

TOTALENERGIES PETROCHEMICALS & REFINING USA, INC. ("TEPRI" or "SELLER")
GENERAL TERMS AND CONDITIONS FOR SHORT TERM AND SPOT
PURCHASE AND SALE OF STYRENE MONOMER AND/OR BASE CHEMICALS

Product Description, Product Specifications, Quantity, Price, Special Payment Terms, Delivery Point, Delivery Period, Shipment Mode, Shipment Instructions, and/or other specific terms and conditions have been agreed upon by the parties (the "Specific Terms and Conditions"). The Specific Terms and Conditions incorporate these General Terms and Conditions by reference therein. The Specific Terms and Conditions together with these General Terms and Conditions and TEPRI's Base Chemicals and Styrene Monomer Marine Provisions ("Marine Provisions"), if applicable, will constitute the parties' Agreement of Purchase/Sale ("Agreement"). In the event any of the terms, provisions or general subject matters contained herein or covered by, are in conflict with any terms and conditions contained in the Specific Terms and Conditions or Marine Provisions, then the terms and conditions contained in the Specific Terms and Conditions and the Marine Provisions will control.

If the transaction has been formed in a telephone conversation between the parties, the confirmation (and the Specific Terms and Conditions contained therein) will be deemed an accurate record of the terms of the transaction unless counterparty delivers to TEPRI a notice of objection to the confirmation and/or any of the Specific Terms and Conditions therein on or before the deadline set out in the confirmation. Acceptance (either directly or by failure to make timely objection) of the confirmation of the transaction indicates counterparty does not object to the Specific Terms and Conditions or to these General Terms and Conditions.

1 PAYMENT.

- 1.1. Payment will be due from Buyer into Seller's designated bank account in U.S. dollars via wire transfer of immediately available funds no later than thirty (30) days from the date the Bill of Lading is issued (Bill of Lading Date inclusive) against Seller's commercial invoice and normal shipping documents as described herein. Buyer's obligation to make payment pursuant to the terms of the Agreement is contingent upon the receipt of the following documents: (i) full set of bills of lading, (ii) commercial invoice (original and one copy), and (iii) certificates of quantity and quality. A book or stock transfer receipt shall be paid on the effective date of the transfer provided an appropriate invoice and supporting documents have been received by Buyer at least two (2) working days prior to the effective date.
- 1.2. In the event the due date falls on a Saturday or a bank holiday for Seller's designated bank other than a Monday bank holiday, then payment may be made on the immediately preceding bank business day. If the due date falls on a Sunday or a Monday bank holiday, then payment may be made on the next succeeding bank business day. Any amount not paid when due shall bear interest from the due date (inclusive) until the date full payment is received by Seller (exclusive) at a rate equal to the lesser of (a) two percent (2%) above the prime rate in effect at the opening of business on the due date at the major lending institutions as quoted in the "Money Rates" section of the *Wall Street Journal*, and (b) the maximum rate of interest permitted under applicable law. Buyer shall pay such interest within five (5) calendar days following Buyer's receipt of Seller's invoice for such interest. Buyer shall pay all of Seller's costs (including, but not limited to, attorney's fees and court costs) of collecting past due payments.

- 2 TITLE, RISK OF LOSS, AND DELIVERY.** Title to, and all risk of loss or damage of any Product delivered under this Agreement shall pass from Seller to Buyer as follows: (a) at the inlet flange when delivering into any vessel with hoses; (b) at the permanent loading pipe flange when delivering into any vessel without hoses; (c) at the outlet flange when receiving from any vessel with hoses; (d) at the vessel's permanent discharge pipe flange when receiving from any vessel without hoses; (e) as the Product enters the receiving equipment when delivering into any truck, tank car or pipeline; (f) as the Product is accepted by the carrier for shipment when delivering to any common carrier; and (g) as the Product enters a storage tank when delivering into the storage tank from a non-vessel delivery system. Subparts (e), (f) and (g) may not be applicable if some or all of the purchase or sales occur outside the United States of America. In the event the Seller or Buyer causes loss or damage to Product during delivery or receipt, the preceding title and risk of loss provisions shall not apply. Instead, (i) the party causing the loss or damage shall pay for any loss or damage to the Product, regardless of the physical location or timing of the loss or damage and (ii) the Seller shall always pay for the expense of pumping Product to or from a delivery system or common carrier. Delivery shall occur when title to the Product passes to Buyer.

