

## GENERAL TERMS AND CONDITIONS

### SALE (REVISED JANUARY 2023)

#### 1. PURPOSE

The following general terms and conditions are incorporated by reference in and made part of Sales Agreement in which they are referenced and/or to which they are attached (the “Sales Agreement”) between the United Liquid Gas Company, Inc. dba United Pacific Energy entity named in the Sales Agreement (the “Seller”) and the other party named in the Sales Agreement (the “Buyer”).

#### 2. INTERPRETATION

This Schedule is incorporated by reference in and made a part of the Sales Agreement. The Sales Agreement, this Schedule and any additional schedules attached to the Sales Agreement are considered the “**Agreement**” of the parties.

- (a) Terms used in this Schedule that are not otherwise defined shall have the meaning given to them in the Sales Agreement or any additional schedules attached to the Sales Agreement. If there is any conflict between the Sales Agreement and this Schedule, the Sales Agreement will prevail.
- (b) No waiver by either party with respect to any breach of or any right under this Agreement and no course of conduct, dealing or performance will be deemed to constitute a continuing waiver of any other breach or of any right, unless such waivers are expressed in writing executed by authorized representatives of the applicable party. The failure of either party to insist upon strict adherence to any term of this Agreement on one or more occasions shall not be considered a waiver or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement. This Agreement embodies the arm’s-length negotiation and mutual agreement of the parties hereto and shall not be construed against either party as having been drafted by it.
- (c) Any amendment of this Agreement must be in writing and executed by the authorized representatives of the parties.
- (d) This Agreement constitutes the entire and exclusive agreement between the parties with respect to this transaction and all representations, offers and undertakings of the parties made prior to the effective date of this Agreement, whether oral or in writing, are merged in it. No representation, affirmation of fact, course of prior dealings, promise or condition in connection therewith, course of performance or usage of the trade not specified in this Agreement shall be binding on either party. In no event shall transactions be subject to any affirmation of fact or promise which relates to the performance or description of Products. Any terms and conditions of any purchase order, confirmation, or other form or document issued by Buyer, irrespective of their materiality, which are either different from or additional to the terms and conditions expressed in this Agreement are objected to and excluded and shall not be binding on Seller unless expressly agreed to in a writing signed by Seller, and performance by Seller shall not constitute agreement to any such different or additional terms or conditions. No agreement or other understanding purporting to add to or to modify the terms and conditions of this Agreement shall be binding upon Seller unless agreed to in a writing signed by Seller. Any conduct by Buyer that recognizes the existence of a contract pertaining to the subject matter hereof shall constitute acceptance by Buyer of this Agreement and all of its terms and conditions. If this Agreement has been issued by Seller in response to an offer and if any of the terms herein are additional to or different from any terms of such offer, then the issuance of this Agreement by Seller shall constitute an acceptance of such offer subject to the express conditions that Buyer assent to such additional and different terms herein and acknowledge that this Agreement constitutes the entire agreement between Buyer and Seller with respect to the subject matter hereof. This Agreement shall constitute the first and last communication between the parties on the terms of this Agreement and all other related communications, regardless of topic or materiality, shall be disregarded.

### 3. TERMINATION OF GUARANTY BY THE BUYER'S GUARANTOR

In the event that the Buyer's guarantor terminates the guaranty provided by the Buyer's guarantor which secures the Buyer's obligations under the Agreement, then this Agreement shall be automatically terminated upon the guaranty's effective termination date without further action on the part of the parties to this Agreement.

### 4. PURCHASE, SALE AND UNDERLIFTING

- (a) The Buyer agrees to purchase the Product from the Seller, and the Seller agrees to sell and deliver the Product to the Buyer [DAP (Incoterms 2010)] at a location as specified in the Sales Agreement ("**Delivery Point**") in accordance with the provision of this Agreement. Except as otherwise specifically provided in this Agreement, the Buyer agrees to take delivery of the Product in accordance with the monthly schedule in rateable quantities per day during each day of the month. Quantities scheduled to be taken in any month which are not taken in such month will not be made available for delivery in any subsequent month, unless the Seller's consent has been obtained prior to the month in which the quantities were originally scheduled to be delivered.
- (b) The Seller will endeavor to provide reasonable notice in the event that the Seller anticipates that it will not have volumes of Product at the Delivery Point sufficient to satisfy its aggregate sales commitments at the Delivery Point for any reason whatsoever. In such an instance, Seller may allocate available Product as it determines in its sole discretion or as required by applicable law or regulation, and, whether or not the shortfall was caused by an event of Force Majeure, Seller will have no liability to the Buyer for actions taken pursuant to this Section 4(b).

