

GENERAL TERMS AND CONDITIONS FOR THE PURCHASE, SALE AND/OR EXCHANGE OF NATURAL-GAS-LIQUIDS

These General Terms and Conditions (along with the applicable confirmation) are intended to govern transactions between the parties for the purchase, sale, and/or exchange of natural-gas-liquids products for physical delivery.

1. Entirety of the Agreement.

- (a) These General Terms and Conditions, together with a confirmation incorporating these General Terms and Conditions, constitute the entire agreement between Buyer and Seller with respect to the product(s) sold and supersedes and replaces any prior or contemporaneous agreement between Buyer and Seller with respect thereto (hereinafter "Agreement").
- (b) If the provisions of any confirmation incorporating these General Terms and Conditions and these General Terms and Conditions directly conflict, then the provisions of the confirmation incorporating these General Terms and Conditions will prevail; furthermore, the provisions of the following will prevail, ranked in order of importance: (1) a confirmation incorporating these General Terms and Conditions, (2) these General Terms and Conditions, (3) additional, valid documentation signed by an authorized representative of Buyer and Seller.
- (c) No conditions, understandings, or agreements purporting to amend, waive, modify, extend, or vary any terms of the Agreement will be binding or of any force or effect unless hereafter made in writing and signed by an authorized representative of Buyer and Seller.
- (d) The Agreement is intended as the final expression of Buyer and Seller and there are no oral representations, stipulations, warranties, agreements, or understandings with respect to the subject matter of the Agreement which are not fully expressed.
- (e) Neither the Agreement nor its execution has been induced by any representation, stipulation, warranty, agreement, or understanding of any kind other than those expressed in writing.
- (f) No prior course of dealing or performance or usage of trade not expressly set forth in the Agreement will be admissible to explain, supplement, modify, or contradict any terms or conditions of the Agreement.
- (g) By executing the Agreement, acknowledging receipt thereof, or engaging in conduct called for by the Agreement which recognizes the existence of a contract pertaining to the product(s) sold, including shipment of any product(s), Buyer and Seller agree, at minimum, to these General Terms and Conditions.

2. Relationship of the Parties.

- (a) Buyer and Seller may be referred to hereinafter collectively as "Parties" and individually as a "Party."
- (b) "Affiliate" means, with respect to a Party, any other person or entity directly or indirectly controlling, controlled by, or under direct or indirect common control with that Party; for purposes of this definition, "control" when used with respect to a person or entity means the power to direct the management and policies of that person or entity, directly or indirectly, whether through the ownership of voting securities, by contract, or otherwise.
- (c) Each Party assumes all its duties under the Agreement as an independent contractor and nothing contained in the Agreement will be construed as inconsistent with such independent contractor relationship; neither Party is an employee or agent of the other Party and as such, neither Party will have the power or authority, express or implied, to pledge credit, to enter into any agreement, or to proffer give any representation, warranty, or guarantee on behalf of the other Party.
- (d) Each Party acknowledges and agrees it will not present itself to any third party as having authority to bind or contract on behalf of the other Party, nor any Affiliate thereof, and will make no implicit or explicit representation to that effect.
- (e) The Agreement is not intended to create nor constitute a joint venture, pooling arrangement, partnership, agency, master-servant, or a business entity, organization, or combination of any type, whatsoever.
- (f) The Parties acknowledge and agree the Agreement and the transaction(s) contemplated under the Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code; furthermore, the Parties acknowledge and agree each is a "forward contract merchant" within the meaning of said Code.

3. Termination.

- (a) The non-defaulting Party may, by written notice, suspend performance or terminate the Agreement if an Event of Default (as defined herein) has occurred with regard to the defaulting Party; an "Event of Default" has occurred if a Party (1) fails to pay, when due, any obligation to the other Party if such failure is not remedied on or before the third business day after notice of such failure is given to such Party, (2) fails to timely transfer collateral, margin or adequate assurance, if such failure is not remedied within one (1) business day of notice, (3) makes an assignment or any general arrangement for the benefit of its creditors, (4) 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 a petition filed against it, (5) otherwise becomes bankrupt or insolvent (however evidenced), or (6) becomes unable to pay its debts as such fall due.
- (b) In the event of termination of the Agreement, all transactions will terminate, other than those transactions, if any, (1) that may not be liquidated and terminated under applicable law or (2) that are, in the reasonable opinion of the non-defaulting Party, commercially impracticable to liquidate and terminate (hereinafter "Excluded Transactions"); such Excluded Transactions will be liquidated and terminated as soon thereafter as is reasonably practicable and upon termination, will be valued consistent with the provisions set forth in Section 3(c) herein.
- (c) Upon termination of the Agreement, the non-defaulting Party will determine, in good faith and in a commercially reasonable manner, the net amount outstanding ("Settlement Amount"), if any, applicable to either Party, whether or not then due and with respect to (1) product(s) delivered and received and (2) any costs or damages incurred or credits or benefits realized due to the defaulting Party's failure to perform; upon determination thereof, the Party so owing will promptly issue payment therefor within five (5) business days.
- (d) The non-defaulting Party shall set off any Settlement Amount due to the non-defaulting Party plus (at the non-defaulting Party's election) any or all other amounts due to the non-defaulting Party under this Agreement and any other contract between the

