

POOLE AGRIBUSINESS
GENERAL TERMS AND CONDITIONS FOR SALES OF FERTILIZER PRODUCTS (NOVEMBER 2021)

1. **General Terms and Conditions.** These General Terms and Conditions for Sales of Fertilizer Products (“**Terms**”) apply to sales of fertilizer products (“**Products**”) by Poole Chemical Co., Inc., a Texas corporation d/b/a Poole Agribusiness (“**Seller**”) to persons or entities purchasing such Products and their officers, directors, agents, employees, and contractors (each a “**Buyer**”) (Seller and Buyer each a “**Party**” and collectively the “**Parties**”). Any other agreement into which these Terms are incorporated, including without limitation any applicable invoice, bill of lading, bill of sale, credit application, or credit agreement, may be referred to herein as a “**Transaction Agreement**.”
2. **Product Delivery.** Unless the Parties agree in writing otherwise, Products shall be delivered free-on-board (“**FOB**”) origin Seller’s designated loading facility at Seller’s plant, storage facility, or terminal (in each case, Seller’s “**Facility**”), as applicable. Notwithstanding the type of delivery or anything else to the contrary, Buyer shall be liable for loss, damage, or injury to persons or property, including the Products, caused by Buyer’s negligent acts or omissions during Product loading or unloading.
3. **FOB Seller’s Facility.** When Products are delivered FOB Seller’s Facility, Buyer shall be responsible for loading such Products at Seller’s Facility into appropriate trucks owned or contracted for by Buyer, subject to any applicable rules, terms, or conditions for accessing Seller’s Facility, and transporting the Products at Buyer’s sole cost and expense to Buyer’s destination. In such cases, title and risk of loss to the Products shall pass to Buyer when the Products pass the outlet flange on Seller’s loading device.
4. **Truck Delivered Buyer’s Destination.** When the Parties have agreed that Products will be truck delivered by or at the direction of Seller to Buyer’s destination, Seller shall be responsible for transporting such Products in trucks owned or contracted for by Seller at its sole cost and expense to Buyer’s agreed upon destination. In such cases, title and risk of loss to the Products shall pass to Buyer when the Products pass the outlet flange from Seller’s truck at the delivery destination. Buyer shall be responsible for unloading the Products from Seller’s trucks and loading the Products into vessels or containers owned or contracted for by Buyer. Buyer shall unload Seller’s trucks as soon as reasonably practicable and shall be liable to Seller for costs or expenses incurred by Seller as a result of Buyer’s failure to accept delivery of Products or failure to unload Products in a reasonably prompt manner. Buyer warrants the destination facility (whether or not owned or controlled by Buyer) is compliant with all applicable laws and regulatory requirements.
5. **Rail Delivered Buyer’s Destination.** When the Parties have agreed that Products will be rail delivered by or at the direction of Seller to Buyer’s destination, Seller shall be responsible for transporting such Products in railroad cars owned or contracted for by Seller at its sole cost and expense to Buyer’s agreed upon destination. In such cases, title and risk of loss to the Products shall pass to Buyer when the railroad car holding the Products is constructively placed by the railroad carrier at the delivery destination. Buyer shall be responsible for unloading the Products from Seller’s railroad cars and loading the Product into vessels owned or contracted for by Buyer. Buyer shall unload Seller’s railroad cars as soon as reasonably practicable, provided that Buyer shall pay Seller demurrage at the rate of \$50 per day per car or the rate charged by the applicable railroad carrier, whichever is greater, beginning on the eighth day after the railroad cars have been constructively placed at the delivery destination until the date that such cars are emptied and released to the applicable railroad carrier. Buyer shall indemnify Seller for loss, damage, or injury to persons or property, including without limitation Seller’s railroad cars, arising from or relating to actions or omissions of any person or entity other than Seller from the time Seller’s railroad cars have been constructively placed at the delivery destination until the time that such cars are emptied, released, and removed by the applicable railroad carrier. Railroad cars will be deemed to be constructively placed at the delivery destination as reasonably determined by the applicable railroad carrier.
6. **Product Measurement; Overages; Underages.** Products shall be measured by calibrated meters or scales, reasonably acceptable to the Parties. Product weights shall be measured in short tons (2,000 pounds). Product volumes shall be rounded to the nearest three decimal places of a unit of volume reasonably acceptable to Seller (e.g. gallons, quarts, pints, dry or wet ounces, pounds, long ton, kilograms). Upon advance written request to the other Party, each Party shall have the right to have a representative witness tests of the other Party’s applicable meters and scales and measurements of Products. Measurements shall be deemed to be correct absent manifest error. Seller and Buyer recognize that loading capabilities for certain transportation methods vary and limit the ability to load exact quantities of Product. If Buyer receives an amount of Product in excess of the quantity specified in a Transaction Document due to the inability to load exact quantities (and in no event due to the error of Seller) (such excess being the “**Relevant Excess**”), Seller may elect, in its sole and absolute discretion, to: (i) charge Buyer for the Relevant Excess at the greater of the per Unit price for such Product or Seller’s then-current per Unit price for such Product, which Buyer agrees to promptly pay; (ii) require Buyer to make available the Relevant Excess to Seller at no cost to Seller and Seller may elect to take or redirect the Relevant Excess at Seller’s cost; or (iii) notify Buyer that Seller elects not to take or charge for the Relevant Excess, in which case Buyer may retain the Relevant Excess at no additional cost to Buyer. If Buyer receives an amount of Product less than the quantity specified in a Transaction Document due to the inability to load exact quantities, Seller may, at Seller’s option, deliver such undelivered amount or refund to Buyer the portion of the purchase price applicable to such undelivered amount at the per unit price applicable to such load. Unless otherwise specified in an applicable Transaction Document, Product weight is determined at the origin by the customary method at such location.
7. **Limited Representations and Warranties.** Seller represents and warrants to Buyer that the Products will conform to generally accepted industry standards and that Products delivered shall be free from lawful security interests, liens, and encumbrances (collectively, the “**Limited Representations and Warranties**”).

