

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

FORM 8-K  
CURRENT REPORT

PURSUANT TO SECTION 13 OR 15(d) OF THE  
SECURITIES EXCHANGE ACT OF 1934

Date of Report (Date of earliest event reported) October 1, 2001

LSB INDUSTRIES, INC.

(Exact name of registrant as specified in its charter)

Delaware  
(State or other  
jurisdiction of  
incorporation)

1-7677  
(Commission File  
Number)

73-1015226  
(IRS Employer  
Identification No.)

16 South Pennsylvania Avenue, Oklahoma City, Oklahoma  
(Address of principal executive offices)

73107  
(Zip Code)

Registrant's telephone number, including area code (405) 235-4546

Not applicable

(Former name or former address, if changed since last report)

Item 5. Other Events and Regulation FD Disclosure.

On November 1, 2001, El Dorado Chemical Company ("EDC"), a wholly owned subsidiary of ClimaChem, Inc. which is a wholly owned subsidiary of LSB Industries, Inc. (the "Company") concluded a long term industrial grade ammonium nitrate supply agreement ("Supply Agreement") with Orica USA Inc. ("Orica"). Under the Supply Agreement, EDC will supply from its El Dorado, Arkansas plant approximately 200,000 tons of industrial grade ammonium nitrate per year, which is the plant's manufacturing capacity for that product, for a term of no less than five years. As part of the Supply Agreement, EDC will implement certain of Orica's proprietary ammonium nitrate manufacturing technology at EDC's Arkansas plant. In addition to the industrial grade ammonium nitrate products, EDC's Arkansas plant has manufacturing capacity for approximately 250,000 tons per year of agricultural grade ammonium nitrate products, 90,000 tons per year of concentrated nitric acid, and 100,000 tons per year of sulfuric acid.

Also on November 1, 2001, EDC concluded the sale of its explosives distribution business to Orica and to Nelson Brothers, LLC. The total sales price for the distribution site was \$3.5 million, \$2 million of which was paid to EDC in the first quarter of 2001, which amount was applied to the total sales price. The Company will recognize a gain on the sale of these assets of approximately \$2.8 million in the fourth quarter of 2001.

Effective October 1, 2001, the Company's subsidiary, Cherokee Nitrogen Company ("CNC") concluded a long term 83% ammonium nitrate solution supply agreement with Nelson Brothers, LLC ("Sales Agreement"). Under the Sales Agreement, CNC will supply to Nelson Brothers, LLC its requirements of 83% ammonium nitrate solution from CNC's Cherokee, Alabama manufacturing plant for a term of no less than five years.

Item 7. Financial Statements and Exhibits.

(c) Exhibits.

99.1 Asset Purchase and Sale Agreement, dated October 22, 2001, between Orica USA, Inc., El Dorado Chemical Company, and Northwest Financial Corporation. CERTAIN INFORMATION WITHIN THIS EXHIBIT HAS BEEN OMITTED AS IT IS THE SUBJECT OF A REQUEST BY THE COMPANY FOR CONFIDENTIAL TREATMENT BY THE SECURITIES AND EXCHANGE COMMISSION UNDER THE FREEDOM OF INFORMATION ACT. THE OMITTED INFORMATION HAS BEEN FILED SEPARATELY WITH THE SECRETARY OF THE SECURITIES AND EXCHANGE COMMISSION FOR PURPOSES OF SUCH REQUEST.

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99.2 AN Supply Agreement, dated November 1, 2001, between Orica USA, Inc. and El Dorado Chemical Company. CERTAIN INFORMATION WITHIN THIS EXHIBIT HAS BEEN OMITTED AS IT IS THE SUBJECT OF A REQUEST BY THE COMPANY FOR CONFIDENTIAL TREATMENT BY THE SECURITIES AND EXCHANGE COMMISSION UNDER THE FREEDOM OF INFORMATION ACT. THE OMITTED INFORMATION HAS BEEN FILED SEPARATELY WITH THE SECRETARY OF THE SECURITIES AND EXCHANGE COMMISSION FOR PURPOSES OF SUCH REQUEST.

