

**General Terms and Conditions June 2018 Edition**

These General Terms and Conditions ("General Terms") govern transactions where **Mobil Oil Guam Inc.** or one of its Affiliates ("Seller") sells, or causes to be sold, unbranded fuel ("Product") to a party which has agreed to purchase said Product ("Buyer") (collectively, the "Parties"). The General Terms form an integral part of any agreement to which they are attached or into which they are incorporated by reference. References hereinafter to this "Agreement" shall be understood to include any such agreement and these General Terms.

Buyer is a sophisticated, commercial fuel customer (not a retail purchaser of motor fuels).

As used in this Agreement, with respect to Seller, the term "Affiliate" means, (1) Exxon Mobil Corporation or its successors-in-interest, (2) any parent corporation, partnership, or other entity of the Exxon Mobil Corporation or its successors-in-interest which now or hereafter owns or controls, directly or indirectly through one or more intermediaries, fifty percent or more of the ownership interest having the right to vote for or appoint directors of Exxon Mobil Corporation or its successors-in-interest ("Parent Company"), (3) any corporation, partnership, or other entity, regardless of where situated, at least fifty percent of whose ownership interest having the right to vote for or appoint directors is now or hereafter owned or controlled, directly or indirectly through one or more intermediaries, by Exxon Mobil Corporation or its successors-in-interest or by its Parent Company.

**GENERAL PROVISIONS**

**1. Intentionally Deleted**

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**5. Ordering**

(a) Buyer's authorized personnel shall submit Buyer's purchase order via phone, email or facsimile on Seller's standard customer order form to Seller's Customer Service personnel at its designated Business Support Center. The purchase order must be made in writing and shall be duly authorized by Buyer.

(b) The quantity of each order from Buyer shall not be less than 75% of truck capacity and/or 80% of compartment capacity or as otherwise advised by Seller and Seller reserves the right to reject orders not meeting its minimum order quantity requirements. Seller may, in its sole discretion, also reject an order if it deems the order to be an uneconomic load and reserves the right to charge Buyer a fee if it agrees to deliver an uneconomic load.

(c) The lead-time for a normal delivery is one (1) working day. Orders must be placed before 2 p.m. of each day if Buyer wants the Product to be delivered by end of the following day.

Notwithstanding the above, no delivery will be made outside Seller's terminal operating hours (currently 8.00 am to 5.00 pm Monday to Friday excluding Saturday, Sunday and public holidays) unless prior arrangements with Seller are made. Seller will notify Buyer if there are any changes in its operating hours.

**6. Delivery, Title, Risk of Loss, Terminal Access and Third Party Facilities**

**(a) Rack Deliveries**

Unless otherwise agreed between Buyer and Seller, delivery will be through loading rack into Buyer's transportation equipment at refineries, storage terminals or depots designated by Seller. If delivery of Product is made at Buyer's facility in tank trucks provided by or on behalf of Seller, the delivery point is deemed reached for Product in each tank truck as it crosses over the property line of Buyer's land. Title and risk of loss shall pass as Product passes the loading flange of the transportation equipment (i.e., transport truck, vessel or other transportation) at delivery points designated by Seller. Transportation from delivery points shall be paid by Buyer, and shall be included in the product price, unless otherwise specified by Seller.

**(b) Vessel Deliveries**

If delivery is made by Seller's vessel, Buyer shall furnish, immediately upon arrival, safe berth at which vessel may lie safely afloat at all stages of tide, together with a safe means of ingress and egress to and from said berth where privately maintained channels or approaches thereto must be utilized, together with necessary facilities for immediate discharge of cargo. Buyer shall be allowed laytime of three hours plus the time required to discharge as fast as vessel can pump. Laytime shall commence upon vessel being secured to the dock, or in the event dock is unable to receive vessel immediately, upon notice of vessel's readiness to be docked. Buyer may be required to pay demurrage at Seller's then current rates for all time in excess of the allowed laytime. For all vessel deliveries inclusive of vessel to vessel deliveries, title to and risk of loss of Product shall pass from Seller to Buyer as Product passes the loading flange on board the vessel.

**(c) Pipeline Deliveries**

For pipeline deliveries where the delivery point is at "a delivery facility and Buyer is the shipper of record, title to and risk of loss of Product shall pass from Seller to Buyer after the Product passes the last flange of the delivering facility's equipment into the pipeline receiving equipment. For pipeline deliveries where the delivery point is at Buyer's designated facility and Seller (or its designee) is the shipper of record, title to and risk of loss of Product delivered via pipeline shall pass to Buyer as Product passes the first flange in the pipeline after such pipeline enters the designated facility.

