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January 25, 2012

NAESB  
801 Travis, Suite 1675  
Houston, Texas 77002

Re: NAESB Wholesale Gas Quadrant Contracts Subcommittee Survey

Dear Ms. Trum:

ConocoPhillips Company submits the following responses to the survey you distributed on January 9, 2012:

1. What approach should NAESB take in development of the new Natural Gas Liquids Master Agreement?
  - a. LEAP Master Agreement- ConocoPhillips Company's experience with the LEAP master agreement is that it is not widely accepted by the industry due to its financial nature; rather than a master agreement designed to support the purchase/sale of physical volumes of natural gas liquids.
  - c. Develop a new Natural Gas Liquids Master Agreement based on another existing agreement. (If Choice C is selected, see ConocoPhillips Company General Terms and Conditions for Liquid Products attached hereto.)
2. Please provide any other comments with regard to NAESB's effort, if any.

ConocoPhillips Company is thrilled that NAESB Wholesale Gas Quadrant Contracts Subcommittee is providing leadership in this effort, which is sorely needed. We support this effort and are interested in being a part of it.

Please feel free to contact me or Maria Dunn, Senior Counsel (281.293.1655) should you have any questions.

Regards,

Kathy Peters  
Supervisor,  
S&T Contract Administration  
c: Catherine Abercrombie

**ConocoPhillips Company.**  
**General Terms and Conditions for Liquids Product Purchases and Sales**  
**Agreements**

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**1) DEFINITIONS**

"Affiliate" means an entity controlling, controlled by or under common control with either party.

"API" means the American Petroleum Institute.

"Business Day" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant party's principal place of business.

"Buyer" means the Buyer of Product as specified in the Contract.

"Contract" means the Contract, including a sales confirmation, to which these terms and conditions are incorporated.

"Effective Date" means the date specified in the Contract coinciding with it becoming a legally binding and valid agreement between Buyer and Seller.

"Liquid Product" means liquid hydrocarbons.

"Plant Sale" refers to a sale or purchase identified in the Contract with a specified transaction location at a processing plant, fractionator or refinery.

"Product" means either the Liquid Product or the Raw Product as specified in the Contract.

"Raw Product" or "Y Grade" means non-segregated mixture of natural gas liquids.

"Seller" means the Seller of Product as specified in the Contract.

**2) REPRESENTATIONS AND WARRANTIES**

- a) Seller represents and warrants to Buyer that: (i) Seller has title to the Product delivered hereunder or the right to deliver same, and **SELLER AGREES TO INDEMNIFY, DEFEND AND HOLD BUYER HARMLESS FROM AND AGAINST ANY LOSS, CLAIM OR DEMAND BY REASON OF ANY FAILURE OF SUCH TITLE OR RIGHT OR BREACH OF THIS WARRANTY;** and (ii) Product delivered hereunder shall be delivered in full compliance with all federal and state laws, rules and regulations and orders that may be applicable thereto, subject to the provisions of Section 5.
- b) Buyer represents and warrants to Seller that: (i) Buyer is sophisticated and knowledgeable of (a) the hazards and risks associated with the Product delivered hereunder, and (b) the handling, receipt, transportation, storage and use of such Product; and (ii) Product received hereunder shall be received in full compliance with all applicable federal and state laws, rules and regulations and orders that may be applicable thereto.
- c) **EXCEPT AS EXPRESSLY SET FORTH IN THE CONTRACT, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO THE PRODUCT OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, EVEN IF SUCH PURPOSE IS KNOWN TO THE PARTIES.**
- d) Each party represents and warrants to the other party that:
  - i) on the Effective Date, it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
  - ii) the execution, delivery and performance of any Contract and these General Terms and Conditions are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contract to which it is a party or any law, rule, regulation, order or the like applicable to it;
  - iii) these General Terms and Conditions, each Contract, and each other document executed and delivered in accordance with these General Terms and Conditions constitutes its legally valid and binding obligation enforceable against it in accordance with its terms;
  - iv) it is not bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming bankrupt.