99.3 Sales Agreement, dated October 1, 2001, between Nelson Brothers, LLC and Cherokee Nitrogen Company. CERTAIN INFORMATION WITHIN THIS EXHIBIT HAS BEEN OMITTED AS IT IS THE SUBJECT OF A REQUEST BY THE COMPANY FOR CONFIDENTIAL TREATMENT BY THE SECURITIES AND EXCHANGE COMMISSION UNDER THE FREEDOM OF INFORMATION ACT. THE OMITTED INFORMATION HAS BEEN FILED SEPARATELY WITH THE SECRETARY OF THE SECURITIES AND EXCHANGE COMMISSION FOR PURPOSES OF SUCH REQUEST.

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Dated: December 28, 2001.

LSB INDUSTRIES, INC.

By: /s/ Tony M. Shelby  
Tony M. Shelby,  
Senior Vice President and  
Chief Financial Officer



**Asset Purchase Agreement\***

**Dated as of October 22, 2001**

**among**

**ORICA USA INC.**

**as Buyer**

**and**

**EL DORADO CHEMICAL COMPANY**

**and**

**NORTHWEST FINANCIAL CORPORATION**

**as Seller**

\*INFORMATION IN THIS DOCUMENT HAS BEEN OMITTED FROM THIS PUBLIC FILING PURSUANT TO A REQUEST BY THE COMPANY FOR CONFIDENTIAL TREATMENT BY THE SECURITIES AND EXCHANGE COMMISSION. THE OMITTED INFORMATION HAS BEEN FILED SEPARATELY WITH THE SECRETARY OF THE SECURITIES AND EXCHANGE COMMISSION FOR PURPOSES OF SUCH REQUEST.

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**List Of Exhibits And Schedules**

Exhibits

Exhibit A	Form of Non-Competition Covenant
Exhibit B	Form of AN Supply Agreement
Exhibit C	Form of Bill of Sale and Assignment

Schedules

Schedule 1.1	Trademarks
Schedule 2.2	Excluded Assets
Schedule 3.3	Conflicts; Seller's Consents
Schedule 3.4	Personal Property

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## **Asset Purchase Agreement**

This Asset Purchase Agreement ("Agreement") is entered into as of the 22nd day of October, 2001, by ORICA USA INC., a Delaware corporation ("Buyer"), whose U.S. Taxpayer Identification Number is 75-2661387, and EL DORADO CHEMICAL COMPANY, an Oklahoma corporation ("EDC"), whose U.S. Taxpayer Identification Number is 73-1183488, and NORTHWEST FINANCIAL CORPORATION, an Oklahoma corporation ("NWF", and collectively with EDC, "Seller"), whose U.S. Taxpayer Identification Number is 73-1131584.

### **RECITAL**

Seller owns or leases and operates certain explosives manufacturing, storage and distribution facilities located in or near Boonville, Indiana (the "Boonville Facility"), Riverport/Owensboro, Kentucky, Combs (Caldwell), Kentucky, Brownsfork, Kentucky, Bonne Terre, Missouri, and Williamson, West Virginia (collectively with the Boonville Facility, the "Facilities"). Buyer desires to purchase and Seller desires to sell substantially all of the assets of Seller used or held for use in connection with the operation of the Facilities, and certain assets used or held for use by Seller in connection with the operation of its Dunlap, Tennessee facility (the "Dunlap Facility"), for cash.

### **AGREEMENTS**

In consideration of the mutual covenants and promises set forth herein, Buyer and Seller agree as follow:

#### **ARTICLE 1 CERTAIN DEFINITONS**

1.1 Defined Terms. As used in this Agreement, the following terms, whether in singular or plural form, shall have the following meanings:

"Adjustment Time" means 11:59 p.m., Mountain Time, on October 31, 2001.

"Affiliate" means, with respect to any Person, any other Person controlling, controlled by or under common control with such

Person, with "control" for such purposes meaning (i) the ownership of 50% or more of the equity interests in a Person, or (ii) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities or voting interests, by contract or otherwise.