3 **MEASUREMENT.**

- 3.1. **Marine Vessels:** A mutually acceptable independent inspector shall hand gauge and record static shore tank measurements immediately before and immediately after delivery of the Product to determine the volume of Product delivered. Each party shall pay one-half of the independent inspector's fees and charges at the point of delivery. If relevant shore tank gauge measurements are not available, but appropriate meters are available at or near the delivery point, the operator of the facility at the delivery point shall read the meters at the time of delivery to determine the volume of Product delivered.
- 3.2. **Pipelines:** At the time of delivery, the operator shall read meters installed on the pipeline at or near the delivery point to determine the volume of Product delivered.
- 3.3. **Tank Trucks/Tank Cars:** The operator of the loading facility shall read meters located at or near the delivery point to determine Bill of Lading volume for each delivery of Product into tank trucks and/or tank cars. If meters are not available at or near the delivery point, the driver shall innage/ullage each tank truck and/or tank car immediately before and immediately after delivery of the Product to determine the volume of Product delivered. These innages/ullages shall be converted to net delivered gallons based on each tank truck's/tank car's official calibration tables.
- 3.4. All volumes of delivered Product shall be corrected for temperature to 60 degrees Fahrenheit in accordance with ASTM D-1250, Table 6B in its latest revision. The term "barrel" means 42 U.S. gallons of 231 cubic inches per gallon. All measurements and/or tests shall be made in accordance with the latest standards or guidelines published by the API or ASTM; provided, however, that in the event a governmental agency with jurisdiction requires a certain standard of measurement to be utilized in a given situation, that standard shall be used. All meters used for measurements shall be proven within thirty (30) days immediately prior to the time of each delivery. The meter operator shall, upon request, allow the other party to review and copy relevant meter proving records.

4 **CLAIMS.** Claims as to shortage in quantity, failure to meet specifications, demurrage and shifting, shall be made by written notice within ninety (90) days after the delivery in question. **OTHERWISE, ANY SUCH CLAIMS SHALL BE DEEMED TO HAVE BEEN WAIVED.** Every notice of claim shall set forth fully the facts upon which the claim is based and shall include full documentation in support of the claim.

5 **TRANSPORTATION EQUIPMENT.** Either party may decline to load, unload or permit loading or unloading of any equipment which it reasonably determines to be contaminated, not suitable for carrying Product, not approved by vetting entities of either party, or not in compliance with any governmental health, environmental or safety regulation.

6 **RIGHT TO WITNESS.** Each party shall be entitled to have its representatives present during all loadings, unloadings, tests and measurements involving Product delivered hereunder. Each party agrees that its agents and employees will comply with all restrictions and safety regulations of the other party when such agents or employees are on the premises of the other party's designated facility and have been informed of such restrictions and safety regulations.

7 **LIMITED WARRANTY.**

- 7.1. Seller warrants that (i) Product delivered pursuant to the Specific Terms and Conditions shall conform to the descriptions and specifications contained therein as well as any descriptions and specifications contained herein; (ii) the Seller had good and defensible title, free and clear of liens, security interests, taxes and encumbrances on the Product at time of delivery and transfer of title; (iii) Seller has the full right and authority to transfer such title and to affect delivery of such Product to the Buyer; and, (iv) the Product will be produced and delivered in full compliance with all applicable governmental laws and regulations.
- 7.2. **EXCEPT AS STATED ABOVE OR IN THE SPECIFIC TERMS AND CONDITIONS, SELLER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR USE OR OTHERWISE, WHETHER THE PRODUCT DELIVERED UNDER THIS AGREEMENT IS SINGULARLY OR IN COMBINATION WITH OTHER SUBSTANCES OR IN ANY PROCESS.**

8 **PRODUCT HAZARDS.** The Buyer acknowledges receipt from the Seller of Material Safety Data Sheets (“MSDS”) for the Product to be received and acknowledges that it has been warned by the Seller of the risks associated with the Product and is aware of the hazards and risks of handling or using the Product. The Buyer will fully inform its employees, agents, contractors, carriers and customers who handle, use, buy or in any way may be exposed to the Product of all known hazards of the Product and will take reasonable steps to convey information as to contents of MSDS and any updates to the MSDS for such Product to all such employees, agents, contractors, carriers and customers. The Buyer shall maintain compliance with all safety and health related governmental requirements concerning the Product.

