



**Meridian Liquids Partners, LLC
General Terms and Conditions
Dated January 1, 2020**

GENERAL PROVISIONS

These General Provisions ("Agreement") are intended to be incorporated into and become a part of any agreement between Meridian Liquids Partners, LLC ("Seller") and the party designated as "Purchaser" relating to the sale by Seller and purchase by Purchaser of one or more types of natural gas liquids. The Agreement will consist of these General Provisions and the terms and provisions contained in a Sales Contract (as such term is defined hereinafter). A "Transaction" shall mean a purchase and sale of natural gas liquids pursuant to the terms and provisions of a Sales Contract and the terms and conditions of these General Provisions. For and in consideration of the mutual benefits to be derived by each and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller and Purchaser agree as follows:

- 1. AGREEMENT** - The parties agree that, pursuant to the terms and conditions set forth in this Agreement, Seller may sell and Purchaser may purchase certain natural gas liquids product(s) (sometime hereinafter referred to as "NGLs" or "Product(s)") for a designated period of delivery. Seller will communicate the terms of the agreement by (i) sending a Sales Contract to Purchaser setting forth, without limitation, the NGL Product, price, quantity, amount of prepayment required, if any, delivery location, as well as such other terms as the parties may have agreed on, or (ii) by confirming such terms and provisions telephonically with Purchaser. The parties further agree that in addition to transmission of written offers and acceptances by mail, courier, delivery service or hand delivery, they may transmit offers and acceptances under this Agreement by electronic transmissions or oral communications and that such offers and acceptances may, absent manifest error, be evidenced by (i) the receipt by Purchaser of an electronic transmission confirming such offer and acceptance without objection by the Purchaser within ten (10) days of such receipt, (ii) by the Purchaser taking delivery of all or any portion of the Product(s) specified in the Sales Contract, or (iii) oral agreement of the parties as evidenced by a recording made by one or both of the parties. By execution of this Agreement, the parties consent to the recording of oral agreements without any additional notices or other requirements. If upon receipt of a Sales Contract from Seller, Purchaser does not believe that such Sales Contract contains the provisions agreed to by the parties or is otherwise in error, Purchaser shall promptly, no later than one (1) Business Day following its receipt of the Sales Contract, notify Seller of the specific terms or provisions that it considers to be in error. The parties will cooperate to correct any error in a timely manner, and Seller will issue a corrected Sales

Contract if the parties agree that one is necessary. In respect of such electronic transmissions, acceptance of Product by the Purchaser or oral agreement, the parties agree that the Delaware Statute of Frauds and Uniform Commercial Code shall not apply; when printed or recorded, such electronic transmissions and recordings shall be deemed to be a "writing" or "in writing"; and, when maintained in the ordinary course of business, shall constitute an original. In addition, a Transaction entered into orally shall be binding and enforceable provided that the oral agreement has been recorded by one or both parties and the recording has been preserved.

2. **TERM** – This Agreement shall be effective as of January 1, 2020, and shall remain in full force and effect until terminated by Seller by giving the other party thirty (30) days prior written notice of its intent to terminate this Agreement or until superseded by a more current version of this Agreement.
3. **DEFINITIONS** – As used herein, the following terms shall be given the following meanings:
 - a. "Affiliate" means any Person controlled, directly or indirectly, by the party, any Person that controls, directly or indirectly, the party or any Person directly or indirectly under common control with the party. Control shall mean (i) ownership, directly or indirectly, of either the outstanding voting stock of the controlled Person or any other ownership interest in the controlled Person is such interest has, directly or indirectly, the power to direct or cause the direction of the management and policies of such relevant Person or (ii) operational control of the controlled Person pursuant to an operating agreement, management agreement or other contractual rights.
 - b. "Agreement" shall mean Meridian Liquids Partners, LLC General Terms and Conditions composed of (i) these General Provisions; (ii) the Sales Contract confirming individual Product sales to Purchaser under this Agreement, if required; (iii) the Attachments, Exhibits and Schedules attached hereto or to the Sales Contract, which are made a part hereof for all purposes; and (iv) any amendments hereto or thereto executed pursuant to the provisions of these General Terms and Conditions.
 - c. "Sales Contract" shall mean an electronic transmission evidencing an offer/acceptance under this Agreement.
 - d. "Person" means an individual, corporation, limited liability company, partnership, joint venture, unincorporated organization or any other legal entity.
 - e. "Purchaser" shall mean the party receiving Product under this Agreement.
 - f. "Seller" shall mean Meridian Liquids Partners, LLC and its successors and assigns.
4. **PRECEDENCE** – In the event of a conflict between the provisions of the documents that comprise this Agreement, the provisions of the documents shall take precedence and govern and control the rights, obligations and duties of the parties in the following order of priority:
 - a. Applicable Sales Contract;
 - b. Attachment(s) to Sales Agreement, if applicable; and
 - c. These General Provisions.

