Terms and Conditions of Sale
(US and Canada)

THIS AGREEMENT IS SUBJECT TO ARBITRATION UNDER THE FEDERAL ARBITRATION ACT, WHERE APPLICABLE, OR THE KANSAS UNIFORM ARBITRATION ACT (K.S.A. 5-423 THROUGH 5-453).

1. Applicability; Proposal Duration; Acceptance and Agreement.

1.1 Applicability. These Terms and Conditions of Sale (as may be amended, modified and/or supplemented from time to time, the "Terms and Conditions"), shall apply to any proposal, sales order, invoice and/or other sales documentation issued (collectively, "Order"), and the sale of any products and/or services and support ("Products"), by or on behalf of Hess Services, Inc., doing business as Nationwide Tanks by Hess ("Seller").

1.2 Proposal Duration. Proposals may be withdrawn by Seller at any time prior to acceptance and shall automatically expire and be void if not accepted in writing within thirty (30) days of the date of the proposal. Notwithstanding acceptance of any proposal, future Product orders are subject to price increases. Proposal pricing is only applicable for thirty (30) days from the date of the proposal, after which time prices shall be adjusted as necessary to reflect Seller then-current prices, and future Product orders require new proposals reflecting pricing applicable at such time. Pricing listed in a proposal, once the proposal is timely and properly accepted by Buyer (as defined below), shall remain firm, subject to any specific escalation provisions in the Order and any raw material and/or fuel price increases as described in Section 3.

1.3 Acceptance and Agreement; Conflicts. You, as the buyer identified in an Order ("**Buyer**" or "**you**"), irrevocably agree by written acknowledgement of such Order, acceptance of any Products thereunder and/or payment of the amount due as indicated thereon that your purchase and Seller sale to you of any Products is subject to these Terms and Conditions, which together with the Order and the documents listed below is a binding agreement (the "**Agreement**") between you and Seller (each a "**Party**" and, collectively, the "**Parties**"). The Agreement shall include (a) any current distributor agreement entered into by the Parties and any documents executed by the Parties in connection therewith; (b) these Terms and Conditions; (c) the Order(s) and any accompanying Seller drawings**;** (d) Change Order(s) (as defined below), if any; and (e) any other document executed by both Parties and specifically incorporated herein by reference. In the event of any conflict among the terms of the foregoing documents, such documents shall have priority in the order in which they are listed in the preceding sentence. If Buyer is an Seller distributor, the additional provisions of any separate distributor agreement between the Parties shall also apply. Seller fulfillment of any order by Buyer does not constitute, and shall not be deemed to constitute, acceptance of any of Buyer's terms and conditions or modification or amendment of the Agreement, and any conflicting or additional Buyer terms, conditions and/or offers, whether previously or hereafter communicated, are expressly rejected by Seller. Any previous offers made by Buyer for the purchase of goods or services from Seller are hereby rejected. Seller shall have no responsibility for furnishing any goods, services, equipment, data or materials shown in any plans or specifications or specifications incorporated directly or by reference in Buyer's purchase documents unless specifically listed in the Order and expressly accepted in writing by Seller. To the extent any advertising or promotional material of Seller conflicts with the terms of the Agreement, the Parties agree that the terms of the Agreement shall control and such advertising or promotional material is not part of the Agreement.

2. Entire Agreement; Amendment; Updates.

2.1 Entire Agreement. The Agreement constitutes the entire agreement between the Parties related to the subject matter of the Agreement and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations, warranties and communications, whether written or oral, between the Parties. There are no promises, covenants, agreements, representations, warranties or undertakings other than those expressly set forth in the Agreement. The Parties have voluntarily agreed to define their rights, liabilities and obligations respecting such subject matter exclusively in the Agreement and each Party hereby acknowledges that the Agreement embodies the justifiable expectations of sophisticated parties derived from arm's-length negotiations and that there is no special relationship between the Parties that would justify any expectation beyond that of parties in an arm's-length transaction.

2.2 Amendment. With the exception of these Terms and Conditions, which may be changed and updated from time to time by Seller in its sole discretion as provided in Section 2.3, the Agreement may only be modified or amended by a writing signed by authorized representatives of both Parties and no waiver or modification by Seller of any provision of the Agreement is effective unless explicitly set forth in a writing that specifically references the Agreement and is signed by an authorized representative of Seller.

2.3 Updates. Seller reserves the right to update these Terms and Conditions at any time, effective upon providing an updated version of the same to Buyer or by posting the updated version to the Seller-designated website, www.nationwidetanks.com (the "Seller Site"), to the extent maintained by Seller. Buyer shall monitor the version date and any change to its posted version date will be deemed notice to Buyer that the Terms and Conditions have been updated. However, Buyer's rights and obligations with respect to any particular Products will be as provided in the version of these Terms and Conditions executed by or made available to Buyer, on the Seller Site or otherwise, at the time of Buyer's purchase of such Products.www.nationwidetanks.com

3. Pricing; Taxes. Pricing shall be as provided in the Order(s), subject to any qualifications set forth therein and/or in the Agreement, including without limitation any delays in production occasioned by Buyer as described in

© Nationwide Tanks by Hess Services Inc. All rights reserved.

Section 6.4, and provided that (a) if the price of raw materials to Seller increases in excess of ten percent (10%), as supported by documented supplier quotations, mill pricing, resin pricing or other verifiable purchase-cost records, during the course of Seller fulfillment of the Order, the price shall be increased accordingly and proportionately; and (b) should there be an increase in the market price for fuel, Seller may increase the price of goods, services and/or transportation and freight accordingly and Buyer agrees to pay that price increase to Seller. Prices do not include drawings or instruction books unless specifically itemized in the Order. Product prices are exclusive of shipping charges and all applicable sales, use, excise or other taxes now or hereafter imposed on the sale or delivery of the Products (collectively, "Taxes"). Buyer shall be solely responsible for paying all Taxes and remitting the same to the applicable taxing authorities (other than Taxes invoiced by Seller, which shall be remitted to Seller), and Buyer shall hold Seller harmless in connection with the same, unless Buyer presents an exemption certificate acceptable to Seller and the applicable taxing authorities. If any exemption certificate presented by Buyer is held to be invalid, then Buyer will immediately pay Seller the amount of the Tax and any penalties and interest related thereto.

4. Payment Terms; Buyer's Credit; Security Interest; Remedies.

4.1 Payment Terms. Unless otherwise specified in writing by Seller, a deposit of fifty percent (50%) of the total purchase price shall be payable by Buyer prior to delivery and the remainder of the net purchase price shall be payable in full thirty (30) days from date of invoice or delivery, whichever is earlier, provided that invoices for Products held at Buyer's request may be rendered upon written notice of readiness for shipment under Section 6.2. If Products are shipped in units or lots, payment for each unit or lot shall be due on shipment thereof in an amount equal to the price specified for each in the Order or, if no unit or lot prices are specified, the percentage of the total purchase price represented by each unit or lot. For Products Seller is required to hold or warehouse beyond the originally scheduled shipment date, payment and other terms shall be as provided in Section 6.2. All payments shall be made in U.S. dollars (except to the extent otherwise indicated by Seller on the Order) to the address or account listed on the Order, and the following forms of payment shall be acceptable: check drawn on a U.S. bank account (or a Canadian bank account for Canadian sales), bank wire transfer from a U.S. bank (or a Canadian bank for Canadian sales) and credit cards (Visa, MasterCard and American Express accepted, which may be subject to an additional fee).

4.2 Buyer's Credit. Payment terms are subject to Seller approval, in its sole discretion, of Buyer's credit. Any credit extended to Buyer may be modified, suspended or revoked at any time by Seller and Seller reserves the right to require advance cash payments, security satisfactory to Seller in its sole discretion, or payment in full prior to delivery. Shipments may be withheld until such payment and/or security is received by Seller. In connection with any extension of credit, Buyer hereby authorizes Seller to investigate Buyer's credit history from time to time, including without limitation with consumer credit reporting repositories and any other sources of information deemed necessary to determine the amount and conditions of credit to be extended, if any, as allowed by the Federal Credit Reporting Act (United States) and the governing law of the Agreement. Buyer further agrees to promptly provide trade references and bank references on Seller written request and hereby authorizes the businesses and financial institutions listed as references by Buyer to release necessary information to Seller to verify the information provided by Buyer. Seller may also require a personal guarantee for any credit extended.