Parties, against any performance security (including margin) then held by the non-defaulting Party.

- (e) The remedies provided for in this Section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

4. Transaction Procedure.

- (a) Any Transaction may be effectuated in conversations, with the offer and acceptance constituting the agreement of the parties. The parties shall be legally bound from the time they so agree to Transaction terms and may each rely thereon. Any such Transaction shall be considered a "writing" and to have been "signed." Notwithstanding the foregoing sentence, the parties agree that the confirming party shall, and the other party may, confirm any oral transaction by sending the other party a Confirmation by facsimile or other mutually agreeable electronic means within three (3) business days of an oral agreement ("Confirm Deadline"), provided that the failure to send a Confirmation shall not invalidate the oral agreement of the parties.
- (b) If a sending party's Confirmation is materially different from the receiving party's understanding of the agreement referred to above, such receiving party shall notify the sending party of the material difference(s) via facsimile or other mutually agreeable electronic means by the Confirm Deadline, unless such receiving party has previously sent a Confirmation to the sending party. The failure of the receiving party to so notify the sending party in writing by the Confirm Deadline constitutes such receiving party's agreement to the terms of the transaction described in the sending party's Confirmation. If there are any material differences between timely sent Confirmations governing the same transaction, then such differences will be resolved by using any evidence that clearly resolves the differences in the Confirmations, including recorded conversations.

5. Delivery; Title and Risk of Loss.

- (a) Seller shall be responsible for all arrangements necessary to deliver Product(s) hereunder to the Delivery Point and Buyer shall be responsible for all arrangements necessary to receive Product(s) at the Delivery Point. Nothing herein shall be interpreted to require Seller to deliver Product or Buyer to receive Product at any location(s) not agreed to as the Delivery Point. Unless otherwise specified, all sales are FOB Seller's Delivery Point and unless Seller specifically agrees herein to pay all or some part thereof, Buyer will pay the freight or other delivery charges, inspection fees, if any, and all other charges levied or imposed on the goods after the loading is completed.
- (b) Unless otherwise specified by Seller and Buyer in a Confirmation, title, risk of loss, and all other incidents of ownership with respect to the Product(s) will transfer to Buyer when such goods (a) pass the last flange connection of Seller's (or its supplier's) delivery system, (b) when delivering via tank- to-tank transfer; as the material passes the delivering tank's down gauge connection, (c) when delivering via a book transfer, on the respective date of the transfer, (d) in all other cases, at the Delivery Point.

6. Weights and Measures.

- (a) Seller's or its carrier's weights, or Seller's measurements in case of Product(s) sold by volume, taken at the Delivery Point, will control unless proven to be in error. (b) The Parties acknowledge and agree claims for shortages or overages of less than one-half percent (0.5%) of the quantity to be delivered are disallowed.
 - (1) In the event of a material discrepancy in the quantity delivered, either Party may in good faith initiate an independent investigation with which the other Party will reasonably cooperate; in such instances, a mutually agreeable independent third party will be utilized to conduct such an investigation, the outcome of which will be final and binding on the Parties absent fraud, manifest or clear error.
 - (2) Any quantity measurement found to be incorrect by more than one-half percent (0.5%) will result in an appropriate adjustment to the quantity delivered and related invoice(s).
 - (3) Each Party will bear its own internal costs associated with any quantity dispute; however, the costs of the third party investigation will be borne equally by the Parties.

7. Taxes.

- (a) All taxes, duties, and levies of whatsoever nature attaching to the Product(s) occurring prior to the Delivery Point shall be for the account of Seller. All taxes, duties, and levies of whatsoever nature attaching to the Product occurring at and after the Delivery Point shall be for the account of Buyer.
- (b) If Buyer desires the sale to be tax exempt or zero rated, upon Seller's request, Buyer will provide Seller with exemption certificates or proof of qualifying export in a form acceptable to the appropriate taxing authority.

