



2021 Edition

# Propane Sales Addendum

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# PART I: GENERAL AND DEFINITIONS

## ARTICLE 1. GENERAL

### Section 1.1. Applicability.

This Propane Sales Addendum applies to the Special Provisions between Seller and Buyer to which this Propane Sales Addendum is attached or incorporated by reference. The General Terms apply to every Transaction for which this Propane Sales Addendum applies. Capitalized terms that are used, but not defined, in this Propane Sales Addendum shall have the meanings ascribed to them in the General Terms.

### Section 1.2. Priority of Terms.

If there is a conflict between or among any terms or conditions in the Special Provisions (including amendments thereto), this Propane Sales Addendum, or the General Terms, the order of precedence for conflict resolution in descending order is: (i) the Special Provisions (including amendments thereto); (ii) this Propane Sales Addendum; and (iii) the General Terms.

## ARTICLE 2. DEFINITIONS

“**AAA**” has the meaning set forth in the Compliance Agreement.

“**AAA Rules**” has the meaning set forth in the Compliance Agreement.

“**AAR**” has the meaning set forth in the Railcar Addendum.

“**Agreement**” means and includes the following documents in connection with each separate Transaction entered into by and between Buyer and Seller: (a) the Special Provisions (including amendments thereto), (b) this Propane Sales Addendum, and (c) the General Terms, and any appendixes and exhibits attached hereto or thereto.

“**Buyer Group**” means Buyer and its Affiliates and each of their directors, officers, employees, agents, and contractors, collectively.

“**Compliance Agreement**” means the Compliance Agreement attached hereto as Appendix A.

“**Customer Information Guide**” means the “Customer Information Guide For: Propane (HD-5 or Commercial Grade) With Odorant” attached hereto as Exhibit B.

“**Delivery Place**” means the place at which the Product is to be delivered to Buyer or its designated third-party carrier, as set forth in the Special Provisions.

“**DOT**” means the United States Department of Transportation, and any successor Government Authority.

“**Force Majeure**” has the meaning set forth in Article 10.

“**General Terms**” means the version of Valero Marketing and Supply Company General Terms and Conditions for Petroleum Product Purchases and Sales in effect at the time of the respective delivery under the Agreement.

“**Greenhouse Gas Component**” has the meaning set forth in Section 5.3.

“**Seller Group**” means Seller and its Affiliates and each of their directors, officers, employees, agents, and contractors, collectively.

“**Propane Sales Addendum**” means this Propane Sales Addendum and all appendixes and exhibits referenced herein or attached hereto, all of which are incorporated herein for all purposes.

“**Product**” means the type of propane specifically identified in the Special Provisions as being the subject of the sale, purchase, or other transaction between the Parties.

“**Railcar Addendum**” means the “Railcar Addendum” attached hereto as Exhibit D.

“**Refinery**” mean Seller’s Affiliate’s refinery where the Product was produced.

“**Specifications**” means the applicable “Product Specifications: ASTM D1835-20” attached hereto as Exhibit A for the Product.

“**Unodorized Liquid Petroleum Gas Waiver Letter**” means the form of letter attached hereto as Exhibit C.

## PART II: DELIVERY; TITLE AND RISK OF LOSS

### ARTICLE 3. DELIVERY

#### Section 3.1. Generally.

- a) Delivery of the Product to Buyer shall be made into truck or railcar, as set forth in the Special Provisions, at the Delivery Place in quantities of not less than 8,000 Gallons per truck or railcar, except that Seller may permit trucks and railcars to load less than 8,000 Gallons. In the event of a truck or railcar load of less than 8,000 Gallons, Buyer shall be assessed a terminal charge for such delivery in an amount to be determined by Seller.
- b) Buyer shall arrange for truck or railcar, as applicable, freight and related transportation services. Upon advance written request from Buyer, Seller may provide railcars for transportation of Product to Buyer's designated location. In the event Seller provides railcars, whether owned or leased by Seller or any Affiliate of Seller, for transportation of Product, each Party agrees to be bound in all respects to the terms and conditions of the Railcar Addendum.

### ARTICLE 4. TITLE AND RISK OF LOSS

Title to and risk of loss of the Product shall pass from Seller to Buyer as the Product passes the last discharge flange of the applicable loading rack at the Delivery Place.

## PART III: GENERAL TERMS

### ARTICLE 5. PRICE; PAYMENT

#### Section 5.1. Price.

The price of Product shall be the price set forth in the Special Provisions.

#### Section 5.2. Required Documentation.

In addition to any documentation required by Applicable Law, payment shall be made by Buyer against the presentation of Seller's invoice.

#### Section 5.3. Greenhouse Gas Component.

For Product transported to destinations within the State of California, the applicable State of California greenhouse gas cap and trade assessment ("Green House Gas Component") will be listed as a separate line item on the invoice for such Product. Such invoice will contain two (2) itemized price components: the "Base Product Price", as set forth in the Special Provisions; and the Greenhouse Gas Component. The Base Product Price and the Greenhouse Gas Component will add up to equal the "Total Product Price" line item on the applicable invoice. Seller reserves the right to change this approach to the component pricing at any time.

### ARTICLE 6. REPRESENTATIONS AND WARRANTIES

#### Section 6.1. Title.

Seller represents and warrants that: (i) as of the date of delivery of the Product hereunder, Seller has good title to the Product sold and delivered, free and clear of any lien or encumbrance; and (ii) Seller has full right and authority to transfer such title of such Product to Buyer.

#### Section 6.2. Product Specifications.

Product sold or transferred under the Agreement shall, at the time that title passes to Buyer, conform to the Specifications, unless other specifications therefor are set forth in the Special Provisions in which case the Product shall conform to such specifications, taking into account any stated tolerances. Whether set forth in the Special Provisions or elsewhere in the Agreement, no reference to "typicals" or to time of delivery shall ever form a part of the Product's specifications or operate or be construed as a warranty of any sort.