5. REPRESENTATIONS AND WARRANTIES –

- a. Seller represents and warrants to the Purchaser that:
 - (1) Seller has title to the Product(s) delivered by it hereunder and the right to deliver same; and
 - (2) Product(s) delivered hereunder shall be delivered in full compliance with all applicable federal and state laws.
- b. Purchaser represents and warrants to the Seller that:
 - (1) Purchaser is knowledgeable and aware that the Product(s) delivered hereunder are hazardous materials and that Purchaser is sophisticated and knowledgeable of (i) the hazards and risks associated with such Product(s), and (ii) the handling, receipt, transportation, storage and use of such Product(s).
 - (2) Product received hereunder shall be received in full compliance with all applicable federal and state laws; and
 - (3) Purchaser is knowledgeable and aware that odorant loss, degradation or absorption may occur during the transportation and storage of Product(s) and the resulting potential for lack of warning of Product presence.
- c. **EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO THE PRODUCT OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE.**

6. DELIVERY –

- a. When delivery is point of origin, delivery shall be deemed to have been completed:
 - (1) To tank cars when the carrier accepts the same for shipment;
 - (2) To pipelines when the Product has passed the downstream flange of the meter measuring the Product for delivery;
 - (3) To tank trucks when the Product (i) has passed the Seller's loading equipment for open hatch deliveries or (ii) enters the tank truck's loading equipment for all other deliveries.
- b. When delivery is point of destination, delivery shall be deemed to have been completed:
 - (1) From tank cars when carrier delivers same at the destination;
 - (2) From pipelines when the Product has passed the upstream flange of the meter measuring the Product for delivery;
 - (3) From tank trucks when the Product has passed the tank truck's delivery equipment.
- c. When by an in-line Product transfer, delivery shall be deemed to have been completed upon execution of the order by the pipeline carrier and/or storage operator.

- d. After completion of delivery of Product by the Seller, Seller shall not be liable to Purchaser for reductions in quantity or degradation of quality of such Product in the hands of Purchaser. Purchaser agrees that, after delivery, the handling, care or use of Product shall be at Purchaser's sole risk and expense.
7. **QUANTITY** – The quantity of Product(s) to be delivered hereunder are set forth in the applicable Sales Contract or as orally agreed to by the parties as provided herein.
8. **PASSAGE OF TITLE** – Title to the Product and risk of loss shall pass to Purchaser upon delivery.
9. **MEASUREMENT** – Measurement shall be done in the manner customarily utilized at the point of delivery in accordance with one of the following alternatives.
- a) On all deliveries into/out of tank cars, the quantity shall be determined by official tank car capacity tables, meters with no vapor return, or by weighing, in accordance with GPA Publication 8182, 8173 and all revisions thereof.
 - b) On all deliveries into/out of transport and tank truck equipment, quantities shall be determined by meter with no vapor return, slip tube, rotary gauging device or weighing, in accordance with GPA Publication 8182, all appropriate GPA and API standards and all revisions thereof.
 - c) On all deliveries into/out of pipelines, quantity shall be determined by turbine or positive displacement pipeline meter in accordance with API Manual of Petroleum Measurement Standards.
 - d) On all deliveries into/out of ships or barges, quantity shall be determined by hand gauging and record static shore tank measurements, unless otherwise agreed.
 - e) Any turbine or positive displacement meters used for quantity determinations shall not allow vapor return.
 - f) All quantities shall be corrected to 60 degrees Fahrenheit and equilibrium vapor pressure of the Product at 60 degrees Fahrenheit.
 - g) Volume and compressibility correction factors shall be determined from referenced API tables or computer programs used to generate these tables.
10. **CLAIMS** – All claims by Purchaser for deficiencies in Product quantity or quality shall be made to Seller within seven (7) days of Product delivery or same shall be conclusively deemed waived by the Purchaser and Seller shall have no liability with respect thereto.
11. **QUALITY** – All Product(s) delivered under this Agreement shall meet the specifications for that Product, if any, set forth in the Sales Contract or as orally agreed to by the parties at the time the Agreement is entered into. If no Product specifications are set forth in the Sales Contract or orally agreed to by the parties at the time the Agreement is entered into, all Products delivered under the Agreement shall meet the latest GPA specifications for that Product. Any requirements of Purchaser pertaining to potential contaminants and/or specific hydrocarbon composition not listed in the Sales Contract or orally agreed to by the parties at the time the Agreement is entered into must be identified by Purchaser and allowable concentrations agreed to in writing by both parties prior to delivery.

