

## CRUDE OIL SALE TERMS AND CONDITIONS

1. Where not inconsistent, the Conoco General Provisions for Domestic Crude Oil Agreements (the Conoco Provisions), dated January 1, 1993, as amended below, shall govern this Commodity Transaction and are incorporated herein (**copy available at <http://www.phillips66.com/customers-site/Documents/domestic-crude-oil-agreement.pdf>**). Any references to Provisions are to the Conoco General Provisions and the terms provided herein.
2. **Acceptance:** If no objection is made to this Contract within two business days, it will be considered final and accepted by Buyer. Parties acknowledge the arbitration standards set forth by the American Arbitration Association (AAA) shall apply to extent not inconsistent with the Contract. Parties agree to settle any controversies hereunder by AAA arbitration, and that any arbitration decision/award shall be final and binding upon the Parties.
3. **UCC/Choice of Law:** Section M "Governing Law" shall be deleted and replaced with the following: "This Agreement shall be governed by the laws of the State of Delaware without regard to principles of conflicts of laws, and Buyer agrees to venue in Nebraska. Except as otherwise provided for herein, the provisions of the Uniform Commercial Code ("UCC") of the state of Nebraska shall be deemed to apply. The United Nations Convention on contracts for the international sale of goods shall not apply.
4. **Consent to Recording:** The Parties consent to the recording of all telephone conversations between its representatives and representatives of the other Party. The Parties agree that the Contract and/or confirmation relating to any transaction between the Parties may be saved in electronic format. Each party waives any objection it may have to the admissibility of such recording or electronic copy in any judicial, arbitration, administrative or other proceeding involving the parties to the extent such objection is based on any rule of evidence that requires authentication or identification of a document, requires an original document, or governs the admissibility of duplicates. In addition, each Party acknowledges that such recording or electronic copy is a business record within the many of the business record exception to the hearsay rule.
5. **Forward Contract:** It is agreed that this Agreement is a "Forward Contract" as defined in the Bankruptcy Code [(11 U.S.C. Sec 101(25)).
6. **Liabilities:** In no event, whether in contract, tort or otherwise, shall seller be liable for consequential, incidental, punitive, special, exemplary or indirect damages, or lost profits. Buyer shall be liable to Seller for any damage to property, where and to the extent such loss, damage is the result of Buyer's (or its agent's) negligence or willful misconduct. Buyer agrees that in case of any such loss or damage, the value of such property and the liability of Buyer shall be the fair market value of such property or the reasonable cost of repair, whichever is less.
7. **Export Controls:** The Parties acknowledge that they will comply in all respects with U.S. laws, regulations and administrative requirements applicable to this Contract concerning any export or reexport of the Product, including, but not limited to, the International Traffic in Arms Regulations, the Export Administration Regulations, the Foreign Trade Regulations and the regulations and orders issued and/or administered by the U.S. Department Of The Treasury, Office Of Foreign Assets Control in relation to export control, antiboycott and trade sanctions matters ("US or any of its affiliates to which this Contract is assigned to comply with any provisions in this Contract that are inconsistent with U.S. Export Control Laws and Regulations. This Contract does not constitute, and shall not be construed to constitute, an Contract by either Party to take or refrain from taking any action which would constitute non-compliance with any laws, regulations or other official government rules or requirements applicable to such Party which relate to export control, antiboycott or trade sanctions matters."
8. **Netting:**
  - a. **Purpose.** The parties are selling to and buying from each other various quantities of crude oil or condensate at stated prices, or are exchanging with each other various quantities of crude oil or condensate at stated differentials under existing Contracts (collectively, the "Crude Contracts"). For purposes of this Net Settlement Arrangement (defined below), Crude Contracts shall not include Contracts in the nature of division orders. With respect to deliveries of crude oil or condensate under the Crude Contracts, the parties agree to engage in net settlement arrangements (the "Net Settlement Arrangement") for the purpose of making payments (and thereby settling the parties' respective accounts) for (a) all existing Crude Contracts, and (b) for all future Crude Contracts that do not specifically identify, and reject application of, this netting procedure.