### 5. PRICE; TERMS OF PAYMENT

- (a) The price of the Product is specified in the Sales Agreement.
- (b) Terms of payment are as provided in the Sales Agreement. All prices are stated in U.S. Dollars. Remittance will be made to the Seller at the address specified on the Seller's invoice. In the absence of payment terms, payment will be due ten (10) days after invoice.
- (c) All invoiced amounts must be paid when due even if disputed and the Seller will promptly refund any disputed amounts resolved in the Buyer's favor without interest. Any dispute or action with respect to an invoice or statement must be commenced within a period of one (1) year from which it was issued, at which time the invoice or statement will be deemed final, accurate and correct. The Buyer must provide supporting documentation acceptable in industry practice to support the amount paid or disputed, and the parties will diligently attempt to resolve such dispute. The Seller reserves and retains a security interest on the Product until the price is fully paid and satisfied. Nothing in this provision will be construed to waive the Seller's legal or equitable remedies or rights. The Buyer will pay interest equal to the prime rate at the Seller's bank plus four percent (4%) per annum or at a rate not exceeding the maximum rate permitted by law, whichever is lower (the "**Default Rate**") on all amounts not paid from the date due until said amounts are paid. In the event either party fails to make timely payments of any monies due the other party under this Agreement, the other party may offset such unpaid amounts against amounts owing to such party under this Agreement. This Agreement constitutes a "security agreement" for all purposes of the Uniform Commercial Code ("UCC"). The Seller is authorized to file UCC financing statements with respect to the Product, and the Seller shall have all the rights and remedies of a secured creditor under the UCC.
- (d) The Buyer will deliver to the Seller such financial statements and other information as the Seller may reasonably request from time to time with respect to the Buyer's credit. If at any time the Buyer fails to make payment when due or the credit or financial condition of the Buyer becomes impaired or unsatisfactory to the Seller, in its sole discretion, the Seller may demand in writing adequate assurance of performance, and may change credit terms (including on completed deliveries), refuse to make delivery except on a COD basis, or alter or suspend performance pending receipt of such assurance. If the Buyer fails to provide such assurance within three (3) business days, it will constitute an Event of Default and the Seller will have such

rights and remedies as further set out under Section 22. Adequate assurance shall mean sufficient security in the form and for the term reasonably specified by the Seller, including but not limited to, a standby irrevocable letter of credit, a prepayment, or a performance bond or guarantee by a creditworthy entity.

## **6. PRICE ESCALATION**

Any increase in the Seller's cost of supplying the Product caused by any law, regulation, tax, common carrier pipeline tariff, fractionation fees, throughput fee, third party operated facility charge or otherwise, imposed or increased after the date of this Agreement on or respecting the ownership, storage, processing, production, transportation (including fuel surcharges, wait times and travel restrictions), distribution, use or sale of the Product covered by this Agreement will be added to the price under this Agreement.

## **7. REFERENCE PRICE**

- (a) Notwithstanding any term or provision of this Agreement to the contrary, if at any time during the term of this Agreement any reference price, whether posted or otherwise, or reference price publication, referred to in this Agreement should cease to exist, either permanently or temporarily, for whatever reason, then parties shall promptly meet together to agree upon a replacement reference price publication, as the case may be, and failing such agreement within five business days after the parties first meet, the price shall be set by Seller upon written notice to Buyer.
- (b) Where the price of Product is based upon the posted price of one of the parties, such party shall give notice in writing to the other party of any change in such posted price, and such change in posted price shall be effective at 12:00 hours, on the day following service of the notice.
- (c) Where the price of Product is based upon third party posted prices, the Seller shall use reasonable efforts to advise the Buyer from time to time of any changes to relevant third party postings. Failure to advise Buyer of changes to third party posting shall not relieve the Buyer of its obligation to pay the price for Product determined herein by reference to the changed posting.

## **8. DEPOSITS**

- (a) If the Sales Agreement provides for a fixed price, the Seller reserves the right at any time, upon two days' prior notice to the Buyer, to require the Buyer to pay a deposit in an amount to be determined by the Seller in its sole discretion based upon market conditions. Failure to timely pay a deposit shall constitute a material default by the Buyer under this Agreement. Deposits shall be nonrefundable but shall be applied against the purchase price due from the Buyer for the last delivery under this Agreement. If there is a material change in the price for Product related to the location that is the source of the Product relative to the contract price (as determined by the Seller in its sole discretion) the Seller may, in its sole discretion, require a deposit or additional deposit be paid by the Buyer (due within two days of invoice) as collateral for assurance of performance of its obligations under this Agreement. There will be no interest paid on funds collected as part of any deposit provided pursuant to this Agreement. The amount of any deposits provided pursuant to this Agreement will be forfeited by the Buyer if the Buyer defaults in the performance of its obligations under this Agreement and shall be applied to the Buyer's unsatisfied payment obligations under this Agreement. For certainty, this remedy is not exclusive and the Seller shall still be entitled to recover from the Buyer any further amounts owed pursuant to the terms of this Agreement that are not satisfied by forfeiture of such deposits.
- (b) Seller reserves the right to terminate this Agreement and retain any deposits previously paid should any deposit invoice not be paid timely.

