

# PRODUCTS CONTRACTS GENERAL PROVISIONS

## Unbranded Rack Deliveries

**1. PURPOSE/DEFINITIONS:** These General Provisions are intended to be incorporated into and become part of the agreements referenced herein (“**Contract**” or “**Contracts**”) between Par Hawaii Refining, LLC, a Hawaii limited liability company, U.S. Oil & Refining Co, a Delaware corporation, Hermes Consolidated, LLC (dba Wyoming Refining Company), a Delaware limited liability company, and Par Montana, LLC, a Delaware limited liability company (each, the “**Company**”), individually or as agent for affiliated companies, and other parties relating to the purchase and sale, of Products, to be delivered at the Point of Delivery as specified in the Rack Sales Agreement. A Contract will consist of a duly executed confirmation of rack sales (“**Rack Sales Agreement**”) and these General Provisions. No Contract is effective until the Rack Sales Agreement has been signed and delivered by an authorized representative of PAR. The Parties expressly recognize and acknowledge that except as expressly set forth in the Contract, no Contract or performance thereunder creates any sole source supply or purchase arrangement, general supplier-purchaser relationship or any franchise or distributor relationship. In the event any such similar relationship were to be implied by law and enforced in the future, whether pursuant to federal, state, or local law, and whether on a retroactive and/or prospective basis, it is agreed by the Parties that either Party, may immediately cancel the Contract by giving written notice to the other. As used herein, the term “**Party**” or “**Parties**”, means Buyer and Seller hereunder, individually or collectively, “**Buyer**” means any Party receiving Products under the Contract, and the term “**Seller**” means any Party delivering Products under the Contract. “**Price Cap Law**” is defined as a legal limit on wholesale gasoline prices, or the maximum amount that may be charged for producing gasoline and delivering at a Point of Delivery. The term “**Point of Delivery**” or “**Delivery Point**” shall mean a terminal or loading rack from which deliveries of Product are ordinarily made to Buyer under the Rack Sales Agreement, the location of which may be changed from time to time at Seller’s discretion. A “**Business Day**” means any calendar day on which an applicable reference price is published. “**Applicable Law**” means any statute, law, regulation, ordinance, rule; judgment, rule of common law, order, decree; permit or other governmental approval, grant, directive, ruling, guideline, policy, requirement or other restriction or similar form of decision or determination, or any interpretation, construction or administration of any of the foregoing, by any national, regional, state, local or municipal government, any political subdivision, agency, commission or authority thereof, in each case as amended.

**2. QUALITY:** Products will:(a)be of the kind, type, grade and quality specified in the applicable Rack Sales Agreement (the “**Specifications**”) and (b) be commercially free of water and biological or other contaminants or impurities. Upon reasonable request of Buyer, Seller shall provide Buyer with representative samples of Products. Each Party shall also provide the other Party with such information and reports as may be reasonably requested or required by law, to enable each Party to file all reports required by regulatory and tax authorities.

**3. WARRANTY:** Seller warrants title, free and clear of all taxes, claims, liens and encumbrance, to all Products sold and delivered hereunder. Seller further warrants that the Products sold and delivered hereunder will conform to the Specifications. **Except as specifically provided above, Seller makes no warranty whatsoever as to the quality, fitness, suitability, conformity or merchantability of the Products, and all such warranties are expressly excluded.**

### **4. VOLUMES:**

(a) The volumes to be sold, delivered, purchased and received, at each Point of Delivery during each month or other specified delivery period will conform to those set forth in the Rack Sales Agreement. If the Rack Sales Agreement set forth a range of volumes, then deliveries and receipts will be within the minimum and maximum volumes within such range. Volumes made available by Seller but not received and purchased by Buyer will not be carried forward without Seller’s written consent. Except as may be required by Applicable Law, Seller has no obligation whatsoever to sell or deliver to Buyer any volumes in excess of the monthly volumes specifically set forth in the Rack Sales Agreement regardless of whether volumes in excess of such volumes may have been sold and delivered in any prior periods. At any time during the term of the Contract, Seller and Buyer may mutually elect to sell and purchase additional volumes in accordance with and subject to the terms and conditions contained in the Contract, by supplementing the Rack Sales Agreement as to such volumes.

(b) Seller’s obligation to sell and deliver Product under the Contract is subject to modification and reduction in accordance with any program governing the allocation of Products by Seller which may be in effect on the date thereof and any allocation program thereafter adopted by Seller or imposed by Applicable Law at any time during the term thereof. Seller may impose allocation of any Products at its sole election, for any reason determined in good faith and in accordance with applicable law, including without limitation reasons relating to economic or market conditions and the available supply of such Products from the refinery(s), terminal(s) and/or pipeline(s) that have historically been used to provide Seller’s supply of such Products in the sales area of such Contract. If the allocation imposed by Seller (i) reduces the Monthly Volume Target (as set forth in the Rack Sales Agreement) to a number that is less than 50% of the Monthly Volume Target, and (ii) continues for a period of three (3) consecutive months (“**Allocation Period**”), then, within 30 days after the last day of the Allocation Period, Buyer may terminate the Contract by not less than five (5) nor more than thirty (30) days prior written notice.

(c) If Seller elects to permanently cease producing or processing Product at Seller’s facility(ies) supplying the Contract, then Seller may, without liability, cease supplying such Product under the Contract to the extent Seller is unable to supply such Product as a result of such cessation, and if such Product is the only Product covered by the Contract, Seller may terminate the Contract upon thirty (30) days’ notice to Buyer.

(d) Buyer expressly agrees and accepts that in case of a reduction in the total supply of Product available to the Company directly or indirectly due to Force Majeure or acts of any governmental authority or by a group of oil producing nations or

by the effect of any Applicable Laws, the Company may first satisfy its needs and those of its affiliates before allocating any remaining available supply of Product. Under no circumstances whatsoever, shall the Company be required to purchase additional quantities of Product to fulfill contractual requirements hereunder. Should the Company so purchase additional Product from other sources, it shall not be required to allocate such Product to Buyer.

