

**General Terms and Conditions for Purchases and Sales**

1. **Composition of Agreement.**

1.1. *Agreement Composition.* These general terms and conditions for purchases and sales (the “**General Terms**”) shall apply to any Transaction (as defined below) that is confirmed by a Confirmation (as defined below) which specifically references these General Terms or to which these General Terms are attached. Collectively, each Confirmation, together with these General Terms and, if applicable, the Master Services Agreement and the MXE Marine Provisions, shall be referred to herein as the “**Agreement**”.

1.2. *Conflicts.* To the extent there is a conflict between any terms or conditions contained in any Confirmation and any terms and conditions contained in these General Terms, the terms and conditions contained in the Confirmation will govern and control. In the event of any conflict between the terms and conditions contained in any Confirmation and the Marine Provisions, the Confirmation shall govern and control. In the event of any conflict between the terms and conditions in the Marine Provisions and the General Terms, the General Terms shall govern and control.

2. **Definitions.** As used in this Agreement, the following terms shall have the following meanings:

2.1. “**Affiliate**” means any entity that, directly or indirectly, controls, is controlled by, or is under common control with the referenced entity, including the referenced entity’s parent. In this definition, “control” means the power to direct the management and policies of an entity, directly or indirectly, whether through the ownership of voting securities, by contract, or otherwise.

2.2. “**API**” means American Petroleum Institute.

2.3. “**Applicable Law**” means any applicable statute, law, regulation, ordinance, rule, judgment, rule of law, order, decree (including, without limitation, any consent decree), permit, approval, license, requirement, or other governmental restriction or any similar form of binding decision of, or any provision or condition of any permit, license or other operating authorization issued under any of the foregoing by, or any binding determination by any Governmental Authority having or asserting jurisdiction over the matter or matters in question, whether now or hereafter in effect and in each case as amended (including without limitation, all of the terms and provisions of the common law of such Governmental Authority), as interpreted and enforced at the time in question.

2.4. “**ASTM**” means ASTM International, formerly known as the American Society for Testing and Materials.

2.5. “**Barrel**” and “**BBL**” means 42 US Gallons measured at 60 degrees Fahrenheit and an absolute pressure of 29.92 inches of mercury.

2.6. “**Business Day**” means all week days (Monday – Friday), excluding the following: New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas Day, and, solely as to payment obligations hereunder, any day on which banks are not generally open for business in Houston, Texas.

2.7. “**Buyer**” means the party purchasing the Product under the applicable Confirmation.

2.8. “**Carrier**” means, either Buyer or a third party hired by Buyer, who takes possession of Product when purchased from Seller under this Agreement.

2.9. “**Close-Out Payment**” means the amount due upon termination, acceleration, liquidation, and close out of this Agreement pursuant to **Section 13.2.3** hereof, to be calculated by the Terminating Party in its sole, reasonable discretion as (i) the difference between (a) the price of remaining Product to be sold under the relevant Transaction and (b) the prevailing market price for such Product or its commercially reasonable equivalent as published in an industry publication or as otherwise determined by the Terminating Party in its sole, reasonable discretion, plus or minus (as applicable) any location differential, determined by the Terminating Party in its sole, reasonable discretion, *multiplied by* (ii) the remaining quantities of the Product to be delivered under the relevant Transaction.

2.10. “**Confirmation**” means a written agreement, or written confirmation of an oral agreement, that

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sets out the agreement date, commencement date, Products, Specifications, term, locations, pricing, and any other terms and conditions applicable to the specific Transaction that is the subject thereof.

2.11. **“Delivery Point”** means (each as applicable) (i) with respect to Product delivered into a pipeline, the outlet flange of the meter measuring the Product for delivery from the terminal to the pipeline, (ii) with respect to a Terminal-to-Vessel Transfer, the outlet flange for the terminal’s hose into the receiving mechanism of the applicable Vessel (or, if the Vessel’s hose is used, the connection between the terminal’s delivering mechanism and the Vessel’s hose), (iii) with respect to In-Tank Transfers, the time at which the transfer is recorded in the operative transfer documentation or on the books and records of the operator of the terminal, (iv) with respect to Tank-to-Tank Transfers, at the outlet tank valve flange on the delivering tank, (v) with respect to Product delivered to tank cars, the point at which the Product passes the tank car’s loading connection, (vi) with respect to Product delivered to tank trucks or tank cars, the point at which the Product enters the loading equipment of the tank truck or tank car (as applicable), (vii) with respect to Vessel-to-Terminal Transfers, the intake flange for the terminal’s hose (or, if the Vessel’s hose is used, the connection between the terminal’s receiving mechanism and the Vessel’s hose), and (viii) with respect to Terminal-to-Terminal Transfers, the outlet flange of the meter measuring Product for delivery from the Seller-controlled terminal to the pipeline or other mechanism delivering such Product to the Buyer-designated terminal, (ix) with respect to Pipeline-to-Terminal Transfer, the intake flange from the pipeline system to the terminal’s system, (x) with respect to Tank Truck-to-Terminal Transfers and Tank Car-to-Terminal Transfers, the intake flange for the terminal’s hose or the terminal’s receiving mechanism (as applicable).