## **9. PRODUCT SPECIFICATIONS**

The Product delivered under this Agreement will comply with the applicable specifications of the GPA Midstream Association (“GPA”) current at the time of delivery if such GPA specifications exist (to the extent they do not, the Product will comply with the specifications set forth in the Sales Agreement, if any, or with Seller’s posted specifications for the Product.

## **10. MEASUREMENT OF PRODUCT QUANTITY**

The quantity of Product delivered will be measured at the location where the Product is loaded into the transportation equipment, as follows: (a) in the case of delivery into tank cars, by means of a slip tube gauging device and applicable outage tables; (b) in the case of delivery into tank trucks, by means of a weigh scale or metering device at the Seller's option; and (c) in the case of delivery into pipelines or storage facilities, by meter or other mutually accepted method or device. All such volumetric measurements will be corrected for temperature to a reference temperature of: (i) 60°F when measured in Imperial or U.S. units; and (ii) 15°C when measured in metric or the International System of Units. All such volume measurements will also be corrected for pressure to equilibrium vapor pressure of the Product at the reference temperature. The parties agree to accept these measurements as correct for all the purposes of this Agreement.

## **11. DELIVERY POINT, TITLE & RISK**

The Seller may reasonably re-designate the Delivery Point. Delivery is complete and title to and risk of loss or damage to the Product passes to the Buyer at the Delivery Point when: (a) Product is made available for unloading from a tank truck, at the outlet flange of the tank truck; (b) Product is made available for unloading from a tank car, at the outlet flange of the tank car, or if applicable, upon the constructive placement of the tank car by the railroad, or upon the actual placement of the tank car for unloading if the tank car has not been previously constructively placed; (c) Product has passed the outlet flange of the facility from where the Product originates from and delivered into the delivering pipeline, or, if applicable, as the Product is metered into connecting storage or transportation system, when Product is delivered by pipeline; or (d) the transfer of Product is entered on the books of the facility, when deliveries are made within a facility or by in-line transfer, on or as of the effective date of such transfer. Except as otherwise specifically provided in this Agreement, the Seller will not be responsible for any aspect of the transportation, handling or use of the Product.

## **12. TANK CAR DELIVERIES**

- (a) When deliveries are made by tank cars, the Seller is not obligated to load the tank cars. When the Buyer is responsible for providing transportation from the Delivery Point, if the Seller's owned or controlled tank cars (“Seller's tank cars”) are used for transportation, the Buyer will provide the Seller, on or before the twentieth (20th) day of each calendar month, written requisitions specifying the quantity of Product to be loaded during the succeeding calendar month, together with complete shipping instructions.
- (b) If the Seller's tank cars are used by the Buyer for transportation, the Seller will allow the Buyer a period of five (5) business days (Saturdays, Sundays and statutory holidays excepted) for off-loading those tank cars commencing at: (i) 7:00 a.m., at the unloading location, of the first morning following notification to the Buyer (or the Buyer's consignee) by the delivering railroad that a tank car is available for placement, or (ii) if notification is not given by the delivering railroad, such time as the tank car is delivered to the Buyer's (or the Buyer's consignee's) off-loading facilities. Upon the expiration of such five (5) business day period, the Buyer will pay the Seller a detention charge until such time as the tank car has been returned to the delivering railroad or otherwise placed in accordance with written instruction of the Seller. The detention charge for the first ten (10) days will be at least sixty-five dollars (\$65) for each day (or part of a day), including Saturdays, Sundays and statutory holidays and seventy-five dollars (\$75) for each day (or part of a day), including Saturdays, Sundays or statutory holidays thereafter. Such detention charges are specified on a per tank car basis. Any claim by the Buyer for a reduction of such detention charges must be supported by certified railway arrival and release documents.

- (c) If the Seller's tank cars used for shipment of Product to a destination are not the same as a class of tank cars specified for service to that destination, additional charges may be incurred and the Buyer will be responsible for such additional charges.
- (d) The Buyer will not divert the Seller's tank cars or consign them to any other routing or to any other destination than that set out in the return billing instructions without obtaining the prior written or faxed consent of the Seller. All diversion charges, additional freight charges and any other costs or expenses incurred, sustained or paid by the Seller resulting from such diversion shall be for the account of the Buyer. Any shipments in the Seller's tank cars to destinations outside of Canada and the U.S. will first require the Seller's consent.
- (e) If the Seller's tank cars are used by the Buyer for transportation and the Buyer is responsible for freight payments and such freight payments exclude mileage compensation, the Buyer will pay the Seller an additional amount per shipment equal to the mileage compensation that would have been paid on the Seller's tank cars under a mileage compensation service. The Buyer shall be responsible for all third party fees incurred by the Seller in respect of the Seller's tank cars and the Buyer's owned or controlled tank cars.
- (f) The Buyer shall be responsible for all fuel surcharges incurred in the transportation of Product.
- (g) Buyer shall pay or reimburse all charges, costs and expenses referred to in this Section 11 on the terms set forth in Section 4.