  - b. **Procedure.** For each calendar month in which sales or exchange transactions occur (a "Transaction Month"), each party shall determine the sales price for the crude oil or condensate sold to the other party and the exchange differentials, if any, due from such other party under the Crude Contracts according to the respective pricing provisions contained therein, to determine the total amount owed by such other party. The parties shall continue to issue invoices to each other in the normal course of business. In addition, after the receipt of all invoices and at least three business day before the 20th day of the month following the Transaction Month, each party shall (a) issue a statement showing all invoice amounts for both parties and the difference resulting after offsetting the total amount each party owes to the other party (the "Net Settlement Amount"), and (b) confer by telephone and compare and confirm the Net Settlement Amount. The Net Settlement Amount shall be paid by the party hereto owing the greater amount by paying such difference to the party hereto owing the lesser amount in accordance with this Contract.
  - c. **Disputed or Unverified Amounts.** If any invoice or portion of an invoice is disputed in good faith or cannot be timely verified and approved for payment, such invoice shall not be held for payment under the Net Settlement Arrangement, but shall be settled independently as soon as verified or as soon as any dispute is resolved, provided that an invoice that is partially verified or disputed shall be included in the Net Settlement Arrangement to the extent that it is verified or undisputed. Notwithstanding the foregoing, each party agrees to use every reasonable effort to achieve the objective of timely verification of invoices in order to permit payment of such invoices pursuant to the terms of this Contract in the month following the Transaction Month and no dispute or lack of verification shall excuse participation in the Net Settlement Arrangement.
  - d. **Effect on Other Contracts.** Except as expressly provided herein, existing Contracts between the parties hereto shall continue in effect and shall not otherwise be affected by this Contract. Notwithstanding the provisions hereof, nothing in this Contract shall have the effect of amending or modifying the pre-payment provisions or the close out netting provisions under this Contract or any existing or future master Contract between the parties.
9. **Modification.** No modification of this Contract shall be binding unless approved in writing. The requirement that any modification of this contract be by signed writing shall not be waived by Seller limited by course of dealing or performance or usage of trade nor shall Seller be deemed estopped to rely upon the requirement. Notwithstanding the foregoing, Buyer is hereby notified of Seller's objection to any of Buyer's terms inconsistent herewith and to any additional terms proposed by Buyer in accepting this Contract and such inconsistent or additional terms shall not become a part of this Contract unless expressly accepted in writing by Seller. Neither Seller's subsequent lack of objection to any such terms, nor the delivery of goods covered hereby, shall constitute or be deemed an agreement by Seller to any such terms. The invalidity of any provision of this Contract shall not affect the remaining provisions, and this Contract shall be construed as if such invalid provision had been omitted.
10. **Acceptance.** Buyer shall be deemed to have accepted the product sold unless the Buyer rejects the product within forty-eight hours.
11. **Taxes.** The Contract Price shall include full reimbursement for, and Seller is liable for and shall pay, or cause to be paid, or reimburse Buyer if Buyer has paid, all Taxes applicable to a transaction arising prior to the Delivery Point. "Tax" or "Taxes" means any or all *ad valorem*, property, occupation, severance, generation, first use, conservation, commodity, transportation, utility, gross receipts, privilege, sales, use, consumption, excise, lease, transaction, and other taxes or governmental charges, licenses, fees, permits and assessments, or increases therein, on the purchase, sale, delivery, availability or exchange of crude oil, other than taxes based on net income or net worth. The Contract Price does not include reimbursement for, and Buyer is liable for and shall pay, cause to be paid, or reimburse Seller if Seller has paid, all Taxes applicable to a transaction arising at and from the Delivery Point, including any Taxes imposed or collected by a taxing authority with jurisdiction over Buyer. Buyer shall indemnify, defend and hold harmless Seller from any claims for such Taxes. Either Party, upon written request of the other, shall provide a certificate of exemption or other reasonably satisfactory evidence of exemption if either Party is exempt from Taxes, and shall use reasonable efforts to obtain and cooperate with obtaining any exemption from or reduction of any Tax. Each Party shall use reasonable efforts to administer this Annex "A" and implement the provisions in accordance with the intent to minimize the imposition of Taxes.