**3) TRANSACTIONS**

- a) A Contract shall be entered into upon written agreement ("Sales Confirmation") setting forth the particular terms and conditions of a transaction by the Buyer and the Seller. Each party agrees not to contest, or assert any defense to, the validity or enforceability based on lack of authority of the party or any lack of authority of any employee of the party to enter into a Contract.
- b) Unless otherwise agreed to by Buyer and Seller, each Contract between the parties shall be governed by the contents of the Sales Confirmation and these General Terms and Conditions. Any inconsistency between these General Terms and Conditions and the terms specified in a Sales Confirmation shall be resolved in favor of the Sales Confirmation.

**4) DELIVERY**

- a) Unless otherwise specified in a Sales Confirmation, title to and risk of loss or damage of any Product shall pass to Buyer when delivery is completed as specified herein.

When delivery is point of origin, delivery shall be completed to pipelines when the Product has passed the downstream flange of the meter measuring the Product for delivery.

- b) After completion of delivery of Product by Seller, Seller shall not be liable to Buyer for reductions in quantity or degradations of quality of such Product in the custody of Buyer or Buyer's designee. Buyer agrees that, after delivery, the handling, care or use of Product shall be at Buyer's sole risk and expense.

#### 5) QUANTITY AND MEASUREMENT

- a) The quantity(ies) of Product(s) sold and purchased under the Contract are set forth on the Sales Confirmation.
  - b) The measurement of all liquid Product will be in accordance with API, GPA and/or other accepted industry measurement standards for such Product and will be corrected to a temperature of 60 F by use of the Volume Correction/Reduction Tables applicable to that Product as published by API, GPA and/or other accepted industry standard and in effect on the date of shipment. Quantities of Product delivered will be determined at the delivery point by a mutually acceptable metering system or weight scale, whenever possible. Product measured volumetrically at pressure above equilibrium vapor pressure must also include compressibility factor corrections.
  - c) In the event of a Plant Sale, Seller reserves the right to make processing elections pursuant to the terms and conditions of its gas processing agreements with the gas processing plants, or refining and manufacturing elections within the refinery or with respect to the crude oil run within the refinery, and such elections could affect the Product volumes available at one or more of the delivery points in the Contract for Buyer. The volumes of Product available for Buyer to purchase from Seller will be subject not only to Seller's gas processing and refining elections, but also to Force Majeure events, operating conditions, production variances, pipeline operational flow orders, fluctuating economic conditions of the marketplace, and various other factors that may be out of Seller's reasonable control.
  - d) In the event of a Plant Sale, Seller agrees to provide to Buyer an estimate of projected Product volumes flowing through each location listed on the Contract on or before two (2) Business Days prior to the beginning of each month of sale. It is fully understood that notwithstanding such estimates, inventory levels at the locations may change which may also affect the Product volumes available for sale.
  - e) If specified on a Contract, the volume of Raw Product produced at a processing plant or refinery that is purchased by Buyer from Seller in a Plant Sale shall be determined based on measurement utilized at the Raw Product Measurement Point identified in the Contract. Seller and Buyer shall have the right to witness all such measurements, tests and determinations. If a Raw Product Measurement Point is not identified in the Contract, the volume of Raw Product purchased by Buyer from Seller in a Plant Sale shall be determined by the gas processing plant statements, fractionator statements and/or refinery statements at the identified Delivery Point.
- 6) **PRICE.** The price for Product sold and purchased under a Contract shall be the price described in the Sales Confirmation.
- 7) **CLAIMS. SELLER SHALL HAVE NO LIABILITY TO BUYER FOR ANY DEFECT IN QUALITY OR SHORTAGE IN QUANTITY OF PRODUCT SOLD AND DELIVERED HEREUNDER UNLESS BUYER GIVES SELLER NOTICE OF BUYER'S CLAIM BY EMAIL OR FACSIMILE AND SELLER IS GIVEN AN OPPORTUNITY TO INSPECT THE PRODUCT IN QUESTION PRIOR TO UNLOADING, OR IN CASE OF ANY LATENT DEFECT IN QUALITY, BUYER GIVES SELLER NOTICE THEREOF WITHIN SEVEN (7) DAYS AFTER BUYER'S DISCOVERY OF SUCH DEFECT. SELLER SHALL HAVE NO LIABILITY FOR ANY DEFECT IN ANY PRODUCT WHICH HAS BEEN COMMINGLED IN ANY WAY WITH A SIMILAR PRODUCT OBTAINED ELSEWHERE OR WITH A DIFFERENT PRODUCT, REGARDLESS OF WHERE OBTAINED. EVERY NOTICE OF CLAIM FOR DEFECT IN QUALITY OR QUANTITY SHALL SET FORTH FULLY THE FACTS UPON WHICH THE CLAIM IS BASED. IT IS AGREED THAT ANY CLAIM ASSERTED BY BUYER UNDER THIS SECTION 7 BASED UPON OR ARISING OUT OF AN ALLEGED DEFECT IN QUALITY OR QUANTITY OF THE PRODUCT SHALL BE BARRED UNLESS ASSERTED BY BUYER BY THE COMMENCEMENT OF AN ACTION WITHIN TWENTY FOUR (24) MONTHS AFTER THE DELIVERY OF THE PRODUCT OR OTHER EVENT, ACTION OR INACTION TO WHICH SUCH CLAIM RELATES. IN NO EVENT SHALL SELLER BE LIABLE TO BUYER FOR ANY PROSPECTIVE PROFITS OR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER OR NOT ARISING OUT OF NEGLIGENCE.**
- 8) **QUALITY.** Delivered Product shall in all respects meet the latest Gas Processors Association ("GPA") specifications for that Product and contain no deleterious substances or concentrations of any contaminants that may make it or its components commercially unacceptable in general industry practice. Buyer shall have the right to accept or reject deliveries of offspec Product. All volumes of Propane which do not meet GPA standards for HD-5 Propane shall be settled at a price to be negotiated by the parties..