"Assumed Contracts" means (i) all Contracts listed on Schedule 3.5 and not also listed on Schedule 2.2; (ii) any Contracts entered into by Seller between the date hereof and the Closing Date which Buyer agrees in writing to assume; and (iii) all Contracts (except employee-related contracts and the Contracts referred to or listed in Section 2.2) which meet the criteria in Section 3.5.1.(i), (ii) or (iii) for exclusion from Schedule 3.5.

"BATF" means the Bureau of Alcohol, Tobacco and Firearms.

"Business" means the wholesale and retail explosives manufacturing, storage and distribution and all other income-generating businesses that are conducted by Seller through the Facilities or the Dunlap Facility.

"Business Day" means any day other than a Saturday, Sunday, or a day on which banking institutions in Denver, Colorado, Oklahoma City, Oklahoma, or New York, New York are required or authorized to be closed.

"Closing" means the consummation of the transaction contemplated by this Agreement in accordance with the provisions of Article 7.

"Closing Date" means the date of Closing as determined in accordance with the provisions of Article 7.

"Code" means the Internal Revenue Code of 1986.

"Consents" means all of the consents, permits or approvals of third parties necessary to transfer the Assets to Buyer (or, at Buyer's request, to an Affiliate of Buyer or the Designee (as defined in Section 10.6 hereof)) or otherwise to consummate lawfully the transactions contemplated hereby, including any consents required to transfer to Buyer (or at Buyer's request, to an Affiliate of Buyer or the Designee) those Assumed Contracts to which entities other than the Seller are parties.

"Contracts" means all leases, private easements, private rights-of-way, purchase orders, supply agreements, service agreements and other agreements, written or oral (including any amendments and other modifications thereto) relating to the Business or to the operations of the Facilities or the Dunlap Facility, and (i) which are in effect on the date hereof and which by their terms are to be in effect as of the Closing Date, or (ii) which are entered into by Seller in the ordinary course of the Business and as permitted by this Agreement between the date of this Agreement and the Closing Date and which by their terms are to be in effect as of the Closing Date.

"ERISA" means the Employee Retirement Income Security Act of 1974.

"Governmental Authority" means the United States of America, any state, commonwealth, territory, or possession thereof and any political subdivision or quasi-governmental authority of any of the same.

"Hazardous Substances" means (i) any "hazardous waste" as defined by the Resources Conservation and Recovery Act of 1976 ("RCRA") (42 U.S.C. Section 6901 *et seq.*); (ii) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 *et seq.*) ("CERCLA"); (iii) any substance regulated by the Toxic Substances Control Act ("TSCA") (42 U.S.C. Section 2601 *et seq.*); (iv) asbestos; (v) polychlorinated biphenyls; (vi) any substances regulated under the provisions of Subtitle I of RCRA relating to underground storage tanks; (vii) any substance the presence, use, treatment, storage, transmission or disposal of which on or from the Real Property is prohibited by any Legal Requirements; and (viii) any other substance which by any Legal Requirements require special handling, reporting or notification to any Governmental Authority in its collection, storage, use, treatment, transmission or disposal.

"Intellectual Property" means all (i) Trademarks and other trademarks, trade dress, trade names, service marks, logos and other similar proprietary rights, (ii) domain names, (iii) copyrights, and (iv) patents and patentable know-how, inventions and processes, in each case used in connection with the Business.

"Inventory" means all useable inventory, including ammonium nitrate, diesel fuel oil, packaged and bulk explosives, boosters and detonators, which are owned by Seller and used or useful as of the date hereof in the conduct of the Business or

operations of the Facilities or the Dunlap Facility, other than Excluded Assets and specifically excluding unusable or obsolete inventory, plus such additions thereto and deletions therefrom arising in the ordinary course of the Business and as permitted by this Agreement between the date of this Agreement and the Closing Date.

