

**U.S. VENTURE, INC. UNBRANDED REFINED  
PRODUCTS (RACK) TERMS OF SALE**

These Unbranded Refined Products (Rack) Terms of Sale ("Terms") are an essential part of each and every Transaction (as hereinafter defined) and Sales Document (as hereinafter defined) and, by this reference, the parties incorporate these Terms into, and make these Terms a part of, every Transaction and Sales Document.

1. BASIS OF CONTRACT. U.S. Venture, Inc. d/b/a U.S. Oil ("Seller") is in the business of marketing and selling finished refined petroleum products, including, without limitation, gasoline and distillates (including diesel and gasoline blended with ethanol and biodiesel), sub-octane gasoline, ethanol, and biodiesel (the "Products"). Buyer wishes to purchase the Products from Seller for its own use and/or resale on an unbranded basis, and Seller wishes to sell such Products to Buyer for such purposes; all in accordance with these Terms. These Terms will be deemed acceptable and agreed to by Buyer if Buyer takes, and/or any of its Carriers (as hereinafter defined) take, delivery of Products thereby commencing performance of Buyer's obligations hereunder.

ANY TERMS CONTAINED IN BUYER'S PURCHASE ORDER OR ANY OTHER FORM OR COMMUNICATION RECEIVED FROM BUYER WHICH ARE IN ADDITION TO OR DIFFERENT FROM THE TERMS AND CONDITIONS CONTAINED HEREIN ARE EXPRESSLY OBJECTED TO AND SHALL BE DEEMED REJECTED BY SELLER, UNLESS EXPRESSLY ACCEPTED IN WRITING BY SELLER.

2. TRANSACTIONS. Seller and Buyer may, from time to time, enter into one or more transactions for the sale and purchase of Products (each a "Transaction" and collectively, "Transactions"). A Transaction will be evidenced by a Sales Document substantiating the specific terms of a Transaction or any amendment thereto. A "Sales Document" means a writing in any of the following forms: (a) any agreement between the parties relating to the purchase or sale of any Product (e.g., electronic mail message (e-mail), instant messaging (IM), an electronic data exchange or interchange transmission (EDI), facsimile, or other mutual agreeable electronic means); (b) subject to the limitations these Terms impose on the effect of purchase order terms, a purchase order or equivalent document for Product; (c) a purchase order confirmation or acknowledgment from Seller; or (d) a quotation, offer to sell, or invoice from Seller.

3. AVAILABILITY. Buyer hereby acknowledges and agrees that Products are subject to availability and that the availability of a particular Product will vary depending upon the applicable Delivery Location (as hereinafter defined) for a Transaction as well as the inventory and allocation of Products at such Delivery Location.

4. PRICE. Unless otherwise agreed by Seller and Buyer in writing, the price for an Authorized Delivery (as hereinafter defined) of Products shall be the per gallon rack price set by Seller effective at the load time for the applicable Product at the Delivery Location and communicated by Seller to Buyer in writing (e.g., via DTN, e-mail, facsimile, or FTP). Product price shall be based on the bill of lading ("BOL") or terminal meter ticket load time. Such prices are: (a) specific to the Delivery Location, the applicable Product, and the account; and (b) are subject to change by Seller at any time.

In the event of a dispute between Seller and Buyer relating to the Product price of an Authorized Delivery (i.e., Seller did not communicate the price for the specific Transaction), then the price shall be the higher of: (a) the Oil Price Information Service (OPIS) average price for that Product in effect in the nearest applicable market for such Product, or (b) the replacement value for the Product at the loading Delivery Location at the time of delivery.

The price for any Unauthorized Delivery (as hereinafter defined) of Products shall be the higher of: (a) Seller's cost for such Product plus \$0.0100/gallon, or (b) the OPIS average price in effect in the nearest applicable market for such Product.

Unless otherwise agreed by Seller and Buyer in writing, all prices for Products are exclusive of all Taxes (as hereinafter defined) and any freight charges and fees.