2.12. **“Force Majeure”** means any cause, whether of the kind enumerated herein or otherwise, which is not within the control of the Party claiming suspension and which by the exercise of reasonable diligence such party is unable to prevent or overcome, and which wholly or partially prevents or delays such Party’s performance of any of its obligations under this Agreement, including any of the following which satisfy the foregoing criteria: acts of God; strikes, lockouts or other industrial disputes or disturbances; acts of the public enemy, sabotage, wars, blockades; insurrections, riots and other civil disturbances; epidemics; landslides, floods, lightning, earthquakes, fires, tornadoes, hurricanes, or other weather events that necessitate extraordinary measures and expense to maintain operations, and warnings for any of the foregoing which may necessitate the precautionary shut-down of wells, plants, pipelines, gathering systems, loading facilities, refineries, terminals or any portion thereof, or other related facilities; arrests and restraints of governments (either federal, state, civil or military); explosions, breakage or accidents to equipment, machinery, plants or any portion thereof, or lines of pipe, or the making of repairs or alterations to any of the foregoing necessitated as a result of a Force Majeure event; inability to secure labor, materials, or transportation (including, without limitation, inability to secure vessels or other shipping) at a reasonable rate after the exercise of reasonable diligence, which are required for a party’s performance hereunder; electric power shortages or outages, or the necessity for compliance with any court order, or any law, statute, ordinance, rule, regulation or order promulgated, after execution of this Agreement, by a governmental authority having or asserting jurisdiction. Notwithstanding the foregoing, “Force Majeure” shall not include: (i) as to Buyer, loss of market, a downturn in the market price for the Product, failure or inability of Buyer to resell or otherwise dispose of such Product, or any other similar cause or causes; or (ii) economic hardship, to include, without limitation, Seller’s ability to sell or Buyer’s ability to purchase the Product at a more advantageous price.

2.13. **“Gallon”** means a U.S. gallon of 231 cubic inches at 60 degrees Fahrenheit (60°F).

2.14. **“Governmental Authority”** means any federal, state, local, foreign government, any provincial, departmental or other political subdivision thereof, or any entity, body or authority exercising executive, legislative, judicial, regulatory, administrative or other governmental functions, or any court, department, commission, board, bureau, agency, instrumentality or administrative body of any of the foregoing.

2.15. **“In-Tank Transfer”** means the transfer of physical inventory of Product on the books and records of a terminal operator where the Buyer and Seller are both terminal customers.

2.16. **“Interest Rate”** means an annual rate (based on a 360-day year) equal to the lesser of: (i) two percent (2%) over the prime rate as published in the Wall Street Journal in effect at the close of the Business

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Day on which payment was due and (ii) the maximum rate permitted by Applicable Law.

2.17. **“Losses”** means any losses, liabilities, damages, fines, penalties, assessments and expenses, and any related judgment, settlement, award, investigation, proceeding and litigation (including fees, expenses and other costs of attorneys, accountants, professional advisors and other experts incurred in connection with the defense or settlement of any of the forgoing).

2.18. **“Marine Claims”** means any dispute or claim arising under the Marine Provisions, including but not limited to demurrage claim disputes.

2.19. **“Master Services Agreement”**, if applicable, shall mean a Master Services Agreement between Buyer and Seller to which these General Terms are attached that provides the terms thereof will apply to these General Terms and the Confirmations contemplated herein.

2.20. **“Pipeline-To-Terminal Transfer”** means a transfer of Product from a pipeline into a terminal.

2.21. **“Product”** shall mean petroleum product purchased by Buyer from Seller pursuant to the Agreement, as specified in the applicable Confirmation.

2.22. **“Seller”** means the party selling the Product under the applicable Confirmation and Agreement.

2.23. **“Specifications”** shall mean any specifications or quality requirements for any Product contained in the applicable Confirmation.

2.24. **“Tank Car-to-Terminal Transfer”** means a transfer of Product from a tank car (railcar) to a terminal.

2.25. **“Tank Truck-to-Terminal Transfer”** means a transfer of Product from a tank truck to a terminal.

2.26. **“Tank-to-Tank Transfer”** means a transfer of a position of physical inventory of Product from one tank in a terminal to another tank at the terminal.

2.27. **“Taxes”** means any and all foreign, federal, state and local taxes, duties, fees and similar charges imposed by any Governmental Authority, including all motor fuel, excise, gasoline, aviation fuel, special fuel, diesel, environmental, spill, gross earnings or gross receipts and sales and use taxes, however designated, paid or incurred with respect to the purchase, storage, exchange, use, transportation, resale, importation, exportation or handling of the Products, and all interest and penalties associated therewith; provided, however, that “Taxes” does not include: (i) any tax imposed on or measured by net profits, gross or net income, or gross receipts (excluding, for the avoidance of doubt, any transaction taxes such as sales, use, gross earnings or gross receipts or similar taxes that are based upon gross receipts, gross earnings or gross revenues received only from the sale of petroleum products); (ii) any tax measured by capital value or net worth, whether denominated as franchise taxes, doing business taxes, capital stock taxes or the like; or (iii) business license or franchise taxes or registration fees.

2.28. **“Terminal-to-Terminal Transfer”** means a transfer of Product from a terminal position controlled by Seller to another terminal designated by Buyer.