THERE ARE NO WARRANTIES OTHER THAN THE LIMITED REPRESENTATIONS AND WARRANTIES DIRECTLY ABOVE OR IN AN APPLICABLE TRANSACTION AGREEMENT. SELLER MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF THE PRODUCTS FOR A PARTICULAR PURPOSE (EVEN IF SUCH PURPOSE IS KNOWN TO SELLER), USE,

ELIGIBILITY OF THE PRODUCT FOR ANY PARTICULAR TRADE USAGE, OR ANY WARRANTY AGAINST INFRINGEMENT (INCLUDING WITHOUT LIMITATION INFRINGEMENT OF PATENT AND TRADEMARK RIGHTS). ANY IMPLIED WARRANTIES ARE EXPRESSLY DISCLAIMED AND EXCLUDED. BUYER ASSUMES ALL RISK AND LIABILITY FOR THE RESULTS OBTAINED BY BUYER'S USE, APPLICATION, OR RESALE OF PRODUCTS AND ALL SUBSEQUENT USES AND REALES OF PRODUCTS.

8. **Notification of Claims.** Buyer shall inspect the Products upon delivery and notify Seller with reasonable particularity as soon as practicable, but no later than 10 days after delivery, of (a) any Products that do not conform to the Specifications, (b) any failure by Seller to comply with these Terms, any applicable Transaction Agreement, or any other agreement between the Parties with respect to the Products, or (c) any other complaint that Buyer may have with respect to, arising from, or relating to the Products or their storage, possession, transportation, and use (each a "**Claim**"). Buyer shall be deemed to have accepted any Products for which notice of a Claim is not timely provided under this Section 8. Buyer shall make any Products that it alleges do not conform to the Specifications available to Seller for its own investigation. The following shall be deemed waiver by Buyer of the provisions of this Section 8: (i) Buyer's failure to timely provide notice under this Section 8; (ii) Buyer's use or application of the Products; (iii) the mixture, blending, or other combination of the Products with any other product or material (whether or not of like kind with the Products); and (iv) Buyer's failure to timely notify Seller under this Section 8. "**Delivery**" as used in these Terms refers to Buyer's receipt of actual or constructive possession of or control over the Products under these Terms.
9. **Sole Remedy for Breach; Deadline for Claims.** Buyer's sole remedy for any claims arising out of or relating to a breach or alleged breach of any of the Limited Representations and Warranties shall be limited to replacement of the Products in breach or refund of the amounts already paid by Buyer with respect to the Products in breach, as elected in Seller's sole discretion. If Seller elects to replace any of the Products, replacement Products would be shipped at Seller's expense. Except as otherwise provided in Section 8 of these Terms, no claim or action shall be made or brought by Buyer against Seller unless (a) Buyer first provides written notice to Seller of any claim alleged to exist against Seller within one year after the event complained of first became knowable or known to Buyer; and (b) an action in this regard is actually commenced by Buyer within two years after the date of such notice.
10. **Taxes.** All prices for Products shall be exclusive of all sales, use, and excise taxes, and any other similar taxes, duties, assessments, and charges of any kind imposed by any governmental authority (collectively, "**Taxes**"), and Buyer shall be responsible for and pay all such Taxes, provided that Buyer shall not be responsible for any Taxes imposed on Seller with respect to Seller's income, personnel, or real or personal property. Without limiting the foregoing, unless the Parties agree otherwise in a separate fully executed Tonnage Tax Agreement, Buyer agrees that it shall be solely responsible for remitting all State tonnage Tax owed on purchases of Products from Seller and that Seller shall have no obligation to include such amounts on its invoices.
