

**FIKES TERMINALS
UNBRANDED PRODUCTS (RACK)
GENERAL TERMS OF SALE**

These Unbranded Products (Rack) General Terms of Sale ("General 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 General Terms into, and make these General Terms a part of, every Transaction and Sales Document.

1. **BASIS OF CONTRACT.** Fikes Wholesale, Inc. d/b/a FIKES Terminals ("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, natural gas liquids 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 General Terms. These General Terms will be deemed acceptable and agreed to by Buyer if Buyer takes, and/or any of Buyer Carriers (as hereinafter defined) take, delivery of Products thereby commencing performance of Buyer's obligations hereunder. The terms of Annex A to these General Terms shall be deemed incorporated into each Firm Fixed Sales Document or Transaction. The terms of Annex B to these General Terms shall be deemed incorporated into each Sales Document or Transaction incorporating DTN Exchange. The terms of Annex C to the General Terms shall be deemed incorporated into each Sales Document or Transaction in which delivery occurs in the State of California. The terms of Annex D to the General Terms shall be deemed incorporated into each Sales Document or Transaction for the sale of natural gas liquids, including propane.

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 THESE GENERAL TERMS ARE EXPRESSLY OBJECTED TO AND REJECTED BY SELLER, UNLESS EXPRESSLY AND SPECIFICALLY 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., wholesale sales agreement, electronic mail message (e-mail), instant messaging (IM), an electronic data exchange or interchange transmission (EDI), facsimile, or other mutual agreeable electronic means); (b) a purchase order or equivalent document for Product; provided, however, that any purchase order is subject to the limitations these General Terms impose on the effect of purchase orders; (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 Point (as hereinafter defined) for a Transaction as well as the inventory of the Seller, or third party supplying Seller, at the location supplying the Products.

4. **PRICE.** Unless otherwise agreed by Seller and Buyer in writing, the price for an Authorized Delivery (as hereinafter defined) of Products shall be provided in the Sales Document, or if not provided in the Sales Document, shall be the per gallon rack price set by Seller effective at the date ("Ship Date") and load time as provided on the terminal meter load ticket or bill of lading for the applicable Product at the terminal location where the Product is supplied and

communicated by Seller to Buyer in writing (e.g., via DTN, e-mail, facsimile, or FTP). Such prices are: (a) specific to the Delivery Point, the applicable Product, and the Seller's account used to supply the Product; and (b) unless provided to the contrary in the Sales Document, 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 Point 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. Seller may increase the price of the Products if Seller's cost of the Product, including delivery costs, increases.

5. 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. Each Party is responsible for obtaining the proper licenses in the states where the deliveries under this Agreement take place. Should any unexpected Taxes, including penalty or interest occur because of Buyer's failure to obtain such licenses, Buyer agrees to bear all the costs associated with this failure and shall indemnify Seller from the additional costs.

6. DELIVERY TERMS.

FOB Point of Origin. Unless otherwise provided in the Sales Document or otherwise agreed by Seller in writing, Seller shall deliver Products to Buyer (when acting as its own carrier) and/or each agent or carrier of Buyer or Buyer's customers (each a "Buyer Carrier") free on board the point of origin (i.e. FOB Point of Origin) provided in the Sales Document ("Delivery Point"). Prior to Buyer being able to access a Delivery Point, both Seller and the operator of the applicable Delivery Point(s) (each a "Terminal Operator") shall first approve in writing Buyer (i.e., when acting as its own carrier) and/or each Buyer Carrier. Such approval (each a "Buyer 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 Buyer Carrier Approval, Seller or Terminal Operator may require that Buyer and/or Buyer Carriers enter into a facility access agreement; such agreement may require that Buyer and/or Buyer Carriers provide certificates evidencing required insurance coverages and indemnify the Terminal Operator. Buyer hereby authorizes any Buyer 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 Buyer Carriers to comply, with all applicable Laws (as hereinafter defined) and operating and safety rules, policies, and procedures, including normal hours of operation of Seller and the Terminal Operator. If Buyer or any Buyer Carrier does not comply with the foregoing requirements, Seller or Terminal Operator may refuse to connect or load Buyer or the Buyer Carrier in question. Buyer and/or Buyer 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 Point's usual business hours. Seller will issue loading numbers ("Loading Numbers") to Buyer for use by Buyer and/or Buyer's Carriers to take delivery of Products from Delivery Points. Any use of Loading Numbers by Buyer or Buyer Carriers in taking delivery of Products shall constitute an authorized delivery (each an "Authorized Delivery"). Alternatively, any failure to use Loading Numbers, or to use the correct Loading Numbers, by Buyer or Buyer 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 Buyer Carriers takes an Unauthorized Delivery, then Seller is under no obligation to make any invoice corrections.