**5. MEASUREMENT:**

(a) All quantities of Products loaded for Buyer's account shall be measured and determined based upon the meter readings at the Point of Delivery locations of Seller or the applicable terminals, as reflected by delivery tickets issued at each Point of Delivery, or if such meters are unavailable, by applicable calibration tables. Meters and temperature probes shall be calibrated according to applicable API standards. Buyer shall have the right at its expense, and in accordance with Point of Delivery location procedure, to independently certify said calibration. Each Party hereto shall have the right to have one representative present, in addition to the independent inspector, to witness all gauges, tests, meter calibration, and measurements.

(b) All quantities shall be billed in the manner set forth in the Rack Sales Agreement, which shall be either on a net gallon basis at 60° F or on a gross gallons basis. A barrel shall consist of 42 U.S. gallons, and a gallon shall contain 231 cubic inches.

**6. DELIVERY/TRANSPORTATION:**

(a) Seller shall supply Buyer with Products from Point of Delivery locations identified in the Contract or such other Point of Delivery location as may be mutually agreed by Seller and Buyer. The sale of Products thereunder is FOB Seller's Point of Delivery location, as specified in the Rack Sales Agreement. If Seller should not own, lease, operate or control the terminal facilities at any of the Point of Delivery locations, or if Seller ceases for whatever reason to supply Products from any such Point of Delivery location, then Seller shall have the right to change the Point of Delivery location upon prior notice to Buyer. In such event, Buyer shall have the right to terminate the Contract as to the amount of Products that Buyer was purchasing from such prior Point of Delivery location, and any purchase obligation established under a Contract shall be reduced by the amount of Product scheduled to be delivered at such Point of Delivery location, but all other obligations thereunder shall remain effective. Buyer shall nominate a carrier to receive the Product at each Point of Delivery and arrange for all transportation of Product from Seller's Point of Delivery location to Buyer's locations. All carriers nominated by Buyer must comply with the requirements of the terminal where the Point of Delivery is located and must be pre-approved by the terminal operator to enter the Point of Delivery location. Buyer agrees that the carriers' contracts between Buyer and carrier for petroleum transport shall include provisions requiring compliance with requirements of Seller and the terminal operator for entry to the Point of Delivery locations listed in the Contract, including insurance requirements. Buyer's receipt of Products shall be made within the normal business hours of the Point of Delivery.

(b) Buyer shall take ratable delivery of monthly volumes set forth in the Contract in accordance with the ratability requirement of the Rack Sales Agreement, or if no such requirement is set forth in the Rack Sales Agreement, then at regular intervals during each month and from month-to-month. If Buyer fails to either (i) take ratable delivery of monthly volumes as set forth in the Contract or (ii) take at regular intervals during each month, Seller may, by written notice to Buyer, establish a ratable delivery schedule, by Point of Delivery location, and Buyer shall adhere thereto until such time, if any, that Seller may cancel such delivery schedule. Failure by Buyer to adhere to such delivery schedule shall constitute a breach of the Contract. If the Contract provides for multiple deliveries, Buyer shall make reasonable efforts to take ratable deliveries of the volumes set forth in the Contract at regular intervals during delivery period.

**7. TITLE AND RISK OF LOSS:** Ownership, title and risk of loss shall pass from Seller to Buyer at the terminal Point of Delivery meter where Products are delivered. Seller shall prepare and be responsible for issuing delivery tickets, bills of lading and associated documents relating to the delivery of Products to Buyer's carrier. The passage of title and risk of loss set forth above is not conditioned on the delivery of the associated documents relating to the delivery of Products to Buyer or Buyer's carrier.

**8. PAYMENT:** Payment shall be made in accordance with the Rack Sales Agreement in immediately available U.S. Dollars. Unless the Company extends credit to Buyer as provided below, Buyer will pay for Products prior to taking possession of the Product. Payments will be made by electronic funds transfer ("EFT") initiated by the Company, or by such other method as the Company may require. Buyer will establish an account with a financial institution, on terms acceptable to the Company that provides EFT services and will authorize the Company to initiate transfers of funds between Buyer's account and the Company's account for payment of all amounts due under any Contract. Buyer will provide the Company with all information and authorization necessary to debit and credit Buyer's account via EFT. All payments must be made in strict compliance with procedures which the Company may implement or change from time to time. Payment will be deemed made when, and only when, its receipt has been verified by the Company. The Company may assess a reasonable charge upon Buyer for any payment, which cannot be completed by EFT or returned or rejected for lack of sufficient funds or other reason within Buyer's control. Payments due on Saturdays or U.S. bank holidays (other than Mondays) shall be made on the preceding Business Day; payments due on Sundays or Monday bank holidays shall be made on the following Business Day; if payment is to be made under Letter of Credit, payment shall be made upon delivery and acceptance of the supporting documentation by the issuer of the Letter of Credit. Unless otherwise specified in the Rack Sales Agreement, all payments shall be supported by invoice from the Seller, setting forth the volume, price, kind and quality of the Products delivered for which payment is being made, and any applicable delivery tickets or other documentation establishing the delivery from Seller to Buyer. If any of such items are to be determined by Buyer, Buyer shall provide Seller with sufficient information to allow Seller to timely provide such an invoice. Any payment made beyond the due date specified on the invoice may be charged a late payment fee, as interest and not a remedy or item of liquidated damages, at the rate of 2% per month prorated for partial months, but not to exceed the maximum rate allowed by law.