12.INSPECTION – Unless otherwise specified or provided by Seller, Purchaser shall provide gauging, sampling, and testing at no charge to the Seller. Each party shall be entitled to have its representatives present during all loading, unloading, tests and measurements involving delivery of Product under this Agreement. Either party may secure outside inspectors to perform gauging, sampling, and testing, in which event such inspector's determinations shall be conclusive and binding on the parties. Payments for such outside inspector's services will be paid by the party who requested the services of such outside inspector, unless some other arrangement for payment is mutually agreed upon.

13.TANK CARS – If tank cars owned or leased by Seller are used to deliver Product hereunder and they are not unloaded and returned to the railroad within five (5) days of arrival, Purchaser shall be liable to Seller for rental at the rate of (i) \$150.00 for each day (or fraction thereof) in excess of five (5) days. Tank cars shall not be diverted without Seller's prior written consent.

14.INVOICES, TERMS OF PAYMENT AND AUDIT – Invoices will be prepared by Seller and transmitted to the Purchaser from time to time during the month the Product is lifted by Purchaser or delivered to Purchaser, as applicable. Unless otherwise specified on the Sales Contract and/or agreed to by the parties, payment is due within ten (10) days after receipt of invoice via electronic funds transfer of same day available funds. Payments shall be made to the account specified in the applicable invoice. If Purchaser, in good faith, disputes the amount of any such invoice or any part thereof, Purchaser will pay the undisputed amount to Seller on the date that the payment originally was due and shall provide supporting documentation acceptable in industry practice to support the amount disputed. The parties will endeavor to resolve in good faith the amount in dispute. Notwithstanding the foregoing, each party's obligations to make payments in connection with transactions shall be subject to the conditions precedent that (x) no event of default with respect to the other party has occurred and is continuing, and (y) no early termination date has occurred or been effectively designated. If payment is not made within the specified time, then Seller may (i) offset all or any portion of the unpaid balance against monies owed to the Seller by Purchaser under this Agreement or any other agreement between the parties or their Affiliates, (ii) apply any prepayments made by Purchaser to Seller against any amounts that are owed to Seller by Purchaser, and/or (iii) charge interest on any portion of the unpaid balance not offset under (i) above at the lesser of one and one-half percent (1 1/2%) per month or the highest rate permitted by Delaware law and Seller shall be entitled to recover its reasonable and necessary costs of collection, including attorney's fees. In addition to Seller's right to offset and/or charge interest on late payments, if payment is not made within the specified time, then Seller, at its sole option, may (i) suspend deliveries to Purchaser until all previous deliveries to Purchaser have been paid in full, (ii) place Purchaser on a cash delivery basis, or (iii) terminate this Agreement or any portion hereof forthwith and without notice. Such suspension or termination shall be without prejudice to Seller's right to claim damages for any loss of profit that Seller would have realized through the end of the term of the Sales Contract.

