

**FLINT HILLS RESOURCES, LP**  
**GENERAL TERMS AND CONDITIONS FOR BASE AND PROCESS OILS; LUBRICANTS**  
**(June 2016)**

**1. APPLICATION:**

These General Terms and Conditions shall be applicable to all contracts and the performance of contracts for purchases and sales of base oils and process oils (all hereinafter referred to as "Products") by Flint Hills Resources, LP ("FHR"), whether such terms and conditions are specifically incorporated into the purchase/sales contracts or not, except to the extent that differing terms are specifically otherwise agreed between the parties.

**2. TITLE; RISK OF LOSS:**

The delivering party warrants to the receiving party that it has good title to the Product delivered hereunder and the right to deliver the same. The delivering party agrees to indemnify and defend the receiving party from any loss, claim or demand of any nature by reason of any breach of this warranty of title. With respect to vessel deliveries or receipts, title to the Product and all risk of loss shall be transferred as the Product passes the flange connecting the vessel's hoses with the terminal's lines. With respect to all other deliveries or receipts, title to the Product and all risk of loss shall be transferred as the Product passes the flange connecting the delivering and receiving apparatus of the parties.

**3. QUANTITY; QUALITY:**

All quantities of Product shall, unless otherwise agreed and specified, be determined in accordance with the following and be adjusted to a standard temperature of sixty (60) degrees Fahrenheit in compliance with applicable law and good industry standards. Quantities delivered by or to vessels shall be determined by shore tank measurements at the point of delivery or receipt or if unavailable, by vessel loaded or discharge figures as adjusted by the appropriate vessel experience factor as determined by an independent petroleum inspector. For Product delivered by or to vessels, all quantity and quality determinations shall be confirmed by an independent petroleum inspector, the cost of which shall be borne equally by the parties. The term "barrel" as used herein shall mean forty-two (42) U.S. gallons. The term "gallon" as used herein shall mean a U.S. gallon of two hundred thirty one (231) cubic inches.

**4. LIMITED WARRANTIES:**

DELIVERING PARTY EXPRESSLY WARRANTS THAT AT THE TIME OF TRANSFER OF TITLE. (A) DELIVERING PARTY SHALL HOLD FULL AND UNENCUMBERED LEGAL AND EQUITABLE TITLE TO THE PRODUCT SOLD BY IT HEREUNDER. AND (B) DELIVERING PARTY SHALL HAVE FULL RIGHT, AUTHORITY AND POWER TO TRANSFER AND CONVEY SUCH TITLE TO RECEIVING PARTY AND TO EFFECT DELIVERY OF THE PRODUCT TO RECEIVING PARTY, AND (C) NO PROMISES, CONDITIONS, AGREEMENTS, REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, MERCHANTABILITY, FITNESS OR SUITABILITY OF THE OIL FOR ANY PARTICULAR PURPOSE OR OTHERWISE, ARE MADE BY DELIVERING PARTY OTHER THAN THAT THE OIL CONFORMS, WITHIN ANY TOLERANCE STATED, TO THE DESCRIPTION AND QUALITY STATED HEREIN.

**5. DELIVERIES:**

Deliveries shall be made within the delivering or receiving terminal's usual business hours at such times as mutually agreed by the parties. The receiving party shall furnish reasonable advance notice with respect to the particulars of each delivery. At the time of giving such notice, the receiving party shall furnish the delivering party with all necessary shipping instructions. The delivering party shall prepare and furnish the receiving party with bills of lading and all other shipping papers.

**6. CREDIT:**

If sufficient credit for this and other pending transactions has not been established with the delivering party's credit department, delivering party shall have the option of requiring security in the form acceptable to delivering party, including prepayment or an irrevocable bank letter of credit. The letter of credit must be opened in a format and on a bank acceptable to the delivering party. Acceptable letters of credit for marine movements should be received by the delivering party seven (7) banking days prior to Product movement. Product transporting by means other than marine transport requires prepayment two (2) banking days prior to Product movement or receipt of a standby irrevocable bank letter of credit three (3) banking days prior to Product movement. In the event the above requirements are not reasonably satisfied within specified time limits, delivering party shall have the option of canceling the contract and/or proceeding against receiving party for damages occasioned by receiving party's failure to perform.