**9. FINANCIAL RESPONSIBILITY:** If Buyer fails to pay Seller all amounts owed when due, or if Seller, in its sole discretion, at any time and for any reason, should deem the credit or financial responsibility of Buyer to be impaired, unsatisfactory or unacceptable, Seller, at its option, may do any or all of the following: (a) require Buyer to pay for Products by cashier's check, money order, EFT or bank wire transfer prior to any deliveries of Products, (b) require that Buyer post an irrevocable letter of credit issued by a bank satisfactory to Seller, (c) require of Buyer other security acceptable to Seller, and (d) suspend all deliveries of Products until such time as Seller may deem reasonable and appropriate. If (a) any requested security is not received within the time reasonably specified by Seller, or (b) Buyer fails to provide Seller such other adequate assurance of future performance reasonably requested by Seller, or (c) any past due indebtedness is not paid in full within five (5) days of a written default notice to Buyer, then Seller shall have the right to (1) immediately terminate any and all Contracts (regardless of anything to the contrary stated or implied elsewhere in these General Provisions), (2) offset and recoup any amounts owing thereunder against any payments or deliveries due Buyer under any Contract between the Parties, pursuant to the Section titled "Remedies", and (3) exercise any other remedies allowed under any Contract, applicable law or equity. If Seller extends credit to Buyer, Seller may withdraw it at any time without notice for any reason.

**10. TAXES; COMPLIANCE COSTS:**

(a) Payment Responsibility: Unless otherwise specified in the Rack Sales Agreement, Buyer shall pay all applicable federal, state and local taxes, duties, imposts, assessments, fees, tariffs or other governmental charges which are directly or indirectly, now in effect or hereafter levied or assessed or otherwise applied by any government or instrumentality or subdivision thereof, upon or with respect to, the manufacture, sale, purchase, import, distribution, exchange, use, resale, transportation, delivery, inspection or handling of the Product sold hereunder, or proportionately upon feedstock from which Product is derived or upon processes utilized in manufacturing Product, or any other fee levied upon petroleum refiners or distributors (collectively "Taxes"), including, but not limited to: environmental fees and taxes, carbon taxes, federal, state or local excise taxes on gasoline, gasoline blend stocks, additives, diesel fuel, aviation fuel and special motor fuels, and any fees, taxes or otherwise associated with any fuel standard or global warming act. In the event that Seller pays any of said Taxes, Buyer shall reimburse Seller for all such payments pursuant to procedures established by Seller in its absolute discretion that may include approximated and/or estimated payments. Any new tax, license, inspection or other fee (other than income tax) levied after the date of a Contract by any government authority upon the transactions provided for in a Contract shall be borne by Buyer, whether paid directly to the government authority or by reimbursement to Seller. Within 30 days after any such new tax or fee becomes applicable, Buyer may give written notice to Seller of Buyer's election to terminate the Contract as to any Products to which such new tax or fee applies and which have not then been purchased. The Contract shall terminate in such case on the date named by Buyer in said notice, unless Seller notifies Buyer within ten (10) days after receipt of said notice that Seller will bear such new tax or fee.

(b) Exemptions: In the event Buyer intends to claim any applicable exemption for any Taxes, Buyer shall, prior to or upon delivery of the Product, furnish to Seller exemption certificates for such Taxes, to the extent such certificates are required or permitted by law. Unless Buyer timely delivers such exemption certificates to Seller, Buyer shall remain liable for the payment of such Taxes and shall reimburse Seller for any such Taxes paid by Seller. By providing such exemption certificates to Seller, Buyer shall represent and warrant that it is legally entitled to all such exemptions, and Buyer shall indemnify, defend and hold Seller harmless from all liabilities for Taxes, penalties and interest, if Buyer is not entitled to an exemption.

(c) Compliance Costs: Seller may incur additional cost or expense to comply with Applicable Law becoming effective after the date this Contract was executed ("Compliance Costs"), including but not limited to costs or expenses relating to (i) making additions or modifications to Seller's facilities, (ii) changing methods of operation to comply therewith, (iii) implementing testing or verification programs, (iv) implementing the conditions of any new permit necessary to operate Seller's facilities, (v) preventing, reducing, controlling or monitoring any emission, exposure or discharge into the environment, or (vi) paying additional fees, taxes or assessments which may be assessed against Seller's facilities or Product. If Seller is required to expend Compliance Costs, Seller may notify Buyer of the Compliance Costs, including a request that Buyer reimburse Seller for Buyer's share of such Compliance Costs based upon the quantity of Products sold to Buyer hereunder. Buyer shall notify Seller within ten (10) days after receipt of Seller's notice or such shorter reasonable time as may be necessary considering the effective date for compliance, whether or not Buyer agrees to pay Buyer's share of Compliance Costs as specified in Seller's notice. If Buyer notifies Seller that Buyer does not agree to bear such costs (or if Buyer fails to notify Seller of its election within the time period set forth above, Buyer shall be deemed to have elected to not to pay Buyer's share of Compliance Costs), whereupon Seller may either terminate this Contract or pay the Buyer's share of Compliance Costs.

**11. PURCHASE ORDER:** Either Party may require a Purchase Order to cover any individual purchase or sale of Products sold under the Contract, in order to process payment for such a sale, and the Purchase Order may contain other incidental provisions covering such sale and payment; provided however, that if there is a conflict or inconsistency between the terms of a Purchase Order and other terms of the Contract, the terms of the Contract shall prevail over those in the Purchase Order. The Company's signature on any document of the other Party, including a Purchase Order, which is not prominently and expressly identified as an amendment to the Contract, will constitute the Company's acknowledgment of receipt of the document only, and will not constitute the Company's agreement to any terms and conditions contained therein which are at variance with the Contract.