#### 9) INSPECTION

- a) If Buyer has reason to believe that Product does not meet the quality specifications under the Contract, the parties shall collect a Product sample and submit same to a mutually agreeable independent laboratory for analysis. The results obtained by the independent laboratory shall be conclusive. Costs for the sampling and testing shall be borne by the Party requesting the test.
- b) Either Buyer or Seller may secure third party inspectors to perform gauging, sampling, and testing of the Product, subject to any safety or other requirements of the owner/operator of the processing plant and/or fractionator. Unless otherwise agreed to in writing, such gauging, sampling (if not performed pursuant to Section 9(a) hereinabove), and testing shall be at the sole expense of the requesting party.

#### 10) INVOICES AND TERMS OF PAYMENT

- a) Payment terms shall be specified in the Contract. If payment is not made within the specified time, Seller, at its sole election and in its sole discretion, may: (i) recover its reasonable costs of collection, institution of any suit or advice or service incident to the breach of any other condition of this Contract by Buyer and on account of bankruptcy proceedings by or against Buyer, including attorney's fees; (ii) collect interest for late payments from the due date to date of payment at the lesser of (a) the prime rate of interest published in the

Wall Street Journal, from time to time, plus five percent (5%), or (b) the maximum non-usurious interest rate which may be charged pursuant to applicable Texas law, Article 5069-1.04 Texas Rev. Civ. Stat. as amended; (iii) suspend deliveries until Buyer has paid in full for all Product delivered; (iv) require Buyer to pay cash at the time of delivery or provide such other collateral security as Seller in its discretion may specify; and/or (v) terminate this Contract or any portion hereof immediately and without notice.

- b) In the event Buyer disputes in good faith, any portion of an invoice, the Buyer shall, within thirty ("30") days of the date of the invoice, notify Seller of the item in dispute, specifying Buyer's complaint, and payment of that item shall be withheld by Buyer without interest until resolution of the dispute. Notwithstanding the foregoing, the undisputed amount shall be paid without delay when due. The parties agree to resolve any such invoice and payment disputes as soon as practicable.
- c) Seller's exercise of any rights reserved under this Section shall be without prejudice to any claim for damages or other rights or remedies available to it under this Contract or applicable law.