FOB Point of Destination. For Delivery Points at Buyer owned or operated locations, (i.e. FOB Point of Destination), prior to Seller's carrier, (each a "Seller Carrier") being able to access a Delivery Point, Buyer shall first approve in writing Seller Carrier. Such approval (each a "Seller Carrier Approval") may be granted, and subsequently revoked, in the sole and exclusive discretion of Buyer. Seller acknowledges and agrees that as a condition of granting a Seller Carrier Approval, Buyer may require that Seller and/or Seller Carriers enter into a facility access agreement; such agreement may require that Seller and/or Seller Carriers provide certificates evidencing required insurance coverages. Seller shall cause Seller Carriers to comply, with all applicable Laws (as hereinafter defined) and operating and safety rules, policies, and procedures, including normal hours of operation of Buyer. If any Seller Carrier does not comply with the foregoing requirements, Buyer may refuse to connect or unload Seller Carrier. Seller Carriers shall provide adequate and safe equipment for the delivery of Products purchased by Buyer hereunder. Buyer reserves the right to refuse delivery into any equipment that Buyer deems unsafe or unsatisfactory to receive such deliveries.

7. BUYER'S TAKE-OR-PAY OBLIGATION. If the Sales Documents provides that the Buyer's obligation to purchase Products is a "take-or-pay" obligation, Buyer acknowledges that Seller will make significant advances of its own capital to procure the Product and acknowledges the financial risks Seller is taking thereby. Buyer agrees to take-or-pay for the volumes provided in the Sales Documents, meaning Buyer is obligated to pay Seller the Price provided in the Sales Document for the volume provided in the Sales Document whether Buyer actually takes the Product or not. Seller shall have no duty to mitigate its damages in this regard since any such Transaction is a take-or-pay agreement with significant risk and investment being made by Seller.

8. TITLE AND RISK OF LOSS. For FOB point of origin deliveries, 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 outlet flange of the loading terminal's hose (in the case of top loading) or when the Product passes the inlet flange of the Buyer's or Buyer's Carrier's tank truck (in the case of bottom loading) of the Buyer's or Buyer's Carrier's receiving connection or equipment (whether truck or other receiving equipment). For FOB point of destination deliveries, title and risk of loss, including without limitation, risk of damage, deterioration, or evaporation, shall pass from Seller to Buyer when the Products passes the last flange of the Seller's or Seller's Carrier's delivery equipment (whether truck or other delivering 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.

9. 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 Point 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 Point. The Measurement Document shall contain both net volume (i.e., adjusted to 60 degrees Fahrenheit) and gross volume of Products delivered.

10. HAZARD WARNING RESPONSIBILITY. Material Safety Data Sheets ("MSDS") and/or Safety Data Sheets ("SDS") for the Products delivered are available upon Buyer's written request. 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 Buyer Carriers, their respective 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.

11. FORCE MAJEURE. Neither party will be liable to the other, or will be considered to be in breach of these General 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 (such as, but not limited to, fires, earthquakes, floods, hurricanes or other casualty), enemy hostile government action, governmental restrictions, civil commotion, 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 11: (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. Should Seller's supply of Product be dependent in whole or in part upon production from a plant or storage, blending or delivery from a terminal that is damaged or destroyed, Seller shall not be obligated to repair or rebuild such plant or terminal in order to fulfill a Transaction. This force majeure provision does not relieve Buyer of its obligations under any take or pay scenario.

12. INVOICES. Invoices will be rendered electronically.

13. PAYMENT. The terms of payment shall be net ten (10) calendar days from the Ship Date 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 General 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.

14. CREDIT. All sales shall be subject to the approval of Seller's credit department. When, in Seller's sole and unrestricted discretion, grounds for insecurity of payment or other performance arise, Seller may terminate any Transaction or Sales Document or, in Seller's sole and unrestricted discretion, Seller may demand in writing Adequate Assurance from Buyer. "Adequate Assurance" shall mean, at Seller's option: (a) a prepayment, (b) cash collateral in an amount acceptable to Seller, or (c) an irrevocable standby letter of credit in Seller's favor in an amount acceptable to Seller and in a form and substance specified by Seller and issued or confirmed by a bank acceptable to Seller (an "L/C"). Buyer grants to Seller a continuing first priority security interest in, lien on and right of setoff against all Adequate Assurance in the form of cash. All bank charges attendant to an L/C shall be for the account of Seller. Delivery of the L/C shall be made within two business days of demand by Seller, but all other Adequate Assurances shall be provided by the close of business on the business day following demand. Seller may change its credit terms at any time for any reason or for no reason. . Buyer warrants that, at the time of entering into any and each Transaction, Buyer is a valid and existing entity authorized to do business in the state of its incorporation and further warrants that it shall keep and maintain its legal entity in good standing throughout the Term of any and each Transaction. .