11. **Payment Terms.** Unless the Parties agree otherwise, all amounts owed to Seller shall be paid by wire transfer of immediately available funds to an account specified by Seller. Unless the Parties agree in writing otherwise, Buyer shall pay for Product in full prior to delivery. If Seller agrees to permit payment after Product delivery, Buyer shall pay in such amounts and at such times as set forth in an invoice or other Transaction Document delivered to Buyer. If Seller agrees to permit payment after Product delivery but has not delivered an invoice to Buyer, payment shall be due within 15 days of Product shipment. In any other case where payment is owed by Buyer to Seller and the date for payment is not specified, payment shall be due at the time set forth in an invoice prepared by Seller and delivered to Buyer. Buyer's obligation to pay when due is absolute and may not be set off against any other amounts or withheld for any other reason. If Buyer fails to pay any amount owed when due, Seller may immediately exercise any and all rights and remedies available to it, including those set forth in these Terms. All amounts owed to either Party under these Terms or any Transaction Agreement shall be paid in United States Dollars. Notwithstanding anything else herein to the contrary, in the event of a conflict between the due date for payment under any applicable credit application, credit agreement, invoice, Transaction Document, or these Terms, the earliest due date shall apply.
12. **Past Due Amounts.** Amounts owed to Seller and not paid when due shall accrue interest at the rate of 18 percent per annum or the highest rate permitted by applicable law, whichever is less, from the date due until such amounts are paid to Seller.¹ Payments made on past due accounts will be applied to Buyer's outstanding balances in the discretion of Seller.
13. **Financial Assurance.** If Buyer fails to make payment when due, approaches or exceeds the limit of credit offered to Buyer by Seller (if any – Seller has no obligation to offer credit to Buyer), or Seller in good faith determines that Buyer may not be able to perform its obligations, Seller may refuse to sell or deliver additional Products to Buyer or suspend performance of Seller's obligations until Buyer delivers adequate financial assurance ("**Financial Assurance**") to Seller, which may include advance cash payment, a guarantee from a creditworthy entity as determined by Seller in its sole discretion, or a letter of credit from a nationally recognized financial institution. Delivery of Financial Assurance shall in no event satisfy Buyer's payment obligations to Seller unless and until Seller actually receives payment and none of Seller's other rights or remedies in these Terms, in any Transaction Agreement, or allowed by applicable law shall be affected or suspended thereby.
14. **Seller's Rights.** If Buyer (a) fails to provide Financial Assurance when requested by Seller, (b) fails to pay any amount owed when due, (c) fails to comply in any material respect with any term of these Terms or any Transaction Agreement, and, if such failure is capable of being cured, is not cured to the satisfaction of Seller within the earlier of 10 days after notice thereof or the applicable cure period, if any, of any Transaction Agreement (provided, however, failure to pay any amount owed when due shall not be subject to any notice and cure period), or (d) admits in writing its inability to pay its debts as they become due, makes a general assignment for the benefit of creditors, has a receiver appointed to it, institutes or agrees to the institution of proceedings in bankruptcy, insolvency, or analogous laws, or is the subject of an order by a court relating thereto, Seller may, in any of the foregoing cases, take any one or more of the following actions in its sole discretion: (i) Seller may suspend performance of its obligations under these Terms or any Transaction Agreement; (ii) Seller may terminate these Terms or

¹ Interest will not exceed the maximum rate or amount of non-usurious interest that may be contracted for, taken, reserved, charged, or received under law. Any interest in excess of that maximum amount will be credited toward Buyer's balance, or if Buyer's balance has been paid, refunded. Buyer warrants to Seller that all purchases of Products by Buyer are for commercial purposes only and not for family, household, or personal purposes.

any Transaction Agreement; (iii) Seller may demand that any amounts of money outstanding under these Terms or any Transaction Agreement shall be due and payable immediately; and/or (iv) Seller may set off or net any amounts owed by Seller to Buyer against any amounts owed by Buyer to Seller. The foregoing rights and remedies shall be cumulative in nature, and any rights of Seller under this Section shall be in addition to any other rights or remedies that Seller may have under these Terms or any Transaction Agreement, at law, or in equity.

