

ETHANOL PURCHASE TERMS AND CONDITIONS

1. Buyer and Seller may be collectively referred to as the Parties or individually as the Party. Buyer shall make full payment as stated in the Contract. Seller shall have the right to ant any time change or withdraw credit terms, effective upon notice to Buyer. Contract price does not include federal, state or local commodity, transaction, sales, use, excise, motor fuels excise, value-added, petroleum, business transfer or similar taxes and any such taxes shall be paid by Buyer.
2. Upon ten (10) days prior written notice provided by Buyer or Seller to the other Party, any claim arising out of or related to this Contract or the default thereof, which has not been mutually resolved shall be settled by arbitration, which shall be conducted at Omaha, Nebraska in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect, as modified or supplemented herein. Notwithstanding the rules, the Parties agree that any arbitration shall be presided over by one arbitrator who has been admitted to the practice of law and be in good standing in any of the fifty United States. The decision of the arbitrator shall be final and judgment may be entered upon it in accordance with the applicable law in any court having jurisdiction. Any claim for relief made pursuant to this Contract shall be made within one (1) year from the date upon which the party claiming relief knew or should have known of the cause of action constitution such claim. This section shall not be deemed a limitation on Seller's rights or remedies to file suit in a court of competent jurisdiction for the collection of amounts due to Seller hereunder.
3. This Contract shall be binding upon the heirs, administrators, assigns, and executors of the respective parties and this Contract cannot be assigned by Seller without Buyer's prior written consent. Buyer may assign the Contract without the consent of Seller. Seller shall not assign this Contract or any right or interest herein nor may Seller delegate any duty or obligation herein without the express written consent of Seller.
4. Seller has a duty to notify Buyer of the correct legal identity to be noted on the Contract. By signing below, and/or performing under this Contract, Seller certifies the legal identity noted on the Contract is correct and agrees to provide documentation verifying the legal identity of Seller upon request. Failure to provide such verification shall be a breach of the Contract.
5. Seller warrants that the commodities delivered under the Contract will be free and clear, from and after time of delivery, of any security interest, lien, claim or encumbrance and that Seller has good and merchantable title thereto. Seller agrees that should any lien, security interest or encumbrance be claimed against any commodity sold hereunder, Seller will immediately cause the same to be discharged and terminated; and, will further, hold Buyer harmless therefrom; and indemnify Buyer from any cost or losses incurred as a result of such claim. Seller warrants that commodities delivered under the Contract meet Seller's specifications in accordance with the Contract description. Seller warrants that commodities delivered under the Contract are of the grade indicated. Buyer's weights and measures are to govern in any dispute or settlement thereof. Product quantity shall be measured when and where the product is loaded for deliver as follows: (i) for railcar, by means of the railcar's gauging device and applicable outage tables; (ii) for tank truck, by means of a weigh scale or metering device; and (iii) for tank storage or pipeline, by means of meter or other mutually accepted method. All measurements shall be corrected for temperature of 60°F. Seller shall provide Buyer with RINS in a format compatible with the EPA's RFS RIN Transaction Report system specs.
6. Product of a standard quality, as determined by Buyer in its sole discretion, shall at Buyer's option be: rejected or returned to Seller with all costs relating to the rejection and return charged to Seller; or accepted with deductions and allowances made and charged against Seller. If Seller fails to complete delivery by the Delivery Period, Buyer has the option to: extend delivery period, terminate this Contract; or Buyer may in good faith and without unreasonable delay, purchase commodities in substitution for that due from Seller, and Buyer may recover from Seller as damages the difference between the cost of substitute commodity and the payment Seller would have received from Buyer, plus any lost profits and incidental or consequential damages, expenses and attorney's fees suffered or incurred by Buyer.
