

**Elbow River Marketing Ltd.**  
**General Terms and Conditions**

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1. **General** – The provisions of these General Terms and Conditions, unless otherwise stated, are subordinate to and form part of the agreement to which they are attached or in which they are referenced. If there is any conflict between the Confirmation or Rider and the General Terms and Conditions, the Confirmation or Rider will prevail.
2. **Term** – This agreement shall terminate at the conclusion of the Term. On termination of this Agreement for any reason, the accrued liabilities of the Parties shall continue, notwithstanding such termination. All terms of this Agreement which would, by their nature, persist after termination of this Agreement shall survive such termination. Unless otherwise specified in the Confirmation or Rider, delivery months begin at 7:00 a.m. on the first day of the calendar month and end at 7:00 a.m. on the first day of the following calendar month.
3. **Delivery Point, Title & Risk** – Buyer agrees to purchase the Product from Seller, and Seller agrees to sell the Product to Buyer. Seller agrees to deliver the Product to Buyer at the Delivery Point. If the Confirmation or Rider specifies the same Delivery Point and Title Transfer 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: (i) Product is loaded into or unloaded from a tank truck, at the outlet flange of the tank truck; (ii) Product is loaded into a railcar, at the outlet flange of the railcar, or if applicable, upon the constructive placement of the railcar by the railroad, or upon the actual placement of the railcar for unloading if the railcar has not been previously constructively placed; (iii) 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 (iv) the transfer of Product is entered on the books of the facility, when deliveries are made within a facility or by in-line transfer. Except as otherwise specifically provided in this Agreement, Seller will not be responsible for any aspect of transportation, handling or use of the Product. If the Confirmation or Rider specifies a Title Transfer Point that is different from the Delivery Point, then title to and risk of loss or damage to the Product passes to the Buyer at the Title Transfer Point.

If Seller acts as shipper of the Product after the passage of title and risk to the Buyer, Seller will be in control of the Product for the sole purpose of delivering the Product to Buyer as Seller's consignee.

Buyer hereby grants to Seller and Seller hereby retains a security interest in all Product sold hereunder and all proceeds from the sale or other disposition of such Product, until such Product is paid for in full by Buyer. Buyer hereby authorizes Seller and its agents to file any financing statements and other documents necessary to create, perfect, and maintain the perfection of the security interest granted hereunder.

4. **Product Specifications** – All Product delivered under this Agreement will comply with specifications in the following order (with (a) having the highest priority and (c) the lowest):
  - a) the specifications described in the Confirmation or Rider, if any;
  - b) the specifications described in the attached Specifications schedule, if any; and
  - c) the specifications that were previously delivered to the Buyer by the Seller, if any.

For greater certainty, in the event of a conflict, the specifications described in the Confirmation or Rider shall govern. If no specifications have been provided, then all Product delivered under this Agreement will comply with standard industry specifications that apply to such Product, as such standards exist from time to time.

5. **Measurement of Product Quantity** – The quantity of Product delivered will be measured at the location where the Product is loaded into the transportation equipment, using standard industry practice at the time of measurement, (i) in the case of delivery into rail cars, by means of the railcar's gauging device and applicable outage tables; (ii) in the case of delivery into tank trucks, by means of a weigh scale or metering device at Seller's option; and (iii) in the case of delivery into pipelines or storage facilities, by meter or other mutually accepted method or device. Unless otherwise specified in the Confirmation or Rider or unless otherwise required by legislation at the receipt or delivery location (as applicable), all volumetric measurements

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contemplated herein will be corrected for temperature to: (i) 60 °F when measured in Imperial or U.S. units; and (ii) 15°C when measured in metric or Système Internationale units.