9 **INDEMNITIES.**

9.1. With respect to Product sold hereunder, the Seller agrees to defend, fully indemnify, and hold harmless the Buyer and any affiliates and their respective agents, officers, directors, employees, contractors, common carriers and contract carriers, representatives and insurers from and against all claims, losses, costs, expenses, demands, damages, suits, judgments, liabilities and causes of action of whatsoever nature or character for property damage, personal injury or death which occur due to the Product or exposure to the Product prior to delivery and while the Product is in Seller’s custody. Neither the Buyer’s negligence nor strict liability shall be a defense to Seller’s obligation to indemnify as provided herein.

9.2. Buyer assumes all responsibility and liability for injury, loss or damage resulting from handling, storage, use or misuse of the Product after title to the Product passes to Buyer. With respect to Product purchased hereunder, the Buyer agrees to defend, fully indemnify, and hold harmless the Seller and any affiliates and their respective agents, officers, directors, employees, contractors, common carriers and contract carriers, representatives and insurers from and against all claims, losses, costs, expenses, demands, damages, suits, judgments, liabilities and causes of action of whatsoever nature or character for property damage, personal injury or death which occur due to the Product or exposure to the Product after delivery and while the Product is in Buyer’s custody except to the extent such damage, injury or death is caused by a failure of the Product to comply with the specifications when received from the Seller. Neither the Seller’s negligence nor strict liability shall be a defense to Buyer’s obligation to indemnify as provided herein unless arising from a failure of the Product to meet the specifications.

10 **BUYER’S WARRANTIES.**

10.1. The Buyer represents and warrants that it may lawfully receive, sell, use and transport Product in interstate and intrastate commerce, as applicable, and shall furnish to Seller any evidence required to prove compliance with such laws, regulations and proclamations and file with governmental agencies reports evidencing such compliance if required by such law, regulation or proclamation.

10.2. Buyer represents and warrants that Buyer is knowledgeable and aware that Product delivered hereunder is hazardous material and that Buyer is sophisticated and knowledgeable regarding (i) of the hazards and risks associated with such Product, and (ii) the handling, receipt, transportation, storage and use of such Product.

10.3. Buyer represents and warrants that it will not cause or permit Product to be shipped, directly or indirectly, through or, to be resold, exchanged or otherwise supplied to any country, governmental entity or person with whom U.S. citizens and companies are prohibited from trading or transacting business under United States law. Upon Seller’s request, Buyer shall notify Seller of the final destination of Product and provide Seller with documentation adequate to verify the destination.

10.4. Buyer represents and warrants that in the event benzene and/or pygas are purchased under this Agreement, such products will not be used as gasoline blendstocks in the United States.

10.5. The United States Environmental Protection Agency has issued an Endocrine Disruptor Screening Program Test Order that essentially bans the use of Seller’s toluene in the formulation of a pesticide product. Buyer hereby represents and warrants that it (i) will not use any toluene purchased hereunder for use in the formulation of a pesticide product and (ii) will not resell toluene purchased hereunder to any person or entity that Buyer knows or reasonably should know intends to use toluene in the formulation of a pesticide product.

10.6. Buyer agrees to defend, indemnify and hold Seller, its affiliated companies (and, for this purpose, BASF TOTAL Petrochemicals LLC and Cos-Mar Company are affiliated companies of Seller) and its and their respective officers, directors, managers and employees harmless from and against any claims,

costs, expenses, or damages incurred by Seller based upon any theory of legal liability for the breach of the foregoing representations and warranties by Buyer.

