



## GENERAL TERMS AND CONDITIONS FOR RACK DELIVERIES (JUNE 14, 2019)

**PURPOSE:** THESE GENERAL TERMS AND CONDITIONS FOR RACK DELIVERIES (JUNE 14, 2019) (THE "GENERAL TERMS AND CONDITIONS") ARE INTENDED TO BE INCORPORATED INTO AND BECOME A PART OF AGREEMENTS REFERENCED HEREIN ("CONTRACT" OR "CONTRACTS") BETWEEN THE PARTIES AS IT RELATES TO THE PURCHASE AND SALE, OF PETROLEUM PRODUCTS AND ETHANOL, TO BE DELIVERED AT THE APPLICABLE TRUCK RACK(S). "CONTRACT" (OR "CONTRACTS") WILL CONSIST OF THESE GENERAL TERMS AND CONDITIONS AND IF APPLICABLE, ANY RACK SALES AGREEMENT OR OTHER FORM OF CONFIRMATION, WHICH REFERENCES SPECIFIC TERMS NEGOTIATED BETWEEN THE BUYER AND SELLER, INCLUDING BUT NOT LIMITED TO THE AGREEMENT DATE, REFERENCE NUMBER, PRODUCT, QUALITY, QUANTITY, PARTIES, TERMS, PRICE, LOCATION, PERIOD, AND PAYMENT TERMS (THE "RACK SALES AGREEMENT"). THE RACK SALES AGREEMENT TOGETHER WITH THESE GENERAL TERMS AND CONDITIONS AND APPLICABLE INCOTERMS WILL CONSTITUTE THE ENTIRE AGREEMENT BETWEEN THE BUYER AND SELLER, (INDIVIDUALLY, A "PARTY" AND COLLECTIVELY, THE "PARTIES") WITH RESPECT TO THE TRANSACTION(S) CONTEMPLATED THEREIN. IF THERE IS ANY CONFLICT BETWEEN THE RACK SALES AGREEMENT AND THE GENERAL TERMS AND CONDITIONS, THE RACK SALES AGREEMENT SHALL PREVAIL.

**DEFINITIONS:** AS USED IN THESE GENERAL TERMS AND CONDITIONS:

"API" SHALL MEAN THE AMERICAN PETROLEUM INSTITUTE.

"ASTM" SHALL MEAN THE AMERICAN SOCIETY FOR TESTING MATERIALS.

"BUSINESS DAY" SHALL MEAN ANY CALENDAR DAY OTHER THAN A SATURDAY, SUNDAY OR NEW YORK BANKING HOLIDAY. A "NEW YORK BANKING HOLIDAY" SHALL MEAN ANY CALENDAR DAY OTHER THAN A SATURDAY OR SUNDAY WHERE BANKS ARE CLOSED FOR GENERAL COMMERCIAL BUSINESS IN NEW YORK, NEW YORK. REFERENCE TO A BUSINESS DAY FOR PRICING PURPOSES SHALL ONLY EXCLUDE NON-PUBLICATION DAY(S) BY U.S. BASED EXCHANGES AND INDUSTRY PRICING PUBLICATIONS.

"BUYER" SHALL MEAN ANY PARTY RECEIVING PRODUCTS UNDER A CONTRACT, AND "SELLER" SHALL MEAN ANY PARTY DELIVERING PRODUCTS UNDER A CONTRACT.

"INCOTERMS" SHALL MEAN THE 2010 EDITION OF THE TRADE TERMS PUBLISHED BY THE INTERNATIONAL CHAMBER OF COMMERCE WHICH SHALL APPLY TO THIS CONTRACT TO THE EXTENT THAT THEY DO NOT CONFLICT WITH THE PROVISIONS OF THE RACK SALES AGREEMENT OR THESE GENERAL TERMS AND CONDITIONS.

"LCFS" SHALL MEAN THE REGULATIONS, ORDERS, DECREES AND STANDARDS ISSUED BY A GOVERNMENTAL AUTHORITY IMPLEMENTING OR OTHERWISE APPLICABLE TO THE CALIFORNIA LOW CARBON FUEL STANDARD AS SET FORTH IN 17 CCR § 95480 ET SEQ. AND EACH SUCCESSOR REGULATION, AS MAY BE SUBSEQUENTLY AMENDED, MODIFIED AND RESTATED FROM TIME TO TIME.

"PARTY" OR "PARTIES" SHALL MEAN BUYER AND SELLER HEREUNDER, INDIVIDUALLY OR COLLECTIVELY.

"POINT OF DELIVERY" OR "POINTS OF DELIVERY" SHALL MEAN A TERMINAL OR LOADING RACK FROM WHICH DELIVERIES OF PRODUCT ARE ORDINARILY MADE TO BUYER UNDER THE RACK SALES AGREEMENT, THE LOCATION OF WHICH MAY BE CHANGED FROM TIME TO TIME AT SELLER'S DISCRETION.

"PRODUCT" OR "PRODUCTS" SHALL MEAN THE PETROLEUM PRODUCTS OR ETHANOL WHICH SELLER MAKES AVAILABLE FROM TIME TO TIME FOR PURCHASE BY BUYER UNDER THE RACK SALES AGREEMENT.

"PURCHASE PRICE" FOR THE PRODUCTS SHALL BE THE TOTAL PRICE SET FORTH IN THE RACK SALES AGREEMENT.

"RIN" SHALL MEAN RENEWABLE IDENTIFICATION NUMBER AS THE TERM IS DEFINED AT 40 CODE OF FEDERAL REGULATION SECTION 80.1101(O).

"RFS2" SHALL MEAN 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 WITHOUT LIMITATION, 40 CODE OF FEDERAL REGULATION PART 80, SUBPART M.

**QUALITY:** ALL PRODUCTS DELIVERED (A) WILL CONFORM TO THE QUALITY SPECIFIED IN THE RACK SALES AGREEMENT (INCLUDING ANY SCHEDULES ATTACHED THERETO), (B) WHERE APPLICABLE, SHALL MEET OR EXCEED THE MINIMUM APPLICABLE FEDERAL, STATE OR LOCAL REQUIREMENTS FOR MOTOR FUEL QUALITY, (C) WHERE APPLICABLE, SHALL MEET OR EXCEED THE APPLICABLE OCTANE/CETANE STANDARDS FOR THAT GRADE OF PRODUCTS IN THE AREA WHERE THE PRODUCTS ARE DELIVERED, AND (D) SHALL BE FREE OF WATER AND BIOLOGICAL OR OTHER CONTAMINANTS. UPON REASONABLE AND TIMELY REQUEST OF BUYER, SELLER AGREES TO PROVIDE BUYER WITH A REPRESENTATIVE SAMPLE OF THE REQUESTED PRODUCT.

**WARRANTIES:** SELLER WARRANTS THAT IT HAS FULL LEGAL TITLE TO THE PRODUCT FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND SECURITY INTERESTS AND THAT IT HAS FULL RIGHT AND OWNER TO CONVEY SUCH TITLE TO BUYER. SELLER MAKES NO CONDITION OR WARRANTY, EXPRESS OR IMPLIED, THAT THE PRODUCTS SOLD HEREUNDER WILL BE MERCHANTABLE OR FIT FOR A PARTICULAR PURPOSE, OR THAT THEY WILL MEET SPECIFICATIONS OTHER THAN THOSE EXPRESSLY PROVIDED HEREIN. ALL OTHER CONDITIONS, WARRANTIES OR OTHER TERMS WHETHER EXPRESS, IMPLIED OR WHICH WOULD OTHERWISE BE IMPOSED BY STATUTE, WITH RESPECT TO QUALITY, SATISFACTORY QUALITY, SUITABILITY OR FITNESS FOR ANY PURPOSE WHATSOEVER OF THE PRODUCT ARE HEREBY EXCLUDED. ANY CLAIMS THAT THE PRODUCT DELIVERED HEREUNDER DOES NOT CONFORM TO THE DESCRIPTION OR QUALITY SPECIFICATIONS SET FORTH HEREIN ARE WAIVED UNLESS PRESENTED IN WRITING BY BUYER TO SELLER WITHIN THIRTY (30) DAYS AFTER DELIVERY THEREOF.

**QUANTITY:** THE RACK SALES AGREEMENT OF EACH CONTRACT SHALL SET FORTH THE APPROXIMATE SALES VOLUMES BY POINT OF DELIVERY LOCATION. THE QUANTITIES TO BE SOLD AND DELIVERED AT EACH DELIVERY POINT DURING EACH MONTH OR OTHER SPECIFIED DELIVERY PERIOD SHALL CONFORM TO THOSE SET FORTH IN THE RACK SALES AGREEMENT. IF THE RACK SALES AGREEMENT SETS FORTH A RANGE OF QUANTITIES, THEN THE DELIVERIES SHALL BE WITHIN THE MINIMUM AND MAXIMUM VOLUMES WITHIN SUCH RANGE. QUANTITIES MADE AVAILABLE BY SELLER BUT NOT PURCHASED BY BUYER MAY NOT BE CARRIED FORWARD WITHOUT SELLER'S WRITTEN CONSENT. EXCEPT AS MAY BE REQUIRED BY LAW, SELLER HAS NO OBLIGATION WHATSOEVER IN ANY MONTH TO SELL OR DELIVER TO BUYER ANY MONTHLY QUANTITIES IN EXCESS OF THE QUANTITY SPECIFICALLY SET FORTH IN A CONTRACT, REGARDLESS OF WHETHER ACTUAL QUANTITIES IN EXCESS OF SUCH CONTRACT QUANTITIES MAY HAVE BEEN SOLD AND DELIVERED IN ANY PRECEDING MONTH OR MONTHS. AT ANY TIME DURING THE TERM OF A CONTRACT, SELLER AND BUYER MAY MUTUALLY AGREE TO SELL OR PURCHASE ADDITIONAL QUANTITIES IN ACCORDANCE WITH AND SUBJECT TO THE TERMS AND CONDITIONS CONTAINED IN THE CONTRACT, BY SUPPLEMENTING THE CONTRACT AS TO SUCH QUANTITIES.

SELLER'S OBLIGATION TO SELL AND DELIVER ANY PRODUCTS UNDER A CONTRACT SHALL BE SUBJECT TO MODIFICATION AND REDUCTION IN ACCORDANCE WITH ANY PROGRAM GOVERNING THE ALLOCATION OF SUCH PRODUCTS BY SELLER WHICH MAY BE IN EFFECT ON THE DATE THEREOF AND ANY ALLOCATION PROGRAM THERE UNDER ADOPTED BY SELLER OR IMPOSED BY LAW OR REGULATION AT ANY TIME DURING THE TERM THEREOF. SELLER MAY IMPOSE AN ALLOCATION OF ANY PRODUCT AT ITS SOLE ELECTION, FOR ANY REASON DETERMINED IN GOOD FAITH AND IN ACCORDANCE WITH APPLICABLE LAW, INCLUDING WITHOUT LIMITATION REASONS RELATING TO ECONOMIC OR MARKET CONDITIONS AND THE AVAILABLE SUPPLY OF SUCH PRODUCT FROM REFINERY(S), TERMINAL(S) AND/OR PIPELINE(S) THAT HAVE HISTORICALLY BEEN USED TO PROVIDE SELLER'S SUPPLY OF SUCH PRODUCT IN THE SALES AREA OF SUCH CONTRACT. WITHIN 30 DAYS OF THE ADOPTION OR IMPOSITION OF ANY SUCH ALLOCATION PROGRAM, BUYER SHALL HAVE THE RIGHT TO TERMINATE THE CONTRACT BY NOT LESS THAN FIVE (5) NOR MORE THAN THIRTY (30) DAYS PRIOR WRITTEN NOTICE.