15. QUALITY AND TITLE WARRANTIES; DISCLAIMERS AND REMEDIES.

Quality and Title. Seller warrants that, at the time the Products are delivered to Buyer, the Products: (i) will meet applicable ASTM standards, 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.

Disclaimer of Warranties. EXCEPT AS SET FORTH IN THE PRECEDING SUBPARAGRAPH, 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, AGENT, OR REPRESENTATIVE OF SELLER IS AUTHORIZED TO ALTER OR MODIFY ANY PROVISION OF THIS SUBPARAGRAPH OR TO MAKE ANY GUARANTEE, WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, ORALLY OR IN WRITING, WHICH IS CONTRARY TO THE FOREGOING, AND BUYER IS NOT ENTITLED TO RELY ON ANY SUCH GUARANTEE, WARRANTY OR REPRESENTATION.

Remedies for Breach of Warranties. Buyer's sole and exclusive remedy in the event of breach of any of the warranties contained herein 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 General Terms which is equitably attributable to such defective Products.

16. 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 risk of loss or passage of title to the Products specified in Paragraph 8 herein.

17. 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 GENERAL TERMS AND/OR THE SALE OF PRODUCTS TO BUYER, AND THE PARTIES EXPRESSLY AGREE WITH THE RESULTING ALLOCATION OF RISK.

18. 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.

19. 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.

20. INSURANCE. Buyer shall maintain, and cause Buyer's Carriers to maintain, liability insurance, including motor vehicle liability insurance, and workers' compensation insurance with the following limits, whichever is greater: (a) as required by Terminal Operators pertaining to Delivery Points, or (b)(i) worker's compensation insurance complying with the laws of the state or states having jurisdiction over each employee, and employer's liability insurance with limits of \$1,000,000 each accident, \$1,000,000 disease each employee, and \$1,000,000 disease policy limit, (ii) commercial or comprehensive general liability insurance on an occurrence form with a combined single limit of \$2,000,000 each occurrence, and annual aggregates of \$10,000,000 for bodily injury and property damage, including coverage for blanket contractual liability, broad form property damage, personal injury liability, independent contractors, products/completed operations, sudden and accidental pollution liability and, the explosion, collapse, and underground exclusion will be deleted, and (iii) automobile liability insurance with a combined single limit of \$2,000,000, each occurrence for bodily injury and property damage to include coverage for all owned, non-owned, and hired vehicles. 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 Point is located.

21. INDEMNIFICATION. To the fullest extent permitted by law, Buyer, its parent companies, subsidiaries, and affiliates, shall indemnify, hold harmless, and defend Seller and Seller's shareholders, directors, officers, employees, agents, and suppliers from and against any and all damages, liabilities, claims, actions, suits, obligations, losses, and expenses (including reasonable attorneys' fees but excluding punitive damages,) arising out of or resulting in any way from the (a) breach of any representation or warranty of Buyer contained in these General Terms (b) breach or violation of any covenant or other obligation or duty of Buyer under these General Terms or under applicable law, or (c) performance or non-performance of these General Terms to the extent that such damages, liability, claims, losses, and expenses are attributable to bodily or personal injury, sickness, disease, or death or to injury to or destruction of tangible property, either real or personal, and caused by the comparative negligent act of Buyer, (anyone directly or indirectly employed by or contracting with Buyer (other than Seller), or 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.

22. 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 General Terms and any or all Transactions. 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 General Terms or Sales Documents if such breach is not cured to the satisfaction of the non-breaching party prior to the end of the day payment is due 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, (b) with respect to Buyer, its failure to provide Adequate Assurance in accordance with Paragraph 14 herein and such failure is not remedied within one (1) day after written notice of such failure from Seller and/or (c) 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 one (1) day, 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 General Terms. All rights and obligations of the parties existing at the time of such termination shall survive termination of these General 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 General 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 General 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.