**(d) Tank Deliveries**

Where the delivery is effected by in-tank, book, stock, or inventory transfer, title to and risk of loss of Product shall pass from Seller to Buyer on the effective date and time of the transfer.

**(e) Terminal Access**

If delivery is at a storage terminal owned or operated in whole or in part by Seller or one of its Affiliates, Buyer shall comply with all operating and safety procedures of such terminal and shall execute and deliver to Seller such agreements as Seller may require from time to time in connection with Buyer's access to such terminal.

**(f) Third Party Facilities**

If delivery is at a storage terminal, depot or other facility owned or operated in whole or in part by a third party:

(i) The Product shall, unless prohibited under any Laws, be deemed to conform to the specifications specified in the section on Product and Quality if they comply with the specifications current at that third party terminal, depot or other facility;

(ii) Upon written request from Buyer, Seller will provide copies of any specifications for any such location; and

(iii) Buyer shall comply with all operating and safety procedures of such storage terminal, depot or other facility and shall execute and deliver such agreements as may be required by such third party from time to time in connection with Buyer's access to such third party facility.

**7. Prices**

(a) Unless otherwise specified in the Agreement, all prices are exclusive of taxes, duties or tariffs. Seller shall be entitled to retain any tax refund or credit it receives from any governmental authority in connection with the sale of Product hereunder. All freight charges, or costs in excess of those expressly included in the prices set forth in any Agreement shall be at Buyer's expense. Buyer acknowledges that Seller does not warrant or guarantee the accuracy of any price data relayed by facsimile or e-mail. If there is any discrepancy between the prices notified to Buyer and the price on Seller's invoice, the invoice price controls.

(b) In the event that prices are calculated by reference to a market index (e.g. Platts), if the index used in the formula employed in calculating the price of Product (as indicated in Specific Terms) is discontinued, it is agreed by both Seller and Buyer that a different index will be selected for use in the formula which appropriately reflects the intention of the Parties. Until such time as the parties can agree on a new index the price of the Product will be calculated using

Seller's daily rack price at a given point of supply. If the Parties are unable to agree on a new index, either party may thereafter terminate the Agreement upon 30 days' prior written notice.

## **8. Invoice and Terms of Payment**

(a) Seller shall invoice Buyer based on the quantity of the Products delivered and may invoice Buyer at any time after each delivery of Products. Buyer shall pay Seller the full invoice value of each delivery of the Products by the due date. If the due date of an invoice falls on a Saturday, Sunday or public holiday, payment shall be made on the following business day. A "business day" refers to any day of the week, except Saturday, Sunday and public holidays.

(b) Buyer shall pay all amounts due to Seller under this Agreement in the currency invoiced. All payments by Buyer under this Agreement must be made in Immediately Available Funds. Immediately Available Funds means cash, irrevocable bank checks, wire transfer of cleared funds or any other form of payment, at a time and at a place that Seller and Buyer agree in writing. If payment is in the form of cash currency, such amount should be deposited directly to Seller's designated bank account. Except to the extent Seller extends credit to Buyer, and unless otherwise stated in the Specific Terms, Buyer shall pay for all Products prior to delivery and pay for any services prior to provision of services. Payment by any other method shall be prohibited unless Seller provides prior consent. Cash discounts, if any, are not applicable to taxes, freight or container charges. Seller may withhold, set off, or recoup any amount due and owing to Buyer or held by Seller on behalf of Buyer from and against any amount owed by Buyer to Seller.

(c) Seller may charge, and Buyer shall pay, fees and/or taxes as Seller may from time to time specify and as are permitted by law, for any checks or bank or other financial institution debits that are not honored by Buyer's bank or other financial institution or are otherwise returned or reversed by the bank or other financial institution.

(d) Dispute

Unless Seller otherwise agrees, Buyer must pay any disputed sum by the due date for payment of that sum.

(e) Late Payment Charge

Late payment interest shall accrue daily on the unpaid amount at an annual rate equivalent to the Floor Rate as published for Guam on the Bank of Hawaii website at <https://www.boh.com/personal/view-the-current-mortgage-rates.asp> for the day when payment was due plus a default margin of 10% per annum, and will be compounded monthly from the date when payment is due until it is made. Should this Floor Rate as published for Guam by the Bank of Hawaii be no longer available, then an equivalent rate advised by Seller will be applicable.

## **9. Credit and Security**

In its sole discretion, Seller may extend credit to Buyer on terms and conditions as specified by Seller, and Seller may modify the terms and conditions of credit, or revoke credit, at any time or from time to time.

(a) Suspension

Seller shall have the right to suspend deliveries when the outstanding amount owed to Seller for product sold to Buyer exceeds the amount of credit that Seller, in its sole discretion, has decided to extend to Buyer.

