

## KEENBOLDEN TERMS AND CONDITIONS FOR THE SALE OF PRODUCT

THESE KEENBOLDEN (“SELLER”) TERMS AND CONDITIONS FOR THE SALE OF PRODUCT APPLY TO AND EXCLUSIVELY GOVERN THE SALE OF PRODUCT BY SELLER, AND TOGETHER WITH THE SALES ORDER (“ORDER”) ISSUED BY SELLER TO BUYER, TO WHICH THIS DOCUMENT IS ATTACHED, CONSTITUTE A CONTRACT (“CONTRACT”) FOR THE SALE OF PRODUCT BETWEEN SELLER AND BUYER.

All capitalized terms not otherwise defined herein will have the meanings given such terms in the Order.

**1. TITLE AND RISK OF LOSS.** Title and risk of loss or damage to Product shall pass from Seller to Buyer when the Product is delivered to the first carrier for shipment or to such other destination as agreed to in writing by Buyer and Seller.

**2. ACCEPTANCE OF PRODUCT.** Product quality will be determined based on Seller’s certificate of analysis and will be conclusively binding in the absence of fraud or manifest error. BUYER SHALL INSPECT THE PRODUCT IMMEDIATELY AFTER DELIVERY AND PRIOR TO USE OF PRODUCT WITHIN THIRTY (30) DAYS AFTER RECEIPT OF PRODUCT AND NOTIFY SELLER IN WRITING OF ANY NONCONFORMITY DISCOVERED BY BUYER. BUYER’S FAILURE TO PROVIDE SUCH NOTICE WITHIN THIRTY (30) DAYS, WILL CONSTITUTE BUYER’S ACCEPTANCE OF, AND WAIVER OF ALL CLAIMS WITH RESPECT TO PRODUCT. SELLER MAY, AT ITS SOLE DISCRETION, REPLACE PRODUCT, OR REFUND OR CREDIT THE PORTION OF THE PURCHASE PRICE PAID BY BUYER FOR NONCONFORMING PRODUCT OR FOR VARIATIONS OF QUANTITY OF +/-5%. BUYER ASSUMES ALL RISK AND LIABILITY RESULTING FROM THE USE OF PRODUCT.

**3. BUYER’S CREDIT.** Buyer will provide Seller, and authorizes Seller to obtain from Buyer or any third party, such credit information and documentation as Seller may require to determine Buyer’s creditworthiness. If Buyer’s creditworthiness becomes reasonably unsatisfactory to Seller, or Buyer fails to promptly provide such credit information and documentation, Seller may, without liability, without prior notice, and without prejudice to its other rights and remedies, (a) suspend performance; (b) reclaim delivered Product; (c) demand cash payments or satisfactory security; and/or (d) cancel all or any part of the Order.

**4. TAXES AND OTHER CHARGES.** Any federal, state, or local excise, sales, use taxes, value added taxes, duties, or other charges (a) now or hereinafter imposed on the Product and the delivery of the Product or (b) imposed on, or required to be paid or collected by, Seller by reason of the transportation, sale or use of the Product shall be paid by Buyer.

**5. PRICE AND PAYMENT.** In addition to the purchase price, all loading, freight, shipping, insurance, demurrage, detention charges, handling charges, storage, duties, surcharges, taxes, export or import tariffs for the delivery of the Product will be added to Seller’s invoice. Freight and insurance rates for transport of the Product from Seller’s manufacturing facility to delivery location(s) applicable to the Order may be adjusted and added to Seller’s invoice to account for changes in the rates imposed by Seller’s transport and logistics providers after the Order has been issued by Seller. Seller may charge Buyer and add to Seller’s invoice all detention and/or demurrage fees levied against Seller by any Seller transportation provider on account of Buyer’s failure to promptly unload and release transportation equipment furnished or arranged by Seller (i.e., within 1 hour allowed laytime for trucks).

