

POET - STANDARD TERMS AND CONDITIONS OF SALE

1. Purchase and Sale. Seller will sell to POET, and POET will purchase from Seller, the equipment, materials, supplies and/or services described on the Purchase Order attached hereto (the “Goods”), subject to the terms and conditions of the Contract Documents (as defined in Section 2 below). For the purposes of the Contract Documents, the term POET may refer to POET LLC, any of its Affiliates or any POET Biorefining facility as necessary and depending on the entity contracting with the Seller; the term “Affiliate” means any entity which Controls, is Controlled by, or is under common Control with, that entity and the term “Control(s)” or “Controlled” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding equity interests in a person or entity and/or the power to direct or cause the direction of the management and policies of such entity, directly or indirectly, whether through ownership or voting securities, by contract, or otherwise.

2. Contract Documents. The “Contract Documents” for the Goods consist of the following: (a) the Purchase Order and these POET – Standard Terms and Conditions of Sale; (b) the specifications, plans, drawings and performance requirements of the Goods, as set forth on the Purchase Order or in any Request for Proposal issued by POET (such specifications and performance requirements are referred to herein as the “Specifications” and such plans and drawings are referred to herein as the “Plans”); (c) all modifications, changes, drawings, data, and other information issued after the date of the Purchase Order, provided the foregoing are evidenced by a writing signed by POET and Seller; (d) any other documents identified on the Purchase Order; and (e) any separate supply agreement executed by the parties that specifies it will supersede the terms on the Purchase Order or found herein.

3. Delivery. Unless otherwise provided in the Purchase Order and/or other Contract Documents, Seller shall deliver the Goods F.O.B. Seller’s place of business or other location agreed upon by POET. The transportation costs will be listed in any quote, acceptance or invoice separate from the cost of Goods. Seller shall keep POET abreast of Seller’s progress on a weekly basis and notify POET of any changes in the Delivery Date (defined below) that may occur. Seller shall be responsible for proper packaging of the Goods and all other steps necessary to ensure safe and orderly transport of the Goods to the Project (as defined in the Purchase Order). Delivery must be made by the date set forth on the Purchase Order or, if no such date is specified, immediately following Seller’s receipt of the Purchase Order (the “Delivery Date”), except to the extent that delivery is delayed by causes beyond the reasonable control of Seller, such as, but not limited to, strikes or other labor difficulties; wars; riots; changes in laws and regulations and other acts of governmental authorities; fire; flood; or unavoidable casualties or delays in transportation of materials or inability to obtain timely delivery of materials from suppliers to the extent that such transportation and materials are timely ordered and appropriately expedited and managed. In the event Seller becomes aware of any such delay or possibility of such delay, Seller will immediately notify POET of learning of the delay and it is agreed that the time for delivery or completion shall be extended for a period of time no greater than the time lost by reason of the delay; provided, that (a) Seller shall promptly and diligently take all such action as may be necessary and practicable under the then-existing circumstances to overcome, and mitigate the effects of, the delay and to resume delivery and (b) if such delay should exceed thirty (30) days, then POET shall have the right to cancel the applicable Purchase Order without penalty or liability on written notice to Seller.

4. Conformity; Inspection. The Goods must conform strictly in all respects to the Specifications, Plans, and all other warranties and requirements set forth in the Contract Documents. POET has the right to inspect the Goods at any reasonable time both prior to and following delivery of the Goods.

5. Acceptance. The parties acknowledge and agree that the Goods are specialized goods and that POET may not be able to determine whether the Goods meet the Specifications, Plans and other warranties and requirements set forth in the Contract Documents until after installation and use or operation of the Goods. The parties thus agree that following the Goods’ installation and satisfaction of all Specifications, Plans and other warranties and requirements, POET will have a period of six (6) months within which to monitor the performance of the Goods and to determine whether they conform to all Specifications, Plans and other warranties and requirements (the “Acceptance Period”). Upon the expiration of the Acceptance Period, POET will notify Seller, orally or in writing, of POET’s acceptance or rejection of the Goods. The terms of this section establish the sole means by which the Goods will be accepted by POET; no payment made to Seller, inspection of the Goods, acts to install the Goods, use of the Goods, or any other action by POET prior to the commencement and termination of the Acceptance Period will be deemed to be an acceptance by POET of the Goods or any portion thereof.