4.3 Security Interest. Buyer agrees to pay Seller for any Products delivered prior to payment in full therefor in accordance with the applicable payment terms and hereby grants Seller a security interest in such Products. Buyer agrees to protect and maintain such Products by all reasonable means and to not sell such Products without the prior written consent of Seller. If Buyer resells any such Products, Buyer further grants Seller a security interest in all Proceeds and Accounts Receivable (as those terms are defined in the United States Uniform Commercial Code and/or as similar terms are defined under the applicable personal property security act or other legislation of similar effect, as applicable) arising out of Buyer's sale of such Products. Buyer shall do everything necessary to assist Seller in registering its interest in and title to any such Products. Buyer grants Seller the authority to execute and file such financing statements, continuation statements and other documents reflecting the ownership of the Products by Seller and Buyer will cooperate with Seller reasonable requests for information and documentation that Seller deems necessary to protect, preserve, perfect, and/or prioritize its security interest. Seller shall retain all lien rights against Buyer and the project.

4.4 Buyer Default; Seller Remedies.

(a) The occurrence of any of the following events shall constitute a default by Buyer: (i) Buyer's failure to make timely payment of any sum owing to Seller; (ii) the institution of any proceedings by or against Buyer under any bankruptcy, insolvency or similar law; (iii) the appointment of or application for a receiver for Buyer; (iv) an assignment by Buyer for the benefit of creditors; (v) Buyer's failure to furnish Seller, on Seller request, with a written representation reaffirming Buyer's solvency (it being understood that the Agreement constitutes a representation by Buyer that Buyer is solvent); (vi) Seller deems itself insecure with respect to performance by Buyer under the Agreement; or (vii) Buyer's breach of any provision of the Agreement.

(b) On Buyer's default, in addition to all other remedies available to Seller at law or in equity, Seller may: (i) terminate the Agreement or one or more Orders; (ii) require Buyer to immediately pay for all Products in process, completed or delivered under the Agreement; and/or (iii) commence proceedings for collection, revoke credit, stop shipment, delay or stop future deliveries, enter any premises owned or controlled by Buyer where goods are located to repossess unpaid delivered goods, charge interest on any past due amounts at a rate equal to the lesser of one percent (1%) per month and the maximum rate permitted by applicable federal, provincial or state law from the due date until paid, and/or charge a service charge equal to $30.00 for each check returned by Buyer's bank. In the event Buyer's account or any part thereof is placed in the hands of an attorney, lawyer and/or collection agency for collection, with or without litigation, or for the purpose of enforcing Seller security interest in the Products, Buyer agrees to pay any and all costs associated with such placement, including without limitation attorneys' and/or lawyers' fees, allocable fees of in-house

© Nationwide Tanks by Hess Services Inc. All rights reserved.

counsel and other costs incurred in connection therewith. Without limiting the foregoing or any other rights of Seller in the event of Buyer's default, Seller reserves all rights granted to a seller under the United States Uniform Commercial Code and/or the applicable personal property security act or other legislation of similar effect, as applicable, for Buyer's failure to pay for any goods sold or any other default by Buyer. Buyer may not withhold payment of any amounts due and payable as a set-off of any claim or dispute with Seller.

5. Buyer Specifications; Order Changes.

5.1 Buyer Specifications. The Products sold to Buyer shall consist of only those specifically listed in the Order, with only the modifications or revisions thereto, if any, specified in the Order by Seller. Seller shall have no responsibility to furnish any goods, services, equipment, data or materials other than the Products specified in the Order, regardless of any plans or specifications referenced directly or indirectly in Buyer's purchase documents. Products will only be fabricated with modifications or revisions pursuant to any specifications, drawings, information and/or data ("**Buyer Specifications**") supplied to Seller by or at the direction of Buyer to the extent accepted in writing by Seller. Fabrication of any such modified or revised Products is based on Seller understanding of the applicable Buyer Specifications and Buyer bears the responsibility for any ambiguity in or problems resulting from such Buyer Specifications.

5.2 Change Orders. Buyer shall send any requests for additions, deletions or other revisions to any Order to Seller promptly and in writing clearly referencing the applicable Order. Seller may accept or reject any such revisions in its sole discretion and any such revisions accepted by Seller shall only be effective if reflected in a written document signed by authorized representatives of both Parties ("**Change Order**"). Such Change Orders shall become a part of the Agreement. Seller shall not be responsible for any delay in fabrication or delivery caused by Change Orders. If any change effected by a Change Order affects the cost or time of performance, the price, payment terms and/or estimated delivery date for the Products shall be adjusted to reflect the effect of such change. Notwithstanding the foregoing: (a) if Seller makes any changes requested by or at the direction of Buyer prior to execution of a Change Order, Seller shall nevertheless be entitled to an equitable adjustment to price, payment terms and estimated delivery date prior to shipment or completion; and (b) no changes agreed by Seller in any Change Order shall be construed to establish any course of dealings between the Parties or in any way affect Seller right to require strict compliance with the terms of the Agreement in connection with other Orders.

6. Delivery and Shipment; Packing and Storage Fees; Equipment Inspection; Delays.

6.1 Delivery and Shipment. Unless specifically agreed otherwise by Seller in writing, deliveries will be made FCA (Incoterms 2020) the Seller facility specifically listed on the Order. Seller will ship Products using its carrier of choice in accordance with its standard shipping procedures at the time of shipment unless otherwise requested in writing by Buyer and agreed in writing by Seller. Buyer shall be responsible for ensuring that (a) Products in transit are insured with limits sufficient to cover the purchase price therefor and (b) Seller is named as a loss payee on any such insurance for Products that have not yet been paid for in full by Buyer. Seller is not responsible to send Products by direct truck line or any other expedited method or routing, unless Buyer has specifically requested, and Seller has accepted, the same in writing and Buyer has prepaid for such services. If any shipment mode or routing requested by Buyer imposes an undue burden on Seller, as determined by Seller in its sole discretion, Seller may inform Buyer of the same in writing and require Buyer to arrange for delivery. Buyer is responsible for all costs of shipment and any payment by Seller of freight or other charges shall be for the account of Buyer and shall not extend Seller delivery obligations. There must be appropriate access to, and adequate room for the delivery truck to turn around and back up at, the delivery location. It is Buyer's responsibility to have someone present at the delivery location to receive and offload the Products at Buyer's expense. If the delivery location is not adequate for delivery for any reason or if delivery is delayed or altered by Buyer or other circumstances beyond Seller control for any reason, then Buyer shall be responsible for any additional charges in connection therewith. With Seller prior written consent, Buyer may make arrangements to have its carrier collect Products at Seller facility, in which case it is Buyer's responsibility to confirm the loading schedule and that the Products are complete and ready for loading. Buyer shall comply with any and all requirements of Seller in connection with any such pick up. Buyer is responsible for sending suitable vehicles capable of hauling the size and weight of the Products and for providing an appropriate method and materials for securing the Products to the vehicle. Buyer shall bear all responsibility in connection with securing and transporting any Products its carrier picks up and none of Seller, its affiliates or their respective Representatives shall have any liability in connection therewith, including without limitation liability for damages to or loss of Products, vehicles, or other property or persons.

