

**FLINT HILLS RESOURCES CANADA, LP**  
**GENERAL TERMS AND CONDITIONS**

**1. GENERAL:**

These General Terms and Conditions shall be applicable to all contracts and the performance of contracts for Crude Purchases, Sales and Lease Crude Purchases by Flint Hills Resources Canada, LP ("FHR") of crude oil, condensate, or other applicable liquid substance (all hereinafter referred to as "Crude Oil"), whether such terms and conditions are specifically incorporated into the Crude Purchase, Sale or Lease Crude Purchase contracts or not, except to the extent that differing terms are specifically otherwise agreed between the parties. All references made herein to the term "this Agreement" shall mean the agreement to which these General Terms and Conditions are attached.

**2. MEASUREMENT:**

The quantity of Crude Oil delivered hereunder shall be determined by use of 100% tank tables, or mutually acceptable automatic measuring equipment, with volume adjusted to 15° Celsius and full deduction for basic sediment and water (BS&W) in accordance with applicable law and good industry standards. The applicable pipeline carrier's records shall be determinative of quantity delivered hereunder.

**3. CONVERSION FACTORS:**

The following conversion factors will be used: Volume: 6.2898105 bbls/m<sup>3</sup>; Currency: based on the 5 decimal WM/Reuters published monthly average rate which excludes the Bank of Canada Holidays for the applicable month.

**4. RATABILITY:**

Delivery of Crude Oil hereunder in any particular calendar month shall be presumed to be made in equal quantities every day of such calendar month unless otherwise agreed to by the Parties.

**5. QUALITY:**

Prior to acceptance of the Crude Oil by the Buyer, Seller shall ensure that the Crude Oil shall contain no more than such percentage of BS&W or other impurities as the Buyer or the applicable pipeline carrier or other transporter receiving the Crude Oil on behalf of the Buyer may from time to time prescribe. Seller shall ensure that any condensate sold hereunder, whether whole or as part of a blend, will meet the current specifications for entry into the CRW pool, as defined by Enbridge Pipelines Inc. tariff.

**6. PAYMENT:**

Payment for all Crude Oil accepted by the Buyer in any calendar month shall be made to the Seller, or as directed by the Seller, on the 25th day of the month following Buyer's acceptance of such Crude Oil with the following exceptions:

If the date for payment of any monies owing under this Agreement falls on a Saturday or on December 25th, then the payment shall be due on the first previous day on which the Royal Bank of Canada is open for regular business. If the date for payment falls on a Sunday or on a day which the Royal Bank of Canada is closed for regular business other than December 25th, then the payment shall be due on the next day on which the Royal Bank of Canada is open for regular business.

Each party warrants and represents that any payment instructions given and any payments made by such party pursuant to this Agreement will comply with all applicable laws, rules and regulations, including without limitation any tax and currency regulations of any country whose laws may govern a party or the transaction in whole or in part, and that payment pursuant to such instructions will not create any liability for the paying party under such laws. Each party further warrants and represents that it has all necessary authorities, licenses and approvals to make such payments and/or give such payment instructions. Each party further warrants and represents that any bank account designated by it for receipt of payments hereunder represents an official, authorized account of such party, and that any payment instructions issued pursuant to this Agreement will have been duly authorized by such party in good faith. Each party agrees to provide such further assurances and documentation as may be reasonably requested by the other party with regard to the matters covered in this paragraph.

Notwithstanding the foregoing, the Buyer may, in the event of any dispute, claim, or litigation involving title to the Crude Oil or relating to payment for the Crude Oil or a right to receive royalties, retain the purchase price of the Crude Oil without any obligation to pay interest on the amount so withheld until indemnity satisfactory to the Buyer shall have been furnished to Buyer or until the dispute as to the ownership of the Crude Oil is settled, whichever is the sooner.