6. Purchase Price; Payment Terms. POET will pay Seller the purchase price set forth in the Contract Documents (the “Purchase Price”). Seller’s invoices shall be payable net thirty (30) days following POET’s receipt and approval thereof (Net 30 terms). Invoices may not be submitted to POET more than once every thirty (30) days. If the Goods provided by Seller include Seller’s successful start-up of the Goods, 90% of the Purchase Price will be paid by POET upon delivery of the Goods and the remaining 10% will be paid upon the earlier to occur of successful start-up of the Goods or the date that is six months after delivery, unless different progress payment terms are included in the Purchase Order in which case such terms will apply. If requested by POET at the time of payment or thereafter, Seller, and Seller’s subcontractors and suppliers, will execute and deliver to POET a partial or full payment lien waiver, as appropriate, in a form acceptable to POET.

7. Taxes. All state sales, excise, and other taxes associated with or levied upon the sale, purchase, or installation of the Goods pursuant to the Contract Documents will be listed on any quote, acceptance or invoice separate from cost of Goods.

8. Information. Seller, at no cost to POET, will furnish to POET all information and materials reasonably necessary for proper maintenance, operation and use of the Goods, and will answer inquiries with respect to the maintenance, use and operation of the Goods for a period of three (3) years from the date of the Purchase Order.

9. Warranties. Seller warrants, represents, and covenants as follows:

a. Title. Seller has good and marketable title to the Goods, and all parts or components thereof, and the sale to POET is free and clear of all liens, claims, security interests, and encumbrances.

b. Condition. The Goods, and all parts or components thereof, are new unless otherwise specified in the Contract Documents. If requested by POET, Seller will furnish evidence as to the kind and quality of the Goods.

c. Installation. If the Goods are installed by Seller, the Goods will be installed in accordance with the Specifications, Plans, and all other warranties and requirements set forth in the Contract Documents.

d. Intellectual Property. POET’s purchase and use of the Goods will not, in whole or in part, violate, infringe upon, breach, conflict with, or otherwise constitute the unlawful, improper, or wrongful use of any patent, trademark, service mark, trade name, copyright, license, trade secret, intellectual property right, or any other right or interest of any person.

e. Performance. The Goods will satisfy the Specifications, Plans, and all other warranties and requirements set forth in the Contract Documents on a twenty-four (24) hour, seven (7) day per week basis with no more than fifteen (15) days of annual down time for routine maintenance during the Warranty Period (defined below). To the extent that the Seller’s Goods or system experiences annual aggregate downtimes greater than fifteen (15) days for routine maintenance, in addition to all other rights and remedies POET may have regarding such downtime, the parties shall meet in good faith to discuss modifications to the Goods or system

which may achieve a more sustained operation. Any services shall be performed in a professional and workmanlike manner in accordance with accepted industry standards and in conformance with all applicable laws, rules and regulations.

f. Compliance with Warranties. Seller warrants that the Goods will satisfy, in all respects, the Specifications, Plans, and all other warranties and requirements set forth in the Contract Documents and shall be free from defects in material and workmanship for the earlier of (i) one year from the date of successful start-up of the Goods and (ii) 18 months from the date of delivery of the Goods to POET (the "Warranty Period"); provided that:

- (1) Seller's warranty will not cover issues that are caused by installation of the Goods not in accordance with Seller's specifications and instructions (unless installation is performed by Seller or its agent) or use and maintenance of the Goods not in accordance with Seller's instructions as to maintenance and operation, as set forth in written operation and maintenance manuals and instruction sheets, reviewed and approved by POET, furnished by Seller;
- (2) Seller's warranty will not cover issues that are caused by the Goods having been significantly modified by POET without the prior written approval of Seller;
- (3) POET gives prompt written notice to Seller before the end of the warranty period specifying all alleged defects in the Goods; and
- (4) POET permits reasonable inspection by Seller of all allegedly defective equipment, parts or items and access to the Goods to observe its startup, operation and maintenance.