6. **Taxes, Assessments, and Duties** – With the exception of income taxes or any other taxes imposed on Seller’s profits, any tax, duty, charge, royalty, contribution, fee, or other amount (collectively referred to as the “**Amounts**”), now or hereafter imposed or collected by or for the benefit of any governmental or public body or agency with regard to, in connection with or as a result of the supply or sale of Products shall be paid by Buyer or, at the discretion of Seller, Seller may impose a surcharge on each unit of Product delivered or sold hereunder to offset, ratably among Seller’s customers, any such amounts, and Buyer shall pay the said surcharge to Seller, in addition to any amounts otherwise payable by Buyer hereunder. Without limiting the generality of the foregoing and where applicable, the Parties acknowledge that the government of the Province of Quebec has created a cap-and-trade system pursuant to which Seller may need to acquire greenhouse gas emission allowances (the “**Emission Allowances**”) to cover the greenhouse gas emissions attributable to the Products sold hereunder, and the Parties acknowledge that other Provinces or jurisdictions in the United States and Canada may, from time to time, create similar systems. At such time as the cost of the Emission Allowances is known to Seller, Seller will invoice to Buyer and Buyer will pay to Seller, in addition to the price of Products sold hereunder, an amount equivalent to the value of Emission Allowances, where the Product sold is subject to such Emission Allowances and as determined by Seller from time to time, necessary to cover the emissions reasonably attributable to the volume of Products sold to Buyer hereunder, unless such value has otherwise been included in the price of the Products. Upon receipt of the first invoice including said value of Emission Allowances, Buyer shall have ten days to express its disagreement with the value determined by Seller, in which case Buyer shall be entitled to immediately terminate this Agreement by written notice to Seller, without affecting the obligation of Buyer to pay the value of Emission Allowances attributable to the sales of Products made before said termination.
7. **Export/Import Compliance** – Notwithstanding Section 6 hereof, (i) if Product is imported from the U.S. to Canada, the Party that is the importer of record of the Product (as indicated on the Confirmation or Rider) shall fulfill all applicable import/export requirements, including but not limited to those of any province, state, the CBSA, and U.S. Customs; and (ii) if Product is imported from Canada to the U.S., the Party that is the exporter of record of the Product (as indicated on the Confirmation or Rider) shall fulfill all applicable import/export requirements, including but not limited to those of any province, state, the CBSA, and U.S. Customs. Such Party shall pay any applicable import duty, “green credit” charge, any tax collected by the CBSA or U.S. Customs in the way of duty, fees, and penalties, or any other applicable fees, fines, penalties, or costs. Both Parties shall exercise commercially reasonable efforts to provide supporting documentation. If the Buyer purports to rely on an exemption from such requirements, then Buyer shall provide evidence in support of such reliance. If Buyer does not provide satisfactory evidence thereof, then Buyer shall indemnify Seller in respect of any amounts Seller pays as a consequence of such requirements.
8. **Deliveries and Underlifting** – On a commercially reasonable efforts basis, all deliveries will be made in accordance with the monthly schedule indicated in the Confirmation or Rider at rateable quantities per day (unless otherwise specified in the Confirmation or Rider) during each day of the month and during loading hours agreeable to Seller. 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. Where Buyer’s liftings are below the scheduled volume in any month, Seller shall have the right to make arrangements to mitigate its losses and this shall include, but not be limited to, selling the underlifted volume to other parties (at Seller’s sole discretion, using commercially reasonable efforts to secure a market rate) and Buyer shall compensate Seller for loss of revenue and all costs of mitigation incurred by Seller, acting reasonably, during any mitigation period.
9. **Rejection and Notice of Defects** – Buyer has 72 hours after receipt of the Product to inspect, at its sole cost, and either accept or reject the Product (which may be rejected only if it contains defects or non-conformities). If Buyer retains the Product in its possession for a period of 72 hours after receipt without rejecting it, this will be regarded as Buyer’s irrevocable acceptance of the Product. If the Product is rejected, Notice must be given to Seller so that the Notice will arrive no later than five business days after discovery of the defect or nonconformity in the Product, fully specifying all claimed defects and nonconformities. Seller will have the

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right to independently test any rejected Product before the transport equipment (e.g. railcar or truck) is offloaded, at which time the Seller may redirect the transport equipment.