## ARTICLE 7. NON-ODORIZED PRODUCT INDEMNITY

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND IN ADDITION TO AND NOT IN LIEU OF ANY OTHER OBLIGATIONS SET FORTH IN THE AGREEMENT, BUYER SHALL BE SOLELY RESPONSIBLE AND LIABLE FOR, AND SHALL RELEASE, DEFEND (UPON SELLER'S REQUEST), INDEMNIFY, AND HOLD EACH OF THE SELLER GROUP HARMLESS FROM AND AGAINST ANY AND ALL LOSSES (AS DEFINED IN THE GENERAL TERMS), INCLUDING LOSSES (AS DEFINED IN THE GENERAL TERMS) FOR INJURY TO, OR DEATH OF, ANY PERSON, AND LOSSES (AS DEFINED IN THE GENERAL TERMS) WITH RESPECT TO ANY PROPERTY WHICH ANY OF THE SELLER GROUP MAY SUSTAIN OR BE EXPOSED TO, BY REASON OF, CAUSED BY, RESULTING FROM, OR OTHERWISE ASSOCIATED WITH:

- a) ANY OF THE BUYER GROUP'S NEGLIGENCE (OR ALLEGED NEGLIGENCE) IN FAILING TO MONITOR AND MAINTAIN THE ODOR LEVEL OF THE ODORIZED PRODUCT DELIVERED HEREUNDER AT OR ABOVE LEGALLY REQUIRED LEVELS (PURSUANT TO THE COMPLIANCE AGREEMENT) WHILE SUCH PRODUCT IS IN ANY OF THE BUYER GROUP'S POSSESSION, OR IN TANKS AND CYLINDERS OWNED BY ANY OF THE BUYER GROUP; OR
- b) THE USE OF ETHYL MERCAPTAN AS THE SOLE (OR BLENDED) PRODUCT ODORANT (AS REQUIRED UNDER THE COMPLIANCE AGREEMENT) IN THE DELIVERIES MADE HEREUNDER; OR
- c) THE ACTUAL OR ALLEGED STORAGE, USE, HANDLING, RESALE OF PRODUCT, OR ANY WARNING (OR LACK THEREOF) BY ANY OF THE SELLER GROUP REGARDLESS OF WHETHER ANY SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY ANY OF THE SELLER GROUP'S CONCURRING OR PARTIAL NEGLIGENCE, OR THE JOINT NEGLIGENCE OF ANY OF THE SELLER GROUP AND ANY OF THE BUYER GROUP, OR OF ANY OF THE SELLER GROUP AND ANY OTHER PERSONS OR ENTITIES, OR ANY COMBINATION OF PERSONS OR ENTITIES. BUYER HEREBY AGREES THAT BUYER'S INDEMNIFICATION OF THE SELLER GROUP UNDER THIS ARTICLE SHALL PROTECT THE SELLER GROUP EVEN FROM THE CONSEQUENCES OF ANY OF THE SELLER GROUP'S OWN (I) CONCURRING NEGLIGENCE WHICH IS ONE OF THE PROXIMATE CAUSES OF THE INJURY, DEATH, OR DAMAGE, OR (II) STRICT LIABILITY; THE ONLY EXCEPTION TO THIS INDEMNITY OBLIGATION BEING WHERE THE NEGLIGENCE OF ANY OF THE SELLER GROUP IS DETERMINED BY A FINAL JUDGMENT OF A COURT PURPORTING TO HAVE PROPER JURISDICTION OVER THE MATTER TO BE THE SOLE PROXIMATE CAUSE OF THE INJURY, DEATH, OR DAMAGE; OR



- d) **THE DEFECTIVENESS (OR ALLEGED DEFECTIVENESS) OF EITHER THE ODORIZED PRODUCT DELIVERED HEREUNDER, OR THE ETHYL MERCAPTAN USED AS THE SOLE ODORANT UNDER THE TERMS HEREUNDER, OR THE ETHYL MERCAPTAN USED AS A COMPONENT IN A BLENDED ODORANT, WHETHER SUCH DEFECT (OR ALLEGATION OF DEFECT) AND THE LOSS RESULTS, IN WHOLE OR IN PART, FROM THE DESIGN, REFINING, MANUFACTURE, MARKETING, DISTRIBUTION, OR WARNING (OR THE LACK THEREOF) OF ODORIZED PRODUCT, OR FROM ANY FAILURE BY ANY OF THE SELLER GROUP TO WARN ANY PERSON OF ANY SUCH DEFECT, OR ANY HAZARD ASSOCIATED WITH THE ODORIZED PRODUCT OR ETHYL MERCAPTAN.**

**FURTHER, IT IS THE EXPRESSED INTENTION OF EACH PARTY THAT THE INDEMNITIES PROVIDED FOR HEREIN ARE UNCONDITIONAL AND BUYER WILL INDEMNIFY AND PROTECT THE SELLER GROUP FROM THE CONSEQUENCES OF DEFECTS IN THE SELLER GROUP'S OWN DESIGN, MANUFACTURE, MARKETING, DISTRIBUTION OF, OR FAILURE TO WARN ABOUT SUCH DEFECTS IN THE PRODUCT, OR DEFECTS IN THE ODORANT ADDED TO THE PRODUCT (I.E., ETHYL MERCAPTAN OR ANY OTHER ODORIZING AGENT) WHETHER THEY MAY BE THE SOLE OR A CONCURRING CAUSE OF THE INJURY, DEATH, OR DAMAGE.**

**THE INDEMNITIES IN THIS ARTICLE 7 ARE LIMITED TO CLAIMS WHICH ARISE IN REGARD TO THE MATTERS EXPRESSLY ENUMERATED HEREIN. THE INDEMNITIES DEAL ONLY WITH LACK OF ODORIZATION OF THE PRODUCT AND WARNING (OR THE LACK THEREOF) RELATED ISSUES. THE INDEMNITIES DO NOT COVER ANY OTHER MATTERS WHICH MAY INVOLVE THE ALLEGED NEGLIGENCE OR STRICT LIABILITY OF ANY OF THE SELLER GROUP.**

## **ARTICLE 8. REFINERY PRODUCTION**

Notwithstanding anything in the Agreement to the contrary, if: (i) the Refinery ceases to produce Product, for any reason or for no reason; (ii) there is a curtailment, reduction, or interruption of Product production at the Refinery, including the Refinery's voluntary election to curtail, reduce, or interrupt production of Product, or (iii) there is a complete or partial shutdown of the Refinery, then Seller shall have no obligation or liability to sell or provide Product to Buyer. Furthermore, nothing in the Agreement shall be construed in any way to require Seller to purchase Product to supply any or all of the Agreement quantity.

## **ARTICLE 9. ACCESS**

When accessing the Delivery Place, Buyer and its employees, agents, and third-party carriers shall comply with all operating and safety procedures of the Delivery Place. Buyer shall inform its employees, agents, and third-party carriers of such procedures and instruct them to comply with all such procedures. Buyer shall require that its agents and third-party carriers execute and deliver to Seller, or if Seller is not the owner or operator of the Delivery Place, to such owner or operator of the Delivery Place, such agreements as Seller or such other owner or operator may require from time to time in connection with Buyer's (or its agent's or third-party carrier's) access to the Delivery Place, including a carrier access agreement on terms and conditions customary at the Delivery Place.

