

## **POET – STANDARD TERMS AND CONDITIONS OF PURCHASE**

**1. Governing Terms.** These Standard Terms and Conditions of Purchase (these “Terms”) apply to and govern the purchase by any POET entity or POET-related entity (“POET”) of any equipment, materials and/or supplies (“Products”) and services (“Services”) from the party to whom the associated purchase, service or work order is addressed (“Seller”) as described in any purchase, service or work order issued by POET (an “Order”) to which these Terms are attached or in connection with which they are delivered (such Order and its attachments, the “PO”, and the PO together with these Terms, the “Agreement”). Notwithstanding the foregoing, these Terms will not apply to the extent otherwise agreed in a writing signed by POET’s authorized representative (“POET’s Representative”). The PO will include any specifications or other requirements for Products and/or Services (collectively, the “Work”), including (as applicable based on the nature of the Work) plans, drawings, acceptance criteria and/or performance or other testing requirements, which may be specified on the PO or by reference to other documentation incorporated therein (the “Specifications”). Without limitation of the foregoing, the PO may incorporate the requirements of a request for proposal issued by POET and/or Seller’s responsive proposal, provided that any reference in any Order to any bid, proposal, offer or quote of Seller or any other Seller documents shall mean and include no more than the price, schedule, quantity, quality, specifications and/or technical data of the same, as applicable, and shall expressly exclude any terms therein, including Seller’s general terms of sale or performance. POET offers to purchase Work from Seller solely pursuant to these Terms and the accompanying PO, and Seller’s acceptance is expressly limited to these Terms, the PO and any separate written agreement signed by POET expressly referencing these Terms. If Seller has offered Work to POET, POET’s acceptance of the offer is expressly conditioned on Seller’s assent to these Terms. Any additional or different terms proposed by Seller in any offer, acceptance or confirmation are requests for material alterations of these Terms and are hereby rejected by POET. No course of dealing, course of performance or usage of trade shall supplement or explain these Terms or the Agreement. In the event of conflict between a provision in the PO and a provision of these Terms, the order of precedence shall be these Terms and then the PO, unless the PO specifically provides a specific or additional term therein shall prevail, or such order of precedence as otherwise or more specifically directed in writing by POET’s Authorized Representative.

**2. Price.** The purchase price and/or fees for Work will be as specified in the PO (the “Pricing”), unless otherwise agreed in a writing signed by POET’s Representative. If not specified in the PO or otherwise agreed in a writing signed by POET’s Representative, POET shall compensate Seller in accordance with Seller’s prevailing rates at the time Products are delivered and/or Services are performed. Pricing is complete and no additional charges of any type will be added without POET’s written consent, including (a) charges for shipping, packaging, labeling, storage, insurance, brokerage fees, customs duties or surcharges of any type (provided that state sales, consumer, use, excise, and other taxes associated with or levied upon the sale, purchase, or installation of Work may be separately specified in the PO or invoice, but will not constitute a part of Pricing) and (b) any expenses, costs or charges incurred by Seller in furtherance of Work, including any travel or other costs or expenses and the costs of all equipment, supplies, and other materials used to perform Work. If any sales, excise or other taxes associated with or levied upon the sale, purchase or installation of Work are required to be collected by Seller with respect to Work, such taxes will be listed on any quote, acceptance or invoice separately from the cost of Work, and Seller will not collect any such taxes for which POET has provided an exemption or resale certificate. Seller shall obtain necessary tax licenses for jurisdictions where Work is delivered or performed and shall be responsible for payroll and other related employment compensation taxes for Seller’s employees, and federal, state and other taxes assessed on Seller’s net income, net worth, license, privilege, or gross receipts. If Seller has provided cost estimates for Work other than on a fixed price basis, Seller shall (i) promptly advise POET in writing if Seller believes the estimate would be insufficient to complete Work, (ii) maintain complete and accurate books and records per generally accepted accounting principles in sufficient detail to reflect actual costs of performing Work, and (iii) provide POET with statements of actual cost when and in such form and detail as POET may request.

**3. Payment.** Seller’s invoices will be submitted in form and detail reasonably acceptable to POET. Duly issued invoices will be paid within the payment period specified in the PO, or if not specified will be payable net 30 days after the later of (a) POET’s receipt of an accurate invoice for Work or (b) acceptance of the Work (the “Payment Period”). Each invoice will separately list any transportation costs, separately from the cost of Work, and if applicable and requested by POET at the time of payment or thereafter, Seller and its subcontractors and suppliers will execute and deliver to POET a partial or full payment lien waiver, as appropriate, in a form acceptable to POET. Seller’s invoices will be submitted monthly unless otherwise agreed in the PO, and the PO may require Seller to submit progress billing invoices based upon the applicable percentages and/or units of Work completed, in which case (unless other progress payments are specified in the PO), 10% will be deducted and retained from progress payments and invoiced upon the earlier to occur of (x) successful start-up of the Work or (y) the date that is six (6) months after delivery. POET shall notify Seller of any invoice dispute within the Payment Period. The parties shall seek to resolve any disputes expeditiously and in good faith, provided that Seller shall continue to perform Work during any such dispute. Each invoice shall specify the following, in addition to any other information reasonably required by POET or specified in the PO: (i) Seller’s invoice number; (ii) POET’s PO number, if applicable; (iii) location at or for which Work was provided; (iv) if billed on an hourly basis, then either by rate or by person (as specified by POET): a description of Work provided, the number of hours, the applicable rates, and the total billed; (v) detailed line item description of any additional amounts billed; (vi) the rate and amount of any taxes being billed, as a separate line item; and (vii) the total amount of the invoice. Neither payment nor transfer of title will constitute acceptance of Work. POET reserves the right to set off any amount owing to it by Seller against any amount payable by POET to Seller.