10. **Product Shortages** – Unless otherwise specified in the Confirmation or Rider, Seller agrees to reimburse Buyer for any substantiated shortage on shipment in excess of 2% of the scheduled volume, provided that authority to unload railcars or other transport equipment with excessive shortage is granted by Seller before unloading and a signed and notarized affidavit from the railroad agent or other person accepted by Seller attesting to the shortage is sent by Buyer to Seller within thirty days from the date the railcar or other transport equipment was inspected.
11. **Buy/Sell and Exchange Balancing** – The terms of this Section 11 shall only apply to this Agreement if substantially similar volumes are intended to be bought and sold or exchanged under this Agreement:
- a) Each Party shall be responsible for maintaining the volumes bought and sold or exchanged in balance on a month-to-month basis, as near as reasonably possible.
  - b) If, for any reason (including events of force majeure), a Party complies with the requirements of Section 11a) but fails to deliver or accept delivery of the contractually specified volume during any month (an “**Imbalance Month**”), then the Party that delivered the lesser volume during the Imbalance Month (the “**Underdelivering Party**”) shall deliver to the other Party a volume of Product equal to the difference between (i) the volume delivered by the Underdelivering Party during the Imbalance Month, and (ii) the volume delivered by the other Party during the Imbalance Month (such difference being the “**Imbalance Volume**”). The Imbalance Volume shall be delivered as soon after the Imbalance Month as is reasonably practicable it being understood that the Parties shall endeavor to cause the Imbalance Volumes confirmed by the 20th day of the Imbalance Month to be delivered during the second calendar month after the Imbalance Month, except to the extent prevented by a new or continued event of force majeure.
  - c) When a Party fails to deliver or accept delivery of the contractually specified volume during an Imbalance Month due to an event of force majeure, if the Imbalance Volume has not been delivered before the end of the second calendar month after the Imbalance Month, and if no other resolution of the Imbalance Volumes has been agreed between the Parties, during the third month after the Imbalance Month, the Underdelivering Party shall deliver, and the other Party shall take, an amount of Product equal to the Imbalance Volume, and such delivery shall be of the same type of Product, at the same location and (except as provided in Section 11d) below) at the same price as the Product received by the Underdelivering Party during the Imbalance Month.
  - d) To the extent that an Imbalance Volume is delivered after the Imbalance Month, and except as provided in the Confirmation or Rider: (i) if the price specified in this Agreement is a fixed price or formula price based on the price of Product on a date or during a specified range of dates (e.g. “April 12, 2016,” or “April 12 – 19, 2016”), the price of the Imbalance Volumes shall be equal to such price without regard to the month of actual delivery; and (ii) if the price specified in the Agreement is a formula price based on the price of Product on a date or during a range of dates that is not tied to a specific date or range of dates (e.g. “bill of lading date”, “month of delivery”, “NYMEX trade month” or “calendar month average”), the price for the Imbalance Volumes will be calculated according to such formula for the actual month the Imbalance is delivered.
  - e) The foregoing notwithstanding, the obligation of either Party to deliver or take an Imbalance Volume less than 1000 barrels (or equivalent) at the end of this Agreement shall be excused.
12. **Equal Daily Deliveries** – For pricing purposes only, unless otherwise specified in the Confirmation or Rider, all Product delivered hereunder during any calendar month shall be considered to have been delivered in equal daily quantities during such month.
13. **Terms of Payment** – Buyer agrees to make payment against Seller’s invoice for the Product purchased and other fees, charges and taxes as applicable, to Seller in the currency specified in the Confirmation or Rider in

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immediately available funds. Payment is due on or before the date specified in the Confirmation or Rider. If payment due date is on a Saturday or bank holiday other than Monday, payment shall be due on the preceding banking day. If payment due date is on a Sunday or a Monday bank holiday, payment shall be due on the succeeding banking day. Payment shall be deemed to be made on the date good funds are credited to Seller's account at Seller's designated bank. In addition:

- a) If Buyer fails to pay all or any part of the invoiced amount when due, interest shall accrue monthly and be payable on the unpaid amount (except for any portion thereof which is subsequently determined to be overstated) at the lower of (i) the prime rate at Seller's bank plus 2% per annum and (ii) the maximum amount allowable by applicable law. Any interest which remains unpaid shall be added to the principal amount then outstanding. If Buyer fails to pay when due any amount owing as set forth in an invoice rendered by Seller, other than such portion thereof as it in good faith disputes in writing, or if Buyer fails to provide a Performance Assurance when required by Seller, and if either of such failures continues for five days following delivery by Seller of written notice of such default, Seller may suspend deliveries hereunder. If such failure to pay or provide a Performance Assurance continues for ten additional days, Seller may terminate this Agreement. Such suspension or termination shall be without prejudice to Seller's right to claim for damages for loss of profit which it would have obtained during the period of suspension or to the end of the original Contract Period if the Agreement is terminated early as above provided.
- b) If Seller has not received notice of a dispute in respect of an invoice within ninety days of the date it was rendered, then such invoice shall be deemed for all purposes to be correct.
- c) In the event either Party fails to make timely payment of any monies due to the other Party hereunder, the other Party may offset such unpaid amount against monies owed to such Party under this Agreement or any other agreement.