23. BANKRUPTCY ACKNOWLEDGMENTS. The Parties intend that each Transaction shall constitute a “forward contract” and “swap agreement,” that these General Terms shall constitute a “master netting agreement,” and that each Party shall be a “forward contract merchant,” “swap participant” and “master netting agreement participant,” as such terms are defined in Title 11 of the United States Code, as amended from time to time (the “Bankruptcy Code”), and as such, that the Non-Defaulting Party shall have the rights granted in the Bankruptcy Code, including Sections 362, 546, 556, 560, 561 and 562, to terminate, liquidate, accelerate, net out, and offset in connection with each Transaction and these General Terms. The Transactions and these General Terms are entered into in reliance on the fact that all Transactions between the

Parties and these General terms form a single agreement between the Parties.

24. 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 due to Seller's terminals being wholly or partially inoperative, or due to pipeline limitations, or for any other 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 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 to Buyer shall not be effective and the quantity deliverable under these General 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 24. If during the term of any Transaction, Seller determines that, due to governmental regulations, it is unable to set the price of any of the Products purchased hereunder in an amount which is sufficient, in Seller's sole discretion, to reflect increases in either (a) the cost of such product to Seller or its supplier, or (b) the fair market value of such Product, which have occurred since the date of the Transaction or the date of the last increase in the price of such Product, whichever is later, Seller may cancel the Transaction and/or these General terms upon not less than ninety (90) days written notice to Buyer (unless a shorter notice period is permitted under applicable federal, state, and local law), or may unilaterally suspend its obligations under the Transaction and/or these General Terms while such limitation is in effect.

25. COMPLIANCE WITH LAWS. Each Party shall perform and shall ensure that its agents, representatives, employees and respective carriers perform, under these General 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 the transporting, receiving, storing, handling, offering for sale, selling, delivering for use, or using itself, the Products, and those concerning pollution, underground and aboveground storage tanks, hazardous substances or wastes, toxic substances, right-to-know, occupational safety and health, the maximum sulfur content or dyeing requirements of motor fuels, the lead content of motor fuels, Reid vapor pressure of gasoline, the posting of notices (health and safety or otherwise) or required information on pump stands and dispensers of motor fuel, the use and labeling of product containers, brand adulteration, commingling and all underground tank gauging or release detection requirements, disability requirements, and privacy requirements. 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 General Terms. Unless provided otherwise in the Sales Document, the Party that is the Importer/Exporter of Record of the Products shall fulfill all requirements applicable to the Importer/Exporter of Record, including but not limited to those of the U.S. Customs and Border Protection ("CBP"). Such Party shall pay any applicable duty, any Tax collected by CBP in the way of duty, fees, and penalties, or any other applicable fees and fines, penalties or costs. The other Party shall provide in a timely manner all information necessary to process such importation/exportation. Notwithstanding the last sentence of Section 24 herein, Seller may request renegotiation of the terms of any Transaction and/or these General Terms if the existing laws, regulations, and/or other governmental mandates (hereinafter "regulations") in effect on the date of execution of the Transaction and/or these General Terms are changed or any new regulation is adopted that in any way materially affects the provisions the Transaction and/or these General Terms, specifically where the effect of any change in a regulation or of any new regulation: (i) is not covered by any other provisions of these General Terms, and (ii) in Seller's judgment, either (aa) has a material effect upon Seller or its suppliers, or (bb) increases the risk to Seller of performance under the Transaction and/or these General Terms.

Seller shall notify Buyer in writing of its request for renegotiation of the terms of the Transaction and/or these General Terms. If Buyer refuses to renegotiate in good faith, or if Seller and Buyer fail to renegotiate the terms of the Transaction and/or these General terms within sixty (60) days of Seller's notification, Seller may terminate the Transaction and/or these General Terms pursuant to the federal Petroleum Marketing Practices Act, if applicable.

26. INDEPENDENT CONTRACTORS. In performing their respective obligations pursuant to these General 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.

27. 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 Fikes Terminals, Attn: David Drew, 6261 Central Pointe Parkway, Temple, Texas 76504 (with a copy to: Fikes Wholesale, Inc., Attn: Legal Department, 6261 Central Pointe Parkway, Temple, Texas 76504) 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.

28. SUCCESSORS AND ASSIGNS. When properly executed, these General Terms are binding on and for the benefit of both parties and their respective successors and permitted assigns. Buyer may not assign these General 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.

29. SURVIVAL. The provisions of Paragraphs 5, 7, 10, 13, 15, 16, 17, 18, 19, 21, 27, 29, 31, 32, 33 and 34 herein shall survive the cancellation, termination, expiration, completion, or assignment of these General Terms and applicable Sales Document.

30. WAIVER. Either party's failure strictly to enforce any provision of these General Terms and applicable Sales Document 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.

31. SEVERABILITY. If any clause or provision of these General Terms and applicable Sales Document 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 General Terms and applicable Sales Document shall not be affected thereby.

