

**TOTALENERGIES PETROCHEMICALS & REFINING USA, LLC**  
**CRAY VALLEY TERMS AND CONDITIONS**

**I.SAFETY AND HEALTH COMMUNICATIONS:**

- I.1 Seller will provide Buyer with Safety Data Sheets for the Product(s) consistent with the Occupational Safety and Health Administration's Hazard Communications standards ("SDS"). Buyer will disseminate to Buyer's employees, contractors, molders, compounders, and other agents (collectively with Buyer, the "Buyer Parties") and customers the SDS and relevant health and safety information, whether the Product(s) is in its original form or subsequently Processed. Buyer will instruct Buyer Parties and customers in the proper and safe use, handling, Processing, storage, and disposal of the Product(s), whether in the Product(s)' original form or in a Processed form. As used herein, "Process", "Processed," and "Processing" shall mean the processing, application, alteration, compounding, blending, molding, mixing, or other uses of the Product(s) or the manufacture, assembly, or fabrication of articles or equipment, in whole or in part, directly or indirectly, from the Product(s), alone or in combination with other materials.

**II.CANADIAN TRANSACTIONS:**

- II.1 Notwithstanding anything to the contrary herein, if any Product(s) are for sale or delivery to Canadian destinations, then the following terms and conditions shall govern:
- II.2 Delivery of Product(s) shall be DDP (INCOTERMS® 2010) with parties intending Seller to act as importer, as applicable, and to deliver and make available Product(s) in Canada to Buyer Parties; title to Product(s), including risk of loss, passes from Seller to Buyer Parties in Canada, on tapping of railcar, or, if delivered by other means, on unloading of delivery vehicle; and, except as set forth in Section II.3 below, Buyer Parties shall be responsible for payment of Canadian sales taxes, including any applicable Division II GST/HST, QST, and any other applicable provincial sales taxes ("Canadian Sales Taxes").
- II.3 In the event Buyer is an unregistered nonresident of Canada, but desires Seller to accept Drop-Shipment Certificates issued by a Buyer Party Canadian resident consignee, so that Seller does not charge Buyer Canadian Sales Taxes, Buyer shall at Seller's request and option enter into or sign Seller's indemnity agreement or such other documents as required by Seller prior to shipment of the Product(s). If Buyer refuses to enter into such indemnity agreements or sign any documentation required by Seller, Buyer shall pay Canadian Sales Taxes.

**III.WARRANTIES**

- III.1 Seller warrants it has good and marketable title to the Product(s) sold to Buyer and that, at the time of delivery, the Product(s) conforms to Seller's specifications for them. **SELLER MAKES NO OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF THE PRODUCT(S) FOR ANY PARTICULAR PURPOSE, EVEN IF THAT PURPOSE IS KNOWN TO SELLER. SELLER MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE SUITABILITY OF THE PRODUCT(S) FOR PROCESSING OR FOR BUYER'S INTENDED USE, PROCESSING, APPLICATION, SALE, OR MARKETING. BUYER IS SOLELY RESPONSIBLE FOR THE SELECTION OF PRODUCT(S) AND THE DETERMINATION OF THE SUITABILITY OF THE PRODUCT(S) FOR PROCESSING, USE, SALE, MARKETING, OR OTHER APPLICATION(S).**
- III.2 Any technical support, application information, advice, or assistance ("Technical Support") that Seller may furnish to Buyer Parties is gratuitous and shall in no way be deemed part of the sale. **SELLER MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY TECHNICAL SUPPORT, ANY PROPRIETARY INFORMATION PROVIDED, OR THE RESULTS THAT MIGHT BE OBTAINED FROM TECHNICAL SUPPORT.**
- III.3 For any claim asserted by Buyer relating to the quantity or specifications of the Product(s) for any reason, Buyer must provide notice, with supporting documentation, to Seller within 15 business days after delivery of Product(s) that is the subject of the claim, or such claim shall be deemed to be barred and to have been waived. Seller's sole and entire liability and Buyer's sole and exclusive remedy for any such claims are limited, at Seller's option, to replacement of nonconforming Product(s) or a credit or reimbursement not to exceed the amount paid to Seller with respect to the Product(s) for which the claim is made.