Each Party shall have the right, at its own expense, upon reasonable notice and at reasonable times, to examine and audit and to obtain copies of the relevant portion of the records of the other Party only to the extent reasonably necessary to verify the accuracy of

any statement, charge, payment or computation made under this Agreement. This right to examine, audit, and to obtain copies shall not be available with respect to proprietary information not directly relevant to this Agreement. All invoices and billings shall be conclusively presumed final and accurate and all associated claims for under or over payments shall be deemed waived unless such invoices or billings are objected to in writing, with adequate explanation and/or documentation, within two (2) years after the date of such invoice. All retroactive adjustments due as a result of any audit under this Section 14 shall be paid in full by the Party owing payment within thirty (30) Days of notice and substantiation of such inaccuracy.

15. FAILURE TO LIFT AND/OR TAKE DELIVERY OF PRODUCT – Should Purchaser fail to lift and/or take delivery of Product at the times and in the quantities designated in the Sales Contract or as orally agreed to by the parties at the time the Transaction is entered into, in addition to any other rights which Seller may have as set forth in this Agreement or otherwise allowed by law, including, but not limited to, Seller's right to sue for specific performance and/or damages arising therefrom, then upon expiration of each time period(s) designated in the Sales Contract or as orally agreed to by the parties at the time the Transaction is entered into, Seller (i) shall have the right, but not the obligation, to sell all or any portion of the volume of Product(s) which Purchaser failed to timely lift and/or take delivery of (the "Remaining Volumes") on terms and at such prices as Seller, in its sole discretion, deems appropriate under the then existing circumstances and collect from Purchaser the difference between the price Purchaser agreed to pay to Seller for such Product(s), as set forth in the Sales Contract or as orally agreed to by the parties at the time the Transaction is entered into, and the Net Price Seller receives in connection with the sale of such Remaining Volumes less five (5) cents per gallon for Administrative Fees and (ii) shall have the right to retain any amounts prepaid to Seller by Purchaser as provided for in the Sales Contract, if at the end of the Transaction by expiration of its term or by virtue of Seller's breach of same. For the purpose of this Section 15, "Net Price" shall mean the gross proceeds received by Seller in connection with the resale of the Remaining Volumes less (i) all of Seller's costs and expenses associated with any such sale(s) and (ii) any additional fees incurred by Seller arising out of, or in any way connected with, Purchaser's failure to timely lift and/or take delivery of the Remaining Volumes, including, but not limited to, any additional storage and/or transportation costs incurred in connection therewith.

16. FINANCIAL RESPONSIBILITY – If, in the sole judgment of Seller, (i) Purchaser's financial condition becomes impaired or unsatisfactory, including due to additional credit exposure resulting from a decrease in the Product's market price below the fixed price per gallon set forth in the Sales Contract, then advance cash payment, additional cash deposit, or other acceptable security (including, but not limited to, a letter of credit from a financial institution acceptable to Seller) may be required by Seller. If Purchaser fails to provide such payment or security, then Seller may, without waiving any rights or remedies, withhold further deliveries until such payment or security is received. Purchaser's duty to provide the above specified credit assurance shall be a condition precedent to Seller's obligation to perform under this Agreement. The requirement to provide credit assurance as specified in this Section 16 shall be in addition to the requirement, if any, to prepay a portion of the price to be paid for the purchase of Product(s) as set forth in the Sales Contract or as orally agreed to by the parties at the

time the Agreement is entered into.

17.FORCE MAJEURE – 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, defined herein as any cause or causes beyond the reasonable control of the party affected (excluding loss of market, a downturn in the market price for the Product, failure or inability of Purchaser to resell or otherwise dispose of such Product, or any other similar cause or causes), then upon the affected party giving prompt notice and full particulars of such force majeure to the other party, the obligations of the affected party shall be suspended for the duration of such inability to perform, but for no longer period, and such cause shall, so far as possible, be remedied with all reasonable dispatch. 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, and that the above requirement that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes or lockouts by acceding to the demands of the opposing party when such course is inadvisable in the discretion of the party having the difficulty.

18.SUPPLY INSUFFICIENCIES – Due to uncertainties in supply/demand, Seller may have insufficient supplies of Product to be delivered hereunder to meet the full requirements of all of its customers, contracts or otherwise. If such a situation exists, Seller shall have, in addition to other rights Seller has under this Agreement, the right to prioritize and allocate deliveries of such Product to such classes of customers as Seller deems appropriate in its sole discretion, notice of which shall be given by Seller to Purchaser within ten (10) days following commencement of such allocation. If necessary, Seller will advise Purchaser in writing of its willingness to supply Product from an origin other than the origin specified in the Sales Contract or as orally agreed to by the parties at the time the Sales Contract is entered into. Additional transportation fees may apply.

