

KIROS ENERGY MARKETING GENERAL TERMS AND CONDITIONS
FEBRUARY 13, 2025

These general terms and conditions (the "**GT&Cs**") supplement and form part of and are incorporated by reference into the confirmation (the "Purchase and Sale Confirmation") to which the GT&Cs are attached which together form a single agreement (the "Agreement") between the parties referenced in the Purchase and Sale Confirmation (the "Parties"). All definitions contained in the Purchase and Sale Confirmation and the GT&Cs are hereby incorporated by reference to the Agreement.

In the event of a conflict, the terms and conditions set forth in the Purchase and Sale Confirmation shall prevail over the terms and conditions set forth in the GT&Cs.

1. **Definitions:** In the Agreement, the following capitalized terms and the capitalized derivatives thereof shall have the following meanings ascribed thereto:

"Affiliate" means, with respect to a Party, any other Person which is affiliated with such Party, and for the purposes hereof (i) two Persons will be considered to be affiliated with one another if one of them controls the other, or if both of them are controlled by a common third Person; (ii) one Person will be considered to control another Person if it has the power to direct or cause direction of the management and policies of the other Person, whether directly or indirectly, through one or more intermediaries or otherwise, and whether by virtue of the ownership of shares or other equity interests, the holding of voting rights or contractual rights, or otherwise; and (iii) a partnership which is a Party will be considered to be an Affiliate of each of its partners and their other Affiliates and *vice versa*;

"Applicable Laws" means, in relation to any Person, transaction or event, all applicable provisions of laws, statutes, instruments, policies, by-laws, ordinances, rules, regulations, official directives, published guidelines, protocols, standards, codes of practice and orders of, and the terms of all judgments, orders, ratings, awards and decrees issued by, any Governmental Authority by which such Person is bound or having application to the transaction or event in question;

"Assessments" means all tariffs, tolls, assessments, levies, taxes, fees, duties, penalties, royalties or other charges (whether similar or dissimilar to the foregoing) imposed by any lawful authority upon Product because of the purchase, sale, ownership, odorization, storage, delivery, transport, export or import of Product;

"Barrel" or **"USB"** means 42 U.S. Gallons;

"Buyer" means the Party designated as such in the Purchase and Sale Confirmation;

"Contract Term" means the term of the Agreement as set forth in a Purchase and Sale Confirmation;

"Cubic Metre" or **"M³"** means 1 cubic meter, measured at an absolute pressure corrected to 101.325 kPa at a temperature of 15°C (59°F);

"Delivery Mode" means the transportation mode for Product stipulated in the Purchase and Sale Confirmation;

"Delivery Point" means the point(s) of delivery of Product from Seller to Buyer under a Transaction as set forth in a Purchase and Sale Confirmation;

"Delivery Schedule" means the timing for delivery of Product set forth in the Purchase and Sale Confirmation;

"Delivery Terms" means the terms of delivery set forth in the Purchase and Sale Confirmation;

"Equalization" or "equalization" means the adjustment for quality as prescribed by the Alberta industry condensate equalization procedures if specified in a Purchase and Sale Confirmation;

"Force Majeure Event" means any event that prevents or delays an affected Party from performing any of its obligations under the Agreement, including, without limitation: (a) any acts of God, including lightning, earthquakes, storms, landslides, floods, fire and washouts; (b) acts of the public enemy, sabotage, war (whether declared or not), rebellions, blockades, insurrections, riots, epidemics, pandemics, civil disturbances, nuclear or atomic incidents, arrests and restraints; (c) fires, explosions, breakages, or accidents; (d) inability to obtain or maintain the necessary rights of way, easements, permits or approvals including a denial,

revocation or non-renewal of a permit or approval and revocation and amendment of any permit, license, certificate or authorization, unless either is attributable to a failure to make a timely and appropriate application for a permit or approval or failure by a Party to comply with its permit or approvals; (e) expropriations; (f) orders of any court, board or any Government Authority having jurisdiction; (h) changes in law or in the standards of compliance with Applicable Laws or with any written requests of any Government Authority having jurisdiction; and / or (i) strikes, labor stoppages or slowdowns or other industrial disturbances, that was not or is not within the reasonable control of the affected Party and which by the exercise of due diligence in accordance with Good Industry Practices, if applicable, the affected Party was or is unable to prevent, make contingency for or overcome. Notwithstanding the foregoing, the following events are not Force Majeure Events: (a) lack of funds for any reason; (b) financial hardship or the inability of a Party or an Affiliate to make a profit or achieve a satisfactory rate of return resulting from performance or failure to perform its obligations under the Agreement or from the sale or transportation of Product; (c) loss of customers, loss of market share, insufficiency of Product reserves or reduction in demand for Product; (d) failure or inability to perform attributable to fees hereunder or currency devaluation; (e) lack of supply of Product; or (f) any Assessments resulting in any changes to Price;