### THE FOLLOWING SECTIONS MODIFY PROVISIONS OF THE CONOCO GENERAL PROVISIONS

12. **Warranty:** The following text shall be added at the end of Section B: "General Representations and Warranties. Each Party represents and warrants to the other Party, as of the date of this Transaction and of each delivery in connection with such Transaction, that: (a) it is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, in good standing; (b) it has the power to execute and deliver the attached Confirmation, to enter into transactions for the purchase/sale of crude oil and physically-settled options on crude oil, to perform its obligations under such transactions, and has taken all necessary action to authorize such execution, delivery and performance; (c) such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets; (d) all governmental and other authorizations, approvals, consents, notices and filings that are required to have been obtained or submitted by it with respect to this Transaction have been obtained or submitted and are in full force and effect and all conditions of any such authorizations, approvals, consents, notices and filings have been complied with; (e) its obligations under this Transaction constitute its legal, valid and binding obligations, enforceable against it in accordance with its terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application regardless of whether enforcement is sought in a proceeding in equity or at law); (f) no Default (as described in the attached Confirmation) with respect to it, or event which, with notice and/or lapse of time, would constitute a Default, has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Transaction; (g) there is not pending or, to its knowledge, threatened against it any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Transaction or any portion of this Transaction or its ability to perform its obligations under the same; (h) it has entered into this Transaction in connection with the conduct of its business and it has the ability to make or take delivery of the crude oil; (i) with respect to each option transaction: (1) it is a producer, processor, commercial user of, or a merchant handling, the commodity which is the subject of such option transaction, or the products or byproducts thereof; and (2) it is entering into the option transaction solely for purposes related to its business as such; (j) it is not relying upon any representations of the other Party other than those expressly set herein or any written guarantee of the obligations of such other Party; it has entered into this Transaction as principal (and not as advisor, agent, broker or in any other capacity,

fiduciary or otherwise); it has entered into this Transaction with a full understanding of the material terms and risks of the same, and it is capable of assuming those risks; it has made its trading and investment decisions (including regarding the suitability thereof) based upon its own judgment and any advice from such advisors as it has deemed necessary and not in reliance upon any view expressed by the other Party; and the other Party has not given to it any assurance or guarantee as to the expected performance or result of this Transaction. Limitation of Warranties. EXCEPT AS SET FORTH HEREIN, SELLER EXPRESSLY NEGATES ANY OTHER REPRESENTATION OR WARRANTY, WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY WITH RESPECT TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

