

GENERAL TERMS AND CONDITIONS
to
GROWMARK, Inc. Energy Bulk Sales Agreements and Confirmations

These General Terms and Conditions apply to any Energy Bulk Sales Agreement (“Agreement”) and any transaction confirmation (“Confirmation”) entered into by GROWMARK, Inc. (Seller”) and any other party hereto (“Buyer”) related to the sales of Products by Seller to Buyer. Buyer’s transaction of business with Seller shall constitute and evidence Buyer’s acceptance of these General Terms and Conditions without further evidence of acceptance by Buyer.

1. WARRANTY: As of the date of each transaction, Seller warrants marketable title, free and clear of all taxes, claims, liens and encumbrances, to all Products sold and delivered hereunder. Seller further warrants that the Products shall conform to the descriptions in the Confirmation. EXCEPT AS EXPRESSLY SET FORTH HEREIN, SELLER MAKES NO OTHER REPRESENTATION OR WARRANTY CONCERNING THE PRODUCTS, AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR ANY PARTICULAR PURPOSE, ARE DISCLAIMED BY SELLER.

2. QUANTITY AND MEASUREMENT:

- (a) Each Confirmation shall set forth the approximate sales volumes by terminal and the quantities to be sold and delivered at each terminal during each month or other specified delivery period.
- (b) Products loaded for Buyer’s account shall be measured and determined based upon the meter readings at the applicable load out location, as reflected by delivery tickets issued at each load out location, or if such meters are unavailable, by applicable calibration tables. Meters and temperature probes shall be calibrated, according to applicable API standards, to meet or exceed applicable state or federal requirements and regulations.
- (c) Liquid fuel quantities shall be billed a net gallon for pipeline quantities basis unless otherwise specified under applicable state, federal or local law. A barrel shall consist of 42 U.S. gallons and a gallon shall contain 231 cubic inches.
- (d) All propane quantities shall be billed on a net gallon basis.
- (e) For pipeline deliveries, the pipeline company’s meters shall determine the quantity of Product delivered.
- (f) For In-Tank deliveries, the quantity stated in the Confirmation shall determine quantity of Product delivered.
- (g) For barge deliveries, the quantity of Product received or delivered shall be determined by a mutually appointed Independent Inspection Company (“IIC”). Quantity as determined by the IIC shall be final and binding on all Parties and shall be the basis for preparing relevant shipping documents and invoices save fraud and/or manifest error. If, for any reason an IIC is not in attendance or if terminal operating procedures prevail, then quantity as determined by the entity (or its personnel) having responsibility for the day-to-day operations of the terminal, pier, wharf or offshore loading platform where title or custody to the Product may transfer (“Terminal Operator”) shall be final and binding on all Parties and shall be the basis for preparing relevant shipping documents and invoices save fraud and/or manifest error. Each Party shall have the right to witness the measurement processes, provided adequate notification is given to interested parties.
- (h) For rail deliveries, Product quantities received from or delivered to rail cars at rail racks shall be determined by calibrated - custody transfer grade meters. If meters are not available or malfunction (i.e. are deemed to be inaccurate), or if verification of meter performance is not possible, quantity shall be based on terminal tank measurements. In the event meters are not available or if shore tank(s) are active (vs. static) during any part of the transfer, quantities shall be based on the weighing rail cars on certified weigh scales.

(i) All measurement and sampling equipment, procedures, calculations, and practices (whether performed by IIC or by the Terminal Operator) shall be performed in conformance with the most current international measurement, sampling and analysis standards (API Manual of Petroleum Measurement Standards (“MPMS”), The Energy Institute Hydrocarbon Management (HM), ISO, National Institute of Standards and Technology and ASTM. Volumes shall be adjusted from observed conditions to standard volumes and weight in accordance with the latest revision of API MPMS Chapter 11 (e.g. Table 6B or 54B, etc. whichever table is applicable to that commodity).

3. PRICING: The price for Products shall be as set forth in the Confirmation, unless otherwise stated in the Confirmation, Product priced is FCA terminal and does not include freight charges.