5. DELIVERY LOCATION(S). As requested by Buyer and approved by Seller (each a "Delivery Location").

6. TAXES. All taxes, duties, fees, dues, or other charges (collectively "Taxes") now in effect or hereafter imposed or assessed by any federal, state, county, or local government or agency with respect to or measured by the Products or the manufacture, transportation, storage, delivery, sale, receipt, exchange, inspection, or use of the Products shall be borne by Buyer. Upon receipt of invoice, Buyer shall reimburse Seller for any Taxes required to be collected or paid. If Buyer is exempt from any Taxes, Buyer shall provide Seller with a proper documentation acceptable to the governmental authority imposing such Tax prior to taking delivery of any Products. If Buyer fails to provide Seller with such proper exempting documentation, then Buyer shall be subject to payment of any such Taxes, together with any applicable interest or penalties, and any consequential costs or fees imposed upon Seller as a result of such failure. If permitted by applicable law, Buyer may elect to defer taxes, with Seller's consent, as defined in applicable state and federal regulations.

7. DELIVERY LOCATION ACCESS. Prior to Buyer being able to access a Delivery Location, both Seller and the operator of the applicable Delivery Location(s) (each a "Terminal Operator") shall first approve in writing Buyer (i.e., when acting as its own carrier) and/or each carrier of Buyer or Buyer's customers (each a "Carrier"). Such approval (each a "Carrier Approval") may be granted, and subsequently revoked, in the sole and exclusive discretion of Seller or Terminal Operator. Buyer acknowledges and agrees that as a condition of granting a Carrier Approval, Seller or Terminal Operator may require that Buyer and/or Carriers enter into a facility access agreement; such agreement may require that Buyer and/or Carriers provide certificates evidencing required insurance coverages.

8. DELIVERY. Unless and only to the extent otherwise agreed by Seller in writing, Seller shall deliver Products to Buyer or Carrier free on board (FOB) at the Delivery Location. Buyer hereby authorizes any Carrier to whom delivery of Products is made hereunder to act as Buyer's agent for the purposes of acceptance of possession of such Products, allocation of risk of loss, and transfer of title.

Buyer shall comply, and shall cause Carriers to comply, with all applicable Laws (as hereinafter defined) and operating and safety rules, policies, and procedures of Seller and the Terminal Operator. If Buyer or any Carrier does not comply with the foregoing requirements, Seller or Terminal Operator may refuse to connect or load Buyer or the Carrier in question. Buyer and/or Carriers shall provide adequate and safe equipment for the taking of delivery of Products purchased by Buyer hereunder. Seller or Terminal Operator reserves the right to refuse delivery into any equipment that Seller or Terminal Operator deems unsafe or unsatisfactory to receive such deliveries. Buyer shall only take such delivery during the Delivery Location's usual business hours.

Seller will issue loading numbers to Buyer for use by Buyer and/or Carriers to take delivery of Products from Delivery Locations. Any use of loading numbers by Buyer or its Carriers in taking delivery of Products shall constitute an authorized delivery (each an "Authorized Delivery"). Alternatively, any failure to use correct loading numbers, or to use loading numbers, by Buyer or its Carriers in taking delivery of Products shall constitute an unauthorized delivery (e.g., taking delivery from an account on which Buyer is not authorized) (each an "Unauthorized Delivery"). In the event that Buyer or its Carrier takes an Unauthorized Delivery, then Seller is under no obligation to make any invoice corrections.

9. TITLE AND RISK OF LOSS. Title and risk of loss, including without limitation, risk of damage, deterioration, or evaporation, shall pass from Seller to Buyer when the Products pass the flange or spout between the delivery line at the Delivery Location and Buyer's or Carrier's receiving connection or equipment (whether truck or other receiving equipment). It is expressly understood that the passage of title and risk of loss as set forth above is not dependent upon the delivery or receipt of bills of lading, terminal meter tickets, or other equivalent documentation.

10. MEASUREMENT. For each Transaction, the quantity of Products shall be net gallons as stated on the applicable BOL or terminal meter ticket unless the Delivery Location is located within a jurisdiction where Seller sells Products in gross gallons; in such case, the quantity will be measured in gross gallons as stated on the applicable BOL or terminal meter ticket. Measurement of quantity delivered into transport vehicles shall be based on the applicable BOL or terminal meter ticket (the "Measurement Document") at the Delivery Location. The Measurement Document shall contain both net volume (i.e., adjusted to 60 degrees Fahrenheit) and gross volume of Products delivered.

