

## PROVISIONS OF AGREEMENT

**The following terms and conditions are incorporated into and form an integral part of the Confirmation to which they are attached, with the same being collectively referred to as the "Agreement", as provided therein.**

**1. PURCHASE ORDER LANGUAGE.** All purchase orders utilized under this Agreement must contain the following language:

"This is acceptance of Musket Corporation's Confirmation dated \_\_\_\_\_, 20\_\_ and of all the term and conditions thereof, including but not limited to this "Provisions of Agreement" attached thereto (collectively, the "Agreement"). The Agreement shall control over any purchase order, delivery sheet or other document used by Fuel Purchaser, regardless of whether or not such document is signed by an employee of Musket Corporation."

**2. PRICE ADJUSTMENTS.** In the event fuel prices are to be determined by reference to an index, the price for each product shall be that first published on the date of delivery. Fuel Purchaser acknowledges that the prices of product sold under this Agreement, if stated in a dollar and cents figure, are based upon consideration of several factors and, as such, are subject to increase or decrease by Seller, in its sole discretion, at any time during the Term of this Agreement, without prior written notice to Fuel Purchaser. If such Product Distribution Costs change over the life of this Agreement, Musket, in its sole discretion, at any time during the Term of this Agreement, with prior written notice to Fuel Purchaser may change the Differential used in calculating the price to reflect the changes in the Product Distribution Costs. In the event any increase in price is unacceptable to Fuel Purchaser, Fuel Purchaser may elect to *immediately* discontinue future purchases hereunder, *only as to the product or products for which the price was increased*; provided that, Fuel Purchaser timely makes such election in accordance with any requirement of Musket in such regard, it being understood that Fuel Purchaser may discontinue the purchase of other products hereunder and/or terminate this Agreement only upon thirty (30) days prior written notice to Seller.

**3. TAXES.** Fuel Purchaser shall be responsible for any and all taxes arising from or related to the transactions contemplated by this Agreement, including but not limited to, all domestic and foreign taxes and duties now or hereafter imposed directly or indirectly: (i) on fuel products purchased by Fuel Purchaser hereunder and (ii) on the production, manufacture, transportation, purchase, sale, use or handling of such fuel products, of any material contained in such fuel products, or of any material from which such fuel products are wholly or partly refined or manufactured. Upon receipt of any invoice, bill or assessment related to such taxes or duties, Fuel Purchaser shall promptly and timely pay the same.

**4. INDEMNITY.** To the extent permitted by applicable law, Fuel Purchaser hereby agrees to defend, indemnify and hold harmless Musket, its parent, subsidiaries, affiliates and related companies, and the partners, officers, directors, members, employees and representatives of any of the foregoing, from and against any and all liabilities, claims, liens, damages, fines or penalties, losses, judgments, costs and expenses (including attorneys fees and court costs), of whatever kind or nature and in any manner directly or indirectly arising out of, in connection with or resulting from (i) any breach of this Agreement or the performance of its obligations under this Agreement by Fuel Purchaser, an employee of Fuel Purchaser or anyone acting under Fuel Purchaser's direction or control or on its behalf, (ii) the negligence (whether active or passive) of Fuel Purchaser, an employee of Fuel Purchaser or anyone acting under Fuel Purchaser's direction or control or on its behalf, and (iii) the willful misconduct of Fuel Purchaser, an employee of Fuel Purchaser or anyone acting under Fuel Purchaser's direction or control or on its behalf, it being understood that Fuel Purchaser's obligations hereunder shall not apply to liabilities caused by the

sole or gross negligence or willful misconduct of the indemnified party. Musket may participate in any investigation or defense of any claim or action hereunder and may, at its option, notwithstanding the foregoing indemnity, elect to conduct any investigation or litigation regarding a claim for which it is indemnified hereunder through counsel of its own choosing and expense. This indemnification shall survive the expiration or termination of this Agreement.

5. **MANNER OF PAYMENT; DEFAULT IN PAYMENT.** All payments hereunder shall be made by Fuel Purchaser in U.S. dollars, without discount, deduction or offset of any kind, and in accordance with the other terms of this Agreement. If at any time, in Musket's opinion, Fuel Purchaser's creditworthiness becomes impaired or otherwise unsatisfactory, Musket may require that Fuel Purchaser (i) make only cash payments for products hereunder and/or (ii) provide such security, as Musket determines necessary or desirable, for Fuel Purchaser's payment and performance under this Agreement. Upon Fuel Purchaser's failure to timely pay any amount due to Musket hereunder, such amount shall (i) accrue interest at the rate of eighteen percent (18%) per annum and (ii) be subject to a late charge equal to ten percent (10%) of the outstanding sum due. The accrual of interest on such amounts and such late charge shall not prejudice any other remedies available to Musket under this Agreement or applicable law.