11 TAXES.

- 11.1. **Seller's Taxes.** Seller shall pay any and all taxes (except for property taxes, which taxes are governed by the state law applicable thereto), fees, or other charges (with the exception of the product excise taxes noted below) imposed or assessed by governmental or regulatory bodies, with respect to Product delivered under this Agreement, the taxable incident of which occurs before the transfer of title to the Product to Buyer.
- 11.2. **Buyer's Taxes.** Buyer shall pay any and all taxes (except for property taxes, which taxes are governed by the state law applicable thereto), fees, or other charges imposed or assessed by governmental or regulatory bodies with respect to Product delivered under this Agreement, the taxable incident of which occurs after transfer of title to the Product to Buyer.
- 11.3. **Excise Taxes.** Any and all taxes, fees, or other charges imposed or assessed by governmental or regulatory bodies or which hereafter may be assessed or imposed by governmental or regulatory bodies, the taxable incident of which is the transfer of title or the delivery of Product under this Agreement, or the receipt of payment therefore, regardless of the character, method of calculation, or measure of the levy or assessment, shall be paid by the party upon whom the tax, fee, or charge is imposed by law, except that Buyer shall reimburse Seller for all federal, state, and local gasoline, motor fuel, sales, use, gross receipt, and other excise taxes or fees which are imposed by law on Seller.
- 11.4. **Exemptions.** In the event either party represents that it is a producer of petroleum products or as a gasoline registrant within the meaning of the federal and state tax regulations or if either party is otherwise exempt from paying excise taxes, then the party that makes such representations shall execute appropriate exemption certificates and provide the other party with such certificates and other necessary documents to verify such exemption with respect to the federal and state petroleum taxes, as the law and regulations permit or require. Any party that fails to promptly supply such exemption certificates and other verifying documents shall be deemed to not be exempt from the federal and state petroleum products taxes and shall be responsible for any taxes accruing by virtue of such non-exemption.
- 11.5. **Retroactivity.** All applicable Superfund and/or federal excise taxes will be charged on any sale of gasoline blendstock even if assessed retroactively.

12 FORCE MAJEURE.

- 12.1. Each party shall be excused from the performance of any obligation, other than the obligation to make payments for amounts due hereunder, during the time and to the extent performance of such obligation is prevented or restricted as a result of a force majeure event. The term "force majeure" as used in this Agreement shall mean any act, event, cause or occurrence beyond the reasonable control of the party affected including but not limited to any acts of God, unusually severe or abnormal weather (including but not limited to hurricanes, tornadoes and tropical storms), floods, riots or other civil disturbances, epidemics or pandemics, wars, acts of piracy, actions of governments, voluntary or involuntary compliance with any law, order, regulation or request of any governmental authority, strikes, lockouts or other labor difficulties, failure of usual source of raw materials, failure of mechanical or chemical function or equipment normally used by Seller for manufacturing, handling or delivering Product covered hereby, plant shutdowns (other than regularly schedule turnarounds), any necessity not to operate or to reduce operation of equipment in order to protect the safety of people or to protect the environment, unavailability or scheduling requirements of public dock facilities used for delivery of Product, or any other circumstances beyond the reasonable control of the party seeking excuse from performance. Nothing herein shall be deemed to require a party to settle any demands of, or disputes with, laborers. Quantities affected by force majeure will be deleted from this Agreement, but this Agreement will otherwise continue in full force and effect. Buyer will allocate its purchases among all of its suppliers, including Seller, if a force majeure condition exists. Seller will fairly and reasonably allocate its supply of the Product affected by the force majeure condition among its existing customers, which may include an allocation for its internal needs.
- 12.2. Upon the occurrence of any of the force majeure events described in this section, the party claiming force majeure shall (i) notify the other party promptly in writing of such event; (ii) to the extent possible, inform the other party of the expected duration of the force majeure event and the volumes of Product

to be affected by the suspension or curtailment of performance under this Agreement; and (iii) use commercially reasonable efforts to mitigate the effects of the event of force majeure and resume performance hereunder. If the event of force majeure lasts for more than sixty (60) days, this Agreement may be terminated by the party not affected by the event of force majeure upon written notice of termination to the other party.

13 CREDIT.

- 13.1. Prior to each delivery of Product under the terms of this Agreement, at Seller's option, Buyer shall (1) make prepayment to Seller, (2) cause a letter of credit to be issued in favor of Seller in a form, in an amount and from a bank which is acceptable to Seller's Credit Department, from time to time, in Seller's sole discretion, or (3) give other security to Seller in a manner, of a type, in a form and in an amount which may be deemed satisfactory to Seller's Credit Department in its sole discretion. Buyer's complete compliance with this provision shall be a condition precedent to Seller's obligation to deliver under the terms of this Agreement.
- 13.2. The security requirements made of Buyer by Seller's Credit Department from time to time and any communications with Seller's Credit Department from time to time shall in no way amend this Agreement or waive any rights Seller may have at law or under the terms of this Agreement.