15. **Forward Contract.** These Terms, and the agreements between the Parties to sell Products, are “forward contracts” within the meaning of Title 11 of the United States Code (the “**Bankruptcy Code**”), and Sections 362(b)(6), 546(e), 556, and 562 of the Bankruptcy Code shall apply.
16. **Fees and Expenses.** Buyer shall reimburse Seller for all expenses incurred by Seller in enforcing these Terms or any Transaction Agreement, including without limitation court costs, reasonable attorneys’ fees, and costs and expenses associated therewith.
17. **Failure to Ship or Take Delivery.** If Buyer fails to order shipment or take delivery of Products prior to the end of any applicable delivery period or any other date by which Buyer has agreed to ship or take delivery of Products, Seller may (a) charge monthly storage fees to Buyer for Product not shipped or delivered at the beginning of each month thereafter in the amount of \$8 per short ton of urea ammonium nitrate Product and \$15 per short ton of anhydrous ammonia Product or (b) elect to terminate the applicable Transaction Agreement and return to Buyer amounts already paid for Products which have not been delivered, without interest. Notwithstanding anything else herein to the contrary, in the event of a conflict between this Section 17 and any applicable Transaction Document, the terms of the Transaction Document control.
18. **Delivery Requirement Failure.** If Seller is unable for any reason to meet all of its delivery requirements, Seller shall have the right, at its option, and without liability to Buyer, to apportion its available Products among any and all parties to which it is obligated to make deliveries, including its affiliated divisions and companies, in such manner as Seller reasonably believes fair and equitable, including, but not limited to, an allocation based on historical or planned deliveries. Seller shall have no obligation to make up any shortages to Buyer resulting from any allocation hereunder.
19. **Access to Seller’s Facilities.** Buyer’s owned or leased truck carriers (“**Buyer Carriers**”) and third party truck carriers engaged by Buyer (“**Third Party Carriers**”) and together with any Buyer Carriers, “**Loading Parties**”) shall have a non-exclusive right, subject to the Third Party Facility Access Terms attached as **Exhibit A (“Access Terms”)** and any applicable Facility rules and instructions (“**Facility Rules**”), to enter Seller’s applicable Facilities for the sole purpose of loading Products that are delivered FOB Seller’s Facility. All Facility Rules, as they may be amended or supplemented from time to time by Seller, shall be deemed to be a part of these Terms immediately upon the earlier of posting at the Facility, posting on Seller’s website, or a Loading Party’s receipt thereof. Buyer represents and warrants to Seller that the Loading Parties will be adequately insured, be properly licensed and trained, and comply with the Access Terms, the Facility Rules, and Laws (defined below). Notwithstanding the foregoing, Seller shall have the right to refuse access to its Facilities to any Loading Party who, in Seller’s sole judgment, poses a risk to persons, property, or the environment.
20. **Compliance with Laws.** Buyer shall comply with all applicable laws, regulations, and ordinances (collectively, “**Laws**”), including without limitation any export or import laws applicable to the sale, use, application, transportation, sale, or resale of the Products. Buyer shall use the Products solely as intended by the manufacturer or any applicable Laws. Buyer shall maintain in effect all licenses, permissions, authorizations, consents, and permits that it needs to perform its obligations under these Terms or any Transaction Agreement. Buyer assumes sole responsibility for shipments of Products requiring government import clearance. Seller may terminate these Terms or any Transaction Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on or related to the Products.
21. **Force Majeure.** Except with respect to payment for delivered Products, neither Party shall be liable or responsible for any failure or delay in performing its obligations, or any loss or damage resulting therefrom, when and to the extent such failure or delay is caused by or results from acts or circumstances beyond its reasonable control, including, without limitation, acts of God, the elements, floods, fires, explosions, storms, earthquakes, power outages, wars, invasions or hostilities (whether war is declared or not), terrorist threats or acts, military operations, national emergencies, riots or civil unrest, revolution, insurrections, epidemics, government proration or regulation, newly implemented or enforced laws, regulations, or ordinances, actions of courts of competent jurisdiction, strikes, lockouts, differences with workmen, labor disturbances or disputes (whether or not relating to either Party’s workforce), breakage or breakdown of equipment, facilities, tankage, or pipelines, shortage of supplies or raw materials, or restraints or delays affecting carriers, manufacturers, or distributors, provided that, if the event in question continues for a continuous period in excess of 30 days, either Party may terminate these General Terms and Conditions or any Transaction Agreement with respect to future deliveries of Products upon notice to the other Party. If by reason of any such circumstances, Seller’s supply of Products is insufficient to meet all of its delivery requirements, Seller shall have the right, at its option, and without liability to Buyer, to apportion its available Products among any and all parties to which it is obligated to make deliveries, including its affiliated divisions and companies, in such manner as Seller reasonably believes fair and equitable, including, but not limited to, an allocation based on historical or planned deliveries. Seller shall have no obligation to make up any shortages to Buyer resulting from any allocation hereunder.
22. **Agister’s Lien.** Buyer acknowledges that the sale of agricultural chemicals or agricultural seed on credit and the provisions of labor related to agricultural chemicals or agricultural seed is subject to Chapter 128, Texas Agriculture Code. Failure to pay the agreed or reasonable charges for the Products may result in the attachment of a lien to the proceeds of the agricultural products produced with the aid of such Products.
23. **Safety Data Sheets.** Seller has made Safety Data Sheets for applicable Products (the “**Safety Data Sheets**”) available to Buyer at www.pooleag.com/SDS. Buyer irrevocably agrees (a) that it can access such webpage without the need to purchase new technology or equipment; (b) to receive Safety Data Sheets solely through such linked webpage; and (c) to receive notices that such Safety Data Sheets have been modified by Email (defined below) or in any Transaction Agreement.
24. **Hazard Warnings; Assumption of Risk.** Based on regulatory pronouncements from the United States Environmental Protection Agency and other governmental authorities and the weight of scientific evidence, the Parties recognize the safety and efficacy of the Products, including