#### 11) FINANCIAL RESPONSIBILITY/REMEDIES.

- a) If Seller grants credit to Buyer, payment terms will be specified in the Contract. Seller shall have the right to request any additional credit support if Seller determines Buyer's financial condition warrants such a change. If Buyer exceeds its credit limit at any time during the term, each payment shall be fully secured by either payment in an amount acceptable to Seller or an irrevocable letter of credit opened with all amendments no later than three ("3") Business Days prior to the scheduled delivery date. If (a) Buyer's credit support becomes impaired; unavailable or unsatisfactory to Seller, (b) Buyer fails to make any payment when due to Seller, or (c) Buyer defaults in performance of any of its obligations pursuant to the Contract, Seller may suspend deliveries to Buyer until such time as Buyer has made satisfactory credit arrangements with Seller (which may include the provision of a stand-by letter of credit or payment in cash in advance of shipment), all at Seller's sole discretion, reasonably exercised, and without prejudice to any other available legal remedy at law or in equity. Failure by Buyer to open a letter of credit, if required for any payment hereunder, shall, notwithstanding anything to the contrary pursuant to the Contract, obligate Buyer to prepay Seller by wire transfer in immediately available funds no later than two ("2") Business Days prior to the scheduled delivery date. If there are instituted by or against either party proceedings in bankruptcy or under any insolvency law or law for reorganization, receivership or dissolution, the other party may withhold shipments and deliveries or terminate the Contract without notice. In the event either party fails to make timely payment of monies due and owing to the other party, or in the event either party fails to make timely delivery of Product due and owing to the other party, the other party may offset any deliveries or payment pursuant to a Contract or under any other agreement between the parties and their affiliates.
- b) Each party represents and acknowledges that with respect to the Contract it is a "forward contract merchant" as such term is defined pursuant to the provisions of the United States Bankruptcy Code (the "Code") and that that transactions covered hereunder include "forward contracts" as set forth in Section 561 (a) of the Code.
- c) Without limiting any other rights that may be available to the liquidating Party (as defined below) (whether under any other agreement or terms and conditions, as a matter of law or otherwise), in the event (each a "default") that a party hereto (the "defaulting party") (a) is the subject of a bankruptcy, insolvency, reorganization or other similar proceeding, (b) fails to pay its debts generally as they become due or otherwise is bankrupt or insolvent, or (c) fails to pay or perform any obligation to the other party (the "liquidating party") and such failure continues for one Business Day after notice from the liquidating party, then the liquidating party shall have the right, exercisable in its sole discretion and at any time or times, to liquidate this transaction and/or (at the liquidating party's election) any or all other agreements between the parties for the purchase and sale of crude oil, petroleum products, natural gas, natural gas liquids or electricity, swaps with respect to the prices thereof or options on any of the foregoing (collectively, "transactions") then outstanding by closing-out this transaction and any other transactions being liquidated (whereupon they shall automatically be terminated, except for the payment obligation referred to below), calculating the loss, if any, for each such transaction, and aggregating or netting such amounts and (at the liquidating party's election) any and all other amount owing under this transaction or any other transaction being liquidated to a single liquidated settlement payment that will be due and payable within one Business Day after the liquidation is completed. "Loss" in respect of each transaction shall be the loss (or gain) to the liquidating party as a result of the liquidation of that transaction (other than consequential damages), 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 the liquidating party in any commercially reasonable manner. In addition, after a default, the liquidating party (at its election) shall have a general right of setoff with respect to any or all amounts owing between the parties (whether under this transaction, under another transaction or otherwise and whether or not then due), provided that any amounts not then due shall be discounted to present value. After a default, the defaulting party is also responsible for any other costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred by the liquidating party in connection with such default.

- 12) **FORCE MAJEURE.** If either party is rendered unable, wholly or in part, to perform its obligations under this Contract (other than to make payments due hereunder) due to force majeure, defined herein as any cause or causes beyond the control of the party affected (including but not limited to fire; explosion; riots; strikes; labor disputes; breakdown of machinery; compliance voluntary or involuntary with any law, order, rule, regulation, recommendation, or request, whether valid or invalid, of any government or international agency or authority or person purporting to act thereunder; shortage, allocation or failure of the usual means of transportation, processing or fractionation of Product or supplies; partial or total failures of shortages in supply, or inability for any reason to obtain supplies; or inability for any reason to obtain materials to be used in the manufacture of Product), then upon the affected party giving prompt notice and full particulars of such force majeure to the other party, the obligations of the affected party shall be suspended for the duration of such inability to perform, and such cause shall so far as possible be remedied with all reasonable dispatch. Notwithstanding the foregoing, it is understood and agreed that the settlement of strikes or lockouts shall be entirely within the discretion of the party having the difficulty. The above requirement that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes or lockouts by acceding to the demands of the opposing party when such course is inadvisable in the discretion of the party having the difficulty.

