

GENERAL TERMS AND CONDITIONS

These General Terms and Conditions apply to any sale of product ("Product(s)") by GROWMARK Energy, LLC. ("Seller") and any other party thereto ("Buyer") whether on a forward contract basis, spot purchase or indexed based pricing. All forward contracts or indexed based pricing sales will be documented with a signed, written document confirming the terms of sale (a "Confirmation"). All spot purchases will be documented with an invoice from Seller to Buyer ("Invoice"). Each Confirmation and Invoice shall set forth the volume, price, Product and quantity of the Products delivered for which payment is being made, and any applicable delivery tickets or other documentation establishing the delivery from Seller to Buyer. If any of such items are to be determined by Buyer, Buyer shall provide Seller with sufficient information to allow Seller to timely provide the Invoice. Buyer's transaction of business with Seller shall constitute and evidence Buyer's acceptance of these General Terms and Conditions without further evidence of acceptance by Buyer.

WARRANTY: Seller warrants marketable title, free and clear of all taxes, claims, liens and encumbrance, to all Products sold and delivered hereunder. Seller further warrants that the Products shall conform to the descriptions in the Invoice or the Confirmation. **EXCEPT AS EXPRESSLY SET FORTH HEREIN, SELLER MAKES NO OTHER REPRESENTATION OR WARRANTY CONCERNING THE PRODUCTS, AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR ANY PARTICULAR PURPOSE, ARE DISCLAIMED BY SELLER.**

QUANTITY:

- (a) For sales of Product documented with an Invoice, each Invoice shall set forth the quantities and price.
- (b) Each Confirmation shall set forth the approximate sales volume by Buyer's location and the quantities to be sold and delivered at each such location during each month or other specified delivery period. Quantities made available by Seller pursuant to a Confirmation, but not purchased by Buyer may not be carried forward without Seller's written consent.
- (c) Seller's obligation to sell and deliver Products under each Confirmation is subject to modification and reduction in accordance with any program governing the allocation of Products by Seller which may be in effect on the date thereof and any allocation program thereafter adopted by Seller or imposed by governmental law or regulation at any time during the term thereof.

PRICING: For sales of Product documented with a Confirmation, the price for Products shall be as set forth in the Confirmation. For sales of Product documented with an Invoice, the price shall be as set forth in the Invoice.

DELIVERY/TRANSPORTATION:

- (a) Seller will deliver all Products to Buyer at such locations as Buyer designates.
- (b) Buyer shall make reasonable efforts to take ratable delivery of monthly volumes set forth in the Confirmation at regular intervals during each month. Should Buyer fail to do so, Seller may, by written notice to Buyer, establish a ratable delivery schedule for Buyer, and Buyer will adhere thereto until such time, if any, that Seller may cancel such delivery schedule. Failure by Buyer to adhere to such delivery schedules that Seller may establish shall constitute a breach of the Confirmation.

COMPLAINTS/OBJECTIONS: In the event that the Buyer has any complaints or objections as to the quantity or quality of Products delivered to it by Seller, the Buyer shall notify Seller no later than ten (10) days after its receipt of specific Products for which it has a complaint or objection, and shall make such Products available to the Seller for its own investigation. Any such notification shall state with particularity the basis for the complaint or objection. In the event that the Buyer has failed to comply with the provisions of this section, it shall be deemed to have waived any complaint or objection as to such specific products.

TITLE AND RISK OF LOSS: Ownership, title and risk of loss shall pass from Seller to Buyer when the Product passes the flange connection between Seller's vehicle and Buyer's fuel tank, storage tank, equipment tank, or other receiving equipment.

PAYMENT: Payment terms shall be as set forth in the Confirmation or Invoice. Payment shall be made in immediately available U.S. Dollars. Payments due on Saturdays or U.S. bank holidays (other than Mondays) shall be made on the following business day; payments due on Sundays or Monday bank holidays shall be made on the following business day; if payment is to be made under letter of credit, payment shall be made upon delivery and acceptance of the supporting documentation by the issuer of the letter of credit. Any payment made beyond the due date specified on the Invoice or Confirmation may be charged a late payment fee, as interest and not a remedy or item of liquidated damages, at the rate of 1.5% per month prorated for partial months, but not to exceed the maximum rate allowed by law.

SECURITY INTEREST: Buyer hereby grants Seller a purchase money security interest in any good sold by Seller to Buyer or any affiliate of Buyer, together with any proceeds received from third parties, until payment therefore is received by Seller. The grant of a security interest is not in derogation of any available statutory liens or held by Seller, all of which are expressly reserved. Buyer authorizes Seller to file financing statements and take other actions related thereto, and shall cooperate with all reasonable requests of Seller in connection with the perfection and priority thereof and collection thereunder.