**7. CREDIT:**

If sufficient credit for this and other pending transactions has not been established with the Seller's credit department, Seller shall have the option of requiring security in the form of a prepayment or an irrevocable bank letter of credit. The letter of credit must be opened in a format and on a bank acceptable to the Seller. Acceptable security shall be by prepayment two- (2)

banking days prior to product movement or receipt of a standby irrevocable bank letter of credit three (3) banking days prior to product movement. In the event the above requirements are not reasonably satisfied within specified time limits, Seller shall have the option of canceling this Agreement and/or proceeding against Buyer for damages occasioned by Buyer's failure to perform.

#### **8. WARRANTY/TITLE; RISK OF LOSS:**

Seller warrants title to all Crude Oil sold and transferred hereunder, and that it has the exclusive right to sell and deliver all Crude Oil sold and transferred hereunder. Seller additionally warrants that it has the exclusive right to receive payment in full for all Crude Oil sold and transferred hereunder on behalf of itself and others. Upon request of the Buyer, Seller agrees to submit to the Buyer documentation proving Seller's title or right in the Crude Oil. Seller agrees to indemnify and defend the receiving party from any loss, claim or demand of any nature by reason of any breach of this warranty of title. Title to the Crude Oil and all risk of loss shall be transferred as the product passes the flange connecting the designated delivering apparatus.

#### **9. CLAIMS:**

Claims as to shortage in quantity, defects in quality, or any others, except for demurrage or shifting, shall be made by written notice to the other party within sixty (60) days after the delivery in question or shall be deemed to have been waived.

#### **10. ATTORNEY'S FEES:**

The Prevailing Party shall be entitled to full reimbursement from the other Party of its reasonable attorney's fees and related reasonable costs/expenses (including expert witness fees, costs and expenses) for any cause of action, claim or dispute arising out of or relating to this Agreement as to which such Prevailing Party prevails, whether in a court of law, administrative proceeding, or through any form of dispute resolution.

#### **11. APPORTIONMENT/CARRIER RESTRICTIONS:**

Volumes of Crude Oil delivered hereunder are subject to apportionment and other volume restrictions on the applicable carriers. Should said carriers place any volume restrictions on Crude Oil, or should said carriers be required to apportion their facilities, the quantity of Crude Oil required to be accepted under the terms of this Agreement shall be proportionately reduced. Neither Party shall be liable to the other for damages arising from said apportionment or volume restriction.

#### **12. TAXES:**

(a) Prior to the time of delivery hereunder the Buyer shall furnish the Seller with the appropriate tax exemption certificates with respect to all federal, provincial or local taxes, tax surcharges, levies, duties, fees, imposts and the like (herein collectively referred to as "taxes") for which the Buyer is permitted or required by applicable law to claim exemption. In the event that the Buyer does not furnish the Seller with such exemption certificates as aforesaid then the Buyer shall be responsible for and shall pay to the Seller at the time any payment hereunder is or becomes due, the full amount of any such "taxes" imposed on, with respect to or which are measured by the product delivered hereunder, the transaction as between the parties hereto or the manufacture, storage, delivery, receipt, purchase, sale, exchange, use or inspection of the product.

(b) In the event that the transaction is "ex-duty" or "inside-duty" the payment of superfund charges, oil spill taxes and similar charges shall be controlled by this Agreement's specific terms.

(c) The Buyer shall be responsible for and shall indemnify the Seller, its supplier and/or the owners of any bonded premises from which the product is dispatched, in respect of any existing or future duties, taxes, tariffs, fees or charges whatsoever (including but not limited to all federal Goods & Services Tax and/or Value Added Tax, governmental charges imposed in the country of origin and such taxes, duties, imposts, fees and charges imposed or levied by any governmental, local or port authority such as excise duty or mineral oil tax) arising at or after delivery in connection with the product, its sale, delivery, import, export or use.

(d) The Seller shall be responsible for and shall indemnify the Buyer in respect of any existing or future duties, taxes, tariffs, fees or charges whatsoever (including but not limited to all of the following taxes or charges: production, severance, federal superfund, oil spill or pollution, and those imposed by a government in the country of origin) arising prior to delivery in connection with the product or its sale, delivery, import or export.