6.2 Packing and Storage Fees. All Products will be packed for shipment in accordance with Seller standard packing practices in effect at the time. Buyer may submit a written request for special packing or handling, preservation, waterproofing, weather and hazard protection and the like, but all such requests by Buyer shall be subject to Seller written acceptance and additional charges in connection with the same. Buyer agrees to hold Seller harmless for any damage to Products caused by Buyer's special packaging requirements. Buyer may request that Seller hold or warehouse Products ("Stored Products") for a period not to exceed thirty (30) days from the originally scheduled ship date (the "Storage Period") and Buyer shall pay Seller the total amount of all Seller Storage Charges in connection with the same. "Storage Charges" shall include all storage fees, moving and handling expenses to and from storage, dunnage and storage material costs charged by Seller, as specified in writing by Seller, in connection with the holding or warehousing of such Stored Products. Payment in full for Stored Products is due and payable by Buyer within fifteen (15) days from the date Seller notifies Buyer that the Stored Products are ready for shipment. If Buyer does not make such payment timely to Seller or Buyer cannot take delivery of the Stored Products immediately following expiration of the Storage Period, Seller may, after written notice and a reasonable opportunity to collect and pay for the Stored Products, exercise available remedies, including lawful resale or disposition, subject to applicable law and any required accounting for

© Nationwide Tanks by Hess Services Inc. All rights reserved.

proceeds. Storage Insurance and Risk. Upon written notice that Products are completed and ready for shipment, Buyer shall bear the risk of accidental loss or damage to Products held at Seller's facility at Buyer's request or due to Buyer's delay, except to the extent caused by Seller's negligence or willful misconduct. Buyer shall maintain property insurance for the full replacement value of such Products, provide evidence of coverage upon request, and name Seller as loss payee to the extent of any unpaid balance. Alternatively, if Seller expressly agrees in writing to arrange insurance for an agreed storage period, Buyer shall pay a charge equal to ten percent (10%) of the value of Stored Products for that agreed period, consisting of seven percent (7%) insurance and three percent (3%) administration, subject to written confirmation of available coverage and its limits. No coverage is assumed absent such written confirmation. Seller may refuse or terminate storage on reasonable written notice, subject to applicable law.

6.3 Equipment Inspection. Seller reserves the right to restrict access to its plant by Buyer or Buyer's Representative, but Buyer may request that Seller permit Buyer or Buyer's Representative to inspect equipment in Seller plant and Seller may, in its sole and absolute discretion, permit access for requested equipment inspection if Buyer makes prior arrangements acceptable to Seller to minimize disruption of Seller production activities.

6.4 Delays. Pricing is based on Seller ability to timely and continuously prosecute the work. Buyer shall be responsible for, and Buyer understands and agrees that prices may be increased to account for, any additional costs and/or delays resulting from any Buyer delays, including without limitation any Buyer failure to approve drawings promptly or give any releases necessary to enable Seller to purchase materials and proceed with timely fabrication and shipment. Without limiting the foregoing, Buyer shall be responsible for all costs associated with any Buyer request for a hold in fabrication, including without limitation the cost of removal of the Product(s) from production, storage, rescheduling, reconditioning, restoring equipment to production after removal of Buyer's hold and other similar costs resulting from Buyer's hold. Seller shall have no responsibility or liability whatsoever in connection with any delays, or the consequences thereof, relating to Buyer hold requests or restoring Products to production after any such hold(s). Notwithstanding any other provision of the Agreement to the contrary, any delivery dates or schedules quoted are approximate and based on estimates at the time of quotation. Seller shall use commercially reasonable efforts to meet such schedules, but neither Seller nor its affiliates shall have any liability for any damages resulting from delays or late delivery and Buyer shall have no termination right in connection therewith.

7. Title; Risk of Loss; Inspection. Title to Products will not pass from Seller to Buyer until Seller has been paid in full for such Products. Risk of loss with respect to any Product will transfer to Buyer upon Seller tendering the Product to the carrier for delivery at Seller's plant, or upon Seller's written notice of completion and readiness for shipment where shipment is delayed at Buyer's request or due to Buyer's failure to arrange collection, subject to Seller's liability for its negligence or willful misconduct as provided in Section 6.2. It shall be Buyer's responsibility to insure the Products immediately upon the transfer of the risk of loss to Buyer and Buyer shall ensure that Seller is named as a loss payee on any such insurance for Products that have not yet been paid for in full by Buyer. The foregoing shall apply notwithstanding any provisions for payment of freight or insurance by Seller or the form or content of any shipping documents. Seller is not responsible for loss or damage to Products that occurs after tender to the carrier. Any damage or loss claims must be made to the applicable carrier. Buyer shall examine all Products upon receipt and shall note any discrepancy on the bill of lading at the time of delivery and promptly notify Seller (in no event later than five (5) business days after delivery) of any claimed discrepancies. Such notice shall be in writing and contain reasonable detail stating the discrepancies. If no notation is made on the bill of lading and/or such notice is not timely given by Buyer, Buyer agrees that such Products will be deemed irrevocably accepted as complete and in good condition and Buyer shall have no claim in respect thereof, which claims shall be conclusively waived. It is Buyer's responsibility to retain a copy of the bill of lading documenting any discrepancies. In cases where Products are properly noted as non-conforming by Buyer, and such non-conformities are not the direct or indirect result of any acts or omissions of Buyer or its carrier, affiliates or Representatives (as defined below), Seller will, at its option, repair, replace or refund the purchase price (or a portion thereof) of the relevant non-conforming Product, which shall constitute BUYER'S SOLE AND EXCLUSIVE REMEDY AND THE SOLE AND EXCLUSIVE OBLIGATION AND LIABILITY OF Seller AND ITS AFFILIATES IN CONNECTION WITH NON-CONFORMING PRODUCTS. Defects covered by the Limited Warranty (as defined in Section 10) shall be reported to Seller and addressed as provided in the applicable Limited Warranty. "Representatives" of a Party, as used in these Terms and Conditions, means a Party's directors, officers, shareholders, members, managers, employees, agents, consultants, advisers and subcontractors.

8. Force Majeure. Neither Seller nor its affiliates shall be liable for any failures, delays or other non-performance caused by circumstances beyond its reasonable control, whether or not foreseeable (each a "**Force Majeure Event**"), including without limitation strikes, lockouts, labor or industrial disputes or disturbances, fires, floods, inclement weather, pandemics or epidemics, local disease outbreaks, public health crises or emergencies, quarantine restrictions, breakdown of communication facilities, breakdown of web host, breakdown of internet service provider, accidents, actions of any governmental authorities, acts of God, war, insurrection or riots, failures or delays of vendors or subcontractors, Buyer's failure to give timely information or approval or any other act or omission of Buyer, or shortages of or delays in labor, energy, fuel, materials, production or manufacturing facilities or transportation. With respect to the COVID-19 pandemic, Buyer acknowledges that future impacts of the outbreak are unknown and shall be considered a Force Majeure Event to the extent that they prevent the performance of Seller obligations under the Agreement or make such performance commercially impractical.

9. Buyer Representations and Warranties. Buyer represents, warrants and covenants to Seller that each of the following statements is true and accurate, will remain true and

© Nationwide Tanks by Hess Services Inc. All rights reserved.

accurate so long as the Agreement remains in effect, and shall be promptly supplemented to reflect any changes:

(a) Buyer possesses the necessary power and authority and has secured the requisite approvals to enter into the Agreement and to carry out its obligations thereunder;

(b) Buyer's execution, delivery and/or performance of the Agreement will not (i) violate, conflict with or result in a breach of any law; (ii) permit the acceleration of the maturity of any indebtedness of Buyer or (iii) violate or conflict with any provisions of the certificate or articles of incorporation, charter, bylaws or similar organizational instruments, if any, of Buyer; and

(c) The Agreement, including without limitation these Terms and Conditions, is enforceable against Buyer in accordance with its terms.