their safe use in accordance with label instructions and applicable regulatory standards. Regardless, Buyer acknowledges that it has been claimed there are risks and hazards associated with handling and using the Products. Buyer represents that it has complete knowledge of the alleged hazards of the Products and that it undertakes and assumes full responsibility to maintain, observe, and communicate adequately to its agents, employees, customers, and contractors all necessary information for the safe handling and use of the Products. Buyer agrees without limitation to promptly provide to its employees, customers, and community representatives, as appropriate, any information provided or made available by Seller relating to hazards, human health, or human or environmental safety on the Products. Buyer assumes, as to its employees, independent contractors, and subsequent purchasers of the Products, all responsibility for all such necessary warnings or other precautionary measures relating to hazards to person and property associated with the Products.

BUYER ASSUMES ALL RISK AND LIABILITY FOR THE USE OF THE PRODUCTS, WHETHER SINGLY OR IN COMBINATION WITH OTHER SUBSTANCES, AND FOR LOSS, DAMAGE, OR INJURY TO PERSONS OR PROPERTY OF BUYER OR OTHERS ARISING OUT OF THE USE, APPLICATION, OR POSSESSION OF THE PRODUCTS BY OR FOR BUYER.

25. **Indemnification.** Buyer hereby releases, indemnifies, and agrees to defend and hold Seller, its parent, affiliate, and subsidiary entities, and its and their respective directors, managers, officers, employees, agents, and representatives harmless from and against each and every suit, demand, and cause of action, and all liabilities, expenses, liens, losses, claims, damages, and costs (including court costs and reasonable attorneys' fees) directly or indirectly arising out of or relating to Buyer's or its employees, agents, contractors, or subcontractors (a) failure to comply with these Terms or any Transaction Agreement, (b) access to Seller's Facilities, (c) loading, handling, storage, sales, transportation, application, use, misuse, or disposal of Products, and (d) negligence or willful misconduct.
26. **Exclusion of Certain Types of Damages.** EXCEPT (A) TO THE EXTENT CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF A PARTY SEEKING INDEMNIFICATION, (B) WITH RESPECT TO CLAIMS SUBJECT TO BUYER'S INDEMNIFICATION OBLIGATIONS, OR (C) AS OTHERWISE EXPRESSLY SET FORTH IN THESE TERMS OR ANY TRANSACTION AGREEMENT, NEITHER PARTY SHALL BE LIABLE UNDER ANY CIRCUMSTANCES FOR ANY DAMAGES PERTAINING TO LOSS OF USE, LOSS OF REVENUE, LOSS OF PROFIT, OR BUSINESS INTERRUPTION, OR FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, SPECIAL, OR SPECULATIVE DAMAGES, WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT, OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.
27. **Limitation of Liability.** SELLER'S LIABILITY AND BUYER'S EXCLUSIVE REMEDY FOR ANY CAUSE OF ACTION ARISING OUT OF THESE TERMS OR ANY TRANSACTION AGREEMENT IS EXPRESSLY LIMITED, AT SELLER'S OPTION, TO REPLACEMENT OF THE PRODUCTS AT ISSUE (DELIVERED AT SELLER'S EXPENSE, FOB BUYER'S DESTINATION) OR REFUND TO BUYER OF AN AMOUNT NOT TO EXCEED THE PURCHASE PRICE PAID BY BUYER FOR THE PRODUCTS AT ISSUE, WHETHER OR NOT SUCH REMEDY SHALL BE DEEMED TO FAIL OF ITS ESSENTIAL PURPOSE.
28. **Product Manufactured by Third Parties.** The Products may be manufactured by Seller or third parties with whom Seller has contracted. The Products may be sold by Seller on behalf of third parties as broker or agent.