## ARTICLE 10. FORCE MAJEURE

“**Force Majeure**” means any cause or event reasonably beyond the control of a Party, including (but without limiting the generality of such term): act(s) of God; perils of the sea; fire; delay of the performing vessel arising from breakdown or adverse weather; natural disasters (such as violent storms, cyclones, earthquakes, tidal waves, floods, destruction by lightning); war (declared or undeclared); epidemic or quarantine restrictions; military operations; blockades; revolution, riots, or rebellions; acts of piracy; acts of sabotage; accidents at, closing of, or restrictions upon the use of mooring facilities, docks, ports, pipelines, harbors, railroads, or other navigational or transportation mechanisms; total or partial disruption, destruction, or breakdown of, or explosions or accidents to, wells, storage plants, the Refinery, the Delivery Place, pipelines, terminals, facilities, machinery, racks, or equipment; failures or delays in transportation; unavailability of suitable railcars or trucks, or parts or equipment therefor; periodic shutdown, cessation of operations (voluntary or involuntary), or turnaround of the Refinery, Delivery Place, terminals, or loading racks for general inspection, repair, or maintenance; exhaustion, reduction, unavailability, or delays in delivery of, or refusal to deliver, any product, or material necessary in the manufacture of Product deliverable hereunder, whether lawful or otherwise, including crude, oil, natural gas, natural gasoline, supplies, raw materials, ingredients, and additives; trade restrictions, transportation embargoes, boycotts, strikes, picketing, lockouts, or a dispute or difference with workers, labor shortage requests; good faith compliance with any orders or actions, whether voluntary or involuntary, of any Government Authority, or by any Person purporting to represent a government; or any other cause of a similar nature as described herein not reasonably within the control of the respective Parties.

## ARTICLE 11. PRODUCT ALLOCATION

### Section 11.1. Suspension of Deliveries During Force Majeure Events.

If Seller finds it necessary to avail itself of any of the causes set forth in Article 10 of this Propane Sales Addendum, Seller shall not be obligated to perform any of the following: (i) remedy any such cause or causes; (ii) make up deliveries omitted by reason thereof; (iii) acquire additional Product from any source to supply Buyer under the Agreement; or (iv) supply Buyer hereunder any additional Product which Seller may acquire from another facility other than the Refinery (or terminal) customarily used in the performance under the Agreement, regardless of whether a commercially reasonable substitute is available.

### Section 11.2. Allocation.

If, from any cause, Seller believes there is such a shortage of Product (or similar product) that Seller is or may be unable to meet the demands of all of its customers, then Seller may allocate among such customers its available supplies in such manner as Seller may determine at its sole discretion.

## ARTICLE 12. APPLICABLE LAWS; RESTRICTIONS ON DELIVERY

### Section 12.1. Compliance With Applicable Laws.

Each Party agrees to comply fully in the performance of the Agreement with all Applicable Laws, specifically including those related to the handling, storage, testing, sale, distribution, transportation, and use of the Product. Buyer further agrees to require each of its own subsequent purchasers for resale to similarly obligate itself.

### Section 12.2. Restrictions on Delivery.

Seller reserves the right, but not the obligation, to refuse to deliver any Product into any truck or railcar (as applicable) furnished by Buyer if Seller considers for any reason that it would be dangerous or hazardous to either Persons or property for Product to be delivered into, contained in, or transported by such truck or railcar, and Seller shall not be liable to Buyer or any other Person by reason of any such refusal. Nothing herein shall be construed as imposing any duty, either express or implied, on Seller, its agents or employees to make any investigation for the purpose of determining or to determine whether it is unsafe or hazardous to load or use any such truck or railcar.

### Section 12.3. Hazardous Materials Emergency Response Information.

Buyer warrants that its transportation equipment and the transportation equipment of its agents, third-party carriers, and/or anyone else authorized to load Product at the Delivery Place for or on behalf of Buyer shall carry at all times during the transportation of the Product the required document(s) to be in compliance with 49 CFR 172.602, as amended.

## ARTICLE 13. UNODORIZED PRODUCT

### Section 13.1. Buyer's Written Certification; Requirements for Taking Delivery.

- a) From time to time upon Seller's agreement to sell unodorized Product and at a price to be mutually agreed upon, Buyer may load unodorized Product from the Delivery Place based upon Buyer's written certification that odorization of a particular designated delivery of such Product will: (i) be harmful to its use or further processing; and (ii) serve no useful purpose as a warning agent in such use or further processing.

- b) Under such circumstances, Buyer shall furnish Seller in advance: (i) a copy of a schedule for each truck or railcar to be loaded with unodorized Product and Seller's employees shall at such times be authorized to load unodorized Product for Buyer, its employees, agents, and contractors; and (ii) a signed Unodorized Liquefied Petroleum Gas Waiver Letter. Buyer agrees to comply with all rules, guidelines, and procedures of Seller in connection with the loading, transportation, handling, storing, odorizing, testing, selling, or dispensing of Product, including those obligations in the Compliance Agreement (placed on Buyer's company letter head with the name of the Refinery, destination location, commencement date for the period of loading unodorized Product, and Buyer's name and the name of Buyer's executing representative inserted into same). Each bill of lading will be signed by Buyer's authorized representative, who is authorized to designate which loads of Product are to be unodorized. **TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND IN ADDITION TO AND NOT IN LIEU OF ANY OTHER OBLIGATIONS SET FORTH IN THE AGREEMENT, FOR EACH DELIVERY OF UNODORIZED PRODUCT, BUYER SHALL BE SOLELY RESPONSIBLE AND LIABLE FOR, AND SHALL RELEASE, DEFEND (UPON SELLER'S REQUEST), INDEMNIFY, AND HOLD EACH OF THE SELLER GROUP HARMLESS FROM AND AGAINST ANY AND ALL LOSSES (AS DEFINED IN THE GENERAL TERMS) ARISING OUT OF BUYER'S PURCHASE AND ANY OF THE BUYER GROUP'S STORAGE, HANDLING, TRANSPORTATION, DISTRIBUTION, SALE, OR USE OF UNODORIZED PRODUCT.**
- c) For all purposes herein, the term "odorized" also means "stenched" and "unodorized" also means "unstenched".

### Section 13.2. Responsibility for Transportation of Unodorized Product.

Additionally, Buyer assumes full responsibility for any Losses sustained by Seller if compliance with this Article results in the transportation of Product contrary to Applicable Law, including applicable regulations of the DOT.

## ARTICLE 14. COMPLIANCE AGREEMENT

Buyer agrees to be bound in all respects by the terms and conditions of the Compliance Agreement.