### **13. EQUIPMENT SAFETY**

Equipment (including tank cars and tank trucks) supplied by either party for the transportation or storage of Product under this Agreement will be in a safe, clean, suitable condition for receipt/delivery and, if applicable, will be fit for the safe receipt and storage of Product. Such equipment and the shipment of Product will be in compliance with all applicable laws, regulations, rules and orders of any level of government or duly constituted authority and all safety and facility requirements of the Seller (where applicable). Where a party provides tank trucks for transportation of Product under this Agreement, such party's carrier and drivers must be acceptable to the operator of the applicable loading facility, comply with the operator's loading and safety procedures and execute an access loading agreement at the applicable facility if required by such facility.

### **14. CLAIMS AND ADJUSTMENTS**

- (a) The Buyer has forty-eight (48) hours after receipt of the Product to inspect and either accept or reject it. The only basis for rejection of Product is material nonconformity with this Agreement. If the Buyer retains the goods in its possession for a period of forty-eight (48) hours after receipt without giving written notice rejecting the Product, this will be regarded as the Buyer's irrevocable acceptance of the Product. If the Product is rejected, written notice must be given to the Seller, fully specifying all claimed defects and nonconformities.
- (b) The Seller will only accept a claim of the Buyer for Product shortages on tank car or tank truck shipments when: (i) the Product shortage is in excess of two percent (2%) of the total loaded quantity recorded on the bill of lading; (ii) the Buyer promptly notifies the Seller by telephone (followed by prompt written confirmation) of the Product shortage and obtains the Seller's permission to unload the shipment; and (iii) the Buyer obtains a sworn affidavit attesting to the shortage from the destination railroad agent or delivering carrier and submits said affidavit to the Seller with Buyer's claim for Product shortage.

### **15. TAXES**

- (a) Unless otherwise provided in the Sales Agreement or an Appendix hereto, prices exclude any applicable tax, user fee, inspection fee, duty, license fee, tonnage charge, assessment, costs associated with compliance with any requirement related to the emissions of greenhouse gas from, or the carbon content or intensity attributable to, the delivery, import, export, sale or consumption of the Product, or other like charge that is

levied, assessed or imposed by any level of government on the Product or transaction contemplated under this Agreement (including the delivery, sale, use or consumption of the Product or privilege of doing any of the same) or that is imposed on or measured by the price of the Product or the proceeds of sale under this Agreement (other than Seller's income tax), all of which (the "**Excluded Charges**") will be in addition to the price set forth in the Sales Agreement and will be paid by the Buyer. The Buyer will furnish the Seller with satisfactory tax exemption certificates where exemption from applicable taxes or charges is claimed. The Buyer is responsible for compliance with all export and import requirements and the maintenance of all documentation necessary to assure the appropriate government agencies of the Buyer's compliance with said requirements. For the sake of clarity and notwithstanding Section 20 of this Agreement, Buyer shall be solely responsible for compliance with any and all requirements now in effect or later imposed by any local, state, provincial or federal jurisdiction with respect to the emissions of greenhouse gases resulting from, or the carbon content or intensity attributable to, the delivery, import, export, sale or consumption of the Product, including any obligation to submit reports or certifications, acquire, hold or surrender allowances, credits or other instruments, or pay any fee, tax or charge, and any and all costs associated with compliance with such requirements shall constitute Excluded Charges.

- (b) The Buyer will indemnify the Seller for any liability it may incur for payment of the Excluded Charges as a result of the Buyer's failure to timely provide the Seller with exemption certificates or its failure to otherwise comply with said export and import requirements, provide governmental agencies documentation necessary to assure them of the Buyer's compliance with said requirements, or satisfy any obligation arising with respect to the emissions of greenhouse gases resulting from, or the carbon content or intensity attributable to, the delivery, import, export, sale or consumption of the Product.
- (c) If any amount becomes payable by either party as a result of a breach, modification or termination of this Agreement, the payer will be responsible for any applicable value added type of tax on such amount and will reimburse the payee, if the payee is responsible to remit such tax.