29. **Miscellaneous.**
- (a) **Notices.** Any notice between the Parties must be in writing (which shall include electronic mail ("**Email**")) and will be effective, and any applicable time period shall commence, when (a) delivered to the recipient Party at the address given by the recipient Party in a Transaction Agreement by a nationally recognized delivery service (costs prepaid) with evidence of delivery or (b) transmitted by Email to the recipient Party at the Email address given or used by the recipient Party, provided the sender does not receive notice that such Email failed to deliver to the recipient Party.
- (b) **Entire Agreement.** These Terms, along with any Transaction Agreement, supersede all prior agreements, whether written or oral, between the Parties with respect to the relevant subject matter and constitute (along with any exhibits or other documents to be delivered pursuant thereto) a complete and exclusive statement of the terms of agreement between the Parties. These Terms, and any Transaction Agreement, may only be amended, supplemented, or modified by a writing executed by each of the Parties, except that these Terms may be amended by Seller from time to time upon 30 days advance notice to Buyer, provided that any amended terms shall only apply with respect to transactions occurring following such 30-day notice period.
- BUYER HAS NOT RELIED ON ANY STATEMENT, REPRESENTATION, WARRANTY OR AGREEMENT OF SELLER OR OF ANY OTHER PERSON ON SELLER'S BEHALF, INCLUDING ANY REPRESENTATIONS, WARRANTIES OR AGREEMENTS ARISING FROM STATUTE OR OTHERWISE IN LAW, EXCEPT FOR THE REPRESENTATIONS, WARRANTIES OR AGREEMENTS EXPRESSLY CONTAINED IN THESE TERMS OR A TRANSACTION AGREEMENT.**
- (c) **Governing Law.** All matters relating to or arising out of these Terms or any Transaction Agreement, whether sounding in contract, tort, or otherwise, will be governed by and construed and interpreted under the laws of the State of Texas without regard to conflicts of laws principles that would require the application of any other State's law. The United Nations Convention on Contracts for the International Sale of Goods or any subsequently enacted treaty or convention of similar nature shall not apply to these Terms or any Transaction Agreement.
- (d) **Jurisdiction.** Any proceeding arising out of or relating to these Terms or any Transaction Agreement shall be brought in the courts of the State of Texas, in the County of Potter, or, if it has or can acquire jurisdiction, in the United States District Court for the Northern District of Texas, and each of the Parties irrevocably submits to the exclusive jurisdiction of each such court in any such

proceeding, waives any objection it may now or hereafter have to venue or to convenience of forum, agrees that all claims in respect of such proceeding shall be heard and determined only in any such court, and agrees not to bring any proceeding arising out of or relating to these Terms or any Transaction Agreement in any other court.

(e) **WAIVER OF JURY TRIAL.** EACH PARTY, KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY, WAIVES ITS RIGHT TO TRIAL BY JURY IN ANY PROCEEDING ARISING OUT OF OR RELATING TO THESE TERMS OR ANY TRANSACTION AGREEMENT, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE.

(f) **No Waiver.** Except as expressly provided otherwise in these Terms, neither any failure nor any delay by any Party in exercising any right, power, or privilege will operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege.