"Judgment" means any judgment, writ, order, injunction, award or decree of any court, judge, justice or magistrate, including any bankruptcy court or judge, and any order of or by any Governmental Authority.

"Knowledge" or "knowledge" of any Person of or with respect to any matter means that such Person (if a natural person) or any of the officers, directors, partners or managers of such Person (if not a natural person), including the Facility manager, has actual awareness or knowledge of such matter.

"Legal Requirements" means applicable common law and any statute, ordinance, code or other law, rule, regulation, order, technical or other standard, requirement or procedure enacted, adopted, promulgated, applied or followed by any Governmental Authority, including Judgments.

"Licenses" means all licenses, authorizations and permits relating to the Facilities, the Dunlap Facility or the Business granted to Seller by any Governmental Authority, including BATF.

"Lien" means any security agreement, financing statement filed with any Governmental Authority, conditional sale or other title retention agreement, any lease, consignment or bailment given for purposes of security, any lien, mortgage, indenture, pledge, option, encumbrance, constructive trust or other trust, claim, attachment, exception to or defect in title or other ownership interest of any kind which constitutes an interest in or claim against property, whether arising pursuant to any Legal Requirement, Contract or otherwise.

"Litigation" means any claim, action, suit, proceeding, arbitration, investigation, hearing or other activity or procedure that could result in a Judgment, and any notice of any of the foregoing.

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"Losses" means any claims, losses, liabilities, damages, Liens, penalties, costs, and expenses, including interest imposed in connection therewith, expenses of investigation, reasonable fees and disbursements of counsel and other experts, and the cost to any Person making a claim or seeking indemnification under this Agreement with respect to funds expended by such Person by reason of the occurrence of any event with respect to which indemnification is sought.

"Permitted Lien" means any (i) Lien securing Taxes, assessments and governmental charges not yet due and payable or being contested in good faith (and for which adequate accruals or reserves have been established), (ii) customary zoning law or ordinance or any similar Legal Requirement, (iii) customary right reserved to any Governmental Authority to regulate the affected property, (iv) as to all Owned Real Property, any Lien (other than Liens securing indebtedness or arising out of the obligation to pay money) which does not and shall not individually or in the aggregate with one or more other Liens interfere with the right or ability to own, use, enjoy or operate the Owned Real Property as it is currently being used or operated, or to convey good, marketable and indefeasible fee simple title to the same (with respect to Owned Property) or materially detract from its value, and (v) any inchoate mechanic's, workmen's, repairmen's or other like Liens arising in the ordinary course of business; provided that "Permitted Lien" shall not include any Lien securing a debt or claim which could prevent or interfere with the conduct of the Business at the affected Facility as it is currently being conducted.

"Person" means any natural person, Governmental Authority, corporation, general or limited partnership, limited liability company, joint venture, trust, association or unincorporated entity of any kind.

"Personal Property:" means all of the equipment, machinery, plants, vehicles, spare parts, supplies and other tangible personal property, including Opening Inventory, which are owned or leased by Seller and used or held for use as of the date hereof in the conduct of the Business or operations of the Facilities or the Dunlap Facility, other than the Excluded Assets, plus such additions thereto and deletions therefrom arising in the ordinary course of the Business and as permitted by this Agreement between the date of this Agreement and the Closing Date.

"Real Property:" means the realty, including appurtenances, improvements and fixtures located on such realty, and all private easements, private rights to access, private rights-of-way, and other real property interests that are owned or leased by Seller and used or held for use, as of the date of this Agreement, in the conduct of the Business or operations of the Facilities, plus such additions thereto and deletions therefrom arising in the ordinary course of business and permitted by this Agreement between the date of this Agreement and the Closing Date.

"Taxes" means all levies and assessments of any kind or nature imposed by any Governmental Authority, together with any interest thereon and any penalties, additions to tax or additional amounts applicable thereto.

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"Title Commitment" means the commitment to issue to Buyer a title insurance policy insuring title to any of the Real Property.

"Title Defect" means any Lien (other than a Permitted Lien) which prevents access to or which could prevent or impede the use or operation of the Real Property for the purposes for which it is currently used or operated by Seller.