2.29. **“Terminal-to-Vessel Transfer”** means a transfer of Product from a terminal position controlled by Seller to a Vessel designated by Buyer.

2.30. **“Transaction”** means the agreement for the purchase or sale of Products which is evidenced by a Confirmation and governed by these General Terms and Conditions.

2.31. **“Quantity Measurement Mechanism”** means, (i) with respect to Product delivered into pipelines or via Pipeline-to-Terminal Transfer, proven, calibrated turbine, Coriolis, or positive displacement pipeline meter (each in accordance with API Manual of Petroleum Measurement Standards); (ii) with respect to Product delivered via Terminal-to-Vessel Transfer, in the following order of preference based on equipment available at the Delivery Point, (A) gauging and official tank capacity tables or (B) if expressly specified in the applicable Confirmation, by shore meter or shore tank measurements; (iii) with respect to Product delivered into tank cars or tank trucks, (X) proven, calibrated meters, (Y) weighing, or (Z) gauging of the tank cars/tank trucks and use of official tank car/truck capacity tables; (iv) with respect to Product delivered via In-Tank Transfers or Tank-to-Tank Transfer, the measurement mechanism employed by the terminal operator, which shall be presumed accurate absent manifest error; (v) with respect

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to Product delivered via Vessel-to-Terminal Transfer, via shore tank upgauge measurement, (vi) with respect to Product delivered via Tank Car-to-Terminal Transfer or via Tank Truck-to-Terminal Transfer, (X) proven, calibrated meters, or (Y) tank upgauge measurement performed at Buyer's designated terminal, and (vii) with respect to Product delivered via Terminal-to-Terminal Transfer, tank upgauge measurement performed at Buyer's designated terminal.

2.32. “*Vessel*” means a Tankship, Tanker, Inland or Oceangoing Barge (including its Tow), ATB or other waterborne apparatus employed for the purpose of transporting Product.

2.33. “*Vessel-to-Terminal Transfer*” means a transfer of Product from a Vessel controlled by Seller into a terminal designated by Buyer.

### 3. **Title and Risk of Loss.**

3.1. *Passing of Title.* For Product sold at a designated terminal, title and risk of loss shall pass from Seller to Buyer as the Product passes the Delivery Point. It is expressly understood that the passage of title and risk of loss as set forth in this **Section 3** is not conditioned on the delivery or receipt of bills of lading or other equivalent documentation.

3.2. *Responsibility for Products.* Except to the extent otherwise expressly set forth in these General Terms, (i) Seller shall be responsible for, and assumes all risk and liabilities arising from or in connection with, the Product and all acts and omissions related thereto, including the transportation, handling, storage, or use of such Product, prior to the Product passing the Delivery Point, and (ii) Buyer shall be responsible for, and assumes all risk and liabilities arising from or in connection with, the Product and all acts and omissions related thereto, including the transportation, handling, storage, or use thereof, after the Product passes the Delivery Point.

### 4. **Payment Terms.**

4.1. *Payments.* Subject to **Section 5** of these General Terms and except as otherwise expressly set forth in the applicable Confirmation, Buyer agrees to pay Seller, at the prices specified in the applicable Confirmation, for all Products purchased under this Agreement within two (2) days after the date of receipt of an invoice for such Products. All payments shall be made without offset, discount, deduction or counterclaim by wire transfer of immediately available funds or by Automated Clearing House credit in U.S. Dollars on or before the payment due date, unless otherwise specified in the applicable Confirmation. When a payment due date falls on a Saturday or on a weekday which is not a Business Day, then any such payment shall be due on the nearest preceding Business Day, and when a payment due date falls on a Sunday or a Monday which is not a Business Day, then any such payment shall be due on the next Business Day.

4.2. *Interest.* Any amount payable under this Agreement shall, if not paid when due, bear interest at the Interest Rate beginning on the due date for such payment, until the date on which such amount is paid in full.

4.3. *Suspension.* If Buyer fails to pay any amount due hereunder (unless such amount is disputed by Buyer in accordance with **Section 4.4**), Seller shall have the right to suspend performance under the Agreement (in whole or in part) until Buyer pays such amount in full.

4.4. *Disputed Amounts.* Notwithstanding anything to the contrary specified in these General Terms, if Buyer reasonably and in good faith disputes any amount invoiced by Seller hereunder, Buyer shall pay the undisputed amount of such invoice when due and provide Seller with notice stating the nature of the dispute along with any relevant supporting documentation regarding such disputed amount on or before the due date for the disputed amounts on such invoice. The Parties shall endeavor in good faith to resolve the disputed amount. Payment of such disputed amounts shall not be required until the dispute is resolved by agreement of the Parties or other means and no interest charges specified in **Section 4.2** be due or payable during the pendency of such dispute, but if Buyer is found to owe disputed amounts, interest on such disputed amounts will be due in accordance with **Section 4.2** measured from the past due date of such disputed amount.