Unless otherwise indicated in the Order, payment will be due net thirty (30) days from invoice date, in United States dollars, by ETF in same day funds net of all bank charges and without deduction, withholding or setoff, into Seller's designated bank account, per Seller's written instructions as confirmed by telephone. Payment which fall due on a non- banking day must be received on the preceding banking day. Buyer will pay 1.5% monthly interest on all past balances due, capped at the maximum rate allowed by Texas law.

## **6. TERM AND EARLY TERMINATION.**

6.1 The Contract shall continue in full force and effect for the period set forth in the Order. After the Order is issued to Buyer, the Order may not be changed or cancelled by Buyer unless such change or cancellation is expressly agreed to in writing by an authorized representative of Seller.

6.2 If Buyer breaches any term or obligation hereunder, including the failure to pay, and fails to remedy such breach within twenty (20) days of receipt of written notice of default, Seller may, without liability, and without prejudice to its other rights or remedies, (a) terminate or suspend the Order; (b) exercise rights of recoupment or setoff with respect to any sums due by Seller to Buyer; (c) initiate legal action; and/or (d) enforce its security interests. Buyer shall pay all of Seller's collection costs including attorneys' fees, litigation expenses and court costs. Seller may also cancel all or part of the Order with twenty (20) days written notice if Seller is prevented by law, regulation or governmental action from providing Product, or from selling Product in accordance with terms of the Contract.

6.3 In the event Seller agrees to a change or a cancellation of the Order as set forth in Section 6.1 above, or the Order is terminated or suspended as set forth in Section 6.2 above, Buyer shall be liable for and (i) compensate Seller for (i) all costs imposed on or incurred by Seller on account of the Order, including, but not limited to, costs incurred in purchasing materials, change or cancellation costs or fees imposed on Seller by its transport and logistics providers, storage, disposal costs incurred in disposing of Products in accordance with law, and any other costs resulting from a change, cancellation, suspension or termination of the Order; and (ii) the payment for Product sold to Buyer prior to the effective date of the change, cancellation, suspension or termination of the Order.

**7. WARRANTY. SELLER WARRANTS THAT THE PRODUCT SHALL MEET THE PRODUCT SPECIFICATION SET FORTH IN THE ORDER. SELLER MAKES NO OTHER WARRANTY, WHETHER FOR MERCHANTABILITY, FITNESS FOR INTENDED PURPOSE OR OTHERWISE, WITH RESPECT TO THE PRODUCT, INCLUDING ANY WARRANTY IMPLIED BY LAW.**

**8. INDEMNITY. BUYER WILL INDEMNIFY, DEFEND, AND HOLD HARMLESS SELLER, ITS AFFILIATES, DIRECTORS AND EMPLOYEES, CONTRACTORS AND AGENTS AGAINST ANY LIABILITY (WHETHER STRICT, ABSOLUTE OR OTHERWISE) FOR ANY CLAIM, LOSS, DAMAGE, COST, AND EXPENSE, INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEYS' FEES AND OTHER COSTS OF LITIGATION ON ACCOUNT OF ANY INJURY, DISEASE OR DEATH OF ANY PERSON (INCLUDING BUYER'S EMPLOYEES) OR DAMAGE TO PROPERTY (INCLUDING BUYER'S PROPERTY), REGARDLESS OF CAUSE, ARISING OUT OF OR RELATED TO: (A) PRODUCT AFTER BUYER, BUYER'S AGENT OR CARRIER TAKES DELIVERY OR CUSTODY OF THE PRODUCT; (B) THE TRANSPORTATION, STORAGE, HANDLING,**

LOADING OR UNLOADING, CONTROL, USE, RESALE OR DISPOSAL OF THE PRODUCT; (C) ENVIRONMENTAL LAW CLAIMS AND LIABILITIES IN RESPECT OF THE TRANSPORTATION, STORAGE, HANDLING, LOADING OR UNLOADING, CONTROL, USE, RESALE OR DISPOSAL OF THE PRODUCT AFTER BUYER, BUYER'S AGENT OR CARRIER TAKES DELIVERY OR CUSTODY OF THE PRODUCT; (D) BUYER'S BREACH OF CONTRACT; OR (E) BUYER'S FAILURE TO COMPLY WITH APPLICABLE LAWS. ANY AND ALL INDEMNIFICATION OBLIGATIONS UNDER THE CONTRACT WILL SURVIVE THE TERMINATION OR CANCELLATION OF THE CONTRACT.