7. Buyer has all remedies applicable under the Uniform Commercial Code (UCC). Seller shall be in default hereunder upon the occurrence of any of the following: A. Failure or refusal of Seller to comply with any provisions hereof; B. Failure or refusal of any third party to issued, advise, confirm, negotiate, extend or reissue any letter of credit or other arrangement provided for hereunder; C. If Seller or any third party that issues any letter of credit or other arrangement hereunder shall become impaired or unable to fulfill its financial responsibilities, in the reasonable judgment of Buyer, or become unable to pay its debts as they become due, shall file a voluntary petition or be declared bankrupt or insolvent or make a general assignment for the benefit of creditors; or D. if a trustee, receive or liquidator be appointed for any material portion of the assets of Seller. Upon the occurrence of any event of default, Buyer may exercise any or all rights and remedies hereunder or at law or in equity, including but not limited to withholding payment for commodities sold to Buyer hereunder or liquidating the Contract.
8. In the event Seller breaches this Contract in any manner, Seller shall be liable to Buyer for any and all damages, including consequential damages, incidental damage and any lost profit incurred as a result thereof and shall pay any reasonable attorney fees related thereto.
9. In the event of breach of this Contract in any manner, then all amounts owing to Seller may be applied and otherwise setoff by Buyer against the payment of the amounts owing to Seller, in addition to any and all other right and remedies available hereunder.
10. 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 outlet flange 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; (ii) product loaded into tank truck, at the outlet flange of the tank truck; and (iii) product loaded into tank storage or pipeline, at the outlet flange or the facility. Seller will not divert Buyer'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 diversion charges, additional freight charges and any other costs or expenses incurred, sustained or paid by Buyer resulting from any diversion shall be the responsibility of Seller. Unless otherwise provided in the Contract, 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. Notwithstanding any other provision herein, title transfer upon interchange from western carrier (BNSF/UP/CP/CN) to eastern carrier (NS/CSX) shall occur when eastern carrier's tracing system officially shows the railcar as "junction received".

11. Railcars must be loaded to capacity as required by the railroad companies. Seller shall pay any and all weighing, inspection, trackage, and interest charges. Re-consigned railcars cannot be utilized on this Contract unless consented to by Buyer in writing prior to loading. Buyer reserves the right to change destination of all shipments prior to departure or railcar from Seller's facility. Seller will not divert Buyer'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 diversion charges, additional freight charges and any other costs or expenses incurred, sustained or paid by Buyer resulting from any diversion shall be the responsibility of Seller. Unless otherwise provided in the Contract, Buyer will allow Seller a period of 5 business days for off-loading railcars. Upon expiration of such 5 business day period, Seller will pay demurrage until such time as the railcar has been returned to the delivering railroad or otherwise place in accordance with written instruction from Buyer. A unit train must be released empty within 48 hours of constructive placement and returned as a unit, not single manifest.
12. Buyer shall not be liable for delay in performance of failure to perform when such delay or failure is due to unforeseen cause 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 and unusually severe environmental conditions.
13. The Parties consent to the recording of all telephone and electronic conversations between its representatives and representatives of the other Party. The Parties consent that the original Contract and/or transaction confirmation relating to any transaction between the Parties may be converted to and 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: (a) requires authentication or identification of a document, (b) requires an original document, or (c) 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.
14. No modification of this Contract shall be binding unless such modification shall be in writing, with signed consent from both Parties expressly assenting to the modification. 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, Seller is hereby notified of Buyer's objection to any of Seller's terms inconsistent herewith and to any additional terms proposed by Seller in accepting this Contract and such inconsistent or additional terms shall not become a part of this Contract unless expressly accepted in writing by Buyer. Neither Buyer's subsequent lack of objection to any such terms, nor the delivery of goods covered hereby, shall constitute or be deemed an agreement by Buyer to any such terms.
15. The invalidity or unenforceability of any particular provision of this Contract shall not affect the remaining provisions thereof, and this Contract shall be construed in all respects as if such invalid or unenforceable provision had been omitted. Seller warrants it has read this Contract in its entirety and understands its terms and legal effect. This Contract, including these terms and conditions on the reverse side hereof, supersedes all prior negotiations and understandings of the parties and contains the complete and final agreement between Seller and Buyer concerning the subject matter hereof and no other agreement in any way modifying any of the said terms and conditions will be binding upon Buyer unless made in a writing specifically referring to this Contract and signed by Buyer's authorized representative.