14 FINANCIAL RESPONSIBILITY/NON-PERFORMANCE.

- 14.1. **Adequate Assurances.** If (1) either party's payments or deliveries to the other party shall be in arrears; (2) the ability of Seller to deliver Product contracted for herein becomes impaired or unsatisfactory in the reasonable opinion of the Buyer (except as otherwise provided in Section 12 herein); (3) the financial responsibility of either party becomes impaired or unsatisfactory in the reasonable opinion of the other party; (4) either party makes an assignment of any general arrangement for the benefit of creditors; or (5) there are instituted by or against either party proceedings in bankruptcy or under any insolvency law or law for reorganization, receivership, or dissolution, then, in any such case, advance cash payment or satisfactory security shall be given upon demand. If the party demanding such payment or security is Seller, Seller may also stop shipments of Product to Buyer. If the requested payment or security is not received within a reasonable length of time from demand thereof, the party demanding such payment or security may claim such failure as an "Event of Default" under the terms of this Agreement.

14.2. **Default.**

An "Event of Default" will be deemed to occur upon one or more of the following events:

- 1) A party fails to make a payment when due under this Agreement within one business day following receipt of the other party's demand; or
- 2) A party fails to perform or repudiates any material obligation to the other party under the Agreement or breaches any representation, covenant or warranty in any material respect under this Agreement that, if capable of being cured, is not cured to the satisfaction of the other party in its sole discretion, within five business days following receipt of notice to such party that corrective action is needed; or
- 3) A party (i) fails to make payment when due under any other commodity agreement between the parties within the cure period for payment defaults specified therein, or if no period is specified, within one business day following receipt for demand for payment by the other party, or (ii) fails to perform or repudiates any material obligation to the other party under any other commodity agreement between the parties and such breach, if capable of being cured, is not cured to the satisfaction of the other party in its sole discretion, within the cure period for such defaults specified therein, or if no period is provided, within five business days following receipt of notice that corrective action is needed.

If an Event of Default occurs, then the performing party may designate an early termination date by giving notice of same to the defaulting party and, upon such designation, will terminate, liquidate, accelerate and otherwise close out all transactions under this Agreement. The performing party's rights under this Section 14 are in addition to, and not in limitation or exclusion of, any rights of setoff, recoupment, combination of accounts, lien or right to damages, which it may have whether by agreement, operation of law or otherwise. No delay or failure by the performing party to exercise any

right or remedy shall constitute an abandonment of such right or remedy at any time after an Event of Default has occurred or is continuing.

14.3. **Liquidation and Close-out.** The parties understand and agree that the transactions contemplated by these General Terms and Conditions are forward contracts as defined in 11 USC §101 (24) United States Bankruptcy Code. In the event a party is the subject of a voluntary or involuntary bankruptcy filing in United States bankruptcy courts, the other party (“Liquidating Party”) will have the immediate right to liquidate and close out the Agreement and any other pending forward contracts between the parties regardless of whether the Liquidating Party is the Seller or Buyer by calculating the difference in price for Product sold under the Agreement and the prevailing market price for the Product or the commercially reasonable equivalent for the Product as published in an industry publication multiplied by the remaining quantities to be delivered. The liquidation balances will be netted to a single sum. The defaulting party will pay the Liquidating Party in US dollars by wire transfer in immediately available funds within twenty-four (24) hours after receiving notice of the results of the calculation.

14.4. **No Prejudice.** The exercise by either party of any right reserved under this Section shall be without prejudice to any claim for damages or any other right under this Agreement or applicable law.

15 **CONFIDENTIALITY.** Neither party shall disclose, release, or publish to any third party, whether orally or in writing, any terms and conditions, discussions, or negotiations between the parties related to the sale of the Product(s), or any confidential and/or proprietary information disclosed or ascertained by a party arising from, resulting out of, or in connection with the sale of the Product(s), without the prior written consent of the other party, except that Seller may disclose to any of Seller's representatives, agents, advisors, joint venturers, parents, shareholders, subsidiaries, financial institutions and affiliated companies and their respective employees any terms and conditions between the parties related to the sale of the Products(s) without prior consent.