"Good Industry Practice" means: (a) good and prudent natural gas engineering, development, operational, environmental and conservation practices, methods and acts engaged in or approved by a significant portion of the natural gas industry in the Province of Alberta, as applicable, during the relevant time period; and (b) any of the practices, methods and acts ordinarily utilized or engaged in by a reasonable and prudent operator, in compliance with good business practices, generally accepted safety and environmental standards and Applicable Law. Good Industry Practice is not restricted to the optimum practice, method or act to the exclusion of all others but rather comprises the spectrum of acceptable practices, methods and acts (that are otherwise consistent with paragraphs (a) and (b) of this definition) applicable to the specific circumstances;

"Governmental Authority" means, in relation to any Person, transaction or event, any: (i) federal, provincial, municipal or local governmental body (whether administrative, legislative, executive or otherwise); (ii) agency, authority, commission, bureau, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government; (iii) court, tribunal, arbitrator, commission or body exercising judicial, quasi-judicial, administrative or similar functions; and (iv) any other body or entity created under the authority of or otherwise subject to the jurisdiction of any of the foregoing, including securities exchanges, in each case having jurisdiction over such Person, transaction or event;

"Inventory Transfer" means the transfer of Product held in inventory at a facility from one Party to the other;

"Month" means a calendar month;

"Negotiated Date" means the date as set forth in the Purchase and Sale Confirmation;

"Offload Point" means a point where any Product is delivered to a fractionation facility, terminal or other facility by Buyer;

"Payment Terms" means the terms stipulated on the Purchase and Sale Confirmation for when payment is due for Transactions;

"Party" means Seller or Buyer and **"Parties"** means both Seller and Buyer, as the context requires;

"Person" means and includes an individual, limited or general partnership, limited liability company, limited liability partnership, trust, joint venture, association, body corporate, unlimited liability corporation, trustee, executor, administrator, legal representative, government (including any Governmental Authority) or any other entity, whether or not having legal status;

"Price" means the price for the Product sold and purchased under a Transaction as set forth in the Purchase and Sale Confirmation, which price shall be in the currency stated in the Purchase and Sale Confirmation;

"Product" means the specific hydrocarbon stipulated on the Purchase and Sale Confirmation which may include, without limitation, any or all of crude oil, natural gasoline, natural gas condensate, propane, propane plus mix, butane, isobutane, ethane plus mix or any other product to be sold and purchased under a Transaction as set forth in the Purchase and Sale Confirmation;

"Purchase and Sale Confirmation" means the cover letter agreement accompanying the GT&Cs which sets forth the terms of the Agreement and which has been executed or otherwise agreed to by the Parties on the basis set forth therein;

"Quantity" means the quantity of Product to be purchased and sold under a Transaction as set forth in the Purchase and Sale Confirmation;

"Seller" means the Party designated as such in a Purchase and Sale Confirmation;

"Total Contract Quantity" means the total volume of Product stipulated in the Purchase and Sale Confirmation;

"Transaction" means the agreement by Seller to deliver and sell and the Buyer to accept and purchase Product on the terms and conditions set forth herein and in the applicable Purchase and Sale Confirmation;

"USD" or **"\$US"** means dollars in the currency of the United States;

"U.S. Gallon" or **"USG"** means a U.S. gallon of 231 cubic inches of liquid at 60° F and equilibrium vapor pressure of the liquid; and

"USMCA" means the United States-Mexico-Canada Agreement (USMCA) (referenced by <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement>).