13. **Entirety of Agreement:** Section Q will be deleted and state that "Conoco General Provisions and the terms provided herein, any preceding pages confirming this transaction, together with all other physically-settled crude oil transactions between the Parties comprise the entire agreement between Green Plains Trade Group LLC and Counterparty."
14. **Rules and Regulations:** The third sentence of Section C is deleted in its entirety.
15. **Force Majeure:** Delete in its entirety and replace with the following: "Except for payment due hereunder, either party hereto shall be relieved from liability for failure to perform hereunder for the duration and to the extent such failure is occasioned by impossibility, war, riots, insurrections, fire, explosions, sabotage, strikes, and other labor or industrial disturbances, acts of God or the elements, governmental laws, regulations, or pipeline carrier in receiving and delivering crude oil tendered, or by any other cause, whether similar or not, reasonably beyond the control of such party. Any such failures to perform shall be remedied with all reasonable dispatch, but neither party shall be required to supply substitute quantities from other sources of supply. Failure to perform due to events of Force Majeure shall not extend the terms of this Contract; provided, however, the term of the Contract shall be extended to the extent necessary to comply with the provisions below regarding Buy/Sell and Exchange Balancing." In addition to the above, and in the event substantially similar volumes are intended to be bought and sold or exchanged under this Contract, the parties shall have the rights and obligations set forth in the circumstances described below: (a) If, because of Force Majeure, a party (the "Delivering Party") is unable to deliver part or all of the quantity of crude oil which it is obligated to deliver under this Contract, the other party (the "Receiving Party") shall have the right, but not the obligation, to reduce its deliveries of crude oil under this Contract by an amount not to exceed the number of barrels of crude oil that the Delivering Party fails to deliver. (b) If, because of Force Majeure, the Receiving Party is unable to take delivery of part or all of the quantity of crude oil to be delivered by the Delivering Party under this Contract, the Delivering Party shall have the right, but not the obligation, to reduce its receipts of crude oil under this Contract by an amount not to exceed the number of barrels of crude oil that the Receiving Party fails to take delivery of.
16. **Payment: The first sentence of Section F is deleted in its entirety and replaced with the following sentence:** "Unless otherwise specified in the Special Provisions of this Contract, Buyer agrees to make payment against Seller's invoice for the crude oil purchased hereunder to a bank designated by Seller in U.S. dollars by telegraphic transfer in immediately available funds, in full, without discount, withholding, setoff or counterclaim (except as otherwise provided herein). Unless otherwise specified in the Special Provisions of this Agreement, payment will be due on or before the 20th of the month following the month of delivery. If payment due date is on a Saturday or Banking holiday other than Monday, payment shall be due on the preceding Banking day. If payment due date is on a Sunday or a Monday Banking holiday, payment shall be due on the succeeding Banking day. Payment shall be deemed to be made on the date good funds are credited to Seller's account at Seller's designated bank. In the event that Buyer fails to make any payment when due, Seller shall have the right to charge interest on the amount of the overdue payment at a per annum rate which shall be two percentage points higher than the published prime lending rate of Morgan Guaranty Trust Company of New York on the date payment was due, but not to exceed the maximum rate permitted by law."
17. **Financial Responsibility:** Delete Section G in its entirety and replace with the following "(a) Adequate Assurance. Seller may, within Seller's discretion, at any time request and Buyer shall, not later than two (2) Banking Days after request by Seller, provide Adequate Assurance of Performance. After such request, Seller may withhold performance until such Adequate Assurance has been received by it. Any cost, expense, or charges associated with any letter of credit procured pursuant to this Section shall be for the account of Buyer. If Buyer exceeds the credit line Seller established for Buyer, which Seller may establish and modify in its sole discretion from time to time, Seller may deem the financial responsibility of Buyer to be unsatisfactory and demand Adequate Assurance of Performance pursuant to the Financial Responsibility provision set forth in the contract."
18. **Liquidation:** Delete Section H in its entirety and replace with the following: new Section: "**Default and Liquidation; Termination:** Seller has all remedies applicable under the Uniform Commercial Code (UCC). In addition, in the event Buyer breaches this Contract in any manner, Buyer shall be liable for all losses and damages including consequential damages, incidental damages, and any lost profits incurred as a result thereof and shall pay any related reasonable attorney fees. Seller, at its option, may: resell the product in the open market and Buyer shall pay any loss or incidental expenses resulting therefrom; require Buyer to pay the difference between the contract price and the price on the date of cancellation; or Seller may without further obligation cancel this Agreement in its entirety. Notwithstanding the foregoing, Seller may pursue any remedy allowed by law at Seller's option.
  - a. If Buyer breaches this Contract, all amounts owed by Buyer may be applied and otherwise setoff by Seller against the payment of the amounts owing to Buyer with respect to any or all amounts owing between the parties, in addition to any and all other right and remedies available hereunder, provided that any amounts not then due shall be discounted to present value. Unless otherwise agreed in writing, Seller shall make delivery on a prorated basis.