16 **LIMITATION OF DAMAGES.**

16.1. **EACH PARTY’S ENTIRE LIABILITY TO THE OTHER FOR ALL LOSSES, INJURIES OR DAMAGES FROM ANY CAUSE WHATSOEVER, SHALL BE LIMITED TO THE INJURED PARTY’S ACTUAL DIRECT DAMAGES, NOT TO EXCEED THE AMOUNT PAID FOR THE PRODUCT RELATED TO THE CLAIM OR CAUSE OF ACTION. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR INDIRECT LOSSES OR DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF USE, LOSS OF CAPITAL, DAMAGES OR LOSSES ARISING FROM OR RELATED TO THE SHUTDOWN OR SLOWDOWN OF ANY PLANT, OR THE INABILITY TO MANUFACTURE ANY MATERIALS OR GOODS, ARISING OUT OF, OR RELATING TO THIS AGREEMENT; PROVIDED, HOWEVER, SUCH LIMITATION SHALL NOT APPLY TO DAMAGES AND LIABILITIES TO THE EXTENT CAUSED BY GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR FRAUD OR TO ONE PARTY’S OBLIGATION TO INDEMNIFY THE OTHER PARTY HEREUNDER.**

16.2. **ANY ACTION ARISING FROM THIS AGREEMENT MUST BE FILED IN WRITING WITHIN TWO YEARS FROM THE DATE OF INCIDENT FOR WHICH SUCH ACTION ARISES OR IT SHALL BE DEEMED TO BE WAIVED.**

17 **ASSIGNMENT.**

17.1. Neither party may assign this Agreement without the prior written consent of the other party. Any attempted assignment without such consent shall be void. Such consent shall not be unreasonably withheld. This Agreement shall be binding upon the successors and permitted assigns of the parties hereto.

17.2. Seller may without Buyer’s consent assign all or a portion of its rights to receive and obtain payment under the Contract, provided such assignment does not contravene any applicable law, regulation or decree binding upon Buyer. Any payment made by Buyer to the payee specified by Seller in respect of the Product deliverable under the Contract shall be in full discharge of Buyer’s payment obligations to Seller under the Contract. Any such assignment will not detract from Seller's obligations under the Contract, except the obligation of confidentiality related to such assignment. Seller or its assignee shall

have the right to set-off any of its receivables with any amount due by Seller or its assignee against Buyer.

18 **NOTICES.**

18.1. Notices required or permitted to be given by any party under this Agreement shall be deemed sufficient if given in writing and delivered in person, by reputable courier service, facsimile, electronic document transfer (“EDT”), or by certified or registered U.S. mail, to the addresses set forth herein or such address as one party may in the future provide to the other party. Delivery of notice shall be deemed to have been given (i) upon delivery (as evidenced by the hand receipt) when delivery is in person or courier service, (ii) three business days after delivery to the U.S. Postal Service when delivery is by U.S. mail, and (iii) upon receipt (as evidenced by the facsimile page or EDT date) when delivery is by facsimile or EDT unless such receipt is outside of business hours on a business day, in which event, delivery shall be deemed to have been given the next business day.

18.2. A party may change its designated recipient(s) of notices and/or address(es) for notices under this provision by written notice to the other party.

19 **NON-WAIVER.** No waiver by either party of any breach by the other party of any of the covenants or conditions of this Agreement shall be construed as a waiver of any succeeding breach of the same nature or of any other covenant or condition hereof.

20 **ENTIRE AGREEMENT.**

20.1. No statement or agreement, oral or written, made prior or subsequent to or at the signing of this Agreement, shall vary or modify the written terms hereof, including any provisions, terms or conditions contained in any brokers’ correspondence and/or any sales or purchase order. Neither party shall claim any amendment to, modification of, or release from any provision by mutual agreement unless such statement or agreement is in writing, signed by the other party and specifically states that it is an amendment to, modification of, or release from this Agreement. A facsimile transmission or pdf of a signed copy of this Agreement will be deemed an original and has the same valid and binding effect.

20.2. Those provisions which by their nature continue in effect (such as, but not limited to, Limited Warranty, and Indemnities) shall survive the expiration or termination of this Agreement.

21 **ATTORNEY'S FEES.** In the event of a dispute between the parties in connection with this Agreement, the prevailing party in the resolution of any such dispute, whether by litigation or otherwise, shall be entitled to full recovery of all attorney's fees (including a reasonable hourly fee for in-house legal counsel), costs and expenses incurred in connection therewith, including costs of court, from the non-prevailing party.

