

SYRUP SALES TERMS AND CONDITIONS

1. Buyer and Seller may be collectively referred to as the Parties or individually as the Party. Parties acknowledge and understand the rules, including the arbitration rules, regulations and standards set forth by the National Grain and Feed Association shall apply to extent not inconsistent with the Contract. Parties agree to settle any controversies hereunder by arbitration, that the arbitration rules of the National Grain and Feed Association shall be the basis of said arbitration, and that the decision and award determined by said arbitration shall be final and binding upon the Parties. Nebraska law shall govern if NGFA rules do not, and Buyer agrees to venue in the courts of Douglas County, Nebraska.
2. Buyer shall not assign this Contract or any right or interest herein nor may Buyer delegate any duty or obligation hereunder without the written consent of Seller.
3. 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.
4. Seller warrants that commodities delivered under the Contract meet Seller's specifications in accordance with the Contract description. Seller warranted that commodities delivered under the Contract are of the grade indicated. Seller's weights and measures are to govern in any dispute or settlement thereof. **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 shall be deemed to have accepted the product sold hereunder unless Buyer rejects within twenty-four hours of receipt.
5. In addition to Seller's remedies under the Uniform Commercial Code (UCC), Buyer shall be in default hereunder upon the occurrence of any of the following: failure or refusal of Buyer to comply with any provisions hereof; 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; if Buyer 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 Seller, 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 if a trustee, receiver or liquidator be 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, including but not limited to withholding delivery of the commodities sold to Buyer hereunder. In the event Buyer breaches this Contract in any manner, Buyer shall be liable to Seller 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. In the event Buyer breaches this Contract, then all amounts owing by Buyer may be applied and otherwise setoff by Seller against the payment of the amounts owing to Buyer, in addition to any and all other right and remedies available hereunder. If more than one contract is open, shipments are to be applied on contracts in order of each contract's delivery date beginning with the older contract. This Contract is not deemed completed until all shipments are picked up or received, graded, weighted and unloaded at destination. The parties recognize that the market price when delivery is required under this Contract may differ substantially from the Contract price and each party agrees not to assert such a difference as an excuse for non-performance hereunder or as a defined for damages for failure to perform in whole or in part. It is agreed that this Agreement is a "Forward Contract", and the Parties are "forward contract merchants", as defined in the Bankruptcy Code [(11 U.S.C. Sec 101(25)]. If one party (the "Defaulting party") files a petition in bankruptcy, reorganization, or receivership; 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.
6. 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 will not divert Seller 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 Seller resulting from any diversion shall be the responsibility of Buyer. 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 are due and payable upon receipt.
7. Seller 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, impossibility, 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, refusal of railroad to accept or pick up railcar(s), utility service interruptions, plant breakdowns and unusually severe environmental conditions.

8. 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. The waiver of any of the terms of this Contract will not be a waiver of any subsequent failure to comply fully with or perform under this Contract.
9. If a confirmation calls for delivery beyond fourteen (14) days from the date of the Contract, Seller may demand Buyer a margin deposit of ten percent (10%) of the gross value of the Contract to be considered as margin on equity, and Seller may demand such further payments from Buyer as may be necessary to maintain a deposit on the contract of ten percent (10%) of the gross value of the Contract, plus an amount equal to the difference between the Contract price value and the prevailing market price value, if the market price value is above the Contract price value. Buyer agrees to pay such margin on demand and if not paid, Seller may exercise the same rights as if the Buyer had defaulted on the Contract.
10. The Parties consent to: the recording of all telephone conversations between its representatives and representatives of the other Party; the original Contract and/or transaction confirmation relating to any transaction between the Parties being converted to and saved in electronic format; 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; such recording or electronic copy is a business record within the many of the business record exception to the hearsay rule.
11. 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. Buyer 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 Seller unless made in a writing specifically referring to this Contract and signed by Seller's authorized representative. This requirement shall not be waived by Seller limited by an objection by Seller, delivery of goods, course of dealing or performance or usage of trade nor shall Seller be deemed estopped to rely upon the requirement. 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. The validity, enforceability, and construction of all portions of this Contract shall be governed by the substantive law of the State of Nebraska, and Buyer agrees to venue in Douglas County, Nebraska.
12. Buyer represents that it is not insolvent, as that term is 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. Unless alternative arrangements are directed by Seller, Buyer agrees to take delivery on a prorated basis. If there is an event of default, or a material change in Buyer's financial condition, Seller may demand adequate assurances of Seller's ability to perform.
13. Liability. 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.
14. Insurance. To extent Buyer brings trucks on Seller 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.