(g) **No Third Party Beneficiaries.** Except as expressly set forth in these Terms, nothing in these Terms or any Transaction Agreement shall entitle any person other than Seller or Buyer, or their successors or assigns, to any claim, cause of action, right, or remedy of any kind relating to the matters contemplated hereby.

(h) **No Agency or Joint Venture.** Buyer shall not in any event nor for any purpose be deemed to be the agent, servant or employee of Seller, and vice versa. It is specifically agreed that there is not, shall be no, privity of endeavor or joint venture whatsoever between Seller and Buyer.

(i) **Survival.** The terms of these Terms and any Transaction Agreement shall continue in full force and effect notwithstanding the fulfillment of any or all applicable Transaction Agreements. Without limiting the generality of the foregoing, Buyer's indemnity obligations will survive for the applicable statute of limitations period.

(j) **Severability.** If any provision of these Terms or any Transaction Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of these Terms or such Transaction Agreement will remain in full force and effect. Any provision of these Terms or any Transaction Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

(k) **Information, Confidentiality, and Intellectual Property.** Buyer acknowledges that data and other information contained in Seller's catalogues, Specifications, Safety Data Sheets, and other descriptive publications published or made available by Seller in print or electronically, and any statement, recommendation, advice, sample or other information provided by Seller regarding any specification, product or use of product is, in each case, subject to variation with or without prior notice to any person, **AND ANY SUCH DATA, INFORMATION, STATEMENT, RECOMMENDATION, ADVICE OR SAMPLE SHALL NOT FORM THE BASIS OF, NOR SERVE AS A WARRANTY BY SELLER, WHETHER EXPRESS OR IMPLIED.** Each party agrees to keep confidential the terms and conditions of this Agreement and all other proprietary information disclosed by or on behalf of the other party or otherwise learned or obtained by such party in connection with this Agreement or the performance of this Agreement, including Seller's prices, costs, discounts, inventions, planned and existing products, customers and distributors as well as information regarding a party's business and finances. Each party agrees that it will not disclose any such confidential information to others and will advise its employees, officers, directors, consultants and legal and tax advisors of such confidential information and take all other steps necessary to protect such confidential information. The sale or delivery of Products under to Buyer shall not, by implication or otherwise, convey any license to Buyer under any intellectual property right relating to the composition and/or use of the Products, and Buyer expressly assumes all risks of any intellectual property infringement by reason of its purchase, importation and/or use of Products.

(l) **Counterparts and Electronic Signatures.** Agreements between the Parties may be executed in one or more counterparts, each of which will be deemed to be an original copy and all of which, when taken together, will be deemed to constitute one and the same agreement or document, and will be effective when counterparts have been signed by each of the Parties and delivered to the other Parties. A manual signature on the signature page to an agreement, an image of which shall have been transmitted electronically, will constitute an original signature for all purposes. The delivery of copies of the signature page of an agreement or other document to be delivered pursuant to an agreement, including executed signature pages where required, by electronic transmission will constitute effective delivery for all purposes.

(m) **Limits of These Terms.** Unless expressly otherwise provided herein, these Terms and any Transaction Agreement do not establish or guarantee shipping, handling or price variables for distribution or servicing, including taxes, freight, application fees, surcharges or extra handling fees.

(n) **Assignment.** Neither party may assign or subcontract its rights or obligations under these Terms or any Transaction Agreement without prior written consent from the other Party, which may be withheld, conditioned, or delayed for any reason. This Agreement shall be binding on the heirs, administrators, executors, successors, and assigns of Seller and Buyer.