#### IV. TRANSPORTATION EQUIPMENT

- IV.1 If any seal, gasket, hatch, packaging, or similar item on the delivering transportation equipment is discovered missing, defective, damaged, or tampered with upon delivery to Buyer's designated delivery location, or if the delivering transportation equipment exhibits defects or damage that could affect the quantity, quality, or specifications of the Product(s) delivered, this must be reported both orally and in writing by Buyer Parties to both the delivering carrier and Seller within 24 hours (or earlier if required by the delivering carrier's contract or tariff) of receipt of the delivering transportation equipment and the Product(s). If Buyer fails to comply with this section, Seller reserves the right to deny the claim. Buyer and Seller agree that the notice required herein may be performed by any Buyer Party.
- IV.2 Seller reserves the right to invoice Buyer for demurrage charges incurred if Buyer does not promptly unload and release Seller's delivering transportation equipment for return after the free time allowed by the carrier has expired. Seller also reserves the right to invoice Buyer for any extra switching charges incurred.

#### V. LIABILITIES AND INDEMNITIES

- V.1 Unless otherwise agreed by the parties (i) all sales are CPT Buyer's facilities (INCOTERMS® 2010); and (ii) title to the Product(s) and risk of loss passes from Seller to Buyer when the Product(s) is delivered to the carrier. After title to the Product(s) passes to Buyer, Buyer assumes responsibility for injury, loss, damage, and compliance with federal, state, and local regulations regarding the handling, storage, sale, Processing, use, or misuse of the Product(s), and Seller shall have no liability thereof.
- V.2 Buyer agrees to defend, indemnify, and hold harmless Seller, as well as its joint venturers, their partners, partnerships, joint ventures, joint venture partners, parents, shareholders, subsidiaries, and affiliated companies and their respective employees, officers, directors, and agents (collectively, "Seller Indemnitees") from and against any liabilities, costs, expenses (including court costs, reasonable legal expenses and attorneys' fees), claims, suits, causes of action, judgments, or damages (collectively "Claims") for any injury, disease, or death of persons (including those of Buyer Parties) and/or loss or damage to property (including that of Buyer Parties) caused by, arising out of, in connection with, or as a result of: (i) Buyer's performance or failure to perform hereunder, (ii) Buyer Parties' negligence (whether joint or concurrent), gross negligence, or willful misconduct, (iii) Buyer Parties' handling, storage, use, Processing, application, or resale of the Product(s), or (iv) the end use or application of the Product(s) by Buyer Parties.
- V.3 Provided that Buyer gives prompt written notice to Seller, Seller agrees to (i) defend at its expense and to hold Buyer harmless against any suit founded on a claim that, as of the date hereof, the Product(s) in its original form infringed any U.S. Patent in existence on the date of hereof, and (ii) indemnify Buyer from any such judgments and costs resulting from any such suit. Seller does not agree to defend, indemnify, or to hold Buyer Parties harmless against any suit founded on a claim of infringement of any U.S. Patent covering the Processing, use, or resale of the Product(s).
- V.4 **SELLER'S ENTIRE AND EXCLUSIVE LIABILITY TO BUYER PARTIES FOR ALL LOSSES, INJURIES, OR DAMAGES FROM ANY CAUSE ARISING WITH RESPECT TO THE PRODUCT(S) SOLD BY SELLER SHALL BE LIMITED TO BUYER'S ACTUAL DIRECT DAMAGES NOT TO EXCEED THE PURCHASE PRICE PAID TO SELLER FOR THE PRODUCT(S) RELATED TO THE CLAIM OR CAUSE OF ACTION. IN NO EVENT SHALL SELLER INDEMNITEES BE LIABLE UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING WHETHER BASED UPON NEGLIGENCE, STRICT, OR PRODUCTS LIABILITY, FOR SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS, CAPITAL, OR BUSINESS OPPORTUNITY, OR DOWNTIME COSTS.**

#### VI. FORCE MAJEURE:

- VI.1 Except as to payments hereunder, a party shall have no liability for delay in performance or non-performance (in whole or in part) arising out of causes beyond its control, including but not limited to compliance in good faith with any applicable foreign or domestic governmental regulation, request, or order whether or not it later proves to be unenforceable or void; fire; Act of God, hurricane, tornado, or flood; accident; riot, war, sabotage, or act of public enemy or terrorism; strike or labor shortage or trouble; breakdown, shutdown, loss or failure of or damage to facilities, machinery, equipment, or transportation means; embargo; failure or shortage of or inability to obtain materials, raw materials, feedstocks, energy, equipment, labor, or transportation normally available from the usual source of supply; inability of Seller to

obtain materials, raw materials, feedstocks, energy, equipment, labor, or transportation at a commercially reasonable price and/or upon commercially reasonable terms; or Seller incurring increased costs for compliance with environmental protection, health or safety regulations. To be so excused the party affected shall provide the other party written notice of the nature and anticipated duration of the force majeure event as soon as practicable. If any of such circumstances affect only a part of Seller's capacity to perform, Seller shall have the right to allocate production and deliveries among all of its customers and its own requirements in a manner and at such times as Seller may determine to be fair and equitable. The affected party may omit purchases or deliveries during the force majeure period and the contract volume shall be reduced by the quantities so omitted. In no event shall Seller be required to purchase products, raw materials, feedstocks, energy or materials from others or a different source in order to deliver Product(s) to Buyer.