16. The validity, enforceability, and construction of all portions of this Contract shall be governed by the substantive law of the State of Nebraska, and Seller specifically agrees that any controversies hereunder may be heard in Nebraska.
17. Notice to either party shall be to the address set forth on the Contract, via USPS certified mail to the attention of the CEO.
18. The parties agree that the transactions hereunder constitute a "forward contract" within the meaning of the United States Bankruptcy Code and that Buyer and Seller are each "forward contract merchants" within the meaning of the United States Bankruptcy Code.
19. The parties enter this Contract in reliance upon the laws, ordinances, rules, codes, regulations, lawful orders and arrangements of and with any government authority applicable to the Product or the performance of this Contract that are in effect on the date of this Contract (collectively, "Regulations"). In the event that any of such Regulations are changed or new Regulations are issued or put in place (collectively, "New Regulations"), whether by law, decree, interpretation or regulation, or by response to the insistence or request of any governmental authority or person purporting to act therefore, and the effect of such changed Regulation or New Regulation a) is not covered by any other provisions of this Contract, or b) in the affected party's judgment has or will have a material adverse effect upon such party or if Seller, upon the suppliers of Seller the affected party shall have the option to request renegotiation of the pertinent terms provided for in this Contract, to be completed within sixty (60) days of written request therefore, failing which the affected party shall have the right to terminate this Contract effective thirty (30) days after the end of such sixty (60) day period.
20. To the extent that the Buyer or its affiliates have or hold any claim or right of recovery against Seller arising hereunder, Buyer and its affiliates shall be entitled to recoup, offset and/or net out of the amount of said claim against any and all amounts or obligation that may be or becomes owed by Buyer or its affiliates to Seller.
21. For all product classified as ethanol, Seller and Buyer both must be registered with and approved by the United States' Environmental Protection Agency ("EPA") to buy and sell ethanol with RINs, regardless of intent to take ownership.
 - a. For all sales in the Contract, the official Product Transfer Document ("PTD") shall be the sales invoice, and RINs shall be transferred on the date of invoice generation (the "Transfer Date"). Invoices submitted without RINs shall be rejected, and a new invoice must be generated with the RIN PTD. For netback purchases from Ethanol plants, the Bill of Lading ("BOL") shall be the official PTD, and the RIN Transfer Date shall be the ship date as stated on the BOL. RIN PTDs must state all matching criteria required by the EPA's Moderated Transaction System ("EMTS").
 - b. EMTS - All RINs must be transferred through the EMTS, within the following guidelines:
 - i. Transactions must be initiated by Seller by the third business day following the transfer date to allow sufficient confirmation time by Buyer.
 - ii. Price per Gallon, as stipulated on the Contract, shall be used for RINs assigned to physical ethanol transfers.
 - iii. Price per RIN, as stipulated in the Contract, shall be used for sale of RINs separate from ethanol, unless otherwise agreed.
 - iv. RIN volume in EMTS transfer batches shall be separated in the same volume that the ethanol transferred is physically separated (per truck, railcar, etc).

- v. EMTS uploads, in Excel format, shall be exchanged promptly upon EMTS submission, and shall contain fields for the PTD number, BOL number, and Unit (truck, rail car, vessel, barge, etc.) number.
- c. Volume discrepancies shall be handled by an immediate transfer of unassigned RINs, if available. If unassigned RINs are not available, agreed upon adjustments shall be made in subsequent transactions, and, if necessary, in subsequent Agreements, until total RINs transferred from Seller to Buyer accurately reflect the gallons of ethanol transferred. If there is cause for Remedial Action with the EPA due to a transfer of assigned RINs without a volume of renewable fuel, both Seller and Buyer agree to work together to remediate according to the EPA's guidance.