## APPENDIX A

### Compliance Agreement

- I) **Introduction.** This Compliance Agreement is a part of the Propane Sales Addendum and is acknowledged and agreed to be enforceable and binding in all respects. This Compliance Agreement deals with the obligations of Buyer and Seller in relation to quality claims handling, dispute resolution, and certain safety issues with respect to the Product.
- II) **Quality Claims/Losses.**
- 1) **Notice of Claims; Opportunity to Inspect.** Buyer shall promptly notify Seller either by facsimile or electronic mail followed by certified mail, return receipt requested, of any claim or lawsuit to be asserted by Buyer concerning any defect, contamination, or unacceptable or unlawful variance in quality (including odorization) of any Product delivered or allegedly delivered hereunder. Seller must be given a reasonable opportunity to inspect any such Product that Buyer suspects or knows is defective, contaminated, or fails to meet the Specifications before the shipment is unloaded at Buyer's scheduled destination point. **THE FAILURE OF BUYER TO GIVE SUCH TIMELY NOTICE AND OPPORTUNITY TO INSPECT SHALL OPERATE AS A WAIVER OF ANY AND ALL CLAIMS WHICH BUYER MAY HAVE AGAINST SELLER AS A RESULT OF ANY SUCH SUSPECTED OR KNOWN DEFECT, CONTAMINATION, OR VARIANCE.**
  - 2) **Settlement; Indemnity; Limitations.**
    - a) Buyer shall not settle or resolve any claim or lawsuit brought by any third party who is known or alleged to have been injured or damaged by Product delivered under the terms of the Agreement without first notifying Seller and permitting Seller to participate in the settlement negotiations in connection with any Product delivered or allegedly delivered under the Agreement. **OTHERWISE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND IN ADDITION TO AND NOT IN LIEU OF ANY OTHER OBLIGATIONS SET FORTH IN THE AGREEMENT, BUYER SHALL BE SOLELY RESPONSIBLE AND LIABLE FOR, AND SHALL RELEASE, DEFEND (UPON SELLER'S REQUEST), INDEMNIFY, AND HOLD EACH OF THE SELLER GROUP HARMLESS FROM AND AGAINST ANY AND ALL LOSSES (AS DEFINED IN THE GENERAL TERMS), INCLUDING REIMBURSEMENT OR PRODUCT REPLACEMENT PAID OR PROVIDED BY BUYER, ANY OF THE BUYER GROUP, OR ANY OF THEIR INSURERS, IN CONNECTION WITH ANY SUCH SETTLEMENT OR RESOLUTION OF SUCH CLAIM OR LAWSUIT.**
    - b) Any suits or action (whether based in contract, tort, products liability, strict statutory liability, fraud, misrepresentation, or otherwise) by Buyer arising under the Agreement shall be barred unless instituted within one (1) year of the occurrence of the event upon which the suit or action is based.

- c) **SELLER'S LIABILITY FOR ANY ACTION OR CLAIM BROUGHT IN CONNECTION WITH THE AGREEMENT SHALL BE LIMITED TO THE PURCHASE PRICE OF THE QUANTITY OF THE PRODUCT IN QUESTION, OR AT SELLER'S OPTION, REPLACEMENT IN KIND OF THE QUANTITY OF THE PRODUCT IN QUESTION. IN ADDITION TO AND NOT IN LIEU OF ANY OTHER LIMITATION SET FORTH IN THE AGREEMENT, BUYER AGREES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THAT NEITHER SELLER NOR ANY OF THE OTHER PARTIES COMPRISING THE SELLER GROUP SHALL BE LIABLE FOR PUNITIVE, EXEMPLARY, INCIDENTAL, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF ANY CAUSE WHATSOEVER (WHETHER SUCH CAUSE BE BASED IN CONTRACT, NEGLIGENCE, STRICT LIABILITY, TORT, OR OTHERWISE).**

### III) Dispute Resolution.

- 1) Mediation. If a dispute arises out of or relates to the Agreement, or the breach thereof, and if the dispute cannot be settled through negotiation, Buyer and Seller each agree to first try in good faith to settle the matter by mediation before resorting to arbitration. The compensation and expense of any mediator shall be shared equally by the Parties unless stipulated otherwise in writing.
- 2) Arbitration.
- a) Generally. Any controversy or claim arising out of or relating to the Agreement, or the breach thereof, or the commercial or economic relationship of the Parties hereto, shall be settled by arbitration in accordance with the American Arbitration Association (“**AAA**”) Commercial Arbitration Rules (the “**AAA Rules**”), and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. The arbitration shall be administered by the AAA and shall be enforced by the provisions of the Texas General Arbitration Act (Texas Civil Practice and Remedies Code, Section 171, et seq.). The AAA Rules are incorporated into the Agreement and, as amended from time to time by the AAA, shall establish the procedures for any arbitration brought under the Agreement, except as modified by the following provisions:
- b) Number of Arbitrators. If a dispute involves an amount in controversy of \$50,000 or less, there shall be one (1) arbitrator. If a dispute involves an amount in controversy in excess of \$50,000 or a request for preliminary injunction, there shall be three (3) arbitrators.
- c) Arbitrators' Qualifications and Selection. All arbitration proceedings shall be conducted in Bexar County, Texas. For disputes involving only one (1) arbitrator, the arbitrator shall be selected in the manner prescribed by the AAA Rules. For disputes involving three (3) arbitrators, within fifteen (15) days after the filing of the demand or submission for arbitration, one (1) arbitrator shall be named in writing by Seller, and one (1) arbitrator shall be named in writing by Buyer. Within ten (10) days following expiration of the foregoing fifteen (15) day period, a third arbitrator shall be selected by the two (2) Party-appointed arbitrators. The arbitrator selected by the other two (2) arbitrators shall be a lawyer experienced in arbitrating large commercial disputes and shall act as chair. Should the Parties fail to timely join in the appointment of the arbitrators, the arbitrators shall be appointed in accordance with the AAA Rules. The Party-appointed arbitrator(s) shall be fully compensated in accordance with their normal hourly or per diem

- rates for all time spent by them in connection with the arbitration proceeding, and pending final award, their compensation and expenses shall be advanced equally, one-half by Seller and one-half by Buyer. However, any arrangement for the compensation of a neutral arbitrator shall be made through the AAA and not directly between the Parties and the arbitrator. There shall be no substantive ex parte communication between any Party or its representative and any arbitrator regarding the arbitration proceeding or its subject matter.
- d) Preliminary Hearing. Within fifteen (15) days after the arbitrator(s) has been appointed, an initial meeting (preliminary hearing) among the arbitrator(s) and counsel/representative for the Parties shall be held for the purpose of developing a plan for the management of the arbitration, which shall then be memorialized in an appropriate stipulation and order.
  - e) Discovery. The arbitrator(s) shall permit and facilitate such discovery as such arbitrator(s) shall determine is appropriate under the circumstances, taking into account the needs of the Parties and the desirability of making discovery expeditious and cost-effective. The arbitrator(s) may issue orders to protect the confidentiality of proprietary information, trade secrets, and other sensitive information disclosed in discovery.
  - f) Time Limits and Schedules. The proceedings shall be conducted in an expeditious manner and, to the extent possible, with a view to having the final award rendered no more than six (6) months after the selection of arbitrator(s) has been completed.
  - g) Self-Authentication of Documents. All documents that a Party proposes to offer in evidence, except for those objected to by an opposing Party, shall be self-authenticating.
  - h) Direct Testimony Via Written Statements. The arbitrator(s) may order that the direct testimony of all or of certain witnesses be furnished by written, sworn statement.
  - i) Governing Law. The arbitrator(s) shall determine the claims of the Parties and render their final award in accordance with the law of the State of Texas, excluding any conflicts provision of such law.
  - j) Pre-Award Interest; Punitive Damages; Attorney's Fees. The arbitrator(s) may, in their discretion, grant pre-award interest and, if so, such interest may be at commercial rates during the relevant period(s). The arbitrator(s) may not award punitive damages. The arbitrator(s) may also award all or a part of a Party's reasonable attorneys' fees, taking into account the final result of the arbitration, the conduct of the Parties and their counsel in the course of the arbitration, and other relevant factors.
  - k) Draft of Proposed Award. Prior to rendering a final award, the arbitrator(s) shall submit to the Parties an unsigned draft of the proposed award, and each Party, within fifteen (15) days after receipt of such draft, may serve on the other Party and file with the arbitrator(s) a written statement outlining any alleged errors of fact, computation, law or otherwise in said draft. Within twenty (20) days after receipt of such Party statements, the arbitrator(s) shall render their final award.

