



Terms & Conditions of Sale

These terms apply where Blue Sky Bio-Fuels ("Seller") sells Product to a customer ("Buyer").

- 1) **Purchase and Sale** - Buyer agrees to buy and receive and Seller agrees to sell and deliver Product in accordance with these terms and conditions of sale. These terms and conditions of sale apply to all sales of Product between Buyer and Seller notwithstanding any different or additional terms appearing on any document associated with any individual sale or Delivery, including without limitation Buyer's purchase order, unless Buyer and Seller shall each have approved such different or additional terms in writing. All CO₂ credits from the sale of this product accrue to Blue Sky Bio-Fuels.
- 2) **Product** - The Product will be Biodiesel fuel. Unless otherwise stated by Seller in writing, Product will conform to the then current ASTM D 675 [standard at Delivery ("Conforming Product"). With each Delivery and, upon request, Seller will provide the relevant Certificate of Analysis.
- 3) **Delivery** - Delivery occurs when the Product passes the end of Seller's hose or pipe into Buyer's truck or tank car at Seller's facility at 851 49th Ave. Oakland, CA 94601 ("Delivery") Buyer bears the cost of transportation from the point of Delivery. Title and risk of loss pass at Delivery. It is expressly understood and agreed by the parties that the passage of title and risk of loss as set forth above is not conditioned upon the delivery or receipt of Bills of Lading or meter tickets.
- 4) **Ordering Procedure** - Buyer will place orders for Product for Delivery during Seller's regular business hours at least six (6) hours in advance of the expected time of Delivery, and at all other times at least twenty-four (24) hours in advance. Seller will be under no obligation to sell and deliver Product pursuant to such orders in the absence of Seller's fax or email acceptance of the order.
- 5) **Price and Payment** - The Price for each Delivery will be as agreed between the parties in accordance with Section 4. Buyer will pay the Price within five (5) days of invoice date without deduction or setoff via Electronic Funds Transfer (EFT)* Seller will issue the invoice on or after the date of Delivery. If Buyer fails to pay any invoice in accordance with its terms, Seller may charge interest on unpaid amounts at the rate of eighteen percent (18%) per annum until paid in full. Interest shall be calculated from the date that the amount becomes overdue, regardless of whether Seller has made demand for payment from the Buyer. In addition to other incidental costs, Buyer shall reimburse Seller costs of collection if any are incurred, including without limitation costs of suit and reasonable attorney fees.
- 6) **Taxes** - Buyer shall pay, in addition to applicable prices hereunder, any and all applicable taxes, duties, imposts or other charges imposed by any governmental or regulatory authority or agency in connection with the sale of the Products to the Buyer (excluding any taxes on the income of Seller). Failure of Seller to add any such tax, fee or charge to the invoice shall not relieve Buyer from liability therefore. Buyer shall reimburse Seller for any interest and/or penalty assessed by any governmental or regulatory authority or agency when the penalty and/or interest is assessed as the result of false, incorrect or delinquent certification(s) made to Seller by Buyer. In the event Buyer seeks to claim any tax exemption status in connection with its purchases hereunder, Buyer shall provide to Seller all proper exemption certificates prior to Delivery. All CO₂ credits from the sale of Product accrue to Seller.
- 7) **Obligations of Buyer** - Buyer will not alter Product except to mix it with diesel fuel oils of the types specified in the then current ASTM 6751 and D975. Buyer will use a blending method that insures uniform mixing of Product with such diesel fuel oils. Buyer is solely responsible for determining the proportions in which Product and such diesel fuel oils are mixed and is solely responsible for assuring that the resulting mixture will conform to any applicable standards and with any applicable obligations to Buyer's customers or end users as the case may be. Buyer hereby indemnifies Seller against claims of third parties arising out of Buyer's failure to conform to its obligations under this paragraph unless caused by Seller's gross negligence or willful misconduct.
- 8) **Measurement** - Seller shall read its meters at the time Product is loaded into Buyer's tank trucks/tank cars to determine volume(s) for each Delivery of Product. If meters are not available at or near the loading point, the driver/tank car loader shall innage/ullage each tank truck and/or tank car immediately before and immediately after Delivery of the Products to determine the volume(s) of Products delivered. These innages/ullages shall be converted to net delivered gallons based on each tank truck's/tank car's official calibration tables.
- 9) **Demurrage** - Buyer is responsible for all demurrage and detention incurred on Buyer's rail tank cars or tracks at Seller's facility.
- 10) **Warranty** - Seller warrants that it has the right to dispose of all Product sold and transferred under these Terms and Conditions, and that the Product delivered hereunder shall conform to the specifications and descriptions contained in these Terms and Conditions and that such Products will be delivered to Buyer free from all lawful security interests, liens and adverse claims including taxes and royalties created by, through, or under Seller. **THE ABOVE IS SELLER'S ONLY WARRANTY CONCERNING THE PRODUCTS AND THIS AGREEMENT, AND IS MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, CONDITIONS AND REPRESENTATIONS, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, EVEN IF SUCH PURPOSES ARE KNOWN TO SELLER.**
- 11) **Quality Claims** - If Product does not conform to Seller's warranty, Buyer's sole remedy shall be, at Seller's sole election, either a) the rescission of the contract for the Delivery concerned and refund of the purchase price, or b) replacement of the nonconforming Product with conforming Product delivered to Buyer at Seller's facility at 851 49th Ave. Oakland, CA 94601. In either case, Buyer will promptly deliver the non-conforming Product to Seller at Seller's facility at 851 49th Ave. Oakland, CA 94601, bearing all costs including without limitation the cost of carriage and the risk of loss until the Product passes the end of Seller's hose. Seller shall have no obligation under this paragraph unless a) Buyer shall give written notice specifying the nonconformity within twenty-four (24) hours of discovery of such nonconformity, which notice shall be received by Seller within 5 days of Delivery and b) Buyer shall have returned a sample of the allegedly nonconforming Product to Seller, and c) Seller shall have conducted such tests either through its own laboratory or through an independent laboratory or testing service of Seller's choice as may be necessary to confirm or reject the Buyer's claim of nonconformity. If the alleged nonconforming Product is found to have been nonconforming before original Delivery to Buyer, Seller shall pay for such tests. If the alleged nonconforming Product is found to have become nonconforming after original Delivery to Buyer, Buyer shall pay for such test and Buyer agrees that it will have waived its rights to make or pursue any claims for nonconformance.
- 12) **LIMITATION OF LIABILITY** - EXCEPT AS OTHERWISE PROVIDED IN THESE GENERAL TERMS AND CONDITIONS, NEITHER PARTY SHALL BE LIABLE FOR INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OR LOST PROFITS ARISING FROM BREACH OF CONTRACT, BREACH OF WARRANTY, TORT OR OTHERWISE. Seller's liability with respect to this Agreement, any Products delivered hereunder, or any action relating to the same (whether in contract, equity, tort, or otherwise) shall be limited to, and shall not exceed, the amount paid by Buyer for the applicable Products hereunder. Any action to enforce rights or obligations under this Agreement must be commenced against the other party no later than one (1) year after the date that the complaining party had actual or constructive knowledge of the events giving rise to the alleged breach of this Agreement.
- 13) **Delegation** - Neither party may delegate the performance of its obligations under this contract without the prior written consent of the other