#### **13. FORCE MAJEURE:**

In the event of the occurrence of a Force Majeure event that prevents or delays performance hereunder, the party or parties whose performance is thereby prevented or delayed (the "declaring party") shall, unless otherwise provided below, be relieved of any obligation or liability under the terms of this Agreement, to the extent that such obligation or liability cannot be met because of such force majeure event, until the expiration of a reasonable time after termination of such disability. "Force Majeure" means an event which is beyond the control of the party that prevents or delays the party from performing its obligations under this Agreement. The following include, but are not limited to, instances that will be recognized as force majeure events hereunder: earthquakes; floods; landslides; civil disturbances; sabotage; acts of public enemies; war; blockades; insurrections; riots; epidemics; the act of any government or other authority or statutory undertaking; the inability to obtain or the curtailment of electric power, water or fuel; strikes, lockouts or other labor disruptions; fires; explosions;

breakdowns or failure of pipe, plant, machinery or equipment; and contamination or poisoning of catalyst and/or solvent or biological treatment facilities. For greater certainty, a lack of funds, the availability of a more attractive market, or Buyer's inability to purchase crude oil do not constitute events of force majeure. The declaring party agrees to notify the other party (the "non-declaring party") of the occurrence of the force majeure event within a reasonable time after the occurrence of the force majeure event. Such notice shall include all reasonable full particulars regarding such force majeure event. Notwithstanding the foregoing, if a force majeure event delays performance for a period of 30 days or more, the non-declaring party shall have the right to terminate this Agreement effective upon providing notice to the declaring party. In no event under this provision shall either party suspend its obligations to make payments then due for products delivered under this Agreement.

#### **14. NON-PERFORMANCE PENALTY:**

The Parties acknowledge that the Buyer will be shipping the Crude Oil subject to applicable carriers' tariffs, and agree this Agreement is subject to said tariffs and the Force Majeure events defined therein ("Carrier Force Majeure"). In the event that the Seller is unable to deliver required quantities of Crude Oil hereunder to Buyer ("Failure to Deliver") and such failure is excused by a Carrier Force Majeure event, Seller shall notify Buyer such that Buyer is able to comply with the applicable tariff. Seller shall notify Buyer of any reduced deliveries in sufficient time such that Buyer can meet the nomination deadlines of the applicable carrier. Notwithstanding anything herein, if Buyer incurs a non-performance penalty ("Penalty") due to a) Seller's Failure to Deliver and such failure is not excused by a Carrier Force Majeure; and/or b) Seller's failure to give notice to Buyer such that Buyer is unable to comply with the applicable tariff, Seller shall be liable for and indemnify and save Buyer harmless from the Penalty and any and all litigation, dispute, claim or demand whatsoever with respect to the Penalty. Buyer shall have the right to set off the Seller's portion of the Penalty, if any, against future payments owing by Buyer to Seller.

#### **15. LIMITED LIABILITY:**

In no event shall either party be liable to the other party for indirect, incidental or consequential damages or for specific performance under this Agreement.

#### **16. INDEMNITY:**

As between the Parties, Seller will have control and possession of the Crude Oil and be responsible for all damages or injury occurring before the point of delivery, and Buyer will have possession and control of the Crude Oil and be responsible for all damages or injury occurring while such Crude Oil is in Buyer's possession. Each Party is liable to and agrees to indemnify and save harmless the other Party against any costs or claims arising while the Crude Oil is in the indemnifying party's control and possession, unless same is due to the other party's acts or omission. In addition, Seller will defend, indemnify, and save harmless the Buyer from and against all costs or claims, and all loss or damage incurred by the Buyer by reason of, arising out of, or in any way connected with any adverse claims to the title to or ownership of the Crude Oil sold and transferred hereunder, and from any failure by Seller to meet the required quality standards for the Crude Oil as set forth herein.