**12. PRICE ADJUSTMENTS:**

(a) Pass Through Adjustments: Unless otherwise specified in the Rack Sales Agreement, the Purchase Price set forth therein will be adjusted upward or downward by the same amounts and at the same times as any applicable increases or decreases in storage terminal fees, transportation tariffs, transportation fuel surcharges or similar third party costs incurred by Seller in making delivery hereunder. If a Party subsequently receives a refund of any part of a tax, tariff, storage fee, delivery fee or similar cost that is expressly referenced as a factor in determining the Purchase Price, then such refund shall be passed through to the Party who initially bore the economic effect of such charge under the Contract, and the Parties shall then make

such payments and/or credits required to accordingly adjust the price paid for delivered Products.

(b) **Reference Price Adjustments:** Unless otherwise provided in the Rack Sales Agreement, a Purchase Price based in total or in part upon a published index or marker prices will be adjusted as follows. For each Business Day when an applicable index or marker price is published, the Purchase Price will be adjusted to correspond to the published price for that Business Day. The Purchase Price for any day other than a Business Day will be adjusted to correspond to the arithmetic mean average of three applicable published index or marker prices. For a Saturday or any holiday other than a Sunday, those three prices will include the prices published for the last two Business Days preceding such Saturday or holiday and the price published for the next Business Day following such Saturday or holiday. For a Sunday, those three prices will include the prices published for the next two Business Days following such Sunday and the price published for the last Business Day preceding such Sunday. If any Purchase Price is established through reference to another price, such as an index or marker price, and if during the term hereof, such reference price ceases to be published, becomes unavailable or ceases to be determined in substantially the same manner as before, then the Parties shall negotiate in good faith to identify one or more substitute reference prices that will place the Parties in substantially the same economic position as was achieved through using the reference price when the Contract was negotiated, and the Purchase Price will be adjusted to utilize the substitute reference price(s). If the Parties are unable to agree in good faith upon substitute reference prices to be used in those circumstances, then upon ten (10) days written notice, either Party may terminate the Contract, and for any deliveries made between the date of termination and the date the original reference price became unavailable or unsuitable, the Purchase Price will be a price that will place the Parties in closest economic position to the one achieved through using the reference price at the time when the Contract was negotiated.

**13. AUDIT:** Each Party and its duly authorized representatives shall have access to the relevant accounting records and other relevant non-privileged documents maintained by the other Party, including measurement records, to the extent reasonably necessary to verify any charge, payment or claim under the Contract, and may review such records at any reasonable time or times during the term of the Contract or within three years after termination of the Contract. The Parties shall promptly make any payments, refunds or deliveries required to cure any discrepancies revealed by a review or other evaluation. Such reviews will be conducted at the expense of the reviewing Party, and at the offices and during normal hours of, the Party whose records are being reviewed.

**14. EXCHANGES AND BUY/SELL AGREEMENTS:** If these General Provisions apply to an Exchange Contract or a matching purchase and sale Contract, each Party shall be obligated to deliver the volume of Products specified under the Contract for delivery by such Party; the other Party shall be obligated to receive the volume of Products specified under the Contract for receipt by such Party; the Party delivering a quantity of Products shall be the Seller of those Products; and the Party receiving such quantity of Products shall be the Buyer of those Products. Except for differentials and other adjustments set forth in the Rack Sales Agreement of an exchange Contract, exchanges of Products shall be on a gallon-for-gallon basis. If one Party is unable to make delivery to the other within the time frame specified in the Contract, the Parties will agree in good faith upon the type, grade, dates and place of a substitute delivery of Products, and price and/or volume differentials, if any, with such deliveries to be made at the earliest reasonable date, so as to cause the economic effect to the Parties to be as close as practicable to the one that would have arisen if the deliveries had occurred on the date(s), at the places and under the terms specified in the Contract. The Parties shall use their best efforts to keep all exchanges and buy/sell arrangements in balance on a monthly basis, or a shorter period if specified in a Contract. Monthly imbalances will be resolved by the Parties on a mutually agreeable basis, but in accordance with the terms of the Exchange Contract and generally accepted industry practices and in recognition of the reasonable rights of the Parties, so as to cause the economic effects to the Parties to be as close as practicable to those that would occur if the deliveries occurred on the date(s), at the places and under the terms specified in the Contract. Any Products imbalance(s) existing upon termination of an Exchange Contract or buy/sell Contract will be settled in accordance with the terms of the Contract or by some mutually acceptable procedure that will take into account the reasonable rights of the Parties with respect to volumes, quality, and the time and place of delivery set forth in the Contract, so as to cause the economic effect to the Parties to be as close as practicable to those that would occur if the deliveries had occurred on the date(s), at the places and under the terms specified in the Contract.

**15. FORCE MAJEURE:** Neither Party shall be liable to the other Party for failure or delay in making or accepting delivery under the Contract or failure to perform any other obligation hereunder, to the extent that such failure or delay is due to Force Majeure. Force Majeure means any event or circumstance (whether or not foreseeable) which is beyond the reasonable control of a Party and is not due to the fault or negligence of such Party, and which, by the exercise of reasonable diligence could not be avoided, and includes, without limitation: compliance with acts, orders, regulations or requests of any national, federal, state or local civilian or military authority or any other persons purporting to act therefor; war (whether or not declared), embargo, civil insurrection, riots; strikes, lockouts or other; labor difficulties; actions of the elements; natural disasters, fire, explosion, mechanical breakdowns; unavailability of crude oil suitable for Seller's manufacture of Products at reasonable cost, or any other causes whether similar or not to those listed above and meeting the foregoing requirements. Seller shall not be obligated to make up any deliveries omitted as a result of any condition of Force Majeure, and the term of the Contract will not be extended by Force Majeure. In the event either Party invokes the provisions of this Section, such Party shall notify the other Party in writing (telex, fax, or other electronic communications acceptable) as soon as reasonably possible upon becoming aware of the Force Majeure, specifying in reasonable detail the underlying circumstances of the particular cause(s) of Force Majeure, and the extent to which performance of the Contract will be affected, and the expected duration thereof. The Party claiming inability to perform due to Force Majeure shall use commercially reasonable efforts to resume full performance of its obligations under the Contract as soon as possible; provided however, that neither Party shall be obligated to settle any strikes or labor disputes on terms it deems unsatisfactory. No Force Majeure condition shall relieve Buyer of any obligation to make payments with regard to Products that have been delivered under the Contract. If, as a result of Force Majeure, the Seller is required to allocate its products, including Product, Seller may do so in any manner deemed appropriate. Seller will, in no event be required to purchase Product for purposes of the Contract. If, due to Force Majeure the affected Party is substantially unable to perform its obligations under the

Contract for a period of ninety (90) consecutive days or more, then the other Party may terminate the Contract by giving notice prior to the time the affected Party resumes full performance of the Contract.