**4. Schedule for Work.** Time is of the essence in the delivery of Work. Acceptance of late delivery shall not create a course of dealing with POET. Seller shall commence and perform, complete, ship and/or deliver Work on such dates and/or within such schedule as specified in the PO, and delivery must be made by the date set forth in the PO, or if no such date is specified, immediately following Seller’s receipt of the PO (the “Delivery Date”). Delivery Dates and associated lead times must include a reasonable time for Seller’s preparation and POET’s approval of any drawings required for the completion of Work, and reasonably set timeframes for the preparation and approval of drawings must be included in the Specifications. Seller’s performance is not conditioned on POET’s performance of any POET responsibility specified in the PO, and any approval procedures shall not be cause for delay by Seller in providing any Work, provided that the timeline required for Seller’s performance will be extended by the length of any delay in POET’s approval of drawings beyond the

reasonably set timeframe outlined in the Specifications (if any). Upon written notice to Seller, POET may defer delivery at no additional charge for a period of three (3) months, after which POET agrees to pay Seller a monthly stocking fee equivalent to 0.1% of the costs of materials for Products. If any date is stated as a target or estimate, Seller shall use commercially reasonable efforts to meet the deadline, and shall promptly notify POET in writing if Seller will not be able to do so for any reason, specifying the reason therefore. Seller shall be responsible for additional costs incurred by POET as a result of Seller's failure to timely complete Work. Seller shall keep POET abreast of Seller's progress on a weekly basis and shall promptly notify POET in writing of any actual or anticipated delay in Seller's performance under the PO, or if at any time the Work is behind schedule or may not be completed within the required schedule or by the required Delivery Date, which notice will include the cause and estimated duration of such delay, and Seller shall thereupon take all steps necessary to promptly remedy its non-compliance with the schedule, without additional cost to POET. If any delay in the delivery of Products is not promptly remedied to POET's satisfaction, then POET may, after written notice to Seller, (a) require Seller to promptly submit a plan for schedule recovery and specify in writing the steps to be taken to achieve compliance with the same, (b) terminate the PO in whole or in part pursuant to Section 8 herein and/or (c) seek any other damages or exercise any other remedies available hereunder or in the PO (including as applicable the recovery of liquidated damages) or permitted by Law. Without limitation of the foregoing, and at POET's option, Seller shall be liable to POET for liquidated damages, which unless otherwise specified in the PO will be in the amount of 1% of the PO line item value per calendar week (1%/week) up to a maximum of 10% if Products are not delivered by the Delivery Date, except to the extent such delay is excused pursuant to Section 15, provided that if any delay in the delivery of Products lasts more than 10 calendar weeks, then POET shall be entitled to terminate the PO pursuant to Section 9 herein and seek any other damages available hereunder or permitted by law.

**5. Products.** This section shall only apply if Seller is supplying Products (the "Product Supply"), in which case it only applies to the Product Supply.

**a.** Seller shall deliver Products to the FOB point (and in accordance with the instructions) in the PO. If no FOB point is specified, the delivery point shall be FOB destination, at the POET address specified in the PO, unless otherwise agreed upon by POET in the PO. Title to, and risk of loss of, Products will pass to POET upon delivery, unless otherwise specifically agreed in the PO. Until risk of loss has passed to POET, Seller must purchase and maintain on Products reasonable insurance against loss or damage by fire, lightning and all other risks covered by the so called extended coverage endorsement in an amount equal to the full insurable value of Products. If Products are not timely delivered in accordance with POET's instructions, Seller shall be responsible for additional costs incurred by POET as a result of Seller's failure to so comply. Seller shall package Products and take other steps necessary to ensure safe and orderly delivery of Products. POET, at its option, may inspect and/or test Products at Seller's facility, off-site, or other point of destination at any reasonable time both prior to and following delivery of Products.

**b.** At no cost to POET, Seller shall, for a period of three (3) years from the date of the PO (i) furnish information, manuals and other documentation necessary for proper maintenance, operation and use of Products, (ii) answer inquiries regarding the maintenance, use and operation of Products and (iii) if applicable and requested by POET, Seller will furnish evidence as to the kind and quality of Products.

