invalidation under § 95985 of the Regulation;
- C. Seller has good and marketable title to the Compliance Instruments sold, delivered and transferred to Buyer pursuant to any Transaction and the right pursuant to the Regulation or otherwise to transfer such Compliance Instruments to Buyer.
- D. Each Compliance Instruments sold, delivered and transferred to Buyer pursuant to any Transaction is free and clear of any claims, liens, charges, encumbrances, pledges or security interests against Seller;

## **7. Indemnity**

Each party agrees to indemnify, defend and hold harmless the other party, and each of the other party's affiliates, directors, officers, employees, agents and permitted assigns, from and against any and all claims, losses, liabilities, damages, judgments, awards, fines,

penalties, costs and expenses (including reasonable attorneys' fees and disbursements) directly incurred in connection with or directly arising from or out of: (A) any breach of representation or warranty or failure to perform any covenant or agreement in any Transaction or under these General Terms and Conditions by said party; (B) any violation of applicable law, regulation or order by said party; and/or (C) any claims by a third party arising out of any act or omission by said party. In addition, to the extent applicable each party agrees to indemnify, defend and hold harmless the other party against any taxes for which such party is responsible pursuant to the Transactions.

## **8. Default and Termination**

If either party shall: (a) subject to Section 5, fail to perform any material obligation hereunder, including a breach or representation, and such failure continues for two (2) business days after notice; (b) become bankrupt or insolvent, however evidenced, or be unable to pay its debts as they fall due; (c) file a petition or otherwise commence a proceeding under any bankruptcy, insolvency or similar law, or have any such petition filed or proceeding commenced against it; and/or (i) have a liquidator, administrator, receiver or trustee appointed with respect to it or any substantial portion of its property or assets; (d) default under any other agreement between the parties and such other agreement is terminated and liquidated in accordance with the terms set forth therein, then the non-defaulting party may terminate and liquidate all Transactions between the parties and calculate its losses and/or gains in a commercially reasonable manner and set off such amount against any other amounts owed by the parties.

## **9. Limitation of Liability**

Except as expressly provided in these General Terms and Conditions or any Transaction, neither party shall be liable to the other party or any other person or entity for any special, incidental, consequential or indirect damages including loss of profits, loss of revenue or business interruption or for exemplary or punitive damages.

## **10. Miscellaneous**

- (a) Neither party shall assign or delegate its rights, obligations or duties under any Transaction, except the prior written consent of the other.
- (b) Each Transaction is a forward contract as such term is defined in the United States Bankruptcy Code.
- (c) Each Transaction shall be governed by and construed in accordance with the laws of the State of California.
- (d) Each Transaction and these General Terms and Conditions contain the entire agreement between the parties and there are no agreements or understandings that are not fully expressed herein. No amendment to or modification or waiver of all or any part of a Transaction or these General Terms and Conditions shall be of any force or effect unless in writing and signed by Buyer and Seller.