**16. REMEDIES:** Buyer's exclusive remedy for any and all losses or damages resulting from the sales of Products under the Contract, including, but not limited to, any allegations of breach of warranty, breach of contract, negligence or strict liability, shall be limited to either the return of the Purchase Price or the replacement of the particular Products for which a claim is made and proved, at Seller's option; provided however, that if Seller delivers Products which must be removed from Buyer's facilities due to a failure to meet the Standards warranted herein, Seller shall reimburse Buyer for Buyer's reasonable costs of any required removal of such Products from Buyer's facilities, disposal of such Products and cleaning such facilities. Seller shall be entitled to recover the Purchase Price payable for any such quantities delivered to Buyer. The damages claimed by either Party as a result of the other Party's failure to sell and deliver or to purchase and receive any Products specified under a Contract shall never exceed the difference between the Purchase Price payable at the time and place specified for delivery under the Contract and the market value of such Products at such time and place. **Any claim by Buyer concerning the quantity or quality of any Product shall be irrevocably waived unless made by written notice delivered promptly upon discovery of such dispute, but in no event no later than thirty (30) days after the delivery of Product at issue. Should Buyer claim that any Product sold was in any way defective, Buyer shall promptly furnish samples of the Product claimed to be defective but Seller shall have the right to take its own samples, and Buyer shall preserve an adequate quantity of the Product for a reasonable period of time to allow Seller to take such samples. In no event shall Seller or Buyer be liable to the other Party for any other special, consequential, incidental or indirect losses or damages resulting from the sale of Products under a Contract; provided, however, that nothing herein shall exonerate a Party from claims made by third parties or reduce the rights and obligations under the express indemnities contained herein. Each Party hereby irrevocably waives its rights to a trial by jury in any dispute, controversy, or claim arising out of or in relation to or in connection with a Contract or the operations carried out under a Contract, including, without limitation, any dispute as to the construction, validity, interpretation, enforceability, or breach of a Contract.**

**17. DEFAULT:** The occurrence of any of the following events, without limitation, shall constitute a Default under a Contract:

- (a) Buyer's failure to pay for Products delivered in accordance with the terms of the Contract;
- (b) failure by a Party to fully perform all of its material obligations under a Contract;
- (c) (i) a Party becoming or being adjudicated insolvent or bankrupt, or (ii) a receiver or trustee being appointed for a Party or its property or (iii) judicial approval of a petition for reorganization or arrangement under any bankruptcy or insolvency law, or (iv) a Party making an assignment for the benefit of its creditors, or (v) a Party filing a voluntary petition in bankruptcy or consenting to the appointment of a receiver or trustee;
- (d) any fraud or criminal misconduct by a Party relevant to such Party's marketing operations involving Products;
- (e) a Party's failure to materially comply with federal, state or local laws or regulations relevant to such Party's purchase, sale, transportation, storage or other handling of Products;
- (f) a Party otherwise ceasing to function as an ongoing business.

Upon the occurrence of a Default by either Party, in addition to such other remedies as may be available in law or equity, the other Party shall have the right to terminate and liquidate each Contract upon five (5) days prior written notice. If a Contract provides for multiple deliveries of one or more types of Products in the same or different delivery months, or for the exchange of Products by the Parties, all deliveries under the Contract to the same Party at the same delivery location during a particular delivery month shall be considered a single commodity transaction for the purposes of termination and liquidation, but a Party who elects to liquidate the Contract must terminate all commodity transactions under that Contract. The Parties stipulate and acknowledge that in the event of such liquidation, the market value of all Products at the times and places specified for delivery in future months under the Contract shall be conclusively deemed to be equal to the Purchase Price payable under the Contract for such Products at the time the notice is delivered, and the liquidating Party shall owe no penalties as a result of such liquidation, provided however, that each Party shall remain fully liable for all performance and breaches arising before the effective time of such liquidation. In the event of such a liquidation, a Party may set off and recoup any obligation under a Contract to pay any amounts owed to another Party by any net amount owed to such recouping Party by the other Party under any Contract subject to these General Provisions. The Parties stipulate and acknowledge that each Contract is a Forward Contract under Section 556 of the U.S. Bankruptcy Code and that each Party is a Forward Trading Merchant with respect to such Contract.

**18. FEES AND EXPENSES.** If a Party seeks to enforce that Party's rights under a Contract in any court action, litigation or similar proceeding, the prevailing Party may recover from the other Party all court costs, expenses and expert's and attorney's fees relating to such court action, litigation or proceeding.

**19. INDEMNIFICATION:**

(a) **Buyer agrees to defend, protect, indemnify, and save Seller, Seller's parent corporation, Seller's affiliates and their respective officers, directors employees and representatives (the "Seller Group") harmless from and against any and all claims, demands, liabilities, losses, causes of action, fines, penalties, costs and expenses (including reasonable attorney's fees) of every kind and character for personal injury, death or damage to property, or violations of law, arising from or occurring or growing out of or incident to, or resulting from the willful or negligent acts or**

omissions of Buyer or its agents, servants, employees, contractors, representatives and invitees.