- 14) Waiver and Amendment - Neither express waiver of breach in one or more cases nor course of dealing constitute a waiver in general, and no such waiver or waivers or course of dealing effects an amendment of these general terms and conditions of sale. These general terms and conditions of sale may be amended solely in writing signed by the party to be charged.
- 15) No Agency - This Agreement does not constitute either party the agent of the other for any purpose.
- 16) Notices - Notices required or permitted to be given under these general terms and conditions shall be validly given if in a writing delivered by hand, by courier service, by fax, by mail, postage prepaid, or by email, in each case addressed as the other party shall have specified for such purpose.
- 17) Force Majeure - If either party is rendered unable by force majeure, or any other cause of any kind not reasonably within its control, wholly or in part, to perform or comply with any obligation or condition of this Agreement, upon such party's giving timely notice and reasonably full particulars to the other party such obligation or condition shall be suspended during the continuance of the inability so caused and such party shall be relieved of liability and shall suffer no prejudice for failure to perform the same during such period provided obligations to make payments then due for Product delivered hereunder shall not be suspended. The party having the difficulty shall notify the other party of any change in circumstances giving rise to the suspension of its performance and of its resumption of performance under this Agreement. The term "force majeure" shall include, without limitation by the following enumeration, Acts of God, war, terrorism, the elements, fire, accidents, breakdowns, strikes, lockouts, differences with workmen, and any other industrial, civil or public disturbance, inability to obtain supplies, or any act or omission beyond the control of the party having the difficulty, and any restrictions or restraints imposed by laws, orders, rules, regulations or acts of any government or governmental body or authority, civil or military. The party subject to such difficulty may apportion deliveries among its customers in accordance with law.
- 18) Severability - If any portion of these terms and conditions is determined by a court to be void or voidable, the remaining portions of these terms and conditions will remain in effect.
- 19) Entire Agreement - Except for such communications as may pass between the parties by fax or email concerning the price, quantity or time of Delivery of any particular order, these terms and conditions of sale constitute the entire agreement of the parties concerning the purchase and sale of Product. All prior promises, agreements or warranties, express or implied, written or oral, are merged herein and superseded.
- 20) Set-Off - If any amount payable by Buyer hereunder is not paid as and when due, Buyer authorizes Seller to proceed without prior notice by way of set-off, counterclaim or otherwise against any assets of Buyer that may at any time be in the possession of Seller, including without limitation against any amounts owing from Seller to Buyer
- 21) Applicable Law - The laws of the State of California apply.
- 22) Disputes - The parties hereby submit to the jurisdiction of the Superior Court of Alameda County, California for the resolution of all disputes arising out of or relating to the purchase and sale of Product, and to venue in such court.

* first delivery will be C.O.D

Accepted and agreed:

Blue Sky Bio-Fuels

[Buyer] _____

By: Patrick MacIntyre

By: _____

Date:

Date: _____