32. APPLICABLE LAW; FORUM AND JURISDICTION. These General Terms and applicable Sales Document shall be governed and construed according to the internal laws of the State of Texas, without giving effect to conflicts of laws principles. The parties hereby irrevocably and unconditionally submit to the exclusive jurisdiction of the District Courts of the State of Texas and of the United States Federal District Court for the Western District of Texas, Waco Division, and agree that any legal action or proceeding relating to these General Terms and applicable Sales Document 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 GENERAL TERMS AND APPLICABLE SALES DOCUMENT.** 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 General Terms or applicable

Sales Document, 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. 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 General Terms or applicable Sales Document, 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.

33. ENTIRE AGREEMENT. The parties hereby agree that these General 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 General Terms or applicable Sales Document 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 that supply agreement shall govern. If any conflict or inconsistency exists between the General Terms and the Sales Document, the Sales Document shall control. If any conflict or inconsistency exists between the General Terms and Annex A, Annex B, Annex C and Annex D, the applicable annex shall control.

34. INDUSTRY PRACTICE. Any matter arising in connection with this Agreement not specifically addressed in this Agreement shall be handled in accordance with the established customs and practices of the industry.

ANNEX A
FIRM FIXED SALES DOCUMENT

The following terms shall apply to all Transactions in which the price of the Products is fixed in the Sales Document for a time period extending more than one day and shall be deemed to supplement and amend the relevant paragraph(s) of the General Terms, but unless explicitly stated, shall not delete any provision of the General Terms.

Firm Fixed Contract Period: The Firm Fixed Contract Period is defined as the month, or months, that the Buyer must take delivery of the agreed upon quantity. Seller will make indicative offers for eighteen (18) months commencing at the month the Transaction is entered into.

Firm Fixed Contract Quantity: The Firm Fixed Contract Quantity is the quantity of Product Buyer is obligated to accept during the Firm Fixed Contract Period. The Firm Fixed Contract Quantity is on a “take-or-pay” basis. Seller will only enter into a Firm Fixed Contract with quantities equal to or in excess of 1,000 barrels (42,000 gallons) for each base grade product.

Firm Fixed Contract Price: The Firm Fixed Contract Price is the price provided in the Sales Document for each Transaction.

Multiple Contracts Pricing: In the event there are one or more open Sales Documents or Transactions between Buyer and Seller, the Buyer will be assigned one loading number and the highest priced Sales Document or Transaction will be actualized first. Buyer may, at its option, obtain from Seller separate loading numbers assigned to each separate Sales Document and the Product prices applicable to each separate Sales Document.

Deficiency Quantity and Overlifting: The Deficiency Quantity is determined by subtracting the quantity of Product taken by Buyer under the Firm Fixed Sales Document from the Firm Fixed Contract Quantity determined at the end of each month of the Fixed Firm Contract Period, unless a different period is specified in the Firm Fixed Sales Document. Over lifting of the Firm Fixed Contract Quantity will default to the per gallon rack price set by Seller effective at the load time for the applicable Product at the Delivery Point.

Deficiency Fee: A Deficiency Fee will be assessed on the Deficiency Quantity and invoiced on the third business day of each month of the Firm Fixed Contract Period ends for any “out of the money” Transactions, unless a different period is specified in the Firm Fixed Sales Document. An “out of the money” Transaction occurs when the market price at the Delivery Point at the end of each month of the Firm Fixed Contract Period, unless a different period is specified in the Firm Fixed Sales Document, for the Product is lower than Firm Fixed Contract Price.

Calculation of Deficiency Fee: EXAMPLE:

Firm Fixed Contract Quantity:	42,000 gallons
Firm Fixed Contract Period:	June
Amount lifted through June 30th:	21,000 gallons
Firm Fixed Contract Price	\$2.000/gallon
Market Price of 1st business day after June 30 th	\$1.900/gallon

Formula: $(42,000 - 21,000) \times (\$2.00 - \$1.90) = \$2,100$. Invoice amount for Deficiency Fee is \$2,100.

Deficiency Fees will **not** be billed for dollar amounts of \$100 dollars or less.

Transactions that are “in the money” occur when the market price at the Delivery Point at the end of each month of the Firm Fixed Contract Period, unless a different period is specified in the Firm Fixed Sales Document, is higher than the Firm Fixed Contract Price. The Buyer will not be required to accept and the Seller will not be required to make available any Deficiency Quantity for Transactions that are “in the money”.