(b) Security

If requested by Seller, Buyer shall provide to Seller as soon as reasonably practicable and maintain security in such amounts and forms as Seller may specify in its sole discretion ("Product Security"), including a letter of credit, cash deposits, or assignment, mortgage or pledge of cash, savings accounts or real estate collateral acceptable to Seller. Buyer shall bear all costs related to this Product Security.

(c) Set Off

Seller may use, without prior notice or demand, any or all of the Product Security to set off or satisfy all or any part of any indebtedness or obligation of Buyer to Seller, or any entity affiliated to Seller, including indebtedness arising from purchases under this Agreement.

(d) Remedies

If Buyer defaults in the payment of any obligation or indebtedness to Seller or otherwise fails to comply with any credit terms imposed by Seller or fails to provide or maintain the Product Security, Seller may without notice or demand, in addition to any other rights it may have (including termination of this Agreement), immediately suspend deliveries of all Product and apply any funds or Product Security which Buyer may have given to Seller to the payment of such indebtedness or obligation.

(h) Financial Information

Buyer will provide at its own cost, at Seller's request, complete and reliable financial statements / balance sheet (audited if available) and / or below:

(i) A statement of financial performance / profit and loss and cash flow statement as at the last balance sheet of Buyer; (A) Improperly influencing any Covered Person in his or its official, corporate or business capacity;

(ii) Any further explanations as may be required by Seller in respect of information required by Seller;

In each case prepared in accordance with generally accepted accounting principles.

(i) Change in Financial Circumstances

If during the term of this Agreement, the financial responsibility of Buyer becomes, in the sole opinion of Seller, impaired or unsatisfactory to Seller, advance cash payment or security satisfactory to Seller must be given by Buyer, and Product delivery may be withheld until such payment or security is received. If such payment or security is not received within fifteen (15) days from Seller's demand, Seller may terminate this Agreement immediately and without notice to Buyer, at which time all outstanding invoices will be due and owing immediately.

(j) Costs

In the event either party sues successfully to enforce any of the terms of this Agreement, that party shall be entitled to recover its reasonable attorneys' fees and costs incurred.

## **10. Tax**

(a) Unless otherwise specifically provided elsewhere in this Agreement, or required by law, Buyer shall be solely liable for and at its own expense pay or cause to be paid when due to the proper governmental authority all taxes, surcharges, fees and other similar levies imposed by any governmental authority by reason of Buyer's operations.

(b) Buyer shall defend, indemnify, and hold Seller harmless from liability to any governmental authority resulting from Buyer's failure to: (i) make timely payment of or pay any of the above taxes, surcharges, fees and other similar levies, including interest, penalties and any other liabilities arising from such failure, or (ii) comply with the reporting, filing or other procedural requirements with respect to their payment.

(c) To the fullest extent permitted by law, Seller may, but is not required to, pass along to Buyer increases or decreases in any taxes, surcharges, fees, and other similar levies, including any additional taxes, surcharges, fees, and other similar levies imposed on Seller during the term of this Agreement, by adjusting the price paid by Buyer to Seller under this Agreement so that the amount realized by Seller as a result of the sale net of such taxes, surcharges, fees, and other similar levies remains the same as it was before the increase or decrease, as the case may be.

(d) If Buyer claims exemption from any of the aforesaid taxes, surcharges, fees, and other similar levies, then Buyer, in lieu of payment of or reimbursement of such taxes, surcharges, fees, and other similar levies to Seller, shall furnish Seller with a properly completed and executed exemption certificate in the form prescribed by the appropriate taxing authority, and will bear exclusive responsibility for and indemnify Seller in respect of liabilities arising from such exemptions. Buyer shall promptly notify Seller in writing of any change in the status of its exemption.

(e) As used in this Agreement, the terms "taxes, surcharges, fees, and other similar levies" may include, but are not limited to: sales, excise, storage, consumption, value added and use taxes, income, profit, corporation, capital gains, franchise, and personal property taxes, environmental taxes, motor fuel taxes, gross receipts (not measured by income or net worth), business and occupation taxes, and at the discretion of the Seller, spill taxes.

## **11. Intentionally Deleted**

## **12. Relationship**

Seller and Buyer affirm and acknowledge they are each independent and separate business entities, and nothing in the relationship shall create a joint venture, partnership, agency, fiduciary or franchise relationship between the Parties. Buyer is solely responsible for all matters relating to Buyer's employees.

