



Victory Renewables, LLC.
GENERAL TERMS AND CONDITIONS
Updated 9.6.2017

1.0 CONTRACT DETAILS

Refer to Sales Agreement

2.0 DELIVERY, TITLE AND RISK

- 2.1 The timing and quantity of the Biodiesel shall be delivered by Seller to Buyer at the Free On Board (“FOB”) point indicated on the Sales Agreement. Unless otherwise agreed in writing by Seller, Buyer shall be responsible for taking delivery of the Biodiesel at the FOB point.
- 2.2 For all RINS trades, the official Product Transfer Document (“PTD”) shall be the sales invoice, and RINs shall be transferred on the date of invoice generation (the “Transfer Date”). Invoices submitted without RINs shall be rejected, and a new invoice must be generated with the RIN PTD.
- 2.3 If any party believes deliveries will not be made as outlined in the Sales Agreement, that party must notify the reason and the expected new timeframe to the other party.
- 2.4 Title to and all risk of loss, damage and contamination of Biodiesel shall pass from Seller to Buyer when the Biodiesel passes through the permanent outgoing flange of either Victory Renewables loading facility or the tank car/truck at delivery location.

3.0 WARRANTIES, LIMITATION OF LIABILITY AND INSURANCE

- 3.1 Seller warrants that Biodiesel delivered shall meet the current ASTM Specifications, and that the production, use or sale of Biodiesel delivered under the Sales Agreement will not infringe any United States patent claims covering the Biodiesel itself, but Seller does not warrant against any infringement by reason of the use of the Biodiesel in combination with other materials or in the operation of any process.
- 3.2 Seller warrants that the RINS are valid and are in compliance with EPA standards, that they have marketable title to the RINS sold hereunder, and the RINS are free and clear of any claims, liens, charges, encumbrances, pledges or security interest.
- 3.3 Except as expressly set out in the Sales Agreement, there are no further warranties of any kind, express or implied, including any warranty of merchantability of fitness for a particular purpose.

4.0 FORCE MAJEURE

- 4.1 “Force majeure” shall mean any occurrence by which a party is prevented from performing any of its obligations under the terms of the Sales Agreement due to the occurrence of any event beyond the reasonable control of such party including, but not limited to, an act of God, acts of war, riot or civil commotion, an act of a State, a strike, fire, or flood. Without limitation on the generality of the foregoing, force majeure includes but is not limited to interruption in Seller’s supply of Biodiesel for any reason. A lack of funds or insolvency shall in no event constitute an event of force majeure.
- 4.2 In the event that either party is unable by reason of force majeure to deliver or receive in whole or in part any quantity of Biodiesel under the Sales Agreement, the deliveries and receipts of such party shall be suspended during the continuance of such force majeure upon the following terms and conditions:

- (a) The party claiming suspension shall give written notice to the other party specifying full particulars of such force majeure as soon as is reasonably possible;
 - (b) The party claiming suspension shall as far as possible remedy the force majeure as soon as reasonably possible; and
 - (c) The party claiming suspension shall give written notice to the other party after the force majeure has been remedied as soon as reasonably possible.
- 4.3 Notwithstanding any other provision of the Sales Agreement, a claim of force majeure shall not under any circumstances suspend the obligation of Buyer to make payment for any Biodiesel delivered under the Sales Agreement.
- 4.4 If by reason of force majeure Seller is unable to supply its total demand for Biodiesel to Buyer and Seller's other buyers located in the United States, Seller may, at its option, allocate equitable its available supply of Biodiesel in the United States among all of Seller's buyers located in the United States. Seller shall not be under any obligation to obtain Biodiesel from any other source or to alter its production schedules or practices.
- 4.5 At the option of either party, the total quantity of Biodiesel to be purchased and sold under the Sales Agreement may be reduced by the quantity by which shipments are suspended due to force majeure. Such option must be exercised in writing by either party within ten (10) days following notice that the force majeure has been remedied. If neither party exercises such option within such period, Seller shall within a reasonable period of time thereafter sell and deliver to Buyer, and Buyer shall purchase and take delivery of, the quantity of Biodiesel which was not delivered by reason of the force majeure.