(b) Seller agrees to defend, protect, indemnify, and save Buyer, Buyer's parent corporation, Buyer's subsidiary corporations, Buyer's affiliates and their respective officers, directors employees and representatives harmless against any and all claims, demands, liabilities, losses, causes of action, fines, penalties, costs and expenses (including reasonable attorney's fees) of every kind and character for personal injury, death or damage to property, or violations of law, arising from or occurring or growing out of or incident to, or resulting from the negligent acts or omissions of Seller or its agents, servants, employees contractors, representatives and invitees.

(c) Where personal injury, death, or loss of or damage to property is the result of the joint negligence or misconduct of a Party hereto, the Parties expressly agree to defend and indemnify each other in proportion to their respective shares of such joint negligence or misconduct. Provided, however, that in the case of indemnity by Seller, such defense, indemnification, and hold harmless obligations due from Seller shall not apply to claims caused by: (A) Buyer's negligence or willful misconduct, or (B) defects in Product sold by Seller hereunder (other than defects attributed to any act or omission of Seller or Seller's employees or agents).

(d) In the event Buyer has access to a third-party facility in connection with this Agreement, Buyer's access may be exercised by Buyer's contractors or carriers in which case Buyer shall be responsible for the acts or omissions of its contractors and carriers. Buyer shall indemnify, protect and hold harmless Seller from claims asserted against Seller due to the (A) acts or omissions, (B) failure to comply with laws or governmental regulations, or (C) failure to comply with the requirements and procedures of the facility by Buyer's contractors or carriers.

(e) **Environmental Claims Indemnity.** Buyer agrees to protect, defend, indemnify and hold harmless the Seller Group from and against all claims, demands, damages, fines, judgments, penalties, costs, liabilities or losses (including, without limitation, any and all cleanup, removal and other remediation costs and services paid for the settlement of claims, attorney fees, consultant and expert fees) arising in connection with the presence, of any Hazardous Substance, on, in, under, or emanating from any of Buyer's properties and sites. As used herein, Hazardous Substance means any substance which is toxic, ignitable, reactive, corrosive, radioactive, flammable, explosive or a human health and safety hazard, including, but not limited to, asbestos, petroleum products, by-products and waste, polychlorinated biphenyl (PCB's) and substances referred to as hazardous substances, hazardous materials, toxic substances or hazardous waste in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 USC § 9601, *et seq.*, the Superfund Amendments and Re-authorization Act of 1986, the Resources Conservation and Recovery Act, 42 USC § 6901, *et seq.*, the Clean Water Act, 33 USC § 1251, *et seq.*, the Toxic Substance Control Act, 15 USC § 2601, *et seq.*, and all regulations promulgated pursuant thereto, and any and all other applicable statutes, laws, ordinances, rules and regulations of any State, Federal, County or Municipality, or quasi-governmental authority or body.

(f) **Buyer's agreement to indemnify Seller shall not be negated or reduced by virtue of the denial of insurance coverage by Buyer's or its carrier's insurers of the occurrence or event which is the subject matter of the claims, and/or refusal to defend the insured or Seller.** Seller shall have the right, but not the duty, to participate in the defense of any claim or litigation with attorneys of Seller's selection. Buyer's and Seller's obligations hereunder shall survive any termination of this Agreement.

## 20. LAWS AND REGULATIONS:

(a) **Compliance.** Buyer and Seller shall enter into each Contract in reliance upon and shall fully comply with all applicable federal, state, and local laws, rules, regulations, decrees, and/or permits ("**Regulations**"), which directly or indirectly affect the Products sold and to be delivered thereunder, or any delivery, transportation handling or storage of Products sold thereunder. Neither Party shall cause or allow Products to be contaminated or changed in any manner that shall violate any applicable Regulations. In the event any Contract, or any action or obligation imposed upon a Party thereby, shall at any time be in conflict with any requirement of a Regulation, then the Contract, action or obligation so adversely affected shall immediately be modified to conform to the requirements of the Regulations, and all other provisions of the Contract shall remain effective.

(b) **New or Changed Regulations.** If during the term of a Contract, new Regulations become effective or any existing Regulations are or their interpretations are materially changed, which change is not addressed by another provision of the Contract ("**Change in Regulations**") and has a material adverse economic impact upon a Party in connection with its performance of the Contract, then either Party, acting in good faith, shall have the option to request renegotiation of the relevant provisions of the Contract with respect to deliveries not yet made. In the event that either Party, acting in good faith, is dissatisfied with the results of such renegotiations, such Party shall have the right to cancel the Contract, by notice of cancellation within thirty (30) days of the effective date of the Change in Regulations. Notwithstanding the foregoing, by notice to the other Party, a Party shall have the right to forthwith suspend its performance under, or to cancel a Contract, to the extent that a Change in Regulations precludes such Party from selling, purchasing, delivering or receiving Products under the Contract terms, or if due to the Change in Regulations, such Party's performance in accordance with the Contract would violate any Regulations.

(c) **Diesel.** Each Party agrees to comply with all applicable federal, state and local regulations for low sulfur diesel fuel (including but not limited to applicable provisions of 40 C.F.R. 80.520 and 80.612). Seller hereby certifies that any diesel sold shall comply with applicable standards at the time and place where such diesel is delivered. Buyer's further sales, offers for sale, dispensing, supply, offers for supply and transportation of said diesel shall be in compliance with all federal, state and local regulations.

