

KINDER MORGAN TRANSMIX COMPANY LLC
MARCH 2022 TERMS AND CONDITIONS (“T&C’s”)

1. **AGREEMENT:** Any Product purchase or sale transaction may be effectuated in a telephone conversation or by e-mail, electronic text message or other electronic data interchange with the offer and acceptance constituting the agreement of the Parties. The Parties agree that they shall be legally bound, and may each rely thereon, from the time they mutually agree to the commercial terms of the transaction. Any such transaction effectuated between the Parties as contemplated herein shall be considered a “writing” and to have been “signed”. As a material part of the consideration for entering into the transaction as evidenced by a Transaction Confirmation each of the Parties agrees not to contest or assert (and hereby releases any right to) any defense to the (i) validity or enforceability of telephonic transactions entered into by them under laws relating to whether certain agreements are to be in writing or signed by such Party, or (ii) the authority of any employee or representative of such Party to enter into a transaction. After the Parties have agreed upon the terms of a transaction, Seller shall complete and send a Transaction Confirmation to Buyer. If a Transaction Confirmation is materially different from Buyer’s understanding of the Agreement, Buyer shall so notify Seller by the deadline provided for in the Transaction Confirmation (the “Confirmation Deadline”) and Buyer’s failure to notify Seller prior to the Confirmation Deadline shall be deemed to be Buyer’s agreement to such Transaction Confirmation.
2. **TITLE AND RISK OF LOSS:** For pipeline or truck deliveries, title to and risk of loss of the Product shall pass to Buyer when the Product passes the flange between Seller’s delivery line and Buyer’s connection and/or receiving vehicle. For in-tank transfers, title to and risk of loss of the Product shall pass to Buyer at the time of transfer, as specified on the books and records of the terminal operator.
3. **INSPECTION AND MEASUREMENT:** Unless otherwise agreed, inspection and measurement shall be based on meters or on certified tank truck capacities according to terminal practice. All quantities shall be adjusted to 60 degrees Fahrenheit in accordance with the latest revised applicable parts of ASTM Designation D:1250, IP Designation: 200 Petroleum Tables.
4. **DELIVERIES:** Buyer shall make nominations and other transfer instructions in accordance with the standard operating procedures of the terminal and the relevant carrier. Buyer shall furnish Seller necessary shipping instructions. Seller shall furnish the receiving carrier with copies of bills of lading and other shipping papers. Each Party shall comply with the terms and conditions of the applicable terminaling agreement and shall pay any fees the terminal operator may impose upon it pursuant to such agreement in connection with deliveries of Product, including in-tank transfers, but Buyer shall reimburse Seller for any demurrage charges incurred by Seller as a result of the untimely loading of Product by Buyer’s agents. Carriers desiring to access a Seller terminal shall be required to execute Seller’s standard carrier access agreement as in effect from time to time.
5. **MATERIAL SAFETY DATA SHEETS.** To the extent required by applicable law, Seller shall provide Buyer with Seller’s Material Safety Data Sheets (“MSDS”) for Product delivered to Buyer. Buyer shall (i) provide its employees, agents, contractors, users, and customers who may come into contact with the Product with a copy of the MSDS and any other safety information provided to it by Seller and (ii) ensure that the recommendations relating to the handling of the Product are followed.
6. **TAXES:** When the laws, regulations, or ordinances permit, Buyer shall assume and be responsible to the proper governmental entities for any and all federal, state, or municipal taxes, excises, charges, and inspection and other fees now or hereafter imposed by any governmental entity that may be applicable to the sale of the Product delivered hereunder. Where the laws, regulations, or ordinances impose upon Seller the obligation to collect or pay such taxes, excises, charges, and inspection and other fees, Buyer shall reimburse Seller for such amounts paid by Seller. If Buyer is entitled to purchase Product free of any tax, fee, or charge, then Buyer shall furnish to Seller proper exemption certificates to cover such purchases.
7. **WARRANTIES AND INDEMNIFICATION:** Seller warrants title to the Product delivered hereunder, that it has the right to sell such Product, and that the Product is free from liens and adverse claims of every kind. Seller will pay all royalties, and other sums due on production, processing, or handling of the Product delivered, unless otherwise specified herein. Seller will indemnify and hold Buyer harmless against all loss, damage, and expense of every character on account of (i) adverse claims to the Product delivered or (ii) royalties, payments, or other charges thereon applicable before delivery. *Other than the warranties specified in this paragraph, Seller makes no and hereby disclaims all other representations or warranties, written or oral, express or implied, including, without limitation, any representation or warranty that the Product will be merchantable or suitable for a particular purpose, even if such purpose is known to Seller.*
8. **LIMITATION OF LIABILITY.** *Notwithstanding any other provision in this Agreement, no Party shall be liable to the other Party for incidental, consequential, indirect, or punitive damages arising out of or related to this Agreement including, without limitation, extra expense, loss of earnings, loss of profits, loss of use and business interruption, whether resulting from negligence, unseaworthiness, breach of this agreement or otherwise, even if the possibility of such damages may have been foreseeable.*
9. **FORCE MAJEURE:** If either Party is rendered unable by Force Majeure, wholly or in part, to perform or comply with any obligation or condition of this Agreement, then, upon such Party’s giving timely notice and reasonably full particulars to the other Party, such obligation or condition shall be suspended during the continuance of the inability so caused and such Party shall be relieved of liability and shall suffer no prejudice for failure to perform the same during such period; provided, that obligations to make payments then due for Product delivered hereunder shall not be suspended. The Party whose performance is suspended by Force Majeure shall (i) use commercially reasonable efforts to remedy the Force Majeure event (other than the settlement of strikes or differences with workmen, which shall be resolved wholly within the discretion of the Party having the difficulty); and (ii) notify the other Party of any change in circumstances giving rise to the suspension of its performance and of its resumption of performance under this Agreement. “Force Majeure” includes, without limitation by the following enumeration, acts of God and the public enemy, the elements, fire, accidents, breakdowns, strikes, differences with workmen, and any other industrial, civil, or public disturbance, any restrictions or restraints imposed by laws, orders, rules, regulations, or acts of any governmental entity,