#### 13) INDEMNITIES AND LIABILITY

- a) **SELLER AGREES, TO THE FULLEST EXTENT PERMITTED BY LAW AND REGARDLESS OF THE PRESENCE OR ABSENCE OF INSURANCE, TO DEFEND, INDEMNIFY AND HOLD BUYER, ITS AFFILIATES, AND ALL OF ITS AND THEIR RESPECTIVE**

Effective June 1, 2010

Supersedes WholeSale Sale and

Wholesale Purchase General Terms & Conditions

DIRECTORS, OFFICERS, EMPLOYEES, BORROWED SERVANTS AND AGENTS (THE "BUYER INDEMNITEES") HARMLESS FROM ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION, COSTS AND EXPENSES (INCLUDING COURT COSTS, ANY COST OR EXPENSE OF INCIDENT INVESTIGATION AND REASONABLE ATTORNEY'S FEES), OR ANY LIABILITY ARISING FROM OR ON ACCOUNT OF INJURY, DEATH OR DAMAGE WHICH OCCURS BEFORE DELIVERY OF PRODUCT TO BUYER OR ITS AGENTS UNDER THIS CONTRACT AND/OR ARISE IN CONNECTION WITH SELLER'S OR ITS REPRESENTATIVE'S OR AGENT'S LOADING, TRANSPORTATION, STORAGE, OR HANDLING OF PRODUCT COVERED BY THIS CONTRACT; PROVIDED, HOWEVER, SELLER'S INDEMNITY OBLIGATION SHALL NOT APPLY TO THE EXTENT THAT SUCH INJURIES OR DAMAGES ARE CAUSED BY THE NEGLIGENCE, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY BUYER INDEMNITEE.