## **13. Trademarks**

All Product sold under this Agreement is on an unbranded basis. Buyer shall neither use nor have the right to use, in any fashion, the trademarks, trade names, brand names or any other identification of Seller or its Affiliates in Buyer's storage, distribution, sale or use of Product received under this Agreement. Any violation of the provisions of this Section by Buyer shall give Seller the right to immediately terminate this Agreement without limitation to any other remedies available to Seller at law.

#### **14. Limitation of Liability**

Notwithstanding anything contrary contained in this Agreement, Seller's total liability for all claims arising hereunder or connected with the products sold hereunder, whether based in contract, tort or otherwise, shall be no greater than an amount equal to the purchase price of the products to which any such claims relate, or at Seller's option, and only in the case of claims regarding defective or non-conforming product, to replacement of such products, provided that in all cases Buyer shall be under an obligation to mitigate any loss as far as possible. Seller shall not in any event be liable for any special, incidental, exemplary or consequential damages.

#### **15. Indemnities**

(a) Buyer shall indemnify, defend and hold harmless Seller, its Affiliates and their respective officers, directors, employees, successors and assigns (the "Indemnified Parties") from and against any and all third party claims, actions, causes of action, demands and judgments, however arising, and all resulting damages, liabilities, awards, penalties, costs and expenses (including reasonable attorneys' fees and litigation costs), arising out of, resulting from, or relating to: (i) Buyer's non-performance or breach of its obligations, representations or warranties under this Agreement; (ii) Buyer's or its affiliates or their respective agents', servants', employees' contractors' or representatives' receipt, storage, loading, transportation, unloading or disposition of Product; (iii) Buyer's or its affiliates' operation of their business or businesses wherever located; or (iv) any failure by Buyer or its affiliates to comply with any Law. Buyer's obligations set forth herein shall apply whether or not such claims, actions, causes of action, demands or judgments result from or are contributed to by the negligence in any form of Seller or any third party or any of their respective agents, employees or independent contractors, or any defect in, or condition of the property of Seller or any third party or any equipment located thereon.

(b) If except to the extent resulting from the gross negligence or willful misconduct of a party's managerial or senior supervisory personnel, neither party nor its affiliates shall be liable to the other party for any indirect, incidental or consequential losses or damages, special or punitive damages, or for lost profits, which arise out or relate to this Agreement or the performance or breach thereof whether sounding in contract, tort or otherwise, including any such losses or damages claims arising from third party claims.

#### **16. Warranties**

There are no warranties which extend beyond the description on the face hereof, and Seller makes no warranty, expressed or implied, of satisfactory quality, merchantability, fitness for any particular use or otherwise, except that the products sold hereunder shall meet Seller's applicable standard specifications or such other specifications as may be notified by Seller to Buyer from time to time. Buyer assumes all risk whatsoever as a result of the use of the products purchased, whether used singly or in combination with other substances or in any process.

#### **17. Intentionally Deleted**

#### **18. Measurement**

(a) Any quantity of Product to be delivered pursuant to an Agreement shall be automatically revised as required to comply with any applicable government rules, regulations, or orders.

(b) Seller may, at any time, upon notice to Buyer, change the grade, specifications, characteristics, delivery package, name, or other distinctive designations of any Product and such Product as so changed shall remain subject to this Agreement. Seller may discontinue the sale of any Product, in which event Seller and Buyer shall be relieved of any future obligation relating to that Product only.

(c) The quantity of the Products purchased and delivered to Buyer shall be the quantity stipulated on Seller's delivery documents in accordance with the measurements upon loading of the Products at the applicable delivery point under the Agreement, and, in the absence of manifest error, the delivery documents shall be conclusive proof of the quantity of the Products delivered.

(d) Unless (i) required by law, (ii) expressly agreed to in any Agreement, or (iii) Seller otherwise notifies Buyer in writing, quantities of Product purchased hereunder shall be computed without temperature adjustment. If quantities of Product purchased hereunder are adjusted for temperature, such quantities shall be adjusted to 60 degrees F (15 degree Celsius) in accordance with ASTM D1250 and API MPMS Chapter 11.1-2004/Adjunct to IP 200/08/Adjunct to ASTM D1250-08 (ADJD1250-E-PDF), as supplemented or amended from time to time.

(e) Buyer may be present or represented by properly accredited agent when such measurements are taken, but if Buyer is not present or represented, then Seller's determination of quantities shall be deemed to be correct and binding.