**14. Rail Car Provisions** – This Section 14 only applies to transactions involving Product that is on a railcar at the Delivery Point.

- a) Buyer will not divert Seller's railcars or consign them to any other routing or to any other destination than that set out in the bill of lading instructions without obtaining prior written or faxed consent of an authorized representative of the Seller. All diversion charges, additional freight charges and any other costs or expenses incurred, sustained or paid by Seller resulting from such diversion shall be for the account of Buyer.
- b) Unless otherwise specified in the Confirmation or Rider, Seller will allow Buyer a period of five days for offloading those railcars commencing at: (i) 12:01 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 railcar is available for placement, or (ii) if notification is not given by the delivering railroad, such time as the railcar is delivered to the Buyer's (or the Buyer's consignee's) off-loading facilities. Upon expiration of such five day period, the Buyer will pay the Seller the detention charge specified in the Confirmation or Rider until such time as the railcar has been returned to the delivering railroad or otherwise placed in accordance with written instruction of the Seller.
- c) Without limiting any of the other provisions of this Agreement, Buyer shall:
  - a. be liable to Seller for all loss, costs, and damages whatsoever which Seller may sustain, pay or incur, including without limitation, railcar rental costs payable to the railcar owner during the period a railcar is under repair or other charges payable to the railcar owner in the event of irreparable damage by Buyer to a railcar; and
  - b. defend, indemnify, and hold harmless Seller from and against all manner of actions, claims, or other proceedings (including inquiries), losses, costs, fines, penalties and expenses (including legal fees), on account of injury or death of persons (including without limitation employees

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of Buyer and Seller) and/or damage to property, including without limitation, the railcars, which may be brought against Seller or which Seller may sustain, pay or incur,

arising prior to the redelivery of the rail car to Seller, except to the extent that such claim, loss, costs, damages, injury, death, fine, penalty or expense results from the negligence or willful misconduct of Seller, its employees, contractors or agents.

15. **Financial Information and Performance Assurance** – Buyer will deliver to Seller such financial statements and other information as Seller may reasonably request from time to time with respect to Buyer’s credit. All costs relating to Performance Assurance will be for the account of the Buyer. All purchases and sales pursuant to this Agreement are, and shall remain, subject to the approval of the Seller’s credit department. If (i) sufficient credit for the transactions contemplated by this Agreement is not approved by Seller’s credit department by five days before the first delivery date of Product hereunder; (ii) subsequent to such approval, Buyer exceeds the credit limit granted by Seller; or (iii) Seller has reasonable grounds for insecurity as to Buyer’s creditworthiness or performance hereunder, Seller may in its sole discretion demand Performance Assurance from Buyer prior to delivering Product as contemplated hereunder.
16. **Audit** – At any time up to twelve months following a month in which payment was due hereunder, either Party shall have the right, at its sole cost and expense, upon not less than fifteen days’ written notice, to have a third party auditor (to be approved by both Parties, acting reasonably) audit the relevant books, accounts, and records directly related to an invoice of the other Party to verify the accuracy of such invoice. All information that an auditor acquires shall be kept strictly confidential. An auditor may be required to enter into a confidentiality agreement if it is deemed necessary by the Party being audited.
17. **Force Majeure** – 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 omissions arises from any Force Majeure event. A Party will not be entitled to rely on this provision unless as soon as practicable after the Force Majeure is discovered by the Party required to give notice, such notice is given to the other Party specifying the cause of the delay or non-performance and unless that Party attempts to rectify as soon as possible such cause, except that (i) the settlement of labour disputes or strikes will be at the discretion of the Party so affected; (ii) Seller will not be obligated to purchase alternate replacement Product to supply to Buyer; and (iii) neither Party will be required to mitigate by agreeing to an alternative mode of transportation or alternative Delivery Point. The term of this Agreement will not be extended because of the Force Majeure event. Quantities of the Product deliverable during the Force Majeure period may be cancelled at the Seller’s option. Seller will allocate available Product among all its customers and itself in a fair and equitable manner. 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. This provision will not excuse the Buyer from its obligation to pay for Product that has been delivered under this Agreement.
18. **Safety Data Sheet** – Seller has provided to Buyer and by taking delivery of Product under the terms of this Agreement Buyer acknowledges receipt of Seller’s current Safety Data Sheet(s) concerning the properties of and safe handling procedures of the Product. 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. Buyer will inform its customers of those safe handling procedures of the Product.
19. **Price Escalation** – Any increase in Seller’s cost of supplying the Product caused by any level of governmental law, regulation, tax or other burden imposed after the date of this Agreement on the ownership, storage, processing, production, transportation, distribution, use or sale of the Product covered by this Agreement will be added to the price under this Agreement.
20. **Event of Default** – An event of default will be deemed to occur if a Party to this Agreement should (i) become the subject of bankruptcy or other insolvency proceedings, or proceedings for the appointment of a receiver, trustee, or similar official, (ii) become generally unable to pay its debts as they become due, or (iii) make a general assignment for the benefit of creditors. If an event of default occurs, the other Party to this agreement