#### **17. HEALTH, SAFETY AND THE ENVIRONMENT:**

Buyer shall provide its employees, agents, contractors, customers, and other persons who handle or to whom it supplies the product(s) delivered hereunder with either a copy of the Seller's current Material Safety Data Sheet or a comparable Material Safety Data Sheet developed by Buyer ("MSDS"), and any other information relating to health, safety and environmental data provided by the Seller from time to time in connection with the product(s) delivered hereunder, or comparable other information developed by Buyer ("the other information"). Buyer shall be responsible for any consequences that result from the use of a MSDS or other information different from that provided by Seller.

Buyer shall provide persons responsible for the management of health, safety and environment matters within its own organization with a copy of the MSDS and other information as provided or developed. Buyer shall provide its employees with appropriate information and training to enable them to handle and use the product(s) delivered hereunder in a manner which does not endanger their health or safety. The receiving party shall be responsible for ensuring that any obligations, requirements or recommendations in respect to health, safety and the environment relating to the product(s) delivered hereunder are complied with under the laws, statutes, regulations or directives in force in or applying to territories, states or other jurisdictions in which the receiving party handles or uses the product(s) delivered hereunder. Seller shall not be responsible in any respect whatsoever for any loss, damage or injury resulting from any hazards inherent in the nature of the product(s) delivered hereunder.

#### **18. DEFAULT:**

(a) Notwithstanding any other provision herein, the following shall each constitute an event of default: a party or, if the obligations of a party are guaranteed by another party whether under this Agreement or otherwise, the guarantor of such party (each or either a "non-performing party") shall (i) default in the payment or performance of any material obligation to the other party (the "performing party") under this Agreement or any other contract, and such default shall continue for three business days after notice of such default to the non-performing party; (ii) file a petition or otherwise commence or authorize the commencement of a proceeding or case under any bankruptcy, reorganization, or similar law for the protection of

creditors or have any such petition filed or proceeding commenced against it; (iii) otherwise become bankrupt or insolvent (however evidenced); (iv) be unable to pay its debts as they fall due by acceleration or otherwise; (v) merge or become consolidated with any other entity or transfer, by any means, all or substantially all of its assets to another entity and the creditworthiness of the resulting, surviving or transferee entity is materially weaker than that of the non-performing party immediately prior to such action as reasonably determined by the performing party; (vi) fails to give adequate security for, or assurance of, its ability to perform its obligations under this Agreement or under any other contract within two business days of a reasonable request therefor from the performing party; or (vii) disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of the guaranty issued by the guarantor.

(b) Upon the occurrence of an event of default described above, the performing party shall, in addition to all other rights and remedies available to the performing party, have the right to immediately liquidate this transaction by notice in writing to the non-performing party. In the case of an event of default described in subsections (a)(ii) through (a)(vii) above, the performing party and its affiliates shall, in their sole discretion, have the further right to liquidate any other outstanding transaction between any of them and the non-performing party by notice in writing to the non-performing party.

(c) The performing party and its affiliates shall determine their respective aggregate gains or losses resulting from the liquidation of any transactions by calculating the difference, if any, between the price specified in each liquidated transaction and the market price for the relevant product on the date of liquidation. The performing party and its affiliates shall notify the non-performing party of the amount of any aggregate loss incurred by them in connection with the liquidation of any transactions. The non-performing party shall pay such amount to the performing party and its affiliates in full within five business days of such notice being given, which amount shall bear interest at the prime rate as listed in the Wall Street Journal, plus two (2) percentage points from the date of termination.

(d) The performing party and its affiliates may, in their sole discretion, aggregate, net and set off amounts which they owe to the non-performing party against any amounts which the non-performing party owes one or more of them under any liquidated transaction or otherwise, whether or not then due, so that all such amounts are aggregated and netted to a single liquidated amount (the "net liquidation payment"). For the purpose of any such calculation, the performing party may convert amounts denominated in any other currency into the performing party's price currency at such rate prevailing at the time of the calculation as it shall reasonably select. If the calculation of the net liquidation payment does not result in a net loss to the performing party and its affiliates, the liquidation payment shall be zero. The performing party and its affiliates shall notify the non-performing party of the amount of any net liquidation payment. The non-performing party shall pay such amount to the performing party and its affiliates in full within five business days of such notice being given, which amount shall bear interest at the prime rate as listed in the Wall Street Journal, plus two (2) percentage points from the date of termination.