22 **AUDIT RIGHTS.** Each party shall have the right at all reasonable times, upon written request, to audit all records of the other party pertinent to this Agreement to verify such party's compliance with the terms and conditions of this Agreement. Notwithstanding the foregoing, each party shall be entitled to protect the confidentiality of any information that it considers proprietary. If any audit conducted pursuant to this Section reveals that there was an inaccuracy or omission in the invoices submitted under this Agreement, the parties shall, within ten (10) days of a request by either party therefor, meet to discuss the adjustments and/or payments that would be necessary to correct such inaccuracy or omission; provided, however, that no adjustments and/or payments shall be made in respect of any inaccuracy or omission first alleged after the second anniversary of the date of the invoice containing such inaccuracy or omission.

23 **CONFLICT OF INTEREST.** Each party warrants that it has given no commissions, payments, gifts of substantial value, kickbacks, lavish or extensive entertainment or other things of substantial value to any employee or agent of the other in connection with this Agreement and acknowledges that the giving of any such payments, gifts, entertainment, or other things of value is strictly in violation of this Agreement and may result in its cancellation.

24 **EQUAL OPPORTUNITY.** This Agreement incorporates by reference to the same extent and with the same force and effect as if set forth herein in full, the provisions as amended of (i) Section 207 of Executive Order

11246 and Title 41, CFR Section 60-1.40, prohibiting discrimination against any employee or applicant on the basis of race, color, religion, sex or national origin: (ii) 29 USC, Section 701 and 41 CFR Section 60-741.5 requiring contractors to take affirmative action in the employment and advancement of qualified handicapped individuals, (iii) 38 USC, Section 2021 and 41 CFR Section 60-250.4 requiring contractors to take affirmative action in the employment and advancement of qualified disabled veterans and veterans of the Vietnam era, and (iv) Executive Order 11625 providing for participation of minority business enterprises in governmental procurement at both the prime and subcontract level. Seller also certifies that it does not and will not maintain any facilities provided for employees in a segregated manner, or permit employees to perform their services at any location under Seller's control where segregated facilities are maintained.

25 **INVALIDITY.** If any part of this Agreement is declared invalid for any reason, this ruling shall not affect the validity of the rest of the Agreement or any other part thereof.

26 **ELECTION OF REMEDIES.** All rights and remedies of both parties hereunder are cumulative, and the election of one remedy shall not exclude another.

27 **BUSINESS PRACTICES.**

27.1. All financial settlements, billings and reports rendered by one party to the other party as provided for in this Agreement and/or any amendments to it will, to the best of the knowledge and belief of the rendering party, reflect properly the facts about all activities and transactions related to this Agreement, which data may be relied upon as being complete and accurate in any further recording and reporting made by such other party for whatever purpose.

27.2. Each party shall notify the other party promptly upon discovery of any instance where the notifying party fails to comply with Section 27.1 above or where the notifying party has reason to believe data covered by Section 27.1 above is no longer accurate and complete.

28 **IMPORT/EXPORT.**

28.1. Buyer agrees that the Product delivered hereunder will not (i) be exported or transshipped to or through any Restricted Jurisdiction (as defined below); (ii) be sold or supplied to any natural or legal person in any Restricted Jurisdiction; (iii) be sold or supplied to any natural or legal person or entity for the purpose of any commercial activity carried out in or from any Restricted Jurisdiction; or (iv) be shipped on any vessel that appears on the List of Specially Designated Nationals and Blocked Persons published by the United States Department of Treasury's Office of Foreign Assets Control as such list may be amended from time to time (SDN List), is registered in or flagged by a country that is a Restricted Jurisdiction, or is owned, operated or controlled by a person or entity within a Restricted Jurisdiction. For purposes of this Section 28.1, a "Restricted Jurisdiction" shall mean any country, state, territory or region against which there are economic sanctions imposed by the United States or United Nations. Should Buyer be in breach of this Section 28.1, Seller may at any time terminate the Agreement without any liability to Buyer. Buyer will hold Seller harmless from and indemnify Seller for any losses, costs, damages and/or penalties incurred by Seller as a result of a breach by Buyer of this Section 28.1.