6. **TERMINAL ACCESS.** Musket shall provide to Fuel Purchaser such keys, cards, or identification numbers (each an "Access Item"), as may be necessary, from time to time, to enable Fuel Purchaser to enter Musket's terminal or to load product at any such terminal. Access Items shall be used only by Fuel Purchaser and its authorized employees or representatives, as permitted by Musket. Fuel Purchaser shall reimburse Musket for (i) any costs incurred by Musket in replacing any Access Item and/or securing any terminal of Musket after Fuel Purchaser's loss of an Access Item and (ii) any loss, cost or expense arising from or related to Fuel Purchaser's loss of any Access Item or the unauthorized use of an Access Item provided to Fuel Purchaser. Fuel Purchaser shall not permit any Access Item to be duplicated without Musket's prior written consent and all Access Items shall be immediately returned to Musket upon termination of this Agreement.

7. **DELIVERY.** Unless otherwise agreed in writing by the parties, delivery of product to Fuel Purchaser shall be deemed complete when products, properly consigned, are placed free on board ("FOB") tank cars, transport trucks, tank wagons, or other vehicles. If Musket is to deliver product at Fuel Purchaser's location, Fuel Purchaser hereby authorizes any janitor, superintendent, caretaker or other purported agent of Fuel Purchaser at such location to sign receipts for deliveries on its behalf. Such signed receipts shall be binding upon Fuel Purchaser and may be relied upon by Musket. Fuel Purchaser shall provide Musket with all necessary access to such delivery location and all necessary hose connections, without delay. In the event Musket delivers product to Fuel Purchaser hereunder in carload, transport truck or tankwagon lots, such delivery shall be deemed in compliance with this Agreement if the actual volume of product delivered is within ten percent (10%) of that required hereunder for such delivery. In any event, Fuel Purchaser shall be charged only for the actual volume of product delivered.

8. **ACCESSORIAL AND OTHER CHARGES.**

8.1 **Tank Cars.** The party responsible for transloading fuel product purchased hereunder (whether conducted by such party or at its direction) shall be solely responsible for any and all destination rail carrier accessorial charges for any fuel shipment hereunder. Additionally, if Fuel Purchaser (or a third party at its direction) is responsible for transloading and fails to offload a Musket owned or leased tank car and release the same to the rail carrier within three (3) days of carrier placement or a constructive placement event, Fuel Purchaser shall be assessed a charge equal to \$25.00 per day / per car for each day a car is detained beyond such three (3) day period, with such charges to be paid to Musket on demand.

8.2 **Trucks.** Prices of fuel product under this Agreement are based on product offloading times not exceeding one (1) hour per full truckload, commencing at the time any such truck arrives at the offloading destination. In this regard, if Fuel Purchaser fails to unload any truck within such one (1) hour period, Fuel Purchaser shall be responsible for any additional expense or charges incurred by Musket as a result of such detention beyond such hour.

Fuel Purchaser shall promptly reimburse Musket or pay directly (as the case may be) any charges for which it is responsible hereunder upon receipt of an invoice or demand therefore. In no event shall Fuel Purchaser be entitled to deduct or offset any amounts due Musket hereunder.

9. **RATABLE LIFTING.** If the term of this Agreement extends beyond one (1) calendar month, the following terms and conditions shall apply:

**Lifting; Volume Tolerance:** Fuel Purchaser shall lift all monthly contract volumes ("MCV") of fuel purchased under this Agreement by the end of each calendar month, on a ratable basis (*i.e.* with the monthly volume being lifted in approximately equal amounts each day of a calendar month, as practical). For each gallon lifted by Fuel Purchaser over the MCV Fuel Purchaser shall be charged the rack price at the applicable terminal. Should Fuel Purchaser not lift the entire MCV for any calendar month of the Term, Fuel Purchase shall be charged for the rack price at the applicable terminal for each gallon of fuel below the MCV. Upon the expiration this Agreement, if Fuel Purchaser has not lifted the entire quantity of fuel under this Agreement, Fuel Purchaser shall remain responsible for the unlifted quantity and such unlifted gallons will be priced the rack price at the applicable terminal.