WHERE THE PRODUCT IS ETHANOL, SELLER WILL PROVIDE ONE GALLON 2018 RFS2 ETHANOL D-6 RIN FOR EVERY GALLON OF ETHANOL SOLD/PURCHASED PURSUANT TO THIS AGREEMENT. SELLER SHALL TRANSFER SUCH RINS TO BUYER ON THE DATE TITLE TO THE PRODUCT PASSES TO BUYER, AS SET FORTH HEREIN. THE PRICE DATA WILL BE REPORTED TO EMTS (EPA MODERATED TRANSACTION SYSTEM) AS MUTUALLY AGREED.

WHERE THE PRODUCT IS ETHANOL AND WILL INCUR AN OBLIGATION UNDER THE LCFS, THE RACK SALES AGREEMENT SHALL SPECIFY WHETHER THE SELLER SHALL RETAIN OR TRANSFER TO BUYER THE LCFS OBLIGATION.

**MEASUREMENT:** ALL QUANTITIES SHALL BE ADJUSTED TO NET GALLONS AT 60°F, IN ACCORDANCE WITH ASTM AND API STANDARDS. ALL QUANTITIES OF PRODUCTS LOADED FOR BUYER'S ACCOUNT SHALL BE MEASURED AND DETERMINED BASED UPON THE METER READINGS AT THE POINT OF DELIVERY LOCATION OF SELLER OR THE APPLICABLE TERMINALS, AS REFLECTED BY DELIVERY TICKETS ISSUED AT EACH POINT OF DELIVERY, OR IF SUCH METERS ARE UNAVAILABLE, BY APPLICABLE CALIBRATION TABLES. METERS AND TEMPERATURE PROBES SHALL BE CALIBRATED ACCORDING TO APPLICABLE API STANDARDS. BUYER SHALL HAVE THE RIGHT AT ITS EXPENSE, AND IN ACCORDANCE WITH POINT OF DELIVERY LOCATION PROCEDURE, TO INDEPENDENTLY CERTIFY SAID CALIBRATION. EACH PARTY HERETO SHALL HAVE THE RIGHT TO HAVE ONE REPRESENTATIVE PRESENT, IN ADDITION TO THE INDEPENDENT INSPECTOR, TO WITNESS ALL GAUGES, TESTS, METER CALIBRATION, AND MEASUREMENTS.

**DELIVERY; TRANSPORTATION:** SELLER SHALL SUPPLY BUYER WITH PRODUCTS FROM POINT OF DELIVERY LOCATIONS IDENTIFIED IN THE CONTRACT OR SUCH OTHER POINT OF DELIVERY LOCATIONS AS MAY BE MUTUALLY AGREED BY SELLER AND BUYER. THE SALE OF PRODUCTS THEREUNDER SHALL BE INCOTERMS "FCA" (FREE CARRIER) SELLER'S POINT OF DELIVERY LOCATION SPECIFIED IN THE CONTRACT. IF SELLER DOES NOT OWN, LEASE, OPERATE OR CONTROL TERMINALING FACILITIES AT ANY OF THE POINT OF DELIVERY LOCATIONS, OR IF SELLER CEASES FOR WHATEVER REASON TO SUPPLY PRODUCTS FROM ANY SUCH POINT OF DELIVERY LOCATION, THEN SELLER SHALL HAVE THE RIGHT TO CHANGE THE POINT OF DELIVERY LOCATION UPON PRIOR NOTICE TO BUYER. IN SUCH EVENT, BUYER SHALL HAVE THE RIGHT TO TERMINATE THE CONTRACT AS TO THE AMOUNT OF PRODUCTS THAT BUYER WAS PURCHASING FROM SUCH PRIOR POINT OF DELIVERY LOCATION, BUT ALL OTHER OBLIGATIONS THEREUNDER SHALL REMAIN EFFECTIVE. BUYER SHALL NOMINATE A CARRIER TO RECEIVE THE PRODUCTS AT EACH POINT OF DELIVERY AND ARRANGE FOR ALL TRANSPORTATION OF PRODUCTS FROM SELLER'S POINT OF DELIVERY LOCATION TO BUYER'S LOCATIONS. ALL CARRIERS NOMINATED BY BUYER MUST COMPLY WITH THE REQUIREMENTS OF THE TERMINAL WHERE THE POINT OF DELIVERY IS LOCATED AND MUST BE PRE-APPROVED BY THE TERMINAL OPERATOR TO ENTER THE POINT OF DELIVERY LOCATION. BUYER AGREES THAT THE CARRIERS' CONTRACTS BETWEEN BUYER AND CARRIER FOR PETROLEUM TRANSPORT SHALL INCLUDE PROVISIONS REQUIRING COMPLIANCE WITH REQUIREMENTS OF SELLER AND THE TERMINAL OPERATOR FOR ENTRY TO THE POINT OF DELIVERY LOCATIONS LISTED IN THE CONTRACT, INCLUDING BUT NOT LIMITED TO SAFETY AND INSURANCE REQUIREMENTS. BUYER'S RECEIPT OF PRODUCTS SHALL BE MADE WITHIN THE DELIVERING TERMINAL'S USUAL BUSINESS HOURS. ANY ADDITIONAL COSTS INCURRED DUE TO OVERTIME DELIVERY WILL BE SOLELY FOR BUYER'S ACCOUNT.

CLEARANCE OF CARRIERS FOR ACCESS TO THE APPLICABLE DELIVERING TERMINAL SHALL BE AT ALL TIMES THE BUYER'S SOLE RESPONSIBILITY. BUYER AND OR ITS DESIGNATED CARRIERS SHALL BE SOLELY RESPONSIBLE FOR THE COORDINATION OF DELIVERIES WITH THE THIRD PARTY TERMINAL TO AVOID TRUCK DEMURRAGE, WHICH SHALL SOLELY BE FOR BUYER'S ACCOUNT. BUYER SHALL MAKE REASONABLE EFFORTS TO TAKE RATABLE DELIVERY OF MONTHLY VOLUMES SET FORTH IN THE CONTRACT AT REGULAR INTERVALS DURING EACH MONTH. SHOULD BUYER FAIL TO DO SO, SELLER MAY, BY WRITTEN NOTICE TO BUYER, ESTABLISH A RATABLE DELIVERY SCHEDULE, BY SELLER POINT OF DELIVERY LOCATION, FOR BUYER, AND BUYER AGREES TO ADHERE THERETO UNTIL SUCH TIME, IF ANY, THAT SELLER MAY CANCEL SUCH DELIVERY SCHEDULE. FAILURE BY BUYER TO ADHERE TO SUCH DELIVERY SCHEDULE AS SELLER MAY ESTABLISH SHALL CONSTITUTE A BREACH OF THE CONTRACT.

**TITLE AND RISK OF LOSS:** OWNERSHIP, TITLE AND RISK OF LOSS SHALL PASS FROM SELLER TO BUYER AT THE TERMINAL POINT OF DELIVERY METER WHERE PRODUCT IS DELIVERED OVER THE RACK. DELIVERING TERMINAL SHALL PREPARE AND BE RESPONSIBLE FOR ISSUING DELIVERY TICKETS, BILLS OF LADING AND ASSOCIATED DOCUMENTS RELATING TO THE DELIVERY OF PRODUCTS TO THE CARRIER. IN THE CASE OF A BOOK, IN-LINE, IN-TANK, INVENTORY, OR STOCK TRANSFER, OWNERSHIP, TITLE AND RISK OF LOSS SHALL PASS FROM SELLER TO BUYER AT 0001 HRS ON THE EFFECTIVE DATE OF THE RESPECTIVE TRANSFER, OR SUCH OTHER TIME AS

AGREED TO BY THE PARTIES.

**PAYMENT:** BUYER SHALL PAY BY DEBIT ACH, INITIATED BY SELLER, OR AT SELLER'S OPTION, PAYMENTS MAY BE MADE BY FEDERAL WIRE TRANSFER FROM BUYER'S DESIGNATED BANK ACCOUNT OF THE FULL INVOICE AMOUNT, WITHOUT DEDUCTION, OFFSET OR COUNTERCLAIM, OF IMMEDIATELY USABLE FEDERAL FUNDS (IN U.S. DOLLARS) NO LATER THAN THE DUE DATE SET FORTH IN THE RACK SALES AGREEMENT AND UPON RECEIPT OF SELLER'S COMMERCIAL INVOICE AND TERMINAL SPREADSHEET EVIDENCING PRODUCT AND BILL OF LADING VOLUME AND IN THE CASE OF ETHANOL, DOCUMENTATION EVIDENCING THE RINS AND LCFS OBLIGATION TRANSFERRED (PDF EMAIL/FAX ACCEPTABLE), IF APPLICABLE, BUYER WILL ESTABLISH AN ACCOUNT WITH A FINANCIAL INSTITUTION, ON TERMS ACCEPTABLE TO SELLER THAT PROVIDE EFT SERVICES AND WILL AUTHORIZE SELLER TO INITIATE TRANSFER OF FUNDS BETWEEN BUYER'S ACCOUNT AND SELLER'S ACCOUNT FOR PAYMENT OF ALL AMOUNTS DUE UNDER ANY CONTRACT. BUYER WILL PROVIDE SELLER WITH ALL INFORMATION AND AUTHORIZATION NECESSARY TO DEBIT AND CREDIT BUYER'S ACCOUNT VIA EFT DEBIT ACH. ALL PAYMENTS MUST BE MADE IN STRICT COMPLIANCE WITH PROCEDURES WHICH SELLER MAY IMPLEMENT OR CHANGE FROM TIME TO TIME. PAYMENT WILL BE DEEMED MADE WHEN, AND ONLY WHEN, ITS RECEIPT HAS BEEN VERIFIED BY SELLER. SELLER MAY ASSESS A REASONABLE CHARGE UPON BUYER FOR ANY PAYMENT, WHICH CANNOT BE COMPLETED BY EFT OR RETURNED OR REJECTED FOR LACK OF SUFFICIENT FUNDS OR OTHER REASON WITHIN BUYER'S CONTROL.

IN THE EVENT PRICING IS NOT COMPLETED BY THE PAYMENT DUE DATE, BUYER AGREES TO PAY A PROVISIONAL INVOICE FOR THE CONFIRMED QUANTITY PRICING ON ALL KNOWN SETTLEMENT QUOTATIONS TO DATE AS OUTLINED IN THE PRICING SECTION OF THE RACK SALES AGREEMENT.

IN THE EVENT OF BOOK TRANSFER, PAYMENT SHALL BE DUE AND PAYABLE ON THE EFFECTIVE DATE OF THE BOOK TRANSFER.