civil or military, and any other cause of any kind not reasonably within the control of the Party having the difficulty.

10. **NOTICES:** Each Party shall deliver notices, requests, or statements hereunder to the other in person, by electronic mail, or by mail at the address shown above, or such other address as specified in writing by the other Party.
11. **ASSIGNMENT:** This Agreement is binding upon and inures to the respective successors and assigns of the Parties. After an assignment, a Party will only be relieved of its obligations hereunder if agreed to in writing by the other Party.
12. **WAIVER:** A Party may only waive a provision or condition of this Agreement in writing, and no such waiver is to be deemed to be or construed as a further or continuing waiver of any such provision or condition or as a waiver of any other provision or condition of this Agreement, unless specifically so stated in such written waiver.
13. **ENTIRE AGREEMENT:** This Agreement constitutes the entire Agreement between the Parties with respect to the subject matter hereof. To be effective, all modifications, amendments, or changes to this Agreement must be in writing, signed by both Parties.
14. **APPLICABLE LAW/VENUE:** This Agreement is subject to all applicable laws, but nothing contained herein is to be construed as a waiver of any right to question or contest any such applicable law in any appropriate forum. The Parties expressly agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. This Agreement is to be interpreted and construed in accordance with the laws of the State of Texas, without regard to the conflicts of laws provisions thereof. The Parties may only bring a suit, action, or proceeding in connection with this Agreement in Harris County, Texas and to the maximum amount permitted by law, hereby irrevocably and unconditionally waive any objection they may now or hereafter have to the laying of venue of any suit, action, or proceeding arising out of or relating to this Agreement in the state and federal courts situated in Harris County, Texas.
15. **NO GOVERNMENTAL DEBARMENT:** As used in this Section “KM” shall mean Kinder Morgan Transmix Company LLC and “COUNTERPARTY” shall mean any person or entity which has agreed pursuant to this Transaction Confirmation to be subject to the provisions of these T&Cs. COUNTERPARTY certifies that at the time of execution of the Transaction Confirmation by which COUNTERPARTY adopts these T&Cs, COUNTERPARTY is not included on any United States Federal Government debarment list (such as the Excluded Parties List System (“EPLS”) (<http://www.epls.gov>) and/or the System for Award Management (“SAM”) (<http://sam.gov>)) maintained by any federal, state or local governmental authority nor prevented from fulfilling its obligations to KM by virtue of any governmental order, proceeding or otherwise, and COUNTERPARTY shall maintain such status through the Term of this Transaction Confirmation. If at any time during the term of the Transaction Confirmation COUNTERPARTY cannot so certify to KM, COUNTERPARTY shall promptly notify KM as to COUNTERPARTY’s status. The Parties further agree that (i) any breach of this warranty and covenant by COUNTERPARTY or (ii) any failure by COUNTERPARTY to comply with environmental laws and regulations shall constitute a material breach of this Agreement, and that KM shall have all remedies available to it at law and in equity, including, but not limited to, immediate termination of the Agreement and all then effective transactions.
16. **PAYMENT TERMS:** Payment, via wire transfer, shall be due to Seller 10 days after the invoice and supporting documents are received by Buyer. If Buyer fails to provide meet its payment obligations in 10 days, Seller shall have the right, at its sole election, to immediately withhold and/or suspend deliveries upon notice and/or to terminate the Agreement without prejudice to any and all claims for damages or other rights or remedies available to Seller.
17. **ADEQUATE ASSURANCE OF PERFORMANCE:** Seller may periodically review Buyer’s credit status and payment record, and may request copies of Buyer’s most recent financial statements, which Buyer shall promptly supply. At any time throughout the term of the Agreement, if Seller has grounds for insecurity at its discretion regarding Buyer’s the performance of its payment obligations, then Seller may require a prepayment, a letter of credit, a parent company guarantee, and/or other collateral in form and amount acceptable to Seller to secure Buyer’s payment obligations under the Agreement. The Buyer is required to provide requested security in 10 days. If Buyer fails to provide requested security in 10 days, Seller shall have the right, at its sole election, to immediately withhold and/or suspend deliveries upon notice and/or to terminate the Agreement without prejudice to any and all claims for damages or other rights or remedies available to Seller.