4.5. *Netting.* Upon mutual agreement of the Parties (email confirmation acceptable, to be provided at each Party's sole and complete discretion), the Parties may elect to net any amounts due and payable by either Party to the other hereunder with other amounts which are due and payable from one Party to the

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other on the same day under any other Transaction such that one Party owes a single amount payable to the other Party (such amount to be calculated as mutually agreed upon by the Parties). Any such net-out shall be effective upon receipt of the remaining balance due after net-out to the Party owed such balance. The Parties understand and agree that such netting of invoices is expressly limited to amounts owed from purchases and sales from one Party to the other Party and that netting out any other amounts due pursuant to any Transaction, for any reason whatsoever, including but not limited to quality claims and demurrage claims, is strictly prohibited unless otherwise agreed to by the Parties.

4.6. *Failure of Pricing Index.* If the price of the Product specified in a Confirmation is based upon a specified index and there is a Market Disruption Event, as defined below, the Parties shall negotiate in good faith to agree on a replacement price or on a method for determining a replacement price for the affected day. If the Parties have not so agreed on or before the second Business Day following the affected day, then the replacement price for the original contract price shall be determined within the next two following Business Days with each Party obtaining, in good faith and from non-affiliated market participants in the relevant market, up to two quotes for prices of Product for the affected day of a similar quality and quantity in the geographical location closest in proximity to the terminal specified for delivery and averaging the quotes received. If either Party fails to provide up to two quotes, then the average of all quotes obtained shall determine the replacement price.. A “**Market Disruption Event**” means, with respect to an index specified in a Confirmation, any of the following events: (i) the failure of the index to announce or publish information necessary for determining the contract price; (ii) the failure of trading to commence or the permanent discontinuation or material suspension of trading on the exchange or market acting as the index; (iii) the temporary or permanent discontinuance or unavailability of the index; (iv) the temporary or permanent closing of any exchange acting as the index; or (v) both Parties agree that a material change in the formula for or the method of determining the contract price has occurred.

5. **Financial Responsibility.** Seller’s duty to perform, and Buyer’s right to purchase hereunder, are at all times subject to approval, and continuing approval, at Seller’s reasonable discretion, of Buyer’s credit by Seller. Notwithstanding anything to the contrary in this Agreement, if in Seller’s reasonable judgment, (i) Buyer’s financial responsibility becomes impaired or unsatisfactory, grounds for insecurity of payment or performance by Buyer arise, or (iii) credit extended to Buyer exceeds the amount of credit which Seller reasonably deems appropriate or prudent (including due to changes in market conditions causing an increase in Seller exposure for forward contracts), Seller may require, in writing, that Buyer provide Adequate Assurance of performance. Seller may, without waiving any rights or remedies, immediately suspend performance and withhold further performance of the services or delivery of Product hereunder until it receives such Adequate Assurance. Further, in the event Seller fails to receive such Adequate Assurance within two (2) Business Days after the date of its request, Seller may terminate this Agreement; provided, however, in the event Buyer provides Adequate Assurance within such period, this Agreement will continue pursuant to its terms, including, without limitation, Seller’s continuing right to demand further Adequate Assurance pursuant to the terms of this Agreement. For purposes of this Agreement, the term “**Adequate Assurance**” means sufficient security reasonably specified by Seller in one of the following forms and for a time period (each as reasonably specified by Seller): (i) advance cash payment, (ii) a standby irrevocable letter of credit from a financial institution acceptable to Seller, or (iii) a guarantee of prompt payment of all obligations when due hereunder in accordance with the terms hereof from an entity, and in form and substance, reasonably satisfactory to Seller.

## 6. **Quantity and Quality Determination.**

6.1. *Measurement.* The quantity of the Products shall be determined in accordance with the latest established API/ASTM standards for the method of delivery. Unless otherwise specified elsewhere in this Agreement, all volumes shall be temperature corrected to 60°F in accordance with the latest supplement or amendment to ASTM-IP petroleum measurement tables (ASTM designated D#1250, table 6(b)). Metering systems shall conform to the API/ASTM Standards then in effect relative to meter calibration/accuracy. The Party responsible for the meters or temperature probes used for measurement under this Agreement shall ensure that such meters and temperature probes are calibrated and proved according to applicable API/ASTM Standards, but in any event, not less frequently than as required by Applicable Law.

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6.2. *Quantity.* Unless otherwise expressly specified in the applicable Confirmation, the quantity of Product shall be determined using the applicable Quantity Measurement Mechanism. If the other Party has reasonable cause, it will have the right to independently certify, at its own expense, the calibration of such meters and temperature probes.

6.3. *Quality.* The quality of the Products shall be determined in accordance with the latest established API/ASTM standards.

6.4. *Safety Data Sheets.* Seller has provided, or shall provide Buyer upon Buyer's request, Seller's Safety Data Sheets ("*SDS*") for the Product to be delivered hereunder. Nothing herein shall excuse Buyer from complying with all Applicable Laws which may require Buyer to provide its employees, agents, contractors, users and customers who may come into contact with the Product with a copy of the SDS and any other safety information provided to it by Seller, and/or which require Buyer to ensure that the recommendations relating to the handling of the Product are followed. Compliance with any recommendation contained in the SDS or other safety information shall not excuse Buyer from complying with all Applicable Laws.