10. Limited Warranties; Disclaimer of Implied Warranties.

10.1 Seller Limited Warranties. Seller provides the written limited warranties identified in the Order or otherwise supplied to Buyer at the time of purchase, including any applicable warranties available on the Seller Site for its various Products (the warranty applicable to the subject Product in each case being referred to herein as the "Limited Warranty") to the original retail purchaser of the applicable Product on the terms stated therein. Seller reserves the right to update the Limited Warranty at any time, effective upon posting an updated version of the same to the Seller Site. Buyer shall monitor the Limited Warranty version date and any change to its posted version date will be deemed notice to Buyer that the Limited Warranty terms have been updated. The Limited Warranty applicable with respect to any particular Products will be as provided in the version of the Limited Warranty posted at the time of Buyer's purchase of such Products. The applicable Limited Warranty is hereby incorporated herein by reference and made a part hereof for all purposes as if fully set forth herein. THE REMEDIES SET FORTH IN THE LIMITED WARRANTY CONSTITUTE BUYER'S SOLE AND EXCLUSIVE REMEDIES, AND THE SOLE OBLIGATION AND LIABILITY OF Seller AND THE OTHER INDEMNITEES FOR BREACH OF WARRANTY OR CONDITION, OR BREACH OF ANY OTHER COVENANT, "DUTY" OR OBLIGATION ON THE PART OF Seller OR ANY OTHER INDEMNITEE. For avoidance of doubt, Seller warrants only Products sold by Hess Services, Inc. under an applicable written Limited Warranty. Nothing herein constitutes an assumption of liabilities or warranties of a predecessor entity for Products sold before the applicable asset acquisition, except to the extent expressly assumed in writing or required by law. Any warranty incorporated by website reference must be identifiable and available to Buyer at the time of purchase.

10.2 Disclaimer of Implied Warranties. OTHER THAN THE APPLICABLE EXPRESS LIMITED WARRANTY, NEITHER Seller NOR ANY OTHER INDEMNITEE (AS DEFINED IN SECTION 12) MAKES ANY WARRANTY, CONDITION OR REPRESENTATION, EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS OR ANY RELATED SERVICE, ADVICE OR CONSULTATION. **IMPLIED WARRANTIES AND CONDITIONS, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, NON-INFRINGEMENT AND TITLE ARE HEREBY EXPRESSLY DISCLAIMED BY Seller AND ITS AFFILIATES AND WAIVED TO THE FULLEST EXTENT ALLOWED BY LAW AND WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.** THE TANK, ANY Seller COMPONENT(S) (AS DEFINED IN THE LIMITED WARRANTY), ANY RELATED SERVICE, ADVICE OR CONSULTATION AND ANY Seller CONFIDENTIAL INFORMATION (AS DEFINED IN SECTION 14) IS PROVIDED "AS IS," WITH ALL FAULTS AND WITHOUT WARRANTY OR CONDITION OF ANY KIND OTHER THAN THE EXPRESS LIMITED WARRANTY, AND ANY WARRANTIES AND CONDITIONS IN CONNECTION THEREWITH IMPLIED BY ANY COURSE OF DEALING OR USAGE ARE EXPRESSLY DISCLAIMED AND EXCLUDED.

11. Returns; Cancellations. No returns, exchanges or credits are permitted unless otherwise agreed in writing by Seller in its sole discretion. To the fullest extent permitted by applicable law, any Product that has been delivered to Buyer may only be returned to Seller if it is, subject to compliance with Section 7, defective or damaged in some way or subject to a recall issued by Seller and provided that any defect, damage or recall is not, to any extent, the direct or indirect result of any act, omission or thing done, or permitted to be done, by Buyer or Buyer's affiliates or Representatives or any breach of the Agreement by Buyer or Buyer's affiliates or Representatives. Buyer may not cancel an order except with the prior written consent of Seller, which consent shall be in Seller sole discretion. If Seller permits Buyer to cancel an order, Buyer shall pay the following to Seller: (a) for cancellations after the Product is ready for delivery, the full purchase price of the Product; (b) for cancellations after production has begun, a 75% cancellation charge; and (c) for cancellations before production has begun, (i) a cancellation fee in the amount of $1,000 to cover expenses in connection with processing the order and cancellation and (ii) the cost of any special materials for special made-to-order projects.

12. Limitations of Liability; No Recourse Against Nonparties; Indemnification.

12.1 Limitations of Liability.

(a) ***IN NO EVENT SHALL Seller OR ANY OTHER INDEMNITEE (AS DEFINED BELOW) HAVE ANY LIABILITY TO BUYER OR ITS AFFILIATES OR REPRESENTATIVES IN ANY ACTION ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT OR ANY PRODUCT, INCLUDING WITHOUT LIMITATION ANY ACTION BASED UPON WARRANTY (INCLUDING BREACH OF THE LIMITED WARRANTY), CONTRACT, NEGLIGENCE, STRICT LIABILITY, TORT OR OTHERWISE, FOR ANY INSTALLATION, REINSTALLATION OR REMOVAL COSTS, LOSS OF USE, INCONVENIENCE, INTERRUPTION OF BUSINESS, DOWNTIME, TRANSPORTATION COSTS, WATER LOSS, ENVIRONMENTAL CONTAMINATION, AMELIORATION OR REHABILITATION, FIRES, EXPLOSIONS, DAMAGE TO PROPERTY OR LOST REVENUES, PROFITS, BUSINESS OPPORTUNITIES, PRODUCTS, PRODUCTION TIME OR SIMILAR LOSS OR***

© Nationwide Tanks by Hess Services Inc. All rights reserved.

EXPENSE INCURRED BY BUYER OR ANY THIRD PARTY, OR OTHER INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES OF ANY KIND, WHETHER OR NOT Seller OR ANY OTHER INDEMNITEE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE AND EVEN THOUGH CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE (WHETHER SOLE, JOINT OR CONCURRENT), GROSS NEGLIGENCE, STRICT LIABILITY, OR OTHER LEGAL FAULT OF Seller OR ANY OTHER INDEMNITEE.

(b) IN NO EVENT SHALL Seller BE LIABLE FOR ANY DAMAGES, WHETHER DIRECT, INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE OR OTHERWISE, RESULTING FROM DELAYS IN PERFORMING ANY OBLIGATIONS UNDER THE AGREEMENT, WHETHER OR NOT SUCH DAMAGES ARE FORESEEABLE. IF Seller IS ULTIMATELY UNABLE TO DELIVER A PRODUCT ORDERED UNDER THE AGREEMENT, BUYER'S SOLE AND EXCLUSIVE REMEDY SHALL BE TO RECEIVE A REFUND OF ANY AMOUNTS PAID TO Seller FOR SUCH PRODUCT. DELIVERY DELAYS SHALL NOT BE DEEMED AN INABILITY TO DELIVER.

(c) Buyer acknowledges and agrees that INSTALLING CONTRACTORS, INCLUDING THOSE THAT ARE Seller DISTRIBUTORS, ARE INDEPENDENTLY OWNED AND OPERATED THIRD-PARTY BUSINESSES AND ARE NOT OWNERS OR AGENTS (IN FACT OR LAW) OF Seller. NEITHER Seller NOR ITS AFFILIATES SHALL BE RESPONSIBLE OR LIABLE FOR ANY ACTS OR OMISSIONS OF INSTALLING CONTRACTORS, INCLUDING THOSE THAT ARE Seller DISTRIBUTORS, OR ANY DAMAGES RESULTING FROM THOSE ACTS OR OMISSIONS.

(d) Subject to the provisions of this Section 12, and other additional, applicable limitations contained in these Terms and Conditions and the Limited Warranty, NO LIABILITY WHATSOEVER SHALL ATTACH TO Seller UNTIL Seller HAS BEEN PAID IN FULL FOR THE PRODUCT(S) AT ISSUE, AND THE TOTAL LIABILITY OF Seller AND THE OTHER INDEMNITEES ON ANY BASIS, INCLUDING WITHOUT LIMITATION NEGLIGENCE, STRICT LIABILITY, TORT, CONTRACT, STATUTE OR OTHERWISE, IN RESPECT OF ANY LOSS SUFFERED OR INCURRED BY BUYER, ITS AFFILIATES OR THEIR RESPECTIVE REPRESENTATIVES OR INVITEES ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT OR A PRODUCT SOLD HEREUNDER SHALL NOT EXCEED THE AMOUNT OF THE TOTAL PURCHASE PRICE (AS DEFINED BELOW) PAID TO Seller FOR THE APPLICABLE PRODUCT(S). THIS LIMITATION OF LIABILITY IS CUMULATIVE WITH ALL EXPENDITURES OF Seller AND THE OTHER INDEMNITEES BEING AGGREGATED TO DETERMINE SATISFATION OF THE LIMIT. BUYER HEREBY RELEASES Seller AND THE OTHER INDEMNITEES FROM ALL OBLIGATIONS, LIABILITY, CLAIMS OR DEMANDS IN EXCESS OF THIS LIMITATION. AS USED HEREIN, THE "**PURCHASE PRICE**" MEANS ONLY THAT AMOUNT PAID BY BUYER TO Seller (BEING EITHER THE WHOLESALE PRICE PAID BY AN Seller DISTRIBUTOR AS BUYER OR THE RETAIL PRICE PAID BY A RETAIL BUYER, AS APPLICABLE) FOR THE APPLICABLE PRODUCT ITSELF AND NO OTHER RELATED PRODUCTS, COSTS, EQUIPMENT OR OTHER WORK OR ASSOCIATED PROJECT COSTS.

