

KINDER MORGAN

TERMS AND CONDITIONS

1. Sales Agreement. These Terms and Conditions ("Terms and Conditions") are between the Kinder Morgan entity ("Kinder Morgan") and buyer ("Buyer"), each as referenced on the invoice ("Invoice") (each may be referred to individually as a "Party", or collectively as the "Parties"). The Invoice incorporates by reference these Terms and Conditions and together shall constitute the entire Parties' agreement for the purchase and sale of bulk product(s) hereunder (the "Agreement"). Capitalized terms used in this Agreement (whether the first initial of the defined term is capitalized or the entire defined term is capitalized) shall have the meanings set forth herein. Kinder Morgan agrees to sell the product described on the Invoice ("Product") to Buyer in accordance with the terms of the Agreement. The Product's price and quantity shall be as stated on the Invoice. Title and risk of loss of Product shall pass to Buyer upon its receipt of Product. Buyer shall be solely responsible for all transportation of Product. Buyer may pickup Product only during Kinder Morgan Terminal's normal operating hours. Buyer agrees to comply with all Kinder Morgan operating policies and procedures. Buyer shall pay Kinder Morgan the price stated on the Invoice. Any payment not paid when due shall bear interest at the rate of one and one-half percent (1.5%) per month for each month or portion of a month thereafter during which such overdue amount remains unpaid. Buyer agrees to pay all taxes and assessments that may be assessed by any governmental authority against any sales and delivery of Product (except for income, franchise and other similar taxes of Kinder Morgan).

2. Buyer and Third Party Access. Kinder Morgan reserves the right, at its sole discretion, to refuse to admit and/or to remove Buyer, any of its employees, or any of Buyer's third parties that Kinder Morgan considers to be a risk to the safety or security of the Terminal. **NOTWITHSTANDING ANY OTHER PROVISION TO THE CONTRARY CONTAINED HEREIN AND TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BUYER HEREBY INDEMNIFIES AND HOLDS HARMLESS KINDER MORGAN AND ITS AFFILIATES, MEMBERS, SHAREHOLDERS, PARTNERS, DIRECTORS, OFFICERS, MANAGERS, AND EMPLOYEES ("INDEMNITEES") FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, LIABILITIES, SUITS, COSTS, LOSSES, FINES, PENALTIES, AND EXPENSES (INCLUDING REASONABLE ATTORNEY'S FEES), INCLUDING WITHOUT LIMITATION, CLAIMS FOR DAMAGE TO THE ENVIRONMENT REQUIRING INVESTIGATION, MONITORING OR REMEDIATION ("CLAIMS") ARISING FROM, RELATED TO, OR CAUSED BY, DIRECTLY OR INDIRECTLY, ACTS OR OMISSIONS OF BUYER'S CONTRACTORS, AGENTS, CARRIERS, THIRD PARTY TRUCK DRIVERS, OR OTHER ENTITY OR PERSON TRANSPORTING PRODUCT OR OTHER GOODS TO OR FROM THE TERMINAL FOR BUYER OR ITS CUSTOMERS, INCLUDING CLAIMS CAUSED BY THE NEGLIGENCE OF KINDER MORGAN OR A KINDER MORGAN INDEMNITEE.**

3. Hazards. Buyer acknowledges that there may be hazards associated with the loading, unloading, transporting, handling and use of the Product sold hereunder, which may require that warnings be communicated to or other precautionary action taken with all persons handling, coming into contact with, or in any way concerned with the Product sold hereunder. Buyer assumes as to its employees, independent contractors, and subsequent purchasers of the Product sold hereunder all responsibility for all such necessary warnings or other precautionary measures relating to hazards to person and property associated with the Product sold hereunder.

4. INDEMNIFICATION. BUYER SHALL INDEMNIFY AND HOLD HARMLESS KINDER MORGAN AND ITS INDEMNITEES FROM AND AGAINST ANY AND ALL CLAIMS THAT RESULT IN OR ARISE FROM ANY PERSONAL INJURY, DEATH OR PROPERTY DAMAGE WHETHER SUCH CLAIMS ARE THREATENED OR INCURRED, BUT ONLY TO THE EXTENT THAT SUCH CLAIMS ARE CAUSED BY OR RESULT FROM THE NEGLIGENCE OR WILLFUL MISCONDUCT ON THE PART OF BUYER OR ITS EMPLOYEES IN THE PERFORMANCE OF THIS AGREEMENT, OR ANY BREACH OF THIS AGREEMENT BY BUYER. THE PARTIES AGREE THAT THE REMEDIES PROVIDED IN THIS AGREEMENT SHALL BE, SUBJECT TO THE LIMITATIONS SET FORTH IN LIMITATION OF LIABILITY SECTION, THE SOLE AND EXCLUSIVE REMEDY FOR CLAIMS RELATED TO THE ACTIVITIES UNDERTAKEN IN CONNECTION WITH THIS AGREEMENT.