**c.** Quantities of Products shipped in excess of quantities designated in the PO may be returned at Seller's expense. POET is entitled to inspect, test and approve Products delivered to POET within 30 days or such longer period of time as is reasonable (the "Acceptance Period"), and additional and/or more specific acceptance criteria and/or a longer Acceptance Period may be specified in the PO based on the nature of the Product and need to inspect during routine operations. No payment made to Seller, inspection of Work, acts to install Products, use of Products or any other action by POET prior to the commencement and termination of the applicable Acceptance Period will be deemed an acceptance by POET of Products or any portion thereof. During the Acceptance Period, POET may reject any portion of Products that are non-conforming or defective, in which case POET, at its option, may (i) rescind the PO in its entirety, (ii) accept Products at a reasonably reduced price or (iii) reject and require the replacement of Products at Seller's sole cost and expense, including with respect to the return of defective or non-conforming Products and delivery of conforming replacement Products, provided that if Seller does not promptly complete the repair or replacement, POET may terminate the PO and replace the defective or non-conforming Products with third party products, in which case Seller must reimburse POET for all incremental costs. Products not rejected within the Acceptance Period will be deemed to have been accepted by POET. The acceptance of Products will not relieve Seller of its obligations pursuant to other clauses of this Agreement, including without limitation those of Section 5(e).

**d.** Seller expressly represents, warrants and agrees that (i) upon delivery, POET will receive good and marketable title to Products, free and clear of any liens, claims, security interests or encumbrances; (ii) Products are new (unless otherwise specified by POET), (iii) Products will be free of defects in design, workmanship and material, and will conform strictly to and perform in accordance with the Specifications stated in the PO and to their standard written documentation, specifications, product literature and marketing materials for the longer of: (A) one (1) year from the date of full and successful start-up of Products, and (B) eighteen (18) months from acceptance (the "Warranty Period"); (iv) Products comply with all Laws applicable to production, sale, use and operation; (v) Products are of a merchantable quality and fit and sufficient for the purpose ordered; and (vi) Products and the purchase and use of Products by POET will not, in whole or in part, violate, infringe upon, breach, conflict with or otherwise constitute the unlawful, improper or wrongful use of any proprietary or other rights of any third party, including any license, copyright, trademark, service mark, tradename, patent or trade secret, or any other right or interest of any person. The above warranties apply in addition to any more specific performance or other warranties (and associated Warranty Periods) as may be specified in the applicable PO.

**e.** If any Products fail to meet the warranties described above (such Products, "Defective Products"), Seller shall, upon notice from POET, promptly repair or replace Defective Products at Seller's sole expense (including transportation charges and all removal and reinstallation costs required for repairs or replacements to be made). If after a reasonable number of attempts Seller fails to repair or replace Defective Products so that they conform to the applicable warranties, Seller shall, at POET's request, refund to POET all amounts paid by POET in respect of such Defective Products. If a recall of Products is necessitated by a defect, failure to conform to Specifications, applicable Laws or any other reason within Seller's control, Seller shall bear all costs and expenses of such recall.

f. POET will be responsible for the installation of any Products requiring installation, unless otherwise specified in the PO; 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, use and operation of Products following delivery of Products.

**6. Services.** This section only applies if Seller provides Services, in which case it only applies to those Services.

a. POET may, without cause, order Seller to suspend, delay or interrupt Work in whole or part for the period of time specified by POET. Upon reinstatement, the schedule will be amended by the parties. Suspension does not entitle Seller to additional compensation.

b. POET is entitled to inspect, test and approve Services delivered to POET prior to POET's acceptance of Services.

c. Seller expressly represents, warrants and agrees that Services and any deliverables will (i) be performed in a professional and workmanlike manner, in accordance with accepted industry standards, in compliance with all applicable Laws, and in compliance with any applicable Specifications, (ii) be free of defects in workmanship and design, and (iii) not infringe on the proprietary or other rights of any third party, including any copyright, trademark, patent or trade secret. Seller warrants that upon delivery, POET will receive good and marketable title to Services and any deliverables, free and clear of any liens, claims, security interests or encumbrances. Additionally, if the PO provides that Seller is installing Products, then Seller expressly represents, warrants and agrees with respect to any installation Services to be provided under the PO (which will also be subject to POET's On-Site Services Terms and Conditions (as referenced below)) that Seller will commence installation of Products immediately following delivery and will complete installation as soon as practicable but in no event later than the installation date set forth on the PO, if included.

d. If any Services fail to meet the warranties described above (such Services, "Defective Services"), Seller shall, upon notice from POET, promptly reperform Defective Services at Seller's sole expense. If, after a reasonable number of attempts, Seller fails to reperform Defective Services so that they conform to the applicable warranties, Seller shall refund to POET all amounts paid by POET in respect of such Defective Services. For installation Services, Seller must reperform Defective Services within a 7-day period after notice from POET, absent which POET may undertake installation of Products without prejudice to POET's other rights and remedies under the PO, including its right to reject Products, and POET will be entitled to offset against Pricing, or if Pricing has been paid in full, to recover from Seller, all costs incurred by POET in completing installation.

e. If Seller performs Services on or at a site owned or controlled by POET and/or its affiliate(s) (the "POET Premises", and such work, including any installation services, the "On-Site Services"), then POET's On-Site Services Terms and Conditions (which are attached hereto) will apply to any such Work.