(d) **Oxygenated Gasoline and RVP.** Each Party agrees to comply with all applicable federal, state, and local volatility regulations for gasoline and alcohol blends (including, but not limited to, 40 C.F.R. 80.27 and 80.28) and to comply

with all applicable federal and state laws for oxygenated gasoline. For each loading of gasoline during any government mandated control season for Reid Vapor Pressure (“RVP”) and/or oxygenated gasoline, Seller shall provide Buyer with a certificate of analysis, a delivery ticket, a bill of lading, or a loading ticket that certifies the maximum RVP of the product at the time and place of delivery and that the gasoline is in compliance with all applicable regulations at the time and place of delivery. Buyer’s further sales, offers for sale, dispensing, supply, offers for supply and transportation of said gasoline shall be in compliance with all federal, state and local regulations.

(e) **RFG and CG.** Each Party agrees to comply with all applicable federal, state, and local regulations for reformulated gasoline and blend stocks (individually and jointly “RFG”) and conventional gasoline (“CG”), (including but not limited to 40 C.F.R. 80.65 through 80.89, as may be revised or amended from time to time). Seller hereby certifies that unless otherwise agreed as permitted by law, all gasoline delivered under a Contract shall be in compliance with all applicable standards at the time and place where such gasoline is delivered to Buyer, and that documentation regarding each such delivery shall also be in compliance with applicable requirements. Seller shall provide Buyer all transfer documents required by 40 C.F.R. 80.77 for RFG and by 40 C.F.R. 80.106 for CG deliveries. Seller and Buyer shall each maintain records of a type and manner and for the time required to comply with 40 C.F.R. 80.74. Seller agrees that it has in effect and shall maintain a quality assurance program as required by 40 C.F.R. 80.79 (c) that includes, without limitation, procedures and requirements for periodic sampling and testing of product and the remedying of gasoline not in compliance. Seller shall provide evidence of such quality assurance program to Buyer upon request.

(f) **Permits and Reports.** Each Party will be solely responsible for compliance with all Regulations associated with the operation of such Party’s locations, including but not limited to, tax and environmental permits and reports, registration or reporting for underground storage tanks and leak detection. Buyer acknowledges and agrees that Seller does not have any liability or responsibility for product storage facilities located on premises of Buyer or Buyer’s customers. Each Party shall provide the other Party with such information and reports as may be reasonably requested or required by law, to enable each Party to file all reports required by regulatory and tax authorities.

(g) **RIN.** Unless otherwise agreed to in the Rack Sales Agreement, Seller retains ownership of all Renewable Identification Numbers (“RIN”) associated with this Contract, if any.

**21. ULTRA LOW SULFUR DIESEL:** With respect to any ultra low sulfur diesel sold under any Contract, Buyer shall take care to ensure that such Product is not commingled or contaminated in any truck, pipeline, railcar, tank or vessel with any other diesel, fuel or other Product, and Buyer will take steps to ensure that the Product is not handled in any fashion such as to cause the sulfur concentration of the Product to exceed any governmental requirements. Buyer shall be solely responsible for ensuring that all carriers, transporters and storage facilities loading and handling the Products after the delivery to Buyer take adequate measures to prevent any contamination of any Product being sold hereunder. Buyer shall also take such measures as necessary to ensure that any ultra low sulfur diesel sold or dispensed by Buyer is properly labeled in compliance with all applicable regulations. Seller shall have no liability to Buyer, or to any carrier, agent, affiliate, contractor or customer of Buyer, for any claims, damages, losses, injury or harm of any kind should the loading, handling, storage, or transportation of any ultra low sulfur diesel by Buyer or its carriers, agents, affiliates, contractors or customers cause or result in any Product’s sulfur concentration to exceed the EPA’s, or other governmental authority’s, requirements, and Buyer hereby waives and releases, and agrees to fully defend and indemnify Seller from all such claims, damages, losses, injury or harm.

**22. SAFETY:** Seller shall furnish to Buyer Material Safety Data Sheets concerning the health and safety aspects of Products purchased by Buyer, including safety and health warnings required by applicable law. Buyer should not rely upon such data as a complete presentation of all potential health and safety risks associated with the Products delivered. Buyer acknowledges that it and its carriers are fully informed concerning the nature and existence of risks posed by transporting, storing, using, handling and being exposed to gasoline, diesel and other refined petroleum products. Buyer will inform its employees, agents, retail outlets, contractors and customers of such risks. Carriers entering the terminals where Seller’s Products are distributed shall comply with all terminal rules and requirements and all Regulations relating to the handling, storage, transportation and distribution of gasoline, diesel and other petroleum products and shall advise and instruct employees relating to the hazards associated with gasoline, diesel and other refined petroleum products and the safe and proper methods of handling Products.

**23. CONFIDENTIALITY:** All information contained within a Contract and notices given pursuant thereto are for the purposes of that Contract only and the Parties will treat such information as confidential and will use it only for the purposes of the Contract. Such confidential information specifically includes, without limitation, the prices specified in a Contract and the maximum and minimum volumes to be sold under a Contract. Except as expressly permitted below, neither Party will disclose this Contract or the other Party’s confidential information (“**Confidential Information**”) to any third party without the other Party’s express prior written consent, provided however, that the Parties shall disclose such information (other than prices) to carriers and the operators of terminals and pipelines, as might be required to arrange delivery of Products being sold under a Contract. Notwithstanding the foregoing, either Party may, without consent of the other Party, disclose Confidential Information to the officers, directors, employees, professional advisors, agents, contractors and lenders of such Party or its Affiliates to the extent such persons need to know the information in connection with transactions contemplated herein, and to prospective purchaser(s) of substantially all the equity ownership interests of such Party or the assets related to its performance of a Contract, provided such persons are bound to protect confidentiality of the information; however, the Party making such disclosure shall be liable for any breach of this provision resulting from actions or omissions of any of such persons. Nothing contained herein shall prevent a Party from disclosing Confidential Information when necessary to enforce provisions of a Contract or when such Party’s counsel determines in good faith that such disclosure is required to comply with applicable law or judicial or administrative process; however, in the event of any such disclosure, the Party making such disclosure shall provide the other Party with notice of and a

reasonable opportunity to object to such disclosure. This confidentiality provision will remain in full force and effect for the term of each Contract and for a period of one (1) year thereafter. "Affiliate" means an entity that directly or indirectly, controls, is controlled by, or is under common control with, another entity, and "control" means ownership of more than 50% of the equity ownership interests of an entity or possession of the power to direct management and policies of an entity, directly or indirectly, whether through voting securities, by contract or otherwise.