4. DELIVERY/TRANSPORTATION: Seller shall supply Buyer with Products from the terminals identified in the Confirmation or such other terminals as may be mutually agreed by Seller and Buyer. The sale of Products thereunder is FCA (Free Carrier) Seller’s terminals specified in the Confirmation. If Seller should not own, lease, operate or control any of the terminals, or if Seller ceases for whatever reason to supply Products from any such terminal, then Seller shall have the right to change the terminal upon prior notice to Buyer. In such event, Buyer shall have the right to terminate the Confirmation as to the amount of Products that Buyer was purchasing from such prior terminal, or elect to have any purchase obligation established under a Confirmation reduced by the amount of Products scheduled to be delivered at such terminal; but all other obligations thereunder shall remain effective. Buyer shall nominate a carrier to receive the Products at each terminal and arrange for all transportation of Products from the terminal to Buyer’s locations. All carriers nominated by Buyer must comply with the requirements of the terminal and must be pre-approved by the Terminal Operator to enter the terminal. Buyer agrees that the carriers’ agreements between Buyer and carrier for petroleum transport shall include provisions requiring compliance with requirements of Seller and the Terminal Operator for entry to the terminals listed in the Agreement or Confirmation, including insurance requirements. Buyer’s receipt of Products shall be made within the delivering terminal’s usual business hours.

5. COMPLAINTS/OBJECTIONS: In the event that Buyer has any complaints or objections as to the quantity or quality of Product delivered to it by Seller pursuant to the Agreement or a Confirmation, Buyer shall notify Seller immediately after receipt of specific Product for which it has a complaint or objection, and shall make such Product available to Seller for its own investigation. Any such notification shall state with particularity the basis for the complaint or objection. In the event Buyer has failed to comply with the provisions of this section, it shall be deemed to have waived any complaint or objection as to such specific Products.

6. TITLE AND RISK OF LOSS: The shipping terms are stated in the Confirmation. When Product is delivered FOB origin, ownership, title and risk of loss shall pass from Seller to Buyer at the terminal 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 the carrier. Seller is responsible for ensuring that all delivery tickets, bills of lading and associated documents relating to the delivery of Products to the carrier accurately represent, on their face, the correct API gravity, temperature, and net and gross Product volumes.

When Product is delivered via the transfer of physical inventory of Product on the books and records of a Terminal Operator where Buyer and Seller are both terminal customers (“In-Tank”), the ownership, title and risk of loss shall pass from Seller to Buyer on the date specified in the Confirmation.

When Product is delivered FOB destination, ownership, title and risk of loss of Product transfer to Buyer as Product passes through the outlet flange of Seller’s delivering pipeline system for pipeline deliveries.

7. **PAYMENT:** Propane payment terms shall be net five (5) business days from receipt of invoice. Refined fuels payment terms shall be net two (2) business days from receipt of invoice. All payments shall be made in immediately available U.S. Dollars. Payments due on Saturdays, Sundays or U.S. bank holidays (other than Mondays) 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 Confirmation, all payments shall be supported by invoice from Seller, setting forth the volume, price, kind and quality of 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 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 1.5% per month prorated for partial months, but not to exceed the maximum rate allowed by law. Buyer's obligations shall be absolute, irrevocable and unconditional, irrespective of the legality or validity of an obligation hereunder or under any related agreements and shall not be subject to any counterclaim, setoff or deduction or defense based upon any claim Buyer may have against Seller.

8. **FINANCIAL RESPONSIBILITY:** If Buyer fails to pay Seller all amounts owed when due, or if, in the reasonable opinion of Seller, the financial responsibility of Buyer should at any time become impaired, unsatisfactory or unacceptable, Seller at its option may require: (i) Buyer to pay cash prior to any future deliveries of Products; (ii) Buyer to post an irrevocable letter of credit or other security reasonably required by Seller and may suspend deliveries of Products until such security is received; provided, however, that if a Confirmation specifies specific security for Buyer's performance Seller may require only such specified security; (iii) Buyer to provide Seller such other adequate assurance of future performance reasonably requested by Seller.

9. **TAXES, FEES AND TARIFFS:** Any tax, excise, fee, or other charge now or hereafter imposed by law upon Products sold to Buyer or on the use, storage, consumption, sale, transfer, transportation or delivery thereof, or on a Confirmation shall be the obligation of Buyer, Buyer shall pay or reimburse Seller for its payment of taxes, fees, or other similar charges, which are levied or assessed upon the purchase, use, resale, withdrawal, transportation, or handling of Products. Such taxes, fees, or other similar charges include, but are not limited to, federal manufacturers excise taxes, environmental taxes, state and local motor fuel taxes, state and local sales and use taxes, gross receipts or franchise taxes, business and occupation taxes, and state and local oil spill taxes or fees. Seller reserves the right to pass to Buyer any increases in applicable pipeline tariffs.