**7. CLAIMS:**

Claims as to shortage in quantity, defects in quality, or any others, except for demurrage or shifting, shall be made by written notice to the other party within sixty (60) days after the delivery in question or shall be deemed to have been waived.

**8. ATTORNEY'S FEES:**

The Prevailing Party shall be entitled to full reimbursement from the other Party of its reasonable attorney's fees and related reasonable costs/expenses (including expert witness fees, costs and expenses) for any cause of action, claim or dispute arising out of or relating to this Agreement as to which such Prevailing Party prevails, whether in a court of law, administrative proceeding, or through any form of dispute resolution.

**9. TAXES:**

a. Prior to the time of delivery hereunder the receiving party shall furnish the delivering party with the appropriate tax exemption certificates with respect to all federal, state or local taxes, tax surcharges, levies, duties, fees, imposts and the like (herein collectively referred to as "taxes") for which the receiving party is permitted or required by applicable law to claim exemption. In the event that the receiving party does not furnish the delivering party with such exemption certificates as aforesaid then the receiving party shall be responsible for and shall pay to the delivering party at the time any payment hereunder is or becomes due, the full amount of any such "taxes" imposed on, with respect to or which are measured by the Product delivered hereunder, the transaction as between the parties hereto or the manufacture, storage, delivery, receipt, purchase, sale, exchange, use or inspection of the Product.

b. In the event that the transaction is "ex-duty" or "inside-duty" the payment of superfund charges, oil spill taxes and similar charges shall be controlled by the specific contract terms.

c. The receiving party acknowledges responsibility for and agrees to indemnify the delivering party, the delivering party's supplier, and/or the owner of the bonded premises from which the goods are dispatched against all liability for any taxes, duties and charges (including without limitation vat, excise duty and mineral oil tax) plus interest, penalties and other costs, whether levied directly or indirectly, relating to the Products supplied under the Agreement, or on the delivering party as a consequence of the delivery of Products under this Agreement.

**10. DEFAULT:**

a. Notwithstanding any other provision herein, the following shall each constitute an event of default: A party or, if the obligations of a party are guaranteed by another party whether under this Agreement or otherwise, the guarantor of such party (each or either a "non-performing party") shall (I) default in the payment or performance of any material obligation to the other party (the "performing party") under this or any other contract, and such default shall continue for three (3) business days after notice of such default to the non-performing party; (II) file a petition or otherwise commence or authorize the commencement of a proceeding or case under any bankruptcy, reorganization, or similar law for the protection of creditors or have any such petition filed or proceeding commenced against it; (III) otherwise become bankrupt or insolvent (however evidenced); (IV) be unable to pay its debts as they fall due by acceleration or otherwise; (V) merge or become consolidated with any other entity or transfer, by any means, all or substantially all of its assets to another entity and the creditworthiness of the resulting, surviving or transferee entity is materially weaker than that of the non-performing party immediately prior to such action as reasonably determined by the performing party; (VI) fails to give adequate security for, or assurance of, its ability to perform its obligations hereunder or under any other contract within two business days of a reasonable request therefor from the performing party; or (VII) disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of the guaranty issued by the guarantor.

b. Upon the occurrence of an event of default described above, the performing party shall, in addition to all other rights and remedies available to the performing party, have the right to immediately liquidate this transaction by notice in writing to the non-performing party. In the case of an event of default described in subsections (A)(II) through (A)(VII) above, the performing party and its affiliates shall, in their sole discretion, have the further right to liquidate any other outstanding transaction between any of them and the non-performing party by notice in writing to the non-performing party.

c. The performing party and its affiliates shall determine their respective aggregate gains or losses resulting from the liquidation of any transactions by calculating the difference, if any, between the price specified in each liquidated transaction and the market price for the relevant Product on the date of liquidation. The performing party and its affiliates shall notify the non-performing party of the amount of any aggregate loss incurred by them in connection with the liquidation of any transactions. The non-performing party shall pay such amount to the performing party and its affiliates in full within five business days of such notice being given, which amount shall bear interest at the prime rate as in the Wall Street Journal, plus two (2) percentage points from the date of termination.