28.2. **Exporter of Record. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, IF THE PRODUCT COVERED BY THIS AGREEMENT WILL BE EXPORTED FROM THE UNITED STATES OF AMERICA AND (A) IF BUYER IS A CITIZEN OF THE UNITED STATES, BUYER SHALL, FOR PURPOSES OF THIS AGREEMENT, BE THE "EXPORTER OF RECORD" AS THAT TERM IS USED BY CUSTOMS AND BORDER PROTECTION ("CBP") AND/OR THE US BUREAU OF INDUSTRY AND SECURITY ("BIS") OR ANY SUCCESSOR GOVERNMENTAL AGENCY AND BUYER SHALL COMPLY WITH ALL REGULATIONS (INCLUDING THOSE RELATED TO REPORTING, FILING AND RECORD KEEPING) OF CBP AND/OR THE BIS AND (B) IF BUYER IS A NOT CITIZEN OF THE UNITED STATES, SELLER SHALL, FOR PURPOSES OF THIS AGREEMENT, BE THE "EXPORTER OF RECORD" AS THAT TERM IS USED BY CBP AND/OR BIS AND SELLER SHALL COMPLY WITH ALL**

REGULATIONS (INCLUDING THOSE RELATED TO REPORTING, FILING AND RECORD KEEPING) OF CBP AND/OR THE BIS.

- 28.3. **Certificate of Origin.** For all Product produced by Seller at facilities within the US, Seller will, if requested by Buyer, provide Buyer with a properly completed certificate of origin for all Product provided hereunder when applicable law requires such a certificate.
- 29 **COMPLIANCE WITH LAWS.** To the extent applicable, the parties shall comply with all laws, ordinances, rules, codes, regulations and lawful orders of any federal, state or local governmental authority applicable to performance of this Agreement. Each party shall certify to its compliance with this Section upon request by the other party.
- 30 **ORIGIN OF AGREEMENT.** This Agreement has been jointly prepared by both parties to this Agreement and there shall be no presumptions regarding such preparation which will be used against either party in connection with any subsequent judicial construction of this Agreement.
- 31 **WAIVER OF DECEPTIVE TRADE PRACTICES ACT. EACH PARTY HEREBY WAIVES ALL CAUSES OF ACTION AND REMEDIES TO WHICH IT IS OR MAY BECOME ENTITLED UNDER THE TEXAS DECEPTIVE TRADE PRACTICES ACT, SECTIONS 17.41 ET SEQ., TEXAS BUSINESS AND COMMERCE CODE.**
- 32 **DRAWBACK.** Seller reserves the right to claim, receive and retain at least 50% of the drawbacks on imported duty-paid merchandise used in the manufacture of Product delivered under this Agreement. Whenever Product is exported, Buyer shall promptly notify Seller and shall on request execute drawback claim forms and assignments in favor of the Seller to enable it to establish its drawback rights under Customs Regulations.
- 33 **TIME IS OF THE ESSENCE.** Time is of the essence in the performance of this Agreement and failure of a party to perform its obligations under this Agreement within the time periods specified, shall, at the option of the other party, without liability, in addition to other rights or remedies, relieve the other party of any obligation to perform under this Agreement.
- 34 **CAPTIONS AND HEADINGS.** The section headings and captions are for the convenience of reference only and shall not constitute a part, nor modify, define or limit any of the terms or provisions hereof.
- 35 **GOVERNING LAW AND JURISDICTION.** This Agreement and all related documents, and all matters arising out of or relating to this Agreement, whether sounding in contract, tort, or statute are governed by, and construed in accordance with, the laws of the State of Texas, without giving effect to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of Texas. Any dispute, claim, suit, action, or proceeding arising out of or relating to this Agreement, including its validity, existence or performance, shall be instituted before: (i) the state courts of Harris, Count, Texas; or (ii) if subject matter jurisdiction exists, the U.S. District Court for the Southern District of Texas. Each party irrevocably submits to the exclusive jurisdiction of, and venue in, such courts. Each party irrevocably and unconditionally waives, and agrees not to assert, by way of motion, as a defense, or otherwise, any claim: (i) that it is not subject personally to the jurisdiction of such courts, (ii) that its property is exempt or immune from attachment or execution, (iii) that the suit, action, or proceeding is brought in an inconvenient forum, (iv) that the venue of the suit, action or proceeding is improper, (v) that this Agreement or the subject matter hereof may not be enforced in or by such courts; or (vi) that this Agreement is subject to arbitration. Notwithstanding subsection (vi), if a Party asserts that this Agreement is subject to arbitration, the court, and not the arbitral body or arbitrator(s), shall have primary responsibility to hear and determine challenges to the jurisdiction of the arbitrator(s).