IN THE EVENT PAYMENT DATE IS A SATURDAY OR A NEW YORK BANKING HOLIDAY OTHER THAN MONDAY, PAYMENT SHALL BE DUE THE PREVIOUS NEW YORK BANKING DAY. IN THE EVENT PAYMENT DATE IS A SUNDAY OR A MONDAY NEW YORK BANKING HOLIDAY, PAYMENT SHALL BE DUE THE FOLLOWING NEW YORK BANKING DAY. "NEW YORK BANKING DAY" IS DEFINED AS ANY CALENDAR DAY, OTHER THAN SATURDAY OR SUNDAY; WHERE BANKS ARE OPEN FOR GENERAL COMMERCIAL BUSINESS IN NEW YORK, NEW YORK.

IN THE EVENT THAT PAYMENT IS NOT MADE ON THE DUE DATE, BUYER WILL BE CHARGED ON THE OUTSTANDING BALANCE FROM THE DATE THAT PAYMENT IS DUE UNTIL THE DATE PAYMENT IS MADE AT THE CURRENT J.P. MORGAN CHASE BANK (NEW YORK) PRIME RATE PLUS TWO (2) PERCENT.

**CREDIT:** THIS AGREEMENT IS SUBJECT TO CREDIT APPROVAL BY SELLER'S CREDIT DEPARTMENT.

IF SELLER GRANTS CREDIT TO BUYER, SELLER SHALL HAVE THE RIGHT AT ANY TIME TO CHANGE THE TERMS OF SUCH CREDIT IF SELLER IN ITS SOLE DISCRETION DETERMINES THAT BUYER'S FINANCIAL CONDITION WARRANTS SUCH A CHANGE OR BUYER EXCEEDS SELLER'S INTERNAL CREDIT LIMITS. THE CHANGE IN CREDIT TERMS SHALL BE EFFECTIVE IMMEDIATELY UPON BUYER'S RECEIPT OF SELLER'S NOTICE OF THE CHANGE AND/OR REQUEST FOR COLLATERAL.

IF SELLER DOES NOT GRANT CREDIT APPROVAL OR REQUESTS COLLATERAL, BUYER AGREES TO THE FOLLOWING TERMS: BUYER TO POST AN IRREVOCABLE STANDBY LETTER OF CREDIT IN A FORM AND AT A BANK ACCEPTABLE TO SELLER TWO (2) NEW YORK BANKING DAYS PRIOR TO THE FIRST DAY OF THE CONTRACTUAL WINDOW (OPERATIONALLY NARROWED WHEN APPLICABLE) OR PROMPTLY UPON REQUEST IF REQUESTED TWO (2) NEW YORK BANKING DAYS PRIOR TO THE FIRST DAY OF THE CONTRACTUAL WINDOW OR THEREAFTER, OR BUYER AGREES TO PREPAY TWO (2) NEW YORK BANKING DAYS PRIOR TO THE FIRST DAY OF THE CONTRACTUAL WINDOW (OPERATIONALLY NARROWED WHEN APPLICABLE) OR PROMPTLY UPON REQUEST IF REQUESTED TWO (2) NEW YORK BANKING DAYS PRIOR TO THE FIRST DAY OF THE CONTRACTUAL WINDOW OR THEREAFTER, OR, AT SELLER'S OPTION, BUYER TO PROVIDE ACCEPTABLE PARENT COMPANY GUARANTEE. SUCH FAILURE BY BUYER TO PROVIDE THE LETTER OF CREDIT WITH ALL REQUIRED AMENDMENTS OR PROVIDE AN ACCEPTABLE PARENT COMPANY GUARANTEE OR MAKE PREPAYMENT AS SPECIFIED ABOVE SHALL BE CONSIDERED A BREACH OF THIS CONTRACT. UPON SUCH BREACH, SELLER SHALL HAVE THE RIGHT UPON WRITTEN NOTICE TO THE BUYER TO CANCEL THIS CONTRACT WITHOUT IN ANY WAY LIMITING ANY OTHER REMEDIES AVAILABLE TO SELLER.

NOTWITHSTANDING ANYTHING TO THE CONTRARY UNDER THIS AGREEMENT OR ANY OTHER AGREEMENT AND WITHOUT PREJUDICE TO ANY OTHER LEGAL REMEDIES AVAILABLE TO SELLER, IF BUYER FAILS TO PROVIDE ACCEPTABLE SECURITY TO SELLER IN ACCORDANCE WITH THE PRECEDING CLAUSE ABOVE, SELLER MAY SUSPEND ITS PERFORMANCE UNDER THIS AGREEMENT OR ANY OTHER AGREEMENT.

**TAXES:**

**PAYMENT RESPONSIBILITY:** UNLESS OTHERWISE SPECIFIED IN THE RACK SALES AGREEMENT, BUYER SHALL PAY ALL APPLICABLE FEDERAL, STATE AND LOCAL TAXES, DUTIES, IMPOSTS, ASSESSMENTS, FEES, TARIFFS AND OTHER GOVERNMENTAL CHARGES (COLLECTIVELY "TAXES") THAT DIRECTLY OR INDIRECTLY, NOW OR HEREINAFTER, MAY BE LEVIED OR ASSESSED OR OTHERWISE APPLIED BY ANY GOVERNMENT OR INSTRUMENTALITY OR SUBDIVISION THEREOF, ON THE SALE, PURCHASE, USE, TRANSPORTATION, DELIVERY, INSPECTION OR HANDLING OF PRODUCT SOLD HEREUNDER, OTHER THAN TAXES BASED ON SELLER'S NET INCOME. IN THE EVENT THAT SELLER IS REQUIRED BY LAW TO PAY ANY OF SAID TAXES, BUYER SHALL REIMBURSE SELLER FOR ALL SUCH PAYMENTS. ANY NEW TAX, LICENSE, INSPECTION OR OTHER FEE (OTHER THAN INCOME TAX) LEVIED AFTER THE DATE OF A CONTRACT BY ANY GOVERNMENT AUTHORITY UPON THE TRANSACTIONS PROVIDED FOR IN A CONTRACT SHALL BE BORN BY BUYER, WHETHER PAID DIRECTLY TO THE GOVERNMENT AUTHORITY OR BY REIMBURSEMENT TO SELLER. WITHIN 30 DAYS AFTER ANY SUCH NEW TAX OR FEE BECOMES APPLICABLE, BUYER MAY GIVE WRITTEN NOTICE TO SELLER OF BUYER'S ELECTION TO TERMINATE THE CONTRACT AS TO ANY PRODUCTS TO WHICH SUCH NEW TAX OR FEE APPLIES AND WHICH HAVE NOT THEN BEEN PURCHASED. THE CONTRACT SHALL TERMINATE IN SUCH CASE ON THE DATE NAMED BY BUYER IN SAID NOTICE, UNLESS SELLER NOTIFIES BUYER WITHIN TEN (10) DAYS AFTER RECEIPT OF SAID NOTICE THAT SELLER WILL BEAR SUCH NEW TAX OR FEE.

**EXEMPTIONS:** IN THE EVENT BUYER INTENDS TO CLAIM ANY APPLICABLE EXEMPTION FOR ANY TAXES, BUYER SHALL, PRIOR TO

OR UPON DELIVERY OF THE PRODUCT, FURNISH TO SELLER ANY NECESSARY EXEMPTION CERTIFICATES FOR SUCH TAXES, TO THE EXTENT SUCH CERTIFICATES ARE REQUIRED OR PERMITTED BY LAW. UNLESS BUYER TIMELY DELIVERS SUCH EXEMPTION CERTIFICATES TO SELLER, BUYER SHALL REMAIN LIABLE FOR THE PAYMENT OF SUCH TAXES AND SHALL REIMBURSE SELLER FOR ANY SUCH TAXES PAID BY SELLER. BY PROVIDING SUCH EXEMPTION CERTIFICATES TO SELLER, BUYER SHALL REPRESENT AND WARRANT THAT IT IS LEGALLY ENTITLED TO ALL SUCH EXEMPTIONS AND BUYER SHALL INDEMNIFY, DEFEND AND HOLD SELLER HARMLESS FROM ALL LIABILITIES FOR TAXES, PENALTIES AND INTEREST, IF BUYER IS NOT ENTITLED TO AN EXEMPTION.

**PRICE ADJUSTMENTS:** UNLESS OTHERWISE PROVIDED IN THE RACK SALES AGREEMENT, A PURCHASE PRICE BASED IN TOTAL OR IN PART UPON PUBLISHED INDEX OR MARKER PRICES SHALL BE ADJUSTED AS FOLLOWS: FOR EACH BUSINESS DAY WHEN AN APPLICABLE INDEX PRICE IS PUBLISHED, THE PURCHASE PRICE SHALL BE ADJUSTED TO BE THE PUBLISHED PRICE FOR THAT BUSINESS DAY. THE PURCHASE PRICE FOR EACH DAY OTHER THAN A BUSINESS DAY SHALL BE BASED UPON THE APPLICABLE PRICE PUBLISHED FOR THE LAST BUSINESS DAY PRECEDING SUCH DAY. IF AN APPLICABLE INDEX PRICE IS NOT PUBLISHED FOR ANY BUSINESS DAY, THEN THE PURCHASE PRICE FOR THAT DAY SHALL BE THE APPLICABLE PRICE PUBLISHED FOR THE LAST BUSINESS DAY PRECEDING SUCH DAY.

IF ANY PURCHASE PRICE IS ESTABLISHED THROUGH REFERENCE TO ANOTHER PRICE, SUCH AS AN INDEX OR MARKER PRICE, AND IF DURING THE TERM HEREOF, SUCH REFERENCE OR MARKER PRICE CEASES TO BE PUBLISHED, BECOMES UNAVAILABLE OR CEASES TO BE DETERMINED IN SUBSTANTIALLY THE SAME MANNER AS WHEN THE PURCHASE PRICE WAS ORIGINALLY ESTABLISHED, THEN THE PARTIES SHALL NEGOTIATE IN GOOD FAITH TO IDENTIFY ONE OR MORE SUBSTITUTE REFERENCE PRICES THAT WILL PLACE THE PARTIES IN SUBSTANTIALLY THE SAME ECONOMIC POSITION AS WAS ACHIEVED THROUGH USING THE REFERENCE PRICE WHEN THE CONTRACT WAS NEGOTIATED, AND THE PURCHASE PRICE SHALL BE ADJUSTED TO UTILIZE THE SUBSTITUTE REFERENCE PRICE(S). IF THE PARTIES ARE UNABLE TO AGREE IN GOOD FAITH UPON SUBSTITUTE REFERENCE PRICES TO BE USED IN THOSE CIRCUMSTANCES, THEN UPON TEN (10) DAYS WRITTEN NOTICE, EITHER PARTY MAY TERMINATE THE CONTRACT, AND FOR ANY DELIVERIES MADE BETWEEN THE DATE OF TERMINATION AND THE DATE THE ORIGINAL REFERENCE PRICE BECAME UNAVAILABLE OR UNSUITABLE, THE PURCHASE PRICE SHALL BE A PRICE THAT WILL PLACE THE PARTIES IN THE CLOSEST ECONOMIC POSITION TO THE ONE ACHIEVED THROUGH USING THE REFERENCE PRICE AT THE TIME WHEN THE CONTRACT WAS NEGOTIATED.