## VI) Safety Issues.

- 1) ODORIZATION OF PRODUCT. UNLESS OTHERWISE DIRECTED IN WRITING BY BUYER, ALL PRODUCT SOLD UNDER THE AGREEMENT SHALL BE ODORIZED WITH ETHYL MERCAPTAN AT THE DELIVERY PLACE BY BUYER, SELLER, OR THEIR RESPECTIVE EMPLOYEES, CONTRACTORS, OR AGENTS, AS APPLICABLE AT THE DELIVERY PLACE. FURTHERMORE, BUYER, OR THOSE PERSONS OR ENTITIES ACCEPTING PHYSICAL DELIVERY OF PRODUCT ON BEHALF OF BUYER AT THE DELIVERY PLACE, SHALL VERIFY IN WRITING AT SUCH DELIVERY PLACE THE ON-SITE ADDITION OF ODORANT TO PRODUCT BY BUYER, SELLER, OR THEIR RESPECTIVE EMPLOYEES, AGENTS, OR CONTRACTORS (AS APPLICABLE AT THE DELIVERY PLACE) FOR DELIVERY TO DOMESTIC RESELLERS, AS WELL AS COMMERCIAL OR RESIDENTIAL ACCOUNTS, AT A RATE OF NOT LESS THAN ONE POUND PER 10,000 GALLONS OF PRODUCT. NEITHER THE OWNER NOR THE OPERATOR OF THE DELIVERY PLACE SHALL HAVE ANY RESPONSIBILITY TO ENSURE THAT THE PRODUCT DELIVERED HEREUNDER IS (OR REMAINS) PROPERLY ODORIZED (A) AFTER RECEIPT BY BUYER OR ITS EMPLOYEES, CONTRACTORS, OR AGENTS, AS APPLICABLE, OR (B) PRIOR TO OR AFTER RECEIPT BY BUYER OR ITS EMPLOYEES, CONTRACTORS, OR AGENTS, AS APPLICABLE, IN THE EVENT BUYER'S EMPLOYEES, CONTRACTORS, OR AGENTS, AS APPLICABLE, ARE RESPONSIBLE FOR ADDING ODORIZATION AT THE DELIVERY PLACE.

FURTHER, BUYER SHALL, AND SHALL CAUSE THE BUYER GROUP (TO THE EXTENT APPLICABLE), TO ROUTINELY INSPECT, MONITOR, AND MAINTAIN THE SAME PROPORTION OF ODORANT IN ANY PRODUCT ACQUIRED FROM SELLER AND REQUIRED TO BE ODORIZED, AND SHALL NOT PERMIT ANY OTHER PARTY TO COMMINGLE ODORIZED PRODUCT WITH UNODORIZED PRODUCT OR WITH PRODUCT CONTAINING ODORANT IN CONCENTRATIONS LESS THAN CONCENTRATIONS MANDATED BY 49 CFR 173.315 (b)(1).

- 2) TRAINING OF BUYER'S EMPLOYEES AND CUSTOMERS. BUYER SHALL TRAIN AND EDUCATE ITS EMPLOYEES, CONTRACTORS, OR AGENTS, AS APPLICABLE, AS WELL AS NOTIFY ITS CURRENT AND FUTURE PRODUCT CARRIERS, RESELLERS, AND CUSTOMERS REGARDING THE CHARACTERISTICS OF ODORIZED PRODUCT INCLUDING PROMPTLY MAILING OR HAND-DELIVERING TO EACH UPON THE INITIAL DELIVERY OF PRODUCT, THE "**CUSTOMER INFORMATION GUIDE FOR PROPANE**" AND/ OR ANY SAFETY AND WARNING INFORMATION MATERIALS PUBLISHED OR DISTRIBUTED BY BUYER THAT ARE THE EQUIVALENT OF THOSE FURNISHED BY SELLER..



- 3) COMPLIANCE AND RECORDKEEPING. UPON REQUEST, BUYER SHALL CERTIFY IN WRITING TO SELLER THAT IT AND ITS EMPLOYEES, CONTRACTORS, AND AGENTS, AS APPLICABLE, HAVE COMPLIED WITH THE TERMS OF THE AGREEMENT, INCLUDING SPECIFICALLY THIS PORTION OF APPENDIX A (SAFETY ISSUES). TO SUPPORT SUCH CERTIFICATION, BUYER SHALL MAINTAIN, FOR NO LESS THAN THREE (3) YEARS, RECORDS WHICH: (A) IDENTIFY THE NATURE AND EXTENT OF BUYER'S TRAINING AND SAFETY PROGRAMS DESIGNED TO EDUCATE BUYER'S EMPLOYEES, CONTRACTORS, AGENTS, CARRIERS, RESELLERS, AND CUSTOMERS REGARDING THE CHARACTERISTICS OF PRODUCT, AS WELL AS THE SAFE METHODS FOR DETECTING, STORING, AND HANDLING IT; (B) VERIFY THE AMOUNT OR PERCENTAGE OF ODORANT ADDED BY BUYER OR ITS EMPLOYEES, CONTRACTORS, OR AGENTS, AS APPLICABLE, TO EACH DELIVERY OF PRODUCT AT THE DELIVERY PLACE; AND (C) DEMONSTRATE BUYER'S CURRENT COMPLIANCE WITH ANY FEDERAL OR STATE HEALTH AND SAFETY (AND SIMILAR) LICENSES, CERTIFICATES, RULES, REGULATIONS, OR ORDERS RELATING TO THE SALE, HANDLING, TRANSPORTATION, ODORIZATION, STORAGE, OR DELIVERY OF PRODUCT.
  