#### **19. Claims**

Any claim for defect or variance in quality or shortage of quantity must be made within three (3) days after Product reaches its destination or, in the case of deliveries in tank cars, prior to the unloading of the Product. If any claim is made concerning the quality of any such Product, Buyer shall, in the presence of Seller or its deliverer, take samples of the Product concerned, and Seller shall be given an opportunity to inspect the relevant Product. The point at which the samples are taken and the method of sampling and testing shall be as agreed between Buyer and Seller or its deliverer or, failing agreement within three (3) days, as reasonably designated by Seller or its deliverer. Any expenses of the analysis of the samples shall be borne by Buyer unless the test results show that there was a defect in the quality of, or a shortage of, the relevant Product. The making of any such claim shall not relieve Buyer of the obligation to make payment for the Product concerned pending resolution of the claim, and Buyer shall take reasonable measures to mitigate its losses relating to any such defect or shortage.

If Seller desires to deliver, or delivers, to Buyer Product which does not fully meet the agreed specifications for Product, Seller may request from Buyer a written authorization for the delivery of such product ("Product Quality Waiver") and the issuance of such a Product Quality Waiver shall constitute unconditional acceptance by Buyer of the product concerned. If Buyer does not agree to a Product Quality Waiver, Buyer's sole and exclusive remedy shall be for Seller, at Seller's expense, to remove, replace or remedy, as Seller shall determine in its discretion, the Product concerned.

Failure of Buyer to observe Sub-Paragraph aforementioned or any action by Buyer which impeded identification of an alleged defect shall operate as a waiver of Buyer's rights to make such a claim. Any other claim by Buyer of any kind shall be deemed waived and barred unless Seller is given written notice within ninety (90) days after the event.

Buyer assumes all risks and losses that result from the use of the Product purchased hereunder whether used singly or in combination with other substances or in any process. Without limiting the generality of the foregoing, Seller shall not be liable for any claim arising from the commingling by Buyer of any Product with any other products or materials on any transport truck, vessel or other transportation.

#### **20. Force Majeure.**

No liability shall result to either Seller or Buyer from delay in performance or nonperformance in whole or in part under this Agreement (except for payment obligations) where the delay or failure results from any causes beyond its reasonable control, including, but not limited to, acts of God, fire, flood, war or terrorist activity or threat thereof, accident, explosion, breakdowns or labor trouble, embargoes or other import or export restrictions, acts of the public enemy, sabotage, diminishment or failure of power, telecommunications, data systems, or networks, any shortage, or crude petroleum or other feedstocks from which Products are derived, or good faith compliance with any regulation, direction, or request, whether valid or invalid, made by any governmental authority or person purporting to act therefor. The party invoking the force majeure will (i) notify the other party as soon as reasonably practicable, (ii) make commercially reasonable efforts to mitigate the impact of the cause of non-performance and remedy the same, and (iii) resume performance under this Agreement as soon as this cause has gone, the other party being released from its contractual obligations until such time. Notwithstanding any other notice requirement in this Agreement, actual notice (e.g., phone, email, letter) to a counterparty of a delay or failure described in this provision will constitute effective notice for purposes of this provision.

## 21. Allocation

If for any reason, including a force majeure event as set forth above, supplies of Product deliverable hereunder, or of crude petroleum or other feedstock from which such Product is derived from any of Seller's existing sources, are curtailed, cut off, or are otherwise inadequate to meet Seller's own requirements and its obligations to its customers, Seller's obligation hereunder during such period of curtailment, cessation, or inadequacy will at its option be reduced to the extent necessary in Seller's reasonable judgment to apportion fairly among Seller's own requirements and its customers (whether under contract or not), such Product as received and as may be available in the ordinary and usual course of Seller's business from any such existing sources of supply at the location(s) from which deliveries hereunder are normally shipped.

## 22. Early Termination

(a) In addition to any other termination rights found elsewhere in the Agreement or provided by applicable Law:

(i) A Party may terminate this Agreement upon written notice to the other Party in the event of the other Party's material breach of this Agreement or any other agreement between the Parties that remains uncured for a period of thirty (30) days after the date on which the notice of the breach has been given to such party.

(ii) A Party may terminate this Agreement upon written notice to the other upon the occurrence of any of the following:

(A) An involuntary proceeding is commenced or an involuntary petition is filed seeking (1) liquidation, reorganization or other relief in respect of the other Party or its affiliates or (2) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the other Party or any of its affiliates or for a substantial part of its or their assets;

(B) The other Party or any of its affiliates (1) voluntarily commences any proceeding or files any petition seeking liquidation, reorganization or other relief under any federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, (2) consents to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (A) above, (3) applies for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the other party (or any of its affiliates) or for a substantial part of its assets, (4) files an answer admitting the material allegations of a petition filed against it in any such proceeding, (5) makes a general assignment for the benefit of creditors or (6) takes any action for the purpose of effecting any of the foregoing; or

(C) The other Party or any of its affiliates becomes unable to pay, admits in writing its inability to pay, or fails generally to pay its debts as they become due.