## **16. EMERGENCY RESPONSE**

If the Seller is required by law or requested by the Buyer to respond to an emergency involving the Product downstream of the Delivery Point and does so respond (provided, that if the Seller is not required by law to respond, the Seller will have no obligation to respond to an emergency when requested to do so by the Buyer), the Buyer will:

- (a) be liable to and reimburse the Seller for all losses, costs and damages whatsoever paid, suffered, sustained or incurred by the Seller in providing such response (including all reasonable legal fees and other expenses of defense);
- (b) defend, indemnify and hold harmless the Seller in connection with the emergency response; and
- (c) release and forever discharge the Seller, in respect of any damage or other claims whatsoever in law or in equity which the Buyer may have; in each such case arising as a result of the acts or omissions of the Seller Indemnified Parties (as defined below), in responding to the emergency, except to the extent same arises as a result of the gross negligence or willful misconduct of the Seller Indemnified Parties.

## **17. WARRANTY AND REMEDY EXCLUSIONS AND LIMITS**

- (a) **THE EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE AND IN LIEU OF, AND SELLER EXPRESSLY DISCLAIMS, ALL OTHER WARRANTIES, WHETHER ORAL, WRITTEN, EXPRESS, IMPLIED OR STATUTORY. IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS OR ANY OTHER MATTER SHALL NOT APPLY AND ARE EXPRESSLY DISCLAIMED. BUYER'S REMEDIES ARE SOLELY AND EXCLUSIVELY AS STATED AND LIMITED HEREIN.**
- (b) For breach of any provision for which an express remedy or measure of damages is provided, such express remedy or measure of damages will be the sole and exclusive remedy, a party's liability under this Agreement will be limited as set forth in such provision, and all other remedies or damages at law or in equity are waived. If no remedy or measure of damages is expressly provided in this Agreement the Seller's liability will be limited to the replacement value of Product involved in any dispute, and all other remedies or damages at law or in equity are expressly and unconditionally waived by Buyer. To the extent that any damages required

to be paid under this Agreement are liquidated or a method for determination is specified in this Agreement, the parties acknowledge that the damages are difficult or impossible to determine, and the damages (or the method for determination) specified in this Agreement are a reasonable approximation of the harm or loss.

- (c) **THE SELLER SHALL NOT BE LIABLE TO THE BUYER FOR INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OR LOSS OF PROFITS, REVENUES, USE OR OPPORTUNITIES ARISING FROM THE SERVICES PERFORMED OR PRODUCTS SOLD OR OTHERWISE IN CONNECTION WITH THIS AGREEMENT. THE LIMITATIONS AND PROTECTIONS AGAINST LIABILITY AFFORDED THE PARTIES HEREIN SHALL APPLY TO ANY ACTION OR CLAIM IN CONNECTION WITH THIS CONTRACT OR THE SERVICES PERFORMED OR PRODUCTS SOLD PURSUANT TO THIS AGREEMENT, WHETHER BASED ON CONTRACT, TORT, STATUTE OR OTHERWISE (INCLUDING NEGLIGENCE, WARRANTY AND STRICT LIABILITY).**

## **18. INDEMNITY**

The Buyer will fully reimburse the Seller, its affiliates and related parties, their respective directors, officers, employees, agents and contractors (collectively, the “**Seller Indemnified Parties**”) for, bear all risk, be solely liable for and indemnify the Seller Indemnified Parties against any and all third-party losses, costs (including without limitation, all legal fees and other expenses of defense) damages, fines, penalties, claims (including without limitation, claims of negligence, strict liability, inherently dangerous activity and for liability imposed by statutes, rules or regulations and whether in tort, contract or otherwise), suits and liability (collectively, “**Claims**”) incurred by the Seller Indemnified Parties on account of: (a) the Buyer’s negligence or any failure by the Buyer to comply with any of its obligations under this agreement; (b) the Buyer’s failure to disseminate safety and health information as required by law; or (c) any and all bodily injuries or death to any persons or damage to, or loss or destruction of any property or environmental contamination or damage, arising directly or indirectly out of or in connection with the transportation (including any contract for transportation between the Buyer and its carrier(s) if the Seller’s tank cars are not used for the transportation of Product), unloading, handling, care, storage, sale or use of the Product after the Delivery Point, whether caused or contributed to by the concurrent, joint, comparative, active or passive gross negligent act or omission of the Seller Indemnified Parties.