**9. EXCLUSIVE REMEDY AND LIMITATION OF DAMAGES.** BUYER'S EXCLUSIVE REMEDY FOR ANY CLAIM FOR LOSSES OR DAMAGES OF ANY KIND OR NATURE ARISING OUT OF RELATED TO THE CONTRACT OR THE ORDER, WHETHER ARISING OUT OF OR RELATED TO BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE OR OTHER TORT, STRICT LIABILITY, OR OTHERWISE, WILL BE DAMAGES AND WILL NOT EXCEED THE AGGREGATE PURCHASE PRICE PAID TO SELLER PURSUANT TO THE ORDER GIVING RISE TO THE CLAIM. IN NO EVENT WILL SELLER BE LIABLE FOR ANY LOSS PROFITS, OR FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL, OR PUNITIVE COST, EXPENSE, LOSS OR DAMAGE OF ANY KIND.

**10. COMPLIANCE WITH LAWS.** Buyer agrees to comply with all applicable laws and regulations, and keep current all licenses, permits and approvals required of Seller for the transportation, storage, handling, loading or unloading, control, use, resale or disposal of Product.

Buyer shall take no actions of any nature that would contravene any provision of the U.S. Foreign Corrupt Practices Act, or any similar laws or provisions applicable to either Seller or Buyer including, offering, paying, giving, requesting or accepting any advantage or anything of value, either directly or indirectly, to or from any person for the purpose of influencing such person to act improperly, or inducing such person to do or omit to do any act in violation of his or her lawful duty or use his or her influence with any government, in order to assist a party in obtaining or retaining business, or obtaining or retaining an advantage in the course of business, for or with, or directing business to, any person.

Buyer shall comply with U.S. export controls and U.S import laws, rules and regulations, including, sanction laws, the Office of Foreign Assets Control, the Bureau of Industry and Security and U.S. Customs.

Seller may terminate the Contract without any liability if, in Seller's sole, reasonable determination, Seller believes that it is necessary to do so to comply with its obligations under applicable laws, rules or regulations.

**11. PRIVACY.** Any personally identifiable information provided by Seller or Buyer may only be used for the performance of the transactions contemplated herein. Neither Seller nor Buyer shall use any personally identifiable information provided by the other, its respective employees, subcontractors, affiliates, customers, or vendors for any marketing, nor transfer such information to any third party.

**12. HEALTH, SAFETY, SECURITY AND ENVIRONMENT.** Seller will make available to Buyer Safety Data Sheets ("SDS"), which include health, safety and other hazard communication information on Product consistent with regulatory requirements. Buyer acknowledges that it is familiar with the Product, understands the SDS and the risks associated with the

transportation, storage, handling, loading or unloading, control, use, resale or disposal of Product, end-use prohibitions or restrictions, including, those set forth in the SDS, and those known in Buyer's industry. Buyer will maintain compliance with all appropriate safe handling and use procedures, and all safety and health-related governmental requirements concerning Product, and will take all necessary steps to accordingly inform its employees, contractors, customers and other third parties.

