

STANDARD TERMS & CONDITIONS FOR PRODUCTS AND SERVICES

THESE TERMS & CONDITIONS CONTAIN INDEMNITY OBLIGATIONS. PLEASE READ CAREFULLY.

From time to time R. B. Stewart Petroleum Products, Inc. (“**RBS**”) may purchase Products from Supplier, or Supplier shall perform Services for RBS as specified in a Purchase Order or Scope of Services. Each Purchase Order or Scope of Services shall be subject to these Terms & Conditions, which are hereby incorporated by reference into any Purchase Order or Scope of Services and shall control and govern all transactions between the Parties with respect to Services performed or Products purchased (whether or not these Terms & Conditions are referenced). No other additional or different terms and conditions in any written or oral communication with respect to a transaction for Products or Services shall vary or amend the Terms & Conditions. In the event of a conflict between the Terms & Conditions and the terms in any Purchase Order or Scope of Services, the Terms & Conditions shall control. RBS may terminate a Scope of Services or cancel a Purchase Order at any time. RBS is not obligated to purchase any Products or Services from Supplier. “**Purchase Order**” means the transactions between the Parties for the purchase of Products. “**Product(s)**” means any goods, equipment, materials, or other tangible items purchased by RBS from the Supplier pursuant to a Purchase Order. “**Scope of Services**” means the transactions between the Parties for the provision of Products or Services. “**Service(s)**” means the services furnished by Supplier to RBS as more particularly described in a Scope of Services. “**Supplier**” means the person or entity specified in a Purchase Order or Scope of Services as the supplier of Products or Services or both.

Service Warranties. Supplier represents and warrants that it has the required skill, experience, and qualifications to perform the Services. Supplier represents and warrants that all Services: (i) shall be performed in a good, professional and workmanlike manner, with reasonable diligence, using competent workmen and supervisors; (ii) shall be performed in accordance with RBS specification as set forth in a Scope of Services; and (iii) shall be performed in accordance with all Applicable Laws and generally recognized industry standards for similar services. Supplier shall devote sufficient resources to ensure that the Services are performed in a timely and reliable manner. Supplier represents and warrants that all reports and deliverables are and shall be Supplier’s original work (except for material in the public domain or provided by RBS) and, to the best of RBS’s knowledge, do not and will not violate or infringe upon or misappropriate the intellectual property right or any other right whatsoever of any person, firm, corporation or other entity. If RBS determines, in its sole discretion, that the Services are non-conforming to the warranties provided hereunder, or defective in any way (“**Non-conforming Services**”), then Supplier shall promptly, and in no event later than forty-eight (48) hours following notice, at RBS’s option, either (i) provide a refund to RBS for amounts paid for the Non-conforming Services; or (ii) re-perform the Non-conforming Services.

Product Warranties. Supplier represents and warrants to RBS that all Products shall: (a) for a period of one (1) year from the date of installation, be and remain free from any defects in workmanship, material and design; (b) conform in all respects to any product specifications, drawings, industry standards, or additional specifications stipulated in the Purchase Order; (c) be merchantable and fit for their intended purpose; (d) be free and clear of all liens,

security interests or other encumbrances; and (e) not infringe or misappropriate any third party’s patent, copyright, trademark, trade dress, or other intellectual property right. The foregoing Product warranties shall survive any delivery, inspection, acceptance, or payment of or for the Products by RBS. If RBS determines, in its sole discretion, that the Products are non-conforming to the warranties provided hereunder or defective in any way (“**Non-conforming Product(s)**”), then Supplier shall promptly, and in no event later than forty-eight (48) hours following notice, at RBS’s option, either (a) provide a refund to RBS for amounts paid for the Non-conforming Products; or (b) replace the Non-conforming Products with products of like or comparable quality.

The warranties provided herein are cumulative and in addition to any other warranty provided at law or equity. Any ancillary or related costs with respect to Non-conforming Products or Services, including but not limited to transportation charges associated with rejected Service or shipment of replacement Products, shall be at the expense of Supplier.

