



BP Global Oil Americas RINs Provisions



2020 Edition

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BP Global Oil Americas RINs Provisions – Applicable to all deliveries of Biofuel with RINs

Section 1. Definitions and Interpretation

1.1 The following terms shall have the meanings specified below when capitalized throughout the Agreement:

“**Agreement**” means the Special Provisions, any applicable Appendices, any applicable transportation provisions, the GTCs, and these BP Global Oil Americas RINs Provisions – Applicable to all deliveries of Biofuel with RINs (2020 Edition).

“**Batch Number**” is a serial number assigned to a batch of fuel under the RFS Program.

“**D-Code**” means the number designating the type of renewable fuel with which a given RIN is associated, as described in Section 80.1425(g) of the RFS Program.

“**Deficient Quantity**” means the volume of Deficient RINs.

“**EMTS**” means the EPA Moderated Transaction System.

“**Generator**” means an entity that generates RINs under the RFS Program.

“**GTCs**” means the BP Global Oil Americas General Terms and Conditions for Purchases and Sales of Crude Oil, Refined Petroleum, and Related Products (2020 Edition).

“**Initiate**” means the submission of a sell transaction in EMTS by the Seller, provided, however, that the Seller shall not be deemed to have submitted any RINs where the Seller cancels such sell transaction in EMTS before the Buyer accepts it in EMTS; and “**Initiation**” shall be similarly construed.

“**K-Code**” means the number designating whether or not a RIN is separated or assigned to a volume of fuel, as described in Section 80.1425(a) of the RFS Program.

“**PTD**” means the document transferring title to the purchased RINs as may be required pursuant to the RFS Program.

“**Qualified Replacement RIN**” means a valid RIN of the same D-Code as that specified in the Special Provisions and generated either in the same year specified therein, or if RINs generated in the year specified therein are not reasonably available in the market or have expired, the then current compliance year.

“**RFS Program**” means the Renewable Fuel Standard Program under the Energy Policy Act of 2005 and the Energy Independence and Security Act of 2007 and implementing regulations, including 40 C.F.R. Part 80, Subpart M, or any successor thereto.

“**RIN**” means a Renewable Identification Number as provided for under RFS Program.

“**RIN Generation Year**” means the calendar year in which a RIN was generated under the RFS Program.

“**RINs Facility**” means a facility at which the batch of renewable fuel associated with the purchased RINs was produced or imported.

“**Transfer Date**” means the date specified as such on the PTD.

“**Transfer Period**” means, for a transaction, the date range specified in the Special Provisions during which the Seller must Initiate the relevant volume of RINs.

- 1.2 All other capitalized terms used herein but not defined above or within a Section below shall have the meanings given to them in the GTCs. For purposes of clarification, the GTCs, as well as the applicable transportation provisions that govern the relevant means of delivery for the biofuels, shall be applicable to these BP Global Oil Americas RINs Provisions, provided however, that in the event of an inconsistency, these provisions shall prevail for all deliveries of biofuels with RINs.

Section 2. Delivery

- 2.1 Pursuant to the Special Provisions, the Seller shall Initiate the relevant volume of RINs within its respective Transfer Period, or the Deficient Quantity of Qualified Replacement RINs, if applicable, within the period specified in Section 4.1.
- 2.2 Pursuant to the Special Provisions, the Buyer shall accept or deny those RINs in EMTS no later than five (5) Business Days after Initiation.
- 2.3 All rights, title and interest in and to each RIN identified in the Special Provisions shall transfer from the Seller to the Buyer on the relevant Transfer Date set out in the PTD; *provided, however*, that if the Buyer denies any RINs in EMTS pursuant to Section 3, such transfer shall be deemed void *ab initio* as to those denied RINs.
- 2.4 A failure by the Buyer to accept or deny a RIN in EMTS by the fifth Business Day after Initiation shall constitute a failure by the Buyer to accept such RIN pursuant to Section 4.3, regardless of whether a basis existed for denial under Section 3.

Section 3. Accept or Deny RINs

- 3.1 Except as limited by Section 2.2, the Buyer shall have the right, at its reasonable discretion, to deny any RINs in EMTS within five (5) Business Days of Initiation. For the avoidance of doubt, and without limitation, the Buyer shall be conclusively deemed to have reasonably exercised its discretion to deny where:
- 3.1.1 the Buyer has blocked the Generator or RINs Facility that generated the RINs or Qualified Replacement RINs in EMTS;
 - 3.1.2 the RINs are invalid under Section 80.1431(a) of the RFS Program;
 - 3.1.3 there is a reasonable prospect that the RINs will be invalid under Section 80.1431 of the RFS Program; or
 - 3.1.4 except where this Agreement is for Specified RINs, the Buyer does not have or has not analyzed information sufficient to verify that any of the RINs are not invalid and that there is no reasonable prospect of such RINs becoming invalid under Section 80.1431(a) of the RFS Program.