(e) UNDER NO CIRCUMSTANCES SHALL A PARTY'S LIABILITY HEREUNDER EXTEND TO ANY PORTION OF ANY CLAIM THAT ARISES FROM, OR IS CAUSED IN WHOLE OR IN PART BY, AN ACT OR OMISSION OF THE OTHER PARTY, ITS AFFILIATES OR THEIR RESPECTIVE REPRESENTATIVES. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, NEITHER Seller NOR ANY OTHER INDEMNITEE SHALL BE LIABLE FOR ANY LOSS OR DAMAGES INCURRED BY BUYER ARISING OUT OF OR RELATING TO (I) BUYER OR ANY OF ITS AFFILIATES' OR REPRESENTATIVES' IMPROPER OR UNAUTHORIZED USE, HANDLING, MAINTENANCE OR INSTALLATION OF THE PRODUCTS, TRANSPORTING OR LOADING/UNLOADING OF ANY PRODUCTS, OR ANY IMPROPER USE OR DISCLOSURE OF ANY INTELLECTUAL PROPERTY OR CONFIDENTIAL INFORMATION OF Seller AND/OR ITS AFFILIATES; OR (II) ANY INFORMATION, DATA OR SPECIFICATIONS SUPPLIED BY OR AT THE DIRECTION OF BUYER, ITS AFFILIATES OR REPRESENTATIVES, OR ANY MODIFICATION OR ALTERATION OF A PRODUCT BY OR ON BEHALF OF BUYER OR ITS AFFILIATES OR REPRESENTATIVES WITHOUT Seller'S PRIOR WRITTEN CONSENT.

12.2 No Recourse Against Nonparties.

(a) The Agreement may only be enforced against, and any action, suit, claim, liabilities, obligations, investigation or proceeding (whether in contract or tort, at law or in equity, or granted by statute) based upon, arising under or out of or related in any manner to the Agreement or the negotiation, execution, performance or breach thereof (including any representation or warranty made in, in connection with, or as an inducement to, the Agreement) ("**Claims**") may only be brought against (and are those solely of) the persons or entities defined herein as the Parties, being Buyer and Seller (for purposes of this Section 12.2, the "**Contracting Parties**").

(b) No person or entity who is not a Contracting Party, including without limitation any direct or indirect parent or subsidiary of Seller or any past, present or future equity owner, director, officer, manager, employee, incorporator, affiliate, agent, attorney, lawyer or representative of, or any financial advisor or lender to, a Contracting Party or any of the foregoing (each a "**Nonparty**" and, collectively, the "**Nonparties**"), shall have any liability on any basis (whether in contract or tort, at law or in equity, granted by statute, or otherwise) for any Claims and, to the maximum extent permitted by the governing law of the Agreement, each Contracting Party hereby waives and releases all such Claims against any such Nonparties.

(c) Without limiting any of the foregoing, to the maximum extent permitted by the governing law of the Agreement, each Contracting Party hereby: (i) waives and releases any and all rights, claims, demands or causes of action that may otherwise be available at law or in equity to avoid or disregard the entity form of a Contracting Party or otherwise impose liability of a Contracting Party on any Nonparty, whether granted by statute or based on theories of equity, agency, control, instrumentality,

© Nationwide Tanks by Hess Services Inc. All rights reserved.

alter ego, domination, sham, single business enterprise, piercing the veil, unfairness, undercapitalization or otherwise; and (ii) disclaims any reliance upon any Nonparty with respect to the performance of the Agreement or any representation or warranty made in, in connection with, or as an inducement to the Agreement.

(d) The Parties acknowledge and agree that the waivers and releases herein are part of the consideration for the Agreement.

12.3 Indemnification. Buyer shall indemnify, defend and otherwise hold Seller, its affiliates and their respective officers, directors, managers, members, shareholders, unitholders, employees, subsidiaries, affiliates, agents, attorneys, lawyers, insurers, successors and assigns (each an "**Indemnitee**" and collectively, the "**Indemnitees**") harmless from and against any and all liability, loss, claims, suits, damages, causes of action and costs, including without limitation reasonable attorney's and/or lawyers' fees, allocable fees of in-house counsel, consulting and expert witness fees, costs and expenses, arising directly or indirectly from, related to or incurred in connection with the following: (a) Buyer or any third party's information, designs or specifications, or any item originally supplied by Seller that is modified or altered in any manner by or at the direction of Buyer, its affiliates or their respective Representatives; (b) the installation, placement, use, handling, care, repair, maintenance, inspection, operation or alteration of Products or any unauthorized use or disclosure of any intellectual property or Confidential Information (as defined below) of Seller or its affiliates by Buyer, its affiliates or their respective Representatives; (c) Buyer's breach of any of its obligations under the Agreement; (d) any omission or willful, unlawful, fraudulent, negligent or tortious act of Buyer or Buyer's affiliates or Representatives; and/or (e) the collection, securing, transporting, loading and unloading, if any, of Products by Buyer, its carrier or any other third party. Without limiting the foregoing, the indemnification obligations in this Section apply regardless of whether the liability, loss, claim, suit, damages or cause of action arises out of or is related to personal injury, death, property damage, Product defects or the gross negligence of Buyer, Buyer's affiliates or Representatives or any third party. The obligations of this Section further apply, without limitation, to liability for any actions undertaken pursuant to or in accordance with the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) or any other governmental requirement, and shall be enforceable as between the Parties without regard to the terms of any duty either may owe to any third parties, including without limitation any governmental entity under any governmental requirement.

12.4 Reliance; Survival. The Parties acknowledge that each of them relied upon the inclusion of the limitations and indemnities in this Section 12 in consideration of entering into the Agreement. The provisions of this Section 12 shall survive any termination of the Agreement.

13. Design Changes; No License. Seller reserves the right to alter, modify or redesign its products without any obligation to replace previous shipments to Buyer. The sale of Products shall not itself confer upon Buyer any license, express or implied, under any patents, trademarks, trade names, or other proprietary rights owned or controlled by Seller, its affiliates or suppliers, it being specifically understood and agreed that all such rights are reserved to Seller, its affiliates or suppliers. Without limiting the foregoing, Buyer will not, without Seller prior written consent, use any trademark or trade name of Seller or its affiliates in connection with any of the Products or otherwise.

14. Seller Intellectual Property and Confidential Information.

14.1 General. Buyer acknowledges and agrees that: (a) Seller or its affiliates is the owner, assignee or licensee of all Confidential Information (as defined below) and various intellectual property rights, including without limitation all patents, trade names, trademarks, copyrights and designs and insignia relating to the Products; and (b) Buyer will not have or acquire any rights in or to such intellectual property or Confidential Information.