### 7. **Warranties.**

7.1. *Covenants.* Seller covenants that at the time that Product passes the Delivery Point, Seller shall ensure that (i) Seller has good and marketable title to the Products sold and delivered and that such Products are delivered free and clear of any liens, (ii) such Product is delivered in compliance with Applicable Law, and (iii) the Product conforms to any Specifications for such Product set forth in the applicable Confirmation.

7.2. *Remediation.* In the event of a breach by Seller of Section 7.1(iii), in addition to any other remedies which are available to Buyer, Seller shall reimburse Buyer for an amount equal to the sum of (i) the price of the Product delivered in breach of Section 7.1(iii) which is paid by Buyer, (ii) Buyer's reasonable costs in handling and disposing of the Product delivered in breach of Section 7.1(iii), (iii) any resulting damage to Buyer's equipment or hardware (including any costs required to clean or remediate any tanks which are contaminated resulting from receipt by Buyer of the Product delivered in breach of Section 7.1(iii), and (iv) the replacement cost of any product into which the Product delivered in breach of Section 7.1(iii) is mixed, less salvage value.

7.3. *Authority.* Each Party represents and warrants to the other Party that: (i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; (ii) the execution, delivery and performance under the Agreement is within its powers, has been duly authorized by all necessary action and does not violate any of the terms and conditions in its governing documents, any contract to which it is a party or any law, rule, regulation, order or the like applicable to it; (iii) the Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject, as to enforceability only, to applicable bankruptcy, moratorium, insolvency or similar laws affecting the rights of creditors generally and to general principles of equity; and (iv) it is not bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming bankrupt.

7.4. *Disclaimer.* EXCEPT AS EXPRESSLY SET FORTH IN THIS **SECTION 7** AND **SECTION 8** BELOW, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES HEREUNDER, AND ALL WARRANTIES OF SELLER, EXPRESS OR IMPLIED, AND ALL REPRESENTATIONS, GUARANTEES, INSTRUCTIONS, PROMISES, DESCRIPTIONS AND SAMPLES FROM SELLER OF, OR PERTAINING TO, PRODUCT QUALITY, COMPOSITION, CHARACTERISTICS, ENVIRONMENTAL OR HUMAN SAFETY OR HAZARD OR HEALTH AFFECTS, PERFORMANCE, OR LIKE MATTERS ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED, INCLUDING ANY AND ALL REPRESENTATIONS, GUARANTEES OR WARRANTIES, EXPRESS OR IMPLIED, OF MERCHANTABILITY OR FITNESS OF THE PRODUCT FOR A PARTICULAR PURPOSE.

**8. Compliance with Applicable Laws.**

8.1. *Hazardous Materials.* If, and to the extent, either Party loads, unloads or ships hazardous materials (as listed in the Tables of 49 C.F.R. 172.101, and 172.102 as amended from time to time) pursuant to the Agreement, each Party hereby warrants and covenants that all hazardous materials in its custody or control hereunder (in the case of Seller, prior to the Delivery Point, and, in the case of Buyer, after the Delivery Point) will be prepared for shipment, loaded, shipped and unloaded in compliance with all Applicable Laws regarding the handling and transportation of hazardous materials.

8.2. *Compliance With Law.* Without limiting the foregoing, each Party will be responsible for compliance, and warrants and covenants that it shall comply, with all Applicable Laws which are applicable to this Agreement and to the Products in such Party's custody and control (in the case of Seller, prior to such Product passing the Delivery Point, and, in the case of Buyer, after such Product passes the Delivery Point), including, without limitation, export and re-export control laws and regulations. A Party's performance under this Agreement will be relieved to the extent that such Party determines, in its sole but reasonable discretion, that its performance of this Agreement would violate Applicable Laws, provided that such Party shall use reasonable efforts to modify its performance under this Agreement as mutually agreed with the other Party to permit performance to the extent not in violation of Applicable Laws.

8.3. *Change In Law.* In the event of a change in Applicable Law which materially impacts either Party's performance of its obligations hereunder, the impacted Party shall provide notice to the other Party of such change and the actual or expected impact of such change in Applicable Law, whereupon the Parties shall promptly, and in good faith, discuss revisions to the Agreement to account for such change in Applicable Law; provided, that any change in this Agreement (or any portion thereof) shall only be to the extent necessitated by such change to Applicable Law. In the event that the Parties are unable to mutually agree on modifications to this Agreement within thirty (30) days following receipt of notice by the non-impacted Party, either Party shall have the right to terminate this Agreement upon written notice to the other Party. Notwithstanding the foregoing, in the event that a Confirmation is not impacted by a change in Applicable Law, the termination right specified in the preceding termination right shall not apply to such Confirmation or any rights or obligations of the Parties thereunder.

**9. Taxes.**

9.1. *General.* Seller shall pay, reimburse, indemnify, defend and hold harmless Buyer for any and all Taxes the taxable incident of which occurs prior to transfer of title to the Products to Buyer. Buyer shall pay, reimburse, indemnify, defend and hold harmless Seller for any and all Taxes the taxable incident of which occurs on or after the transfer of title to the Products to Buyer. Buyer shall pay, or reimburse Seller for, all Taxes imposed on any transaction of Product sold hereunder. For the avoidance of doubt, Seller shall be responsible for all Taxes imposed on the Product prior to the time such Product passes the Delivery Point, and Buyer shall be responsible for all Taxes imposed on the Product at or after the time such Product passes the Delivery Point.