(iii) If Buyer fails to timely pay any obligation due to Seller under this Agreement or any other agreement between the Parties, then Seller may terminate this Agreement with immediate effect upon providing written notice to Buyer.

(iv) If a Party's failure to perform its obligations hereunder is excused pursuant to Failure to Perform clause hereof for a prolonged period of time, the other Party may terminate this Agreement upon written notice.

(b) Any termination of this Agreement shall be without prejudice to the accrued rights of the Parties. If Buyer is indebted to Seller at the time of any termination, all outstanding amounts will become due and owing immediately at termination. All rights and remedies of are cumulative.

## 23. Business Practices

(a) The Parties, in performing their obligations under this Agreement, shall establish and maintain in effect appropriate business standards, procedures and controls to avoid any real or apparent impropriety. This obligation shall apply to the activities of employees and contractors. The Parties agree that all financial settlements, invoices, and reports shall reflect properly the facts about all activities and transactions, which data may be relied upon as being complete and accurate in any further recordings and reporting for whatever purpose.

(b) Compliance with Laws

Each party agrees and will secure agreement by its contractors to comply with all applicable laws, regulations rules and orders (collectively "Laws") in connection with its performance under this Agreement.

(c) Conflict of Interest

Each party shall exercise reasonable care and diligence to prevent any action or condition which may result in a conflict of interest with those of the other party. This obligation shall apply to the activities of each party's employees and agents in their relations with the employees and families of the other party, its representatives, vendors, subcontractors and third parties. Each party's compliance with this requirement shall include but shall not be limited to, establishing precautions to prevent that party's employees or agents from making, receiving, providing or offering substantial gifts, entertainment, payments, loans or other considerations for the purpose of influencing individuals to act contrary to the other party's best interest. Each party shall promptly notify the other party with the identity of its representatives or employees who are known in any way to have a substantial interest in the other party's business or the financing thereof.

(d) Anti-Corruption Commitments and Representations

For purposes of this section, "Official" means and includes: (i) any officer or employee of any government or any department, agency or instrumentality or administrative body controlled by a government, or any person acting in an official capacity on behalf of any such government, department, agency, instrumentality or administrative body; (ii) any officer or employee of any legal entity owned or controlled by a government or any person acting in an official capacity on behalf of any such legal entity; (iii) any political party; (iv) any official of a political party; (v) any candidate for political office; or (vi) any officer or employee of a Public International Organization (e.g. United Nations, IMF, World Bank).

(i) In recognition of and to secure compliance with the principles of: (i) the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions which entered into force on February 15, 1999; (ii) the United States Foreign Corrupt Practices Act; (iii) the United Kingdom Bribery Act 2010 and (iv) any other laws having the same or similar effect with respect to Officials or other persons, Buyer represents, warrants and agrees that in connection with this Agreement no fee, money or any other thing of value has been or will be paid, offered, given, authorized or promised by Buyer or any of its agents or employees, directly or indirectly, to any (I) person or entity (whether natural or legal), or (II) Official (each of the foregoing described in (I) and (II)), being a "Covered Person", for purposes of:

(A) Improperly influencing any Covered Person in his or its official, corporate or business capacity;

(B) Inducing any Covered Person to do or omit to do any act in violation of its lawful duty or that represents an actual or apparent conflict of interest;

(C) Improperly inducing any Covered Person to use his or its influence with a government or government controlled instrumentality to improperly affect or influence any act of decision of such government or instrumentality;

(D) Improperly or covertly inducing any Covered Person directly or indirectly to purchase Products or cause Products to be purchased or to take or fail to take some other action with respect to the Products or in order to promote sales of the Products or otherwise improperly assist Seller or its Affiliates; or

(E) Securing any improper or unethical advantage.

(ii) Buyer represents and warrants that no Official or close relative to an Official has or will have any direct or indirect ownership or other legal or beneficial interest in Buyer or any of its Affiliates, or in the contractual relationship established by or related to this Agreement, and that no such Official serves as an officer, director, employee or agent of Buyer

(iii) Buyer's representations in this Section shall be continuing throughout the term of this Agreement. Agrees to notify Seller promptly and in writing of any change in direct or indirect ownership in it or its Affiliates that would make it or them an Official as defined in this Agreement or any instance where Buyer fails to comply with this Section. Buyer covenants that should Seller notify it of any concern that there may have been a breach of the provisions of this Section, it shall cooperate in good faith with Seller in determining whether such a breach has occurred. If Seller determines in its sole determination that there has been such a breach or that Buyer has taken any action that would create a material risk of liability for Seller under any applicable Law, it shall be entitled to treat the breach as an event of default and to exercise any rights it may have upon the occurrence of an event of default, without regard to any waiting periods or cure periods specified in this Agreement. Buyer shall, with respect to any of its affiliates or third parties that are undertaking activities pursuant to this Agreement, require compliance with contractual provisions substantially identical to those contained in this Section.