## **19. INSURANCE**

- (a) Without limiting either party’s obligations or liability hereunder, each party covenants and agrees to use only carriers that maintain during the term of this Agreement the following minimum insurance coverage with licensed insurers satisfactory to the other party, whose approval shall not be unreasonably withheld, delayed or conditioned: (i) motor vehicle liability insurance, covering all motor vehicles and component parts owned, licensed or hired by the party and used in the performance of the obligations of this Agreement with inclusive limits of not less than five million dollars (\$5,000,000) per event unless otherwise approved; (ii) if spill clean-up costs are excluded in the motor vehicle liability policy, the party’s carrier shall have an endorsement attached to the comprehensive general liability policy to include spill clean-up costs as a result of motor vehicle operations; (iii) comprehensive general liability insurance covering all obligations of the party hereunder in the amount of not less than five million dollars (\$5,000,000) per event unless otherwise approved or such greater amount as required by legislation; (iv) cargo loss or damage insurance in the amount of the replacement costs or value; and (v) workers’ compensation as required by applicable law.
- (b) Each party shall ensure that its carriers’ insurance programs are sufficient and adequate for the purpose hereunder, particularly in respect of the nature of the coverage, the coverage, the exclusions and deductibles.
- (c) Each party shall ensure that its carriers insurance programs contain a requirement that they may not be cancelled without endeavoring to provide at least thirty (30) days written notice to the party’s representative.

- (d) Each party shall provide the other party, if requested by the other party, with certificates of insurance of its carriers, attesting to the existence of the aforementioned insurance coverage prior to the execution of this Agreement and from time to time at the other party's reasonable request.

## **20. SAFE HANDLING OF PRODUCT AND PRODUCT ODORIZATION**

- (a) The Seller has provided to the Buyer and by taking delivery of the Product under the terms of this Agreement the Buyer acknowledges receipt of the Seller's current Safety Data Sheet(s) concerning the properties of and safe handling procedures for the Product. The Buyer acknowledges that the Product is a hazardous material and represents and warrants that it is familiar with the properties of and safe handling procedures for the storage, handling, transportation and use of the Product. The Buyer will inform its customers of those safe handling procedures of the Product.
- (b) The Seller has no knowledge how its customers will handle, store, transfer, distribute or use the Product and makes no warranty regarding the Product after delivery to the Buyer. With respect to the Product, the Buyer acknowledges that the Seller has no feasible method for conveying safety or warning information to the Buyer's customers. It is recommended that the Buyer provide its employees and subsequent customers with information regarding the characteristics of the Product, and how those characteristics relate to the employees' or customers' use including the limitations of any chemical odorant including ethyl mercaptan. With proper handling, transportation and storage, adding an odorant such as ethyl mercaptan has proven to be a very effective warning device, but all odorants have certain limitations. The effectiveness of the odorant may be diminished by a person's sense of smell, by competing odors and by oxidation, any of which may cause a potentially dangerous situation. The Buyer acknowledges that no odorant is certain to be effective to warn every user 100 percent of the time.
- (c) It is understood and acknowledged by the Buyer that odorant can fade over a period of time, or fade if subjected to certain metals or conditions of metals, household surfaces such as masonry, concrete blocks and woods may, therefore, be undetectable. When it is indicated in the Sales Agreement that the Seller is to deliver stench or odorized Product, Product shall be odorized in accordance with applicable laws and transport regulations at the Delivery Point. The Seller has no further responsibility to ensure that the Product remains properly odorized after the Delivery Point except where the Seller failed to properly odorize/stench the Product. The Buyer shall be responsible for ensuring the Product contains a quantity of odorant sufficient to meet the applicable laws of the jurisdiction of the ultimate destination of the Product when the Product arrives at such destination. The Seller makes no warranty that the odorization of the Product will: (i) meet applicable laws of the jurisdiction of the ultimate destination (if different than the Delivery Point); and (ii) not have suffered from odorant fade, loss, or degradation since leaving the loading point. Prior to receiving the Product at the Delivery Point, the Buyer shall inspect the Product to confirm that it is odorized to the Buyer's satisfaction. The Buyer is liable for and will indemnify the Seller Indemnified Parties against all Claims brought against the Seller Indemnified Parties related to odorant fade, total or partial loss of odorization or lack of odorization of product, except where such odorant fade, total or partial loss of odorization or lack of odorization has resulted from a failure of the Seller to comply with this Section 19(c).
- (d) If unodorized Product is to be delivered under this Agreement, then the Buyer represents and warrants to the Seller that the Buyer will not use such Product for fuel, heating material or industrial process or knowingly resell it for fuel, heating material or industrial process without adding an odorizing agent in conformance with applicable laws and regulations. It is recommended that the Buyer provides its agents, contractors, employees and customers with information regarding the characteristics of unodorized Product and how those characteristics relate to, or affect, the handling, storage, distribution and use of unodorized Product. The Buyer is liable for and will indemnify the Seller Indemnified Parties against all Claims brought against the Seller related to the Buyer requesting and receiving unodorized Product from the Seller.
- (e) To the extent that the Buyer blends any odorized Product sold under this Agreement with any non-odorized, under-odorized or odorized product after the time that delivery is made by the Seller, the Buyer shall test the resulting blend product to assure continued compliance with all applicable laws and regulations and shall document the impact of the blending on the product, and shall maintain all testing documentation.