**EXCHANGES AND BUY/SELL AGREEMENTS:** IF THESE GENERAL TERMS AND CONDITIONS APPLY TO AN EXCHANGE CONTRACT OR A MATCHING PURCHASE AND SALE CONTRACT, EACH PARTY SHALL BE OBLIGATED TO DELIVER THE VOLUME OF PRODUCTS SPECIFIED UNDER THE CONTRACT FOR DELIVERY BY SUCH PARTY; THE OTHER PARTY SHALL BE OBLIGATED TO RECEIVE THE VOLUME OF PRODUCTS SPECIFIED UNDER THE CONTRACT FOR RECEIPT BY SUCH PARTY; THE PARTY DELIVERING A QUANTITY OF PRODUCTS SHALL BE THE SELLER OF THOSE PRODUCTS; AND THE PARTY RECEIVING SUCH QUANTITY OF PRODUCTS SHALL BE THE BUYER OF THOSE PRODUCTS. EXCEPT FOR DIFFERENTIALS AND OTHER ADJUSTMENTS SET FORTH IN THE RACK SALES AGREEMENT OF AN EXCHANGE CONTRACT, EXCHANGES OF PRODUCTS SHALL BE ON A GALLON-FOR-GALLON BASIS. IF ONE PARTY IS UNABLE TO MAKE DELIVERY TO THE OTHER WITHIN THE TIME FRAME SPECIFIED IN THE CONTRACT, THE PARTIES WILL AGREE IN GOOD FAITH UPON THE TYPE, GRADE, DATES AND PLACE OF A SUBSTITUTE DELIVERY OF PRODUCTS, AND PRICE AND/OR VOLUME DIFFERENTIALS, IF ANY, WITH SUCH DELIVERIES TO BE MADE AT THE EARLIEST REASONABLE DATE, SO AS TO CAUSE THE ECONOMIC EFFECT TO THE PARTIES TO BE AS CLOSE AS PRACTICABLE TO THE ONE THAT WOULD HAVE ARISEN IF THE DELIVERIES HAD OCCURRED ON THE DATE(S), AT THE PLACES AND UNDER THE TERMS SPECIFIED IN THE CONTRACT. THE PARTIES SHALL USE THEIR BEST EFFORTS TO KEEP ALL EXCHANGES AND BUY/SELL ARRANGEMENTS IN BALANCE ON A MONTHLY BASIS, OR A SHORTER PERIOD IF SPECIFIED IN A CONTRACT. MONTHLY IMBALANCES WILL BE RESOLVED BY THE PARTIES ON A MUTUALLY AGREEABLE BASIS, BUT IN ACCORDANCE WITH THE TERMS OF THE EXCHANGE CONTRACT AND GENERALLY ACCEPTED INDUSTRY PRACTICES AND IN RECOGNITION OF THE REASONABLE RIGHTS OF THE PARTIES, SO AS TO CAUSE THE ECONOMIC EFFECTS TO THE PARTIES TO BE AS CLOSE AS PRACTICABLE TO THOSE THAT WOULD OCCUR IF THE DELIVERIES OCCURRED ON THE DATE(S), AT THE PLACES AND UNDER THE TERMS SPECIFIED IN THE CONTRACT. ANY PRODUCT IMBALANCE(S) EXISTING UPON TERMINATION OF AN EXCHANGE CONTRACT OR BUY/SELL CONTRACT WILL BE SETTLED IN ACCORDANCE WITH THE TERMS OF THE CONTRACT OR BY SOME MUTUALLY ACCEPTABLE PROCEDURE THAT WILL TAKE INTO ACCOUNT THE REASONABLE RIGHTS OF THE PARTIES WITH RESPECT TO VOLUMES, QUALITY, AND THE TIME AND PLACE OF DELIVERY SET FORTH IN THE CONTRACT, SO AS TO CAUSE THE ECONOMIC EFFECT TO THE PARTIES TO BE AS CLOSE AS PRACTICABLE TO THOSE THAT WOULD OCCUR IF THE DELIVERIES HAD OCCURRED ON THE DATE(S), AT THE PLACES AND UNDER THE TERM SPECIFIED IN THE CONTRACT.

**FORCE MAJEURE:** NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR FAILURE OR DELAY IN MAKING OR ACCEPTING DELIVERY UNDER A CONTRACT TO THE EXTENT THAT SUCH FAILURE OR DELAY MAY BE DUE TO FORCE MAJEURE. "FORCE MAJEURE" SHALL INCLUDE COMPLIANCE WITH ACTS, ORDERS, REGULATIONS OR REQUESTS OF ANY NATIONAL, FEDERAL, STATE OR LOCAL CIVILIAN OR MILITARY AUTHORITY OR ANY OTHER PERSONS PURPORTING TO ACT THEREFORE; WAR (WHETHER OR NOT DECLARED), EMBARGO, CIVIL INSURRECTION, RIOTS; STRIKES; LABOR DIFFICULTIES; ACTIONS OF THE ELEMENTS; NATURAL DISASTERS, FIRE, EXPLOSION, MECHANICAL BREAKDOWNS, OR ANY OTHER CAUSES REASONABLY BEYOND THE CONTROL OF SUCH PARTY, WHETHER SIMILAR OR NOT. SELLER SHALL NOT BE OBLIGATED TO MAKE UP ANY DELIVERIES OMITTED AS A RESULT OF ANY CONDITION OF FORCE MAJEURE, EXCEPT TO THE EXTENT THAT SELLER AND BUYER ARE RECONCILING OR BALANCING DELIVERIES UNDER AN EXCHANGE OR BUY/SELL CONTRACT. IN THE EVENT EITHER PARTY MUST INVOKE THE PROVISIONS OF THIS SECTION, SUCH PARTY SHALL USE ITS BEST EFFORTS TO PROVIDE THE OTHER PARTY, IN WRITING (EMAIL, FAX, OR OTHER ELECTRONIC COMMUNICATIONS ACCEPTABLE) WITH AS MUCH ADVANCE NOTICE AS IS POSSIBLE, STATING THE UNDERLYING CIRCUMSTANCES OF THE PARTICULAR CAUSE(S) OF FORCE MAJEURE, AND THE EXPECTED DURATION THEREOF. EACH PARTY SHALL USE REASONABLE DILIGENCE TO CURE OR CORRECT ANY CONDITION OF FORCE MAJEURE AFFECTING PERFORMANCE BY SUCH PARTY, PROVIDED HOWEVER, THAT NEITHER PARTY SHALL BE OBLIGATED TO SETTLE ANY STRIKES OR LABOR DISPUTES ON TERMS IT DEEMS UNSATISFACTORY. NO FORCE MAJEURE CONDITION SHALL RELIEVE BUYER OF ANY OBLIGATION TO MAKE PAYMENTS WITH REGARD TO PRODUCTS THAT HAVE BEEN DELIVERED UNDER A CONTRACT. IF A PARTY NOTIFIES ANOTHER PARTY OF A FORCE MAJEURE CONDITION THAT WOULD EXCUSE DELIVERY OF VOLUMES OF PRODUCTS TO BE DELIVERED UNDER AN EXCHANGE OR BUY/SELL CONTRACT, THE PARTY WHO IS TO RECEIVE SUCH DELIVERIES MAY, AT ITS OPTION, SUSPEND DELIVERIES OF ANY EQUIVALENT VOLUMES TO BE EXCHANGED OR SOLD UNDER SUCH EXCHANGE OR BUY/SELL CONTRACT.

**LIABILITIES:** IN NO EVENT SHALL SELLER OR BUYER BE LIABLE FOR INDIRECT OR CONSEQUENTIAL DAMAGES OR FOR SPECIFIC PERFORMANCE. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY AND WITHOUT LIMITATION ON THE FOREGOING, NEITHER

PARTY SHALL BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES.

BUYER ACKNOWLEDGES THE HAZARDS ASSOCIATED WITH THE HANDLING, STORAGE, TRANSPORTATION, USE, MISUSE, DISPOSAL OR SUBSEQUENT PROCESSING (THE "USE") OF THE PRODUCT DELIVERED TO IT AND ASSUMES FULL RESPONSIBILITY FOR ADVISING ITS EMPLOYEES, AGENTS, CONTRACTORS, AND CUSTOMERS, WHO SHALL USE, WORK OR OTHERWISE COME IN CONTACT WITH THE PRODUCT, OF THE HAZARDS TO HUMAN HEALTH OR HUMAN OR ENVIRONMENTAL SAFETY, WHETHER SUCH PRODUCT IS USED SINGULARLY OR IN COMBINATION WITH OTHER SUBSTANCES OR IN ANY PROCESSES OR OTHERWISE. BUYER SHALL INDEMNIFY, DEFEND AND HOLD SELLER, ITS EMPLOYEES, AGENTS AND CONTRACTORS HARMLESS FROM AND AGAINST ANY AND ALL LIABILITY OCCURRING FROM OR ARISING OUT OF A BREACH OF ITS OBLIGATIONS UNDER THIS SECTION AND FROM AND AGAINST CLAIMS, DEMANDS OR CAUSE OF ACTION FOR PERSONAL INJURY, DAMAGE TO THE ENVIRONMENT OR PROPERTY ARISING FROM OR ATTRIBUTABLE TO BUYER'S USE OF THE PRODUCT. THIS INDEMNITY SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

BUYER'S EXCLUSIVE REMEDY FOR ANY AND ALL LOSSES OR DAMAGES RESULTING FROM THE SALES OF PRODUCTS UNDER THE CONTRACT, INCLUDING, BUT NOT LIMITED TO, ANY ALLEGATIONS OF BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE OR STRICT LIABILITY, SHALL BE LIMITED TO EITHER THE RETURN OF THE PURCHASE PRICE OR THE REPLACEMENT OF THE PARTICULAR PRODUCTS FOR WHICH A CLAIM IS MADE AND PROVED, AT SELLER'S OPTION. THE DAMAGES CLAIMED BY EITHER PARTY AS A RESULT OF THE OTHER PARTY'S FAILURE TO SELL AND DELIVER OR TO PURCHASE AND RECEIVE ANY PRODUCTS SPECIFIED UNDER A CONTRACT SHALL NEVER EXCEED THE DIFFERENCE BETWEEN THE PURCHASE PRICE PAYABLE AT THE TIME AND PLACE SPECIFIED FOR DELIVERY UNDER THE CONTRACT AND THE MARKET VALUE OF SUCH PRODUCTS AT SUCH TIME AND PLACE.

ANY CLAIM BY BUYER CONCERNING THE QUANTITY OR QUALITY OF ANY PRODUCT SHALL BE IRREVOCABLY WAIVED UNLESS MADE BY WRITTEN NOTICE DELIVERED PROMPTLY UPON DISCOVERY OF SUCH DISPUTE, BUT IN NO EVENT NO LATER THAN THIRTY (30) DAYS AFTER THE DELIVERY OF PRODUCT AT ISSUE. SHOULD BUYER CLAIM THAT ANY PRODUCT SOLD WAS IN ANY WAY DEFECTIVE, BUYER SHALL PROMPTLY FURNISH SAMPLES OF THE PRODUCT CLAIMED TO BE DEFECTIVE. IN ADDITION, SELLER SHALL HAVE THE RIGHT TO TAKE ITS OWN SAMPLES, AND BUYER SHALL PRESERVE AN ADEQUATE QUANTITY OF THE PRODUCT FOR A REASONABLE PERIOD OF TIME TO ALLOW SELLER TO TAKE SUCH SAMPLES.