- d. Seller shall deliver RINs to Buyer under this Agreement that meet the requirements set forth by the EPA under the RFS2 and any related federal statutes, regulations, rules, clarifications, and updates. Seller will transfer RINs properly generated and separated under 40 CFR §80.1426 and 40 CFR§80.1429, respectively. Seller holds title and the right to transfer the RINs to Buyer and the RINs should not have been used previously for compliance to meet another entity's Renewable Volume Obligation under 40 CFR §80.1427, export obligation under 40 CFR §80.1430, or spillage or disposal obligation under 40 CFR §80.1432. If the RINs delivered by Seller via EMTS do not meet the requirements set forth by the EPA in 40 CFR §80.1431 regarding treatment of invalid RINs, and validity claims arise as a result thereof, such validity claims may be administered by Buyer with prior consent of Seller to address replacement of RINS determined invalid by the EPA.
- e. Buyer and Seller agree to wholly comply with the registration, record keeping, and reporting requirements of the RFS2. Buyer reserves the right to request reasonable documentation to support the validity of RINs transferred and Seller agrees to provide the requested documentation in a timely manner.
- f. In the event that Seller fails or is unable to transfer title to all of the purchased RINs to Buyer or if the EPA determines any or all of the purchased RINs sold and purchased hereunder to be invalid or otherwise unavailable for use by the Buyer (each such purchased RIN not transferred or subject to a breach of warranty or determined by the EPA to be invalid or unavailable for use by the Buyer, is hereinafter referred to as an "Invalid RIN"), then Seller and Buyer agree to cooperate in an effort to achieve an efficient, commercial and practical resolution consistent with the options (or any combination thereof) in Section (g), in order to cure any default with respect to any Invalid RINs provided.
- g. In the event that the Buyer receives Invalid RINs from Seller, Seller shall, at Seller's sole cost and expense, and at the option of the Buyer, be required to provide remedy for the Invalid RINs in one of the following ways:
 - i. Transfer to Buyer a volume of unassigned RINs equal to the number of Invalid RINs, within ten (10) days of discovery of the Invalid RINs, from Seller's bank of unassigned RINs, generated in the same vintage and category as the Invalid RINs or generated in the current compliance year if the Invalid RINs are expired or not reasonably available.
 - ii. Transfer to Buyer a volume of unassigned RINs equal to the number of Invalid RINs, within fifteen (15) days of discovery of the Invalid RINs, which the Seller may purchase from one or more approved third Parties, generated in the same vintage and category as the Invalid RINs or generated in the current compliance year if the Invalid RINs are expired or not reasonably available.
 - iii. In the event Seller is unable to locate any or a sufficient quantity of replacement RINs under (a) and (b) above, Seller shall pay Buyer within ten (10) business days of Seller's receipt of Buyer's invoice for such replacement RINs, including, without limitation, (i) the greater of any funds previously advanced to Seller for the volume of Invalid RINs or the cost of the replacement RINs purchased by Buyer provided such purchase price was no less favorable than that available to Buyer through good faith negotiations, (ii) Buyer's expenses including reasonable broker, consultant, and attorney fees incurred in connection with obtaining such replacement RINs, and (iii) any fines or penalties levied upon Buyer under the RFS2 program as a result of such failure.

22. NOMINATION PROCEDURE

- a. Monthly (ratable) contracts
 - i. Nominations are expected to be received prior to 1st business day of the month
 - ii. If nominations are received prior to last business day of the month prior to shipment Seller will be responsible for ratable shipments.
 - iii. Nominations received after the 1st of shipment month will be considered late.
 - iv. Nominations changed within the shipment month will be executed on a best efforts basis.
- b. Spot contracts
 - i. Spot contracts will define expected Bill of Lading dates. Nominations are expected from buyer last business day prior to week of shipment.
 - ii. If nominations are received by last business day prior to week of shipment Seller will be held responsible for ratable shipments in accordance with the nominations.
 - iii. Nominations received any later will be considered late, and Seller shall have no liability, whether direct or indirect, for any damages, costs, lost profits or otherwise, resulting or arising from non-ratable or late shipments.
- c. Form of nomination - The Buyer shall nominate the quantities and approximate timing of Product required. Each nomination shall specify the shipping schedule, method of shipment, quantity per shipment, consignee and payor of freight.