11. QUALITY. Quality shall be presumed to be the quality certified under bulk product from which delivery is drawn.

12. HAZARD WARNING RESPONSIBILITY. Upon Buyer's written request, Seller shall provide to Buyer a Material Safety Data Sheet (MSDS) and/or Safety Data Sheet (SDS) for each Product

delivered hereunder. Buyer acknowledges that there may be hazards associated with the loading, unloading, transporting, handling, or use of the Products sold hereunder, which may require that warnings be communicated to or other precautionary action taken with all persons handling, coming into contact with, or in any way concerned with the Products sold hereunder. Buyer assumes as to its employees, independent contractors, and subsequent purchasers of the Products sold hereunder all responsibility for all such necessary warnings or other precautionary measures relating to hazards to person and property associated with the Products sold hereunder. Moreover, Buyer shall hold harmless, indemnify, and defend Seller and its and their agents, officers, directors, employees, representatives, successors, and assigns from and against any and all claims, demands, suits, losses, damages, causes of action, and reasonable attorneys' fees arising out of or in any manner related to Buyer's failure to provide necessary warnings or other precautionary measures in connection with the Products sold hereunder as provided above.

13. FORCE MAJEURE. Neither party will be liable to the other, or will be considered to be in breach of these Terms, due to any delay or failure to perform any nonmonetary obligation hereunder which is the result of strikes, lockouts, labor disputes, acts of God, enemy hostile government action, governmental restrictions, civil commotion, fire or other casualty, and other causes beyond the reasonable control of such party. In the event of a delay caused by any of those items described in this Paragraph 13: (a) the delayed party shall make all commercially reasonable efforts to minimize the impact of the event, and (b) if such occurrence impacts Seller's ability to supply Products to Buyer, then Seller may, but is under no obligation to, allocate production and delivery among Seller's customers.

14. INVOICES. Invoices will be rendered electronically and dated as of the date of delivery or, if applicable, at such other time as agreed upon by Seller and Buyer in writing.

15. PAYMENT. The terms of payment shall be net ten (10) days from date of delivery to Buyer or Carrier at Delivery Location by automated clearing house (ACH), unless otherwise agreed by Seller and Buyer in writing. Buyer shall pay Seller all amounts invoiced that become due under these Terms in United States dollars without deduction or setoff. Seller may impose a service charge on any amount not paid when due at the rate of one percent (1%) per month (twelve percent (12%) per annum) or the maximum rate allowed by law, whichever is less, such payments to include past due interest. Seller may setoff any amounts it owes to Buyer, or any of Buyer's parent entities of any tier, affiliated entities of any nature which are under common control with Buyer, and the subsidiaries of any tier, divisions, successors, and assigns and any surviving, resulting, or transferee corporation, partnership, or other business entity of any one or more of them ("Buyer Entities") against any amount owed to Seller by any of the Buyer Entities, whether such setoff arose before, concurrently with, or after the date of any Transaction. If a payment due date falls on a Sunday, or on a Monday that is not a business day in the place where payment is to be made, payment shall be made in immediately available funds to Seller on the next business day after such payment due date. If the payment due date falls on a Saturday, or on a non-business day other than a Monday in the place where payment is to be made, payment shall be made in immediately available funds to Seller on the last business day prior to such payment due date.

16. CREDIT. All sales shall be subject to the approval of Seller's credit department. Seller may, at any time and from time to time and without prejudice to Seller's other legal and equitable remedies, suspend or terminate performance or delivery hereunder or require full or partial payment in cash or by letter of credit prior to delivery, security, guarantees, or other adequate assurance satisfactory to Seller when, in Seller's opinion, the financial condition of Buyer or other grounds for insecurity warrant such action.