(e) The non-performing party shall further indemnify and hold the performing party and its affiliates harmless from any other losses, damages, costs and expenses including reasonable attorneys fees, incurred in connection with an event of default, termination, or exercise of any remedies hereunder.

(f) Notwithstanding any provision herein to the contrary, the performing party and its affiliates shall not be required to pay to the non-performing party any amount due under this Agreement until the performing party and its affiliates receive confirmation satisfactory to them, in their reasonable discretion, that all obligations of any kind whatsoever of the non-performing party to make any payments to them under this Agreement or any other contract have been or will be fully and finally performed; nor shall the performing party or its affiliates be required to compensate the non-performing party for any losses incurred by the non-performing party in connection with a default or termination hereunder.

(g) The parties acknowledge and agree that this Agreement constitutes a "forward contract," each party is a "forward contract merchant," and each payment hereunder constitutes a "transfer" or a "settlement payment" for the purposes of the U.S. Bankruptcy Code, with all attendant protections and benefits. The Parties further agree that this Agreement constitutes an "eligible financial contract" for the purpose of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, the *Winding-up and Restructuring Act*, R.S.C. 1985, c. W-11, as amended, and the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended.

(h) The performing party's rights under this provision shall be in addition to, and not in limitation or exclusion of, any other rights which the performing party may have (whether by agreement, operation of law or otherwise), including any right and remedies under the applicable law.

## 19. NOTICES:

Any notice permitted or required to be given under this Agreement shall be in writing and properly addressed to the Party receiving such notice as set forth on the attached of these General Provisions. Any such notice may be delivered, mailed or sent via telecommunication. Either the Seller or the Buyer may from time to time change its address for service hereunder on written notice to the other party.

## 20. MISCELLANEOUS PROVISIONS:

(a) **Assignment.** Neither party shall assign the whole or any part of its rights and obligations hereunder directly or indirectly without the prior written consent of the other party. Unless otherwise stated in such consent, assignor shall not be released from its obligations hereunder following such assignment. Notwithstanding the foregoing, either party may assign its rights and obligations hereunder to an affiliate of such party without the consent of the other party, provided that the

creditworthiness of such affiliate is not materially weaker than the creditworthiness of the assignor. If such an assignment is made to a creditworthy affiliate, the assignor shall have no further obligation hereunder following such assignment.

(b) **Compliance with Law.** Each party agrees to comply with and abide by all statutes, rules, regulations, orders and directives of any governmental authority, federal, provincial or local.

(c) **Entirety of Agreement.** This Agreement and the written particulars relating hereto constitute the entire understanding of the parties relating to the transaction contemplated hereby. No modification or amendment to this Agreement shall be effective except if in writing and signed by the parties hereto.

(d) **Governing Law.** This Agreement, and any disputes arising hereunder, shall be governed by the laws of the Province of Alberta and each of the Parties irrevocably attorns to such jurisdiction.

(e) **Waiver.** No waiver by either Party of a breach of an obligation owed hereunder by the other Party shall be construed as a waiver of any other breach, whether of the same or a different nature, current or future.

(f) **Variance; Conflict.** In the event of any conflict between these General Terms and Conditions and the written particulars relating to a given transaction, the latter shall prevail.

(g) **Headings.** All paragraph and sub-paragraph headings used herein are for convenience of reference only and shall not be considered in the interpretation or construction of any provision hereof.

(h) **Severability.** Any provision hereof which is legally unenforceable shall be ineffective only to the extent of such unenforceability without thereby invalidating the remaining provisions hereof or affecting the validity of enforceability of this Agreement as a whole.

(i) **Confidentiality.** The parties agree that the prices, volumes, delivery locations, and other terms of sale contained in this Agreement shall be treated as confidential between the parties.

#### **INDUSTRY PRACTICES:**

This Agreement shall be construed in accordance with accepted oil industry terminology and practices.