- 4) PRODUCT HAZARD WARNING. BUYER WARRANTS TO SELLER THAT IT AND ITS EMPLOYEES, CONTRACTORS, AND AGENTS, AS APPLICABLE, WHO HANDLE PRODUCT ON BEHALF OF BUYER (A) ARE FAMILIAR WITH THE CHARACTERISTICS OF PRODUCT WITH ODORANT, (B) ARE ADEQUATELY TRAINED CONCERNING THE SAFE HANDLING OF PRODUCT, AND (C) HAVE WARNED, OR SHALL PROMPTLY WARN, ALL OF ITS PRODUCT CARRIERS, RESELLERS, DEALERS, AND CUSTOMERS ABOUT THE CHARACTERISTICS OF ODORIZED PRODUCT AND SAFE METHODS FOR HANDLING IT.

## EXHIBIT A

### Product Specifications: ASTM D1835-20

Product Characteristics	Commercial Propane	Propane HD-5	ASTM Test Methods
Composition	Predominantly propane and/or propylene		
Vapor pressure at 37.8 °C (100 °F), max			
kPa	1435	1435	D1267 (Note A) or
psig	208	208	D2598 or D6897
Volatile residue:			
Butane and heavier, max % by volume	2.5	2.5	D2163
Propylene content, max, % by volume		5.0	D2163
Residual matter: One of the following requirements shall be met:	0.05ml	0.05ml	D2158
(1) Residue on evaporation of 100 ml, max, mL and Oil stain observation <sup>1</sup>	pass	pass	D2158
Or			
(2) Residue by gas chromatography, max, mg/kg	350	350	D7756
Density at 15 °C or relative density at 15.6 °C/15.6 °C (60 °F/60 °F)	350 (Note C)	350 (Note C)	D1657 or D2598
Corrosion, copper, strip	No. 1	No. 1	D1838 (Note C)
Sulfur, mg/kg (ppm mass) <sup>2</sup>	185	123	D6667
Hydrogen sulfide	pass	pass	D2420
Moisture content	pass	pass	D2713
Free water content	—	—	—

- 1) An acceptable product shall not yield a persistent oil ring when 0.3ml of solvent residue mixture is added to a filter paper, in 0.1 ml increments and examined in daylight after 2 minutes as described in Test Method D2158.
- 2) The total sulfur limits in these specifications do include sulfur compounds used for stenching purposes.
- 3) Note that the total pressure of a batch of LPG can be higher than the vapor pressure determined by Practice D2598 if there are any inert gases (such as nitrogen or carbon dioxide) present in the LPG. Test Method D2598 is a calculation method of the vapor pressure of all hydrocarbons identified in a batch of LPG by Test Method D2163, but this gas chromatographic method does not detect the presence of inert gases, if present, in a batch of LPG.

Note A: In case of dispute about the vapor pressure of a product, the value actually determined by Test Method D1267 shall prevail over the value calculated by Practice D2598 or measured by Test Method D6897.

Note B: In case of dispute, Test Method D2158 shall be the referee test method.

Note C: Although not a specific requirement, the density or relative density can be needed for other purposes and should be reported. Additionally, the relative density of PB mixture is needed to establish the permissible maximum vapor pressure (see Footnote 3).

Note D: This method may not accurately determine the presence of reactive materials (for example, H<sub>2</sub>S, So) in liquefied petroleum gas if the product contains corrosion inhibitors or other chemicals which diminish the reaction with the copper strip.

## EXHIBIT B

### Customer Information Guide for: PROPANE (HD-5 or Commercial Grade) WITH ODORANT

Chemical Name:	Propane
Synonyms/Common Names:	LP-Gas, LPG, HD-5 or Commercial Grade Propane (as applicable)
Chemical Formula:	C <sub>3</sub> H <sub>8</sub>
Odorant Used:	Ethyl Mercaptan (CH <sub>3</sub> CH <sub>2</sub> -S-H)
DOT Proper Shipping Name:	Propane
DOT Hazard Class:	Flammable Gas
DOT I.D. Number:	#1978 (UN 1075 for LP Gas)

\*\*\*\* THE INFORMATION CONTAINED IN THIS GUIDE SHOULD BE PROVIDED TO AND UNDERSTOOD BY ALL SHIPPERS, CARRIERS, AND DISTRIBUTORS RESPONSIBLE FOR HANDLING ODORIZED PROPANE. IT SHOULD ALSO BE GIVEN TO EVERYONE WITH WHOM YOU SUPPLY, CONSIGN, OR SELL PROPANE.

#### GENERAL INFORMATION:

Propane is a compound derived from processing natural gas and crude oil. Propane is normally transported and stored as a liquid (under pressure).

Unpressurized and at normal atmospheric temperatures, propane is a colorless, odorless gas. If liquid propane leaks from its pressurized container to the air, gaseous propane may accumulate undetected and an explosion and fire could result. For this reason a strong odorizing agent (or “odorant”) is injected into propane used for residential or industrial fuel. The “odorant” enables detection (by sense of smell) of gaseous propane in air at well below explosive levels.

#### HANDLING, STORAGE, AND TRANSPORTATION:

There may be hazards associated with the loading, unloading, transporting, handling or use of propane, which may require that warnings be communicated to or other precautionary action taken with all persons handling, coming into contact with, or in any way concerned with propane. Therefore, proper safety precautions should be followed when handling propane. A safety data sheet for propane (as modified, amended and updated from time to time) may be found at the following website: [www.valero.com](http://www.valero.com). National Fire Protection Association (NFPA) Bulletins No. 54 and 58 also contain recommended sources of safety information and practices.

Liquid propane is transported in specially designed high pressure cargo vessels meeting the requirements of the U.S. Department of Transportation (DOT). Only DOT, American Society of Mechanical Engineers (ASME) and American Petroleum Institute (API)—ASME approved containers should be used to store propane.

The pressure within a storage tank will rise as the temperature increases. Propane containers should be equipped with an automatic relief valve to protect them from excessive pressures.

#### **OTHER PROPERTIES:**

Propane liquid, upon contact with skin, causes rapid dehydration similar to a cold burn or frostbite. Insulated protective equipment should be worn if contact with liquid propane is a possibility.

Gaseous propane is heavier than air and will displace air and settle near the floor, in low lying areas, and poorly ventilated spaces. Propane gas is not toxic; however, if it displaces enough air, it becomes an asphyxiant and can cause suffocation from lack of oxygen.

#### **THE USE OF ODORANT:**

Ethyl mercaptan is injected into Valero's propane (HD-5 or Commercial Grade Propane (as applicable)) with odorant during loading at all distribution facilities in a concentration of at least 1.0 pound per 10,000 Gallons of propane. Ethyl mercaptan gives a distinctive "foul stench" that can be readily detected if a leak occurs.