5.0 DEMURRAGE CLAUSE:

Buyer will be subject to all demurrage or storage charges levied by any third party transportation company as a result of the Buyer not returning railcars as scheduled. In the case of Buyer utilizing Seller's railcars, Buyer shall promptly return all equipment and comply with any instructions as given by Seller or its carrier with respect to the return of any unloading or shipment equipment. If Buyer does not unload and correctly release Seller's railcar from discharge location within five (5) days of arrival, Buyer shall (beginning on the 6th day) be liable to pay Seller demurrage equivalent to the greater of One Hundred and No/100 Dollars (\$100.00) per day or the actual amount incurred by Seller. The arrival time is based on the date and time of Constructive Placement of the railcar(s). Constructive Placement occurs when the delivering railroad delivers or offers the railcar to the serving rail yard at the customer's destination, whichever occurs first. Buyer shall comply with any instructions as given by Seller with respect to the return of any shipment equipment.

6.0 CONFIDENTIALITY

Except for information which, is already known by a party, is in the public domain; or is required to be disclosed by law, the Sales Agreement including its terms shall be kept strictly confidential.

7.0 PAYMENT AND CREDIT

- 7.1 All payments for Biodiesel shall be made in U.S. Dollars by wire transfer for the full invoice amount according to the payment terms stated in the Sales Agreement.
- 7.2 If Buyer is past due on any amount owed and in addition to all other rights and remedies available in these Terms and Conditions, Seller may suspend shipments of Biodiesel or terminate outstanding Sales Agreements in whole or in part. Buyer shall pay all reasonable costs and expenses (including attorney fees) of Seller in collecting any amounts owed by Buyer to Seller.
- 7.3 If Buyer does not pay Seller in full for Biodiesel delivered by the due date, interest shall accrue on the unpaid amount at the lesser of one and one-half percent (1.5%) per month or the maximum rate allowed by law. In the event of a disputed item (pricing, billing errors, etc.), Buyer must notify Seller's Accounts Receivable Department within ten (10) days from date of receipt of the original invoice. Buyer agrees to pay all non-disputed amounts within payment terms set for the in the Sales Agreement. Buyer will make best efforts to resolve the disputed item with Seller within thirty (30) days from date of receipt of invoice(s).

8.0 DEFAULT

- 8.1 Notwithstanding any other provision herein, the following shall each constitute an event of default (“Event of Default”) under the Sales Agreement: a party to the Sales Agreement or, if the obligations of such party are guaranteed by another person, whether under the Sales Agreement or otherwise, the guarantor of such party (each or either a “Non-Performing Party”), commits any of the following acts: a) default in the payment or performance of any material obligation under the Sales Agreement to the other party to the Sales Agreement (the “Performing Party”), and such default shall continue for three (3) business days after notice of such default to the Non-Performing Party (provided that if default is for failure to perform any obligation other than failure to make payment and the Non-Performing Party commences to cure such default and does so continuously until such default is cured, an Event of Default shall not have occurred); b) file a petition or otherwise commence or authorize the commencement of a proceeding or case under any bankruptcy, reorganization or similar law for the protection of creditors or have any such petition filed or proceeding commenced against it; c) otherwise become bankrupt or insolvent, however evidenced; d) be unable to pay its debts by any means; e) merge or consolidate with another entity or sell or otherwise transfer all or substantially all of its assets to another entity where the creditworthiness of the resulting, surviving, or transferee entity is materially weaker than that of the Non-Performing Party immediately prior to such action, as reasonably determined by the Performing Party, or f) disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, any guaranty issued by the guarantor under the Sales Agreement.
- 8.2 Upon the occurrence of an Event of Default, the Performing Party shall, in addition to all other rights and remedies available in law, equity or otherwise, have the right to terminate all Sales Agreements and all transactions contemplated therein immediately upon written notice to the Non-Performing Party.
- 8.3 Upon the occurrence of an Event of Default, the Non-Performing Party shall indemnify and hold the Performing Party harmless from all losses, damages, costs and expenses including, without limitation, reasonable attorneys’ fees to the extent incurred in connection with an Event of Default, or any termination of any Sales Agreement or the exercise of any remedies arising wherefrom.
- 8.4 Upon the occurrence of an Event of Default, and without limitation, the Performing Party may net and set off amounts that the Performing Party or any of its affiliates owe the Non-Performing Party against any amounts that the Non-Performing Party owes to the Performing Party or any of its affiliates (whether under the Sales Agreement or any other agreement between such parties and whether or not then due). The Performing Party shall notify the Non-Performing Party in writing of the net amount owed to the Performing Party and its affiliates, and the Non-Performing Party shall pay such amount to the Performing Party (subject to any netting or set-off) in full within five (5) business days of such notice being given. Any amount due and owing pursuant to the Sales Agreement that is not paid when due shall bear interest at the prime rate as listed in the Wall Street Journal, plus 2%, from the date such amount becomes past due.