(iv) Seller may, in its sole discretion, request from Buyer a compliance certification that all provisions of this Section have been strictly adhered to. Refusal to give this certification will entitle Seller to treat the breach as an event of default and to exercise any rights it may have upon the occurrence of an event of default, without regard to any cure periods specified within the Agreement.

## 24. Confidentiality

All information (A) supplied by Seller to Buyer in connection with the negotiation and performance of the Agreement, (B) relating to the business conducted pursuant to this Agreement, including the terms and conditions of the Agreement, shall be considered "Confidential Information" for purposes hereof; provided, that Confidential Information shall not include information that (i) was known to Buyer at the time of disclosure by Seller; (ii) is or becomes publicly available without breach of the Agreement; (iii) is received by Buyer on a non-confidential basis from a third party that was not prohibited from disclosing such information; or (iv) is independently developed by Buyer without the aid of or reference to the Confidential Information. Buyer shall not disclose the Confidential Information to any person, except that Buyer may disclose such Confidential Information: (a) to its affiliates and its and their respective employees and contractors who need to know such information to connection with the performance of the Agreement (its "Representatives"), provided that such Representatives agree to be bound by the confidentiality and limited use provisions hereof, or (b) if required to do so pursuant to a valid subpoena or order of a governmental entity or court with proper jurisdiction or as otherwise required by applicable Laws. Buyer shall not use the Confidential Information for any purpose other than in connection with the exercise of its rights or the performance of its obligations under the Agreement. Buyer shall be responsible for any breach of this Section by its Representatives.

#### **25. Data Protection**

(a) Seller will use any Seller or personal data it receives in connection with the Buyer to create or update records held by Seller and any members of the ExxonMobil Group (meaning Exxon Mobil Corporation and all or any of its affiliates from time to time) relating to any matter(s), including, without limitation, for the purposes of keeping accounts and records, product supply and product market analysis, credit analysis and statistical compilation.

(b) Seller may make enquiries at any time in relation to the Buyer with third parties, including, without limitation, banks, credit reference agencies and other suppliers to the Buyer, all or any of which may keep a record of Seller's enquiry whether or not credit is granted. Whether or not credit is granted, and where an application for credit is in the process of being considered, Seller may also disclose details about the Buyer's account within the ExxonMobil Group. Seller will use its reasonable endeavours to ensure that details about the Buyer which are held by Seller will not be accessible by third parties outside the ExxonMobil Group.

(c) In Sub-clauses (a) and (b) above, references to "the Buyer" shall be deemed to include (but without limitation) the Buyer's officers, employees, contractors and agents in relation to which Seller receives personal data arising out of or in connection with the Buyer's dealings with Seller and other members of the ExxonMobil Group.

#### **26. Alcohol and Drugs**

In the event Buyer takes delivery of Product from Seller at Seller's facilities, the following provisions of this Section shall apply:

(a) Buyer and Buyer's employees, agents and contractors shall not enter Seller's facilities while under the influence of alcohol or any controlled substance. Buyer, its employees, agents and contractors shall not use, possess, distribute or sell illicit or unprescribed drugs in connection with any activity performed under this Agreement. Buyer, its employees, agents and contractors shall not use, possess, distribute or sell alcoholic beverages at any time while performing activities under this Agreement. Buyer has adopted or will adopt its own policy to assure a drug and alcohol free workplace while performing activities under this Agreement.

(b) Buyer will remove any of its employees, agents or contractors from performing activities hereunder any time there is suspicion of alcohol or drug use, possession or impairment involving such employee, agent or contractor, and at any time an incident occurs in performing activities hereunder where drug or alcohol use could have been a contributing factor. Seller has the right to require Buyer to remove Buyer's employees, agents or contractors from Seller's facilities at any time cause exists to suspect alcohol or drug use by such employees, agents or contractors. In such cases, Buyer's employee, agent or contractor may be considered for return to Seller's facilities only if the Buyer certifies as a result of a for cause test, conducted immediately after removal, that said employee, agent or contractor was in compliance with the provisions of this Section. Buyer will not use an employee, agent or contractor to perform activities hereunder who either refuses to take, or tests positive in, any alcohol or drug test.