10. **RESALE OF PRODUCT.** Fuel Purchaser's resale of on road product purchased under this Agreement is restricted to Fuel Purchaser's customary fuel sales at truck stop and convenience store locations. Fuel Purchaser shall not sell product purchased under this Agreement to any other third party, without the prior written consent of Musket, in each instance. Notwithstanding anything in this Agreement to the contrary, in the event Fuel Purchaser fails to obtain any such required consent, Musket may terminate this Agreement, effective immediately, upon written notice to Fuel Purchaser.

11. **CAPACITY - ABILITY TO PERFORM.** If Musket determines, in its sole discretion, that its ability to perform under this Agreement is significantly impaired or impractical, as to one or more products, for any reason whatsoever, upon written notice to Fuel Purchaser, Musket shall be relieved of any and all obligations hereunder (as to such product or products). In such event, Musket shall not be liable for any claims, damages or liabilities resulting from or in any way related to a delay in delivery, or non-delivery, of product to Fuel Purchaser. Nothing in this Section 11 shall be construed to extend the Term of this Agreement or to relieve Fuel Purchaser of its obligation to (i) pay for product actually delivered or (ii) otherwise perform under this Agreement.

12. **FORCE MAJEURE.** Either party's failure to perform any term or condition of this Agreement as a result of conditions beyond such non-performing party's reasonable control, including, but not limited to, Acts of God, natural disaster or severe weather conditions, war, strikes, riots, picketing or other labor troubles or disputes, malicious mischief, civil commotion, the inability to procure materials, shortages, government restrictions, performance failures of third parties upon which the non-performing party relies in its performance hereunder, and the total or partial failure of transportation facilities customarily available to such non-performing party shall not be deemed a breach of this Agreement.

13. **LIMITED WARRANTY AND LIMITATION OF DAMAGES.** BEYOND THE BASIC DESCRIPTION OF THE PRODUCT BEING SOLD TO FUEL PURCHASER UNDER THIS AGREEMENT, MUSKET MAKES NO WARRANTIES OR REPRESENTATIONS, EITHER EXPRESS OR IMPLIED, AS TO THE QUALITY, CONDITION, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT BY OR ANY OTHER

MATTER RELATING TO THE PRODUCT. FUEL PURCHASER'S SOLE AND EXCLUSIVE REMEDY FOR BREACH OF THIS LIMITED WARRANTY SHALL BE REPLACEMENT OF THE NONCONFORMING PRODUCT. IN ANY EVENT, MUSKET SHALL NOT HAVE ANY RESPONSIBILITY TO FUEL PURCHASER FOR INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OF ANY NATURE, INCLUDING BUT NOT LIMITED TO, LOSS OF BUSINESS OR ANTICIPATED PROFITS, OR OTHER FINANCIAL LOSS ARISING OUT OF OR IN CONNECTION WITH THE SALE, PURCHASE, USE, PERFORMANCE OR NONCONFORMANCE OF PRODUCT HEREUNDER. TO THE EXTENT PERMITTED BY LAW, THIS DISCLAIMER OF LIABILITY WILL NOT BE AFFECTED OR IMPAIRED IF THE REMEDY PROVIDED HEREUNDER SHALL FAIL OF ITS ESSENTIAL PURPOSE.

**14. CLAIMS; REQUIRED NOTICE.** Fuel Purchaser must notify Musket in writing of any claim for breach of the limited warranty provided in this Agreement within two (2) business days after delivery of the product at issue, it being agreed that Fuel Purchaser's failure to provide timely written notice shall constitute Fuel Purchaser's waiver of any such claim. Fuel Purchaser shall allow Musket reasonable opportunity to inspect the product at issue; provided that, if delivery of product is made in equipment furnished by Musket, notice of any claim and the reasonable opportunity to inspect shall be given prior to such product being unloaded. Fuel Purchaser shall immediately notify Musket in writing if any equipment used to deliver product is leaking or is otherwise not in good condition and repair.

**15. FUEL PURCHASER'S INSURANCE.** If Fuel Purchaser, its agents, employees or contractors, will at any time during the Term of this Agreement pick up product purchased hereunder at any terminal, transload site, or other premises owned, leased or operated by Musket, Fuel Purchaser shall procure and maintain in full force and effect during the Term, the following policies of insurance:

Commercial General Liability Insurance (including blanket contractual liability), insuring Fuel Purchaser against any liability for injury or death to a person or persons, and for damage to or destruction of property occasioned by or arising out of or in connection with Fuel Purchaser's performance under this Agreement, with a combined single limit of not less than \$5,000,000.00 per occurrence and in the aggregate.