**7. Changes.** POET may withdraw the PO prior to its acceptance or deemed acceptance by Seller. POET, at any time on notice to Seller prior to shipment or delivery of Work, may request a change and/or modification to Product or Services, including to alter, add to or deduct from the Specifications, time or place of delivery, method of transportation, or other requirements, and the parties may also agree to incorporate drawings, data and other information issued after the date of the PO, provided that neither party will be bound to any change or supplement to the PO or any associated adjustment to any term except to the extent agreed upon in writing by the parties' authorized representatives (a "Change Order"). If Seller claims that a requested change causes a material increase in Seller's cost or adjustment to the time of performance (unless due to Seller's non-conformance or breach), Seller must give POET written notice of such claim within three (3) days of receipt of the requested change, in which case the parties will negotiate an equitable increase in Pricing or the time due for performance. As appropriate based on the scope of the Work, 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 PO or later agreed upon; or (c) by cost and percentage or by cost and a fixed fee, and if one of the foregoing methods is agreed upon prior to effecting the changes, and provided a Change Order covering all other aspects of the change has been executed as above described, Seller will proceed with the change, and under the method provided in (c), 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; additionally, 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 Products. All Change Orders will be made using the form provided or approved by POET's Representative.

**8. Cancellation and Termination.** Without penalty or liability, POET may cancel the PO in whole or in part for any or no reason prior to shipment or delivery of Work. If POET terminates the PO pursuant to this section or otherwise, Seller's sole and exclusive remedy is payment for Work received and accepted by POET prior to the termination, provided that if POET terminates the PO for any or no reason within fifteen (15) days of PO date, Seller must promptly refund all payments made by POET.

**9. Default.** If Seller (a) delivers Work that does not meet the warranties or other requirements of the Agreement, (b) fails to timely deliver Work in accordance with the instructions and specifications of POET, (c) breaches or violates any other representation, warranty or agreement of Seller under the Agreement, (d) has a voluntary or involuntary petition in bankruptcy filed against it, (e) becomes insolvent or makes an assignment for the benefit of creditors, (f) is dissolved, liquidated, merged or transfers a substantial part of its assets or (g) develops a financial condition unsatisfactory to POET (any of the foregoing, an "Event of Default"), then POET at its election may exercise any one or more of the following remedies: (i) cancel the PO without liability to Seller, (ii) recover from Seller all damages of any kind arising from or relating to (or incurred by POET as a result of) the Event of Default and (iii) recover attorney fees and costs incurred by POET in enforcing the Agreement. If the Event of Default is the failure of Work to meet any applicable Specifications, then instead of cancelling the PO, POET may, at its election, require Seller, at its expense (including for costs of travel, transportation, removal and reinstallation) to repair or replace Products (or any non-conforming parts or components of Products) FOB the POET facility so as to establish full compliance with the Specifications. If after a reasonable number of attempts, Seller is unable to so repair or replace Products, Seller agrees at POET's request to refund to POET the price paid for Products and reimburse POET for all taxes, duties and transportation charges paid by POET in connection with such Products.

**10. Indemnity.** Seller shall defend, indemnify and hold harmless POET and its affiliates, officers, directors, consultants, employees, agents, and assigns from and against any losses, damages, claims, liabilities, and expenses, including attorney fees, arising from or related to: (a) the nonconformance of Work to the warranties described in this Agreement, (b) Seller's failure to perform its obligations under this

Agreement, (c) Seller's violation of its representations, warranties or obligations under the Agreement, (d) the negligent act or omission and/or violation of applicable Law by Seller or any Seller Personnel, (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 Work or any deliverables or (f) the assertion of any mechanic's lien against Products, any associated project, or any real or personal property as a result of the provision of services or materials on, to or as part of Products by a subcontractor, supplier or agent of Seller. Seller shall not enter into any settlement for any such claim without POET's or the indemnitee's prior written consent. If POET is enjoined from using Work 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 Work or (ii) replace the infringing Work and/or deliverables with non-infringing Work and deliverables, which replacement shall comply with the warranties stated herein and all Specifications. As used in the Agreement, "Seller Personnel" means Seller's employees, subcontractors and their agents and employees, and any other persons assisting Seller with the Work.

**11. Insurance.** Seller shall maintain, at its expense, commercial general liability insurance ("Seller's Insurance") providing coverage for POET as an additional insured and insuring POET against claims for bodily injury, death and property damages and against liability for any claim, injury, damage or loss arising out of or resulting from allegedly defective or nonconforming Products or from Seller's performance of Services, including (as applicable) as caused by the negligent acts or omissions of Seller during the installation or servicing of Work. Seller's Insurance shall include, without limitation, product completed operations coverage and shall apply regardless of the theory of liability or causation alleged in the underlying claim. Seller's Insurance shall be primary to, and not in excess of or contributory with, other insurance available to POET and shall provide combined total limits of coverage in an amount equal to the full limits of liability insurance maintained by Seller in the normal course of Seller's business (including all primary and any umbrella or excess liability insurance policies), provided that such combined total limits of coverage shall not be less than \$2,000,000 per occurrence and \$2,000,000 in the aggregate. Seller waives, to the fullest extent permitted by law, all rights of subrogation against POET and against each of POET's respective owners, members, directors, officers, employees, or agents in connection with and to the extent that any claim, injury, damage or loss is covered by Seller's Insurance that meets the requirements of this section, which waiver must be indicated on all policies. Seller shall provide POET with certificates of insurance evidencing Seller's Insurance as required hereunder annually or upon request of POET. Additionally, the policies must name and Seller must provide POET with a certificate of insurance showing as additional insured parties: POET Investments, Inc. and its subsidiaries, POET Plant Management, LLC; POET Biorefining (all locations) and POET Design and Construction, and the certificate must contain the insurer's agreement to give POET thirty (30) days' notice of cancellation of such insurance.