- b) BUYER AGREES, TO THE FULLEST EXTENT PERMITTED BY LAW AND REGARDLESS OF THE PRESENCE OR ABSENCE OF INSURANCE, TO DEFEND, INDEMNIFY AND HOLD SELLER, ITS AFFILIATES, AND ALL OF ITS AND THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, BORROWED SERVANTS AND AGENTS (THE "SELLER INDEMNITEES") HARMLESS FROM ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION, COSTS AND EXPENSES (INCLUDING COURT COSTS, ANY COST OR EXPENSE OF INCIDENT INVESTIGATION AND REASONABLE ATTORNEY'S FEES), OR ANY LIABILITY ARISING FROM OR ON ACCOUNT OF INJURY, DEATH OR DAMAGE WHICH OCCURS AFTER DELIVERY OF PRODUCT TO BUYER OR ITS AGENTS UNDER THIS CONTRACT AND/OR ARISE IN CONNECTION WITH BUYER'S OR ITS REPRESENTATIVE'S OR AGENT'S LOADING, TRANSPORTATION, STORAGE, OR HANDLING OF PRODUCT COVERED BY THIS CONTRACT; PROVIDED, HOWEVER, BUYER'S INDEMNITY OBLIGATION SHALL NOT APPLY TO THE EXTENT THAT SUCH INJURIES OR DAMAGES ARE CAUSED BY THE NEGLIGENCE, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY SELLER INDEMNITEE.
- 14) **INSURANCE.** Unless Buyer is self-insured and has provided Seller evidence of such self-insurance reasonably acceptable to Seller, Buyer agrees to procure and maintain or cause its agents, contractors and their subcontractors, and representative to procure and maintain insurance coverage. Such insurance shall be in compliance with the requirements of the law of the state in which delivery of the Product will occur with respect to the receipt of Product hereunder and/or activities related thereto. Buyer acknowledges and agrees that Seller shall not insure Buyer's products, servants and/or property, not the Product(s), property and/or servants of others in connection with this Contract. Insurance required by the above provision, if any, and deductibles associated therewith shall be carried and paid, as applicable by Buyer at its own expense.
- 15) **CONFLICT OF INTEREST.** Except as otherwise expressly, provided herein, no director, employee or agent of either party, its subcontractors or vendors, shall give or receive from any director, employee or agent of the other party or any affiliate, any commission, fee, rebate, gift or entertainment of significant cost or value in connection with this Contract. In addition, no director, employee, or agent of either party, its subcontractors or vendors, shall enter into any business arrangement with any director, employee, or agent of the other party or any affiliate who is not acting as a representative of such party or its affiliate without prior written notification thereof. Any representative(s) authorized by either party may audit the applicable records of the last three years of the other party for the sole purpose of determining whether there has been compliance with this paragraph.
- 16) **ASSIGNMENT.** This Contract shall extend to and be binding upon the parties hereto, their successors and assigns, but it is expressly agreed that neither party shall assign this Contract without the prior written consent of the other party, which consent shall not be unreasonably withheld, provided however, either party shall have the right to assign this Contract to any of its Affiliates without necessity of obtaining the other party's consent thereto. Should either party assign this Contract to any of its Affiliates, notice will be given to the other party within thirty (30) days. In the event of assignment of this Contract, the assignee shall be required, at a minimum, to meet the terms and conditions set forth in Sections 11 and 14 of this Contract.
- 17) **NOTICE.** Any notice hereunder shall be in writing and shall be delivered personally, by mail, or by facsimile to the party's address set forth in the Contract, unless changed by notice and shall be deemed to have been given on the date of the delivery thereof to the party receiving such notice.
- 18) **AUDIT.** Each party and its duly authorized representatives shall have access to the accounting records and other documents maintained by the other party which relate to the measurement, composition or handling of the Product being delivered under this Contract. Each party shall have the right to audit such records once a year at any reasonable time or times within twenty-four (24) months of the rendition of any statement or invoice forming the basis of such claim. Neither party shall make claim on the other for any adjustment after said twenty-four month period.
- 19) **TAXES.** Seller assumes liability for, and must pay, all taxes assessed on or in connection with production, extraction, processing (excluding odorization), manufacture or transport (excluding taxes and fees imposed upon the removal from a plant, terminal or wharf) of Product prior to delivery to the Delivery Point, (including, without limitation, assuring that severance taxes, royalties, working interest payments and similar burdens imposed with relation to extraction and production of same are borne by Seller or prior suppliers of same). Any personal property or similar ad valorem taxes levied or assessed by any governmental authority upon ownership of the Product subject to any Contract must be paid by the Party having title thereto at the time of such assessment. Other than such taxes and fees as are allocated under this Section above, the Buyer assumes liability, and must pay or reimburse Seller in addition to the Contract Price, for all other taxes, fees, charges or any other exactions, levied or assessed by any federal, state, local or other governmental authority upon or as a result of any transactions and Product which are the subject matter of this Contract (but excluding the other Party's net income, gross margin, excess profits or corporate franchise taxes) imposed by any governmental authority upon the sale, use, delivery or receipt of the Product. If either Party is exempt from the payment of any taxes allocated to such Party under the foregoing provisions, such Party must furnish the other Party hereto proper exemption documentation. **EACH PARTY AGREES TO INDEMNIFY AND HOLD THE OTHER PARTY HARMLESS FROM AND AGAINST ALL CLAIMS, CAUSES OF ACTION, PROCEEDINGS, JUDGMENTS, INTEREST, PENALTIES, FEES OR OTHER LIABILITIES BROUGHT BY OR AWARDED TO THIRD PARTIES ARISING OUT OF OR CONNECTED WITH TAXES TO BE PAID BY SUCH PARTY PURSUANT TO THIS SECTION.** Said indemnity includes the payment of attorney's fees and expenses incurred in defense of said claims, proceedings or causes of action. The Parties agree to cooperate with each other in defending non-taxable transaction of the Product pursuant to the Agreement if a Party is audited by or on behalf of a taxing jurisdiction for ad valorem, sales, use, excise, or similar taxes.
- 20) **LIMITATION OF LIABILITY.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY LOST PROFITS OR INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL OR SPECIAL DAMAGES.