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may withhold shipments or pickups without notice. At any time after an event of default, the other Party to the Agreement shall have the right, at its sole discretion, to terminate this Agreement immediately. Upon termination, the Parties shall have no further rights or obligations with respect to this Agreement, except for the payment of accrued liabilities.

The Parties hereby agree that it is their mutual intent that each transaction completed pursuant to this Agreement: (i) be an “eligible financial contract” for the purpose of the *Companies Creditors Arrangement Act*, RSC 1985, c C-36, as amended, the *Winding-Up and Restructuring Act*, RSC 1985, c W-11, as amended, and the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended; and (ii) if one of the Parties is organized in the United States, be a “Forward Contract” as defined in the US bankruptcy code (11 USC Sec 101(25)).

21. **Warranty** – The Seller warrants good title to all Product delivered hereunder and warrants that such Product shall be free from all royalties, liens, and encumbrances. The sole liability of Seller to Buyer for a breach of warranty will be to replace any Product subject to such breach or refund the purchase price of such Product. EXCEPT FOR THE WARRANTIES EXPRESSLY SET FORTH IN THIS AGREEMENT, THE PARTIES AGREE THAT ALL WARRANTIES IN RESPECT OF QUALITY, FITNESS FOR A PARTICULAR PURPOSE, OR MERCHANTABILITY OF THE PRODUCT, WHETHER EXPRESS OR IMPLIED (INCLUDING WARRANTIES IMPOSED BY STATUTE), ARE HEREBY EXCLUDED AND DISCLAIMED BY SELLER.
22. **Mutual Indemnification** – To the extent permitted by Law, the Parties agree as follows:
- a) **Indemnification of Buyer** – Seller hereby agrees to defend, indemnify and hold harmless Buyer, its respective affiliates and related companies, and the partners, officers, directors, members, employees and representatives of any of the foregoing from and against any and all liabilities, claims, liens, damages, fines, or penalties, losses, judgments, costs and expenses (including attorney’s fees and court costs), of whatever kind or nature and to the extent arising out of, in connection with or resulting from (i) any breach of this Agreement or the performance of its obligations under this Agreement by Seller, (ii) the negligence of Seller, or (iii) the willful misconduct of Seller.
  - b) **Indemnification of Seller** – Buyer hereby agrees to defend, indemnify and hold harmless Seller, its respective affiliates and related companies, and the partners, officers, directors, members, employees and representatives of any of the foregoing from and against any and all liabilities, claims, liens, damages, fines, or penalties, losses, judgments, costs and expenses (including attorney’s fees and court costs), of whatever kind or nature and to the extent arising out of, in connection with or resulting from (i) any breach of this Agreement or the performance of its obligations under this Agreement by Buyer, (ii) the negligence of Buyer, or (iii) the willful misconduct of Buyer.
23. **LIMITATION OF LIABILITY** – EXCEPT FOR AND WITHOUT REGARD TO DAMAGES THAT MAY BE AWARDED TO A NON-AFFILIATED THIRD PARTY AGAINST A PARTY TO THIS AGREEMENT (INCLUDING DAMAGES THAT ARISE IN RESPECT OF INDEMNIFICATION PROVISIONS SET FORTH HEREIN), IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR PROSPECTIVE PROFITS OR SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, SPECULATIVE, OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF VALUE, LOSS OF PRODUCTION, LOSS OF FINANCIAL ADVANTAGE, LOSS OF PROFIT, OR BUSINESS INTERRUPTIONS) HOWEVER IT MAY BE CAUSED, BUT SHALL BE LIMITED TO ACTUAL DAMAGES ONLY.
24. **Subrogation** – To the extent payment is made by an indemnifying Party at any time pursuant to this Agreement, such indemnifying Party shall be subrogated to the indemnified Party’s rights and may receive an assignment of rights of recovery for a loss or cost.
25. **Insurance** – Both Parties acknowledge and agree that neither Party is insuring the Product or property of the other Party. Buyer agrees to procure and maintain and cause its carriers to procure and maintain insurance coverage (i) in compliance with the requirements of the laws and regulations of the jurisdiction(s) in which delivery of the Product will occur with respect to the receipt of Product hereunder and/or any activities related