d. The performing party and its affiliates may, in their sole discretion, aggregate, net and set off amounts which they owe to the non-performing party against any amounts which the non-performing party owes one or more of them under any liquidated transaction or otherwise, whether or not then due, so that all such amounts are aggregated and netted to a single liquidated amount (the "net liquidation payment"). For the purpose of any such calculation, the performing party may convert amounts denominated in any other currency into the performing party's price currency at such rate prevailing at the time of the calculation as it shall reasonably select. If the calculation of the net liquidation payment does not result in a net loss to the performing party and its affiliates, the liquidation payment shall be zero. The performing party and its affiliates shall notify the non-performing party of the amount of any net liquidation payment. The non-performing party shall pay such amount to the performing party and its affiliates in full within five business days of such notice being given, which amount shall bear interest at the prime rate as listed in the Wall Street Journal, plus two (2) percentage points from the date of termination.

e. The non-performing party shall further indemnify and hold the performing party and its affiliates harmless from any other losses, damages, costs and expenses including reasonable attorney's fees, incurred in connection with an event of default, termination, or exercise of any remedies hereunder.

f. Notwithstanding any provision herein to the contrary, the performing party and its affiliates shall not be required to pay to the non-performing party any amount due under this contract until the performing party and its affiliates receive confirmation satisfactory to them, in their reasonable discretion, that all obligations of any kind whatsoever of non-performing party to make any payments to them under this or any other contract have been or will be fully and finally performed; nor shall the performing party or its affiliates be required to compensate the non-performing party for any losses incurred by the non-performing party in connection with a default of termination hereunder.

g. The performing party's rights under this provision shall be in addition to, and not in limitation or exclusion of, any other rights which the performing party may have (whether by agreement, operation of law or otherwise), including any right and remedies under the Uniform Commercial Code.

**11. LIMITED LIABILITY:**

In no event shall either party shall be liable for indirect, incidental or consequential damages or for specific performance under this Agreement.

**12. MARINE PROVISIONS:**

a. **Terminals.** Terminals utilized in receipts or deliveries pursuant to this Agreement shall provide a safe berth to which vessels may proceed, lie at and depart from always afloat; and, except as local industry practice may otherwise establish, free of all wharfage, dockage and quay dues. Terminals shall berth vessels under this Agreement on an equal basis with all other vessels arriving to load or discharge in order of rotation as determined by the terminal in its sole commercially reasonable judgment.

b. **Notice.** As soon as practical after establishment of this Agreement, the parties shall consult with each other to narrow the contractual delivery laydays to a 24-hour period acceptable to both parties considering delivery vessel schedule and receiving terminal schedule. The delivering or receiving terminal shall be promptly notified of each vessel nominated under this Agreement in accordance with standard industry practice. For tanker or ocean-going barge movements the terminal shall be further notified of arrival time seventy-two (72), forty-eight (48) and twenty-four (24) hours in advance of arrival. The terminal shall be notified when a scheduled tanker or ocean-going barge arrival time changes by more than three (3) hours.

c. **Notice of Readiness.** When a vessel arrives at the customary anchorage or other place of waiting and is, in all respects, ready to proceed to berth and commence loading or discharging, the master or his agent shall tender to the terminal a notice of readiness.

d. **Pumping.** (1) Vessel loading: The cargo shall be pumped into the cargo tanks of the vessel by the delivering terminal at the terminal's expense. Pumping shall be at the terminal's risk only to the point at which the vessel's hoses are attached to the terminal's lines, or if vessel's hoses are not used, to the permanent hose connections of such vessel.