In the event of Buyer: (a) becoming insolvent; (b) being unable, or admitting in writing its inability, to pay its debts as they mature; (c) failing to promptly lift any execution, garnishment or attachment of such consequence as will, in the judgment of Seller, impair the ability of Buyer to carry on its business operations; (d) making a general assignment for the benefit of creditors or to an agent authorized to liquidate any amount of its property; (e) entering into an agreement of composition with its creditors; (f) becoming the subject of an "order for relief" within the meaning of the U.S. Bankruptcy Code; (g) filing a petition in bankruptcy or for reorganization or to effect a plan or other arrangement with creditors under the provisions of the Bankruptcy Reform Act of 1978, as amended, or under any similar act in any domestic or foreign jurisdiction which may now be in effect or hereafter enacted; (h) filing an answer to a creditor's petition (admitting the material allegations thereof) for reorganization or to effect a plan or other arrangement with creditors; (i) applying to a court for the appointment of a receiver for any of its assets; (j) having a receiver appointed for any of its assets (with or without the consent of Buyer) and such receiver not being discharged within sixty (60) days after his/her appointment; or (k) failing to make any

payment hereunder when due, then the entire contract price hereunder shall immediately become due and payable without notice to Buyer.

17. WARRANTIES AND REMEDIES.

a. At the time the Products are delivered to Buyer, the Products: (i) will conform to, in all material respects, the latest established API/ASTM International specifications for the Products, and (ii) will be sold and delivered, free and clear of any liens or encumbrances, other than taxes that are due by Buyer and governmental and statutory liens securing payments not yet due and payable.

b. EXCEPT AS SET FORTH IN PARAGRAPH 17(a), TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, SELLER MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS, IMPLIED, STATUTORY, ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH REGARD TO THE PRODUCTS PROVIDED HEREUNDER. BUYER ACKNOWLEDGES THAT IT ALONE HAS DETERMINED THAT THE PRODUCTS PURCHASED HEREUNDER WILL SUITABLY MEET THE REQUIREMENTS OF ITS INTENDED USE. NO EMPLOYEE, REPRESENTATIVE OR AGENT OF SELLER IS AUTHORIZED TO ALTER OR MODIFY ANY PROVISION OF THIS PARAGRAPH 17(b) OR TO MAKE ANY GUARANTEE, WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, ORALLY OR IN WRITING, WHICH IS CONTRARY TO THE FOREGOING.

c. Buyer's sole and exclusive remedy in the event of breach of any of the warranties contained in Paragraph 17(a) shall be for Seller, at Seller's option, to (i) provide replacement Products, or (ii) refund or issue a credit for that portion of the consideration payable to Seller under these Terms which is equitably attributable to such defective Products.

18. RETURN OF PRODUCTS. Buyer shall have no right to return Products to Seller without Seller's written authorization to do so and shipping instructions. Unless otherwise agreed by Seller in writing, any such return of Products to Seller shall be at Buyer's expense. Seller's physical possession of such Products pursuant to an authorized return shall not alter the allocation of risk of loss or passage of title to the Products specified in Paragraph 9.

19. LIMITATIONS OF LIABILITY. SELLER'S LIABILITY FOR ANY LEGAL CLAIM, WHETHER IN CONTRACT, TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE AND STRICT LIABILITY, WHETHER SOLE OR CONCURRENT) OR OTHERWISE, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM THE SALE, DELIVERY, RESALE, REPLACEMENT, OR USE OF THE PRODUCTS SOLD BY SELLER HEREUNDER SHALL IN NO EVENT EXCEED THE PURCHASE PRICE OF SUCH PRODUCTS. THE ESSENTIAL PURPOSE OF THIS PROVISION IS TO LIMIT THE POTENTIAL LIABILITY OF SELLER ARISING OUT OF THESE TERMS AND/OR THE SALE OF PRODUCTS TO BUYER, AND THE PARTIES EXPRESSLY AGREE WITH THE RESULTING ALLOCATION OF RISK.

20. CLAIMS. Any claim by Buyer relating to the quality or quantity of any Products delivered shall be waived unless submitted to Seller in writing, together with supporting documentation and reasonable details of the facts on which the claim is based, within ten (10) days after the date of delivery. The delivery date shall be determined by the BOL or other shipping document as appropriate for the delivery method.