## **VII.PRICES, CREDIT, AND PAYMENT TERMS**

- VII.1 Prices are exclusive of all taxes, excises, or other charges, imposed by any local, state or federal authority ("Taxes"). Any such Taxes shall be paid by Buyer. Buyer further agrees to defend and indemnify Seller against any and all liabilities for Taxes, as well as any legal fees or costs incurred by Seller in connection therewith.
- VII.2 Buyer shall pay all invoices in full according to the payment terms agreed between the parties, without set-off or deductions.
- VII.3 Any credit limit available to Buyer is at the sole discretion and determination of Seller. Notwithstanding any contrary agreement between the parties, if in Seller's sole judgment the Buyer's financial responsibility or status becomes unsatisfactory, upon written notice to Buyer, Seller reserves the right to take any of the following actions, without any further liability, penalty, or cost to Seller: (i) offset or deduct any amounts due to Buyer from Seller; and/or (ii) require financial security from Buyer; and/or (iii) change the payment terms (including requiring cash payments and/or payments in advance); and/or (iv) stop shipments; and/or (v) change Buyer's available credit limit; and/or (vi) terminate any agreement under which the Product(s) is sold to Buyer.
- VII.4 Notwithstanding Section XII.7 below, if Seller is required to institute proceedings to collect any sum due and owing by Buyer, Buyer shall reimburse Seller for all amounts owing hereunder, and the collection costs, costs of court, and reasonable attorneys' fees incurred by Seller.

## **VIII.U.S. CUSTOMS AND BORDER PROTECTION / BUREAU OF INDUSTRY AND SECURITY**

- VIII.1 The parties shall comply with all applicable law, rules, regulations, and ordinances to such party regarding the transactions contemplated herein.
- VIII.2 Except as related to Canadian transactions described in Section II or as otherwise expressly agreed upon by Seller, if the Product(s) purchased by a U.S. Buyer is to be exported from the United States by Buyer Parties, Buyer shall be the "Exporter of Record" as that term is used by U.S. Customs and Border Protection ("CBP") or the Bureau of Industry and Security ("BIS"), or any other successor governmental agency, and Buyer shall comply with all rules and regulations (including those related to reporting, filing and record keeping) of CBP and/or BIS. If the Product(s) purchased by a non-U.S. Buyer in the United States are to be exported from the United States by Buyer Parties, Seller shall be the "Exporter of Record" as that term is used by CBP or BIS, or any other successor governmental agency, and Seller shall comply with all rules and regulations (including those related to reporting, filing and record keeping) of CBP and/or BIS.
- VIII.3 **BUYER EXPRESSLY ACKNOWLEDGES, UNDERSTANDS, AND AGREES THAT ANY POLYBUTADIENE RESIN AND ANY TECHNICAL DATA RELATED TO SUCH POLYBUTADIENE RESIN ARE EXPORT CONTROLLED BY THE U.S. GOVERNMENT. EXPORTATION/ INTERNATIONAL SHIPMENTS OF THIS PRODUCT ARE SUBJECT TO LICENSING BY THE U.S. GOVERNMENT. EXPORT, REEXPORT, OR OTHER DIVERSION, EITHER IN THE ORIGINAL PRODUCT FORM OR AFTER BEING INCORPORATED IN AN INTERMEDIATE PROCESS INTO OTHER END-ITEMS, IS STRICTLY PROHIBITED UNLESS EXPRESSLY AUTHORIZED BY THE COMPETENT AGENCY OF THE U.S. GOVERNMENT. IF BUYER PLANS TO EXPORT OR RE-EXPORT THIS PRODUCT IN SOME FORM, OR SELL THE PRODUCT FOR EXPORT OR RE-EXPORT, BUYER SHALL CONTACT SELLER PRIOR TO SUCH EXPORT OR RE-EXPORT FOR FURTHER HANDLING AND LICENSING INSTRUCTIONS.**

## **IX.CONFIDENTIALITY:**

- IX.1 Buyer shall not disclose, release, or publish to any third party, whether orally or in writing, any terms and conditions, discussions, or negotiations between the parties related to the sale of the Product(s), or any confidential and/or proprietary information disclosed or ascertained from Seller arising from, resulting out of, or in connection with the sale of the Product(s), without Seller's prior written consent.