**12. Confidential Information.** Seller shall and shall ensure that Seller Personnel: (a) protect Confidential Information with the degree of care Seller uses to protect its own confidential information of a similar nature, (b) not use or disclose Confidential Information except to the extent required for Seller to perform the Work. "Confidential Information" means any confidential or proprietary information regarding POET's plans, programs, plants, processes, products, costs, equipment, operations or suppliers (including any drawings, specifications, data, memoranda, documents, or notes) which may come within the knowledge or possession of Seller in performing hereunder, including if disclosed to or observed by Seller in any manner or form during its performance of Work at any POET Premises. Seller shall (i) restrict the knowledge of Confidential Information to Seller Personnel who have a bona fide need to know such information, are under a duty of nondisclosure with respect to such information, and sign confidentiality agreements in a form satisfactory to POET, and (ii) cause Seller Personnel to comply with this section as if they were Seller. Further, Seller shall not publish, publicize, or advertise the existence of the Agreement or Seller's contractual relationship with POET without POET's written consent. The confidentiality obligations of this section are in addition to, and not in derogation of, Seller's obligations of confidentiality under any other agreement with POET, including any non-disclosure agreements and/or material transfer agreements. In the event of a conflict between the terms of such other agreements and those of this Agreement, the terms of such other agreements shall govern and control.

**13. Intellectual Property.** Seller hereby assigns to POET the Seller's entire right, title, and interest in any invention, technique, process, device, discovery, improvement, or know-how, patentable or not, hereafter made or conceived solely or jointly by Seller while working for or on behalf of POET that relates to, is suggested by, or results from matters set out in this Agreement and depends on either (a) Seller's knowledge of Confidential Information or (b) use of POET equipment, supplies, facilities, information, or materials (the "IP"). IP is the exclusive property of POET, whether or not patent applications are filed thereon. Seller shall (i) give POET reasonable assistance, (ii) furnish, execute and deliver documents necessary and (iii) take actions required to protect the interests of POET and its nominees in securing for itself or their own benefit patents on IP in the U.S. and such other countries in which POET may elect to file applications. The parties agree that copyrightable material arising out of any Work will constitute works made for hire. Seller agrees that this Agreement constitutes an assignment of such rights to POET and agrees without cost to POET to take such further appropriate action to assign such rights.

**14. Legal Compliance.** Seller shall comply with all federal, state, local and foreign laws, regulations, ordinances and administrative rules, including applicable workers' compensation requirements ("Laws") governing the provision, production and sale of Work. The parties hereby incorporate 41 C.F.R. 60-1.4(a)(7); 29 C.F.R. Part 471, Appendix A to Subpart A; 41 C.F.R. 60-300.5(a)ii; and 41 C.F.R. 60-741.5(a), if applicable. Supplier shall abide by the requirements of 41 C.F.R. 60-300.5(a) and 41 C.F.R. 741.5(a) during the performance of this Agreement. These regulations prohibit discrimination against qualified protected veterans, and qualified individuals on the basis of disability, respectively, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and qualified individuals with disabilities, respectively. Seller shall give notices required by Laws applicable to the Work. POET and its representatives may inspect and audit Seller's books and records relating to Work at reasonable times during performance and for three (3) years thereafter.

**15. Force Majeure.** "Force Majeure" means an event beyond a party's reasonable control not caused by its fault or negligence. Neither party shall be liable to the other for any delay or failure in performing obligations hereunder to the extent directly caused by Force Majeure, if the effected party provides immediate written notice of the Force Majeure to the other and promptly uses all diligent efforts to end any delay or failure, including as necessary and practicable under then existing circumstances. The time for performance (including any Delivery Date) shall only be extended for the period of time lost by reason of any delay caused by Force Majeure. The existence of

Force Majeure will not preclude a party from exercising rights of termination provided for in the Agreement that do not arise solely as a result of the delay or suspension. If Force Majeure prevents Seller from meeting any delivery commitment as it becomes due, Seller shall not discriminate against POET in favor of any other customer in making such deliveries. If Force Majeure delays or prevents Seller from performing its obligations under the PO for more than ten (10) days (or such longer period of time as is reasonable based on the nature of the supply, not to exceed thirty (30) days), POET may terminate the PO upon written notice to Seller.