21. INCIDENTAL AND CONSEQUENTIAL DAMAGES. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY PENALTIES, SPECIAL, CONTINGENT, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL LOSSES, DAMAGES OR EXPENSES DUE TO BREACH OF WARRANTY, BREACH OF CONTRACT, OR OTHERWISE INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR DESTRUCTION OF OR LOSS TO PROPERTY, PERSONAL INJURY, LOSS OF USE OF THE PRODUCTS OR ANY ASSOCIATED EQUIPMENT, LOSS OF PRODUCTION, REVENUE, OR PROFITS, COST OF CAPITAL, COST OF SUBSTITUTE PRODUCTS, FACILITIES, OR SERVICES, OR FOR ANY OTHER TYPES OF ECONOMIC LOSS, OR FOR CLAIMS OF CUSTOMERS OF BUYER OR USERS OF BUYER'S PRODUCTS FOR ANY SUCH DAMAGES.

22. INSURANCE. As applicable, Buyer shall maintain, and/or cause Carriers to maintain, liability insurance, including motor vehicle liability insurance, and workers' compensation insurance: (a) as required by Terminal Operators pertaining to Delivery Locations, and/or (b) in commercially reasonable amounts (i.e., commercial general liability and automobile insurance shall have combined single limits of

at least \$1,000,000.00). All such insurance policies required hereunder shall be written by one or more reliable insurance carriers authorized to do business in the jurisdiction in which the applicable Delivery Location is located.

23. **INDEMNIFICATION.** Buyer shall indemnify, hold harmless, and defend Seller and Seller's shareholders, directors, officers, employees, and agents from and against any and all damages, liability, claims, losses, and expenses (including reasonable attorneys' fees but excluding punitive and consequential losses, damages, and expenses) arising out of or resulting in any way from the performance of these Terms to the extent that such damages, liability, claims, losses, and expenses are (a) attributable to bodily or personal injury, sickness, disease, or death or to injury to or destruction of tangible property, either real or personal, and (b) caused by the comparative negligent act of (i) Buyer, (ii) anyone directly or indirectly employed by or contracting with Buyer (other than Seller), or (iii) anyone else for whose acts Buyer may be legally liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

24. **DEFAULT.** Upon the occurrence of an Event of Default (as hereinafter defined), the non-defaulting party shall, in addition to all other rights and remedies available (i.e., at law, in equity, or otherwise), have the right to terminate these Terms. The term "Event of Default" shall mean the occurrence of any one or more of the following events: (a) any breach of a material provision of these Terms if such breach is not cured to the satisfaction of the non-breaching party prior to the end of a period of at least five (5) days with regard to payment defaults and at least fifteen (15) days with regard to non-payment defaults after written notice thereof from the non-breaching party to the breaching party, and/or (b) any party becomes subject to any proceeding or other action under any existing or future law of any jurisdiction relating to bankruptcy, insolvency, reorganization, or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it as bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, liquidation, dissolution, composition, or other relief with respect to it or its debts, or seeking appointment of a receiver, trustee, custodian, or other similar official for it or for all or any substantial part of its assets or, should any such proceeding be initiated against such party, fails to secure the dismissal of the same within sixty (60) days after the initiation of such proceeding. Upon the occurrence of an Event of Default, the non-defaulting party shall notify the defaulting party in writing of the existence of such Event of Default and the defaulting party shall have a period of five (5) days or fifteen (15) days, as applicable, in which to cure such Event of Default. Failure of the defaulting party to cure such default within such period of time may result in the non-defaulting party terminating these Terms. All rights and obligations of the parties existing at the time of such termination shall survive termination of these Terms.