FINANCIAL RESPONSIBILITY: If Buyer fails to pay Seller all amounts owed when due, or if, in the reasonable opinion of Seller, the financial responsibility of Buyer should at any time become impaired, unsatisfactory or unacceptable, Seller at its option may require Buyer to pay cash prior to any future deliveries of Products; or may require Buyer to post an irrevocable letter of credit or other security reasonably required by Seller and may suspend deliveries of Products until such security is received; provided however, that if an Invoice specifies specific security for Buyer's performance, Seller may require only such specified security. If (a) any requested security is not received within the time reasonably specified by Seller, or, (b) Buyer fails to provide Seller such other adequate assurance of future performance reasonably requested by Seller, or (c) any past due indebtedness is not paid in full within ten (10) days of a written default notice to Buyer, then Seller shall have the right to (1) immediately terminate the contract to sell Product or Confirmation (regardless of anything to the contrary stated or implied elsewhere in these General Terms and Conditions) and (2) exercise any other remedies for default allowed under these General Terms and Conditions, the Confirmation, or applicable law.

TAXES: Any tax, excise, fee or other charge now or hereafter imposed by law upon Products sold to Buyer or on the use, storage, consumption, sale, transfer, transportation or delivery thereof, or on a Confirmation shall be the obligation of Buyer. Buyer shall pay or reimburse Seller for its payment of taxes, fees, or other similar charges, which are levied or assessed upon the purchase, use, resale, withdrawal, transportation, or handling of Products. Such taxes, fees, or other similar charges include, but are not limited to, federal manufacturers excise taxes, environmental taxes, state and local motor fuel taxes, state and local sales and use taxes, gross receipts or franchise taxes, business and occupation taxes, and state and local oil spill taxes or fees.

FORCE MAJEURE: Neither party shall be liable to the other for failure or delay in making or accepting delivery under these General Terms and Conditions, or a Confirmation to the extent that such failure or delay may be due to Force Majeure. Force Majeure shall include any cause reasonably beyond the control of a party, including, but not limited to, compliance with acts, orders, regulations or requests of any national, federal, state or local civilian or military authority or any other persons purporting to act therefor; war (whether or not declared), embargo, civil insurrection, riots; strikes; labor difficulties; actions of the elements; natural disasters, fire, explosion, mechanical breakdowns, or any other causes reasonably beyond the control of such party, whether similar or not. Seller shall not be obligated to make up any deliveries omitted as a result of any condition of Force Majeure. In the event either party must invoke the provisions of this Section, such party shall use commercially reasonable efforts to provide the other party, in writing (telex, fax, or other electronic communications acceptable) with as much advance notice as is possible, stating the underlying circumstances of the particular cause(s) of Force Majeure, and the expected duration thereof. Each party shall use reasonable diligence to cure or correct any condition of Force Majeure affecting performance by such party, provided however, that neither party shall be obligated to settle any strikes or labor disputes on terms it deems unsatisfactory. No Force Majeure condition shall relieve Buyer of any obligation to make payments with regard to Products that have been delivered under these General Terms and Conditions, any Confirmation or any Invoice. Neither party, along with its approved agents, carriers, or contractors, shall be required to cross picket lines, or otherwise endanger its employees or equipment to fulfill a delivery under these General Terms and Conditions, any Confirmation or any Invoice.

REMEDIES:

(a) Buyer's exclusive remedy for any and all losses or damages resulting from the sales of Products under these General Terms and Conditions, any Confirmation, or any Invoice, including, but not limited to, any allegations of breach of warranty, breach of agreement, negligence or strict liability, shall be limited to either the return of the purchase price or the replacement of the particular Products for which a claim is made and proved, at Seller's option.

(b) Seller shall be entitled to recover the purchase price payable for any quantities delivered to Buyer. If Buyer does not take delivery of the quantity of Product set forth in a Confirmation or Invoice, Seller can sell the volume of Product not lifted in the open market the first five (5) days of the following month. If the open market price (average of Seller's posting of the terminal listed in the Invoice) is less than the price set forth in the Confirmation or Invoice, Buyer will pay Seller the amount equal to the volume not lifted times the difference between the open market price and the price set forth in the Confirmation or Invoice with such payment due net ten (10) days from notice from Seller.