8. Payment.

- (a) Payment will be made against Seller's invoice via electronic funds transfer such that funds are available to Seller no later than five (5) business days from date of invoice, terms net cash, unless otherwise specified herein, regardless of whether such day is a business day; Buyer shall pay an interest charge on late payments 1.5% per month or the highest rate allowed by law, whichever is highest.
- (b) A Party may set off any valid loss, damage, liability, or claim it may have under the Agreement against any performance or payment due under the Agreement.
- (c) If Buyer has a bona fide dispute regarding any portion of an invoice, Buyer will pay the undisputed portion of the invoice and must promptly notify Seller in writing of such disputed item(s).
 - (1) Upon receipt of requisite notice concerning any disputed invoice item(s), the Parties will work together, in good faith, to promptly resolve the disputed amount and to mutually agree upon which portions, if any, of the amount are rightly owed Seller.

- (2) Upon determination that any of the disputed and unpaid amounts are rightly owed Seller, Buyer will promptly remit same.
- (d) When reasonable grounds for insecurity arise with respect to the performance of a Party, the other Party may, in writing, demand adequate assurance of performance (E.g., cash in advance or letter of credit from an institution acceptable to the aggrieved Party) and until such assurance is received, the aggrieved Party may, if commercially reasonable, suspend any performance for which the agreed return has not already been received.
- (1) Acceptance of any improper delivery or payment will not prejudice the aggrieved Party's right to demand adequate assurance of future performance.
- (2) After receipt of a justified demand, a Party's failure to provide within a reasonable time, not exceeding two (2) business days, such assurance of due performance will constitute an Event of Default under the Agreement for which the non-defaulting Party may suspend performance or terminate the Agreement immediately and cancel all further performance thereunder.
- (e) In addition to any other legal remedy, if Buyer fails to fulfill the terms of payment, Seller may defer further delivery of goods hereunder or may, at its option, cancel all further deliveries of goods to Buyer.
- (f) Buyer agrees to pay all costs and expenses, including reasonable attorneys' fees, incurred by Seller in the collection of any sum payable by Buyer to Seller.

9. Warranties.

- (a) Seller warrants (1) that the Product(s) sold pursuant to the Agreement will conform to the specifications set forth in Exhibit A, attached hereto and incorporated by reference for all purposes, and (2) that Seller will have good title to and the right to transfer such Product(s).
- (b) SELLER MAKES NO OTHER EXPRESS OR IMPLIED WARRANTY, STATUTORY OR OTHERWISE, CONCERNING ITS GOODS, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTY OF MERCHANTABILITY.

10. Remedies of Buyer.

- (a) Buyer's sole and exclusive remedy in the event of delivery of non-conforming goods is expressly limited, at Seller's option, to replacement of the non-conforming goods or repayment of the purchase price paid by Buyer, upon credit or return of the non-conforming goods.
- (b) Upon delivery, Buyer must promptly notify Seller in writing of any and all claims, including, but not limited to, alleged defective goods, shortage, breach of warranty, or otherwise.
- (c) Subject to limitations set forth in Section 26 herein, any claim hereunder not asserted as a claim, counterclaim, defense, or setoff, in a legal proceeding instituted before a court of competent jurisdiction within two (2) years from accrual of the claim will be forever waived, released, and barred.

11. Notice.

- (a) Notices and other communications required or permitted under the Agreement will be in writing and addressed to the addressee(s) set forth on the face of the Agreement, or at such other address as a Party may designate in writing from time to time.
- (b) Notices and other communications required or permitted under the Agreement will be deemed to have been given only if (1) delivered personally, (2) mailed by first-class, registered or certified mail, return receipt requested, postage prepaid, (3) sent by next-day or overnight mail or delivery, (4) sent by facsimile, or (5) sent via such other means as may be specified in writing by the Parties.
- (c) Notices and other communications required or permitted under the Agreement will be deemed received (1) if by personal delivery, on the date of such delivery, (2) if by registered or certified mail, or next-day or overnight mail or delivery, on the date delivered, (3) if by facsimile, on the day on which such facsimile was received, or (4) if by such other means as may be specified in writing by the Parties, on the day on which such notice or communication was received; provided, however, any notice or communication delivered pursuant to clauses (3) and (4) herein and received after 5:00 p.m. local time will be deemed received the next business day.