Ratability: Unless Buyer agrees to pay a non-ratable fee of at least \$0.05 per gallon on the entire Firm Fixed Contract Quantity at the beginning of the Firm Fixed Contract Period, the Firm Fixed Contract Quantity will be lifted in a ratable manner such that Buyer shall accept Product in approximately equal amounts per ten (10) day increments over the Firm Fixed Contract Period.

EXAMPLE: If the Transaction is for 1,000 bbls and the Firm Fixed Contract Period is June, then approximately 333 bbls, or 14000 gallons, would need to be lifted each ten (10) day period throughout the month of June.

If Buyer agrees to a non-ratable fee, the Product may be pulled at any time within the Firm Fixed Contract Period. The intent of this provision is for risk management purposes associated with the hedging of the Transaction.

Rolling or Extending Transactions: Transactions may be rolled out to future months or rolled up to closer months upon request by Buyer and agreement by Seller for a market based fee that will be added to the total Transaction price for the remaining volume to be accepted. The extension must be agreed upon in writing and prior to the expiration of the Firm Fixed Contract Period.

ANNEX B
DTN EXCHANGE TRANSACTIONS

The following terms shall apply to all Transactions in which the Seller's price for the Product is obtained by Buyer through the website commonly referred to as the "DTN Energy's Web Site" and shall be deemed to supplement and amend the relevant paragraph(s) of the General Terms, but unless explicitly stated, shall not delete any provision of the General Terms.

Basis for Pricing: Seller and Buyer desire to enter into Transactions utilizing DTN Energy's Web Site ("Web Site"). Through the Web Site, Seller agrees to sell and Buyer agrees to purchase Product in specified quantities, within a specified period of time, at a specified Delivery Point, and at the specified price and payment terms. All such Transactions are cash forward contracts as defined under the Commodity Exchange Act or the Commodity Futures Modernization Act. In order for Seller to enter into such Transactions, it is understood that Seller must make certain financial assurances that are based on Buyer's commitment to take full receipt of the Product in accordance with the volume, timing, Point, and price and payment terms established in the Transaction.

Buyer Obligation: Buyer shall be obligated to purchase Product, on a "take-or-pay" basis: (a) for the quantity; (b) during the prescribed time period; (c) at the Delivery Point; and, (d) at the price and payments terms specified in the Sales Document. Failure by Buyer to take receipt of One Hundred percent (100%) of the specified quantity of Product within the applicable time period and at the Delivery Point, as set forth in the Sales Documents, shall not relieve Buyer from its obligation to pay Seller as if Buyer had taken receipt of One Hundred percent (100%) of the Product in full compliance with the terms set forth in the Sales Documents. Seller shall have the absolute right to invoice Buyer as if Buyer had fully complied with the terms of the Transaction and Buyer shall pay Seller in accordance with the General Terms and Sales Document. However, in the event the Buyer lifts within 100 gallons of the Transaction quantity, Seller will consider the Transaction complete. Buyer understands and agrees that Seller is under no obligation to supply Product to Buyer beyond the original term as designated in the Transaction.

Allocation of Product by Seller does not does not alter, in any way, Buyer's take-or-pay obligation set forth hereinabove to pay for One Hundred percent (100%) of the specified quantity of Product.

NYMEX Accuracy. It is understood that Seller will use NYMEX data available through DTN Energy's Web Site to establish its Product pricing. In the event that NYMEX determines such data does not accurately reflect market pricing for such Product, Seller shall have, in its sole discretion, the right to terminate any Transaction that it has entered into that was based upon such inaccurate NYMEX data. Buyer shall have no recourse against Seller due to such inaccurate NYMEX data or subsequent termination of a Transaction.

Web Site Access. Buyer is responsible for providing or obtaining, at Buyer's expense, all communication lines, internet service, internet browsers, hardware, software, services and other

materials, and technology necessary for Buyer to access the Web Site. Seller shall have no responsibility for any failure of such items or any failure or limitation of the Internet or other computer hardware or software. Buyer hereby acknowledges it has executed the DTN Exchange's Buyer Agreement and is in full compliance with all the terms and conditions thereof.

Overlift. In the event Buyer lifts Product in an amount that exceeds the specified volume of Product as delineated in a Transaction, Product volume will be priced as follows;

Overlift < 100 gallons: Gallons shall be priced as specified in the Transaction, up to a One Hundred gallon (100) maximum over the specified volume in the Transaction.

Overlift > 100 gallons: Gallons shall be priced at Seller's market price at the Delivery Point, as of the day the overlift occurred, for all gallons exceeding One Hundred (100) gallons over the specified volume in the Transaction.