Workers' Compensation Insurance for each of Fuel Purchaser's employees performing under this Agreement, with coverage in accordance with applicable statutory requirements and Employer's Liability Insurance with limits of not less than \$1,000,000.00 per accident or illness.

Business Auto Liability Insurance covering all owned, non-owned and hired vehicles used in connection with Fuel Purchaser's performance under this Agreement, with a combined single limit of not less than \$1,000,000.00 per occurrence and Supplemental Environmental Automobile Liability ("SEAL") Insurance covering losses resulting from claims for bodily injury, property damage or clean-up costs caused by a pollution release from transported cargo, regardless of the location of such occurrence.

Each policy required hereunder (i) shall be carried with a reputable insurance carrier licensed to do business in the states in which the terminals, transload sites or other premises at which product is being picked-up by Fuel Purchaser are located, (ii) shall include waiver of subrogation in favor of Musket, (iii) shall apply as primary insurance without contribution from any other insurance or self-insurance programs afforded to or maintained by Fuel Purchaser (and shall not require the exhaustion of coverage), and (iv) shall be endorsed to state that coverage shall not be suspended, voided, canceled or reduced in limits except after thirty (30) days prior written notice to Musket. All general liability or property damage insurance shall name Musket as an additional insured, with proceeds payable first to Musket to the extent of liability, if any, and the balance to Fuel Purchaser. The proceeds of fire, theft or other casualty insurance shall be payable to Musket, as loss payee, with respect to the loss suffered thereby. Fuel Purchaser shall furnish Musket with certificates of insurance and original endorsements affecting coverage required by this Section 15 prior to performing hereunder and, from time to time, as applicable, certificates evidencing renewal of such policies no less than thirty (30) days prior to the expiration thereof. Musket shall have no

duty to examine any certificate or other evidence of insurance or to advise Fuel Purchaser in the event that any insurance is not in compliance with this Section 15. That notwithstanding, should Fuel Purchaser fail to obtain any insurance policy required to be obtained hereunder, or furnish proof thereof, Musket may (but shall have no obligation to) obtain such insurance, at Fuel Purchaser's expense and Fuel Purchaser shall reimburse Musket for the same on demand. All such sums not paid to Musket within ten (10) days of demand therefore shall accrue interest at the rate of eighteen percent (18%) per annum until paid in full, it being understood that accrual of interest on such amounts shall not prejudice any other remedies which may be available to Musket.

Self-insured retentions, if any, shall not exceed Five Thousand Dollars (\$5,000.00), unless a larger amount is approved by Musket, in its sole discretion. That notwithstanding, in all instances of self-insured retention in excess of Five Thousand Dollars (\$5,000.00), Fuel Purchaser shall furnish to Musket a certificate of excess liability coverage.

Insurance coverage required under this Agreement shall be additional security for the obligations assumed by Fuel Purchaser hereunder and in no event shall the types of insurance or limits of coverage required hereunder be deemed to limit any obligation or liability assumed under this Agreement.

**16. NOTICE.** All notices or other communication herein required or permitted shall be in writing and given by personal delivery or sent by (i) registered or certified mail, return receipt requested, postage prepaid, (ii) facsimile or (iii) nationally recognized overnight courier service, addressed to the respective party as set forth on the first page of the Agreement (unless written notice of change thereof is provided). Notice shall be deemed given on the earlier of (i) actual receipt, (ii) three (3) business days after deposit in the U.S. Mail, (iii) the date of facsimile delivery/receipt confirmation, or (iv) the first business day after deposit with an overnight courier. Any notice or communication not received because of change of address, without notice to the other party thereof, or refusal to accept delivery, shall be deemed received on the date of attempted personal delivery or on the date, as indicated above, for other permitted methods of delivery.

**17. MISCELLANEOUS.** This Agreement and the legal relations between the parties shall be governed by the laws of the State of Oklahoma without giving effect to any conflict of law provision (whether of the State of Oklahoma or any other jurisdiction) that would cause the application of the law of any other jurisdiction. No waiver by Musket of any breach or default of any provision of this Agreement shall waive any subsequent breach or default of the same or any other provision. Fuel Purchaser may assign its rights under this Agreement only upon the prior written approval of Musket and, notwithstanding any such assignment, Fuel Purchaser shall not be released from its obligations hereunder, absent Musket's written agreement to the contrary. This Agreement may be executed in one or more counterparts, and by facsimile, all of which counterparts shall be considered one and the same agreement. In any action to enforce or defend this Agreement, the prevailing party shall be entitled to an award of its reasonable attorneys' fees and costs associated therewith.