Upon the occurrence of an Event of Default by Buyer, Seller, without limiting any other rights that may be available to it (e.g., under these Terms, as a matter of law, or otherwise), shall have the right, at any time, exercisable in its sole and exclusive discretion, to close out and liquidate any Transactions then outstanding ("Liquidation"). Upon such Liquidation, each such Transaction shall automatically terminate and Buyer's obligations, except its payment obligations relating thereto, shall also terminate. Moreover, upon such Liquidation, Seller shall: (a) calculate the Loss (as hereinafter defined) on each such Transaction, and (b) at Seller's election, aggregate or net such Loss amount(s) on the Transaction(s) and any and all other amounts owed by Buyer to Seller under these Terms into a single liquidated settlement payment (the "Liquidation Settlement Payment"). Upon demand of Seller, the Liquidation Settlement Payment shall be due and payable by Buyer to Seller within one (1) business day following Liquidation. The term "Loss" shall mean, with respect to each Transaction, the loss (or gain) to Seller as a result of the liquidation of that Transaction including, without limitation, the cost of entering into a replacement transaction and of maintaining, terminating, and/or reestablishing any hedge or related trading positions (and discounted to present value or bearing interest, as appropriate), in each case as determined by Seller in any commercially reasonable manner.

25. **FORWARD CONTRACT.** The parties agree that (a) each of the Transactions under these Terms constitute a "forward contract" within the meaning of the United States Bankruptcy Code, (b) and that Buyer and Seller are each "forward contract merchants" within the meaning of the United States Bankruptcy Code, and (c) each payment hereunder constitutes a "Transfer" or a "Settlement Payment" under the United States Bankruptcy Code.

26. **ALLOCATION.** If Seller, because of a shortage of crude oil, raw materials, products, or refining capacity of its regular sources of supply, or in the industry generally, or because of governmental regulations, or for any reason, deems that it may be unable to meet all of its supply obligations hereunder, Seller may restrict deliveries of Products without liability and may allocate Seller's supply of Products among its customers and classes of customers in any manner which Seller, in its sole

and exclusive discretion, deems appropriate. Buyer agrees to be bound by any such allocation. During the period of such allocation, any related quantity purchase requirements applicable Buyer shall not be effective and the quantity deliverable under these Terms shall then be such quantity as Seller determines. Upon cessation of any such period of allocation, neither Seller nor Buyer shall be obligated to make up any quantities omitted pursuant to this Paragraph 26.

27. TERM AND TERMINATION. Beginning with the parties entering into the first Transaction hereunder, these Terms shall remain in full force and effect until terminated by either party upon thirty (30) days' advance written notice to the other party. Upon termination of these Terms, each party will remain liable for all obligations arising or incurred by it prior to the effective date of termination.

28. COMPLIANCE WITH LAWS. Each party shall perform under these Terms in compliance with all federal, state, and local laws, regulations, rules, and ordinances (collectively, "Laws") applicable to their respective activities including, without limitation, laws, regulations, rules, and ordinances pertaining to health, safety, and environmental matters. Each party shall procure and maintain in force all permits and licenses which are required to operate their respective businesses and to perform and satisfy their respective duties, obligations, and liabilities under these Terms.

29. INDEPENDENT CONTRACTORS. In performing their respective obligations pursuant to these Terms, Seller and Buyer are acting solely as independent contractors maintaining complete control over their respective employees, facilities, and operations. Neither Seller nor Buyer is authorized to take any action in any way whatsoever for or on behalf of the other party.

30. NOTICE. All written notices, requests, demands, consents, or other communications required or permitted to be given hereunder shall be sufficiently given when (a) mailed by certified mail, return receipt requested, postage prepaid, (b) sent via commercial overnight delivery courier, fees prepaid, or (c) sent by facsimile or other electronic transmission and confirmed by method (a) or (b) above, addressed to Seller at U.S. Oil, a division of U.S. Venture, Inc., Attn: Kevin E. Olson, 20329 State Highway 249, Suite 350, Houston, TX 77070 (with a copy to: U.S. Venture, Inc., Attn: Legal Department, 425 Better Way, Appleton, WI 54915) and to Buyer at the most current address for Buyer in Seller's possession. Either party may by like notice at any time and from time to time designate a different address to which notices shall be sent.

31. SUCCESSORS AND ASSIGNS. When properly executed, these Terms are binding on and for the benefit of both parties and their respective successors and permitted assigns. Buyer may not assign these Terms or any of Buyer's rights or obligations hereunder without the prior written consent of Seller, which consent shall not be unreasonably withheld, conditioned, or delayed.