"Trademarks" means the trademarks identified on Schedule 1.1 hereto.

"Transaction Documents" means all instruments and documents executed and delivered by Buyer, Seller, or any officer, director or Affiliate of any of them, in connection with this Agreement or the transactions contemplated hereby.

1.2 Additional Definitions. The following is a list of additional terms used in this Agreement and a reference to the Section hereof in which such term is defined:

<u>Term</u>	<u>Section</u>
Adjustment Certificate	2.6
AN Supply Agreement	6.1.11
Assets	2.1
Assumed Obligations and Liabilities	2.3
Assumption Agreement	7.3.3
Bonne Terre Parcel	6.1.12
Boonville Facility	Recital
Buyer	Preamble
Confidential Information	5.20
Current Items Amount	2.5
Deductible	9.4
Designated Assets	10.6
Designee	10.6
Dunlap Facility	Recital
Environmental Assessment	5.18
Excluded Assets	2.2
Facilities	Recital
Indemnitee	9.3.1
Indemnitor	9.3.1
Letter Agreement	2.4.2
Non-Competition Covenant	6.1.6
Opening Inventory	2.4.3
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Outside Closing Date	7.1.1
Owned Real Property	3.13
Post-Closing Payment Date	2.6
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Retained Boonville Real Property	7.1.2
Retained Employees	5.9.1
Qualified Auditor	2.6
Seller Preamble	Preamble
Tax Withholding Amounts	2.4.1

Transitional Services Agreement	5.11
U.S. GAAP	2.5.3

1.3 Rules of Construction. Unless otherwise expressly provided in this Agreement: (i) accounting terms used in this Agreement shall have the meaning ascribed to them under U.S. GAAP; (ii) words used in this Agreement, regardless of the gender used, shall be deemed and construed to include any other gender, masculine, feminine, or neuter, as the context requires; (iii) the word "including" is not limiting, and the word "or" is not exclusive; (iv) the capitalized term "Section" refers to sections of this Agreement; (v) references to a particular Section include all subsections thereof; (vi) references to a particular statute or regulation include all amendments thereto, rules and regulations thereunder and any successor statute, rule or regulation, or published clarifications or interpretations with respect thereto, in each case as from time to time in effect; (vii) references to a Person include such Person's successors and assigns to the extent not prohibited by this Agreement; and (viii) references to a "day" or number of

"days" (without the explicit qualification "Business") shall be interpreted as a reference to a calendar day or number of calendar days.

## ARTICLE 2 PURCHASE AND SALE

2.1. Covenant of Purchase and Sale; Assets. Subject to the terms and conditions set forth in this Agreement, at Closing, Seller shall transfer to Buyer, and Buyer shall acquire from Seller, free and clear of all Liens (except Permitted Liens and Liens for *ad valorem* Taxes not yet due and payable), all of the following described assets and properties, tangible and intangible, used or held for use by Seller in its operation of, or otherwise relating to, the Facilities, the Dunlap Facility or the Business (the "Assets"):

2.1.1 the Personal Property;

2.1.2 the Real Property;

2.1.3 the Assumed Contracts;

2.1.4 the Licenses;

2.1.5 the Trademarks;

2.1.6 all of Seller's technical information and data, customer lists, machinery and equipment warranties, maps, computer disks and tapes, plans, diagrams, blueprints and schematics relating to the Facilities or the Dunlap Facility, including filings with the BATF, other than as any of the foregoing relate to the Excluded Assets;

2.1.7 all books and records relating to the Business or operations of the Facilities or the Dunlap Facility, including executed copies of the Assumed Contracts, subject to the right of Seller to have

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such books and records made available to Seller for a reasonable period, not to exceed three years from the Closing Date;

2.1.8 the goodwill and going concern value generated by Seller with respect to the Facilities, the Dunlap Facility and the Business, if any; and

2.1.9 all intangible assets of Seller relating to the Facilities, the Dunlap Facility or the Business not specifically described above.