EACH PARTY HEREBY IRREVOCABLY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY DISPUTE, CONTROVERSY, OR CLAIM ARISING OUT OF OR IN RELATION TO OR IN CONNECTION WITH A CONTRACT OR THE OPERATIONS CARRIED OUT UNDER A CONTRACT INCLUDING, WITHOUT LIMITATION, ANY DISPUTE AS TO THE CONSTRUCTION, VALIDITY, INTERPRETATION, ENFORCEABILITY, OR BREACH OF A CONTRACT.

**DEFAULT AND LIQUIDATION:** IN THE EVENT EITHER PARTY (THE "DEFAULTING PARTY") SHALL (1) DEFAULT IN THE PAYMENT OR PERFORMANCE OF ANY OBLIGATION TO THE OTHER PARTY UNDER THIS OR ANY SPECIFIED AGREEMENT; (2) BECOME INSOLVENT, UNABLE TO PAY ITS DEBTS OR ADMIT IN WRITING ITS INABILITY GENERALLY TO PAY ITS DEBTS AS THEY BECOME DUE; (3) FILES A PETITION OR OTHERWISE COMMENCES OR AUTHORIZES THE COMMENCEMENT OF A PROCEEDING OR CASE UNDER ANY BANKRUPTCY, INSOLVENCY, REORGANIZATION, OR SIMILAR LAW FOR THE PROTECTION OF CREDITORS, OR HAS ANY SUCH PETITION FILED OR PROCEEDING OR CASE COMMENCED AGAINST IT AND IT IS NOT SUCCESSFUL IN HAVING SUCH PETITION, PROCEEDING, OR CASE DISMISSED WITHIN 60 DAYS; (4) BE DISSOLVED (OTHER THAN PURSUANT TO A CONSOLIDATION, AMALGAMATION OR MERGER); (5) HAVE A LIQUIDATOR, ADMINISTRATOR, RECEIVER OR TRUSTEE APPOINTED WITH RESPECT TO IT OR ANY SUBSTANTIAL PORTION OR ITS PROPERTY OR ASSETS; (6) PROPOSE OR MAKES A GENERAL ASSIGNMENT OR AN ARRANGEMENT OR COMPOSITION WITH OR FOR THE BENEFIT OF ITS CREDITORS; (7) FAIL TO PROVIDE ADEQUATE ASSURANCE OF ITS ABILITY TO PERFORM ALL OF ITS OBLIGATIONS UNDER THIS CONTRACT OR ANY OTHER AGREEMENT BETWEEN THE PARTIES WITHIN 48 HOURS OF A REASONABLE REQUEST THEREFORE FROM THE OTHER PARTY, WHEN A PARTY HAS REASONABLE GROUNDS WITH RESPECT TO SUCH PARTY'S PERFORMANCE; THEN IF ANY SUCH EVENT OCCURS, WITHOUT LIMITING ANY OTHER RIGHTS THAT MAY BE AVAILABLE, THE PARTY OTHER THAN THE DEFAULTING PARTY (THE "NON-DEFAULTING PARTY") SHALL HAVE THE RIGHT, EXERCISABLE IN ITS SOLE DISCRETION IMMEDIATELY AND AT ANY TIME (S), TO LIQUIDATE THIS CONTRACT AND ANY OR ALL OTHER AGREEMENTS THEN OUTSTANDING BETWEEN THE PARTIES. A SETTLEMENT AMOUNT SHALL BE CALCULATED IN A COMMERCIALY REASONABLE MANNER FOR EACH SUCH LIQUIDATED AND TERMINATED AGREEMENT AND BE PAYABLE BY ONE PARTY TO THE OTHER. SETTLEMENT AMOUNT SHALL MEAN, WITH RESPECT TO AN AGREEMENT AND THE NON-DEFAULTING PARTY, THE LOSSES AND COSTS (OR GAINS) EXPRESSED IN U.S. DOLLARS, WHICH SUCH PARTY INCURS AS A RESULT OF THE LIQUIDATION, INCLUDING LOSSES AND COSTS (OR GAINS) BASED UPON THE THEN CURRENT REPLACEMENT VALUE OF SUCH AGREEMENT TOGETHER WITH, AT THE NON-DEFAULTING PARTY'S ELECTION BUT WITHOUT DUPLICATION OR LIMITATION, ALL LOSSES AND COSTS WHICH SUCH PARTY INCURS AS A RESULT OF MAINTAINING, TERMINATING, OBTAINING OR REESTABLISHING ANY HEDGE OR RELATED TRADING POSITION. SUCH SETTLEMENT AMOUNTS SHALL BE NETTED TO A SINGLE LIQUIDATED AMOUNT PAYABLE BY THE PARTY WITH THE PAYMENT OBLIGATION TO THE OTHER WITHIN ONE BUSINESS DAY OF THE LIQUIDATION. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS CONTRACT OR ANY OTHER AGREEMENT BETWEEN THE PARTIES, THE NON-DEFAULTING PARTY SHALL SET OFF OR AGGREGATE AS APPROPRIATE, THE SETTLEMENT AMOUNT AND (AT THE ELECTION OF THE NON-DEFAULTING PARTY) ANY OR OTHER AMOUNTS DUE AND OUTSTANDING UNDER THIS CONTRACT OR ANY OTHER AGREEMENT BETWEEN THE PARTIES, PROVIDED THAT ANY AMOUNTS NOT THEN DUE SHALL BE DISCOUNTED TO PRESENT VALUE. THE NON-DEFAULTING PARTY'S RIGHTS UNDER THIS CLAUSE SHALL BE IN ADDITION TO, AND NOT IN LIMITATION OR EXCLUSION OF, ANY OTHER RIGHTS WHICH THE NON-DEFAULTING PARTY MAY HAVE (WHETHER BY AGREEMENT, OPERATION OF LAW OR OTHERWISE). AFTER A DEFAULT, THE DEFAULTING PARTY SHALL INDEMNIFY AND HOLD THE NON-DEFAULTING PARTY HARMLESS FROM ALL COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEY'S FEES AND DISBURSEMENTS) INCURRED BY THE NON-DEFAULTING PARTY IN THE EXERCISE OF THE REMEDIES HEREUNDER.

**INDEMNIFICATION:** THE PARTIES AGREE TO INDEMNIFY EACH OTHER AS FOLLOWS:

BUYER AGREES TO DEFEND, PROTECT, INDEMNIFY, AND SAVE SELLER, SELLER'S PARENT CORPORATIONS, SELLER'S AFFILIATES AND THEIR RESPECTIVE OFFICERS, DIRECTORS EMPLOYEES AND REPRESENTATIVES (THE "SELLER GROUP") HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, LIABILITIES, LOSSES, CAUSES OF ACTION, FINES, PENALTIES, COSTS AND EXPENSES (INCLUDING REASONABLE ATTORNEYS FEES) OF EVERY KIND AND CHARACTER FOR PERSONAL INJURY, DEATH OR DAMAGE TO PROPERTY, OR VIOLATIONS OF LAW, ARISING FROM OR OCCURRING OR GROWING OUT OF OR INCIDENT TO, OR RESULTING FROM THE WILLFUL OR NEGLIGENT ACTS OR OMISSIONS OF BUYER OR ITS AGENTS, SERVANTS, EMPLOYEES, CONTRACTORS, REPRESENTATIVES

AND INVITEES.

SELLER AGREES TO DEFEND, PROTECT, INDEMNIFY, AND SAVE BUYER, BUYER'S PARENT CORPORATIONS, BUYER'S AFFILIATES AND THEIR RESPECTIVE OFFICERS, DIRECTORS EMPLOYEES AND REPRESENTATIVES HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, LIABILITIES, LOSSES, CAUSES OF ACTION, FINES, PENALTIES, COSTS AND EXPENSES (INCLUDING REASONABLE ATTORNEYS FEES) OF EVERY KIND AND CHARACTER FOR PERSONAL INJURY, DEATH OR DAMAGE TO PROPERTY, OR VIOLATIONS OF LAW, ARISING FROM OR OCCURRING OR GROWING OUT OF OR INCIDENT TO, OR RESULTING FROM THE WILLFUL OR NEGLIGENT ACTS OR OMISSIONS OF SELLER OR ITS AGENTS, SERVANTS, EMPLOYEES CONTRACTORS, REPRESENTATIVES AND INVITEES.

WHERE PERSONAL INJURY, DEATH, OR LOSS OF OR DAMAGE TO PROPERTY IS THE RESULT OF THE JOINT NEGLIGENCE OR MISCONDUCT OF THE PARTIES HERETO, THE PARTIES EXPRESSLY AGREE TO DEFEND AND INDEMNIFY EACH OTHER IN PROPORTION TO THEIR RESPECTIVE SHARES OF SUCH JOINT NEGLIGENCE OR MISCONDUCT.

**INDEMNITY AS TO ENVIRONMENTAL CLAIMS:** BUYER AGREES TO PROTECT, DEFEND, INDEMNIFY AND HOLD HARMLESS THE SELLER GROUP FROM AND AGAINST ALL CLAIMS, DEMANDS, DAMAGES, FINES, JUDGMENTS, PENALTIES, COSTS, LIABILITIES OR LOSSES (INCLUDING, WITHOUT LIMITATION, ANY AND ALL CLEANUP, REMOVAL AND OTHER REMEDIATION COSTS AND SERVICES PAID FOR THE SETTLEMENT OF CLAIMS, ATTORNEY FEES, CONSULTANT AND EXPERT FEES) ARISING IN CONNECTION WITH THE PRESENCE OF ANY HAZARDOUS SUBSTANCE, ON, IN, UNDER, OR EMANATING FROM ANY OF BUYER'S PROPERTIES AND SITES. AS USED HEREIN, "HAZARDOUS SUBSTANCE" MEANS ANY SUBSTANCE WHICH IS TOXIC, IGNITABLE, REACTIVE, CORROSIVE, RADIOACTIVE, FLAMMABLE, EXPLOSIVE OR A HUMAN HEALTH AND SAFETY HAZARD, INCLUDING, BUT NOT LIMITED TO, ASBESTOS, PETROLEUM PRODUCTS, BY- PRODUCTS AND WASTE, POLYCHLORINATED BIPHENYL (PCBS) AND SUBSTANCES REFERRED TO AS HAZARDOUS SUBSTANCES, HAZARDOUS MATERIALS, TOXIC SUBSTANCES OR HAZARDOUS WASTE IN THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT OF 1980, AS AMENDED, 42 USC 9601, ET SEQ., THE SUPERFUND AMENDMENTS AND RE-AUTHORIZATION ACT OF 1986, THE RESOURCES CONSERVATION AND RECOVERY ACT, 42 USC 6901, ET SEQ., THE CLEAN WATER ACT, 33 USC 1251, ET SEQ., THE TOXIC SUBSTANCE CONTROL ACT, 15 USC 2601, ET SEQ., AND ALL REGULATIONS PROMULGATED PURSUANT THERETO, AND ANY AND ALL OTHER APPLICABLE STATUTES, LAWS, ORDINANCES, RULES AND REGULATIONS OF ANY STATE, FEDERAL, COUNTY OR MUNICIPALITY, OR QUASI-GOVERNMENTAL AUTHORITY OR BODY.