Prices; Payment. Prices for Products and Services shall be established in the Purchase Order or Scope of Services with respect thereto. Supplier shall provide Products and Services to RBS at such prices, and on such payment, warranty and other terms that are no less favorable than the prices, payment, warranty, and other terms offered or given by Supplier to any other customer of substantially similar products and volumes. If Supplier provides more favorable pricing, payment, warranty or other terms to any customer, it shall immediately notify RBS and apply such terms to all pending and future Purchase Orders and Scope of Services. RBS may audit Supplier for compliance with this Section at least once in any twelve (12) month period. RBS shall pay undisputed amounts due under a Purchase Order or Scope of Services within thirty (30) days of RBS’s receipt of the invoice for delivered Products or Services. RBS shall have no obligation to pay invoices submitted one hundred and eighty (180) days or more from the date Products or Services were delivered. If Supplier utilizes a pay factor service or other similar payment management system (“**Factor**”), then it shall provide RBS with duly authorized payment instructions; provided, that any payments made to a Factor with respect to amounts due and owing hereunder are and shall be deemed valid and authorized payment to Supplier and Supplier shall defend, indemnify and hold RBS harmless from any Claims arising out of or relating to any payment RBS makes to a Factor with respect to any invoice, billing statement or any other request or demand for payment hereunder. Supplier shall submit invoices for the full amount due, along with any supporting documentation, to edi.invoices@rbsfuel.com, or as instructed through the computer maintenance management software utilized by RBS. Unless otherwise specified in the Purchase Order or Scope of Services, prices for Products and Services include, if applicable, all packaging, transportation costs, insurance, customs duties, fees, and applicable taxes, including, but not limited to, all sales, use, or excise taxes.

INDEMNIFICATION. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW SUPPLIER SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS RBS FROM AND AGAINST ANY AND ALL ACTUAL OR THREATENED ACTIONS, PROCEEDINGS, OR CLAIMS ARISING OUT OF OR RELATING TO PURCHASE ORDERS, THE PRODUCTS, THE SCOPE

OF SERVICES, OR THE SERVICES, OR ANY ACT OR OMISSION OF SUPPLIER, INCLUDING REASONABLE ATTORNEYS FEES. SUPPLIER SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS RBS FROM AND AGAINST ANY CLAIMS THAT ANY DELIVERABLES OR PRODUCTS INFRINGE UPON AN INTELLECTUAL PROPERTY RIGHT OF A THIRD PARTY.

Limitation of Liability. RBS shall not be liable to Supplier for, and Supplier hereby waives and releases RBS from and against, any and all Claims for Consequential Damages. **“Consequential Damages”** means (i) any and all indirect, incidental, special, punitive, exemplary, or consequential damages or consequential losses of any nature whatsoever (whether or not foreseeable), and (ii) damages or losses, whether direct or indirect, for lost products or production, lost profits or revenues, loss of or inability to use property or equipment, lost business, failure to meet contractual commitments or deadlines, or business interruption. RBS maximum aggregate liability with respect to Claims arising out of, or in any way relating to these Terms & Conditions, any Purchase Orders or Scope of Services, or any Products or Services, whether sounding in contract or tort (including negligence, gross negligence, willful misconduct, strict liability and breach of statutory duty), at law or in equity, shall be limited to the aggregate amounts paid to Supplier for all Products and Services purchased pursuant to Purchase Orders or any Scope of Services during the twelve (12) month period immediately preceding the event giving rise to the Claim, not to exceed \$50,000.00, in the aggregate (**“Liability Cap”**). Supplier hereby releases RBS from and against any such liability in excess of the Liability Cap. **“Claim”** means all claims (actual or threatened), damages, liabilities (including contractual liabilities), losses, demands, liens, encumbrances, government imposed fines or penalties, investigations, causes of action of any kind or character (including those for property damage, personal injury, disease or death), obligations, costs and expenses, judgments, interest and awards whether under judicial proceedings, administrative proceedings or otherwise (including those requiring reasonable attorneys’ fees, or other costs of litigation), arising out of or in any way relating to any Purchase Order, Scope of Services, Products, or Services and expressly includes any claims that may be brought by (or losses suffered by) spouses, heirs, survivors, legal representatives, successors or assigns or both.