2. **Purchase and Sale Obligations and Underlifting:**

- a) Seller agrees to sell, and Buyer agrees to buy, for the Price, the Total Contract Quantity over the course of the Contract Term in one or more Transactions as set forth in the Purchase and Sale Confirmation. In respect of each Transaction, Seller shall sell and deliver to Buyer, and Buyer shall accept, the Quantity of Product, on the Delivery Schedule, at the Delivery Point, transported using the Delivery Mode, on the Delivery Terms and on the other terms and conditions set forth in the Agreement.
- b) Upon prior mutual agreement between the Buyer and the Seller, quantities scheduled to be taken in any month which are not taken in such month may be available for delivery in a subsequent month. If the Product is propane, in addition to other rights which Seller may have as set forth in this Agreement or as otherwise allowed by law, including, but not limited to, Seller's right to sue for specific performance and/or damages:
 - (i) in the event the Buyer's cumulative volumes of Propane actually lifted from each Delivery Point during the period from April 1 through to September 30 (the "summer" period) are less than the cumulative volumes of propane contracted for under this Agreement during such summer period, the Seller may, in their sole and absolute discretion (but shall not be obligated to do so), reduce the volumes of Propane specified in the monthly volume schedule for delivery at each Delivery Point during the next following period of October 1 through to March 31 (the "winter" period) by multiplying each such winter period monthly volume by a fraction, the numerator of which shall be the Buyer's cumulative volumes of the remaining volume of propane not actually lifted or delivered from each Delivery Point during the summer period, and the denominator of which shall be the Buyer's cumulative volume of Propane actually contracted for under this Agreement at each Delivery Point for the summer period; provided that the foregoing reduction in scheduled winter period deliveries shall not apply if the under lifting during the summer period was due to Force Majeure; and
 - (ii) if Buyer fails to lift and/or take delivery of Product that is Propane within the period(s) designated in this Agreement, Seller shall have the right, but not the obligation, upon expiration of the period(s) designated in this Agreement, to sell to any other party all or any portion of the propane that Buyer failed to lift and/or take delivery of (the "Remaining Volumes") on such terms and at such prices as Seller, in its sole discretion, deems appropriate under the then existing circumstances and to collect from Buyer the difference between the price Buyer agreed to pay to Seller for such Propane, as set forth in this Agreement, and the net price Seller receives in connection with the sale of such Remaining Volumes. For this purpose, "net price" shall mean the gross proceeds received by the Seller in the sale of the Remaining Volumes less:
 - all of Seller's costs and expenses associated with any such sale;
 - a sales commission equal to the greater of the amounts actual paid by Seller and five percent (5%) of the gross proceeds of such sale; and
 - any additional fees and expenses incurred by Seller that arise out of, or are in any way connected with, Buyer's failure to lift and/or take delivery of the Remaining Volumes, including, but not limited to, any additional storage and/or transportation costs.

- 3. **Supply Insufficiencies:** In the event of any partial interruption or failure of Seller's normal sources of supply or usual means of transportation of Product, Seller will have the right to allocate any such supply and transportation then available to Seller among Seller's customers in a commercially reasonable manner as determined by Seller, provided that any such allocation shall be

made by Seller without preference based on price paid for Product by such customers. In no case shall Seller be obligated to divert Product from, or deliver Product to, any alternative Delivery Point or to use alternative means of transportation unless expressly agreed by Seller.

4. **Nominations and Delivery:**

- (a) The delivery and acceptance of Product under a Transaction shall be on a ratable basis unless otherwise agreed in a Purchase and Sale Confirmation. Volumes scheduled to be taken by Buyer in any Month and not taken will not be made available for delivery in any subsequent Month unless Seller's consent has been first obtained.
- (b) When deliveries are made into tank cars, Seller is not obligated to load or ship partially filled tank cars. Buyer will provide Seller, on or before the 20th day of each calendar month, written requisitions specifying the quantity of Product to be loaded during the succeeding calendar month, together with complete shipping instructions. Buyer will not divert Seller's tank cars or consign them to any other routing or to any other destination than that set out in the shipping instructions without obtaining the prior written, faxed or e-mail consent 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. Any shipments in the Seller's tank cars to destinations outside of Canada and the U.S. will first require the Seller's consent. The Seller shall be responsible for the equipment specified in the Delivery Mode and shall ensure that all such equipment: (i) is safe to transport the Product; (ii) is insured for the transport of the Product; and (iii) complies with all Applicable Laws prior to delivery of Product to the Delivery Point.

5. **Title and Risk of Loss:** Title to and risk of loss for Product delivered shall pass to the Buyer on delivery of the Product at the Delivery Point. For greater certainty, title and risk of loss shall transfer to the Buyer at the Delivery Point even where the Offload Point differs from the Delivery Point. In the case of an Inventory Transfer, title to and risk of loss for Product shall pass to the Buyer upon the book entry thereof by the operator of the facility in which the Product is being stored or transported.

6. **Rail Car Detention Charges:** Unless Seller's rail cars are unloaded and released to the Seller within 5 days of being considered "constructively placed" and in some cases "arrival" by the delivering rail carrier, including weekends and statutory holidays, Buyer shall pay to Seller, a daily detention charge of the greater of:

- (a) In the event that Seller utilizes any third party equipment, the amount of such third party detention charges; and
- (b) In the event that Seller utilizes its own equipment:
 - (i) USD75.00 per rail car per day from and including days 6 through 10;
 - (ii) USD150.00 per rail car per day from and including days 11 through 30; and
 - (iii) USD250.00 per rail car per day from and including days 31 forward.