(2) Vessel unloading: The cargo shall be pumped into the storage tanks of the receiving terminal by the vessel at the vessel's expense. Pumping shall be at terminal's risk only from the point at which the vessel's hoses are attached to terminal's lines, or, if the vessel's hoses are not used, from the permanent hose connections of such vessel.

e. **Barges.** Laytime shall commence upon arrival at berth, all fast excluding hoses. Laytime shall cease when the performing vessel is released. Allowed laytime shall be determined by reference to the barge's charter party. Any delays to the barge following tender of notice of readiness for reasons over which the terminal has no control shall not count as used laytime. Any prohibition of loading or discharging by reason of tide or hour which is imposed by port authorities shall not count as used laytime. Each barge must demonstrate the ability to discharge or receive the entire cargo within allowed laytime and must maintain one hundred (100) psi at terminal's manifold during and throughout discharge. Any time lost by reason of failure to so pump or to so maintain pressure as set forth above shall not count as used laytime. In the event of such failure, terminal reserves the right to order the barge to be removed from the berth and to suspend the running of laytime while the barge remains so removed. Except as set forth above and in subparagraph g. and h. below, laytime shall be determined in accordance with the applicable charter party.

f. **Tankers and Ocean-going Barges.** Laytime shall commence upon arrival at berth, all fast excluding hoses. Laytime shall end following completion of loading or discharging and disconnection of hoses. Allowed laytime shall be thirty-six (36) running hours for loading or discharging full cargo and pro-rata for any part thereof. The term "full cargo" in the proceeding sentence shall be defined with reference to the totality of the bills of lading issued for the voyage rather than with reference to vessel capacity. Any delays to the vessel following tender of notice of readiness for reasons over which the terminal has no control shall not count as used laytime. Any prohibition of loading or discharging by reason of tide or hour which is imposed by port authorities shall not count as used laytime. Each vessel must demonstrate the ability to discharge or receive the entire cargo within allowed laytime and must maintain one hundred (100) psi at terminal's manifold during and throughout discharge. Any time lost by reason of failure to so pump or to so maintain pressure as set forth above shall not count as used laytime. In the event of such failure, terminal reserves the right to order the removal of the vessel from berth and to suspend the running of laytime while the vessel remains so removed. Except as set forth above and in subparagraphs g and h below, laytime shall be determined in accordance with the applicable charter party, or if none, in accordance with the ASBA II charter party form.

g. **Demurrage.** Upon presentation of invoice and such supporting documentation as may reasonably be requested, demurrage shall be payable for each running hour and pro-rata for any part thereof that used laytime exceeds allowed laytime, minimum of twelve (12) hours. FHR shall not be obligated to pay demurrage in excess of the amount actually incurred by receiving party/delivering party. The rate shall be the rate specified in vessel's charter party and in the absence thereof, prevailing market rates for a similar vessel on a similar voyage shall apply. Seller shall not be liable for any demurrage caused by strikes, lockouts, stoppages or restraints of labor by master, officers and crew of the vessel, tugs or pilot boats, fire, explosion, storm or breakdown of machinery or equipment in the terminal.

h. **Vessel Compliance.** All vessels shall comply fully with all terminal directives as well as with all applicable statutes, rules, regulations, orders, directives and recommendations of any governmental authority federal, state or local relating thereto. Delays of any nature resulting from non-compliance by vessels shall not count as used laytime. The party owning or chartering the vessel shall assure that the vessel holds all applicable environmental compliance and environmental damage insurance certificates and memberships for the voyage undertaken. Vessels nominated hereunder to call at any terminal must be acceptable to FHR and FHR's representative at their sole discretion.

i. **Demurrage and Shifting Claims.** Any claims relating to demurrage or shifting shall be made by written notice to the other party within ninety (90) days after the delivery in question or shall be deemed to have been waived. If the vessel's charter party contains a provision regarding time for submission of claims, the time permitted hereunder shall be thirty (30) days beyond the time so specified in the said charter party.

j. **Pollution Prevention and Responsibility.**

In the event a spill, escape or discharge of oil or other Product occurs from a vessel and causes or threatens to cause pollution damage (hereinafter "spill"), the vessel shall promptly take whatever measures are necessary to prevent or mitigate such damage. The terminal may undertake any measures that are, in the terminal's sole discretion, reasonably necessary to prevent or mitigate the pollution damage. The terminal may, but is under no obligation to, undertake any action that it deems reasonably necessary to prevent or mitigate the pollution damage.