14.2 Confidentiality.

(a) "**Confidential Information,**" as used herein, means all information whether now in existence or hereafter developed, regardless of its form or the medium in which it is stored, that is treated by Seller or its affiliates or suppliers as confidential or is not generally known by third parties without reasonable restriction and that is disclosed to Buyer by or on behalf of Seller or its affiliates. Without limiting the foregoing, Confidential Information also includes, whether or not marked or designated as confidential: (i) all information with respect to Seller intellectual property and technology, including without limitation any formulations, designs, tools, dies, patterns, molds and other items involved in production of the Products and any technical advice and testing results with respect to the Products; (ii) all Seller drawings, designs, inventions, ideas, concepts, discoveries, product information, prototypes, research and development, specifications and formulas and all services, processes, methods, procedures, templates, algorithms, formulae, test results and other confidential information related thereto; (iii) any information related to Seller customers, suppliers, business partners or service providers; (iv) the existence and content of the Agreement, including without limitation the Order(s); (v) information disclosed to Buyer by third parties on behalf of Seller; (vi) all documents or information related to Seller pricing, costs, profit or margin information, employee skills, salaries, finances, financial statements, customer lists, consulting practices, marketing strategies and plans, future business plans and other confidential information related thereto; and (vii) all intellectual property rights related to the foregoing. Confidential Information does not include information that: (i) is or becomes, through no fault or breach of Buyer, generally and publicly available and in the public domain; (ii) was available to Buyer on a non-confidential basis as shown in written records prior to Seller disclosure to Buyer; or (iii) becomes available to Buyer on a non-confidential basis from a source other than Seller, provided that such source is not bound by a confidentiality agreement and is not otherwise prohibited from transferring the information to Buyer by a contractual, legal or fiduciary obligation. The existence of a copyright notice on any Confidential Information will not cause, or be construed as causing, such Confidential Information to be a published copyrighted work or to be publicly known or in the public domain. The public availability of one or more constituent pieces of information shall not negate the confidential nature of information that is not generally known in the aggregate. The burden of showing that any Confidential Information or intellectual property is not subject to the obligations of this Section 14 shall rest on Buyer.

© Nationwide Tanks by Hess Services Inc. All rights reserved.

(b) Buyer may use Confidential Information solely in connection with discussions or negotiations regarding Buyer's purchase of Products and as necessary in connection with Buyer's proper use, installation and operation of the Products (the "**Authorized Purpose**"), and Buyer shall not use Confidential Information for any other purpose without Seller prior written consent. Buyer shall maintain all Confidential Information in strict confidence and shall treat it with not less than the same degree of care and confidentiality with which Buyer treats its own confidential information, but in no event less than reasonable care. Buyer shall not disclose any Confidential Information directly or indirectly to any third party without the prior written consent of Seller. Buyer may only make copies of Confidential Information in connection with the Authorized Purpose and Buyer agrees to reproduce and include any proprietary, patent, trademark and copyright legends and notices, in the same manner in which such notices were set forth in or on the originals, on any copies of Confidential Information. Buyer shall ensure that each employee, agent or advisor who has access to any Confidential Information is bound by obligations of confidentiality with respect to such Confidential Information at least equivalent to those obligations set forth in this Section 14 prior to any disclosure of Confidential Information to such employee, agent or advisor. Buyer shall be responsible for any use or disclosure of Confidential Information in violation of the Agreement by any of its employees, agents or advisors who have access to or are otherwise provided Confidential Information.

(c) Buyer agrees that Buyer shall not use or employ any Confidential Information in any way that would be harmful to or against the best interests of Seller. Without limiting the foregoing, Buyer further agrees and warrants that it shall not (i) modify or create derivative works (as such term is used in United States copyright laws) of any Confidential Information, or reverse engineer, disassemble, or decompile any Confidential Information or tangible objects that embody Confidential Information; (ii) directly or indirectly in any capacity, use or permit any of its affiliates or Representatives to use any Confidential Information other than for the Authorized Purpose, including, without limitation, any use of Confidential Information to engage in the development, marketing, sale or distribution of underground fiberglass storage tanks for storing ethanol blended fuels, biodiesel, diesel exhaust fluid, gasoline, motor oils, fire suppression water, potable water, rainwater, stormwater, waste water and/or irrigation water; or (iii) use any Confidential Information for the benefit of any third party engaged in the development, marketing, sale or distribution of underground fiberglass storage tanks for storing ethanol blended fuels, biodiesel, diesel exhaust fluid, gasoline, motor oils, fire suppression water, potable water, rainwater, stormwater, waste water and/or irrigation water.

(d) Buyer agrees to notify Seller immediately upon discovery of any unauthorized use, copying, dissemination or disclosure of Confidential Information. At the request of Seller, Buyer shall assist Seller in identifying any use, copying, dissemination or disclosure of any Confidential Information by any current or former employee or agent of Buyer in any manner other than as expressly permitted in the Agreement, and Buyer shall cooperate with Seller to help Seller regain possession of the Confidential Information and prevent its further unauthorized use or disclosure.

(e) If Buyer becomes obligated under court order or other applicable legal requirement to disclose any Confidential Information, Buyer may disclose such Confidential Information only to the extent required by court order or legal requirement, provided Buyer shall give Seller prompt written notice of such requirement as soon as possible prior to such disclosure and shall provide Seller with assistance in obtaining an order protecting the information from disclosure. If, in the absence of a protective order, Buyer is compelled by court order or other applicable legal requirement to disclose such Confidential Information, Buyer may disclose only that limited portion of such Confidential Information as required to comply with the court order or legal requirement.

(f) Buyer acknowledges that the unauthorized disclosure, dissemination, copying or use of any Confidential Information by Buyer will cause irreparable harm and significant injury to Seller, which may be difficult to measure with certainty or to compensate through monetary damages. Buyer agrees that Seller therefore shall be entitled in such event to obtain a temporary restraining order, temporary injunction, and/or a permanent injunction, without the necessity of a bond, against such breach from any court of competent jurisdiction. Seller right to obtain such relief shall not limit its right to obtain other remedies.

(g) Upon the earlier of Seller request or the completion of the Authorized Purpose, Buyer shall promptly return or destroy all originals, copies, and any and all other tangible embodiments of Confidential Information and discontinue all further use thereof. Buyer shall promptly certify in writing to Seller that such action has been taken.

(h) To the extent that Buyer receives any Confidential Information hereunder that Seller has received from its suppliers, business partners or other third parties, Buyer agrees to comply with the terms of any agreement(s) between Seller and such third parties governing the use or disclosure of such information.

14.3 Ownership; No License. Seller shall retain sole and exclusive ownership of all right, title, and interest in and to all of the Confidential Information provided to Buyer, all intellectual property rights therein and all other Seller intellectual property. Buyer's limited right to use the Confidential Information for the Authorized Purpose is revocable and not coupled with an interest in any Confidential Information. No license by implication, estoppel, or otherwise under any patent, copyright, trade secret, trademark, or other intellectual property right is granted by Seller to Buyer.

14.4 Other Prohibitions; Work for Hire. Buyer acknowledges and agrees that: (a) neither Buyer nor any affiliate, agent, contractor, subsidiary or Representative of Buyer shall in any way copy, duplicate, reverse engineer, adjust, alter, deface, remove, cover up or mutilate in any manner any intellectual property or Confidential Information of Seller or its affiliates; and (b) any work performed by Seller hereunder shall not be considered a "Work for Hire" and, for purposes of 17 U.S. Code Section 201(b), Seller owns all rights comprised in any copyright obtained or obtainable by Seller, provided that this Section shall not give Seller any rights with respect to pre-existing works owned and provided by Buyer to Seller pursuant to the Agreement.

14.5 Conflicts; Survival. To the extent the provisions of this Section 14 conflict with the provisions of any separate

© Nationwide Tanks by Hess Services Inc. All rights reserved.

confidentiality or nondisclosure agreement between the Parties (other than the confidentiality provisions in any distributor agreement between the Parties, which shall control in the event of a conflict and the additional provisions of which shall apply if Buyer is an Seller distributor), the provisions of this Section 14 shall control as to the subject matter of the Agreement and the Confidential Information provided thereunder. The provisions of this Section 14 shall survive any termination of the Agreement.

15. No Back Charges. Any repairs or other work ordered by Buyer before consulting Seller and giving Seller the opportunity in writing to determine the necessity of the work and to either (a) conduct the work either itself or through an Seller Representative or (b) decline the same in writing shall be at Buyer's sole cost and expense and Seller shall have no responsibility or liability therefor. No claim by Buyer for back charges will be honored by Seller for any reason.