Buyer shall also reimburse Seller for any excess mileage charges, which may become due by reason of Buyer's failure to conform to Seller's return routing instructions. If Seller's tank cars used for shipment of Product to a destination are not the same as a class of tank cars specified for service to that destination, any additional charges are the responsibility of the Seller.

7. **Claims and Adjustment:** Seller will only be liable for claims of Product shortages on rail car or truck shipments where and to the extent that:

- (a) Buyer has promptly notified Seller of the Product shortage and has obtained Seller's permission to unload;
- (b) the Product shortage is in excess of 3% of the total loaded volume recorded on the bill of lading; and
- (c) Buyer has obtained an affidavit from the operator of the destination facility or railroad agent, as the case may be, attesting to the facts set forth in paragraphs (a) and (b) and has submitted such affidavit to Seller along with Buyer's claim.

8. **Odourization:** All Product delivered hereunder shall be odourized in accordance with all Applicable Laws and industry standards, except where the Parties expressly agree in writing to the delivery of such Product unodourized. Because of the potential for odourant loss, degradation and absorption in the transportation of Product, Seller does not warrant the level of odourization at the Delivery Point if it is downstream of the point of loading. Where any such Product is specifically agreed to in writing to be unodourized:

- (a) the Buyer acknowledges that it has expressly requested that the Seller sell such Product unodourized to it for transportation in accordance with the Purchase and Sale Confirmation;
- (b) the Buyer has documented with the BNSF that such Product being transported is unodourized;
- (c) the Buyer agrees that the Delivery Point has received delivery of such unodourized Product in the past and that the off-loading facility has unodourized procedures in place for the handling of and offloading of such unodourized Product;

- (d) the Buyer agrees to accept the delivery of such unodourized Product under this Agreement, and is aware of the hazards of handling and transporting unodourized Product;
- (e) the Buyer hereby agrees to indemnify the Seller, its directors, officers, employees, agents, contractors and representatives against demands, damages (including incidental, indirect, punitive, special and/or exemplary damages), suits, penalties, liabilities, judgments, causes of actions (including legal fees on a solicitor and his own client on a full indemnity basis), that may be asserted against any such parties or incurred by or as a result of or arising from the Buyer offloading such unodourized Product, including but not limited to the subsequent sale to or use of such unodourized Product by any other person or entity, including but not limited to claims related to personal injuries (including death), property damages(s), and any violations of applicable laws, rules, regulations and/or orders; and
- (f) the Buyer acknowledges its obligation under this Agreement to ensure that the transportation and use of such unodourized Product complies with all Applicable Laws and industry standards.

9. **Quantity and Measurement:** Measurement of Quantities of Product delivered to the Delivery Point shall be determined as follows:

- (a) When delivery of Product is made from or into rail tank cars, quantities shall be determined at the loading point by means of a slip tube gauging device, a magnetic gauge rod or other such metering device in accordance with industry practices and standards.
- (b) When delivery of Product is made from or into a tank truck, the quantity delivered shall be determined at the loading point by means of a rotary gauging device, weight scale or other such metering device in accordance with industry practices and standards.
- (c) When delivery of Product is made from or into a pipeline or storage facility, quantities shall be determined at the specified point of delivery by meter or other gauging method or device as prescribed by the facility operator who controls the custody transfer point.
- (d) All volumetric measurement so determined shall be corrected in volume for temperature to: 60 degrees F when measured in Imperial or U.S. Units; and 15 degrees C when measured in metric or SI units.
- (e) In the event that the Delivery Point has insufficient facilities to measure Product, it shall be measured on such basis at the Offload Point.

10. **Representations and Warranties:** Seller represents and warrants to Buyer that with respect to each Transaction (a) it has good title to the Product delivered by it thereunder and the right to deliver and sell same thereunder, free of all royalties, encumbrances, interests and adverse claims; (b) it shall not deliver any product or substance to Buyer thereunder other than Product and that all product delivered thereunder shall meet the specifications for Product as set forth above and in the Purchase and Sale Confirmation and (c) shall comply with and observe all laws, regulations or directions enacted by all governmental authorities having jurisdiction. Buyer represents and warrants to Seller that (a) it is knowledgeable and aware that the Product is a hazardous material, (b) it is sophisticated and knowledgeable of the hazards and risks associated with such Product and the handling, receipt, transportation, storage and use of same (c) it has an understanding of odourant loss, degradation and absorption in the transportation of Propane and the resultant potential for lack of warning that Propane is present and (d) shall comply with and observe all laws, regulations or directions enacted by all governmental authorities having jurisdiction. Except as expressly set forth in the Agreement, each Party specifically disclaims and makes no representations or warranties, express, implied or statutory, with respect to the Product delivered or otherwise, including, without limitation, any warranty of merchantability or of fitness for a particular purpose.