5. LIMITATION OF LIABILITY. NEITHER PARTY SHALL BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, SUCH DAMAGES AS LOST PROFITS, LOST BUSINESS OR ANY BUSINESS INTERRUPTION AND NO MATTER HOW LOSS OR DAMAGE SHALL HAVE OCCURRED. EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE PRODUCT IS SOLD "AS IS" AND THERE ARE NO GUARANTEES OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHETHER ARISING BY OPERATION OF LAW OR OTHERWISE. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, KINDER MORGAN'S TOTAL LIABILITY FOR ALL CLAIMS AND ACTIVITIES IN CONNECTION WITH THIS AGREEMENT, WHETHER SUCH LIABILITIES ARISE UNDER CONTRACT, INDEMNITY, TORT, STATUTE OR ANY OTHER LEGAL THEORY, SHALL IN NO EVENT EXCEED THE PRICE OF THE PRODUCT(S) SOLD HEREUNDER OR THE PRICE OF THAT PORTION OF THE PRODUCT(S) ON WHICH LIABILITY IS ASSERTED.

6. TEXAS DECEPTIVE TRADE PRACTICES (CONSUMER PROTECTION) ACT. The Parties certify that they are not "consumers" within the meaning of the Texas Deceptive Trade Practices (Consumer Protection) Act, Subchapter E of Chapter 17, Sections 17.41, et seq., of the Texas Business and Commerce Code, as amended ("DTPA"). The Parties covenant for themselves and for an on behalf of any successor or assignee that if the DTPA is applicable to this Agreement: (A) the Parties are "business consumers" as that term is defined in the DTPA; (B) OTHER THAN SECTION 17.555 OF THE TEXAS BUSINESS AND COMMERCE CODE, EACH PARTY HEREBY WAIVES AND RELEASES ALL OF ITS RIGHTS AND REMEDIES THEREUNDER AS APPLICABLE TO THE OTHER PARTY AND ITS SUCCESSORS AND ASSIGNS; AND (C) EACH PARTY SHALL DEFEND AND INDEMNIFY THE OTHER PARTY FROM AND AGAINST ANY AND ALL CLAIMS OF OR BY THE INDEMNIFYING PARTY OR ANY OF ITS SUCCESSORS AND ASSIGNS OR ANY OF ITS OR THEIR AFFILIATES OR SUBSIDIARIES BASED IN WHOLE OR IN PART ON THE DTPA AND ARISING OUT OF OR IN CONNECTION WITH A CONTRACT.

7. Force Majeure. Any event whether foreseeable or not that prevents a Party from being able to perform its obligations under this Agreement is a "Force Majeure Event", and includes, but is not limited to, the following: any act of God, fire, storm, tornado, lightning, hurricane, earthquake, flood, freezes, other adverse weather conditions, war, riot, boycott, terrorism, civil disturbance, epidemic, pandemic, labor strike, industrial dispute, cyber-attack, loss or outage of utilities and internet or communications, and unexpected breakdown or non-availability of machinery or supplies. A Party shall not be liable for any failure to perform or delay in performing under this Agreement to the extent caused by a Force Majeure Event. The Party claiming such inability shall within a reasonable time after it learns of the Force Majeure Event provide notice to the other Party of such Force Majeure Event and its cause. Buyer shall be responsible to pay all charges arising from this Agreement when due regardless of any Force Majeure Event. The Party affected by a Force Majeure Event shall exercise commercially reasonable efforts to eliminate the disabling effects of such Force Majeure Event.

8. General. This Agreement shall be governed by the laws of the State of Texas, without regard to choice of law rules. The Parties agree that any actions, proceedings or counterclaims brought by either Party against the other on any matters whatsoever arising out of or in any way connected with this Agreement shall be brought exclusively in the Eleventh Business Court Division of the State of Texas, Harris County, provided such court has jurisdiction and new case filings are being accepted, and if not, then exclusively in a federal or state court located in Harris County, Texas. A Party prevailing on any issue in court shall be entitled to recover its reasonable attorney's fees and costs incurred in prosecuting or defending the issue. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT. This Agreement supersedes any and all terms and conditions which may be contained in any purchase orders or other documents or writings issued by Buyer. If any of the provisions, or portions thereof, of this Agreement are found to be void, invalid, or unenforceable, they are deemed to be omitted, but only to the extent of such unenforceability. Unless expressly provided otherwise, the remedies herein provided for shall not be exclusive, but shall be cumulative and shall be in addition to all other remedies available at law or in equity. This Agreement may not be modified, amended, altered, or changed, including by course of conduct or dealing or course of performance, except by written agreement signed by both Parties. Buyer shall not transfer, subcontract or assign this Agreement, in whole or in part, without the prior written consent of Kinder Morgan. There are no third party beneficiaries to this Agreement. The provisions of this Agreement which by their nature are intended to survive the termination, cancellation, completion or expiration of this Agreement, including without limitation, any indemnity, limitation of liability, and choice of law provisions, shall continue as valid and enforceable obligations of the Parties. Buyer shall comply with all applicable laws in the performance of its obligations under this Agreement, and certifies to Kinder Morgan that neither it (nor any of its directors, officers, managers, or affiliates) are included on any U.S. denied parties or debarment lists and that it is not owned directly or indirectly 50% or more by any person or party on such lists. Kinder Morgan shall be an independent contractor in relation to Buyer, and neither Party shall be deemed for any purpose to be an agent, servant, employee or representative of the other Party. Nothing in this Agreement creates, or is intended to create, a partnership, joint venture, agency or other similar relationship between the Parties.