**16. Notices.** Unless otherwise provided herein, notices required or permitted to be given under the Agreement shall be sent to the recipient's address as stated in the PO (or as subsequently changed by notice given pursuant to this section), and 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. The parties may transmit and receive documents and notices by email in lieu of written documents and notices, unless objected to in writing by Seller. The failure of Seller to object in writing to such notification method within five (5) days of Seller's receipt of these Terms shall constitute Seller's agreement to future electronic notifications between the parties.

**17. Assignment.** The Agreement shall bind and inure to the benefit of the parties and their respective successors and assigns. Seller may not assign or delegate any rights or obligations under the Agreement (including its right to payment) without the written consent of POET. Any attempted assignment in violation of this section shall be null and void. POET may at any time assign, transfer or subcontract any of its rights or obligations without Seller's prior written consent, including as applicable to a design builder or contractor in the event such design builder or contractor takes over the construction of any overall project associated with the Work.

**18. Subcontracting.** Seller shall not subcontract any portion of Work without POET's written permission, which may be specified in the PO. If permission to subcontract is granted, such permission shall not relieve Seller of its obligations under the Agreement or modify Pricing owed. Seller shall remain responsible for acts and omissions of any subcontractors.

**19. Independent Contractor.** For installation and otherwise, the relationship between the parties is that of independent contractors, and therefore Seller has complete responsibility for Work and shall be solely responsible for and have control over means, methods techniques and procedures for Work in accordance with the Agreement, including those of installation in accordance with the Agreement and for coordinating all Work associated with installation if and as required by the Agreement. Seller will be responsible to POET for all acts and omissions of Seller Personnel. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

**20. Governing Law; Venue.** The Convention of Contracts for the International Sale of Goods or any successor thereto does not apply to this Agreement. The Agreement and its validity, interpretation, construction and performance shall be governed by the laws of the state of South Dakota, exclusive of any conflicts of laws principles. Any and all disputes, controversies or claims between the parties, if not settled within twenty (20) days following written notice of such dispute, shall be referred to senior management of the parties for resolution. If the dispute, controversy or claim is not resolved within thirty (30) days following referral to senior management or such longer period as the parties may agree, either party may initiate formal proceedings at law or in equity against the other party. Notwithstanding the foregoing, a party may initiate formal proceedings with regard to any dispute, controversy or claim: (i) in order to avoid the expiration of any applicable statute of limitations period; or (ii) for which injunctive relief is available under the Agreement. The federal and state courts of Minnehaha County, South Dakota shall have exclusive jurisdiction over any legal or equitable action arising under or in connection with the Agreement. The parties agree, consent and hereby irrevocably submit to the exercise of personal jurisdiction by (and agree to exclusive venue in) such courts and waive any objection based on improper venue or *forum non conveniens*. **EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.** Notwithstanding the foregoing, Seller agrees to participate in, and be bound by, any mediation or arbitration proceeding involving Work in accordance with any mediation or arbitration provisions contained in the contract between POET and the owner of any overall project associated with the Work. If POET is required to engage in any proceedings, legal or arbitration or otherwise, to enforce its rights under the Agreement, POET will be entitled to recover from Seller, in addition to any sums due, the reasonable attorney fees, costs and necessary disbursements involved in or related to such proceedings.

**21. Remedies.** The rights and remedies granted to POET in the Agreement are cumulative, and POET reserves all rights and remedies allowed by law or in equity relating to Seller's performance, sale and delivery of Work, and all such remedies are cumulative to rights and remedies granted to POET in any provision of this Agreement, including the PO, and remedies available at law or in equity. **TO THE MAXIMUM EXTENT PERMITTED BY LAW, POET SHALL NOT BE LIABLE TO SELLER FOR INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING FROM, OR RELATING TO, ANY ACTION OR INACTION OF POET RELATING TO POET'S PURCHASE OF WORK.**

**22. Entire Agreement.** These Terms together with the PO constitute the entire agreement and understanding between the parties with regard to its subject matter, and except if and as otherwise specifically provided in this Agreement, expressly supersede and replace any prior or contemporaneous agreements, negotiations or communications, written or oral, with respect thereto.

**23. Amendment.** This Agreement may not be superseded, cancelled or amended except in a writing which states that it amends this Agreement signed by POET's Representative, or as otherwise provided in the Agreement. No other act, document, usage or custom shall be deemed to supersede, cancel, modify or amend this Agreement.

**24. Waiver.** Neither party shall be deemed to have waived any of its rights or remedies under the Agreement or any applicable Laws unless the waiver is in a writing signed by such party. The waiver by any party of a breach of any provision of this Agreement shall not operate or be construed as a further or continuing waiver of such breach, or as a waiver of any other or subsequent breach of such provision or of any of the provisions of the Agreement. No failure on the part of any party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver of such right, power or remedy, nor shall any single or partial exercise of such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

**25. Severability.** Each provision of the Agreement is severable and the invalidity of any one or more such provisions shall not in any way affect the validity of any other provisions of the Agreement. If any provision of the Agreement is determined to be invalid, illegal or unenforceable, such provision shall be enforced to the extent possible consistent with the stated intention of the parties, and the remaining provisions shall remain in full force and effect. Without limitation of the foregoing, all representations and warranties, as well as all indemnification and confidentiality obligations contained in the Agreement will survive any inspection, delivery, acceptance or payment.