Any and all costs or expenses incurred as a result of the aforementioned measures shall be at the vessel's expense. The vessel, and the party to this Agreement owning, operating or chartering the vessel involved in a spill (hereinafter the "Owner") shall each be responsible to promptly reimburse all costs, expenses and losses incurred by the terminal due to its clean up or other compliance efforts. Under no circumstances shall the terminal be deemed a responsible party for any such spill because of any action taken to mitigate or prevent pollution damage. The vessel and the Owner shall each be responsible, jointly and severally, to indemnify, defend and hold harmless the terminal from any and all claims, costs, expense, clean up costs, fines, losses, penalties, or other damages incurred by the terminal as a result of the spill.

Each and every of the duties of indemnity, defense and reimbursement stated herein shall be owed to the terminal without regard to the negligence or fault of terminal, except to the extent the negligence or other fault of terminal is a proximate cause of the spill, in which case, the terminal shall be responsible for that portion of the spill, including all reasonable costs incurred, for which the terminal was the actual and proximate cause.

13. **FORCE MAJEURE:**

In the event of the occurrence of a force majeure event that prevents performance hereunder, the party or parties whose performance is thereby prevented or delayed (the "declaring party") shall, unless otherwise provided below, be relieved of any obligation or liability under the terms of this Agreement, to the extent that such obligation or liability cannot be met because of such force majeure event, until the expiration of a reasonable time after termination of such disability. "Force majeure" means an event which is beyond the control of the party that prevents the party from performing its obligations under this Agreement. The following include,

but are not limited to, instances that will be recognized as force majeure events hereunder: earthquakes; floods; landslides; civil disturbances; sabotage; acts of public enemies; war; blockades; insurrections; riots; epidemics; the act of any government or other authority or statutory undertaking; the inability to obtain or the curtailment of electric power, water or fuel; strikes, lockouts or other labor disruptions; fires; explosions; breakdowns or failure of pipe, plant, machinery or equipment; and contamination or poisoning of catalyst and/or solvent or biological treatment facilities. For greater certainty, a lack of funds, the availability of a more attractive market, or inefficiencies in operations do not constitute events of force majeure. The declaring party agrees to notify the other party (the "non-declaring party") of the occurrence of the force majeure event in writing, as soon as possible after the occurrence of the force majeure event. Such notice shall include all reasonable full particulars regarding such force majeure event. Notwithstanding the foregoing, if a force majeure event delays performance for a period of 30 days or more, the non-declaring party shall have the right to terminate this Agreement effective upon providing notice to the declaring party. In no event under this provision shall either party suspend its obligations to make payments then due for Products delivered under this Agreement. If Seller is prevented by law, regulation, rule, order or other governmental action from continuing or increasing any price under this Agreement, Seller may suspend deliveries under this Agreement upon giving Buyer notice. Seller is excused from performance if Excel Paralubes cannot make the Product for any reason. Under no circumstances shall Seller be obligated to purchase or otherwise obtain goods or raw materials for goods from any other person or entity to supply Buyer. In no event shall Supplier be required to make up delivery of volumes excused under this provision.

#### **14. HEALTH, SAFETY AND THE ENVIRONMENT**

The receiving party shall provide its employees, agents, contractors, customers, and other persons who handle or to whom it supplies the Product(s) delivered hereunder with either a copy of the delivering party's current Safety Data Sheet or a comparable Safety Data Sheet developed by the receiving party ("SDS"), and any other information relating to health, safety and environmental data provided by the delivering party from time to time in connection with the Product(s) delivered hereunder, or comparable other information developed by the receiving party ("the other information"). The receiving party shall be responsible for any consequences that result from the use of a SDS or other information different from that provided by the delivering party. The receiving party shall provide persons responsible for the management of health, safety and environment matters within its own organization with a copy of the SDS and other information as provided or developed. The receiving party shall provide its employees with appropriate information and training to enable them to handle and use the Product(s) delivered hereunder in a manner which does not endanger their health or safety. The receiving party shall comply with any laws, statues, regulations or directives in force relating to the Product(s) delivered hereunder. The delivering party shall not be responsible in any respect whatsoever for any loss, damage or injury resulting from any hazards inherent in the nature of the Product(s) delivered hereunder.