11. **Force Majeure:** In the event of a Force Majeure Event, the Party or Parties who are unable to perform shall be relieved, to the extent necessitated by such event, of its/their obligation or liability under the Agreement, other than obligations respecting the payments of amounts which are or become due and owing under the Agreement, until the expiration of such event. A Party claiming relief in accordance with the provisions hereunder is under an obligation to provide the other Party with prompt notice that it is unable to perform its obligations by reason of such event, and to use its commercially reasonable efforts to resolve the event which renders it unable to perform its obligations under the Agreement.

The affected Party shall, promptly upon learning of a Force Majeure Event and ascertaining that it has or will, with reasonable certainty, affect such Party's performance under the Agreement, give Notice of the Force Majeure Event to the other Party. Failure by the affected Party to give the above Notice of Force Majeure with reasonable promptness shall not relieve the affected Party from the performance of its obligations under the Agreement. Notice of Force Majeure Event shall set out the reasonable details of such Force Majeure Event.

The affected Party shall use reasonable efforts (including the expenditure of reasonable amounts of money) and shall take reasonable precautions or pursue reasonable alternative measures available to it to prevent or mitigate the effects of the occurrence or continuation of a Force Majeure Event on the performance of its obligations hereunder and to remedy such Force Majeure Event. Upon cessation of the Force Majeure Event, the affected Party shall give prompt Notice to the other Party of such cessation. The affected Party shall resume performance of its obligations affected by the Force Majeure Event as soon as

reasonably practicable after: (i) the cessation of such Force Majeure Event or; or (ii) any decision reached pursuant to a legal proceeding initiated declaring that no Force Majeure Event has occurred with respect to the affected Party.

The Party receiving a Notice of a Force Majeure Event shall have the right to object to the declaration of a Force Majeure Event hereunder by commencing arbitration or other legal proceedings. Unless otherwise agreed to by the Parties and until the objection is resolved pursuant to arbitration proceedings, the declaration of the Force Majeure Event shall be deemed effective until a resolution of the arbitration proceedings or agreement of the Parties.

In the event of a Force Majeure Event that lasts for 30 days more ("**Extended Force Majeure Event**"), either Party may upon expiry of such 30 day period and for so long thereafter as the Extended Force Majeure Event is continuing, terminate the Agreement by providing notice of termination in accordance with the Agreement, on 10 days written notice to the other Party.

12. **Liability of Buyer:** Except insofar as such loss, cost claim, damage, injury or expense caused by Seller's breach of a representation or warranty in the Agreement, Buyer shall be solely liable for, and shall indemnify and hold Seller harmless from and against any losses, costs, claims, damages, injuries and expenses incurred by Seller in respect of (a) the breach or inaccuracy of any of the representations and warranties of Buyer herein in the Agreement; and (b) the injury or death of persons, the loss, destruction or contamination of Product or the damage or destruction of property, or environmental damage directly or indirectly caused by or attributable to the transportation, handling, care or storage of Product at and downstream of the Delivery Point.

Liability of Seller: Except insofar as such loss, cost claim, damage, injury or expense is caused by Buyer's breach of a representation or warranty in the Agreement, Seller shall be solely liable for, and shall indemnify and hold Buyer harmless from and against any losses, costs, claims, damages, injuries and expenses incurred by Buyer in respect of (a) the breach or inaccuracy of any of the representations and warranties of Seller in the Agreement, and (b) the injury or death of persons, the loss, destruction or contamination of Product or the damage or destruction of property or environmental damage directly or indirectly caused by or attributable to the transportation, handling, care or storage of Product upstream of the Delivery Point. In addition to any other remedies available hereunder or in law, Buyer shall be entitled to refuse to accept delivery of any Product that falls materially below industry standard quality levels. In the event that any such quality issues arise after delivery, Buyer shall forthwith [within 12 calendar days], provide written notice to Seller, wherein the Seller shall either replace such Product or refund a reasonable portion of the Price.

13. **Limitation on Liability:** Neither Party shall be liable to the other Party under the Agreement for indirect, consequential or punitive damages.