## 21. REGULATORY CHANGE

This Agreement is subject to all rules, regulations, orders and other requirements of each governmental having jurisdiction over this Agreement. Notwithstanding Sections 5 and 25, if any new or increased governmental law, regulation, tax or other burden (a “**Regulatory Change**”) is imposed on the parties after the date of this Agreement and such Regulatory Change either (a) renders this Agreement illegal or unenforceable, or (b) materially adversely affects the business of a party hereto with respect to its financial position or otherwise, then the affected party may request the renegotiation of the terms of this Agreement. The affected party must exercise its option to renegotiate by giving written notice to the other party within thirty (30) days after the Regulatory Change becomes effective, such notice to specify the new terms desired by the affected party. If the parties fail to mutually agree upon the new terms within thirty (30) calendar days after notice to renegotiate was given, the affected party may terminate this Agreement upon an additional thirty (30) calendar day written notice. Any amount owing under this Agreement at the date of termination will become immediately due and payable.

## 22. CONFIDENTIALITY

This Agreement will not be disclosed in whole or in part by either the Buyer or the Seller to any third party without obtaining the prior written consent of the other party, unless such disclosure is: (a) required by law; (b) necessary to obtain regulatory approval or reporting; (c) for obtaining any necessary financing; or (d) to a party's employees, counsel, accountants or other agents or representatives on a need to know basis (provided such persons have agreed to keep such terms confidential).

## 23. DEFAULT

- (a) The occurrence of any of the following with respect to a party (the “**Defaulting Party**”) shall constitute an “**Event of Default**” in respect of such party: (i) the failure to pay when due any amount owing hereunder and such failure continues for more than three (3) business days; (ii) failure to provide performance assurance in accordance with Section 5(d) or any non-performance under, repudiation or rejection or, or expiration, termination or cessation of the effectiveness of any such performance assurance after it has been provided; (iii) the failure to perform any other obligation hereunder and such failure continues for more than ten (10) business days following receipt of notice describing such failure; or (iv) an Insolvency Event (as defined below) occurs in relation to a party.
- (b) Upon and during the continuation of an Event of Default with respect to a Defaulting Party, the other party shall have the right, in addition to any other remedies available hereunder or at law, to: (i) immediately suspend its performance of its obligations hereunder; (ii) charge the Default Rate on late payments as provided for in Section 4(c); (iii) in the case where the Buyer is the Defaulting Party, apply the proceeds from or otherwise realize on the performance assurance or any deposit provided pursuant to a Margin Call; (iv) on ten (10) days written notice to the Defaulting Party, terminate this Agreement. Notwithstanding the foregoing, upon the occurrence of an Event of Default which is an Insolvency Event, all transactions under this Agreement shall automatically terminate, and the date of such occurrence shall be deemed to be the termination date of this Agreement. The rights and remedies of the parties hereto shall be cumulative (and not alternative).
- (c) As used in this Agreement, “Insolvency Event” means that a Party: (i) makes an assignment or any general arrangement for the benefit of creditors; (ii) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors or has such petition filed or proceeding commenced against it that is not dismissed within sixty (60) days; (iii) otherwise becomes bankrupt or insolvent (however evidenced); or (iv) becomes unable to pay its debts generally as they fall due.

## 24. SURVIVAL OF OBLIGATIONS

Notwithstanding the expiration or termination of this Agreement, the provisions of Sections 2, 4, 12, 14, 16, 17, 18, 21, 24, 27 and this Section 23 shall survive the expiration or termination of this Agreement and will remain in full force and effect in accordance with their terms.

## 25. NOTICE

Unless stipulated otherwise in this Agreement, any notice, invoice or other communication required or permitted by this agreement to be given to a party will be in writing and will be either personally delivered, sent by nationally-recognized overnight courier, or sent by facsimile, e-mail, charges prepaid, to the intended recipient at the address of the recipient indicated in the Sales Agreement. Every notice will be deemed to be received: (a) on the date of delivery, if delivered personally; (b) at the time of delivery or transmission if delivered by facsimile or other similar method of recorded communication when received on or before 5:00 p.m. (local time at the recipient's address) on a business day; (c) on the next business day following the date of its transmission, if delivered by facsimile or e-mail and received after 5:00 p.m. (local time at the recipient's address) on a business day or at any time during a day that is not a business day; or (d) the next business day if delivered by overnight courier.