**13. FORCE MAJEURE.** Neither Seller nor Buyer shall be in breach of the Contract or otherwise be liable to the other to the extent that performance under the Contract, other than the obligation to pay any sum when due, is delayed or prevented by any act of God, fire, explosion, landslide or earthquake; any storm, hurricane, flood, tidal wave or other adverse weather condition; any war (whether declared or not), revolution, act of civil or military authority, riot, blockade, embargo, trade sanction, terrorism, sabotage, or civil commotion; any epidemic or quarantine restriction; any strike, lock-out or labor dispute from whatever cause; any compliance with any laws, regulation or ordinance or with any order, demand or request of any international, national, local or other port, transportation or governmental authority or agency or anybody or person purporting to be or to act for such authority or agency or any corporation directly or indirectly controlled by any of them; any unavailability of or interference with the usual means of transporting Product; any of Seller's inability to acquire from its usual supply source(s) or on terms it deems reasonable for the Product; or any circumstance or event outside the party's reasonable control (each a "Force Majeure Event"). The party that is or may be delayed in performing its obligations under the Contract shall promptly notify the other party in writing with reasonable details of such event. Seller or Buyer may terminate the Contract if a Force Majeure Event prevents performance hereunder for a period of ten (10) consecutive days.

**14. CONFIDENTIALITY.** Any and all information exchanged by Seller and Buyer or generated in connection with the execution and performance of the Contract, shall be considered confidential and, without the prior written consent of the disclosing party, shall not be disclosed to anyone, except to the extent required by applicable law or regulation or court order. Information which is available to the public as of the date hereof, or thereafter becomes available to the public other than as a result of a breach of this provision or obtained from another source not subject to a confidentiality obligation is expressly excluded.

**15. NON-SOLICITATION OF EMPLOYEES.** Buyer agrees that during the term hereof and for two (2) years after termination or cancelation of the Contract, Seller shall not, directly or indirectly, contact any employees of Seller for the purpose of soliciting such employees for hire, whether as an employee or independent contractor or otherwise disrupting such employee's relationship with Seller.

**16. GOVERNING LAW.** ANY DISPUTE OR CLAIM OF WHATEVER NATURE ARISING OUT OF OR IN CONNECTION WITH THE CONTRACT AND/OR THE ORDER WILL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS, USA, WITHOUT REGARD TO ANY CONFLICTS OF LAWS PRINCIPLES THAT WOULD REQUIRE THE APPLICATION OF THE LAWS OF ANY OTHER JURISDICTION. BUYER HEREBY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE FEDERAL AND STATE COURTS LOCATED IN HARRIS COUNTY, TEXAS, WITH REGARD TO ANY ACTION ARISING OUT OF OR RELATING TO THIS CONTRACT AND WAIVES ANY OBJECTION ON THE BASIS OF PERSONAL JURISDICTION OR INCONVENIENT FORUM. THE PROVISIONS OF THE UNIFORM COMMERCIAL CODE AS ADOPTED BY THE STATE OF TEXAS WILL APPLY TO ALL SALES OF PRODUCT; THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS IS EXPRESSLY EXCLUDED. BUYER AND SELLER

AGREE THAT ACCEPTANCE OF SALES MADE UNDER THE CONTRACT WILL BE DEEMED THE TRANSACTION OF BUSINESS WITHIN HOUSTON, TEXAS.

**17. OTHER PROVISIONS.** The Contract constitutes the entire agreement between Buyer and Seller, and supersedes any prior or contemporaneous oral or written agreements or communications between them relating to the subject matter hereof. There are no other representations, warranties, terms, conditions, or collateral agreements between Buyer and Seller. The Contract and/or the Order can only be amended by written agreement executed by the authorized representative of each party. No part of the Order may be assigned by Buyer without the prior written consent of the Seller. If any of the provisions herein shall for any reason be held void or unenforceable, the remaining provisions shall remain in full force and effect and such void or unenforceable provision shall be revised or reformed, to the maximum extent permitted under applicable laws, in a manner most closely representing the intention of the parties expressed herein.

All notices and communications must be delivered to the addresses identified in the Order either: (a) in person; (b) through an internationally recognized express courier service; (c) by certified or registered U.S. mail, return receipt requested and postage prepaid; or (d) electronically. A notice is only effective upon receipt by the receiving party and its effective date will be the date of receipt thereof.