- 21) **ALLOCATION.** In case of partial or total interruption or loss or shortage of transportation facilities or supplies, or shortage of Products deliverable hereunder, the affected Party may allocate the available Products to the other Party if the affected Party does not have sufficient supplies of Products, storage or transportation to meet the full requirements of the other Party, its subsidiaries and affiliated companies or any of the other Party's customers. Either Party may allocate its available supplies of Products on any basis which in the claiming Party's sole judgment is fair and reasonable, including, but not limited to, an allocation based on historical or planned deliveries. The shortage creating the need to allocate may be based on any of the following: an actual shortage of Products; a partial or total interruption or loss or shortage of transportation facilities or supplies; a shortage in a contemplated source of supply; or a general shortage in Seller's supply system (including the supply system of Seller's Affiliates).
- 22) **MARINE PROVISIONS.** In the event delivery of Product(s) hereunder is to be accomplished by waterborne transportation, the provisions set out in the "Marine Provisions" attached hereto are made a part hereof, including International Ship and Port Facility Security ("ISPS") Code Provisions.
- 23) **BRAND NAMES.** Unless otherwise specifically agreed to by the parties in writing, Buyer shall not represent, or authorize or permit any other person to represent, that Product delivered hereunder is the Product of Seller. All Product delivered hereunder shall be used or sold under Buyer's brand names or the brand names of its purchasers, it being understood and agreed that nothing herein shall be construed to permit Buyer or its purchasers to use Seller's name or any brand name it may have in connection with the sale of any Product purchased hereunder.
- 24) **CONDUCT OF PARTIES' BUSINESS.** Each party in the performance of a Contract is engaged in an independent business, and nothing herein contained shall be construed as giving either party any right to control the other party in any way in the performance of the other party's business. Neither party shall have any right to exercise control over any of the other party's employees, representatives, agents or contractors of any level except to the extent of any safety requirements for delivery of Product under a Contract.
- 25) **GOVERNING LAW; JURISDICTION.** Contracts shall be subject to the jurisdiction of, governed by, and construed in accordance with the laws of the State of Texas without regard to those laws that would reference the laws of another jurisdiction. Any legal action or proceedings against a party with respect to any Contract shall be brought exclusively in a federal or state court located in Houston, Texas; and by acceptance of the Contract, the parties irrevocably accept for themselves and in respect of their property, generally, irrevocably and unconditionally, submit to the jurisdiction of these courts. Each party waives its respective right to any jury trial with respect to any litigation arising under or in connection with any Contract and these General Terms and Conditions.
- 26) **CONFIDENTIALITY.** Neither party shall disclose the terms or conditions of a Contract to any third party (other than the party's employees, lenders, counsel, accountants or advisors that have a need to know such information and have agreed to keep it confidential) except in order to comply with any applicable law, regulation, any exchange or in connection with any court or regulatory proceeding; provided, however each party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. Notwithstanding the foregoing, a party may elect to report a transaction pursuant to a Contract to a price index publication in which case the Product description, volume, price, delivery point and delivery date may be disclosed but the identity of the counterparty shall remain confidential. The parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with this confidentiality obligation.
- 27) **SEVERABILITY.** The invalidity of any one or more covenants or provisions of a Contract shall not affect the validity of any other provision hereof or of any Contract as a whole. In case of any such invalidity, the Contract shall be construed to the maximum extent possible as if such invalid provision had not been included herein.
- 28) **NO THIRD PARTY BENEFICIARY.** Except as expressly set forth in a Contract, nothing in a Contract or these General Terms and Conditions shall entitle any persons other than Seller or Buyer or their successors or assigns, to any claim, cause of action, remedy or right of any kind relating to the transaction(s) contemplated herein.
- 29) **WAIVER.** Waiver by either party of the breach of any provision(s) hereof by the other party shall not be deemed to be a waiver of the breach of any other provision(s) hereof or of any subsequent or continuing breach of such provision(s).
- 30) **ALTERATIONS.** A Contract shall contain the entire agreement of the parties respecting the matters addressed therein, and no oral promises, agreements or warranties shall be deemed a part thereof. Nor shall any alteration or amendment of a Contract or waiver of any of its provisions be binding upon either party hereto unless the same is in writing and signed by the party to be charged.
- 31) **CONSTRUCTION OF AMBIGUITY.** The parties acknowledge and agree that the terms and conditions of the Contract were freely negotiated and drafted by the parties. The parties expressly agree that: in the event of any ambiguity in any of the terms and conditions of a Contract (including any Contracts, Attachments, Exhibits or Schedules thereto whether or not placed of record), such ambiguity shall not be construed for or against any party hereto on the basis that such party did or did not author the same.
- 32) **HEADINGS.** The headings of the Articles, Sections and Paragraphs of these General Terms and Conditions are for convenience of reference only and shall not constitute a part nor modify, define or limit any of the terms of provisions hereof.
- 33) **TEXAS DECEPTIVE TRADE PRACTICES (CONSUMER PROTECTION) ACT.** The parties certify that they are not "consumers" within the meaning of the Texas Deceptive Trade Practices (Consumer Protection) Act, Subchapter E of Chapter 17, Sections 17.41, et seq., of the Texas Business and Commerce Code, as amended ("DTPA"). The parties covenant for themselves and for an on behalf of any successor or assignee that if the DTPA is applicable to a Contract: (1) the parties are "business consumers" as that term is defined in the DTPA; (2) OTHER THAN SECTION 17.555 OF THE TEXAS BUSINESS AND COMMERCE CODE, EACH PARTY HEREBY WAIVES AND RELEASES ALL OF ITS RIGHTS AND REMEDIES THEREUNDER AS APPLICABLE TO THE OTHER PARTY AND ITS SUCCESSORS AND ASSIGNS; and (3) EACH PARTY SHALL DEFEND AND INDEMNIFY THE OTHER PARTY FROM AND AGAINST ANY AND ALL CLAIMS OF OR BY THE INDEMNIFYING PARTY OR ANY OF ITS SUCCESSORS AND ASSIGNS OR ANY OF ITS OR THEIR AFFILIATES OR SUBSIDIARIES BASED IN WHOLE OR IN PART ON THE DTPA AND ARISING OUT OF OR IN CONNECTION WITH A CONTRACT.