g. Fitness for Particular Purpose. The Goods are and will be fit for the particular purpose for which they have been purchased by POET.

h. Laws. The Goods, including their design, installation, use and operation, will comply with all applicable governmental laws, regulations, executive orders, ordinances and restrictions now or hereafter in force.

i. Policies. Seller's employees, agents and contractors will comply with all safety and other policies and requirements of POET when such employees, agents or contractors are on POET's premises.

10. Assignment of Warranties. Seller assigns to POET all of its right, title, and interest in and to all warranties provided by any manufacturers of the Goods, or any parts or components thereof, to the extent not manufactured by Seller.

11. Events of Default. Any one or more of the following occurrences will constitute a default by Seller hereunder ("Events of Default"): (a) Seller fails to timely deliver the Goods pursuant to the Contract Documents; (b) if the Goods are to be installed by Seller, Seller fails to timely install the Goods pursuant to the Contract Documents; (c) the Goods, or any part or component thereof, fail to conform in any way to the Specifications, Plans, or other warranties and requirements of the Contract Documents; (d) Seller fails to comply with any other provisions of the Contract Documents and Seller fails to cure such failure within fifteen (15) days following written notice thereof; or (e) Seller becomes insolvent, files a petition in bankruptcy, is adjudicated a bankrupt, makes an assignment for the benefit of creditors, is subject to the appointment of a receiver, makes a material liquidation of its assets, or Seller fails to notify POET in writing of a bankruptcy proceeding being levied against Seller by any third party or fails to obtain the dismissal thereof within 90 days of the commencement of such proceeding.

12. Remedies. Upon an Event of Default, POET, at its election, may exercise any one or more of the following remedies. The remedies outlined within this Section 12 shall be separately enforceable for each Purchase Order between POET and Seller:

a. Repair and Replacement. If the Event of Default is a failure of the Goods to conform in any way to the Specifications or Plans or any of the other warranties or requirements set forth in the Contract Documents, Seller will repair or replace, at no cost to POET, F.O.B. the Project, the Goods or any non-conforming parts or components of the Goods to establish full compliance with the Specifications, Plans, and all other warranties and requirements set forth in the Contract Documents. If, after a reasonable number of attempts, Seller is unable to so repair or replace the Goods, Seller agrees to, at POET's request, refund to POET the price paid for the Goods and reimburse POET for all taxes, duties and transportation charges paid by POET in connection with such Goods.

b. Damages. Subject to Section 31 below and subject to the payment of liquidated damages for untimely delivery as set forth in Section 12(f) below, POET shall be entitled to recover from Seller any and all actual direct damages incurred by POET as a result of the Event of Default. If the Event of Default is the failure of the Goods, or any part thereof, to comply with the warranties specified in Section 9, then, in addition to the costs of repairs and replacement of equipment and parts and in addition to any other rights or remedies of POET under the Contract Documents or at law or in equity, Seller shall also be responsible for the cost of removing and reinstalling the Goods for those repairs or replacements to be made unless the Goods were purchased used at POET's request and reconditioned by Seller, in which event the costs of removing and reinstalling the equipment shall be borne by POET.

c. Termination. If an Event of Default described in Section 11(e) occurs, this Agreement will immediately and automatically terminate without the need for written notice to Seller. If an Event of Default described in Sections 11(a)-(d) occurs and continues for a period of thirty (30) days following Seller's receipt of a notice of default from POET, POET will be entitled to terminate the Contract Documents by delivery to Seller of a written notice of termination.

d. Punitive Damages. Notwithstanding the other provisions of this Agreement, Seller will not be responsible to POET for punitive damages.

e. Cumulative. The rights and remedies granted POET in this Section 12 are in addition to all remedies available under the Contract Documents, at law, or in equity. Nothing contained in this Section 12 will in any way limit POET's remedies or Seller's obligations under Section 13 below.