9.2. *Exemption; Tax Forms.* If Buyer claims exemption from any of the aforesaid Taxes, then Buyer, in lieu of payment of or reimbursement of such Taxes to Seller, shall furnish Seller with a properly completed and executed exemption certificate in the form prescribed by the appropriate taxing authority. Buyer shall promptly notify Seller in writing of any change in the status of its exemption. Buyer's tender of any tax exemption documentation to Seller shall not relieve Buyer of its underlying obligations, if any, in respect of the applicable Taxes.

**10. Indemnity.**

10.1. *Buyer Indemnity.* Buyer shall defend, indemnify, and hold harmless Seller, its Affiliates, and its and their respective employees, directors, officers, agents, and contractors (collectively, the "***Seller Indemnitees***") from and against any Losses suffered, incurred, or sustained by any Seller Indemnitee or to which the Seller Indemnitees become subject, arising out of any third party claim arising from the violation of Applicable Law, gross negligence, or intentional misconduct of Buyer.

10.2. *Seller Indemnity.* Seller shall defend, indemnify, and hold harmless Buyer, its Affiliates, and its and their respective employees, directors, officers, agents, and contractors (collectively, the "***Buyer Indemnitees***" and, together with the Seller Indemnitees, the "***Indemnitees***") from and against any Losses

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suffered, incurred, or sustained by any Buyer Indemnitee or to which the Buyer Indemnitees become subject arising out of any third party claim arising from the violation of Applicable Law, gross negligence, or intentional misconduct of Seller.

10.3. *Proportionate Indemnification.* Where any claim subject to indemnification hereunder is the result of (i) acts or omissions of both Parties giving rise to indemnification obligations from each hereunder or (ii) the joint gross negligence or intentional misconduct of the Parties hereto, the Parties shall indemnify each other in direct proportion to the amount of Losses which are attributable to their respective (A) acts or omissions giving rise to indemnification obligations hereunder, or (B) gross negligence or intentional misconduct.

10.4. *Indemnification Procedures.* If any third party claim is commenced against any of the Indemnitees, the indemnified Party shall promptly notify the indemnifying Party of such claim; provided, that any failure or delay in providing such notification shall only excuse the indemnifying Party's obligation to indemnify the indemnified Party to the extent that such failure or delay actually prejudices the defense of such claims. Upon receipt of such notice, and provided the indemnifying Party acknowledges its indemnification obligations with respect thereto, the indemnifying Party shall promptly assume the defense of such claim, with counsel reasonably satisfactory to the indemnified Party, and shall pay the fees and disbursements related to such proceeding. Notwithstanding the foregoing, the indemnifying Party shall not, without the prior written consent of the indemnified Party, effect any settlement of any pending or threatened proceeding in respect of which the indemnified Party is or could have been a party and indemnity could have been sought under this Agreement by the indemnified Party unless such settlement: (i) includes a full and final release of all threatened or pending claims against the Indemnitees; (ii) does not require any Indemnitees to make any admission of liability, fault or wrong-doing; and (iii) does not require any Indemnitees to take or refrain from taking any specific action.

### 11. **Limitation of Liability.**

11.1. *Indirect Damages.* Neither Party shall be liable to the other, whether in contract, tort, breach of warranty, or any other theory for any indirect, incidental, special, punitive, or consequential damages arising out of or relating to its performance or failure to perform under this Agreement. Notwithstanding the foregoing, any liability or costs for which Seller is responsible pursuant to Section 7.2 will be considered direct damages and will not be limited by this Section 11.1.

#### 11.2. *Claims.*

11.2.1. Any claim regarding the quality or quantity of any Products delivered shall be waived unless submitted to Seller in writing, together with supporting documentation and reasonable details of the facts on which the claim is based, within thirty (30) days after the date of delivery. The delivery date shall be determined by the bill of lading or other shipping document as appropriate for the delivery method.

11.2.2. Any claim regarding amounts due and payable for Products delivered hereunder shall be waived unless submitted to Seller in writing, together with supporting documentation and reasonable details of the facts on which the claim is based, within ninety (90) days after the invoice date for such amounts.

11.2.3. Except as otherwise specified in **Section 11.2.1** and **Section 11.2.2** or claims that are Marine Claims, any actions by either Party to enforce any rights or obligations under the Agreement must be filed against the other Party in court and in accordance with the terms of this Agreement no later than one (1) year after the date on which the alleged breach of the Agreement occurred.