Insurance. Supplier shall procure and maintain, at its sole expense, policies of insurance for commercial general liability, as well as errors and omissions, workers’ compensation, employer’s liability, auto liability, and umbrella/excess liability, each with limits of not less than \$1,000,000.00 per occurrence. Each insurance policy shall be issued by a company with an AM Best Financial Strength Rating of B+ or better and AM Financial Size Category Rating of VII or better, and Supplier shall furnish RBS evidence of such required insurance promptly upon request by RBS.

If any one or more of the provisions contained in these Terms & Conditions shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and these Terms & Conditions will remain in full force and effect, adjusted as necessary so as to give maximum effect to the original intent and economic effect of the Parties.

A waiver by either Party of the breach or violation of any provision of these Terms & Conditions shall not operate as, or be construed to be, a waiver of any subsequent breach of these Terms & Conditions.

Any right or obligation which by its nature extends beyond termination of

a Purchase Order or Scope of Services will survive such termination for a period not less than two (2) years, unless otherwise specified herein.

Any breach of these Terms & Conditions may result in irreparable damage to RBS for which RBS may not have an adequate remedy at law. RBS may seek, without any requirement to post a bond or other security (a) a decree or order of specific performance to enforce the performance of any covenants or obligation under these Terms & Conditions; and (b) an injunction restraining such breach or threatened breach. The remedies provided in this Section shall be cumulative of all of RBS rights and remedies at law or in equity.

Neither Party shall be considered in breach of these Terms & Conditions or any Purchase Order or Scope of Services if prevented from performing due to a Force Majeure. **“Force Majeure”** means any act or event that renders it wholly impossible for the affected Party to perform its obligations pursuant to these Terms & Conditions or any Scope of Services or Purchase Order or materially delays the affected Party’s ability to do so, when such act or event (i) is beyond the reasonable control of the affected Party, (ii) is not due to the fault or negligence of the affected Party, and (iii) could not have been avoided by the affected Party by the exercise of reasonable diligence.

Supplier may not assign any Purchase Order or Scope of Services, or any rights or interest therein, without the prior written consent of RBS. Supplier shall promptly provide RBS written notice of any change in ownership.

These Terms & Conditions and all Purchase Orders and Scope of Services shall be governed by the laws of the State of Texas without giving effect to any choice of law provision or rule, and performance of obligations hereunder shall be deemed to be in Brazoria County, Texas. Any action or proceeding arising out of or relating to these Terms & Conditions or any Purchase Order shall be brought in the state or federal courts situated in Brazoria County, Texas, and each Party hereby submits to the personal jurisdiction and exclusive venue of such courts in any such action or proceeding.

THE PARTIES BOTH KNOWINGLY, WILLINGLY, INTENTIONALLY, VOLUNTARILY AND IRREVOCABLY WAIVE THEIR RESPECTIVE RIGHT TO TRIAL BY JURY FOR ANY CLAIMS ARISING OUT OF THESE TERMS AND CONDITIONS, ANY PURCHASE ORDER OR SCOPE OF SERVICES, OR PRODUCTS OR SERVICES. THIS WAIVER DOES NOT AFFECT ANY REMEDIES AVAILABLE UNDER ANY APPLICABLE LAWS; RATHER, THE PARTIES WAIVE ONLY THE RIGHT TO TRIAL BY JURY AND WILL PRESENT ANY CONTROVERSY INVOLVING THEM IN A BENCH TRIAL TO A JUDGE.

RBS may revise and post updates to these Terms & Conditions from time to time, and all Purchase Orders and Scope of Services will be subject to the most recently posted version of these Terms & Conditions. Supplier shall be deemed to have accepted these Terms & Conditions, unless RBS and Supplier have entered into a separate, written, master purchasing agreement or other contract which governs the purchase of Products.