19.INDEMNITIES –

a. **SELLER AGREES, TO THE FULLEST EXTENT PERMITTED BY LAW AND REGARDLESS OF THE PRESENCE OR ABSENCE OF INSURANCE, TO DEFEND, INDEMNIFY AND HOLD PURCHASER, ITS DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS HARMLESS FROM ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION, COSTS AND EXPENSES (INCLUDING COURT COSTS, ANY COST OR EXPENSE OF INCIDENT INVESTIGATION AND REASONABLE ATTORNEY'S FEES,) OR ANY LIABILITY ARISING FROM OR ON ACCOUNT OF INJURY, DEATH OR DAMAGE WHICH OCCUR BEFORE DELIVERY OF PRODUCT TO PURCHASER UNDER THIS AGREEMENT AND ARISE IN CONNECTION WITH SELLER'S NEGLIGENCE OR WILLFUL MISCONDUCT; PROVIDED, HOWEVER, SELLER'S INDEMNITY OBLIGATION SHALL NOT APPLY TO THE EXTENT THAT THE PURCHASER'S NEGLIGENCE OR WILLFUL MISCONDUCT IS DETERMINED TO BE A CAUSE OF SUCH INJURIES OR DAMAGES.**

b. **PURCHASER AGREES, TO THE FULLEST EXTENT PERMITTED BY LAW AND REGARDLESS OF THE PRESENCE OR ABSENCE OF INSURANCE, TO DEFEND, INDEMNIFY AND HOLD SELLER, ITS DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS HARMLESS FROM ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION, COSTS AND EXPENSES (INCLUDING COURT COSTS, ANY COST OR**

EXPENSE OF INCIDENT INVESTIGATION AND REASONABLE ATTORNEY'S FEES,) OR ANY LIABILITY ARISING FROM OR ON ACCOUNT OF INJURY, DEATH OR DAMAGE WHICH OCCUR DURING OR AFTER DELIVERY OF PRODUCT TO PURCHASER UNDER THIS AGREEMENT AND ARISE IN CONNECTION WITH PURCHASER'S OR ITS REPRESENTATIVE'S, AGENTS OR CUSTOMER'S NEGLIGENCE OR WILLFUL MISCONDUCT; PROVIDED, HOWEVER, PURCHASER'S INDEMNITY OBLIGATION SHALL NOT APPLY TO THE EXTENT THAT THE SELLER'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT IS DETERMINED TO BE THE CAUSE OF SUCH INJURIES OR DAMAGES.

- c. IF PRODUCT IS DELIVERED ODORIZED, NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, UPON RECEIPT FROM SELLER OF DOCUMENTATION OF THE REQUIRED ODORIZATION, PURCHASER'S INDEMNIFICATION OBLIGATION UNDER THIS AGREEMENT SHALL INCLUDE, AMONG ANY OTHER CLAIMS, THOSE COMPRISING OR ASSERTING LACK OF OR INADEQUATE WARNING MATERIALS, IMPROPER AMOUNTS, USE OR TYPE OF ODORANT, "ODORANT FADING," LACK OF WARNING ON SUPPLEMENTAL WARNING SYSTEMS (SUCH AS GAS DETECTORS) AND IMPROPER TRAINING OR MONITORING OF PURCHASER'S WARNING OR TRAINING PROGRAMS RESPECTING ODORIZATION. IF PURCHASER DESIRES ANY PRODUCT DELIVERED HEREUNDER TO BE UNODORIZED, PURCHASER MUST FURNISH AN UNSTENCHED PRODUCT REQUEST TO SELLER ON A FORM ACCEPTABLE TO SELLER'S LEGAL DEPARTMENT.