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thereto and (ii) in compliance with the requirements of any loading facilities at which delivery of the Product will occur.

26. **Necessary Documents** – Upon request, each Party agrees to furnish all substantiating documents incident to the transactions contemplated in this Agreement, including a Delivery Ticket for each volume delivered and an invoice for any month in which sums are due.
27. **Government Regulations** – The terms, provisions, and activities undertaken pursuant to this Agreement shall be subject to all applicable laws, orders and regulations of all governmental authorities.
28. **Governing Law** – This Agreement will be interpreted and governed in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein (excluding any conflicts of law rule or principle that would otherwise refer construction or interpretation of the Agreement to the substantive law of another jurisdiction), and the Parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Alberta.
29. **Confidentiality** – This Agreement will not be disclosed in whole or in part by either Party to any third party without obtaining prior written consent of the other Party, unless such disclosure is required by law, is necessary to obtain regulatory approval or reporting, or for obtaining any necessary financing.
30. **Assignment and Successors** – The Seller, at its own discretion, may assign this Agreement in the event that the Buyer is in default of any payment required under this Agreement, or any other material term of this Agreement. In all other cases, neither Party may assign this Agreement, any money due hereunder, nor any claim arising in connection herewith, without prior written consent of the other Party, which consent shall not be unreasonably withheld. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and permitted assigns.
31. **Severability** – If any provision of this Agreement is held illegal, invalid or unenforceable for any reason whatsoever, the legality, validity or enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby.
32. **Headings** – Headings used in this Agreement are used for convenience of reference only and do not form a part of this Agreement.
33. **Waiver** – No waiver by either Party with respect to any breach of or any right under this Agreement, and no course of 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 Parties hereto.
34. **Entire Agreement** – 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. Unless expressly provided otherwise in this Agreement, each Party objects to and will not be bound by any past or future terms or conditions or representations not set forth in this Agreement, including any additional or inconsistent terms shown on the other Party's confirmation, shipping documents or invoices, and any additions to the provisions of this Agreement included in those documents are null and void.
35. **Amendments in Writing** – Any amendment of this Agreement must be in writing executed by the authorized representatives of the Parties hereto.
36. **Notice** – Any notice required or permitted to be given under this Agreement will be validly given if in writing and delivered, sent by electronic facsimile transmission or other means of electronic communication capable of producing a printed copy (including email) or sent by prepaid registered mail, addressed to the applicable Party at its address indicated on the Confirmation or Rider or to such other address as any Party may specify by notice in writing to the other. Any notice delivered on a business day will be deemed conclusively to have been

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effectively given on the date notice was delivered and any notice given by facsimile or other electronic communication method will be deemed conclusively to have been given on the date of such transmission. Any notice sent by prepaid registered mail will be deemed conclusively to have been effectively given when actually received.