14. **Price and Price Escalation:** The Price is payable in respect of the quantity of Product delivered by Seller for each Month of the Contract Term and is exclusive of all Assessments upon said Products incidental to or after delivery thereof. Buyer shall be responsible for reimbursing Seller for any and all Assessments unless Buyer furnishes Seller with satisfactory exemption certificates where exemption from applicable Assessments is claimed. For greater certainty: (i) , any and all Assessments levied upon any Product which the Buyer must pay shall be passed on to the Seller on a full reimbursement basis; (ii) any Assessments that are tariffs, shall be passed on to the Seller on a full reimbursement basis regardless of the point of origin for determination of the Price and regardless of the Delivery Point; and (iii) the Buyer expressly acknowledges that some or all of the Product may be originating in Canada and subject to US tariffs which will be passed through tot the Buyer as an Assessment on a full cost recovery basis.

15. **Transportation Charges:** Unless otherwise set forth in the Purchase and Sale Confirmation, the Price is exclusive of transportation charges downstream of the Delivery Point and any changes in transportation charges occurring subsequent to the Negotiated Date shall be for the account of Buyer.

16. **Price Redetermination:** If the Price for a Transaction is to be calculated or determined by reference to any posted or published price or index and any such posted or published price or index ceases to exist, then the Parties agree to promptly, and in good faith, negotiate a mutually satisfactory replacement. If the Parties cannot agree on a substitute posting, price or index by the end of the delivery Month for which the Price cannot be determined, then an appropriate replacement posted or published price or index will be established by arbitration in accordance with the Arbitration Act (Alberta). A posted or published price or index will be deemed not to cease to exist in the event that an entity that posts or publishes the particular price or index is replaced or succeeded by a successor entity which carries on substantially the same business and continues to post or publish prices on substantially the same basis as the original entity.

17. **Financial Assurances:** If Seller has any grounds for insecurity regarding the payment, performance or enforceability of any obligation of Buyer under any Transaction, Seller may demand that Buyer provide security in form and substance acceptable to Seller, in their absolute discretion, which may include without limitation a standby irrevocable letter of credit, payment prior to invoice, performance bond or guarantee. In the event that Buyer does not provide the requisite security within 2 business day after receipt of notice to Seller, Seller may, in addition to any other remedies it may have, suspend or terminate the particular Transaction or all Transactions on further 2 business days' notice to Buyer. Seller reserves and retains a lien on the Product until the purchase price is fully paid and satisfied. Invoices not paid by the specific payment due date are considered delinquent.
18. **Invoices and Payment:** Invoices will be prepared by Seller or its Affiliate and delivered to Seller in respect of the Payment Terms which shall be binding obligations as to when payment is due for each Transaction. If payment of an invoice is not made by Buyer when due, then Seller may, in addition to any other remedies it may have, do either or both of the following: (i) offset all or any portion of the unpaid balance against moneys owed by Seller under the Agreement or any other agreement between the Parties, and (ii) charge interest on any portion of the unpaid balance not offset under paragraph (i) above at 2% per month, calculated and compounded monthly. In addition, Seller shall be entitled to recover its reasonable costs of collection, including legal fees on a solicitor/client basis. For pre-buy Agreements, in which Buyer will not be taking possession of the Product for a period more than 30 calendar days after the date of the Agreement, Seller may require payment of a minimum 20% deposit.
19. **Margin Calls:** Seller may make margin calls (a "Margin Call") on Buyer if the posted price of the chosen index for the Product indicated in the Agreement falls 10% or more below the Price in the Agreement and remains so for 5 consecutive calendar days. For any such drop, in the posted price, a Margin Call equal to such drop multiplied by the total contracted volume may be required by Seller. Buyer shall pay the full amount of the Margin Call within 24 hours after receipt of notice to do so from Seller, failing which Seller shall have the right to:
- (a) retain any down payment or Margin Calls previously paid, as a genuine pre-estimate of damages and not as a penalty; and
 - (b) consider it an act of default under this Agreement. Where Seller has not terminated this Agreement, all Margin Calls previously paid shall appear as a set-off on applicable invoices and be applied against the final purchase price as an additional down payment.
20. **Events of Default and Remedies:**
- (a) If a Party, or its credit support provider (such party the "Defaulting Party"):
 - (i) fails to make payment when due;
 - (ii) fails to perform any of its material obligations under a this Agreement;
 - (iii) fails to provide adequate assurance of its ability to perform after written request therefor when the other Party has reasonable grounds for insecurity; or
 - (iv) becomes insolvent or becomes the subject of bankruptcy or insolvency proceedings,then the other Party shall have the right to withhold or suspend its own performance until such failure is remedied. If the failure continues for 10 days after written notice thereof by the other Party (the "Non-Defaulting Party") (or, in the case of (c) above, after 2 business days, or in the case of (d) above, immediately upon notice), then the Non-Defaulting Party may, unless the particular default has been remedied to the Non-Defaulting Party's reasonable satisfaction, without defaulting in its own obligations in this Agreement or releasing the Defaulting Party from its obligations thereunder:
 - (i) suspend all of the Non-Defaulting Party's obligations under this Agreement or terminate the particular obligations of this Agreement without prejudice to the rights and obligations of the Parties accruing prior to the date of termination;
 - (ii) such suspension or termination shall be without prejudice to Non-Defaulting Party's right to claim damages or to avail itself of any other remedies; and
 - (iii) if the Non-Defaulting party elects to terminate the agreement within the rights established herein, then the Non-Defaulting Party shall determine:
 - A. amounts owed by each Party for Product delivered under this Agreement; and
 - B. the difference between the Price and the replacement price of all undelivered Products under this Agreement;