32. SURVIVAL. The provisions of Paragraphs 2 (i.e., as it relates to the definitions of "Transaction" and "Transactions"), 6, 12, 15, 17, 18, 19, 20, 21, 23, 27 (i.e., as it relates to post-termination obligations), 30, 32, 34, 35, 36, 37, 38, and 39 shall survive the cancellation, termination, expiration, completion, or assignment of these Terms.

33. WAIVER. Either party's failure strictly to enforce any provision of these Terms will not be construed as a waiver of that provision or as excusing the other party from future performance. One or more waivers of any covenant, term, or condition hereof shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition.

34. SEVERABILITY. If any clause or provision of these Terms is illegal, invalid, or unenforceable under present or future laws, then and in that event, it is the intention of the parties hereto that the remainder of these Terms shall not be affected thereby.

35. ALTERNATIVE DISPUTE RESOLUTION. All disputes and controversies between Seller and Buyer arising out of or in connection with these Terms or the breach thereof shall be submitted first to negotiation and, if not resolved by negotiation, then to mediation and, if not resolved by mediation, then either party may pursue such legal remedies as such party may deem appropriate. All negotiations and any mediation proceedings shall involve officers of both Seller and Buyer having authority to settle all claims between them and shall be conducted promptly within thirty (30) days after written notice from either Seller or Buyer requesting negotiations or mediation. An individual agreeable to Seller and Buyer having expertise in the Products and services that are the subject matter of these Terms shall preside over any mediation proceeding. Any decision rendered by a mediator shall be advisory only and shall not be final or binding. All mediation proceedings shall be conducted in accordance with the applicable rules of the American Arbitration Association and shall be held in Appleton, Wisconsin USA. Seller and Buyer

shall each be responsible for and pay their respective costs, including attorneys' fees, incurred by them in preparing and presenting their case at the mediation proceedings but the costs of the mediator shall be shared equally by Seller and Buyer. Notwithstanding any contrary provision hereof, this Paragraph 35 shall not apply to breaches of Paragraph 15.

36. APPLICABLE LAW; FORUM AND JURISDICTION. These Terms shall be governed and construed according to the internal laws of the State of Wisconsin, without giving effect to conflicts of laws principles. The parties hereby irrevocably and unconditionally submit to the exclusive jurisdiction of the Circuit Courts of the State of Wisconsin and of the United States of America for the Eastern District of Wisconsin, Green Bay Division, and agree that any legal action or proceeding relating to these Terms shall be brought exclusively in such courts. **THE PARTIES HEREBY IRREVOCABLY AND KNOWINGLY WAIVE TO THE FULLEST EXTENT PERMITTED BY LAW ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING ARISING OUT OF THESE TERMS.** The parties agree that any such action or proceeding shall be tried before a court and not a jury. In the event the parties' waiver of a trial by jury is deemed invalid, the parties hereby agree that any action or claim arising out of any dispute in connection with these Terms, any rights, remedies, obligations, or duties hereunder, or the performance or enforcement hereof or thereof shall be determined by judicial reference. Any action, whether based upon theories of breach of warranty, breach of contract, negligence, or otherwise, with regard to the Products delivered hereunder must be commenced within one (1) year after the cause of action has accrued. Subject to Paragraph 35, in the event either party finds it necessary to bring suit against the other party as a result of any dispute arising out of these Terms, the prevailing party in such dispute shall be entitled to recover, in addition to such other damages and relief as it may be awarded by the court or other forum of competent jurisdiction, its reasonable attorneys' fees, court costs, and other reasonable costs of litigation.

37. ENTIRE AGREEMENT. The parties hereby agree that these Terms and applicable Sales Documents shall constitute the entire agreement between Seller and Buyer and supersede any other agreements or offers, including any purchase order of Buyer, prior or contemporaneous oral or written understandings, or communications relating to the subject matter hereof. All captions and headings contained herein are for the convenience of the parties hereto and shall not be deemed or construed as in any way limiting or extending the language of the provisions to which such captions and headings refer. Any modifications of, or amendments to, these Terms must be in writing and signed by both parties. Notwithstanding the foregoing, in the event Buyer and Seller have a written supply agreement, the terms of the supply agreement shall govern.