10. **FORCE MAJEURE:** Neither party shall be liable to the other for failure or delay in making or accepting delivery under the Agreement or a Confirmation to the extent that such failure or delay may be due to Force Majeure. Force Majeure shall include any cause reasonably beyond the control of a party, including, but not limited to, 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; labor difficulties; actions of the elements; natural disasters, fire, explosion, mechanical breakdowns, or any other causes reasonably beyond the control of such party, or any other events or circumstances not within the reasonable control of the party affected, whether similar or dissimilar to any of the foregoing, in each case, beyond such party's reasonable control (a "Force Majeure Event"). Upon occurrence of Force Majeure Event, the affected party shall promptly notify the other party that a Force Majeure Event has occurred and its anticipated effect on performance, including its expected duration. The affected party shall furnish the non-affected party with periodic reports regarding the progress of the Force Majeure Event. The affected party shall use reasonable diligence to minimize damages and to resume performance. Seller shall not be obligated to make up any deliveries omitted as a result of any Force Majeure Event. No Force Majeure Event shall relieve Buyer of any obligation to make payments with regard to Products that have been delivered under the Agreement or any

Confirmation. Neither party, along with its approved agents, carriers, or contractors, shall be required to cross picket lines, or otherwise endanger its employees or equipment to fulfill a delivery under the Agreement or any Confirmation.

11. DEFAULT: The occurrence of any of the following events, without limitation, shall constitute a “Default” under a Confirmation or the Agreement: (1) Buyer’s failure to take delivery of Product or to pay for Products within ten (10) days of a written Default notice to Buyer delivered in accordance with the terms of the Agreement or Confirmation; (2) wrongful failure by a party to fully perform all of its material obligations under the Agreement or a Confirmation including without limitation Buyer’s failure to comply with Section 8 of these General Terms and Conditions; (3)(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; (4) any fraud or criminal misconduct by a party relevant to such party’s marketing operations involving Products; (5) 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; or (6) a party otherwise ceasing to function as an ongoing business.

12. REMEDIES:

(a) Except as otherwise provided in this section, upon Default by either party, in addition to such other remedies as may be available in law or equity, or under the Agreement, any Confirmation or these General Terms and Conditions, the non-defaulting party shall have the right to terminate all pending Confirmations.

(b) For the avoidance of doubt, Seller shall be entitled, at Seller's sole discretion, to recover the purchase price payable for any quantities delivered to Buyer. If Buyer does not take delivery of the quantity of Product set forth in a Confirmation, Seller can sell the volume of Product not lifted. If the market price is less than the forward fixed price set forth in the Confirmation, Buyer will pay Seller the amount equal to the volume not lifted times the difference between the open market price and the forward fixed price with such payment plus a deficiency fees as determined by Seller due net ten (10) days from invoice date.

(c) Buyer’s exclusive remedy for any and all losses or damages resulting from the sales of Products under the Agreement or any Confirmation, including, but not limited to, any allegations of breach of warranty, breach of agreement, 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.

(d) Nothing herein shall exonerate a party from claims made by third parties or reduce the rights and obligations under the express indemnities contained herein.

(e) SELLER SHALL NOT BE LIABLE TO THE BUYER FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, SPECIAL, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR REVENUE OR LOSS OF USE OF EITHER, OR BUSINESS INTERRUPTION DAMAGES, WHETHER BY STATUTE, IN TORT OR IN AGREEMENT EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(f) If a party seeks to enforce its rights under a Confirmation, the Agreement or these General Terms and Conditions, in any court action, litigation or similar proceeding, the substantially prevailing party may recover from the other party all court costs, expenses and expert’s and reasonable attorney’s fees relating to such court action, litigation or proceeding.

(g) In the event of a Default hereunder by Buyer, all unpaid indebtedness of Buyer shall become immediately due and payable, without further notice to or demand upon Buyer.

13. TRADEMARKS: Neither party shall use the other party’s name, trade or service marks, or trade dress in any way with regard to the Products or the marketing of the Products.