For purposes of making its assessment, it shall be reasonable for the Buyer to disregard the benefit of any warranties given under this Agreement.

- 3.2 Without prejudice to the application of Section 8 of the GTCs, it is not a reasonable exercise of discretion for the Buyer to deny RINs solely on the basis of the market price of, RINs.
- 3.3 Without prejudice to the Buyer's rights to rely on the Seller's representation and warranties given under this Agreement, where this Agreement specifies a specific Generator, RINs Facility or Batch Number (a "**Specified RIN**") and unless otherwise agreed by the Parties in writing, the Seller shall Initiate such Specified RINs, and the Buyer shall accept such Specified RINs; provided, however, that if the Specified RINs are invalid or there is a reasonable prospect that the RINs will be invalid under Section 80.1431(a) of

the RFS Program before the Buyer accepts them in EMTS, the Buyer shall have the right to deny such RINs in accordance with Section 3.1.

Section 4. Remedies for Failure to Initiate or Accept RINs, and Deficient RINs

4.1 In the event that:

- 4.1.1 the Seller fails to Initiate all or part of a relevant volume of RINs during the applicable Transfer Period;
- 4.1.2 the Buyer exercises its right to deny all or part of the relevant volume of RINs pursuant to Section 3;
- 4.1.3 the Seller breaches any of the warranties contained in Section 4, or any warranty specified as being subject to this Section 3 in the Special Provisions; or
- 4.1.4 Initiated RINs accepted by the Buyer are, or become, invalid for purposes of the RFS Program,

(each such affected RIN a “**Deficient RIN**”), then, the Seller shall, at the Seller’s sole cost and expense, Initiate Qualified Replacement RINs in a volume equal to the Deficient Quantity within: (i) in the case of Sections 4.1.1 or 4.1.2, three (3) Business Days after the Seller receives notice from the Buyer that the circumstances in Sections 4.1.1 or 4.1.2 apply; or (ii) in the case of Sections 4.1.3 or 4.1.4, fifteen (15) calendar days after the Seller receives notice from the Buyer that the circumstances in Sections 4.1.3 or 4.1.4 apply; provided, however, that if such day is not a Business Day, then the deadline shall be the immediately preceding Business Day.

4.2 Except where Section 3.3 applies, if:

- 4.2.1 the Seller fails to timely or fully comply with its obligation to Initiate contained in Section 4.1; or
- 4.2.2 at the time the circumstances in Sections 4.1.2, 4.1.3 or 4.1.4 occur and fewer than ten (10) Business Days remain before February 28 of the year that is two (2) calendar years after the year the originally Initiated RINs were generated,

then the Seller shall, at the Buyer’s election by notice either (a) Initiate Qualified Replacement RINs in a volume equal to the Deficient Quantity in accordance with Section 4.1, or (b) pay the Buyer within five (5) Business Days of receipt of the Buyer’s invoice, unless otherwise mutually agreed between the Parties, the positive difference, if any, between (a) Market Value and (b) Contract Value, with such sum increased by any amount already paid by the Buyer to the Seller on account of the Deficient RINs.

For purposes of this Section 4.2:

- (i) “**Market Value**” means the amount of the RINs remaining to be delivered or received under a transaction multiplied by the RINs market price for an equivalent transaction for Qualified Replacement RINs as determined by the performing Party in a commercially reasonable manner. To ascertain the Market Value, the performing Party may consider, among other valuations, quotations from leading dealers in swap contracts or physical trading markets, similar sales or purchases and any other bona fide third-party offers, all adjusted for the length of the term, relevant payment due dates, transfer dates, and relevant volume of RINs. A Party shall not be required to enter into a replacement transaction in order to determine the Market Value of a transaction. For the avoidance of doubt, any option pursuant to which one Party has the right to extend the term of a transaction shall be considered in determining Contract Value and Market Values;
- (ii) “**Contract Value**” means the amount of the RINs remaining to be delivered or received under a Transaction multiplied by the price specified in the Agreement.