2.2 Excluded Assets. Notwithstanding the provisions of Section 2.1, the Assets shall not include the following, which shall be retained by Seller (the "Excluded Assets"): (i) accounts receivable; (ii) insurance policies and rights and claims thereunder; (iii) bonds, letters of credit, surety instruments, and other similar items; (iv) cash and cash equivalents, including deposits of customers of the Business (subject to Section 2.5.1); (v) Seller's patents, patent rights, trademarks, trade names, service marks, service names, logos, and similar proprietary rights (exclusive of the Trademarks and subject to Section 5.14); (vi) all claims, rights and interests in and to any refunds for Taxes or fees for periods prior to the Closing Date; (vii) the rights, assets, and properties described on Schedule 2.2, as agreed upon by the parties; (viii) employee benefit plans of any nature and their assets; (ix) subject to Section 2.4.3, the Inventory; (x) the Retained Boonville Real Property, if any; and (x) any real property or interests in real property located in or around Dunlap, Tennessee, and any Licenses relating in any manner to, or required in connection with the ownership or operation of, such real property or interests in real property.

2.3 Assumed Obligations and Liabilities. At and after the Closing, Buyer shall assume, pay, discharge, and perform the following (the "Assumed Obligations and Liabilities"): (i) those obligations and liabilities accruing and relating to periods of time after the Adjustment Time under the Assumed Contracts; (ii) those obligations and liabilities of Seller that Buyer elects in writing to assume at Closing; and (iii) all other obligations and liabilities accruing and relating to periods after the Adjustment Time and arising out of Buyer's ownership of the Assets or operation of the Business after the Adjustment Time, except to the extent such obligations or liabilities relate to any Excluded Asset. All obligations and liabilities arising out of or relating to the Assets or the Business other than the Assumed Obligations and Liabilities shall remain and be the obligations and liabilities solely of Seller.

2.4 Purchase Price; Inventory Price.

2.4.1 Purchase Price. Subject to Sections 2.4.1, 2.4.2, and 2.5 below, Buyer shall pay to Seller \$3,500,000 as consideration for the Assets (the "Purchase Price"). The Purchase Price, as adjusted, shall be paid to Seller on the Closing Date by wire transfer of immediately available funds to the account designated by Seller in writing prior to the Closing Date; provided that Buyer shall have the right to withhold from the Purchase Price payable on the Closing Date, or from any amounts otherwise payable by Buyer under the Transitional Services Agreement as of the Post-Closing Payment Date (as defined in Section 2.6),

an amount, as determined by Buyer acting in good faith (the "Tax Withholding Amounts"), equal to Seller's outstanding state and local Tax liability for periods ending on or before the Adjustment Time, or attributable to the transactions contemplated hereby. Unless otherwise agreed by the parties, Buyer shall remit any such Tax Withholding Amounts to the appropriate state or local taxing Governmental Authorities on or before the applicable due date; provided that Buyer shall return to Seller any excess Tax Withholding Amounts; and provided further that the Tax Withholding Amounts shall not be the limit of Seller's liability for amounts owed to state and local taxing Governmental Authorities in respect of the Assets for periods ending on or before the Adjustment Time or attributable to the transactions contemplated hereby.

2.4.2 Purchase Price Adjustment. In addition to any Tax Withholding Amounts, Buyer shall be entitled to a credit against the Purchase Price in the amount of \$2,000,000, representing prepayments made by Buyer and its Designee for ammonium nitrate prills and solution to be sold to Buyer and the Designee as referenced in that certain Prepayment for Ammonium Nitrate letter agreement dated March 8, 2001 among Seller, Buyer, and the Designee (the "Letter Agreement"). From and after Closing, all rights and obligations of Seller, Buyer and Designee under the Letter Agreement shall be deemed to be terminated and of no further force and effect.