14. INDEMNIFICATION:

(a) Buyer agrees to defend, protect, indemnify, and save Seller, Seller's parent corporation, Seller's subsidiary corporations, 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 negligent or willful acts or omissions of Buyer or its agents, servants, employees, contractors, representatives and invitees, or a breach of the Agreement or any Confirmation.

(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 (the "Buyer Group") 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 or willful acts or omissions of Seller or its agents, servants, employees contractors, representatives and invitees, or a breach of the Agreement or any Confirmation.

(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 indemnify each other in proportion to their respective shares of such joint negligence or misconduct.

(d) 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 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 125 I 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.

15. LAWS AND REGULATIONS:

Buyer and Seller shall enter into the Agreement and each Confirmation in reliance upon, and shall fully comply with, all applicable federal, state, and local laws, rules, regulations, decrees, and/or permits which directly or indirectly affect the Products sold and to be delivered thereunder, or any delivery. transportation handling or storage of Products sold thereunder.

16. SAFETY:

Buyer does hereby specifically acknowledge receipt of Seller's Material Safety Data Sheet ("MSDS"). Buyer shall read such MSDS and advise its employees, its affiliates and all third parties who may purchase Products, of the MSDS and of precautionary procedures for handling such Products that are set forth in such MSDS and any supplementary MSDS or written warning that it receives from Seller from time to time. 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 Products. All carriers nominated by Buyer that enter the terminals where Products are distributed shall comply with all terminal rules and requirements and all regulations relating to the handling, storage, transportation and

distribution of Products and shall advise and instruct its employees relating to the safe and proper methods of handling Products.

17. INTERPRETATION: If any one or more provisions of the Agreement, these General Terms and Conditions, or any Confirmation should for any reason, be held to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect any other provision thereof, the remainder of the Agreement, these General Terms and Conditions or any Confirmation, shall nevertheless survive and remain in full force and effect, and shall be construed to give effect of the intent of the parties specified therein to the maximum extent legally possible. In the event of any ambiguity in any of the terms or conditions of the Agreement, these General Terms and Conditions or any Confirmation, such ambiguity shall not be construed for or against any party on the basis that such party did or did not author the same. The headings used throughout these General Terms and Conditions are for convenience only and shall be disregarded for the purposes of construing the Agreement, these General Terms and Conditions or any Confirmation.

18. MISCELLANEOUS:

(a) Entire Agreement; Amendment. The Agreement, all Confirmations and these General Terms and Conditions, constitute the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersede and cancel all prior agreements and understandings with respect thereto. The obligations of a party to the Agreement, all Confirmations and these General Terms and Conditions shall be binding on the parties and their successors and permitted assigns. The Agreement, all Confirmations and these General Terms and Conditions may not be amended or modified by Buyer except in a written instrument duly signed by Seller. No terms or provisions in any other document or correspondence, including without limitation, any invoice, terms, conditions, letter, email, facsimile transmission or other documentation or communication, shall have any effect or be binding upon the parties.

(b) Waiver. No delay or failure by Seller to exercise any right or remedy shall constitute an abandonment of any such right and no waiver of any default shall constitute a waiver of any later default.

(c) Governing Law; Jurisdiction; Waiver of Jury Trial. The Agreement, all Confirmations and these General Terms and Conditions shall be governed by the laws of the State of Illinois without regard to the conflicts of laws. Any dispute arising hereunder shall be brought only in the federal or state courts located in McLean County, Illinois, all protests based on jurisdiction or venue being hereby waived. 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 Confirmation, the Agreement or these General Terms and Conditions, including, without limitation, any dispute as to the construction, validity, interpretation, enforceability, or breach of a Confirmation, the Agreement or these General Terms and Conditions.

(d) Assignment. Buyer may not assign its rights or obligations under the Agreement, all Confirmations and these General Terms and Conditions without the prior written consent of Seller.

(e) Time of the Essence. Buyer acknowledges and agrees that time is of the essence in Buyer's performance of the Agreement, all Confirmations and these General Terms and Conditions.

(f) Notices. Any notice provided for in the Agreement, all Confirmations and these General Terms and Conditions shall be in writing and shall be deemed given when personally delivered, the day following delivery by electronic mail, or three (3) days after being sent by certified mail, return receipt requested and postage prepaid.