### 12. **Force Majeure.**

12.1. *Force Majeure Events.* If either party is rendered unable, wholly or in part, to perform its obligations under this Agreement (other than to make payments due hereunder) due to Force Majeure, then the affected party (the "***Excused Party***") shall give prompt notice, either in writing or orally (followed as soon as practicable with written notice), and full particulars of such Force Majeure to the other Party, and the obligations of the Excused Party shall be suspended for the duration of such inability to perform and such cause shall, so far as possible, be remedied by the Excused Party with all reasonable dispatch. Neither Buyer nor Seller shall be liable for any delay or failure in performance if and to the extent such delay or



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failure in performance is a result of Force Majeure. Without limiting the foregoing, neither Party shall be required to make up any volume of Product not received or delivered, as applicable, to the extent due to Force Majeure, and any volume specified in any Confirmation shall be adjusted as necessary to account for any decrease in volumes received or delivered due to Force Majeure. Notwithstanding the foregoing, it is understood and agreed that the settlement of strikes or lockouts shall be entirely within the discretion of the party having the difficulty. Where the Force Majeure involves interruption and unavailability of a Party's means of transporting Product to or from the point of delivery, that Party shall have no obligation to seek alternative means of transportation unless the cost and transit time of such substitute transportation to that party is materially equivalent to, or less than, the cost and transit time of the interrupted means of transportation.

### 13. Default/Termination.

#### 13.1. *Termination Rights.*

13.1.1. Each of the following is an “*Event of Default*” under the Agreement:

- a) a material breach of this Agreement by a Party which is not cured by such Party within thirty (30) days after receipt of written notice of such breach from the non-breaching Party;
- b) a failure by a Party to perform a material portion of its obligations hereunder for any reason for a period of ten (10) days or longer (except to the extent due to the occurrence of a Force Majeure Event);
- c) with respect to Buyer, a failure by Buyer to pay any undisputed amount when due hereunder and failure to cure such non-payment within two (2) Business Days after receipt of written notice from Seller of such failure;
- d) a Party (a) becoming the subject of bankruptcy or other insolvency proceedings or proceedings for the appointment of a receiver, trustee, or similar official, (b) becoming insolvent or generally unable to pay its debts as they become due, or (c) making a general assignment for the benefit of its creditors (a “*Bankruptcy Event*”);
- e) Buyer failing to provide Adequate Assurance in accordance with Section 5; or
- f) a Party failing to perform any material portion of its obligations hereunder due to Force Majeure for a period of sixty (60) days or longer.

#### 13.2. *Remedies.*

13.2.1. Upon occurrence of an Event of Default, the Party not subject to the Event of Default (the “*Terminating Party*”) may, at its sole discretion and without prejudice to its other rights, terminate the Agreement or, in the case of Seller being the Terminating Party, suspend delivery under the Agreement until further notice, by and upon giving written notice thereof to the Party subject to the Event of Default (the “*Terminated Party*”). With respect to an Event of Default described in Section 13.1.1(e) or Section 13.1.1(f), such termination of the Agreement or, if applicable, suspension of delivery of Product under the Agreement shall be the Terminating Party's sole and exclusive remedy for such Event of Default.

13.2.2. Upon the occurrence of an Event of Default described in Sections 13.1.1(a)-(c), the Terminating Party, in addition to its other rights and remedies specified in Section 13.2.1, may proceed against the Terminated Party for damages or other remedies provided at law or in equity occasioned by such Event of Default.

13.2.3. Upon occurrence of a Bankruptcy Event, the Terminating Party may, at its sole election and in addition to any other rights and remedies it may have under this Agreement, calculate the Close Out Payment for this Agreement (as well as the Close Out Payment for any other Forward Contracts (as defined in Section 556 of the U.S. Bankruptcy Code) between the Parties (or their Affiliates), in which case the Close Out Payment for this Agreement shall be netted with the Close Out Payments for any other Forward Contracts between the Parties) and the Party that owes the other Party a net sum due under this Section 13.2.3 shall pay the other Party such sum in U.S. Dollars by wire transfer in

immediately available funds within twenty four (24) hours after it receives written notice of the amount due hereunder.

14. **Allocation.**

14.1. If Seller does not have sufficient supplies of Product to meet the supply obligations under this Agreement and its other product supply obligations, then Seller shall allocate its available supplies of Product to Buyer and the other customers of Seller in a commercially reasonable manner as determined by Seller in its sole discretion. The shortage creating the need to allocate may be based on any of the following: (i) an actual shortage of Product; (ii) a partial or total interruption or loss or shortage of transportation facilities or supplies of Product; (iii) a shortage in a contemplated source of supply of Product; or (iv) a general shortage in Seller's product supply system. Seller shall have no obligation to make up any shortage resulting from an allocation hereunder (and Buyer shall have no obligation to purchase the amount of any Product shortage due to such allocation). Furthermore, this Agreement shall not be construed in any way to require Seller to purchase Product or transfer Product from another refinery to supply any or all of the contract volume hereunder.

15. **Product Handling; Transportation; Environmental**

15.1. *Seller Rejection.* Seller reserves the sole right to reject any transportation apparatus (including a Vessel) presented by a Carrier for loading which Seller reasonably believes (i) fails to meet any Applicable Law or (ii) would present an unsafe or potentially unsafe situation or condition. Seller reserves the right, in its sole discretion, to refuse to load or handle any Product under any conditions it deems unsafe or in violation of any Applicable Law, including, without limitation, those caused by drivers, personnel, equipment, procedures, and/or weather conditions.

15.2. *Facility Access Agreement.* No Carrier will be entitled to access each relevant terminal unless and until the Carrier enters into a facility access agreement (or such other required agreement or contract) with the operator thereof and provides all necessary documentation, including, without limitation, certificates evidencing required insurance coverages, as required thereby, in the operator's discretion.

