

1. Governing Terms. These Terms and Conditions of Purchase (“Terms”) govern the purchase by South Dakota Soybean Processors, LLC (“SDSP”) of any and all goods and services (collectively, the “Items”) from Seller, unless otherwise agreed in a written agreement signed by SDSP. SDSP offers to purchase Items from Seller solely pursuant to these Terms and any accompanying Purchase Order issued by SDSP, and Seller’s acceptance is expressly limited to these Terms and the Purchase Order. If Seller has offered Items to SDSP, SDSP’s acceptance of such 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 rejected by SDSP. No course of dealing, course of performance or usage of trade will supplement or explain these Terms.

2. Price. The price of the Items will be the price stated by SDSP in the Purchase Order, unless otherwise agreed in writing by SDSP. Seller warrants the price is complete, and no additional charges of any type will be added without SDSP’s written consent, including charges for shipping, packaging, labeling, storage, insurance, taxes, brokerage fees, customs duties or surcharges. The price will include all sales, consumer, use, excise and other taxes associated with the sale and purchase of the Items, unless otherwise agreed in writing by SDSP. Standard box or carton quantities will be specified by Seller at the time of quotation or proposal.

3. Payment. SDSP will remit payment for the Items within thirty (30) days of the later of: (a) SDSP’s receipt of an accurate invoice for the Items, and (b) the delivery of the Items to SDSP in accordance with these Terms. All packing lists, shipping papers, delivery sheets, invoices and payment correspondence from Seller must reference the Purchase Order number.

4. Delivery; Title. Seller will deliver the Items to the “Ship To” address, and in accordance with any instructions, set forth in the Purchase Order, unless otherwise agreed in writing by SDSP. Seller acknowledges the delivery point may be SDSP’s facility in Volga, South Dakota or St. Lawrence, South Dakota or any other delivery point identified in the Purchase Order. Title to, and risk of loss of, the Items will pass to SDSP at the designated delivery point. Time is of the essence in the delivery of the Items. When determining delivery time, only regular business days shall be counted, excluding federal holidays. If Items are not delivered in accordance with SDSP’s instructions, Seller will be responsible for all additional costs incurred by SDSP as a result of Seller’s failure to so comply.

5. Labeling; Packaging. Seller will label and package the Items in accordance with all applicable federal, state, local and foreign packaging and labeling laws. Seller will package the Items and take all other steps necessary to ensure safe and orderly delivery of the Items. At or before delivery, Seller will provide to SDSP the most recent versions of Safety Data Sheets of materials included in the Items or consumed in performing any services included in the Items.

6. Inspection; Acceptance. SDSP is entitled to inspect, test and approve Items prior to SDSP’s acceptance thereof. SDSP, at its option, may inspect and/or test the Items at SDSP’s facility, off-site, or other point of destination. In no event will payment or transfer of title constitute acceptance of the Items. Acceptance of the Items by SDSP will not relieve Seller from any of its obligations or warranties under these Terms.

7. Changes. Neither party may make changes or additions to the Purchase Order, including scope of work, quantity, price, or delivery method or date, except as provided in Section 8 or by written agreement of the parties in the form of a change order addendum referencing the original Purchase Order number, a subsequent Purchase Order (new number), or a revised Purchase Order (original number with revision identifier).

8. Cancellation. SDSP reserves the right to cancel for convenience all or part of the Purchase Order prior to delivery of Items to SDSP. In the event of a cancellation, SDSP will pay Seller for Items received up to the cancellation notification date, but will have no obligation to pay for Items received after such date or for any cancellation charges or restocking fees.

9. Warranty. Seller warrants to SDSP: (a) Seller has good and marketable title to the Items and the sale thereof to SDSP will be free and clear of any liens, claims, security interests and encumbrances; (b) the Items and all parts thereof will be new, free from defects in design, material and workmanship, and conform to the requirements of the Purchase Order; (c) the Items will comply with all applicable federal, state, local and foreign laws; (d) purchase and use of the Items by SDSP will not infringe upon or violate any patent, trademark, copyright or any other right or interest of any person; and (e) any services included in the Items will be performed in accordance with the Purchase Order and with the skill and care at least equal to the recognized standards prevailing in the industry. With respect to third party manufactured parts, Seller, in addition to the foregoing, will assign to SDSP and assist SDSP in securing the benefit of any warranties provided by such third parties. Used or substituted materials are not permitted unless noted in the Purchase Order or approved by SDSP pursuant to Section 6.

10. Defective Products. If any of the goods or services comprising the Items fail to meet the warranties described in Section 9 (“Defective Items”), Seller will, upon notice from SDSP, promptly replace or correct the Defective Items at Seller’s sole expense, except where such defect is caused by ordinary wear and tear or improper use by SDSP. If Seller fails to promptly replace or correct the Defective Items, Seller will reimburse SDSP for all costs incurred by SDSP to remedy or correct the Defective Items. SDSP’s remedies under this section are in addition to all rights and remedies described in Section 12.