2.4.3 Inventory Price. Buyer and Seller shall jointly examine the Inventory located at each Facility promptly after the Closing and shall agree on which items of such Inventory shall be acquired by Buyer on a consignment basis (such as agreed Inventory, the "Opening Inventory"). Buyer and Seller shall use their best, good faith efforts to agree upon the value of the items comprising the Opening Inventory (the "Opening Inventory Values") within three Business Days following the Closing. Buyer shall acquire the Opening Inventory, and as consideration therefore Buyer shall pay Seller an aggregate amount equal to the Opening Inventory Values, in each case subject to the conditions and at the times set forth in this Section 2.4.3. Buyer shall pay to Seller within ten Business Days after the end of each of the first five months following the Closing Date for Opening Inventory consumed or sold by Buyer during the preceding month an amount based on the Opening Inventory Values of such Opening Inventory. Buyer shall consume or sell such Opening Inventory on a priority basis in respect of sales to the customers of the Business in order to enable Seller to receive payment for the Opening Inventory at the earliest reasonably possible date, provided that all such Opening Inventory in Seller's possession at Closing shall be paid for by Buyer not later than 180 days from the Closing Date. Buyer may request Seller to purchase additional quantities of products from Seller's current suppliers in order to facilitate the sale of Inventory, and Seller shall comply with such requests, provided that Buyer shall remit payment to Seller for such additional products in accordance with the terms offered by Seller's supplier. For greater certainty, all Inventory not included in the Opening Inventory shall

not be purchased by Buyer and shall be removed from the Facilities by Seller within 30 days from the Closing Date and disposal thereof shall be Seller's responsibility.

2.5 Current Items Amount. Buyer or Seller, as appropriate, shall pay to the other the net amount of the adjustments and prorations effected pursuant to this Section 2.5 (the "Current Items Amount").

2.5.1 Advance Payments and Deposits. Buyer shall be entitled to an amount equal to the aggregate of (i) all deposits made by customers of the Business prior to the Adjustment Time for services to be rendered or supplied by the Business after the Adjustment Time, and (ii) all other payments made to Seller for (a) services to be rendered by Buyer to customers of the Business after the Adjustment Time and (b) other services to be rendered by Buyer to other Persons after the Adjustment Time, to the extent that the obligations of Seller relating thereto are assumed by Buyer at Closing.

2.5.2 Utility Deposits. Seller shall be entitled to an amount equal to the aggregate of all deposits and other cash security made by Seller before the Adjustment Time in respect of utility and other similar services relating to the Facilities or the Business after the Adjustment Time.

2.5.3 Revenues and Expenses. As of the Adjustment Time, all revenues attributable to the Business and the following expenses shall be prorated, in accordance with generally accepted accounting principles consistently applied in the United States ("U.S. GAAP"), so that all revenues realized from or accruing to the Business and all expenses attributable to the Business for periods prior to the Adjustment Time shall be for the account of Seller, and all such revenues and expenses for periods after the Adjustment Time shall be for the account of Buyer:

- (i) all payments and charges under the Assumed Contracts;
- (ii) general property Taxes, special assessments, and *ad valorem* Taxes levied or assessed against any of the Assets;

(iii) sales and use Taxes, if any, payable with respect to conduct of the Business;

(iv) charges for utilities and other goods or services furnished to the Facilities; and

(v) all other items of expense relating to the Business;

provided, however, that Seller and Buyer shall not prorate any items of expense payable under any Excluded Assets, all of which shall remain and be solely for the account of Seller.