f. Liquidated Damages for Untimely Delivery. Seller shall be liable to POET for liquidated damages in the amount of 1% of the PO line item value per calendar week (1%/week) up to a maximum of 10% if the Goods are not delivered by the Delivery Date, except to the extent that Seller's delay of delivery past the Delivery Date is allowable under the exceptions to timely delivery specified in Section 3 herein. Seller acknowledges that actual damages likely to result from Seller's failure to timely deliver Goods would be difficult for POET to prove, that the parties' intend for Seller's payment of this liquidated damages amount to serve to compensate POET for any breach by seller of its obligations for timely delivery, and that the parties do not intend for these liquidated damages to serve as punishment for any such breach by Seller.

13. Indemnification. Seller shall indemnify, defend, and hold harmless POET, POET's Affiliates and the entity or entities that will own, operate, or manage the Project upon its completion (even if such entity is not an Affiliate), and their respective officers, employees, representatives, and agents, from and against any and all claims, damages, liabilities, penalties, proceedings, demands, costs and expenses, including attorneys' fees, arising out of or relating to: (a) Seller's failure to perform its obligations under the Contract Documents; (b) any negligent act or omission of Seller, its officers, agents or employees; (c) the violation of any law by Seller, its

officers, agents or employees; (d) the assertion of any mechanic's lien against the Goods, the Project, or any real or personal property as a result of the provision of services or materials on, to or as part of the Goods by a subcontractor, supplier or agent of Seller; or (e) the infringement or claimed infringement on the intellectual property rights of any person or entity as a result of POET's use of the Goods. If POET is enjoined from using the Goods because of a claim of infringement, Seller shall, at Seller's expense and at POET's option: (i) obtain for POET the right to continue using the infringing Goods or (ii) replace the infringing Goods with non-infringing Goods, which replacement will comply with the Specifications, Plans, and all other requirements of the Contract Documents.

14. Changes in Contract Documents. POET, without invalidating the Contract Documents, may make changes in the Contract Documents by altering, adding to or deducting from the Specifications or Plans, and all such changes will be performed under the terms of the Contract Documents. Any such change must be evidenced by a writing signed by the parties prior to implementation of the change. If either party claims that a change made by POET requires a change in the Purchase Price or the time of performance, such party must give the other party written notice of such claim within three (3) days of receipt of notice of the change, and the value of any such change will be determined as follows: (a) by estimate and acceptance in a lump sum; (b) by unit prices named in the Contract Documents or later agreed upon; or (c) by cost and percentage or by cost and a fixed fee. If none of the foregoing methods is agreed upon prior to effecting such changes and provided a written change order covering all other aspects of the change has been executed as above described, Seller will proceed with such change. In such case and also under the method provided in (c) above, Seller will present in such form as POET may direct an account of the cost together with vouchers, and final payment will be based upon agreement between Seller and POET.

15. Accessories and Engineering Changes. Seller must, upon POET's request, furnish to POET, at Seller's established prices and terms prevailing at the time, any attachments, features, and engineering changes that Seller has available for sale and which may be suitable for use on or with the Goods.

16. Assignment. POET may freely assign the Contract Documents to the owner of the Project or to a design builder or contractor in the event such design builder or contractor takes over construction of the Project. Seller may not assign the Contract Documents without the prior written consent of POET. Any attempted assignment in violation of this section will be void. The Contract Documents inure to the benefit of and shall be binding on the successors and permitted assigns of the parties.

17. Risk of Loss; Insurance. Risk of loss of the Goods pass from Seller to POET upon delivery of the Goods in accordance with Section 3 herein, or as otherwise provided in the Contract Documents. Until risk of loss has passed to POET, Seller must purchase and maintain on the Goods reasonable insurance against loss or damage by fire, lightning and all other risks covered by the so-called extended coverage insurance endorsement in an amount equal to the full insurable value of the Goods.