- (iii) the phrase “the amount of the RINs remaining to be delivered or purchased under this Agreement” as used in the defined terms “Market Value” and “Contract Value” shall refer to and mean the Deficient Quantity; and
 - (iv) the Market Value shall be calculated on the Business Day notified by the Buyer that falls (x) where Section 4.2.1 applies, no sooner than the last day for performance of the Seller’s obligations under Section 4.2.1 applies and, (y) where either Section 4.2.1 or 4.2.2 applies, at least three (3) Business Days after the date the Seller gives notice of its election.
- 4.3 In the event that the Buyer fails to accept or deny all or part of the relevant volume of RINs or Qualified Replacement RINs in EMTS, as contemplated under Section 2, the Seller shall provide written notice of such failure to the Buyer. If the Buyer fails to accept any portion of those RINs (the “**Pending RINs**”) in EMTS within one (1) Business Day of receiving such notice, then
- 4.3.1 the Seller may cancel one or more of the Pending RINs in EMTS, and the Seller’s obligation to sell and deliver and the Buyer’s obligation to purchase and receive shall be reduced to the extent the Seller cancels such Pending RINs or such Pending RINs expire in EMTS, and
 - 4.3.2 regardless as to whether the Seller cancels, the Buyer shall pay the Seller the sum of (a) the positive difference, if any, between (1) the RINs market price and (2) the price specified in the Agreement multiplied by the volume of all Pending RINs (on all such RINs whether or not ultimately accepted), and (b) the purchase price for any of such RINs ultimately accepted by the Buyer.
- 4.4 In the event the provisions of this Section are invoked, the Parties shall work together in good faith to pursue an efficient, commercial and practical resolution consistent with the foregoing options (or any combination thereof) in order to cure any default with respect to any Deficient RINs, provided, however, the replacement RINs must be Qualified Replacement RINs unless otherwise mutually agreed.
- 4.5 The Seller shall issue a PTD accurately describing the Qualified Replacement RINs.
- 4.6 For the avoidance of doubt, this Section shall apply equally to any Qualified Replacement RINs.
- 4.7 Except in respect of a failure to pay any amount due under Sections 4.2 or 4.3, the remedies set out in this Section are exclusive remedies for the occurrence of the events described in this Section.

Notwithstanding any other provision of this Agreement for purposes of RINs, neither Party shall indemnify the other for any regulatory or governmental penalties, fees or fines arising as a result of any RINs transfer.

Section 5. Warranties

- 5.1 By Both Parties: Each Party represents and warrants to the other Party (which representations and warranties are deemed to be repeated by each Party on each relevant RINs Transfer Date) that:
- 5.1.1 it has the corporate and legal capacity, authority, and power, and all governmental and other licenses, authorizations, and other approvals (if any), necessary to execute and perform this Agreement (“**Required Authorizations**”), and that such Required Authorizations shall remain in full force and effect until its obligations have been fulfilled;
 - 5.1.2 it is a registered user of EMTS and has completed any registration required by the RFS Program; and
 - 5.1.3 such Party’s performance is in compliance with the RFS Program.

- 5.2 By the Seller: The Seller represents and warrants to the Buyer that on each relevant Transfer Date:
- 5.2.1 it shall convey good title to all RINs it sells hereunder, free and clear of any liens, or security interests by any third party;
 - 5.2.2 each RIN Initiated or sold: (a) is valid under the RFS Program; (b) is separated and unassigned; (c) was generated from a RINS Facility; (d) has no basis for becoming invalid under Section 80.1431(a) of the RFS Program; and (e) shall not otherwise result in a violation of Section 80.1431(a)(2) of the RFS Program, nor shall the Seller engage in any future conduct that would result in such a violation; and
 - 5.2.3 each RIN Initiated or sold:
 - (a) is of the (i) D-Code; (ii) K-Code; and (iii) RIN Generation Year, (other than where a later year is permitted in accordance with this Agreement) specified in the Special Provisions; and
 - (b) has not been retired.

Section 6. Force Majeure

- 6.1 Section 8.2 of the GTCs is revised by deleting the “or” at the end of Section 8.2.3, adding a semicolon at the end of Section 8.2.4, and adding the following additional Sections, all of which are subject to Section 4.3:
- “8.2.5 a situation where the RINs the Seller Initiates or intends to Initiate are invalid for purposes of the RFS Program;
 - 8.2.6 a situation where certain RIN vintages are cancelled but the RFS Program itself is not cancelled;
 - 8.2.7 a situation where the RFS Program is cancelled for a date in the future but the RINs to be Initiated remain valid up until the cancellation date; or
 - 8.2.8 a situation where the RFS Program is cancelled and the RINs are no longer required, but the biofuel delivered or to be delivered is not affected. In such a case, the biofuel must still be delivered pursuant to the Agreement and, if:
 - (a) the price was a fixed price; and
 - (b) the affected Party gives the other Party written notice of renegotiation not later than fifteen (15) days before the cancellation of the RFS Program is effective,

then the Parties shall work together in good faith to renegotiate a price that reflects the value of the remaining biofuel to be delivered. Provided however, if the original fixed price was, in effect, established as a differential to a specific index and that index continues to be published, the parties shall apply that differential to that index. If the Parties cannot reach agreement within fifteen (15) calendar days after such notice, then, by the close of business on the sixteenth (16th) Business Day following such notice, each of the Parties shall be required to obtain a quotation from three leading independent dealers in the relevant market. The highest and lowest quotations shall be excluded, and the arithmetic mean of the remaining quotations shall be the new price, absent manifest error or fraud.”
- 6.2 Notwithstanding any other provision of Section 8 of the GTCs, in the event that EMTS is disrupted or unavailable, the affected obligations of the Parties will be suspended (but not discharged) until EMTS is not disrupted and is available.