**LAWS AND REGULATIONS:**

**COMPLIANCE:** BUYER AND SELLER SHALL ENTER INTO EACH CONTRACT IN RELIANCE UPON AND SHALL FULLY COMPLY WITH ALL APPLICABLE FEDERAL, STATE, AND LOCAL LAWS, RULES, REGULATIONS, DECREES, AND/OR PERMITS ("REGULATIONS"), WHICH DIRECTLY OR INDIRECTLY AFFECT THE PRODUCTS SOLD AND TO BE DELIVERED THEREUNDER, OR ANY DELIVERY, TRANSPORTATION, HANDLING OR STORAGE OF PRODUCTS SOLD THEREUNDER. NEITHER PARTY SHALL CAUSE OR ALLOW PRODUCTS TO BE CONTAMINATED OR CHANGED IN ANY MANNER THAT SHALL VIOLATE ANY APPLICABLE REGULATIONS. IN THE EVENT ANY CONTRACT, OR ANY ACTION OR OBLIGATION IMPOSED UPON A PARTY THEREBY, SHALL AT ANY TIME BE IN CONFLICT WITH ANY REQUIREMENT OF A REGULATION, THEN THE CONTRACT, ACTION OR OBLIGATION SO ADVERSELY AFFECTED SHALL IMMEDIATELY BE MODIFIED TO CONFORM TO THE REQUIREMENTS OF THE REGULATIONS, AND ALL OTHER PROVISIONS OF THE CONTRACT SHALL REMAIN EFFECTIVE. PRODUCT DELIVERED HEREUNDER MAY NOT BE RESOLD, SUPPLIED OR DELIVERED, DIRECTLY OR INDIRECTLY, TO ANY DESTINATION OR REPRESENTATIVES OR SUBJECTS THEREOF PROHIBITED BY THE REGULATIONS.

**NEW OR CHANGED REGULATIONS:** IF DURING THE TERM OF A CONTRACT, NEW REGULATIONS BECOME EFFECTIVE OR ANY EXISTING REGULATIONS ARE OR THEIR INTERPRETATIONS ARE MATERIALLY CHANGED, WHICH CHANGE IS NOT ADDRESSED BY ANOTHER PROVISION OF THE CONTRACT AND HAS A MATERIAL ADVERSE ECONOMIC IMPACT UPON A PARTY OR ANY THIRD PARTY TRANSPORTING, RECEIVING OR DELIVERING PRODUCTS SOLD THEREUNDER, EITHER PARTY, ACTING IN GOOD FAITH, SHALL HAVE THE OPTION TO REQUEST RENEGOTIATION OF THE RELEVANT PROVISIONS OF THE CONTRACT WITH RESPECT TO DELIVERIES NOT YET MADE. IN THE EVENT THAT EITHER PARTY, ACTING IN GOOD FAITH, IS DISSATISFIED WITH THE RESULTS OF SUCH RENEGOTIATIONS, SUCH PARTY SHALL HAVE THE RIGHT TO CANCEL THE CONTRACT, BY NOTICE OF CANCELLATION WITHIN THIRTY (30) DAYS OF THE EFFECTIVE DATE OF THE CHANGE OF REGULATIONS, OR AT ANY TIME THEREAFTER IF THE CHANGE IN REGULATIONS EFFECTIVELY PRECLUDES A PARTY FROM SELLING, PURCHASING, DELIVERING OR RECEIVING PRODUCTS UNDER THE CONTRACT TERMS.

**DIESEL:** EACH PARTY AGREES TO COMPLY WITH ALL APPLICABLE FEDERAL, STATE AND LOCAL REGULATIONS FOR LOW SULFUR DIESEL FUEL (INCLUDING BUT NOT LIMITED TO 40 C.F.R 80.29 AND 80.30, AS MAY BE REVISED OR AMENDED FROM TIME TO TIME). SELLER HEREBY CERTIFIES THAT ANY DIESEL SOLD SHALL COMPLY WITH APPLICABLE STANDARDS AT THE TIME AND PLACE WHERE SUCH DIESEL IS DELIVERED. BUYER'S SUBSEQUENT SALES, OFFERS FOR SALE, DISPENSING, SUPPLY, OFFERS FOR SUPPLY AND TRANSPORTATION OF SAID DIESEL SHALL BE IN COMPLIANCE WITH ALL FEDERAL, STATE AND LOCAL REGULATIONS.

**ULTRA LOW SULFUR DIESEL:** WITH RESPECT TO ANY ULTRA LOW SULFUR DIESEL SOLD UNDER ANY CONTRACT, BUYER SHALL TAKE CARE TO ENSURE THAT SUCH PRODUCT IS NOT COMMINGLED OR CONTAMINATED IN ANY TRUCK, PIPELINE, RAILCAR, TANK OR VESSEL WITH ANY OTHER DIESEL, FUEL OR OTHER PRODUCT, AND BUYER WILL TAKE STEPS TO ENSURE THAT THE PRODUCT IS NOT HANDLED IN ANY FASHION SUCH AS TO CAUSE THE SULFUR CONCENTRATION OF THE PRODUCT TO EXCEED ANY GOVERNMENTAL REQUIREMENTS. BUYER SHALL BE SOLELY RESPONSIBLE FOR ENSURING THAT ALL CARRIERS, TRANSPORTERS AND STORAGE FACILITIES LOADING AND HANDLING THE PRODUCTS AFTER THE DELIVERY TO BUYER TAKE ADEQUATE MEASURES TO PREVENT ANY CONTAMINATION OF ANY PRODUCT BEING SOLD HEREUNDER. BUYER SHALL ALSO TAKE SUCH MEASURES AS NECESSARY TO ENSURE THAT ANY ULTRA LOW SULFUR DIESEL SOLD OR DISPENSED BY BUYER IS PROPERLY LABELED IN COMPLIANCE WITH ALL APPLICABLE REGULATIONS. SELLER SHALL HAVE NO LIABILITY TO BUYER, OR TO ANY CARRIER, AGENT, AFFILIATE, CONTRACTOR OR CUSTOMER OF BUYER, FOR ANY CLAIMS, DAMAGES, LOSSES, INJURY OR HARM OF ANY KIND SHOULD THE LOADING, HANDLING, STORAGE, OR TRANSPORTATION OF ANY ULTRA LOW SULFUR DIESEL BY BUYER OR ITS CARRIERS, AGENTS, AFFILIATES, CONTRACTORS OR CUSTOMERS CAUSE OR RESULT IN ANY PRODUCT'S SULFUR CONCENTRATION TO EXCEED THE EPA'S, OR OTHER GOVERNMENTAL AUTHORITY'S, REQUIREMENTS, AND BUYER HEREBY WAIVES AND RELEASES, AND AGREES TO FULLY DEFEND AND INDEMNIFY SELLER FROM ALL SUCH CLAIMS, DAMAGES, LOSSES, INJURY OR HARM.

**OXYGENATED GASOLINE AND RVP:** EACH PARTY AGREES TO COMPLY WITH ALL APPLICABLE FEDERAL, STATE, AND LOCAL VOLATILITY REGULATIONS FOR GASOLINE AND ALCOHOL BLENDS (INCLUDING, BUT NOT LIMITED TO, 40

C.F.R. 80.27 AND 80.28, AS MAY BE REVISED OR AMENDED FROM TIME TO TIME) AND TO COMPLY WITH ALL APPLICABLE FEDERAL AND STATE LAWS FOR OXYGENATED GASOLINE FOR EACH LOADING OF GASOLINE DURING ANY GOVERNMENT MANDATED CONTROL SEASON FOR REID VAPOR PRESSURE ("RVP") AND/OR OXYGENATED GASOLINE. DELIVERING TERMINAL SHALL PROVIDE BUYER WITH A CERTIFICATE OF ANALYSIS THAT CERTIFIES THE MAXIMUM RVP OF THE PRODUCT AT THE TIME AND PLACE OF DELIVERY AND THAT THE GASOLINE IS IN COMPLIANCE WITH ALL APPLICABLE REGULATIONS AT THE TIME AND PLACE OF DELIVERY. BUYER'S SUBSEQUENT SALES, OFFERS FOR SALE, DISPENSING, SUPPLY, OFFERS FOR SUPPLY AND TRANSPORTATION OF SAID GASOLINE SHALL BE IN COMPLIANCE WITH ALL FEDERAL, STATE AND LOCAL REGULATIONS.

**RFG AND CG:** EACH PARTY AGREES TO COMPLY WITH ALL APPLICABLE FEDERAL, STATE, AND LOCAL REGULATIONS FOR REFORMULATED GASOLINE AND BLEND STOCKS (INDIVIDUALLY AND JOINTLY "RFG") AND CONVENTIONAL GASOLINE ("CG"), (INCLUDING BUT NOT LIMITED TO 40 C.F.R. 80.65 THROUGH 80.89, AS MAY BE REVISED OR AMENDED FROM TIME TO TIME). SELLER HEREBY CERTIFIES THAT UNLESS OTHERWISE AGREED AS PERMITTED BY LAW, ALL GASOLINE DELIVERED UNDER A CONTRACT SHALL BE IN COMPLIANCE WITH ALL APPLICABLE STANDARDS AT THE TIME AND PLACE WHERE SUCH GASOLINE IS DELIVERED TO BUYER, AND THAT DOCUMENTATION REGARDING EACH SUCH DELIVERY SHALL ALSO BE IN COMPLIANCE WITH APPLICABLE REQUIREMENTS. DELIVERING TERMINAL OR SELLER SHALL PROVIDE BUYER ALL TRANSFER DOCUMENTS REQUIRED BY 40 C.F.R. 80.77 FOR RFG AND BY 40 C.F.R.

80.106 FOR CG DELIVERIES. SELLER AND BUYER SHALL EACH MAINTAIN RECORDS OF A TYPE AND MANNER AND FOR THE TIME REQUIRED TO COMPLYING WITH 40 C.F.R. 80.74.

**ETHANOL:** EACH PARTY AGREES TO COMPLY WITH ALL APPLICABLE FEDERAL, STATE, AND LOCAL REGULATIONS FOR ETHANOL. THE RINS SOLD HEREUNDER SHALL BE TRANSFERRED IN FULL COMPLIANCE WITH ALL APPLICABLE LAW. SELLER AND BUYER SHALL MAINTAIN APPROPRIATE RECORDS THAT DEMONSTRATE COMPLIANCE WITH APPLICABLE LAW AND INDUSTRY STANDARDS. EACH PARTY ALSO SHALL IMMEDIATELY NOTIFY THE OTHER PARTY IN WRITING OF ANY VIOLATION OR ALLEGED VIOLATION WITH RESPECT TO THE ETHANOL AND RINS SOLD HEREUNDER AND, UPON REASONABLE REQUEST, SHALL PROVIDE THE OTHER WITH EVIDENCE OF ENVIRONMENTAL INSPECTIONS OR AUDITS BY ANY GOVERNMENTAL AGENCY WITH RESPECT TO SUCH ETHANOL AND/OR RINS. THE PARTIES AGREE THAT EITHER SELLER OR BUYER ("THE RECIPIENT") AS MUTUALLY AGREED WILL ACCEPT THE LCFS COMPLIANCE OBLIGATION AS THE REGULATED PARTY. THE RECIPIENT IS NOW THE REGULATED PARTY FOR THE ACQUIRED ETHANOL AND ACCORDINGLY IS RESPONSIBLE FOR MEETING THE REQUIREMENTS OF THE LCFS WITH RESPECT TO THE ETHANOL AS OUTLINED IN THE LCFS.