18. Confidentiality. Seller will treat the Goods and all related information as POET's confidential property and not use or disclose to others during or following the term of the Contract Documents, except as required to perform hereunder, any information regarding POET's plans, programs, plants, processes, products, costs, equipment, operations or suppliers (including, without limitation, any drawings, specifications, data, memoranda, documents, or notes) which may come within the knowledge or possession of Seller in performing hereunder and which were not otherwise furnished to Seller by third parties without restriction on disclosure or use. Seller shall restrict the knowledge of such information to its employees only on a need-to-know basis, and cause such persons to sign confidentiality agreements in a form satisfactory to POET. Seller further agrees that it will not publish, publicize, or advertise the existence of the Contract Documents or Seller's contractual relationship with POET without POET's written consent. Seller's obligations under this section will be in addition to any confidentiality obligations imposed under any other agreements between POET and Seller.

19. Time of the Essence. The parties acknowledge and agree that time is of the essence of the Contract Documents.

20. Waiver. No waiver of breach of any provision of the Contract Documents will have any force or effect unless in writing, nor will a waiver of a breach of any provision of the Contract Documents constitute a waiver of any subsequent breach of such provision or of any of the provisions of the Contract Documents.

21. Notices. Any and all notices required or permitted to be given hereunder must be in writing, addressed to the address of the applicable party set forth on the Purchase Order (or as changed by written notice thereof to the other party pursuant to this Section). Any notice given under the Contract Documents will be deemed delivered when personally delivered or mailed by first class mail, return receipt requested, or overnight courier, or when receipt is acknowledged if sent by facsimile, telecopy, email or other electronic transmission.

22. Governing Law. The Contract Documents will be construed under, and governed by, the laws of South Dakota. Any legal or equitable action for claims, debts, or obligations arising under or out of the Contract Documents must be brought in Minnehaha County, South Dakota and Seller agrees and hereby submits, and waives any objection, to jurisdiction and venue in any state or federal court located therein. Seller agrees to participate in, and be bound by, any mediation or arbitration proceeding involving the Goods in accordance with any mediation or arbitration provisions contained in the contract between POET and the owner of the Project.

23. Expenses and Attorneys' Fees. If POET is required to engage in any proceedings, legal or arbitration or otherwise, to enforce its rights under the Contract Documents, POET will be entitled to recover from Seller, in addition to any such other sums due, the reasonable attorneys' fees, costs, and necessary disbursements involved in or related to such proceedings.

24. Survival. All representations and warranties, as well as all indemnification and confidentiality obligations, contained in the Contract Documents will survive any inspections, delivery, acceptance or payment.

25. Severability. Each provision of the Contract Documents is completely severable, and the invalidity of any one or more such provisions will not affect the validity of the Contract Documents or any of the provisions thereof.

26. Deferral/Cancellation.

a. Deferral. Upon written notice, POET may defer delivery of the Goods at no additional charge for a period of three (3) months ("Deferral Period"). After the Deferral Period, POET agrees to pay Seller a monthly stocking fee equivalent to 0.1% of the costs of materials for the Goods incurred by Seller.

b. Cancellation. Within fifteen (15) days of Purchase Order date, POET may terminate a Purchase Order for any or for no reason. Upon receiving POET's notice of termination of a Purchase Order, Seller must promptly refund all payments made from POET to Seller. If in the event of termination by POET after 15 days of the Purchase Order date, the Seller shall be entitled to receive payment for work executed and costs directly incurred by reason of such termination.

27. Entire Agreement; Construction. The terms of the Contract Documents constitute the entire agreement between the parties and supersede all previous negotiations or agreements, either oral or written, and may not be enlarged, modified or altered except in a writing signed by each party. The Contract Documents expressly limit acceptance by Seller to the terms and conditions of the Contract Documents, which terms and conditions may not be varied except by a writing signed by each party. In the event any document prepared by Seller is made a part of the Contract Documents, only the typed and handwritten information contained on such

document, and not any standard printed terms or conditions, will be incorporated into the Contract Documents. To the extent that there are any conflicts between the Contract Documents and these POET Standard Terms and Conditions of Sale, the POET Standard Terms and Conditions of Sale will govern.