(c) Seller may, without prior notice, search the person, possession and vehicles of Buyer's employees, agents and contractors that are on the premises owned or controlled by Seller. Any person who refuses to cooperate with such search will be removed from the premises and will not be allowed to return. Buyer will replace any of its employees, agents or contractors at Seller's request.

#### **27. Safety and Health Information**

(a) Seller has made available (or will make available) to Buyer information (including material safety data sheet(s) or similar documentation) concerning the safety and health aspects of Product and/or containers for such Product sold to Buyer hereunder, including safety and health warnings. Buyer acknowledges receipt of such information and agrees to communicate such warnings and information to all persons Buyer can reasonably foresee may be exposed to or may handle such Product and/or containers, including, but not limited to, Buyer's employees, agents, contractors, and customers.

##### **(b) Environmental**

If delivery to Buyer is into transportation vessels at Seller's facility, and Product sold hereunder is spilled at or near such facility, Seller shall have the right to undertake, or to cause Buyer to undertake measures which Seller considers necessary to prevent or mitigate resulting environmental damages regardless of the cause of such spill. Such measures shall be at the expense of the party or parties responsible for such spill; provided however, if Seller undertakes such measures, Buyer hereby waives and agrees not to raise the defense of "Volunteer" to a claim for reimbursement of such expenses.

If delivery to Buyer is by transportation vessel into Buyer's facility and Product is spilled at or near such facility, Buyer shall undertake measures which Buyer considers necessary to prevent or mitigate resulting environmental damage regardless of the cause of such spill and shall immediately report such event to the appropriate federal and state legal authorities and Seller's representative. If, in Seller's sole judgment, Buyer does not take adequate measures to prevent or mitigate environmental damage, then Seller shall have the right to undertake such measures as Seller considers necessary to prevent or mitigate environmental damage or remove any threat of environmental damage. Such measures, whether taken by Buyer or Seller, shall be at the expense of the party or parties responsible for such spill; provided however, if Seller undertakes such measures, Buyer hereby waives and agrees not to raise the defense of "Volunteer" to a claim for reimbursement of such expenses.

#### **28. Law & Dispute Resolution**

##### **<<Guam>>**

The Agreement will be governed by the laws of Guam. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. The number of arbitrators shall be three. Each party shall appoint one arbitrator. The two arbitrators so appointed shall appoint a third arbitrator who shall act as president of the tribunal. The place of arbitration shall be Guam. The language of the arbitration shall be English.

#### **29. No Waiver**

Neither Party's right to require strict performance shall be affected by any previous waiver or course of dealing. Neither this Agreement nor any modification or waiver shall be binding on a Party unless it is contained in a writing signed by its authorized representative. Past performance shall not be deemed a waiver of this requirement.

#### **30. Assignment**

Buyer may not assign this Agreement without the prior written consent of Seller. Any purported assignment of this Agreement by Buyer without the Seller's written consent shall be void. Seller may assign this Agreement upon prior written notice to Buyer.

#### **31. Intentionally Deleted**

#### **32. Entire Agreement**

The Agreement is intended by the Parties to be the final expression of their agreement with respect to the matters expressly dealt with herein and supersedes and replaces any and all prior agreements between Buyer and Seller in their entirety with respect to those matters, and is also intended to be the complete and

exclusive statement of the terms of this Agreement. Accordingly, any such prior agreements between the Parties dealing with those matters are hereby terminated as of the date upon which this Agreement becomes effective and are of no further force or effect, except for any provisions contained therein which, by their terms, are expressly stated to survive the termination or expiration of the prior agreements, which provisions shall continue pursuant to such terms. There are no oral understandings, representations or warranties affecting the agreement between the Parties.

**33. Severability**

It is understood and agreed by the Parties that if any of the provisions of this Agreement shall become invalid or illegal under the laws of the particular state, county, or jurisdiction, such invalidity or illegality shall not invalidate the whole Agreement, but shall be construed as if not containing the particular provision or provisions held to be invalid or illegal, and the rights and obligations of the Parties shall be construed and enforced accordingly.

**34. Intentionally Deleted**

**35. Intentionally Deleted**

**36. Non exclusivity of Remedies**

Seller's exercise of any right produced by this agreement shall be without prejudice to any claim for damages or any other right of Seller under this Agreement or applicable law.

**37. Audit**

Buyer shall keep and maintain in accordance with generally accepted accounting practices the complete books, invoices and records relating to its performance hereunder for a period of at least three (3) years after the performance to which such books, invoices and records relate. At any time during normal business hours, Seller's representatives shall have the right, at its expense, to audit such books, invoices and records, including Buyer's personnel and subcontractors, for the sole purpose of verifying compliance with the terms and conditions of this Agreement. This section shall survive termination of this Agreement for a period of three (3) years.