**26. Interpretation.** The words “include,” “includes” and “including” are deemed to be followed by the words “without limitation”.

**27. Survival.** Provisions of the Agreement which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement.

## **POET'S ON-SITE SERVICE TERMS AND CONDITIONS**

Services performed at a site owned or controlled by POET and/or its affiliate(s) (such site, the "POET Premises") and such services, the "On-Site Services") shall be subject to (1) these On-Site Service Terms and Conditions (the "On-Site Terms"), (2) POET's Standard Terms and Conditions and (3) other parts of the Agreement to which these On-Site Terms are attached or in which they are referenced (the "Agreement"). These On-Site Terms shall prevail if inconsistent with other terms of the Agreement. POET may require Seller to execute a supplemental Access Agreement as a condition of granting Seller or its contractors or agents access to the POET Premises, and Seller shall obtain the written agreement of every subcontractor performing On-Site Services to be bound to terms materially and substantially the same as these On-Site Terms. Capitalized terms used herein shall have the same meaning given in the Standard Terms and Conditions.

**1. On-Site Services.** Seller shall perform On-Site Services (referred to here as "Work") to the satisfaction of POET and in accordance with sound and generally accepted professional practices, good workmanship, and applicable industry standards. At the request of POET, (a) Seller shall designate a competent on-site supervisor with authority and responsibility to provide adequate supervision and direction to Seller Personnel, whose communications shall be binding on Seller and (b) Seller shall remove from the POET Premises any of Seller Personnel whose performance is not satisfactory to POET. POET shall have access to and the right to inspect Work in the course of performance. Seller shall reperform any defective Work upon written notice of non-compliance from POET, or if reperformance is not possible, shall provide an appropriate credit for the defective portion of Work. Reperformed Work will be warranted as described in this section. Seller will provide and pay for all labor, materials, furnishings, equipment, tools, machinery, transportation, and other facilities and services necessary for the Work. POET will obtain title to Work completed and materials on account as payments are made. At POET's option, Pricing shall not be due until Seller has provided POET with a complete release of all liens arising out of this Agreement, receipts covering all labor and materials for which a lien could be filed, or a bond satisfactory to POET indemnifying POET against any lien.

**2. Compliance.** Seller warrants that it has valid certifications, licenses and permits, current and in good standing, as necessary to perform Work. Seller must comply with and give notices required by all Laws applicable to the performance of Work or to the safety of persons or property in connection therewith. Seller Personnel shall comply with any regulations and directives provided to Seller with respect to safety, security, site access, parking areas, health, sanitation, environmental, and other property or site policies and procedures applicable at the POET Premises. Seller shall confine its apparatus, materials, and operations to limits indicated by Laws or permits and shall not unreasonably encumber the POET Premises with materials. Seller shall obtain POET's written authorization as to the location and space for any storage, and shall keep sites where Work is performed in a clean and orderly manner, removing rubbish and site waste materials daily. Seller will be responsible to POET for acts and omissions of Seller Personnel. Seller shall be responsible for loss of, damage to, and the storage and security of Seller Personnel's vehicles, materials, supplies, tools and equipment, including those brought onto the POET Premises, Seller shall take all reasonable and necessary safety precautions and furnish, install and maintain guards and barricades necessary for the prevention of accidents and injury to persons and property. Seller shall immediately notify POET of any accident or incident involving personal injury, property damage of any kind or any violation of safety rules and regulations occurring during the performance of Work. Seller shall immediately notify POET by phone and in writing of any discovered violations of this section, and shall comply with any instructions of POET provided in connection with such notice.

**3. Environmental.** Seller shall observe and comply with all Laws applicable to Work, including those applicable to the environment and as promulgated by the Occupational Safety & Health Administration and Department of Transportation, and during the Work, Seller shall:

- a. Deliver to POET's Representative a Material Safety Data Sheet for any substance to be used, including those classified as hazardous, extremely hazardous, or toxic under applicable Law.
- b. Plainly and properly label hazardous substances and oil brought to the POET Premises and hazardous waste, waste oil, or used oil generated during the performance of Work.
- c. Comply with applicable spill prevention, control and countermeasure rules and regulations while unloading and transferring petroleum or chemical product from a vehicle or to a storage tank.
- d. Immediately notify POET in the event of a spill, leak or other intended or unintended release of any chemical, petroleum product or other hazardous substances encountered during the Work.
- e. Remove and dispose of hazardous and non-hazardous waste, waste material, or refuse generated in the performance of Work at Seller's expense and in compliance with applicable Laws.
- f. Comply with applicable Laws associated with the management, generation, disposal and discharge of storm, processed, treated or waste water, and not discharge processed, treated, or waste water into POET's water treatment system without prior written approval, provided that associated costs shall be specified in the PO.