9.0 TAXES

The price for Biodiesel delivered hereunder does not include any sales tax, use tax, federal, provincial, municipal, or state taxes which may be levied by any governmental or taxing authority. Buyer agrees to be responsible for payment of such taxes and indemnify Seller from liability with respect to such taxes. If Buyer provides Seller with a valid resale/exemption certificate for sales or use taxes, such sales/use taxes might not be imposed on the sale of Biodiesel hereunder. If Biodiesel is delivered to Buyer in a state where taxes imposed by the state require Seller to invoice Buyer with taxes on Biodiesel delivered, Buyer agrees to make payment of such taxes to Seller without any delay.

10.0 ARBITRATION

All claims shall be settled by arbitration in Southlake, Texas by one arbitrator appointed by the American Arbitration Association in accordance with the Commercial Arbitration Rules. The arbitrator shall issue a written decision and award, including any interest, costs, or any other amount. This arbitration award shall be binding on both parties. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction hereof.

11.0 EPA REGULATIONS

If product is sold RINless, seller shall not be obligated to transfer any “RINs” to buyer (as such terms is defined at 40 CFR 80, subpart M, section 80.1401).

If RINs are required to be retired as a result of the use of the product after title passes to buyer, whether from export of the product from the US or otherwise, as between buyer and seller, buyer shall be responsible for retiring such RINs. If seller is required to retire RINs as a result of the actions or inactions of buyer or its successors in interest to the product, buyer shall deliver to seller upon demand the necessary number of valid RINs and shall otherwise indemnify and hold harmless seller against any losses or costs arising from such requirements to retire.

Each party represents and warrants that it is registered and has received an EPA company identification number in accordance with requirements of 40 Code of Federal Regulations ("CFR") part 80 subpart M.

12.0 WARRANT OF USAGE IN THE UNITED STATES OF AMERICA

Buyer acknowledges the biodiesel may have been produced outside of the United States and agrees to blend and consume the biodiesel in the United States, per IRS and EPA approved usages, such that the Seller may claim any tax credit.

13.0 MISCELLANEOUS

- 13.1 Each party's right to require strict performance of the obligations of the other party under the Sales Agreement shall not be extinguished or impaired by the waiver of any default under the Sales Agreement unless such waiver is in writing and is signed by a duly authorized representative of the waiving party, and no such waiver shall affect the rights of the waiving party with respect to any other or future defaults, whether similar or not.
- 13.2 Neither Buyer nor Seller shall assign this Contract or any rights or obligations hereunder without the previous consent in writing of the other party. In the event of an agreed assignment between the parties, the assignor shall nevertheless remain responsible for the proper performance of the Contract. Any assignment not agreed upon shall be void.
- 13.3 The Sales Agreement shall be governed by and interpreted in accordance with the laws of the State of Texas, without regard to its or any other jurisdiction's laws governing conflicts of law.
- 13.4 This Sales Agreement reflects the entire agreement between the two parties; all prior statements, agreements and conditions, whether written or oral, are merged into this Sales Agreement. Neither party shall claim or assert amendment to, release, or modification of any term or condition of this Agreement by mutual agreement unless such agreement is signed by the other party.

The Sales Agreement along with the body of this contract shall govern this transaction. Victory Renewables will not accept any contracts or modifications after physical delivery of the Biodiesel unless confirmed by Victory Renewables in writing. Where not contrary to the foregoing specific terms, Incoterms 2000, plus subsequent amendments, shall govern.