**24. INTERPRETATION:** The Contract, including the validity, interpretation, and enforcement hereof, and any disputes arising under or in connection therewith, shall be governed by the laws of the State of Hawaii, without giving effect to conflict of law principles. All provisions of this Contract will be harmonized to the maximum extent possible, but in the event of any conflict, the between the Rack Sales Agreement and these General Provisions, the Rack Sales Agreement prevail over the General Provisions. If any one or more provisions of the Contract should for any reason, be held to be invalid, illegal or unenforceable to any extent, such invalidity, illegality or unenforceability will not affect any other provision thereof, the remainder of the Contract will survive and remain in full force and effect, and will be construed to give effect to the intent of the Parties specified therein to the maximum extent legally possible, however, if it is not possible to give effect to such original intent, then the Parties shall promptly negotiate in order to agree upon a replacement provision having the same economic effect as the invalid, illegal or unenforceable provision. In the event of any ambiguity in any of the terms or conditions of the Contract, including any Schedule(s) thereto, such ambiguity will not be construed for or against any Party thereto on the basis that such Party did or did not author the Contract. The headings used throughout these General Provisions are for convenience only and will be disregarded for the purposes of construing the Contract. "Including" and "includes" will be deemed to be followed by the words "without limitation". References to a Party include such Party's successors and permitted assigns, and references to any agreement means such agreement as supplemented, amended or replaced from time to time.

**25. NOTICES:** Any notice, request, acknowledgment, or other communication required or permitted by or pertaining to the Contract, shall be in writing and addressed to the other Party at the address listed in the Rack Sales Agreement provided however that communications concerning scheduling of deliveries may be made orally, promptly followed by written or electronic confirmation. Any such notice, request or other communication will be either (a) by prepaid mail or nationally recognized courier or messenger service with confirmed delivery, or (b) by personal service upon an authorized owner, officer or manager of the receiving Party; or (c) sent by facsimile with written confirmation of successful transmission; provided that notices concerning scheduling of deliveries or contractually permitted changes in the Purchase Price or other Contract terms may be made by fax, e-mail or other electronic communication, provided that the sender of the notice is able to document actual receipt by the intended recipient. All notices will be deemed served upon receipt by the other Party.

**26. ASSIGNMENT:** Buyer may not assign the Contract without the prior written consent of Seller, which consent shall not be unreasonably withheld. Any assignment by Buyer without the required prior written consent of Seller shall be null and void. Seller may assign this Contract in its sole discretion without Buyer's consent. A Party making any assignment shall promptly notify the other Party of such assignment, regardless of whether consent is required, and no assignment or other transfer of any Contract right, interest or obligation shall be binding upon the other until after such Party has received notice of an assignment, and each Party shall remain fully liable for all obligations incurred prior to such notice. In the event of an assignment by a Buyer, Seller may impose additional Financial Responsibility requirements, as provided above. Each Contract shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

**27. CONSUMPTION TAXES:** As clarification to Section 10, in the event that at any time and from time to time during the term of this Contract any border adjustment tax, value added tax or other similar tax (a "Consumption Tax") is imposed by a government authority and becomes effective, and such Consumption Tax has a material adverse economic effect upon Seller, Seller shall have the option to request re-negotiation of the prices or other pertinent terms hereunder. Such option may be exercised by Seller at any time after such Consumption Tax is promulgated, by written notice of desire to re-negotiate, such notice to contain the new prices or terms desired by Seller. If the Parties do not agree upon new prices or terms satisfactory to both within thirty (30) days after Seller gives such notice, Seller shall have the right to terminate the affected transaction at the end of the said thirty (30) day period. Any Product delivered during such thirty (30) day period shall be sold and purchased at the price and on the terms applying hereunder without any adjustment in respect of the Consumption Tax.

**28. INSURANCE:** Buyer (i) agrees that it has been provided a copy of Seller's standard insurance terms and conditions, and (ii) agrees that it will be bound by, and fully comply with, Seller's standard insurance terms and conditions. Buyer agrees to promptly provide proof of compliance with Seller's standard insurance terms and conditions at its cost upon request from Seller.

**29. WAIVER OF FUTURE SUPPLY OBLIGATIONS:** The Parties acknowledge and agree that these General Provisions are freely entered into and do not reflect or result from any legal obligation that either party may have to the other party to supply Products.. Neither party expects or desires that these General Provisions, any invoice issued by Seller or any other written agreement between the parties relating to these General Provisions will form the basis of any future obligation of either party to supply Products to the other party. To the extent that any present or future laws or regulations may require any such supply obligation, each party waives, in advance, any right it may now have or subsequently obtain to enforce any such obligation.

**30. ENTIRETY OF AGREEMENT, MODIFICATION AND WAIVER:** A Contract shall constitute the entire understanding of the Parties relating to the sale of Products specified therein and shall supersede all prior written or oral proposals, negotiations, and representations of the Parties regarding such sale. No amendment, modification, waiver or alteration of any Contract shall be binding unless reflected either by a written instrument signed by the Parties or by an exchange of executed written correspondence between the Parties reciting full agreement on the changes and stating that the exchange of correspondence reflects a modification, waiver or amendment of the Contract. Waiver by either Party of performance of any Contract rights or obligations or of any default by the other Party shall not operate as a waiver of any other right,



obligation or default or as a future waiver of the same right or obligation or a waiver of any future default.