20. INSURANCE – Purchaser acknowledges and agrees that Seller shall not insure Purchaser's Products, servants and/or property, nor the Product(s), property and/or servants of others, and that any insurance required and deductibles associated therewith shall be carried and paid, as applicable, by the Purchaser at its own expense. If Purchaser carries any insurance on its Product(s), property and/or servants, Purchaser and Purchaser's insurance carrier(s) shall waive subrogation against Seller, its affiliates, subsidiaries and parents and its and their officers, employees, representatives and agents, and copies of such waivers shall be furnished to Seller.

21. ASSIGNMENT – This Agreement shall extend to and be binding upon the parties hereto, their heirs, successors and assigns, but it is expressly agreed that neither party shall assign this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, either party shall have the right to assign this Agreement to an affiliate without the necessity of obtaining the other party's consent thereto but any such assignment shall in no way relieve or release the assigning party from any obligations or liabilities hereunder.

22. NOTICE – Any notice hereunder shall be in writing and shall be delivered personally, by mail, by fax, by telex, or by telegram to the party's address set forth below, unless changed by notice. Such notice shall be deemed to have been given on the date of the delivery thereof to the party receiving such notice.

23. TAXES – Any tax, fee, charge or other exaction ("Taxes"), now or hereafter enacted, levied or assessed by any federal, state, local or other governmental authority upon, or as a result of the transaction(s) herein provided for, or the goods or source materials thereof which are the subject matter of this Agreement, shall, if paid or payable by Seller, regardless of

whether paid or payable by Seller directly to the collecting authority or to a third party collecting or being reimbursed for having paid any such Taxes, be paid by Purchaser on demand by Seller. Any personal property taxes levied or assessed by any governmental authority upon the Products covered by this Agreement shall be paid by the party having title thereto at the time of such assessment. PURCHASER SHALL INDEMNIFY AND HOLD SELLER, ITS DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES AND SELLER'S AFFILIATES AND THEIR DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS OR CAUSES OF ACTION OF ANY KIND, TOGETHER WITH ALL LOSS, DAMAGE AND EXPENSE (INCLUDING COURT COSTS AND ATTORNEYS' FEES) ARISING WITH RESPECT TO THE PAYMENT OF ANY TAXES (INCLUDING PERSONAL PROPERTY TAXES), AND OTHER PAYMENTS DUE OR TO BECOME DUE ON THE GOODS OR SOURCE MATERIALS WHICH ARE SUBJECT TO THIS AGREEMENT AND WHICH PURCHASER IS OBLIGATED TO PAY UNDER THIS AGREEMENT. Purchaser shall furnish Seller a proper exemption certificate(s) where tax exemption is claimed on any Product(s) delivered hereunder.

- 24. LIMITATION OF LIABILITY** – Notwithstanding anything contained in this Agreement to the contrary, neither party shall be liable to any other party for any indirect, punitive, exemplary, consequential or special damages suffered by such party resulting from or arising out of this Agreement, including without limitation, loss of use, increased cost of operations, loss of profit or revenue or business interruptions, however same may be caused and regardless of the other party's negligence (regardless of whether such negligence is sole, joint, current, active, passive or gross), fault, liability without fault, or willful misconduct. The preceding sentence shall not be construed as limiting the obligation of any party thereunder to indemnify the other party against third party claims for special, indirect, consequential, punitive or special damages.
- 25. BRAND NAMES** – Unless otherwise specifically agreed to by the parties in writing: Purchaser shall not represent, or authorize or permit any other person to represent, that Product delivered hereunder is the Product of Seller; all Product delivered hereunder shall be used or sold under Purchaser's brand names or under brand names approved by Seller; and Purchaser shall not allow said Product to be used or sold under any other brand names.
- 26. CONFLICTS OF INTEREST** – No director, employee or agent of either party shall give or receive any commission, fee, rebate, gift or entertainment of significant cost or value in connection with this Agreement. Any representative(s) authorized by either party may, at its sole expense, audit the applicable records of the other party solely for the purpose of determining whether there has been compliance with this Article.
- 27. CONDUCT OF PARTIES' BUSINESS** – Each party in the performance of this Agreement is engaged in an independent business and nothing herein contained shall be construed as giving either party any right to control the other party in any way in the performance of the other party's business. Neither party shall have any right to exercise control over any of the other party's employees, representatives, agents or contractors of any level except to the extent of any safety requirements for delivery of Product under this Agreement. All employees, representatives, agents or contractors of any level of a party shall be entirely under the control and direction of that party, which shall be entirely responsible for their actions and omissions.
- 28. GOVERNING LAW** – THIS AGREEMENT SHALL BE SUBJECT TO THE JURISDICTION OF,

GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE WITHOUT REGARD TO ANY CONFLICT OF LAWS RULES THAT MAY DIRECT THE APPLICATION OF THE LAW OF ANY OTHER JURISDICTION.