16. Compliance with Laws. Buyer represents and warrants to Seller that it will comply with all foreign, federal, provincial, state and local laws, codes, rules, regulations, ordinances and decrees of governmental and/or regulatory authorities applicable to the Parties, the Products or the worksite where work in connection with any Buyer Order is performed, including without limitation any applicable anti-corruption laws and regulations such as the United States Foreign Corrupt Practices Act, Canada Correction of Foreign Public Officials Act, United Kingdom Bribery Act and such other similar anti-corruption laws as may apply. Buyer further represents, warrants and certifies that: (a) no Products provided and/or serviced by Seller will be sold, exported, reexported, transferred, rented, leased, consigned, diverted or otherwise disposed of in violation of any applicable export or import laws, rules or regulations, including without limitation the United States International Traffic in Arms Regulations, the United States Export Administration Regulations, the provisions of the Chemical Weapons Convention, any applicable United States sanctions and embargoes administered by the United States Department of Treasury and/or any other applicable laws or regulations; (b) Buyer will comply with all applicable export and import licenses and their provisos; and (c) Buyer will not, directly or indirectly sell, export, reexport, transfer, rent, lease, consign, divert or otherwise dispose of any Products to, via or for the use by or benefit of any person, entity, or country (including any territory(ies) of such country and/or territorial waters or other areas over which such country asserts jurisdiction or economic rights) or for any activity or use prohibited by or subject to sanctions under the laws or regulations of the United States or other applicable jurisdiction, without obtaining prior authorization from the competent governmental authorities as required by those laws and regulations. Buyer acknowledges and agrees that: (a) Seller shall not be obligated to take any action that Seller believes in good faith would cause it to be in violation of any laws, codes, regulations, rules, ordinances, decrees or directives applicable to Seller, its affiliates, any Products or Buyer; and (b) if Seller believes in good faith that Buyer has breached any provision of this Section 16, Seller may, in its sole discretion, immediately cancel or terminate the Agreement and/or any Order on notice to Buyer and BUYER SHALL INDEMNIFY, DEFEND AND HOLD Seller HARMLESS FROM AND AGAINST ANY CLAIMS, LOSSES AND/OR DAMAGES INCURRED IN CONNECTION WITH, ARISING OUT OF OR RELATED TO SUCH BREACH BY BUYER AND/OR CANCELLATION OR TERMINATION OF THE AGREEMENT OR ANY ORDER BY Seller.

17. Arbitration; No Class Actions; Jury Waiver.

17.1 Arbitration. Except to the extent expressly prohibited by provisions of applicable federal, provincial or state law that cannot be waived by contract and that are necessarily applicable notwithstanding a contractual choice of other governing law, and subject to the provisions of this Section 17 and the provisions of Section 18 below, any and all Claims (as defined in Section 12.2) shall be submitted to binding arbitration under the Federal Arbitration Act (9 U.S.C. § 1 et seq.) where applicable and otherwise the Kansas Uniform Arbitration Act (K.S.A. 5-423 through 5-453), and shall be determined by arbitration administered by the American Arbitration Association pursuant to its then-current commercial arbitration rules and procedures. The arbitration shall take place in Hays, Ellis County, Kansas unless the Parties expressly agree otherwise in writing. The arbitrator must follow the law, and may not disregard the express terms of the Agreement, including without limitation the Parties' choice of law in Section 18. A judgment may be entered upon the arbitration award by any federal, provincial or state court in the state or province where Seller or Buyer maintains its principal place of business at the time the action is initiated. Notwithstanding the foregoing, the arbitration requirements of this Section shall not apply to (a) enforcement of the provisions of Section 14 (Seller Intellectual Property and Confidential Information), with respect to which Seller expressly reserves the right to petition a court directly for injunctive and other equitable relief, it being acknowledged and agreed that any such breach or threatened breach will cause irreparable injury to Seller and money damages will not provide an adequate remedy; (b) any action for declaratory or equitable relief, including without limitation injunctive relief, brought at any time, including without limitation prior to or during the pendency of any arbitration proceedings initiated hereunder; or (c) at Seller option, an action by Seller to collect amounts due and payable by Buyer under the Agreement.

17.2 NO CLASS ACTIONS. BUYER AND Seller AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN THEIR INDIVIDUAL CAPACITY AND NOT IN A PRIVATE ATTORNEY GENERAL CAPACITY OR AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE ACTION, AND NEITHER WILL SEEK TO COORDINATE OR CONSOLIDATE ANY CLAIMS HEREUNDER WITH ANY OTHER PROCEEDING. Unless both Buyer and Seller agree in writing, no arbitrator or judge may consolidate more than one person's claims or otherwise preside over any form of a representative or class proceeding.

17.3 JURY WAIVER. SUBJECT TO THE FOREGOING ARBITRATION REQUIREMENTS, AND WITHOUT LIMITING OR WAIVING THE SAME, EACH OF BUYER AND Seller ACKNOWLEDGES AND AGREES THAT IT HAS HAD AN OPPORTUNITY TO CONSULT WITH COMPETENT LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ANY RIGHT TO A TRIAL BY JURY OF ANY DISPUTE PERTAINING TO OR RELATING IN ANY WAY TO THE AGREEMENT OR THE PRODUCTS, THE PROVISIONS OF ANY FEDERAL, PROVINCIAL, STATE OR LOCAL LAW,

© Nationwide Tanks by Hess Services Inc. All rights reserved.

REGULATION OR ORDINANCE THAT CAN BE WAIVED BY CONTRACT NOTWITHSTANDING.

18. Governing Law, Jurisdiction and Venue; Commencement of Action. This Agreement and all claims arising out of or relating to it shall be governed by Kansas law, without regard to conflicts-of-law principles. Arbitration shall be governed by the Federal Arbitration Act (9 U.S.C. § 1 et seq.) where applicable and otherwise by the Kansas Uniform Arbitration Act (K.S.A. 5-423 through 5-453). Subject to Section 17, the Parties consent to exclusive venue in the District Court of Ellis County, Kansas, or, if federal subject-matter jurisdiction exists, the United States District Court for the District of Kansas. Arbitration shall be held in Hays, Ellis County, Kansas, unless the Parties agree otherwise in writing. Buyer shall commence any claim within eighteen (18) months after delivery of the Products to the extent permitted by applicable law.

19. No Inducement; Non-Reliance. Buyer acknowledges and agrees that: (a) Buyer has not been induced to purchase any Products or enter into the Agreement by any representation, warranty or condition not expressly set forth in the Agreement; (b) neither Seller nor any Seller Representative is making or has made any representation, warranty or condition, expressed or implied, at law or in equity, in respect of the Products, Seller or its business or operations, or any other matter or thing whatsoever that is not expressly set forth in the Agreement; (c) no Representative of Seller has any authority, express or implied, to make any representation, warranty, condition or agreement not specifically set forth in the Agreement and Buyer is not relying upon and has not relied upon any such other representation, warranty, condition or agreement; and (d) Buyer's purchase of Products is subject only to the specific representations and warranties expressly set forth in the Agreement, as limited by the specifically listed and bargained-for exclusive remedies.

20. Buyer Exclusive Remedies. Buyer's sole and exclusive remedies for any Claims (as defined in Section 12.2) shall be those remedies available at law or in equity for breach of contract only (as such contractual remedies have been further limited or excluded pursuant to the express terms of the Agreement, including without limitation the Limited Warranty), and Buyer hereby agrees that Buyer shall have no remedy or cause of action (whether in contract or tort or granted by statute) for any statements, communications, disclosures, failures to disclose, representations or warranties not set forth in the Agreement.

21. Miscellaneous.

21.1 Notices. Except to the extent otherwise provided in a distributor agreement between the Parties, any notices hereunder shall be given as provided herein, shall be in writing and in the English language and shall be delivered by hand, sent by certified or registered mail (postage prepaid, return receipt requested) or reputable overnight express delivery service or, to the extent delivery is acknowledged by a confirmation of receipt, sent by email, and shall be deemed given upon personal delivery, three (3) business days after deposit in the mail, the next day after deposit with an overnight express delivery service or upon acknowledgment of receipt of email transmission. Unless otherwise notified in writing by either Party in accordance with this Section, notices shall be sent to Buyer to the physical or email address listed on the Order and to Seller as follows: Seller, ATTN: CEO, 1789 230th Ave. Hays, KS.