12. Indemnification.

- (a) Buyer's Indemnity. BUYER WILL INDEMNIFY, DEFEND, AND SAVE HARMLESS SELLER, ITS AFFILIATES, AND ITS AND THEIR OFFICERS, EMPLOYEES, AND AGENTS FROM AND AGAINST ALL SUITS, ACTIONS, LOSSES, LIABILITIES, DAMAGES, AND CLAIMS OF ANY CHARACTER, TYPE, OR DESCRIPTION, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEYS' FEES (WHETHER FOR PERSONAL INJURY, DEATH, DISEASE, PROPERTY DAMAGE, INCLUDING, BUT NOT LIMITED TO, ENVIRONMENTAL CONTAMINATION, OR OTHERWISE), ARISING OUT OF, OR OCCASIONED BY, THE LOADING, TRANSPORTATION, UNLOADING, STORAGE, HANDLING, OR USE, EITHER SINGLY OR IN COMBINATION WITH OTHER SUBSTANCES, OF THE PRODUCTS *AFTER* TITLE AND RISK OF LOSS TRANSFERS TO BUYER.
- (b) Seller's Indemnity. SELLER WILL INDEMNIFY, DEFEND, AND SAVE HARMLESS BUYER, ITS AFFILIATES, AND ITS AND THEIR OFFICERS, EMPLOYEES, AND AGENTS FROM AND AGAINST ALL SUITS, ACTIONS, LOSSES, LIABILITIES, DAMAGES, AND CLAIMS OF ANY CHARACTER, TYPE, OR DESCRIPTION, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEYS' FEES (WHETHER FOR PERSONAL INJURY, DEATH, DISEASE, PROPERTY DAMAGE, INCLUDING, BUT NOT LIMITED TO, ENVIRONMENTAL CONTAMINATION, OR OTHERWISE), ARISING OUT OF, OR OCCASIONED BY, THE LOADING, TRANSPORTATION, UNLOADING, STORAGE, HANDLING, OR USE, EITHER SINGLY OR IN COMBINATION WITH OTHER SUBSTANCES, OF THE GOODS *PRIOR TO* TITLE AND RISK OF LOSS TRANSFERRING TO BUYER.