Odorants, such as ethyl mercaptan, have proven to be highly effective warning devices; however, no odorant is one hundred percent (100%) effective in all circumstances for all people. For unknown reasons, a few people seem to be unable or have difficulty smelling ethyl mercaptan. Where any appliance using propane is installed, people should smell near the floor level first to detect the smell of the odorant before servicing the appliance or bringing any ignition source into the area. Odor detectors are available and **any time there is a question about the presence of propane gas, the use of an explosimeter for detection is recommended.** This equipment may provide the propane user with an extra level of protection from undetected leaks which might not be detected by smell alone.

Every person handling or using propane should be aware that certain physical and environmental conditions may impair their ability to smell the odorant and, thus, detect the presence of propane gas, for example:

- other odors may mask the propane odor;
- physical ailments such as sinus congestion, allergies, head colds, or recent use of alcohol, drugs, and smoking, may decrease the ability to smell;
- high concentrations of ethyl mercaptan (or other odorants) may shock or diminish the sense of smell;
- olfactory fatigue may result from continuous exposure to ethyl mercaptan (or other odorants); and
- inattentiveness, eating, or sleeping may decrease the ability to smell.

**PEOPLE WHO HAVE AN IMPAIRED SENSE OF SMELL SHOULD TAKE SPECIAL CARE WHEN USING OR HANDLING PROPANE.**

#### **ODORANT FADE:**

Ethyl mercaptan can oxidize when air, rust, or moisture is present in the container in which odorized propane (gas or liquid) is stored. Ethyl mercaptan may also be absorbed by soils. Oxidation or adsorption may reduce the intensity of ethyl mercaptan's odor, and this reduction in odor intensity is sometimes called "odorant fade."

**Because of the potential for odorant fade it is extremely important that all propane containers be properly purged of all air and water (moisture) before use. Further, the inside of the containers should not contain any rust or other oxygen containing scale. It is recommended that propane marketers follow the recommended purging procedures contained in NLPGA Safety Bulletin No. 133, “Purging New Containers,” and NFPA 58, Section 4-3.2.**

Seller and its affiliates have no knowledge of, nor control over, how its customers will handle, store, transfer, distribute, detect, odorize, or use propane with odorant, and therefore cannot be held responsible for the propane or ethyl mercaptan after title passes to the respective customer. **Propane marketers should train their employees and instruct their customers regarding the characteristics of propane with odorant, how those characteristics relate to the employee’s or customer’s use, the proper handling and maintenance of propane containers, and the limitations of any odorant (including ethyl mercaptan).**

THIS CUSTOMER INFORMATION GUIDE HAS BEEN PREPARED BY SELLER TO AID IN THE SAFE USE OF ODORIZED PROPANE. SELLER HAS TAKEN ALL REASONABLE PRECAUTIONS TO ENSURE THE ACCURACY OF THE INFORMATION CONTAINED IN THIS GUIDE. SELLER DOES NOT ASSUME ANY LIABILITY FOR ANY ERRORS, OMISSIONS, OR OTHER DEFECTS, OR ANY DAMAGE OR INJURY RESULTING FROM THE USE OF OR RELIANCE UPON THE CONTENTS OF THIS GUIDE.

## EXHIBIT C

### Form Unodorized Liquefied Petroleum Gas Waiver Letter

Date: \_\_\_\_\_

Valero Marketing and Supply Company  
Propane Marketing  
One Valero Way  
San Antonio, Texas 78249-1616

#### RE: Unodorized Liquefied Petroleum Gas Waiver

Valero Representatives:

This letter sets forth the understanding and agreement by and between Valero Marketing and Supply Company (“**Valero**”) and \_\_\_\_\_ (“**Buyer**”) regarding the sale to Buyer of unodorized liquefied petroleum gas (“**Unodorized Product**”) and loading of same at the \_\_\_\_\_ Refinery, terminal, or loading point (the “**Delivery Place**”) via transport trucks and / or railcars delivered to \_\_\_\_\_.

For and in consideration of Valero delivering Unodorized Product, and upon Buyer’s specific written request, Buyer hereby certifies that odorization of such Unodorized Product will be harmful to its use or further processing and that odorization will serve no useful purpose as a warning agent in such use or further processing. Valero, Valero’s contractors, and/or the personnel at the Delivery Place where the trucks or railcars are to be loaded are hereby authorized to load the transport trucks or railcars, as applicable, with Unodorized Product. Buyer will provide Valero with a copy of a completed form for each transport truck or railcar to be loaded with Unodorized Product. Such form will be signed by the drivers of the transport trucks or railcars, each of whom is hereby duly authorized by Buyer to designate the transport truck loads or railcars that are to be loaded with Unodorized Product and to execute the form for and on behalf of Buyer.

IN CONSIDERATION OF VALERO’S COOPERATION WITH THIS REQUEST, BUYER HEREBY AGREES TO CONFINE ITS REQUEST FOR UNODORIZED PRODUCT TO THE DELIVERY PLACE DESIGNATED ABOVE, TO LIMIT BUYER’S DELIVERIES OF UNODORIZED PRODUCT TO THE DESTINATION(S) DESIGNATED ABOVE, AND TO INDEMNIFY AND DEFEND VALERO, AS WELL AS VALERO’S AFFILIATES, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, AND CONTRACTORS (COLLECTIVELY, THE “**VALERO INDEMNITEES**”), AND TO HOLD THE VALERO INDEMNITEES HARMLESS FROM ANY LOSSES, CLAIMS, SUITS, EXPENSES, LIABILITIES, FINES, PENALTIES, OR JUDGMENTS OF ANY NATURE (COLLECTIVELY, “**LOSSES**”) THAT VALERO OR ANY OF THE VALERO INDEMNITEES MAY SUSTAIN AS A RESULT OF OR ARISING FROM FURNISHING BUYER WITH UNODORIZED PRODUCT. BUYER ALSO SPECIFICALLY ASSUMES FULL RESPONSIBILITY FOR ANY LOSSES THAT THE VALERO INDEMNITEES MAY SUSTAIN IF COMPLIANCE WITH THIS REQUEST RESULTS IN THE TRANSPORTATION OF PRODUCT CONTRARY TO ANY APPLICABLE DEPARTMENT OF TRANSPORTATION REGULATIONS OR OTHER APPLICABLE LAWS.

It is further understood and agreed that Buyer shall limit this request for Valero to load Unodorized Product to the period commencing on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, and ending after Buyer provides at least five (5) days' written notice to Valero; provided however, that such termination shall not relieve Buyer of its indemnity obligations and responsibilities hereunder.