16. **Miscellaneous.**

16.1. *Notices.* In any case where any notice, approval, agreement or other communication is required or permitted to be given under this Agreement, such notice, approval, agreement or communication shall be in writing and deemed to have been duly given and delivered: (i) if delivered in person, on the date of such delivery; (ii) if sent by overnight express or registered or certified mail (with return receipt requested), on the date of receipt of such mail; or (iii) if sent by electronic mail, upon the date a notice of receipt is received by the sender. Such notice or other communication shall be sent to the notice addresses specified in the applicable Confirmation.

16.2. *Recordings.* Each Party (i) consents to the recording of telephone conversations between the trading, marketing and other relevant personnel of the Parties in connection with any potential Confirmation, (ii) agrees to obtain any necessary consent of, and give any necessary notice of such recording to, its relevant personnel and (iii) agrees, to the extent permitted by applicable law, that recordings may be submitted in evidence in any legal proceedings.

16.3. *Electronic Documents.* Any Confirmation or other related document, or recording may be scanned and stored electronically, or stored on computer tapes and disks, as may be practicable (the "*Imaged Agreement*"). The Imaged Agreement, if introduced as evidence on paper, the Confirmation if introduced as evidence in automated facsimile form, any recording, if introduced as evidence in its original form and as transcribed onto paper, and all computer records of the foregoing, if introduced as evidence in printed format, in any judicial, arbitration, mediation or administrative proceedings, will be admissible as

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between the Parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither Party shall object to the admissibility of any Imaged Agreement (or photocopies of the transcription of such Imaged Agreement) on the basis that such were not originated or maintained in documentary form under the hearsay rule, the best evidence rule or any other rule of evidence. However, nothing herein shall be construed as a waiver of any other objection to the admissibility of such evidence.

16.4. *Confidentiality.* Neither Party shall disclose the terms or conditions of the Agreement to any third party (other than the Party's employees, lenders, counsel, accountants or advisors that have a need to know such information and have agreed to keep it confidential), except in order to comply with any Applicable Law, any exchange or in connection with any court or regulatory proceeding, in which case each Party shall, to the extent practicable, use commercially reasonable efforts to prevent or limit such required disclosure. Notwithstanding the foregoing, a Party may elect to report a Transaction under the Confirmation to a price index publication in which case the Product description, volume, price, delivery point and delivery date may be disclosed but the identity of the counterparty shall remain confidential. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with this confidentiality obligation.

16.5. *Entirety of Agreement; Amendments; Waivers.* The Agreement constitutes the entire agreement and supersedes (i) all prior oral or written proposals or agreements, (ii) all contemporaneous oral proposals or agreements and (iii) all previous negotiations and all other communications or understandings between the Parties with respect to the subject matter hereof. The Agreement (and any portion thereof) may only be amended or modified in a writing that references this Agreement and is signed by an officer or other authorized representative of or for each of the Parties. No waiver of any right under this Agreement at any time will serve to waive the same right at any future date.

16.6. *Relationship of the Parties.* The Parties intend to create an independent contractor relationship and nothing contained in this Agreement shall be construed to make either Seller or Buyer partners, joint venturers, principals, agents or employees of the other. Neither Party shall have any right, power or authority, express or implied, to bind the other. Neither Seller nor Buyer is authorized to take any action in any way whatsoever for or on behalf of the other.

16.7. *Forward Contract Status.* The parties acknowledge and agree that this Agreement (and any Confirmations under this Agreement) constitutes a "Forward Contract," each Party is a "Forward Contract Merchant," and each payment hereunder constitutes a "Transfer" or a "Settlement Payment" under the U.S. Bankruptcy Code - 11 U.S.C. Sec. 101, with all attendant protections and benefits.

16.8. *Assignment.* The Agreement shall not be assignable by either Party without the prior written consent of the other Party (not to be unreasonably withheld). This Agreement shall be binding upon the parties hereto, and their respective successors, heirs, administrators, executors, and assigns.

16.9. *Amendment.* No amendment to the Agreement will be effective unless made in writing and signed by an officer or other authorized representative of both Parties.

16.10. *Severability.* To the fullest extent permitted by Applicable Law, if any provision of this Agreement, or the application thereof to any Person or circumstance, is held by a court of competent jurisdiction to be invalid or unenforceable, then (a) such provision shall be considered removed from the Agreement and (b) the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected by such invalidity or unenforceability.

16.11. *Choice of Law and Forum.* This Agreement will be deemed made in and governed by the laws of the State of Georgia, without application of its principles regarding conflicts of law. Each party irrevocably agrees that any legal action, suit, or other proceeding brought by it in any way arising out of this Agreement must be brought solely and exclusively in the Federal or state courts located in or encompassing Cobb County, Georgia, *provided that* Marine Claims will be resolved in accordance with the Dispute Resolution Clause of the Marine Provisions.

16.12. *Jury Waiver.* **EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY CLAIM OR DISPUTE ARISING FROM OR RELATING TO THIS AGREEMENT.**

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16.13. *U.N. Convention.* The United Nations Convention on Contracts for the International Sale of Goods shall not in any way apply to or govern this Agreement or any transaction under this Agreement.

[End of General Terms]