**4. Indemnity.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND WITHOUT NEGATING, ABRIDGING, OR REDUCING OTHER RIGHTS OR OBLIGATION OF INDEMNITY THAT WOULD OTHERWISE EXIST AS TO A PARTY OR PERSON DESCRIBED HEREIN, SELLER SHALL RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS POET, ITS PARENT, SUBSIDIARIES, AFFILIATES, PARTNERS, AND ITS AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, CONSULTANTS, CONTRACTORS, INVITEES, AGENTS, REPRESENTATIVES, SUCCESSORS, ASSIGNS AND INSURERS (COLLECTIVELY THE "POET INDEMNITEES") FROM AND AGAINST ANY CLAIMS, DAMAGES, FINES, PENALTIES, PROCEEDINGS, DEMANDS, COSTS (INCLUDING ATTORNEY FEES AND COURT COSTS), AND LIABILITIES ARISING FROM, ALLEGED TO ARISE FROM, OR IN ANY WAY ASSOCIATED WITH (A) SELLER'S FAILURE TO PERFORM ITS OBLIGATIONS WITH RESPECT TO THE WORK AND/OR ANY NEGLIGENT ACT OR OMISSION OF SELLER PERSONNEL. THE FOREGOING INDEMNITY SHALL APPLY EVEN IN THE EVENT OF ANY CONCURRENT OR CONTRIBUTORY NEGLIGENCE OR FAULT ON THE PART OF ANY POET INDEMNITEE, HOWEVER, SELLER WILL NOT BE RESPONSIBLE HEREUNDER TO THE EXTENT OF THE SOLE

**NEGLIGENCE OR FAULT OF ANY POET INDEMNITEE AS MAY BE FINALLY DETERMINED BY A COURT.** In the event claims against a POET Indemnitee are made by Seller Personnel, the obligation above shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for Seller or subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts. Further, with respect to any legal limitations now or hereafter in effect and affecting the validity and enforceability of the indemnity of this section, such legal limitations are made a part of the foregoing indemnification obligations to the minimum extent necessary to bring this section into conformity with the requirements of such limitations and, as so modified, the indemnification obligation shall continue in full force and effect.

**5. Insurance.** Without limiting in any way Seller's liability hereunder, Seller must purchase and maintain the following insurance coverage with form and underwriters satisfactory to POET, which shall include coverage for the indemnity obligations above: (a) Worker's Compensation Insurance as prescribed by applicable law, but not less than \$1,000,000 each accident, \$1,000,000 Disease each employee, and \$1,000,000 Disease in the aggregate; (b) Employer's Liability Insurance with limits of liability as prescribed by applicable law, or if not prescribed by applicable law, not less than \$1,000,000 per occurrence; (c) Comprehensive General Liability (Bodily Injury and Property Damage) Insurance including the following supplementary coverage: (i) Contractual Liability to cover liability assumed under the Agreement, (ii) Product and Completed Operations Liability Insurance and (iii) Broad Form Property Damage Liability Insurance with a limit not less than \$1,000,000 per occurrence for Bodily Injury and \$1,000,000 per occurrence for Property Damage (and total coverage shall be not less than \$2,000,000 if combined Single Limit is provided); (d) Automobile Bodily Injury and Property Damage Liability Insurance extending to owned, non-owned and hired automobiles used in the performance of this Agreement with limits of liability not less than \$1,000,000 per occurrence for Bodily Injury and \$1,000,000 per occurrence for Property Damage (or not less than \$2,000,000 if combined Single Limit is provided), (e) Umbrella liability of \$5,000,000 per occurrence, \$5,000,000 in the aggregate, plus if applicable, (f) Professional liability with limits not less than \$3,000,000 per occurrence, \$3,000,000 in the aggregate, and (g) Pollution liability with limits not less than \$3,000,000 each occurrence. Insurance shall be primary with respect to Seller's operations. Prior to performing Work, Seller must provide POET an original certificate of insurance confirming requested coverage, naming POET Investments, Inc. and its subsidiaries; POET Plant Management, LLC; POET Biorefining (all locations); and POET Design and Construction as additional insured parties to the extent required to provide coverage for the obligations entered into, and reflecting waiver, to the fullest extent permitted by law, all rights of subrogation against POET and against POET Indemnites. POET shall be given at least thirty (30) days' notice of cancellation of such insurance.

**6. Governing Law; Venue.** These On-Site Terms and their validity, interpretation, construction and performance shall be governed by the laws of the state of the POET Premises, exclusive of any conflicts of laws principles. Any and all disputes, controversies or claims between the parties, if not settled within twenty (20) days following written notice of such dispute, shall be referred to senior management of the parties for resolution. If the dispute, controversy or claim is not resolved within thirty (30) days following referral to senior management or such longer period as the parties may agree, either party may initiate formal proceedings at law or in equity against the other party. Notwithstanding the foregoing, a party may initiate formal proceedings with regard to any dispute, controversy or claim: (i) in order to avoid the expiration of any applicable statute of limitations period; or (ii) for which injunctive relief is available under the Agreement. The nearest federal and state courts located within the same state encompassing the POET Premises shall have exclusive jurisdiction over any legal or equitable action arising under or in connection with the PO or these Terms, and Seller agrees and hereby irrevocably submits, and waives any objection, to jurisdiction and venue in such courts. **EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.**



