

DDGS SALES TERMS AND CONDITIONS

1. 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 National Grain and Feed Association (NGFA) shall apply to extent not inconsistent with the Contract. Parties agree to settle any controversies hereunder by NGFA arbitration, and that any arbitration decision/award shall be final and binding upon the Parties. If NGFA rules are inapplicable, said arbitration shall be conducted pursuant to the rules of the American Arbitration Association. Nebraska law shall apply in any situation NGFA rules do not govern, and Buyer agrees to venue in Douglas County, Nebraska. Notice to either party shall be to the address set forth on the Contract, via USPS certified mail to the attention of the General Counsel. These terms and conditions shall control unless varied in the confirmation of this Contract.
2. This Contract shall be binding upon the heirs, administrators, and assigns of the Parties. This Contract cannot be assigned by Buyer without the prior written consent of Seller. However, Seller may assign the Contract without the consent of Buyer. Buyer shall not assign or delegate this Contract, any right, or duty hereunder without the written consent of Seller. Buyer acknowledges and agrees that it shall not use or resell the commodity for human consumption. In compliance with Title VII-Wall Street Transparency and Accountability Act of 2010 ("Dodd-Frank"), each of the Parties represents to the other that a) it has the capacity to make or take delivery of the commodity in the ordinary course of its business, and is entering this transaction in connection with its business, and b) it intends to make or take physical delivery of the commodity.
3. Buyer has read this Contract in its entirety and understands its terms and legal effect. Seller warrants that commodities delivered under this contract: meet Buyer's specifications and Seller's Contract description. Origin weights and grades are to govern. **THIS WARRANTY IS BUYER'S EXCLUSIVE REMEDY AND IS IN LIEU OF ALL OTHER WARRANTIES, COVENANTS OR REPRESENTATIONS. SELLER MAKES NO OTHER WARRANTIES, EXPRESSED OR IMPLIED, WHICH EXTEND BEYOND THOSE SPECIFICALLY STATED IN THIS PARAGRAPH. THE IMPLIED WARRANTY OR FITNESS FOR A PARTICULAR PURPOSE IS HEREBY DISCLAIMED. IN NO EVENT, WHETHER IN CONTRACT, TORT OR OTHERWISE, WILL SELLER BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES OR FOR SPECIFIC PERFORMANCE.** Buyer must assume all risk and liability for results of Buyer's use of the Products. Seller's liability shall in no event exceed the purchase price of the Products. Buyer shall be deemed to have accepted the product sold hereunder unless Buyer rejects within forty-eight hours of receipt.
4. 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 or the Trade Rules, at Seller's option.
5. Buyer shall be in default if: Buyer fails or refuses to comply with any provisions hereof; any third party fails or refuses to issue, advise, confirm, negotiate, extend or reissue any letter of credit or other arrangement provided for hereunder; if Buyer becomes unable to pay its debts as they become due, files a voluntary petition, is declared bankrupt or insolvent, or makes a general assignment for the benefit of creditors; or, if a trustee, receiver or liquidator is appointed for any material portion of the assets of Buyer. Upon the occurrence of any event of default, Seller may exercise any or all rights and remedies hereunder or at law or in equity.
6. It is agreed that this Agreement is a "Forward Contract" as defined in the Bankruptcy Code [(11 U.S.C. Sec 101(25))]. If one party (the "Defaulting Party") shall voluntarily file a petition in bankruptcy, reorganization, or receivership or shall be forced by its creditors to bankruptcy, reorganization or receivership, (ii) becomes insolvent or incapable of paying its debts as they become due; or makes a general assignment for the benefit of creditors; the other party (the "Liquidating Party") shall have the immediate right, exercisable in its sole discretion, to liquidate this Agreement and all other forward contracts as defined in the Bankruptcy Code then outstanding between the Parties (whether the Liquidating Party is seller or buyer thereunder) by closing out all such contracts at the then current market prices so that each contract being liquidated is terminated except for the settlement payment referred to below. The Liquidating Party shall calculate the difference, if any, between the price specified in each contract so liquidated, and the market price for the relevant commodity as of the date of liquidation (as determined by the Liquidating Party in any commercially reasonable manner), and aggregate or net such settlement payments, as appropriate, to a single liquidated amount. Payment of said settlement payment will be due and payable within one (1) banking day after reasonable notice of liquidation. This is in addition to any other rights and remedies which the other party may have.
7. If Buyer breaches this Contract, all amounts owed by Buyer may be applied and otherwise set off by Seller against the payment of the amounts owing to Buyer, in addition to any and all other right and remedies available hereunder. Unless otherwise agreed in writing, Seller shall make delivery on a prorated basis.
8. Sanitary Feed Transportation. If Buyer is to provide equipment for loading, Buyer must provide acceptable equipment including vibrator brackets for any rail cars. Buyer shall not provide equipment which has been previously used to transport any product prohibited by federal law in animal feed unless such equipment has been cleaned using methods approved under federal law. Buyer shall ensure that the last load carried prior to any load of DDGs, or other commodity was not any prohibited animal product, by-product, medication or non-feed bulk materials including (but not limited to) the following items ("Prohibited Items"): animal by-product meal, animal digest, animal liver, antibiotics, blood products, bone meal, bone marrow, food waste, garbage, glass, pet food, dried meat solubles, fleshings hydrolysate, food processing waste, glandular and extracted glandular meal, hydrolyzed hair, hydrolyzed leather meal, meat, meat and bone meal, meat and bone meal tankage, meat by-products, meat meal, meat protein isolate, medicated feed, restaurant food waste, salvage pet food, stock, unborn calf carcasses. If a carrier hired by Buyer's last load is a prohibited item as noted, Carrier shall provide a wash certificate reflecting that the vehicle has been cleaned to remove the presence of Prohibited Items. In general trucks must be clean and in good repair. Buyer shall ensure that it only retains carriers whose drivers and employees are trained on sanitary feed transportation, retain documentation proving this training occurred, and use the FDA suggested training program or an equivalent.