**PERMITS AND REPORTS:** EACH PARTY WILL BE SOLELY RESPONSIBLE FOR COMPLIANCE WITH ALL REGULATIONS ASSOCIATED WITH THE OPERATION OF SUCH PARTY'S LOCATIONS, INCLUDING BUT NOT LIMITED TO, TAX AND ENVIRONMENTAL PERMITS AND REPORTS, REGISTRATION OR REPORTING FOR UNDERGROUND STORAGE TANKS AND LEAK DETECTION. BUYER ACKNOWLEDGES AND AGREES THAT SELLER DOES NOT HAVE ANY LIABILITY OR RESPONSIBILITY FOR PRODUCT STORAGE FACILITIES LOCATED ON PREMISES OF BUYER OR BUYER'S CUSTOMERS. EACH PARTY SHALL PROVIDE THE OTHER PARTY WITH SUCH INFORMATION AND REPORTS AS MAY BE REASONABLY REQUESTED OR REQUIRED BY LAW, TO ENABLE EACH PARTY TO FILE ALL REPORTS REQUIRED BY REGULATORY AND TAX AUTHORITIES.

**GOVERNING LAW AND JURISDICTION:** THE FOLLOWING SHALL BE CONSIDERED AS WRITTEN IN BOLD FACE: THIS CONTRACT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REFERENCE TO ITS LAW ON CONFLICTS, AND EACH PARTY CONSENTS TO THE NON-EXCLUSIVE JURISDICTION OF THE COURTS IN THE BOROUGH OF MANHATTAN, CITY OF NEW YORK, STATE OF NEW YORK AND TO SERVICE OF PROCESS BY U.S. CERTIFIED MAIL. THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS SHALL NOT IN ANY WAY GOVERN OR APPLY TO THIS CONTRACT.

**ARBITRATION:** IF ANY DISPUTE ARISES BETWEEN BUYER AND SELLER IN CONNECTION WITH THIS CONTRACT, THE MATTER IN DISPUTE SHALL BE SUBMITTED BY EITHER PARTY HERETO TO ARBITRATION IN NEW YORK CITY, NEW YORK, USA, BEFORE THREE ARBITRATORS. THE PARTY INITIATING ARBITRATION SHALL PROVIDE WRITTEN NOTICE OF ITS INTENT TO SUBMIT THE MATTER FOR ARBITRATION. SUCH NOTICE SHALL IDENTIFY THE ARBITRATION CLAIM AND SPECIFY THE INITIATING PARTY'S DESIGNATED ARBITRATOR. WITHIN TEN (10) DAYS FOLLOWING SUCH NOTICE OF ARBITRATION, THE OTHER PARTY SHALL APPOINT ITS DESIGNATED ARBITRATOR. IF SUCH PARTY FAILS TO APPOINT AN ARBITRATOR WITHIN THE APPLICABLE 10-DAY PERIOD AND GIVE TIMELY NOTICE OF SUCH APPOINTMENT TO THE INITIATING PARTY, THEN THE INITIATING PARTY SHALL BE ENTITLED TO SPECIFY SUCH SECOND ARBITRATOR AS WELL. THE THIRD ARBITRATOR SHALL BE SELECTED BY THE TWO ARBITRATORS SO CHOSEN. EACH PARTY WILL BEAR AND PAY THE COSTS OF THE ARBITRATOR APPOINTED BY (OR FOR) IT AND THE COST OF THE THIRD ARBITRATOR SHALL BE BORNE AND PAID EQUALLY BY THE PARTIES. THE DECISION OF THE ARBITRATORS SHALL BE FINAL, CONCLUSIVE AND BINDING ON ALL PARTIES. JUDGMENT MAY BE ENTERED UPON ANY SUCH AWARD IN ANY COURT WITH JURISDICTION. FOR DISPUTES OF LESS THAN USD \$25,000, ONE ARBITRATOR WILL BE USED AS AGREED BY BOTH PARTIES. IF BOTH PARTIES FAIL TO AGREE ON ONE ARBITRATOR, THE SELLER WILL APPOINT A SUITABLE ARBITRATOR.

**SAFETY:** UPON REQUEST, SELLER SHALL FURNISH TO BUYER MATERIAL SAFETY DATA SHEETS CONCERNING THE HEALTH AND SAFETY ASPECTS OF PRODUCTS PURCHASED BY BUYER, INCLUDING SAFETY AND HEALTH WARNINGS REQUIRED BY APPLICABLE LAW. BUYER SHOULD NOT RELY UPON SUCH DATA AS A COMPLETE PRESENTATION OF ALL POTENTIAL HEALTH AND SAFETY RISKS ASSOCIATED WITH THE PRODUCTS DELIVERED.

BUYER ACKNOWLEDGES THAT IT AND ITS CARRIERS ARE FULLY INFORMED CONCERNING THE NATURE AND EXISTENCE OF RISKS POSED BY TRANSPORTING, STORING, USING, HANDLING AND BEING EXPOSED TO ETHANOL, GASOLINE, DIESEL AND OTHER REFINED PETROLEUM PRODUCTS. BUYER WILL INFORM ITS EMPLOYEES, AGENTS, RETAIL OUTLETS, CONTRACTORS AND CUSTOMERS OF SUCH RISKS. CARRIERS ENTERING THE TERMINALS WHERE SELLER'S PRODUCTS ARE DISTRIBUTED SHALL COMPLY WITH ALL TERMINAL RULES AND REQUIREMENTS AND ALL REGULATIONS RELATING TO THE HANDLING, STORAGE, TRANSPORTATION AND DISTRIBUTION OF ETHANOL, GASOLINE, DIESEL AND OTHER PETROLEUM PRODUCTS AND SHALL ADVISE AND INSTRUCT EMPLOYEES RELATING TO THE HAZARDS ASSOCIATED WITH ETHANOL, GASOLINE, DIESEL AND OTHER REFINED PETROLEUM PRODUCTS AND THE SAFE AND PROPER METHODS OF HANDLING PRODUCTS.

BUYER SHALL DEFEND AT ITS OWN EXPENSE, INDEMNIFY FULLY AND HOLD HARMLESS SELLER AND ITS PARENTS, SUBSIDIARIES AND AFFILIATES AND ITS AND THEIR AGENTS, OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES, SUCCESSORS AND ASSIGNS FROM



AND AGAINST ANY AND ALL LIABILITIES; LOSSES, DAMAGES, DEMANDS, CLAIMS, PENALTIES, FINES, ACTIONS, SUITS, LEGAL, ADMINISTRATIVE OR ARBITRATION PROCEEDINGS, JUDGMENTS, ORDERS, DIRECTIVES, INJUNCTIONS, DECREES OR AWARDS OF ANY JURISDICTION, COSTS AND EXPENSES (INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND RELATED COSTS) ARISING OUT OF OR IN ANY MANNER RELATED TO BUYER'S FAILURE TO PROVIDE NECESSARY WARNINGS OR OTHER PRECAUTIONARY MEASURES IN CONNECTION WITH THE PRODUCT SOLD HEREUNDER AS PROVIDED ABOVE.

**CONFIDENTIALITY:** THE PARTIES AGREE TO KEEP CONFIDENTIAL THE EXISTENCE AND TERMS OF THIS AGREEMENT (“CONFIDENTIAL INFORMATION”), SAVE THAT EACH PARTY MAY DISCLOSE THE CONFIDENTIAL INFORMATION PURSUANT TO AN ORDER OF ANY COURT OF COMPETENT JURISDICTION, OR AS MAY BE REQUIRED BY ANY APPLICABLE LAW, REGULATION, OR BY ANY GOVERNMENTAL OR OTHER REGULATORY AUTHORITY HAVING JURISDICTION OVER THE PARTIES, OR TO ANY OF ITS AFFILIATES, PROFESSIONAL ADVISORS, AUDITORS, INSURERS, AGENTS AND/OR BROKERS OR IN CONNECTION WITH ANY DISPUTE OR COURT OR ARBITRATION PROCEEDINGS. THE CONFIDENTIALITY OBLIGATIONS CONTAINED IN THIS AGREEMENT SHALL SURVIVE THE TERMINATION OR EXPIRY OF THIS AGREEMENT FOR A PERIOD OF TWO YEARS. EACH PARTY ENTERS INTO THIS AGREEMENT AS PRINCIPALS ON AN ARM’S-LENGTH BASIS (AND NOT AS AGENTS OR IN ANOTHER CAPACITY, FIDUCIARY OR OTHERWISE). THE PARTIES ACKNOWLEDGE AND AGREE THAT (I) VITOL IS IN THE COMMODITY TRADING BUSINESS, (II) VITOL’S TRADING ACTIVITIES MAY, FROM TIME-TO-TIME, BE ADVERSE TO THE TRADING OR MARKET POSITIONS OF THE OTHER PARTY, (III) VITOL MAY DISCLOSE THE CONFIDENTIAL INFORMATION TO ITS EMPLOYEES, INCLUDING TRADERS, WHO MAY DISCUSS SUCH CONFIDENTIAL INFORMATION INTERNALLY IN CONSIDERATION OF THE AGREEMENT AND WHO MAY RETAIN MENTAL IMPRESSIONS THEREOF, (V) SUCH RETAINED MENTAL IMPRESSIONS WILL NOT LIMIT VITOL’S ABILITY TO ENGAGE IN ANY TRADING OR OTHER RELATED ACTIVITIES OR WORK ON PROJECTS RELATED TO THE AGREEMENT (INCLUDING ANY HEDGING ARRANGEMENTS), AND (VI) SUCH RETAINED MENTAL IMPRESSIONS SHALL NOT PRECLUDE VITOL FROM DEVELOPING INTERNAL PRICING AND VALUATION MODELS RELATING TO THE AGREEMENT OR OTHERWISE.

**NOTICES:** ANY NOTICE, REQUEST, ACKNOWLEDGMENT OR OTHER COMMUNICATION REQUIRED OR PERMITTED BY OR PERTAINING TO A CONTRACT SHALL BE IN WRITING AND ADDRESSED TO THE OTHER PARTY THERETO AT THE ADDRESS LISTED IN THE CONTRACT; PROVIDED HOWEVER THAT COMMUNICATIONS CONCERNING SCHEDULING OF DELIVERIES MAY BE MADE ORALLY, PROMPTLY FOLLOWED BY WRITTEN CONFIRMATION. ANY SUCH NOTICE, REQUEST OR OTHER COMMUNICATION SHALL BE EITHER (I) BY PREPAID MAIL OR NATIONALLY RECOGNIZED COURIER OR MESSENGER SERVICE WITH CONFIRMED DELIVERY, OR (II) BY PERSONAL SERVICE UPON AN AUTHORIZED OWNER, OFFICER OR MANAGER OF THE RECEIVING PARTY (III) PROVIDED THAT NOTICES CONCERNING SCHEDULING OF DELIVERIES OR CONTRACTUALLY PERMITTED CHANGES IN THE PURCHASE PRICE MAY BE MADE BY FAX. ALL NOTICES SHALL BE DEEMED SERVED UPON RECEIPT.