#### **15. Representation on Improper Payments:**

- a. Receiving party represents that it shall not make any improper payments of money or anything of value to a Government Official in connection with this Agreement. Receiving party shall not make improper payments to a third party knowing, or suspecting, that the third party will give the payment, or a portion of it, to a Government Official.
- b. For purposes of this Agreement, a "Government Official" shall include any appointed, elected, or honorary official or any career employee of a U.S. or non-U.S. government, or of a public international organization. The "government" includes any agency, department, embassy, or other governmental entity. It also includes any company or other entity owned or controlled by the government. A person does not cease to be a government official by purporting to act in a private capacity or by the fact that he or she serves without compensation.
- c. Should FHR reasonably and in good faith believe that there may have been a breach of this representation, receiving party shall cooperate in good faith with FHR to determine whether such a breach has occurred. If FHR determines reasonably and in good faith that there has been a breach of the representation, it shall have the right unilaterally to terminate this Agreement immediately or to take other appropriate action in accordance with the terms of this Agreement.

#### **16. GENERAL:**

a. **Assignment.** Neither party shall assign the whole or any part of its rights and obligations hereunder directly or indirectly without the prior written consent of the other party. Unless otherwise stated in such consent, assignor shall not be released from its obligations hereunder following such assignment. Notwithstanding the foregoing, either party may assign its rights and obligations hereunder to an affiliate of such party without the consent of the other party, provided that the creditworthiness of such affiliate is not materially weaker than the creditworthiness of the assignor. If such an assignment is made to a creditworthy affiliate, the assignor shall have no further obligation hereunder following such assignment.

b. **Compliance.** Each party agrees to comply with and abide by all statutes, rules, regulations, orders and directives of any governmental authority, federal, state or local. If, and to the extent, Buyer loads, unloads or ships hazardous materials (as listed in the Tables of 49 C.F.R. 172.101. and 172.102 as amended from time to time) pursuant to the Agreement, Buyer hereby warrants that all hazardous materials shall be prepared for shipment, loaded, shipped and unloaded in compliance with all applicable federal, state, and local laws, rules and regulations regarding the handling and transportation of hazardous materials and Buyer shall indemnify and defend Seller from all liability, of whatever nature, to which Seller may become subject as a result of Buyer's failure to comply therewith.

Buyer will be responsible for compliance with all laws, regulations, decrees, international conventions, and any other directives applicable to this Agreement and to the products upon and following their delivery in accordance with the agreed delivery term including export and re-export control laws and regulations, to the extent not penalized or prohibited under applicable law. Specifically, Buyer covenants that it shall not- directly or indirectly - sell, export, re-export, transfer, divert, or otherwise dispose of any products, software, or technology including products derived from or based on such technology) received from the Seller under this Agreement to or via any destination, entity, or person or for any use prohibited by E.U., U.S. or other applicable laws or regulations, without obtaining prior authorization from the competent government authorities as required by those laws and regulations.

Buyer agrees to indemnify, to the fullest extent permitted by law, Seller from and against any fines or penalties that may arise as a result of Buyer's breach of this provision. This section shall survive termination or cancellation of this Agreement. Upon Seller's request, Buyer will provide Seller with appropriate documentation to verify the final destination of any products here delivered.

If any license or consent of any government or other authority is required for the acquisition, carriage or use of the products by Buyer, Buyer will obtain the same at its own expense and if necessary produce evidence of the same to Seller on demand. Failure so to do will not entitle Buyer to withhold or delay payment of the price.

Despite any other provision of this Agreement, no party shall be required to take or refrain from taking any action inconsistent with or penalized under the laws of the United States or any applicable foreign jurisdiction, including without limitation the antiboycott laws administered by the U.S. Commerce and Treasury Departments.

c. **Equal Employment Opportunity.** The provisions of Section 202 of Executive Order 11246 and the Rules and Regulations issued pursuant to Section 201 thereof, are hereby incorporated by reference and the Buyer represents, by acceptance of this purchase order, that it will comply with such Executive Order and Rules and Regulations, and amendments thereto, to the extent same are applicable to the manufacture and/or sale of the goods purchased hereunder.

d. **Entirety of Agreement.** This Agreement and the written particulars relating hereto constitute the entire understanding of the parties relating to the transaction contemplated hereby. No modification or amendment to this Agreement shall be effective except if in writing and signed by the parties hereto.

e. **Governing Law; Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of New York without regard to conflict of law rules. The parties hereto consent to the exclusive jurisdiction of the federal courts in New York with regard to all disputes hereunder.