EXHIBIT A
Third Party Facility Access Terms

1. **Facility Access.** Subject to these Access Terms, Seller grants to Loading Parties non-exclusive and non-assignable permission to enter the Facility for the sole purpose of loading such Products into or unloading Products from transport vehicles (“**Transport Vehicles**”) and driving Transport Vehicles across the Facility during operating hours in effect from time to time at the applicable Facility.
2. **Revocation; Applicability of Terms.** Each Loading Party agrees that Seller’s grant of permission hereunder to enter the Facility is non-exclusive and non-assignable and may be revoked by Seller at any time, in its sole discretion, without prior notice. These Access Terms shall continue in effect until such time as they are modified or terminated by Seller. Any indemnities or outstanding obligations of the Loading Parties shall survive modification or termination for all purposes.
3. **Loading and Safety.** Each Loading Party shall send into the Facility only safe and serviceable Transport Vehicles which are compatible with loading equipment at the Facility, and which shall comply with all Laws, including all applicable Laws relating to the loading and transportation of hazardous materials, wastes, and substances, and each Loading Party shall obtain all insurance, permits, licenses or other authorities required by any governmental authority under such Laws. Each Loading Party shall send to the Facility only such personnel as have been properly licensed and instructed as to the characteristics and safe hauling methods associated with the Facility and the Products to be loaded and transported. Notwithstanding the foregoing, Seller may at any time refuse entry to or remove immediately from the Facility any person (including, without limitation, any Loading Party and its employees or any carrier) or equipment (including any Transport Vehicle) which, in the sole discretion of Seller poses a hazard to the Facility’s personnel or property or violates the Facility rules or licensing or insurance requirements.
4. **Indemnification.** EACH LOADING PARTY AGREES TO AND SHALL RELEASE, HOLD HARMLESS, DEFEND AND INDEMNIFY SELLER, ITS PARENT, THEIR SUBSIDIARIES AND AFFILIATES, AND THE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS AND INVITEES OF EACH OF THEM (COLLECTIVELY, *INDEMNITEES*), FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION, DAMAGES, SUITS, COSTS, LOSSES OR EXPENSES OF ANY KIND OR CHARACTER AND WHETHER OR NOT ARISING FROM OR RELATING TO A BREACH OF THESE ACCESS TERMS OR THE TERMS TO WHICH THEY ARE ATTACHED (COLLECTIVELY, *CLAIMS*), INCLUDING REASONABLE ATTORNEYS’ FEES, EXPERT FEES, AND OTHER COSTS OF LITIGATION, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE EXERCISE BY EACH LOADING PARTY OF THE PRIVILEGES HEREIN GRANTED; PROVIDED, HOWEVER, SUCH RELEASE, HOLD HARMLESS, DEFENSE, AND INDEMNITY OBLIGATIONS SHALL NOT APPLY TO THE EXTENT CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNITEE. FURTHER, BUYER AGREES TO AND SHALL RELEASE, HOLD HARMLESS, DEFEND AND INDEMNIFY THE INDEMNITEES FOR ALL CLAIMS ARISING FROM OR RELATING TO THE ACTS OR OMISSIONS OF ANY LOADING PARTY ENGAGED BY OR ON BEHALF OF BUYER.
5. **Insurance**
 - (a) **Coverages and Limits.** Each Loading Party shall at all times during the term of this Agreement carry and pay for the following minimum insurance coverages and limits (and such additional coverages and limits as may be required by Law): (i) workers compensation (or comparable) insurance, including all such insurance as may be required by applicable State and Federal workers’ compensation acts and such other acts as may be applicable to each Loading Party’s activities under this Agreement; (ii) employers liability insurance with a limit of not less than \$1,000,000.00 per accident; (iii) commercial general liability insurance on an occurrence form with a combined single limit of not less than \$1,000,000.00 per occurrence, including coverage for (A) premises and operations, (B) products and completed operations, (C) explosion, collapse and underground damage, (D) liability assumed under an insured contract (including the tort liability of another assumed in a business contract), and (E) sudden and accidental pollution liability; and (iv) business vehicle liability insurance with a combined single limit of \$1,000,000.00 per occurrence for owned, hired, or otherwise operated non-owned vehicles, in the form of a motor carrier or truckers policy that contains trailer interchange coverage and pollution liability/environmental impairment coverage.
 - (b) **Additional Insured.** Each Loading Party shall cause all required insurance policies to include Indemnitees as additional insureds. All insurance required hereunder and provided by each Loading Party shall be primary to any other insurance coverage to Seller or its related insureds and shall apply and be in full force and effect regardless of other insurance. Each Loading Party shall furnish to Seller upon request a copy of any of the required insurance policies, including all riders or endorsements; provided, however, that neither review nor failure to review such policies shall constitute acquiescence thereto or be deemed to waive or diminish Seller’s rights.
 - (c) **Insurance.** Upon request of Seller which may be made from time to time in its discretion, each Loading Party shall furnish to Seller certificates of insurance that demonstrate each Loading Party’s compliance with these Access Terms. All insurance coverage provided by each Loading Party under this Agreement shall be supplied on policy forms and by insurers reasonably acceptable to Seller. Each Loading Party’s obligations and liabilities under this Agreement, including its indemnification obligations, shall not be limited or relieved through compliance or noncompliance with these insurance-related provisions.