  - b. For purposes of this Contract, an event of default ("Event of Default") shall mean with respect to a party or, the guarantor of such party, if any, any of the following: (a) the failure by such party or its guarantor, if any, to make, when due, any payment required under this Contract, or any guaranty given in support of this Contract, if such failure is not remedied within five (5) Banking Days after receipt of written notice; (b) the failure by such party to provide Adequate Assurance of Performance when due, if such failure is not cured within five (5) Banking Days after receipt of written notice; or (c) the occurrence of an Insolvency Event.
  - c. If an Event of Default occurs and is continuing, the non-defaulting party may, without limiting any other rights and remedies that may be available to the non-defaulting party under this Contract or otherwise, (a) offset all or any portion of any amounts owed by the defaulting party to the non-defaulting party against any amounts owed by the non-defaulting party to the defaulting party, (b) apply any prepayments made, or Adequate Assurance of Performance posted, by the defaulting party to the non-defaulting party against any amounts that are owed to the non-defaulting party, (c) if the non-defaulting party is the Seller, suspend deliveries until all amounts due for all previous deliveries to the defaulting party have been paid in full; provided, however, to the extent the non-defaulting party sustains damages related to the suspension of deliveries, the defaulting party shall pay such damages to the non-defaulting party, (d) place the defaulting party on a pre-pay basis, if the defaulting party is the Buyer, and/or (e) terminate this Contract pursuant to this Section or terminate all Transactions pursuant to this section as applicable.
  - d. "Insolvency Event" means the Party or its guarantor (i) makes a general assignment for the benefit of its creditors, (ii) commences a proceeding under applicable bankruptcy law or other law for the relief of debtors, (iii) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or readjustment of debts, (iv) has a trustee, custodian, conservator, receiver or similar official appointed for it, or for a substantial part of its property; (v) becomes insolvent or is unable to pay its debts as they become due; or (vi) becomes subject to any involuntary bankruptcy, reorganization, debt arrangement, or other proceeding under any applicable bankruptcy, insolvency or other similar law for the relief of debtors or any dissolution or liquidation proceeding is instituted against the party or its guarantor;
  - e. If an Insolvency Event occurs and is continuing, the non-defaulting party ("Liquidating Party") may, by written notice to the defaulting party, designate a day no earlier than the day such notice is effective and no later than twenty (20) days after such notice is effective as an early termination date ("Early Termination Date"). On the Early Termination Date, all transactions between the parties for the purchase and sale of all crude oils, whether governed by these Provisions or otherwise, including the Transactions, shall be terminated except as provided herein ("Terminated Transactions"). If an Early Termination Date has been designated, the Liquidating Party shall in good faith calculate the Settlement Amount of all Terminated Transactions as of the Early Termination Date (or as soon thereafter as reasonably practicable). The Liquidating Party shall aggregate all amounts due between the Parties into a single net amount (the "Termination Payment") by aggregating or setting off, as appropriate, (i) the Settlement Amount for each Terminated Transaction, (ii) all Unpaid Amounts owed to the Liquidating Party, and (iii) all Unpaid Amounts owed to the defaulting party; provided, however, if the net of the Settlement Amounts for all such Terminated Transactions would be an amount owing to the defaulting party, then such net amount shall be zero for purposes of determining the Termination Payment. The Liquidating Party shall notify the defaulting party in writing of the amount of the Termination Payment due from the defaulting party, along with reasonable detail regarding the calculation of such amount. The defaulting party shall pay the Termination Payment to the Liquidating Party within two (2) Banking Days after receipt of such notice, with interest (as provided in the Payment Section) from the Early Termination Date until paid.
  - f. If an Early Termination Date is designated, the Liquidating Party shall be entitled, in its sole discretion, to set-off any amount payable by the Liquidating Party or any of its Affiliates to the defaulting party under this Contract or otherwise, against any amounts payable by the defaulting party to the Liquidating Party or any of its Affiliates under this Contract or otherwise. The Liquidating Party shall also be entitled to apply any Adequate Assurance of Performance posted by the defaulting party to the Liquidating Party or any of its Affiliates against any amounts owed to the Liquidating Party. This Section shall be in addition to any right of setoff or other rights and remedies to which any Party is otherwise entitled (whether under this Contract, by operation of law, contract, normal business practice, or otherwise). If an obligation is unascertained, the Liquidating Party may in good faith estimate that obligation and set-off in respect of the estimate, subject to the Liquidating Party accounting to the defaulting party when the obligation is ascertained."
  - g. If an Event of Default occurs and has not been remedied pursuant to this agreement the non-defaulting party shall be entitled to terminate this Contract, whereupon the non-defaulting party shall have all remedies that may be available to it under this Contract or by law.
19. **Buy/Sell and Exchange Balancing:** Delete section J in its entirety and replace with the following: "The terms of this Section J shall only apply to this Contract if substantially similar volumes are intended to be bought and sold or exchanged under this Contract. Each party shall be responsible for maintaining the volumes bought and sold or exchanged in balance on a month-to-month basis, as near as reasonably possible. If a party fails to deliver or take its required volume during any month (Shortfall Month), including a failure to deliver or take due to an event of Force Majeure, despite