- 34) **NO BROKER'S FEES/CONFLICTS.** If a party has retained any brokers, agents or finders, that party agrees to indemnify and hold the other party harmless from and against any claims or with respect to any commissions, finders fees or other such remuneration due to any broker, agent or finder claiming by, through or under such party.
- 35) **SAFETY.** Each party agrees that its agents and employees shall comply with all safety regulations of the other when such agents and employees are upon the premises of the other in connection with the performance of the Contract.
- 36) **ELECTRONIC RECORDING.** The parties agree that each party may electronically record all telephone conversations between their employees with respect to potential transactions and Contracts related to Products, without any special or further notice to the other party. Each party shall obtain any necessary consent of its agents and employees to such recording.
- 37) **DISPUTE RESOLUTION.** The Parties will attempt in good faith to resolve any controversy or claim arising out of or relating to this Contract promptly by negotiations.

If a controversy or claim should arise, the representatives of the Parties who negotiated the same, or their respective successors ("Principal Contacts"), will meet at least once and will attempt to resolve the matter. Either Principal Contact may request that the other meet within fourteen ("14") days, at a mutually agreed time.

If the matter has not been resolved within twenty ("20") days of their first meeting, the Principal Contacts shall refer the matter to senior executives of their respective companies who shall have authority to settle the dispute (herein called "the senior executives"). Thereupon, the Principal Contacts shall promptly prepare and exchange memoranda stating the issues in dispute and their positions, summarizing the negotiations which have taken place, and attaching relevant documents. The senior executives will meet for negotiations within 14 days of the end of the twenty-one ("21") day period referred to above, at a mutually agreed time. The first meeting shall be held at the offices of the Principal contact receiving the request to meet. If more than one meeting is held, the meetings shall be held in rotation at the offices of each company.

If the matter has not been resolved within thirty ("30") days of the meeting of the senior executives (which period may be extended by mutual agreement), the Parties will attempt in good faith to resolve the controversy or claim in accordance with the International Institute for Conflict Prevention & Resolution ("CPR") Model Procedure for Mediation of Business Disputes.

If the matter has not been resolved pursuant to the aforesaid mediation procedure within 60 days of the commencement of such procedure (which period may be extended by mutual agreement), the controversy shall be settled by arbitration in accordance with the CPR Rules for Non-Administered Arbitration of Business Disputes, by a sole arbitrator. The arbitration shall be governed by the United States Arbitration Act, 9 U.S.C. 1-16, and judgment upon the award rendered by the Arbitrator(s) may be entered by any court having jurisdiction thereof. The place of arbitration shall be Houston, Texas.

- 38) **Exchange Transactions.** After the close of each month, Each company/party will render to the other by the 15th day of the following month, a statement showing current month volumes and accumulative volumes received and delivered and exchange balances by product. Except for the differentials, taxes, and/or other government fees or charges provided for within the sales confirmation, this exchange will be on a gallon-for-gallon basis without the payment of any money by either party to the other. Upon termination of this agreement for any reason, the party having received the smaller volume of products will continue to receive from the other party until the deliveries of each party to the other are as nearly equal in quantity as loading into barges, tank cars, or tank trucks will permit. Any small balances then due either party may be invoiced to the other at a mutually agreeable rate.