11. Default. In the event: (a) Seller delivers Items which fail to meet the warranties and other requirements of the Purchase Order or these Terms; (b) Seller fails to timely deliver the Items in accordance with the Purchase Order; (c) Seller fails to supply sufficient skilled workers to provide any services comprising the Items; (d) Seller breaches or violates any other representation,

warranty or agreement of Seller under these Terms; (e) a voluntary or involuntary petition in bankruptcy is filed against Seller or Seller becomes insolvent or makes an assignment for the benefit of creditors; (f) Seller is dissolved, liquidated, merged or transfers a substantial part of its assets; or (g) Seller’s financial condition becomes unsatisfactory to SDSP, then SDSP, in addition to all rights or remedies hereunder or at law or in equity, may: (i) cancel all outstanding orders for Items without liability; (ii) recover from Seller all damages arising from or relating to Seller’s default; and (iii) recover attorneys’ fees and costs incurred by SDSP in enforcing these Terms.

12. Indemnity. Seller will defend, indemnify and hold harmless SDSP and its affiliates, officers, directors, employees, agents and assigns from and against any losses, damages, claims, liabilities and expenses, including attorneys’ fees, arising from or related to: (a) the nonconformance of any Items to the requirements of the Purchase Order or these Terms; or (b) Seller’s violation of any of its representations, warranties or obligations under the Purchase Order or these Terms.

13. Insurance. Seller will maintain at its expense commercial general liability insurance providing coverage for SDSP as an additional insured and insuring against liability for injury, damage or loss arising out of allegedly defective or nonconforming Items, including coverage for products-completed operations. Such insurance will be primary to other insurance available to SDSP and will provide coverage in an amount equal to the full amount maintained by Seller in the normal course of Seller’s business (including excess or umbrella liability coverage), but in no event may such combined coverage be less than \$2,000,000 per occurrence.

14. On-Site Services. If the Items include installation or other services to be performed by Seller on the premises of SDSP, Seller will: (a) maintain at its expense, in addition to the insurance described in Section 13, the following insurance listing SDSP as an additional insured: (i) commercial general liability insurance as described in Section 13 and/or excess liability insurance but with combined coverage of at least \$5,000,000 per occurrence, (ii) automobile and/or excess liability insurance with coverage of at least \$5,000,000 per accident, (iii) workers’ compensation insurance as required by applicable law, (iv) if the services involve hazardous materials, environmental impact (pollution) liability insurance with coverage of at least \$1,000,000 per incident, and (v) if the services include professional services, professional liability insurance with coverage of at least \$2,000,000 per wrongful act; (b) comply with all federal, state and local laws concerning employment, wages and hours of employees engaged in the services, including the Occupational Safety and Health Act and the Construction Safety Act, and provide all notices required by applicable law; (c) comply with all safety rules of SDSP and undergo any applicable training and certification; (d) comply with all food safety and quality rules and undergo applicable training and certification; and (e) indemnify, defend and hold harmless SDSP from all damages and costs related to activities of Seller and its employees and contractors on SDSP’s premises.

15. Lien Waivers. Upon the request of SDSP, Seller will furnish to SDSP all lien waivers, affidavits and other documents required to keep SDSP’s premises free from liens arising from the furnishing of any Items by Seller.

16. Confidential Information. Information transmitted by SDSP to Seller in conjunction with SDSP’s purchase of the Items may contain information confidential and proprietary to SDSP. Seller may not use such information except in conjunction with the sale and delivery of the Items and may not disclose such information to any third parties without SDSP’s prior written consent. The obligations set forth in this section are in addition to, and not in derogation of, Seller’s obligations of confidentiality under any other agreement with SDSP.

17. Legal Compliance. Seller will comply with all federal, state, local and foreign laws, regulations and rules governing the production, sale and delivery of the Items, including all environmental laws and regulations and all laws and regulations governing the export or import of the Items. Seller will give all notices required by such laws which apply to the Items.

18. Assignment. The Purchase Order and these Terms will bind and inure to the benefit of SDSP and Seller and their respective successors and assigns. Neither party may assign or delegate any rights or obligations thereunder without the written consent of the other party.

19. Waiver. A party will not be deemed to have waived any of its rights or remedies under these Terms or applicable law unless the waiver is in a writing signed by the other party, and no waiver of a right or remedy will operate as a waiver of such right or remedy on any future occasion.

20. Dispute Resolution. The parties will first attempt to resolve any dispute relating to the Items or the Purchase Order through good faith discussions between party executives holding authority to resolve such matters. If the dispute is not resolved within five days of the commencement of such discussions, either party may proceed with legal action to resolve such dispute.

21. Governing Law; Venue. The laws of the State of South Dakota will govern the Purchase Order and these Terms and any disputes relating thereto. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to any Items sold or purchased hereunder. All disputes will be subject to the exclusive jurisdiction of the state or federal courts for Brookings County, South Dakota, and the parties consent to the exclusive jurisdiction and venue of these courts.

22. Entire Agreement. The Purchase Order and these Terms constitute the entire agreement between Seller and SDSP with regard to the Items and expressly supersede and replace any prior or contemporaneous agreements, written or oral, relating thereto. The Purchase Order and these Terms may not be superseded, cancelled or amended except in a writing signed by SDSP. If any provision of these Terms is determined to be invalid, illegal or unenforceable, such provision will be enforced to the extent possible consistent with the stated intention of the parties and the remaining provisions will remain in full force and effect.