**ASSIGNMENT:** WITHOUT THE PRIOR WRITTEN CONSENT OF THE OTHER PARTY, WHICH CONSENT SHALL NOT BE UNREASONABLY WITHHELD, NEITHER PARTY MAY ASSIGN ITS RIGHTS OR OBLIGATIONS UNDER THIS CONTRACT IN FULL OR IN PART, EXCEPT THAT THE SELLER AND ITS ASSIGNS MAY WITHOUT SUCH CONSENT ASSIGN ALL OR A PORTION OF THEIR RIGHTS TO RECEIVE AND OBTAIN PAYMENT UNDER THIS CONTRACT IN CONNECTION WITH SECURITIZATION OR BANK FUNDING ARRANGEMENTS. ANY SUCH ASSIGNMENT WILL NOT DETRACT FROM THE SELLER'S OBLIGATIONS UNDER THIS CONTRACT.

**TRADE CONTROLS:** NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, NEITHER PARTY SHALL BE OBLIGED TO ACT IN ANY WAY OR TO PERFORM, AND NOTHING IN THIS AGREEMENT IS INTENDED, OR SHOULD BE INTERPRETED OR CONSTRUED AS REQUIRING OR INDUCING A PARTY TO ACT IN ANY WAY OR TO PERFORM ANY OBLIGATION OTHERWISE REQUIRED BY THIS AGREEMENT (INCLUDING WITHOUT LIMITATION AN OBLIGATION TO (A) PERFORM, DELIVER, ACCEPT, SELL, PURCHASE, PAY OR RECEIVE MONIES TO, FROM OR THROUGH A PERSON OR ENTITY, OR (B) ENGAGE IN ANY OTHER ACTS) IF THIS WOULD BE IN VIOLATION OF, INCONSISTENT WITH, PENALIZED OR PROHIBITED BY, OR EXPOSE SUCH PARTY TO PUNITIVE MEASURES UNDER ANY APPLICABLE LAWS, REGULATIONS, DECREES, ORDINANCES, ORDERS OR RULES OF THE EUROPEAN UNION (“EU”), ANY EU MEMBER STATE, THE UNITED NATIONS, THE UNITED STATES OF AMERICA OR OTHER JURISDICTION APPLICABLE TO THE PARTIES RELATING TO INTERNATIONAL BOYCOTTS, TRADE SANCTIONS, FOREIGN TRADE CONTROLS, EXPORT CONTROLS, NON-PROLIFERATION, ANTI-TERRORISM OR SIMILAR LAWS (THE “TRADE RESTRICTIONS”).

WHERE ANY PERFORMANCE BY A PARTY WOULD BE IN VIOLATION OF, INCONSISTENT WITH, OR EXPOSE SUCH PARTY TO PUNITIVE MEASURES UNDER A TRADE RESTRICTION, SUCH PARTY (THE “AFFECTED PARTY”) SHALL, AS SOON AS REASONABLY PRACTICABLE, GIVE WRITTEN NOTICE TO THE OTHER PARTY OF ITS INABILITY TO PERFORM. THE AFFECTED PARTY SHALL BE ENTITLED:

- A. IMMEDIATELY TO SUSPEND THE PERFORMANCE OF THE OBLIGATION (WHETHER A PAYMENT OR PERFORMANCE OBLIGATION) UNTIL SUCH TIME AS THE AFFECTED PARTY MAY LAWFULLY DISCHARGE SUCH OBLIGATION; AND/OR
- B. WHERE THE INABILITY TO DISCHARGE THE OBLIGATION CONTINUES UNTIL THE END OF THE CONTRACTUAL TIME FOR DISCHARGE THEREOF OR A PERIOD OF 30 DAYS (WHICHEVER IS THE SHORTER), TO A FULL RELEASE FROM THE OBLIGATION, PROVIDED THAT WHERE THE OBLIGATION RELATES TO PAYMENT FOR GOODS WHICH HAVE ALREADY BEEN DELIVERED, THE OBLIGATION SHALL REMAIN SUSPENDED (WITHOUT PREJUDICE TO THE ACCRUAL OF ANY INTEREST ON AN OUTSTANDING PAYMENT AMOUNT) UNTIL SUCH TIME AS THE AFFECTED PARTY MAY LAWFULLY RESUME PAYMENT; AND/OR
- C. WHERE THE OBLIGATION IS ACCEPTANCE OF THE VESSEL, BARGE, TRUCK, OR OTHER MODE OF TRANSPORT (AS RELEVANT), TO, OR TO REQUIRE THE OTHER PARTY TO, NOMINATE AN ALTERNATIVE (SAVE THAT THE ALTERNATIVE MUST BE THE SAME MODE OF TRANSPORT AS INITIALLY NOMINATED),

IN EACH CASE WITHOUT ANY LIABILITY WHATSOEVER (INCLUDING BUT NOT LIMITED TO ANY DAMAGES FOR BREACH OF CONTRACT, PENALTIES, COSTS, FEES AND EXPENSES).

NOTHING IN THIS CLAUSE SHALL BE TAKEN TO LIMIT OR PREVENT THE OPERATION OF THE DOCTRINE OF FRUSTRATION (INCLUDING FRUSTRATION OF THE ADVENTURE, OF PURPOSE OR OF THE AGREEMENT) OR ANY ANALOGOUS DOCTRINE UNDER THE LAW GOVERNING THIS AGREEMENT.

**SEVERABILITY:** IF ANY PROVISION (OR PART THEREOF) OF THIS AGREEMENT IS DECLARED INVALID, ILLEGAL OR UNENFORCEABLE



BY A COURT OR ARBITRAL TRIBUNAL OF COMPETENT JURISDICTION OR BECOMES INVALID, ILLEGAL OR UNENFORCEABLE DUE TO EITHER PARTY'S COMPLIANCE WITH APPLICABLE LAWS, IT SHALL BE DEEMED MODIFIED TO THE MINIMUM EXTENT NECESSARY TO MAKE IT VALID, LEGAL AND ENFORCEABLE. IF SUCH MODIFICATION IS NOT POSSIBLE, THE RELEVANT PROVISION OR PART THEREOF SHALL BE DEEMED DELETED. ANY MODIFICATION TO OR DELETION OF A PROVISION OR PART THEREOF UNDER THIS CLAUSE SHALL NOT AFFECT THE VALIDITY AND ENFORCEABILITY OF THE REMAINDER OF THIS AGREEMENT.

**ANTI-CORRUPTION:** THE PARTIES TO THIS AGREEMENT EACH AGREE AND UNDERTAKE TO THE OTHER THAT IN CONNECTION WITH THIS AGREEMENT, THEY WILL EACH RESPECTIVELY COMPLY WITH AND ACT IN A MANNER CONSISTENT WITH ALL APPLICABLE LAWS, RULES, REGULATIONS, DECREES AND/OR OFFICIAL GOVERNMENT ORDERS OF THE GOVERNMENTS OF THE UNITED KINGDOM, EUROPEAN UNION, UNITED STATES OF AMERICA OR OTHER JURISDICTION APPLICABLE TO THE PARTIES RELATING TO ANTI-BRIBERY, ANTI-MONEY LAUNDERING AND TAX EVASION. IF ONE PARTY REASONABLY BELIEVES THAT THE OTHER PARTY IS IN BREACH OF ANY OF ITS OBLIGATIONS UNDER THIS CLAUSE, THE NON-BREACHING PARTY MAY TERMINATE THE AGREEMENT FORTHWITH UPON WRITTEN NOTICE (SUPPORTED BY REASONABLE EVIDENCE) TO THE OTHER PARTY WITHOUT PREJUDICE TO THE NON-BREACHING PARTY'S RIGHTS UNDER THIS AGREEMENT OR GENERALLY.

**NON-CONFORMING PRODUCT:** SELLER'S SOLE LIABILITY AND BUYER'S EXCLUSIVE REMEDY FOR NON-CONFORMING PRODUCT IS EXPRESSLY LIMITED, AT BUYER'S OPTION, TO (I) REPLACEMENT OF THE NON-CONFORMING PRODUCT, OR (II) PAYMENT NOT TO EXCEED THE CURRENT MARKET PRICE OF THE PRODUCT FOR WHICH DAMAGES ARE CLAIMED.

**DAMAGES:** NOTWITHSTANDING ANYTHING HEREIN AND WITHOUT LIMITATION ON THE FOREGOING, NEITHER PARTY SHALL BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES. BUYER ACKNOWLEDGES THE HAZARDS ASSOCIATED WITH THE HANDLING, STORAGE, TRANSPORTATION, USE, MISUSE, DISPOSAL OR SUBSEQUENT PROCESSING (THE "USE") OF THE PRODUCT DELIVERED TO IT AND ASSUMES FULL RESPONSIBILITY FOR ADVISING ITS EMPLOYEES, AGENTS, CONTRACTORS, AND CUSTOMERS, WHO SHALL USE, WORK OR OTHERWISE COME IN CONTACT WITH THE PRODUCT, OF THE HAZARDS TO HUMAN HEALTH OR HUMAN OR ENVIRONMENTAL SAFETY, WHETHER SUCH PRODUCT IS USED SINGULARLY OR IN COMBINATION WITH OTHER SUBSTANCES OR IN ANY PROCESSES OR OTHERWISE.

**INDEMNITY:** EACH PARTY SHALL INDEMNIFY, DEFEND AND HOLD THE OTHER PARTY, ITS EMPLOYEES, AGENTS AND CONTRACTORS HARMLESS FROM AND AGAINST ANY AND ALL LIABILITY OCCURRING FROM OR ARISING OUT OF A BREACH OF ITS OBLIGATIONS UNDER THIS SECTION AND FROM AND AGAINST CLAIMS, DEMANDS OR CAUSE OF ACTION FOR PERSONAL INJURY, DAMAGE TO THE ENVIRONMENT OR PROPERTY ARISING FROM OR ATTRIBUTABLE TO EACH PARTY'S HANDLING OR USE OF THE PRODUCT. THIS INDEMNITY SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

**ENTIRETY OF AGREEMENT, MODIFICATION AND WAIVER:** A CONTRACT SHALL CONSTITUTE THE ENTIRE UNDERSTANDING OF THE PARTIES RELATING TO THE SALE OF PRODUCTS SPECIFIED THEREIN AND SHALL SUPERSEDE ALL PRIOR WRITTEN OR ORAL PROPOSALS, NEGOTIATIONS, AND REPRESENTATIONS OF THE PARTIES REGARDING SUCH SALE. NO AMENDMENT, MODIFICATION, WAIVER OR ALTERATION OF ANY CONTRACT SHALL BE BINDING UNLESS REFLECTED EITHER BY A WRITTEN INSTRUMENT SIGNED BY THE PARTIES OR BY AN EXCHANGE OF EXECUTED WRITTEN CORRESPONDENCE BETWEEN THE PARTIES RECITING FULL AGREEMENT ON THE CHANGES AND STATING THAT THE EXCHANGE OF CORRESPONDENCE REFLECTS A MODIFICATION, WAIVER OR AMENDMENT OF THE CONTRACT. WAIVER BY EITHER PARTY OF PERFORMANCE OF ANY CONTRACT RIGHTS OR OBLIGATIONS OR OF ANY DEFAULT BY THE OTHER PARTY SHALL NOT OPERATE AS A WAIVER OF ANY OTHER RIGHT, OBLIGATION OR DEFAULT OR AS A FUTURE WAIVER OF THE SAME RIGHT OR OBLIGATION OR A WAIVER OF ANY FUTURE DEFAULT.

**END**