## **X.NOTICE TO SELLER:**

- X.1 Unless otherwise specifically agreed in writing by the parties, notices required or permitted to be given to Seller shall be deemed sufficient only if given in writing and delivered (i) in person, or (ii) by reputable courier service to the following address or such address as Seller may in the future provide to Buyer:

TotalEnergies Petrochemicals & Refining USA, Inc.  
1201 Louisiana Street, Suite 1800  
Houston, Texas 77002  
Attention: Sales Manager

WITH COPY TO: Legal Department  
TotalEnergies Petrochemicals & Refining USA, Inc.  
1201 Louisiana Street, Suite 1800  
Houston, Texas 77002

Electronic messages shall not be deemed adequate to provide notice to Seller. Except as otherwise provided herein, notice is deemed effective upon Seller's receipt.

## **XI.TERMINATION**

- XI.1 Either party may immediately terminate this Agreement at any time for cause upon breach of any material obligation under this Agreement by the other party, provided that such breach has continued unabated for a period of 60 days after written notice thereof has been given.
- XI.2 Either party may stop shipments or terminate this Agreement immediately upon written notice to the other in the event the other party (i) files any petition under the bankruptcy laws of any governmental authority, (ii) has filed against it any such petition which is not dismissed or otherwise resolved in such party's favor within 60 days of filing, (iii) makes any general assignment for the benefit of creditors, (iv) commences any winding-up or liquidation process, (v) applies for or is subject to the appointment of any receiver, (vi) fails or becomes unable to generally pay its debts when they become due, (vii) ceases to function as a going concern or to conduct its business operations in the ordinary course, or (viii) takes any action to accomplish any of the foregoing.
- XI.3 It is expressly understood and agreed that the provisions of Sections I, III, IV, V, VIII, IX, X, and XII herein will survive the expiration, cancellation, or termination of this Agreement.

## **XII.OTHER**

- XII.1 This Agreement may not be amended or modified except by written instrument executed by both parties.
- XII.2 Buyer shall not assign or transfer this Agreement without the prior written consent of Seller. For purposes of this Agreement, a reverse merger or similar change of control or ownership is considered an assignment. Any attempted assignment or transfer without consent shall be void. This Agreement shall be binding upon Buyer's permitted successors and assigns.
- XII.3 If any provision of this Agreement violates any applicable laws, or rule, order or regulation, Seller shall have the right, upon notice to Buyer, to cancel such provision, without affecting the other provisions of this Agreement, or to cancel this Agreement in its entirety.
- XII.4 Each of the provisions contained in this Agreement shall be deemed to be distinct and severable terms so that if one or more of such provisions should be or become void or unenforceable, then the other provisions shall continue in full force and effect.
- XII.5 No waiver by either party of any obligation, performance, or breach hereunder or of its failure to enforce any of the provisions of this Agreement shall limit or waive the right of such party to enforce this Agreement and compel strict compliance with each and every provision.
- XII.6 Any action against Seller must be brought within one (1) year after the cause of action accrues. This Agreement shall be governed and construed in accordance with the laws of the State of Texas, without consideration to any choice of law principles. THE PARTIES AGREE TO THE EXCLUSIVE JURISDICTION AND VENUE OF THE STATE AND FEDERAL COURTS LOCATED IN HARRIS COUNTY, TEXAS FOR ANY DISPUTE ARISING IN ANY WAY FROM OR UNDER THIS AGREEMENT. WITHOUT LIMITING THE FOREGOING IN ANY WAY, THE UNITED NATIONS CONVENTION ON

CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS, AND THE UNIDROIT PRINCIPLES OF INTERNATIONAL COMMERCIAL CONTRACTS SHALL NOT APPLY TO THIS AGREEMENT.

- XII.7 In the event of a dispute between the parties arising out of this Agreement, the prevailing party in the resolution of such dispute shall be entitled to full recovery of all attorneys' fees (including a reasonable hourly fee for in-house legal counsel), costs, and expenses incurred in connection therewith, including costs of court, against the non-prevailing party.
- XII.8 This Agreement constitutes the entire contract for the sale and purchase of the Product(s) between the parties and supersedes any prior or contemporaneous agreements and understandings, whether oral or written, with regard to the subject matter. The terms and conditions of this Agreement will govern and prevail over any purchase orders, shipping orders, delivery orders, e-commerce or electronic terms and conditions, or other writing between the parties ("documents") and such documents will be void.

The terms of this Addendum A are incorporated into the Agreement with Buyer.