The Non-Defaulting Party shall net or aggregate all amounts in A. and B. herewith into a single liquidated amount payable by one Party to the other. At its sole discretion, the Non-Defaulting Party may net against amounts owing to the Defaulting Party under other agreements between the Parties. The liquidated amount shall be paid:

- (i) if due from the Defaulting Party, within 2 business days of notice of such liquidated amount;
- (ii) if due from the Non-Defaulting Party, on the 25th of the month following termination;

- (iii) if any disputed amounts are subsequently resolved in favour of the Defaulting Party, the Non -Defaulting Party shall promptly pay such amounts with accrued interest, at the rate of 2% per annum, from the date of dispute until the disputed amounts are paid in full.
- (b) Nothing in this sub-section will be construed to waive Seller's legal or equitable remedies or rights. In addition, Seller shall be entitled to recover its reasonable costs of collection, including legal fees on a solicitor and his own client on a full indemnity basis.

21. Duties and Taxes:

- (a) All amounts payable by Buyer hereunder are exclusive of GST and other applicable sales or value added taxes.
- (b) The Buyer's Responsibilities:
 - (i) The amount of any taxes, duties, imposts, fees, charges and dues of every description imposed or levied by any government or local authority in respect of the Product supplied hereunder, or in respect of such Product's export, delivery, transportation, ownership, sale or use, in respect of any stage after risk in respect of such Product has passed to Buyer shall be for Buyer's account, notwithstanding such tax, duty, impost, fee, charge or dues may have been imposed or levied on Seller;
 - (ii) Buyer shall bear no responsibility for any income, franchise or other type of direct tax that may inure to Seller as a result of this transaction;
 - (iii) Buyer will bear sole responsibility for all indirect taxes resulting from this transaction, including but not limited to: federal and provincial excise taxes, sales and use taxes (including without limitation the Goods and Services Tax), gross receipts taxes, value added taxes, and environmental fees and taxes;
 - (iv) At time of sale Seller will invoice Buyer for all taxes for which Buyer is responsible: and Buyer will pay Seller the invoiced amount for all such taxes;
 - (v) Buyer is responsible for the maintenance of all documentation necessary to assure the appropriate Government Bodies of Buyer's compliance with export or import requirements; and
 - (vi) If Seller is required under applicable law to collect and remit Buyer's taxes, Buyer agrees to make a payment to Seller in respect of such taxes that Seller is obligated to pay on behalf of the Buyer, including those taxes of the Buyer which Seller discovers subsequent to the time of sale to have been payable at the time of sale, including taxes that are discovered to have been payable as a result of an audit by any taxing authority.
- (c) The Seller's Responsibilities: The amount of any taxes, duties, imposts, fees, charges and dues of every description imposed or levied by any governmental or local authority on the Product supplied hereunder, or on its export, delivery, transportation, ownership, sale or use, in respect of any stage prior to risk in such Product passing to the Buyer shall be for the Seller's account.
- (d) Seller warrants that all Product sold by Seller to Buyer hereunder qualifies as an "originating good" pursuant to the USMCA Rules of Origin Regulations, and Seller will provide all documentation to Buyer reasonably necessary to substantiate the same (including any additional documentation requested by a government agency in respect of USMCA claims made on the Product purchased from Seller).
- (e) USMCA Reimbursement: Seller agrees to reimburse Buyer for any customs duties, taxes, fees and penalties incurred by Buyer with respect to Seller's breach of the warranty in subsection (d).

22. Insurance: Each Party will maintain during the Contract Term the following insurance policies:

- (a) comprehensive general liability having inclusive limits of not less than \$10,000,000 per occurrence combined single limit;
- (b) automobile liability, covering all vehicles used for delivery and receipt of Product and have a blanket fleet endorsement with limits, per occurrence, of not less than \$5,000,000;
- (c) pollution liability coverage in either (a) or (b); and
- (d) workers' compensation coverage in accordance with applicable legislation.