reasonable efforts to remain in balance, such volumes (Imbalance Volumes) shall be delivered and taken as soon thereafter as is reasonably practicable, and the term of this Contract shall be extended for the sole purpose of balancing deliveries. The parties shall endeavor to cause the Imbalance Volumes confirmed by the 20th of the month to be delivered during the following calendar month, and the Imbalance Volumes confirmed after the 20th of the month to be delivered during the second following calendar month, except to the extent prevented by the continuation of the event of Force Majeure. An event of Force Majeure shall not relieve either Party from its obligations to balance deliveries once the event of Force Majeure has passed and the imbalance created during said period is known. A declaration of Force Majeure is not required for the terms of this provision to apply. If Imbalance Volumes created as a result of an event of Force Majeure have not been delivered within three months after the Shortfall Month, and no other resolution of the Imbalance Volumes has been agreed between the Parties, during the fourth month following the Shortfall Month, the Delivering Party shall deliver, and the Receiving Party shall take, an amount of crude oil equal to the Imbalance Volumes of the same type, at the same location and at the same price as was received by the Delivering Party during the Shortfall Month.

a. For all imbalances, if the price specified in this Contract is a fixed price, or a formula price which is based on fixed calendar dates (eg. April 12, 2009 or April 12-19, 2009), the price of the Imbalance Volumes shall be equal to such price without regard to the month of actual delivery. However, if the price specified in the Contract is a formula price not based on fixed calendar dates, that formula, based on prices for the month of actual delivery, will be used to calculate the price for the Imbalance Volumes, unless specified.

b. The foregoing notwithstanding, for any Imbalance Volumes existing at the end of this Contract less than 1000 barrels, the obligation of either party to deliver or take such Imbalance Volumes shall be excused.

20. **Assignment: Delete section P in its entirety and replace with the following:** "Buyer shall not assign or delegate this Contract, any right, or duty hereunder without the written consent of Seller. This Contract shall be binding upon the heirs, administrators and executors of the respective Parties. Seller may assign the Contract without the consent of Buyer. Any payment made by Buyer to the payee specified in Seller's invoice in respect of crude oil delivered 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."

21. **Delivery, Title, and Risk of Loss:** The following text shall be added after all text contained in Section K "Except as expressly provided herein, Seller shall sell and deliver or cause to be delivered, and Buyer shall purchase and receive or cause to be received, the Contract Quantity. Seller shall arrange and pay for transportation to the Delivery Point and Buyer shall arrange and pay for transportation from the Delivery Point. Title to and risk of loss related to the Contract Quantity shall transfer from Seller to Buyer upon delivery and receipt at the Delivery Point. Each Party shall indemnify, defend and hold harmless the other Party from any claims arising from any act or incident occurring during the period when possession, control and title to the crude oil is vested in the indemnifying Party.

Equal Daily Deliveries. All crude oil delivered hereunder during any calendar month shall be considered to have been delivered in equal daily quantities during such month.