- (c) Proportionate Responsibility. IN INSTANCES WHERE BOTH PARTIES ARE TO SOME DEGREE RESPONSIBLE FOR A CLAIM(S) DESCRIBED IN THIS SECTION 12, THE PARTIES WILL INDEMNIFY EACH OTHER TO THE EXTENT OF THEIR PROPORTIONATE RESPONSIBILITY FOR SUCH CLAIM(S).
13. Liability. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY. A PARTY'S LIABILITY HEREUNDER SHALL 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 HEREIN OR IN A TRANSACTION, A PARTY'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY. SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR LOSS OF PROFITS OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES ARISING OUT OF THE DELIVERY, NON-DELIVERY, SALE, RESALE, OR USE OF SELLER'S GOODS, WHETHER BASED ON CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR OTHERWISE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS
14. Force Majeure.
- (a) Neither Party will be liable to the other Party if it is rendered unable by an event of Force Majeure (as defined herein) to perform in whole or in part any obligation or condition of the Agreement for so long as the event of Force Majeure exists and to the extent performance is hindered by the event of Force Majeure; provided, however, the Party unable to perform will use all commercially reasonable efforts to avoid or remove the event of Force Majeure.
- (b) The term "Force Majeure" will mean any cause not within the reasonable control of the Party claiming suspension and which by the exercise of due diligence such Party could not have prevented, including, but not limited to, physical events such as acts of God, landslides, lightning, earthquakes, fires, storms or storm warnings, such as hurricanes resulting in evacuation, floods, washouts, explosions, machinery malfunctions or breakdowns, inability to obtain fuel, power, or materials necessary for production, deficient transportation, electric power outages, strikes, lockouts, or other industrial disturbances, acts of a public enemy, sabotage, wars, blockades, insurrections, riots, acts of terror, and compliance with any law, order, rule, or regulation of any governmental agency. The term "Force Majeure" expressly excludes (1) a failure of performance of any person other than the Parties, except to the extent that such failure was caused by an event that would otherwise satisfy the definition of a Force Majeure event as set forth in this Section, (2) the loss of Buyer's market or any market conditions for the Product that are unfavorable for Buyer or Seller, (3) the loss of Seller's intended supply of the Product, (4) the failure of Seller's intended supplier of the Product to perform, (5) the depletion of Seller's reserves of the Product, (6) any failure by a party to apply for, obtain or maintain any permit, license, approval or right of way necessary under applicable law for the performance of any obligation hereunder, and (7) a Party's inability to economically perform its obligations under this Agreement.
- (c) When performance has been prevented or delayed by an event of Force Majeure, the quantity of Product(s) affected will be deducted from the amount required to be supplied or purchased hereunder, as the case may be, with no obligation to make up such Product(s).
- (d) During the period a Party's performance of its obligations has been suspended in whole or part by reason of an event of Force Majeure, the other Party may likewise suspend the performance of all or part of its obligations to the extent such suspension is commercially reasonable, except for any payment and indemnification obligations.
- (e) The Party rendered unable to perform will provide notice to the other Party within a reasonable time after learning of the occurrence of a Force Majeure event; such notice will state when the Force Majeure initially occurred, the nature and extent of the Force Majeure condition claimed, the expected duration of the Force Majeure event, and the quantity of Product(s) affected.
- (f) The suspension of performance afforded by this Section 14 (1) will not apply until the aforementioned notice is given, (2) will not be available to a Party failing to use reasonable diligence to remedy the situation and remove the cause in an adequate manner and with all reasonable dispatch, (3) and will not relieve Buyer of the obligation to pay for product(s), title to which has passed to Buyer.
- (g) The requirement that any Force Majeure be remedied with all reasonable dispatch will not require the settlement of strikes or labor controversies by acceding to the demands of the opposing party or parties.
- (h) The Party rendered unable to perform will apportion its available supply or its purchases, as the case may be, on an equitable basis, including its Affiliates and own units, departments, and divisions under common ownership, without incurring liability for failure to perform.
- (i) The Parties acknowledge and agree that in the event of Force Majeure, Seller will not be required to acquire, by purchase or otherwise, additional quantities of goods from other suppliers or otherwise supplement its available supply of goods.
- (j) No curtailment or suspension of deliveries or acceptance of deliveries pursuant to this Section shall operate to extend the delivery period or the term of any transaction.
15. Technical Information and Safety.
- (a) EACH PARTY ACKNOWLEDGES IT IS FAMILIAR WITH THE RISKS ASSOCIATED WITH HANDLING, USING, TRANSPORTING, STORING, AND DISPOSING OF THE PRODUCTS AND IS FAMILIAR WITH THE PRODUCTS; EACH PARTY FURTHER ACKNOWLEDGES IT HAS SEPARATE AND INDEPENDENT KNOWLEDGE OF SUCH RISKS, WHICH RISKS ARE KNOWN IN THE INDUSTRY.