ANNEX C

TRANSACTIONS IN CALIFORNIA

The following terms shall apply to all Transactions where Product is sold, supplied or offered for sale in California and is a transportation fuel as identified in 17 CCR

§95480.1(a)(1)-(12), and shall be deemed to supplement and amend the specified section of the General Terms, but unless explicitly stated, shall not delete any provision of the General Terms.

Replacement of Paragraph 33 APPLICABLE LAW; FORUM AND JURISDICTION

This Agreement and any disputes arising out of, or relating to, this Agreement shall be governed by, and construed in accordance with, the substantive and procedural laws of the State of California without regard to any principles of choice of laws in California or in any other state. Each Party submits to the non-exclusive jurisdiction of the United States District Court located in Los Angeles, California, but in the event that such court refuses to exercise jurisdiction or venue over the Parties or any claims made pursuant to this Agreement then the Parties agree to submit to the non-exclusive jurisdiction of the California State Courts located in Los Angeles, California. EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION OR PROCEEDING RELATING TO THIS AGREEMENT.

New Paragraph 35 LCFS:

Except as otherwise specified in the Sales Document, the Parties agree that Seller shall transfer to Buyer, and Buyer shall accept, the California Air Resources Board Low Carbon Fuel Standard (“LCFS”) compliance obligations as the Regulated Party pursuant to 17 CCR §95480 et. seq. (the “LCFS Regulations”), for the total volume of Product transferred to Buyer; provided that for the transfer of LCFS compliance obligations to be effective, Seller must provide a product transfer document (“PTD”) that complies with the requirements of 17 CCR §95491(c) that clearly states that the Buyer shall receive the LCFS compliance obligations for the Product.

At the time of the transfer of ownership of the Product, the Seller shall provide a product transfer document that prominently states the required elements of 17 CCR §95491(c) as applicable to the transaction.

Additionally, Seller shall provide Buyer with relevant fuel transport mode information if required for Buyer’s initial demonstration under 17 CCR §95488(e).

ANNEX D

TRANSACTIONS INVOLVING NATURAL GAS LIQUIDS INCLUDING PROPANE

The following terms shall apply to all Transactions where Product sold, supplied, exchanged or offered for sale is ethane, propane, butane, isobutene, or pentane within the United States of America, and shall be deemed to supplement and amend the specified section of the General Terms, but unless explicitly stated, shall not delete or disapply the provisions of the General Terms, subject to Section 33 of the General Terms.

Section 13 PAYMENT

Section 13 Payment, the first sentence shall be replaced in its entirety with “The terms of payment shall be net ten (10) calendar days from the Ship Date by electronic funds transfer (EFT), unless otherwise agreed by Seller and Buyer in writing.”

Section 15 QUALITY AND TITLE WARRANTIES: DISCLAIMERS AND REMEDIES

Section 15 Quality and Title, shall have the following sentence inserted as the second sentence thereto: “If no natural gas liquid product, including propane, specification is set forth in the applicable Sales Document or in an attachment thereto, all Product delivered under such Sales Document shall meet the latest Gas Processors Association or its successor-in-interest 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 application.”

Section 33 ENTIRE AGREEMENT

Section 33 Entire Agreement, the last sentence shall be replaced in its entirety with: “If any conflict or inconsistency exists between the General Terms and Annex A, Annex B, Annex C and Annex D, the applicable annex shall control.”

Section 35 Miscellaneous

New **Section 35 Propane**. For Transactions where propane is the Product, the following provisions shall govern the Transactions, as applicable.

- (i) If the Product is sold as odorized propane, the Product shall be delivered by the Seller at the point of delivery with odorant levels meeting at least the minimum standards under applicable law. Upon request, Seller shall provide documentation of test that confirms the odorized propane meets the minimum standards under applicable law, including testing as applicable. The Seller shall have no further responsibility to ensure that any odorized propane remains properly odorized after its delivery at the point of delivery, except as may be provided in (iii) below, and the Buyer will monitor and maintain the odorant at or above proper levels after receipt at the point of delivery as required by applicable law.
- (ii) Buyer may test any odorized propane delivered by the Seller at the point(s) of delivery. The Buyer may elect not to accept delivery of such propane at the point(s) of delivery until such propane has been odorized pursuant to the specification in the Sales

Document or to applicable law if no specification is included in the Sales Document.