## 26. FORCE MAJEURE

- (a) No delay, failure or omission by either party in the performance of any obligation of this Agreement will be deemed a breach of this Agreement, nor create any liability for damages if such delay, failure or omission arises from any Force Majeure event.
- (b) **“Force Majeure”** means any event that is beyond a party’s reasonable control, including but not limited to: acts of God, war, accident, fire, storm, flood, earthquake or explosion, acts of war, terrorism or the common enemy, acts of, or compliance with requests of any level of government or any agency thereof, strike, lockout, disputes with workmen, labor shortages, transportation embargoes, or failure or delays in transportation, unavailability of suitable tank cars or tank trucks or parts thereof, or exhaustion, reduction or unavailability of the Product at the Seller's normal source of supply for the Product, or delays in delivery of any inventory or material, including, without limitation, crude oil, natural gas, natural gasoline, supplies, raw materials and ingredients necessary in the production of the Product, or any other cause or causes beyond the reasonable control of the affected party, whether or not similar to the foregoing events.
- (c) A party will not be entitled to rely on this provision unless the affected party gives prompt notice to the other party specifying the cause of the delay or non-performance and unless the affected party uses commercially reasonable efforts to overcome the Force Majeure event as soon as possible, except that: (i) the settlement of labor disputes or strikes will be at the discretion of the party so affected; (ii) the Seller will not be obligated, to purchase alternate replacement Product to supply to the Buyer; and (iii) neither party will be required to mitigate by agreeing to an alternative mode of transportation or alternative Delivery Point.
- (d) The term of this Agreement will not be extended because of the Force Majeure events. Quantities of the Product deliverable during the Force Majeure period may be cancelled at the Seller's option. This provision will not excuse the Buyer from its obligation to pay for Product that has been delivered under this Agreement. Currency fluctuations, changes in interest rates or banking charges or practices affecting a party will not excuse that party from performance of its obligations under this Agreement. Lack of finances or loss or reduction of the Buyer's markets for the Product for any reason will not be a Force Majeure event.
- (e) Where the Product is exported by the Seller, “Force Majeure”, as defined in this Agreement, shall include, without restriction, any new governmental export or import restrictions or prohibitions that are imposed on any party, including, without limitation, any restriction or condition as to the maximum or minimum price at which the Product must be sold. The party affected by such restriction or prohibition may terminate this Agreement on at least thirty (30) calendar days' notice if the effect of the restriction or prohibition, in its opinion, frustrates the Agreement.

**27. ASSIGNMENT**

- (a) No assignment of this Agreement by the Buyer, in whole or in part, is valid without the prior written consent of the Seller, which consent will not be unreasonably withheld, delayed or conditioned; provided, that it shall be reasonable for the Seller to withhold consent if such assignment in any way relates to or is in connection with or in anticipation of a transfer of all or a controlling interest in the Buyer or the business of the Buyer (and any such transfer or contemplated or attempted transfer shall constitute an assignment for purposes of this Section 26) by sale of equity, sale of assets, merger or any other methods. Any attempted assignment made without obtaining the necessary consent is null and void.
- (b) Subject to this Section 26, this Agreement is binding upon the parties and their respective successors and approved assigns.

**28. LAWS AND VENUE SELECTION**

- (a) This Agreement is governed by and construed in accordance with the laws of the State of New York without regard to any conflict of law doctrine. Each party to this Agreement submits to the exclusive jurisdiction of the state and federal courts sitting in Monroe County in the State of New York, and waives any jurisdictional, venue or inconvenient forum objections to such courts. **EACH PARTY HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING, WHETHER AT LAW OR IN EQUITY AND WHETHER IN TORT, CONTRACT OR OTHERWISE, COMMENCED BY EITHER OF THEM IN ANY WAY ARISING OUT OF THIS AGREEMENT.** In the event that any of the provisions of this Agreement are held by a court or other tribunal of competent jurisdiction to be unenforceable, such provision shall be limited or eliminated to the minimum extent necessary and this Agreement shall otherwise remain in full force and effect and enforceable.
- (b) The parties hereby agree that it is their mutual intent that this Agreement, if applicable, be a “Forward Contract” as defined in the U.S. bankruptcy code.

**29. COUNTERPARTS**

This Agreement may be executed in two or more counterparts, each of which shall, when executed, be deemed to be an original and all of which shall be deemed to be one and the same instrument. The exchange of copies of this Agreement, including executed signature pages, by electronic transmission (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., [www.docuSign.com](http://www.docuSign.com)) will constitute effective execution and delivery of this Agreement for all purposes.

## **APPENDIX “A” – TAXES AND FEES INCLUDED**

The Price includes costs to comply with the State of California’s Cap-and-Trade Program, Mandatory Greenhouse Gas Reporting Regulation, and Cost of Implementation Fee Regulation under AB 32. All other taxes, fees, costs, charges, and assessments are excluded and remain the responsibility of the Customer.