(c) Nothing herein shall exonerate a party from claims made by third parties or reduce the rights and obligations under the express indemnities contained herein.

(d) SELLER SHALL NOT BE LIABLE TO THE BUYER FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, SPECIAL, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR REVENUE OR LOSS OF USE OF EITHER, OR BUSINESS INTERRUPTION DAMAGES, WHETHER BY STATUTE, IN TORT OR IN AGREEMENT.

(e) If a party seeks to enforce that party's rights under an Invoice, these General Terms and Conditions, or a Confirmation, in any court action, litigation or similar proceeding, the substantially prevailing party may recover from the other party all court costs, expenses and expert's and attorney's fees relating to such court action, litigation or proceeding.

DEFAULT: The occurrence of any of the following events, without limitation, shall constitute a Default under an Invoice, a Confirmation or these General Terms and Conditions: (1) Buyer's failure to take delivery of Product or to pay for Products delivered in accordance with the terms of these General Terms and Conditions, the Confirmation or Invoice; (2) wrongful failure by a party to fully perform all of its material obligations under these General Terms and Conditions, a Confirmation of an Invoice; (3)(i) a party becoming or being adjudicated insolvent or bankrupt, or (ii) a receiver or trustee being appointed for a party or its property or (iii) judicial approval of a petition for reorganization or arrangement under any bankruptcy or insolvency law, or (iv) a party making an assignment for the benefit of its creditors, or (v) a party filing a voluntary petition in bankruptcy or consenting to the appointment of a receiver or trustee; (4) any fraud or criminal misconduct by a party relevant to such party's marketing operations involving Products; or (5) a party's failure to materially comply with federal, state or local laws or regulations relevant to such party's purchase, sale, transportation, storage or other handling of Products; or (6) a party otherwise ceasing to function as an ongoing business. Upon Default by either party, in addition to such other remedies as may be available in law or equity, the non-defaulting party shall have the right to terminate all pending Invoices.

TRADEMARKS: Neither party shall use the counterparty's name, trade or service marks, or trade dress in any way with regard to the Products or the marketing of the Products.

INDEMNIFICATION:

(a) Buyer agrees to defend, protect, indemnify, and save Seller, Seller's parent corporation, Seller's subsidiary corporations, Seller's affiliates and their respective officers, directors employees and representatives (the "Seller Group") harmless from and against any and all claims, demands, liabilities, losses, causes of action, fines, penalties, costs and expenses (including reasonable attorneys' fees) of every kind and character for personal injury, death or damage to property, or violations of law, arising from or occurring or growing out of or incident to, or resulting from the negligent or willful acts or omissions of Buyer or its agents, servants, employees, contractors, representatives and invitees, or a breach of these General Terms and Conditions, a Confirmation or any Invoice.

(b) Seller agrees to defend, protect, indemnify, and save Buyer, Buyer's parent corporation, Buyer's subsidiary corporations, Buyer's affiliates and their respective officers, directors employees and representatives (the "Buyer Group") harmless against any and all claims, demands, liabilities, losses, causes of action, fines, penalties, costs and expenses (including reasonable attorneys' fees) of every kind and character for personal injury, death or damage to property, or violations of law, arising from or occurring or growing out of or incident to, or resulting from the negligent or willful acts or omissions of Seller or its agents, servants, employees contractors, representatives and invitees, or a breach of these General Terms and Conditions, a Confirmation or any Invoice.

(c) Where personal injury, death, or loss of or damage to property is the result of the joint negligence or misconduct of a party hereto, the parties expressly agree to indemnify each other in proportion to their respective shares of such joint negligence or misconduct.

(d) Buyer agrees to protect, defend, indemnify and hold harmless the Seller Group from and against all claims, demands, damages, fines, judgments, penalties, costs, liabilities or losses (including, without limitation, any and all cleanup, removal and other remediation costs and services paid for the settlement of claims, attorney fees, consultant and expert fees) arising in connection with the presence, of any Hazardous Substance, on, in, under, or emanating from any of Buyer's properties and sites. As used herein, Hazardous Substance means any substance which is toxic, ignitable, reactive, corrosive, radioactive, flammable, explosive or a human health and safety hazard, including, but not limited to, asbestos, petroleum products, by-products and waste, polychlorinated biphenyl and substances referred

to as hazardous substances, hazardous materials, toxic substances or hazardous waste in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 USC 9601, et seq., the Superfund Amendments and Re-authorization Act of 1986, the Resources Conservation and Recovery Act, 42 USC 6901, et seq., The Clean Water Act, 33 USC 1251, et seq., The Toxic Substance Control Act, 15 USC 2601, et seq., and all regulations promulgated pursuant thereto, and any and all other applicable statutes, laws, ordinances, rules and regulations of any State, Federal, County or Municipality, or quasi-governmental authority or body.