- (iii) Buyer may, prior to unloading of the odorized propane and in no case greater than five business days after the odorized propane's arrival at the agreed upon

destination set forth in the Sales Document, obtain samples of the odorized propane from an appropriate location on the tank truck, and/or the loading/unloading facilities in a manner consistent with applicable industry testing and sampling standards. If the Buyer elects to obtain such samples of the odorized propane, the Buyer will (a) be responsible for arranging for analysis of such samples, by a qualified laboratory or testing organization, all at the Buyer's expense and (b) provide reasonable notice to the Seller of the time of the sample collecting. Each party will be entitled to have its representatives present during all loadings, unloadings, tests and measurements involving delivery of odorized propane. If Buyer fails to (a) obtain samples, (b) provide notice of the testing or (c) provide notice of any alleged off-spec Product based on the sampling within the greater of the referenced five (5) business days or the minimum time period required by applicable law, along with supporting test results and information and documentation (collectively the "Product Rejection Notice"), the Seller shall have no liability for any defect in the quality of odorized propane, and the odorized propane will be deemed accepted. Measurement, sampling and analysis will be conducted in accordance with the industry standards applicable to the sampling methodology used. All such standards are incorporated herein for all purposes, including all revisions of those standards adopted and in effect during the term of this Sales Document. If the Buyer timely rejects odorized propane pursuant to the procedure set forth above, the Buyer will retain possession of such odorized propane without unloading the odorized propane until the Seller has had the opportunity to inspect and test the odorized propane; provided, however, the Buyer will not be obligated to retain such odorized propane beyond ten (10) days following the Product Rejection Notice. If the rejected odorized propane is unloaded by the Buyer prior to the expiration of the ten (10) day period, then Seller shall have no liability for any defect in the quality of odorized propane, and the odorized propane will be deemed accepted. If the Seller does not take possession of the rejected odorized propane within the referenced ten day period, the Buyer will be entitled to dispose of the rejected odorized propane at the Seller's cost and expense (provided such costs and expenses are reasonably incurred). If it is established that the delivered odorized propane is properly odorized pursuant to the specification in the Sales Document or applicable law if no specification is included in the Sales Document, Buyer shall be responsible for damages resulting from its wrongful rejection.

- (iv) **IF PERMITTED BY APPLICABLE LAW AND IF REQUESTED IN WRITING BY BUYER, PROPANE SOLD AND DELIVERED HEREUNDER MAY BE UNODORIZED, OR (A) IF BUYER KNOWINGLY ACCEPTS UNDER-ODORIZED PROPANE AT THE POINT OF DELIVERY OR (B) FAILS TO INSPECT AND TEST ODORIZED PROPANE AND PROVIDE APPROPRIATE DOCUMENTATION TO SELLER UNDER (ii) AND (iii) ABOVE, UPON RECEIPT, BUYER SHALL ASSUME FULL RESPONSIBILITY AND LIABILITY FOR ANY AND ALL CLAIMS ARISING OUT OF THE TRANSPORTATION, USE AND SALE OF SUCH PROPANE, AS WELL AS ANY LIABILITY ARISING FROM OR ON ACCOUNT OF CLAIMS OF PERSONAL INJURY, DEATH OR PROPERTY DAMAGE. Buyer represents and warrants to Seller that Buyer will not use such unodorized propane for fuel or resell it for fuel without adding an odorizing agent in conformance with**

applicable law.

- (v) If Buyer (A) fails to inspect and test any odorized propane in accordance with (ii) and (iii) above, (B) fails to maintain any and all documentation related to the inspecting and testing of odorized propane or (C) blends any odorized propane after its delivery at the point of delivery, then Buyer shall indemnify, defend and hold Seller and its respective directors, officers, members, employees, contractors and agents harmless from any and all damages, liabilities, claims, actions, suits, obligations, losses, and expenses (including reasonable attorneys' fees but excluding punitive damages) as well as ANY LIABILITY ARISING FROM OR ON ACCOUNT OF CLAIMS OF PERSONAL INJURY, DEATH OR PROPERTY DAMAGE involving lack of or inadequate warning materials, improper amounts, use or type of odorant, "odorant fading," lack of warning on supplemental warning systems (such as gas detectors) and improper training or monitoring of Buyer's warning or training programs respecting odorization that are incurred as a result of or arising from such propane, except to the extent the damages, liabilities, claims, actions, suits, obligations, losses, and expenses (including reasonable attorneys' fees but excluding punitive damages) arose as a result of the gross negligence or intentional acts of Seller, its directors, officers, members, employees, contractors or agents; provided, however, if Seller fails to provide the documentation required under (i) above, to Buyer, buyer shall not have any indemnity obligations hereunder.**
- (vi) Buyer acknowledges that Seller does not have the ability to convey safety or warning information to Buyer's customers. Accordingly, Buyer will inform its customers of the hazards of propane. Seller authorizes Buyer to copy any such information for distribution to its customers.**