- 29. CONFIDENTIALITY** – Each party shall hold as confidential the terms and provisions of this Agreement and each Transaction entered into pursuant to this Agreement.
- 30. SEVERABILITY** – The invalidity of any one or more covenants or provisions of this Agreement shall not affect the validity of any other provisions hereof or this Agreement as a whole, and in case of any such invalidity, this Agreement shall be construed to the maximum extent possible as if such invalid provision had not been included herein.
- 31. NO THIRD-PARTY BENEFICIARY** – Nothing in this Agreement shall entitle any persons other than Seller or Buyer, or their successors or assigns, to any claim, cause of action, remedy or right of any kind relating to the transaction(s) contemplated by this Agreement.
- 32. WAIVER** – Waiver by either party of the breach of any provision(s) hereof by the other party shall not be deemed to be a waiver of the breach of any other provision(s) hereof or of any subsequent or continuing breach of such provision(s).
- 33. ALTERATIONS** – This Agreement contains the entire Agreement of the parties respecting the matters addressed herein and no oral promises, agreements or warranties shall be deemed a part hereof, nor shall any alteration or amendment of this Agreement, or waiver of any of its provisions, be binding upon either party hereto unless the same be in writing and signed by the party charged.
- 34. CONSTRUCTION OF AMBIGUITY** – The parties acknowledge and agree that the terms and conditions of this Agreement were freely negotiated and drafted by the parties and the parties expressly agree that in the event of any ambiguity in any of the terms and conditions of this Agreement, including any Attachments, Exhibits or Schedules hereto, and whether or not placed of record, such ambiguity shall not be construed for or against any party hereto on the basis that such party did or did not author the same.
- 35. HEADINGS** – The headings of the Articles, Sections and Paragraphs of this Agreement are for convenience of reference only and shall not constitute a part, nor modify, define or limit any of the terms or provisions, hereof.
- 36. NO CONTRACT UNLESS AGREED – IT IS UNDERSTOOD AND AGREED THAT SELLER'S INTENT TO CONTRACT HEREUNDER IS EXPRESSLY CONDITIONED ON PURCHASER'S ACCEPTANCE OF EACH OF THE TERMS AND CONDITIONS SET FORTH HEREIN WITHOUT ANY MODIFICATIONS WHATSOEVER. IT IS FURTHER UNDERSTOOD AND AGREED THAT IF PURCHASER MAKES CHANGES TO THIS AGREEMENT, EXECUTES AND RETURNS SAME TO SELLER AND THEN SUBSEQUENTLY ENTERS INTO A TRANSACTION IN THE MANNER SET FORTH ABOVE, SUCH TRANSACTION(S) SHALL BE GOVERNED BY THE TERMS AND PROVISIONS OF THIS AGREEMENT WITHOUT TAKING INTO CONSIDERATION ANY SUCH MODIFICATIONS MADE BY PURCHASER, INCLUDING ANY MODIFICATIONS TO THIS SECTION 36.**
- 37. PRIOR AGREEMENTS SUPERSEDED; ENTIRE AGREEMENT** – This Agreement, including without limitation, all exhibits hereto, integrates the entire understanding between the parties with respect to the subject matter covered and supersedes all prior understandings, drafts, discussions, or statements, whether oral or in writing, expressed or

implied, dealing with the same subject matter. It is understood and agreed that with respect to the sale of Product by Seller (i) these General Provisions shall supersede and replace any general terms and conditions previously entered between the parties, including, without limitation, any Purchase Sale or Exchange Agreements, and (ii) if the parties hereto have not previously entered into any Purchase, Sale or Exchange Agreements or any other general terms and conditions covering the sale of Product by Seller, this Agreement shall apply retroactively to any such sales which may have occurred.