The policies specified in this section will be underwritten by insurers licensed to do business in the jurisdiction(s) in which the Transaction takes place and will include provisions: (a) in the case of the comprehensive general liability policy, naming the other Party as an additional insured; (b) in the case of the comprehensive general liability policy, providing that the insurer will waive all rights of subrogation against the other Party and its employees, directors and officers; and (c) providing that the insurer will provide to the other Party at least thirty (30) days advance written notice of the cancellation, restriction, reduction or any other material change in coverage.

Each Party will cause all persons involved in the transportation, delivery or receipt of Product on its behalf to maintain insurance policies during the periods and for the coverages specified in this section. In addition, each Party shall require that any persons accessing the facilities at a Delivery Point on its behalf carry workers' compensation coverage and /or employer's liability insurance for a minimum of \$5,000,000 per occurrence.

Each Party and its personnel referred to above in this section, will, upon request, provide certificates of insurance in a form acceptable to the other Party, acting reasonably. Each Party has the right, without any liability to the other Party to deny entry to the facilities at a Delivery Point and to refuse the delivery or receipt of Product should such other Party not be reasonably satisfied that the applicable person maintains the required insurance.

23. **Confidentiality:** During the Contract Term, any Transactions shall be kept confidential by the Buyer and Seller and neither party shall divulge its contents to any third party without the prior written consent of the other party, unless required by law, by any regulatory body having jurisdiction, or by that party's auditors or financial or legal advisors. In the event a party is required to give a disclosure of information in accordance with the foregoing, that party shall promptly notify the other party of the requested disclosure.
24. **Notices:** All notices shall be in writing and either hand delivered, sent by facsimile or mailed to the addresses set out in the Purchase and Sale Confirmation. Any notice given hereunder shall be deemed to have been received on the same business day if hand delivered or sent by facsimile during normal business hours, or on the first business day following its delivery or transmission if hand delivered or sent by facsimile after normal business hours, or if sent by mail on the 4th business day following the mailing except in the event of a postal disruption. Either Party may designate a different address for notices.
25. **Assignment:** A Party may not assign its interest in or obligations under the Agreement or any Transaction without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, a Party may assign its interest in or obligations under the Agreement or any Transaction to an Affiliate without the prior written consent of the other Party provided that the assigning Party and its Affiliate remain jointly and severally liable to the other Party thereunder.
26. **Waiver:** The failure of either Party to exercise any right granted hereunder shall not impair or be deemed to be a waiver of such Party's privilege of exercising such right at any subsequent time or times and no waiver by a Party of any default shall in any way be or construed to be a waiver of any other existing or subsequent default.
27. **Laws:** The Agreement shall be construed in accordance with and governed by the laws in force in the Province of Alberta and the Parties hereby submit to the exclusive jurisdiction of the Alberta courts.
28. **Entire Agreement:** The Agreement is the entire agreement between the Parties with respect to the subject matter thereof and any amendments thereto shall be mutually agreed upon in writing.
29. **Time of the Essence:** Time shall be of the essence for the performance of all obligations under each Transaction.
30. **Severability:** Should any provision of the Agreement be illegal or not enforceable under the laws of the Province of Alberta, it or they shall be severable and / or substituted by a court of competent jurisdiction and the balance of the provisions shall remain in full force and effect and be binding upon the Parties as though such illegal or unenforceable provisions had never been included herein.
31. **Set-Off:** In the event a Party fails to make a timely
 - (a) delivery of any Product due and owing to the other Party, or
 - (b) payment of any monies due and owing to the other Party, then the non-defaulting Party may, at its option and in its discretion, to the extent permitted by law, set off any obligations owed by the non-defaulting Party to the defaulting Party under this Agreement or any other agreement, whether matured, unmatured, contingent, or otherwise, against the amounts owed by the defaulting Party under this Agreement or any other oral or written agreement between the Parties or their affiliates. In such event, the obligations of the non-defaulting Party shall be deemed satisfied and discharged to the extent of such set-off satisfied the full obligation owing. The right of set-off set forth herein shall be cumulative of and in addition to any common law or other contractual right of set-off. If an obligation is unascertained, the non-defaulting Party may in good faith estimate such obligation and set-off a payment or volume amount in respect of the estimate, subject to the non-defaulting Party accounting to the defaulting Party when the obligation is ascertained.
32. **Contra proferentem:** Any ambiguity in the Agreement shall not be construed against Seller as the preparer of the Agreement.