9. If the number of loads is defined on the face of this contract, this contract shall be load based. Trucks loading at approximately 25 tons (+/- 5 tons)) and railcars must be loaded to capacity as required by the railroad companies. Buyer shall pay any and all weighing, inspection, track age, and interest charges. Unless otherwise set forth in this Contract, title and risk of loss shall pass from Seller to Buyer at the Delivery Point as follows: (i) product loaded into a railcar, at the loading of the railcar or if applicable, upon the constructive placement of the railcar by the railroad or upon the actual placement of the railcar for unloading if the railcar has not been previously constructively placed; or (ii) product loaded into truck, at the loading of the truck;. Buyer will not divert Seller's or its agents railcars or consign them to any other routing or to any other destination than that set out in the Contract or bill of lading instructions without Seller's prior written consent. All charges for diversion or freight charges and any other costs or expenses incurred, sustained or paid by Seller resulting from any diversion shall be the responsibility of Buyer. Unless otherwise agreed, Seller will allow Buyer a period of 5 days free demurrage for off-loading railcars from time of constructive placement until empty release. Cars held beyond 5 days the Buyer will be charged at \$90.00 per day until empty release. Demurrage charges will be invoiced to the Buyer at end of each month and payable upon receipt.
10. Seller shall not be liable for delay in performance or failure to perform when such delay or failure is due to impossibility or force majeure unforeseen causes beyond its reasonable control and without its fault or negligence, including but not limited to acts of God or the public enemy, governmental action, regulatory action, natural disasters, fires, floods, tornados, earthquakes, epidemics, quarantine restrictions, labor difficulties, riots, insurrections, freight embargoes, rail car shortages, rail service interruptions, utility service interruptions, plant breakdowns, failure or refusal of railroad to accept or pick up rail cars, and unusually severe environmental conditions.
11. 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.
12. No modification of this Contract shall be binding unless approved in writing, such requirement shall not be waived by Seller limited by course of dealing 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. This Contract, including these terms and conditions, contains the complete and final agreement between the Parties.
13. Buyer represents that it is not insolvent, as defined in the UCC. If Buyer's financial condition is deemed unsatisfactory to Seller during the term of this Contract, Seller may terminate this Contract and all other contracts with Buyer whether or not Buyer is in default. Seller may at its discretion and without prejudice to other legal remedies treat Buyer's failure to perform under this Contract as a breach of this Contract and/or any other open contracts with Buyer, and pursue all remedies.
14. Liability. Buyer shall be liable to Seller for any damage to property, where and to the extent such loss or damage is the result of Buyer's (or its agent's) negligence or willful misconduct. Buyer agrees that the liability of Buyer shall be the fair market value of such property or the reasonable cost of repair, whichever is less.
15. Insurance. To extent Buyer brings trucks on Seller's property, Buyer (or its trucking agent) shall obtain and maintain at all times the following insurance coverage: i. Commercial general liability (including automobile), insurance, with minimum limits of \$500,000 per occurrence and \$1,000,000 aggregate. ii. Workers' Compensation and Employer's Liability Insurance covering statutory limits of the applicable state. To the extent allowed by law the policies shall include a waiver of subrogation rights against Seller. If requested, Buyer shall provide certificates of insurance coverage evidencing the insurance required herein remains in force. Buyer shall provide Seller with 30 days written notice of policy cancellation. Any coverage provided by Buyer is considered to be primary insurance.