21.2 Severability; Reformation. If, but only to the extent that, any provision of the Agreement is declared or found to be illegal, unenforceable or void under provisions of applicable law that cannot be waived by contract and that are necessarily applicable notwithstanding a contractual choice of other law, then both Parties shall be relieved of all obligations arising under such provision, provided that (a) the remainder of the Agreement not affected by such provision shall be enforced to the fullest extent permitted by law; (b) it is the specific intent and request of the Parties that the court, arbitrator or other adjudicative body called upon to interpret or enforce the Agreement modify such provision to the minimum extent necessary so as to render it legal and enforceable while preserving the intent of the Parties; and (c) if such amendment is not possible, another provision that is legal and enforceable and achieves the same objectives shall be substituted therefor.

21.3 Attorneys' and/or Lawyers' Fees. Without limiting or waiving the provisions of Section 17, if either Party brings any action for relief against the other, declaratory or otherwise, the prevailing Party shall be entitled to recover reasonable legal fees (including without limitation attorney's and/or lawyers' fees, allocable fees of in-house counsel and expert witness fees) and expenses (including without limitation arbitration expenses) in such action in addition to any other recovery to which the prevailing Party is entitled.

21.4 No Waiver. Neither the failure nor any delay to exercise or enforce a right, remedy or privilege under the Agreement shall preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, remedy or privilege, nor shall any single or partial exercise of a right, remedy or privilege preclude any further exercise of the same. A waiver or consent is only effective and binding if in writing. No waiver of a breach of a term of the Agreement shall operate as a waiver of any other or further breach of that term or a breach of any other term of the Agreement.

21.5 Construction; Headings. The Agreement has been negotiated by the Parties and their respective counsel and shall be interpreted fairly in accordance with its terms and without any construction in favor of or against the other Party. Titles or headings herein are intended for convenience of reference only and shall not affect the interpretation of any provision.

21.6 Independent Relationship. The Parties understand and agree that they are not partners, joint venturers, or agents of one another and that nothing herein authorizes either one of them to make any contract, agreement, warranty or representation on the other's behalf, or to incur any debt or other obligation in the other's name.

21.7 Assignment; Successors and Assigns; Subcontracting. The Agreement may not be assigned by Buyer, in whole or in part, by operation of law or otherwise without the prior written consent of Seller in its sole and absolute discretion. Any purported assignment without such consent shall be void and unenforceable. The Agreement shall bind and inure to the benefit of the Parties and their successors and permitted assigns. Seller may assign this Agreement in connection with a sale of substantially all of its business or assets, subject to applicable law. Seller may subcontract portions of the work to be performed under the Agreement. Asset Acquisition

© Nationwide Tanks by Hess Services Inc. All rights reserved.

Clarification. Seller is Hess Services, Inc. operating under the Nationwide Tanks by Hess trade name. No provision of this Agreement shall be construed as an assumption by Seller of liabilities of a predecessor entity arising before Seller's asset acquisition, except as expressly assumed in a separate written instrument or required by applicable law. Seller's rights in acquired intellectual property and other assets extend only to rights actually acquired.

21.8 No Third-Party Beneficiaries. Except for (a) the Parties' successors and permitted assigns as and to the extent provided in Section 21.7, (b) the Nonparties as and to the extent provided in Section 12.2 and (c) the Indemnitees (as defined in Section 12.3), the Agreement shall not confer any rights on any persons or entities not a party to the Agreement, and no other person or entity shall be considered a third party beneficiary of the Agreement.

21.9 Buyer Consent Regarding Personal Information. To the extent permitted by applicable law, Buyer hereby consents to the following with respect to any Buyer Personal Information Buyer provides to Seller: (a) disclosure of such Personal Information by Seller to its Affiliates, any third parties from which Seller acquires the Products, and any other third parties reasonably requested by Seller to be included; and (b) use of such Personal Information by the entities and third parties listed in subsection (a) in carrying out Seller obligations under the Agreement and for marketing and sales purposes. "**Personal Information**" means information defined as "personal information" under any applicable laws, including without limitation any names, addresses or phone numbers in combination with other identifying information relating to an individual, such as dates of birth, or social security numbers, social insurance numbers or other identifying numbers, symbols or other particulars assigned to an individual and any health or medical information relating to an identified or identifiable individual.

21.10 Consent to Seller Use of Photos. If any photos of Buyer's project involving the Products are taken by Seller or its Representatives, Buyer hereby consents to the use, publication and distribution of such photos by Seller for internal business purposes and for marketing purposes.

21.11 Consent to Receive Electronic Communications. Buyer hereby consents to receive electronic communications from Seller, including without limitation updates, insights and information on Seller business, products and services, provided that Buyer may opt out of receiving such electronic communications at any time by calling or writing to Seller, or by choosing the unsubscribe option in any Seller electronic communication.

21.12 Further Assurances. Buyer covenants and agrees that, subsequent to the execution and delivery of the Agreement and without any additional consideration, Buyer will execute and deliver any further legal instruments and perform any acts which are or may become reasonably necessary to effectuate the Agreement.

21.13 Survival. The provisions of Section 1 (Applicability; Proposal Duration; Acceptance and Agreement), Section 2 (Entire Agreement; Amendment; Updates), Section 3 (Pricing; Taxes), Section 4 (Payment Terms; Buyer's Credit; Security Interest; Remedies), Section 6.4 (Delays); Section 7 (Title; Risk of Loss; Inspection), Section 8 (Force Majeure), Section 9 (Buyer Representations and Warranties), Section 10 (Seller Limited Warranties), Section 12 (Limitations of Liability; No Recourse Against Nonparties; Indemnification), Section 13 (Design Changes; No License), Section 14 (Seller Intellectual Property and Confidential Information), Section 16 (Compliance with Laws), Section 17 (Arbitration; No Class Actions; Jury Waiver), Section 18 (Governing Law, Jurisdiction and Venue; Commencement of Action), Section 19 (No Inducement; Non-Reliance), Section 20 (Buyer Exclusive Remedies), this Section 21 (Miscellaneous) and any provisions specified as surviving in any other document expressly made a part of the Agreement, shall survive the termination or expiration of the Agreement for any reason.

21.14 Counterparts; ELECTRONIC SIGNATURES. The Parties agree as follows with respect to any document comprising the Agreement: (a) such document may be signed in counterparts, each of which shall constitute an original and all of which together shall constitute one instrument; (b) facsimile, PDF, electronic and scanned signatures shall be deemed originals and are intended to have the same force and effect as a manual signature; and (c) the person signing any document comprising the Agreement on behalf of such Party has the right, power and authority to execute such document. Moreover, Buyer acknowledges and agrees that in accessing these Terms and Conditions or any other document comprising the Agreement via or within, without limitation, the Seller Site or any electronic Seller ordering system or application: (a) by clicking on the button labeled "I Accept" or such similar labels as may be designated by Seller to accept such document, Buyer is expressly assenting to the terms of such document electronically, is affixing Buyer's legally binding electronic signature and entering into a legally binding contract, and is aware that Seller will rely on such signature; and (b) Buyer's electronic submissions constitute Buyer's agreement and intent to be bound thereby. Pursuant to any applicable statutes, regulations, rules, ordinances or other laws, including without limitation the United States Electronic Signatures in Global and National Commerce Act (the "E-Sign Act") and Uniform Electronic Transactions Act ("EUTA") or other similar statutes, BUYER AGREES TO THE USE OF ELECTRONIC SIGNATURES, CONTRACTS, ORDERS AND OTHER RECORDS AND TO ELECTRONIC DELIVERY OF NOTICES, POLICIES AND RECORDS OF TRANSACTIONS INITIATED, COMPLETED OR OFFERED BY Seller. Buyer hereby waives any rights or requirements under any statutes, regulations, rules, ordinances or other laws in any jurisdiction that can be waived by contract that require an original signature or delivery or retention of non-electronic records and agrees to not contest the admissibility or enforceability of the electronically stored copy of these Terms and Conditions or any other document comprising the Agreement.

Customer Signature_____

Please Print Name:_____

Date:_____

© Nationwide Tanks by Hess Services Inc. All rights reserved.