28. Installation by POET. Unless the Contract Documents provide that Seller is installing the Goods, POET will be responsible for installation of the Goods; provided, however, that Seller, at no additional cost, will furnish to POET copies of installation instructions, drawings, assembly materials, and all other information and materials reasonably necessary for proper installation, maintenance, and operation of the Goods, and will answer inquiries with respect to the installation, maintenance, use, and operation of the Goods following delivery of the Goods.

29. Installation by Seller. If the Contract Documents provide that Seller is installing the Goods, Seller, at Seller's expense, must install the Goods in accordance with the Specifications and Plans and in a good and workmanlike manner. Seller's installation will be subject to the following additional requirements:

a. Time. Seller will commence installation of the Goods immediately following delivery of the Goods and will complete installation as soon as practicable but in no event later than the installation date set forth on the Purchase Order or otherwise in the Contract Documents, if such a date is provided.

b. Supervision. Seller will be solely responsible for and have control over the means, methods, techniques, and procedures of installation, in accordance with the Contract Documents, and for coordinating all work associated with installation. Seller will be responsible to POET for all acts and omissions of Seller's employees, subcontractors and their agents and employees, and any other persons assisting Seller with the installation of the Goods.

c. Labor and Materials; Utilities. Seller will provide and pay for all labor, materials, furnishings, equipment, tools, machinery, transportation, and other facilities and services necessary for proper installation of the Goods, whether temporary or permanent and whether or not incorporated into the Goods. POET will provide Seller with reasonable amounts of water, electricity, and gas for purposes of the installation work.

d. Laws. Seller must comply with, and give all notices required by, all applicable laws and rules promulgated by federal, state and local authorities that relate to the installation of the Goods or to the safety of persons or property in connection therewith. Seller will initiate, maintain and supervise all safety programs reasonably necessary to prevent damage, injury or loss to persons or property in connection with the installation of the Goods.

e. Superintendent. Seller must employ a competent superintendent to be at the Project at all times during installation of the Goods. The superintendent will represent Seller; any communications given to the superintendent by POET will be binding upon Seller.

f. Cleanliness. Seller may not unreasonably encumber the Project premises with materials or equipment during installation of the Goods, and must keep the premises free from accumulation of waste materials or rubbish.

g. Right to Assume Installation. If Seller fails to perform the installation of the Goods as required by the Contract Documents and fails within a 7-day period after receipt of a written notice from POET to correct such deficiency, POET may undertake installation of the Goods without prejudice to POET's other rights and remedies under the Contract Documents, including but not limited to its right to reject the Goods. POET will be entitled to offset against the Purchase Price or, if the Purchase Price has been paid, to recover from Seller, all costs incurred by POET in completing installation.

30. Insurance. Seller must purchase and maintain general liability insurance against claims for bodily injury, death and property damage caused by the negligent acts or omissions of Seller during the installation or servicing of the Goods, which insurance must afford minimum protection of \$1,000,000 per occurrence, \$2,000,000 in the aggregate, Automobile liability of \$1,000,000 per occurrence, , Umbrella liability of \$5,000,000 per occurrence, \$5,000,000 in the aggregate, and Worker's Compensation of \$1,000,000 each accident. Seller must provide POET a certificate of insurance that names POET as an additional insured and contains the insurer's agreement to give POET thirty (30) day notice of cancellation of such insurance. Seller waives, to the fullest extent permitted by law, all rights of subrogation against POET and against each of POET's respective owners.

31. Limitation of Liability. Except to the extent of liability arising from death, personal injury or damage to tangible property or Seller's obligations under and liability for breach of Sections 13 and/or 18 above, Seller's liability, whether arising out of contract or tort or any other legal context or theory, including negligence and strict liability, for any claim under the Contract Documents, including, but not limited to, any claim for breach of any warranty or guarantee, failure of performance or delay in performance by Seller or performance or non-performance of the purchased Goods, shall not exceed one hundred twenty-five percent (125%) of the total Purchase Price of the Goods stated in the Purchase Order.