37. **Time of the Essence** – Time is of the essence in this Agreement.
38. **Definitions** – The terms set out in this Section 38 shall carry the following meanings throughout the Agreement unless specified otherwise:
- a) **“Agreement”** means these General Terms and Conditions, the Confirmation or Rider, and any additional schedules attached to these General Terms and Conditions or the Confirmation or Rider;
  - b) **“Amounts”** has the meaning ascribed thereto in Section 6;
  - c) **“Buyer”** means the Party receiving product or having obligation to receive Product;
  - d) **“CBSA”** means the Canadian Border Services Agency;
  - e) **“Confirmation or Rider”** means the confirmation of agreement, rider, or other document to which the General Terms and Conditions are attached or into which they are incorporated, and any schedules thereto;
  - f) **“Delivery Point”** means the location specified in the Confirmation or Rider for delivery of the Product by the Seller to the Buyer Free on Board (**“FOB”**);
  - g) **“Delivery Ticket”** means a shipping/loading document or documents stating the type and quality of product delivered, the volume delivered and method of measurement, the corrected specific gravity, temperature, and S&W content;
  - h) **“Emission Allowances”** has the meaning ascribed thereto in Section 6;
  - i) **“Force Majeure”** means events that are beyond a Party’s reasonable control, including without limitation: acts of God, war, accident, fire, storm, flood, earthquake or explosion, acts of, or compliance with requests of any level of government or any agency thereof, strike, lock-out, disputes with workmen, transportation embargoes, or failure or delays, 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 whether or not similar to the foregoing events that are unforeseen or beyond such Party’s reasonable control, but for greater certainty, a shift in the market price for the Product, a lack of finances, or a loss or reduction of Buyer’s markets for the Product for any reason will be deemed not to be a Force Majeure event;
  - j) **“Imbalance Month”** has the meaning ascribed thereto in Section 11;
  - k) **“Imbalance Volume”** has the meaning ascribed thereto in Section 11;
  - l) **“Party”** means either Buyer or Seller, and **“Parties”** means both of them;
  - m) **“Performance Assurance”** means security in the form, amount, and term specified by Seller, including, but not limited to, a standby irrevocable letter of credit, a prepayment, or a guarantee by an entity acceptable to Seller;
  - n) **“Product”** means the substance(s) bought and sold pursuant to this Agreement, as described in the Confirmation or Rider;

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- o) “**Seller**” means the party delivering Product or having an obligation to deliver Product;
  - p) “**Term**” means, as applicable:
    - a. the time between the start and end dates as specified in the Confirmation or Rider, inclusive of both dates; or
    - b. the term specified in the Confirmation or Rider;
  - q) “**Title Transfer Point**” means the location specified in the Confirmation or Rider for transfer of title of the Product from Seller to Buyer; and
  - r) “**Underdelivering Party**” has the meaning ascribed thereto in Section 11.
39. **Odorization – This Section 39 is applicable only if the Product contemplated in this Agreement is propane.** Unless otherwise expressly directed by Buyer or Seller in writing, Product delivered hereunder shall be odorized in accordance with applicable federal and provincial statutory and regulatory requirements. It is understood and recognized by Buyer that the odorant can fade over a period of time or fade if subjected to certain metals or conditions of metals and may, therefore, be undetectable. Seller shall have no further responsibility to ensure that the Product remains properly odorized after the Delivery Point. Buyer agrees to indemnify and save Seller harmless from any and all claims, demands, loss or damage directly or indirectly from Buyer’s failure to monitor and maintain odorant at or above said levels or to so notify its buyer. Any request by Buyer for delivery by Seller of unodorized Product shall require prior written consent and the Buyer agrees to indemnify and hold harmless the Seller for all loss, damage, claims or expenses resulting from the failure to odorize the Product.
40. **Propane Education and Research Council (PERC) – This Section 40 is applicable only if the Product contemplated in this Agreement is propane.** The Buyer shall be responsible for the payment of all applicable federal and state propane education fees, including without limitation Propane Education and Research Council (PERC) assessment fees on shipments of odorized propane into the United States and any applicable state fees for imports among states. Unless the Parties agree otherwise in writing:
- a) if the Buyer is the importer of record, the Buyer shall pay such fees directly to the PERC Council and/or to the state authorities and shall provide evidence of such payment to the Seller upon request; or
  - b) if the Seller is the importer of record, the Buyer shall pay such fees to the Seller.
41. **Compliance Units – This Section 41 is applicable only if the Products contemplated in this Agreement are renewable fuels.** The Buyer shall either:
- a) transfer to the Seller (by providing appropriate transfer documentation and meeting any other transfer requirements) sufficient compliance units commensurate with the volume of Product purchased and sold pursuant to this Agreement to meet the requirements of the Federal Renewable Fuels Regulations pursuant to the *Canadian Environmental Protection Act, 1999* or of any similar legislation; or
  - b) fully reimburse the Seller upon the Seller’s purchase of such compliance units.