**Signature Page to Unodorized Liquefied Petroleum Gas Waiver**

BUYER:

Date of Execution by Buyer:

\_\_\_\_\_, 20\_\_\_\_\_

By: \_\_\_\_\_

AUTHORIZED REPRESENTATIVE OF

\_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

## EXHIBIT D

### Railcar Addendum

#### I) General Responsibilities.

- 1) Provision of Railcars. Seller agrees to furnish railcars for transportation of Product under the Agreement in accordance with the present requirements of the DOT, the Association of American Railroads (“AAR”) Interchange Rules, the AAR Manual of Standards and Recommended Practices, and any other requirements of any Government Authority that has jurisdiction over the railcars. Buyer agrees, and agrees to cause any parties it contracts with, to preserve the railcars in good condition and not to in any way alter the physical structure of the railcars without the prior written approval of Seller. Unless otherwise agreed by the Parties, immediately after off-loading of railcars, Buyer shall return, and agrees to cause any parties it contracts with to return, such railcars to Seller or its designee at the location designated by Seller, empty and free from all charges, liens, encumbrances, or attachments of any kind or nature whatsoever which may result from any act of Buyer or any parties it contracts with or any default of Buyer. The railcars shall not be diverted without the prior written consent of Seller.
- 2) Markings. No lettering or marking of any kind shall be placed upon any of the railcars by or on behalf of Buyer or by the parties with whom Buyer contracts without the prior written consent of Seller; except as required by Applicable Law.
- 3) Compliance with Law. Each Party shall comply with all Applicable Laws.
- 4) Loss/Damaged/Destroyed Railcars. To the extent that any loss of or damage to a railcar occurs due to the legal fault of Buyer or any of the parties with whom Buyer contracts while such railcar is in the care, custody, or control of Buyer or any of the parties with whom Buyer contracts, Buyer shall be responsible for promptly reimbursing Seller for the costs of repair of such railcar. If, however, such railcar shall be completely destroyed, or if the physical condition of such railcar shall become such that it cannot be operated in railroad service as determined by AAR Interchange Rules or a Government Authority having proper jurisdiction over the subject matter in question, then Buyer shall be liable for the replacement value thereof.

#### II) Railcar Delivery and Spotting.

- 1) Buyer will facilitate delivery and pick up of railcars (including railcar sets) with the Class 1 railways in a reasonable and ratable manner.
- 2) Buyer will be responsible for reasonable switching and spotting, or causing the reasonable switching and spotting, of Seller’s railcars at the Delivery Place.



III) **Forwarding for Repair.** Without limiting Buyer's obligations under paragraph 4 of Section A of this Railcar Addendum, if a railcar has or develops a mechanical failure and is rejected by a railway for rail transportation services, fails to safely or properly contain Product, or suffers other mechanical issues that require repairs of the railcar, then Buyer will notify, or cause any party with whom Buyer contracts to notify, Seller and (if directed by Seller) forward such railcar for repair as directed by Seller. If a railcar fails to safely or properly contain Product, Buyer or any party with whom Buyer contracts may in its discretion exercise those actions necessary and reasonable to prevent leakage of Product from the railcar including containment or removal of such Product to prevent or contain spills.

IV) **Railcar Detention.** Buyer shall have five (5) days from the date of constructive placement of any railcar(s) at Buyer's designated location to unload the Product from such railcar(s). Buyer shall be assessed a one hundred fifty dollar (\$150.00) daily railcar detention fee for each railcar detained in excess of said five (5) day period.

V) **Insurance.**

Insurance Requirements. Buyer will procure, and at all times during the term of the Agreement maintain, or cause any party with whom Buyer contracts to procure and maintain, the following insurance:

- a) Commercial General Liability insurance with combined limits of not less than one million dollars (\$1,000,000) per occurrence and in the aggregate annually. Such insurance shall include coverage for broad form contractual liability, bodily injury including death, property damage liability, and such other coverage as is reasonable and customary in the industry;
- b) Excess/Umbrella Form Liability Insurance with a combined limit of not less than ten million dollars (\$10,000,000) per occurrence and in the aggregate annually;
- c) Pollution Liability Insurance covering losses resulting from claims for bodily injury, property damage or clean-up costs caused by a pollution release, with limits of not less than five million dollars (\$5,000,000) per occurrence and ten million dollars (\$10,000,000) in the aggregate.

VI) **Indemnification.**

- 1) **TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, BUYER SHALL BE LIABLE FOR, AND RELEASE, DEFEND (UPON SELLER'S REQUEST), INDEMNIFY AND HOLD EACH OF THE SELLER GROUP HARMLESS FROM AND AGAINST ALL LOSSES TO THE EXTENT ARISING FROM, CAUSED BY, RESULTING FROM, OR IN ANY WAY RELATED TO (I) THE NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY OF THE BUYER GROUP IN THE PERFORMANCE OF THE AGREEMENT OR THIS RAILCAR ADDENDUM, AND/OR (II) THE RAILCARS WHILE SUCH RAILCARS ARE IN THE CARE, CUSTODY, OR CONTROL OF ANY OF THE BUYER GROUP OR ANY OF THE PARTIES WITH WHOM ANY OF THE BUYER GROUP CONTRACTS REGARDLESS OF WHICH PARTY ACTUALLY COORDINATES THE TRANSPORTATION OF SUCH RAILCARS.**

- 2) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SELLER SHALL BE LIABLE, AND RELEASE, AND DEFEND (UPON BUYER'S REQUEST), INDEMNIFY AND HOLD EACH OF THE BUYER GROUP HARMLESS FROM AND AGAINST ALL LOSSES TO THE EXTENT ARISING FROM, CAUSED BY, RESULTING FROM, OR IN ANY WAY RELATED TO THE NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY OF THE SELLER GROUP IN THE PERFORMANCE OF THIS RAILCAR ADDENDUM.
- 3) IF ANY LOSSES ARE CAUSED IN WHOLE OR IN PART BY THE CONCURRENT NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY OF THE BUYER GROUP (ON THE ONE HAND), AND ANY OF THE SELLER GROUP (ON THE OTHER HAND), THEN THE OBLIGATION TO INDEMNIFY IN THIS RAILCAR ADDENDUM WILL BE COMPARATIVE AND EACH PARTY WILL INDEMNIFY THE OTHER AND THE OTHER MEMBERS OF THE RESPECTIVE GROUP TO THE EXTENT SUCH PARTY'S AND SUCH OTHER MEMBERS OF THE RESPECTIVE GROUPS' NEGLIGENCE OR WILLFUL MISCONDUCT WAS THE CAUSE OF SUCH LOSSES.
- 4) THE FOREGOING INDEMNIFICATION OBLIGATIONS SHALL BE IN ADDITION TO ANY OTHER OBLIGATIONS, INCLUDING OTHER INDEMNIFICATION OBLIGATIONS, SET FORTH IN THE AGREEMENT, AND SUBJECT TO ALL LIMITATIONS OF LIABILITY CONTAINED IN THE AGREEMENT.