- (b) EACH PARTY WILL MAINTAIN COMPLIANCE WITH ALL APPLICABLE SAFETY AND HEALTH RELATED GOVERNMENTAL REQUIREMENTS CONCERNING THE PRODUCTS AND WILL TAKE ALL STEPS REQUIRED BY APPLICABLE LAW TO INFORM, WARN, AND FAMILIARIZE ITS EMPLOYEES, AGENTS, CONTRACTORS, AND CUSTOMERS CONCERNING ALL HAZARDS ASSOCIATED WITH THE PRODUCTS, INCLUDING HANDLING, SHIPMENT, STORAGE, USE, AND DISPOSAL THEREOF.
16. Survivability. THE PROVISIONS OF THE AGREEMENT WHICH, BY THE NATURE OF THEIR CONTENT, ARE INTENDED, EXPRESSLY OR IMPLIEDLY, TO CONTINUE AND HAVE EFFECT REGARDLESS OF THE TERMINATION OF THE AGREEMENT WHETHER BY DEFAULT OR OTHERWISE, WILL SURVIVE AND CONTINUE TO BIND THE PARTIES, INCLUDING, BUT NOT LIMITED TO, SECTIONS 4, 9, 12, 13 AND 17 HEREIN.
17. Confidentiality. The Parties agree the Agreement, the terms and conditions hereof, and all information and data exchanged by the Parties in accordance with the Agreement will be maintained in strict and absolute confidence, except to the extent disclosure is necessary to perform a Party's obligations or as required by law, court order, suit, subpoena, or regulation.
18. Assignment.
- (a) The Agreement will not be assignable or transferable by either Buyer or Seller without the prior written consent of the other, which consent will not be unreasonably withheld or delayed, and any attempted assignment or transfer without such consent will be void.
- (b) All covenants and provisions of the Agreement by and for the benefit of the Parties will bind and inure to the benefit of their respective successors and assigns as permitted by the provisions of this Section 18.
19. No Third-party Beneficiaries. The Agreement is intended solely for the benefit of the Parties and their permitted assigns and will not impart rights enforceable by any other person or entity, except as expressly provided in the Agreement.
20. Construction and Interpretation. The Parties hereby agree and represent that each has had adequate time to review all provisions of the Agreement with their own legal counsel and that the Agreement was not prepared by either Party to the exclusion of the other and as such, the Agreement will not be construed against either Party by reason of its preparation.
21. Non-waiver.
- (a) No waiver by either Party of one or more defaults by the other Party in the performance of any of the provisions of the Agreement will operate or be construed as a waiver of any other or further default or defaults, whether of a like or different character.
- (b) No indulgence, leniency, or extension of time granted by either Party to the other Party will operate or be construed as an estoppel against the granting Party.
22. Severability. The invalidity or unenforceability of any particular provision of the Agreement will not affect the other provisions hereof, and the Agreement will be construed in all respects as if such invalid or unenforceable provision was omitted.
23. Headings. The titles and headings set forth in the Agreement have been included solely for ease of reference and will not be considered in the interpretation or construction of the Agreement.
24. Conspicuousness. The Parties acknowledge all provisions of the Agreement comply with any and all requirements of conspicuousness under the laws of the State of Texas.
25. Counterparts. The Agreement may be executed and delivered in one or more counterparts, and by the different Parties in separate counterparts, each of which when executed and delivered will be deemed an original, but all of which taken together will constitute one and the same agreement.
26. Jurisdiction; Venue; Waiver.
- (a) All provisions of the Agreement will be governed by and construed in accordance with the laws of the State of Texas, excluding any choice of law rules which may direct the application of the laws of any other jurisdiction.
- (b) The rights and obligations of Seller and Buyer arising from the Agreement will not be governed by the provisions of the United Nations Convention on Contracts for the International Sale of Goods, application of which is hereby expressly excluded pursuant to Article 6 thereof.
- (c) Any suit, action, or proceeding relating to or arising from the Agreement must be brought exclusively in the state or federal courts of Harris County, Texas, and Seller and Buyer hereby waive, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of venue of such suit, action, or proceeding in such court or that any such suit, action, or proceeding which is brought in such court has been brought in an inconvenient forum.
- (d) INsofar as is permitted by law, EACH PARTY IRREVOCABLY WAIVES ANY AND ALL RIGHTS TO TRIAL BY JURY IN ANY LEGAL PROCEEDING IN CONNECTION WITH THIS AGREEMENT OR ANY TRANSACTION, AND ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO THE OTHER PARTY'S ENTERING INTO THIS AGREEMENT.
27. Dispute Resolution.
- (a) With respect to any claims, counterclaims, demands, causes of action, disputes, controversies, and other matters in question involving the Parties and arising out of or relating to the Agreement, including any questions regarding its existence, validity, or termination, any provision hereof, the alleged breach thereof, or in any way relating to the subject matter of the Agreement or the relationship between the Parties created by the Agreement, and not resolved in the ordinary course of business

(hereinafter "Dispute"), a Party must initiate the dispute resolution procedures set forth in this Section 27.

(1) A Party desiring to initiate dispute resolution must provide written notice of the Dispute to the other Party (hereinafter "Dispute Notice").

(2) The Dispute Notice will include (A) a statement of the issuing Party's position and a summary of arguments supporting that position, and (B) the name(s) and title(s) of the executive who will represent that Party in the negotiations and of any other person who will accompany the executive.

(3) Executives appointed to represent the Parties pursuant to any Dispute Notice must have the authority to settle the controversy and must be of a level of management higher than those directly involved in the Dispute.

(4) If one Party has issued a Dispute Notice, the other Party will likewise promptly issue (A) a statement of its position and a summary of arguments supporting that position, and (B) the name(s) and title(s) of the executive who will represent that Party in the negotiations and of any other person who will accompany the executive; thereafter, the Parties will promptly attempt in good faith to resolve the Dispute by negotiations between the executives so appointed.

(b) Should a Dispute fail to be resolved pursuant to Section 27(a) herein within thirty (30) days of receipt of the Dispute Notice, either Party may seek whatever remedies available at law or in equity subject to the limitations in Section 26 herein and in the event of litigation, the prevailing Party will be entitled to all costs and expenses associated therewith, including reasonable attorneys' fees.