LAWS AND REGULATIONS: Buyer and Seller shall enter into these General Terms and Conditions, a Confirmation or any Invoice in reliance upon, and shall fully comply with all applicable federal, state, and local laws, rules, regulations, decrees, and/or permits which directly or indirectly affect the Products sold and to be delivered thereunder, or any delivery, transportation handling or storage of Products sold thereunder.

SAFETY: Buyer does hereby specifically acknowledge receipt of Seller's Material Safety Data Sheet ("MSDS"). Buyer shall read such MSDS and advise its employees, its affiliates and all third parties who may purchase Products, of the MSDS and of precautionary procedures for handling such Products that are set forth in such MSDS and any supplementary MSDA or written warning that it receives from Seller from time to time. Buyer acknowledges that it and its carriers are fully informed concerning the nature and existence of risks posed by transporting, storing, using, handling and being exposed to Products. Carriers entering the terminals where Seller's Products are distributed shall comply with all terminal rules and requirements and all regulations relating to the handling, storage, transportation and distribution of gasoline, diesel and other petroleum products and shall advise and instruct employees relating to the safe and proper methods of handling Products.

INTERPRETATION: If any one or more provisions these General Terms and Conditions, a Confirmation or any Invoice should for any reason, be held to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect any other provision thereof, the remainder of these General Terms and Conditions, a Confirmation or any Invoice shall nevertheless survive and remain in full force and effect, and shall be construed to give effect of the intent of the parties specified therein to the maximum extent legally possible. In the event of any ambiguity in any of the terms or conditions of these General Terms and Conditions, a Confirmation or any Invoice, such ambiguity shall not be construed for or against any party on the basis that such party did or did not author the same. The headings used throughout these General Terms and Conditions are for convenience only and shall be disregarded for the purposes of construing these General Terms and Conditions, a Confirmation or any Invoice.

MISCELLANEOUS:

Entire Agreement; Amendment. These General Terms and Conditions, a Confirmation or any Invoice constitute the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersede and cancel all prior agreements and understandings with respect thereto. The obligations of a party to these General Terms and Conditions, a Confirmation or any Invoice shall be binding on the parties and their successors and permitted assigns. these General Terms and Conditions, a Confirmation or any Invoice may not be amended or modified by Buyer except in a written instrument duly signed by Seller. No terms or provisions in any other document or correspondence, including without limitation, any invoice, terms, conditions, letter, email, facsimile transmission or other documentation or communication, shall have any effect or be binding upon the parties. Seller shall have the right to amend these General Terms and Conditions from time to time, in Seller's sole discretion. These General Terms and Conditions shall be effective and binding upon Buyer without any

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requirement of notice to Buyer or execution of any document. A copy of these General Terms and Conditions shall be provided to Buyer upon Seller's receipt of a written request therefor from Buyer. Seller may also post amendments hereof on a website of Seller established for such purpose, in Seller's discretion.

Waiver. No delay or failure by Seller to exercise any right or remedy shall constitute an abandonment of any such right and no waiver of any default shall constitute a waiver of any later default.

Governing Law; Jurisdiction; Waiver of Jury Trial. these General Terms and Conditions, a Confirmation or any Invoice shall be governed by the laws of the State of Illinois, without regard to the conflicts of laws. Any dispute arising hereunder shall be brought only in the federal or state courts located in McLean County, Illinois, all protest based on jurisdiction or venue being hereby waived. Each party hereby irrevocably waives its rights to a trial by jury in any dispute, controversy, or claim arising out of or in relation to or in connection with these General Terms and Conditions, a Confirmation or any Invoice, including, without limitation, any dispute as to the construction, validity, interpretation, enforceability, or breach of these General Terms and Conditions, a Confirmation or any Invoice.

Assignment. Buyer may not assign its rights or obligations under these General Terms and Conditions, a Confirmation or any Invoice without the prior written consent of Seller.

Time of the Essence. Buyer acknowledges and agrees that time is of the essence in Buyer's performance of these General Terms and Conditions, a Confirmation or any Invoice.

Notices. Any notice provided for in these General Terms and Conditions, a Confirmation or any Invoice shall be in writing and shall be deemed given when personally delivered, the day following delivery by electronic mail, or three (3) days after being sent by certified mail, return receipt requested and postage prepaid.