Without limiting the foregoing in any way, it is expressly understood and agreed that this transaction shall not be interpreted and enforced in accordance with the provisions of the UN convention on the international sale of goods.

Notwithstanding any other provision herein, this Agreement does not constitute an agreement by either party to comply with any provision hereof that is in conflict with or compliance with which is penalized under U.S. law.

f. **Waiver.** Waiver by either party of a default on the part of the other shall not operate as a waiver of any future default, whether of a like or different character.

g. **Variance; Conflict.** In the event of any conflict between these General Terms and Conditions and the written particulars relating to a given transaction, the latter shall prevail.

h. **Headings.** All paragraph and sub-paragraph headings used herein are for convenience of reference only and shall not be considered in the interpretation or construction of any provision hereof.

i. **Notices.** All notices, statements, and other communications to be given, submitted or made hereunder by either party to the other shall be properly given if in writing, bearing the transaction number, and sent by airmail, postage paid, courier, telex, facsimile or cable to the address of such other party as indicated in this Agreement, or in the written particulars relating hereto, which address may be changed by either party upon reasonable advance written notice (telex acceptable) to the other party.

j. **INCOTERMS.** The terms of INCOTERMS®, 2010 Edition, International Chamber of Commerce effective January 1, 2011 are incorporated by reference, except to the extent contrary to any of the terms hereof.

k. **Interest Clause.** Any sum not paid when due for any reason related to Buyer, at Seller's sole option, shall bear interest (basis 360 days per year) for each day on which any sum is past due at the prime rate as listed in the Wall Street Journal on the payment date, plus two (2) percentage points. Acceptance of payment made after the payment date shall not constitute a waiver of rights to interest and shall in no circumstance be considered as an agreement to provide extended credit. Any sum not paid by Buyer when due for any reason related to Seller, shall not incur interest.

l. **Forward Contract.** The parties acknowledge and agree that this Agreement constitutes a "forward contract," each party is a "forward contract merchant," and each payment hereunder constitutes a "transfer" or a "settlement payment" for the purposes of the U.S. Bankruptcy Code, with all attendant protections and benefits. The Parties further agree that this Agreement constitutes an "eligible financial contract" for the purpose of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, the *Winding-up and Restructuring Act*, R.S.C. 1985, c. W-11, as amended, and the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended.

m. **BOOKOUT CLAUSE.** The Parties, acting through schedulers or other responsible personnel, may agree, either bilaterally or as part of a multi-party arrangement, to a book-out, book transfer, circle-out, or other cancellation of physical delivery (in each case, "Bookout"). Provided in each case that the Parties will be deemed to confirm that they are "Commercial Participants" as defined in the CFTC/SEC further definition of "Swap", "Security-based Swap", and "Security-based Swap Agreement" (August 13, 2012) and that they reasonably believe the other Party(ies) with whom they agree to such Bookout likewise to be "Commercial Participants". In the event of a Bookout, (1) the agreement to such Bookout must be confirmed in writing or electronically between the relevant Parties within a reasonable timeframe, and/or (2) the delivery obligations under the contract will be extinguished (whether in whole or in part) to the extent agreed, and unless prepayment is required, payment will be due on the agreed effective date of the Bookout. Prepayment, if required, will be due at least two (2) business days prior to the effective date of the Bookout whether or not a sum certain is then known, but if not then known, Buyer shall prepay in the amount of Seller's estimate (subject to subsequent true-up). At any time prior to the agreed effective date of the Bookout, either Party may elect, at its option and upon notice to the other Party, to break the Bookout and thereby restore all original contract terms, including delivery and payment, all without liability to the other Party.

n. **Commercial Participant.** In compliance with Title VII – Wall Street Transparency and Accountability Act of 2010 ("Dodd-Frank"), each of the parties makes the following representation to the other party that (a) it has the capacity to make or take delivery of the Commodity in the ordinary course of its business, and is entering into this transaction in connection with its business; and (b) it intends to make or take physical delivery of the Commodity.