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2.6 Current Items Amounts Calculated. The Current Items Amount shall be calculated by Seller, and set forth, together with a detailed statement of the calculation thereof, in a certificate (the "Adjustment Certificate") executed by an officer of Seller and delivered to Buyer, together with such documentation as is reasonably necessary or required by Buyer to support the amount of the Current Items Amount, not later than the 30<sup>th</sup> day following the Closing Date. The Adjustment Certificate, unless objected to by Buyer, shall constitute the basis on which the Current Items Amount is calculated. On or before the fifth day following delivery of the Adjustment Certificate (the "Post-Closing Payment Date"), the party against whose favor the Current Items Amount is so determined shall pay to the other the Current Items Amount by way of adjustment to the Purchase Price provided that if Seller is the party obligated to make such a payment on the Post-Closing Payment Date, Buyer shall have the right but not the obligation to set-off such payment against amounts owed by Buyer to Seller for Transitional Services under the Transitional Services Agreement in satisfaction of all or a portion of the Current Items Amount, if any, owed by Seller to Buyer. If Buyer and Seller are unable to agree on the Current Items Amount by the Post-Closing Payment Date, (i) the undisputed portion of the Current Items Amount shall be paid on the Post-Closing Payment Date, and (ii) the disputed portion of the Current Items Amount shall be determined by a partner in a major accounting firm with substantial audit experience but which is not an auditor of either Buyer or Seller (the "Qualified Auditor") and the determination of that Qualified Auditor shall be final and binding upon the parties. If Buyer and Seller cannot agree with respect to selection of the Qualified Auditor, Buyer and Seller shall each select an auditor and those two auditors shall select the Qualified Auditor whose determination shall be final and binding upon the parties. Buyer shall bear 50% and Seller shall bear 50% of the expenses arising in connection with the determination of the Qualified Auditor. Not later than 15 days after Seller and Buyer shall have finally agreed upon the actual Current Items Amount, or the actual Current Items Amount is determined by the Qualified Auditor, Seller or Buyer, as appropriate, shall pay to the other an amount equal to the amount by which the Current Items Amount as finally determined differs from the Current Items Amount paid on the Post-Closing Payment Date.

2.7 Allocation of Purchase Price. The Purchase Price shall be allocated among the Assets as set forth in a schedule to be prepared not later than 45 days after the Closing Date; provided that EDC, NWF and Buyer will undertake good faith efforts to agree upon such schedule prior to Closing or as soon thereafter as is reasonably practicable; and provided, further, that the entire Purchase Price shall be allocated to "Class IV assets", "Class V assets" and "Class VI assets" as such terms are used in the applicable regulations under the Code. Each of EDC, NWF and Buyer agree to be bound by the allocation and to refrain from taking any position inconsistent with such allocation, and will file all returns and reports with respect to transactions contemplated by this Agreement, including all federal, state and local Tax returns and Forms 8594 as required by Section 1060 of the Code, on the basis of such allocation.

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### ARTICLE 3 SELLER'S REPRESENTATIONS AND WARRANTIES

Seller represents and warrants to Buyer, as of the date of this Agreement and as of Closing, as follows:

3.1 Organization of Seller. Each of EDC and NWF is duly organized, validly existing, and in good standing under the laws of the State of Oklahoma, and has all requisite power and authority to own and lease the properties and assets it currently owns and leases and to conduct its activities as such activities are currently conducted.

3.2 Authority. Each of EDC and NWF has all requisite corporate power and authority to execute, deliver, and perform this Agreement and to consummate the transactions contemplated hereby. The execution, delivery, and performance of this Agreement and the consummation of the transactions contemplated hereby by each of EDC and NWF have been duly and validly authorized by all necessary action on the part of EDC and NWF (including approval by the board of directors and shareholders of each of EDC and NWF), and this Agreement has been duly and validly executed and delivered by each of EDC and NWF, and is the valid and binding obligation of each of EDC and NWF, enforceable against each of EDC and NWF in accordance with its terms.

3.3 No Conflict; Required Consents. The execution, delivery, and performance by EDC and NWF of this Agreement do not and will not (i) conflict with or violate any provision of the articles of incorporation or bylaws of either EDC or NWF; (ii) violate any provision of any Legal Requirements; (iii) except for Consents set forth on Schedule 3.3, in any material respect conflict with,

violate, result in a breach of, constitute a default under (without regard to requirements of notice, lapse of time, or elections of other Persons, or any combination thereof) or accelerate or permit the acceleration of the performance required by, any Contracts or Licenses to which either EDC or NWF is a party or by which either EDC or NWF or the Assets are bound or affected; (iv) result in the creation or imposition of any Lien against or upon any of the Assets other than a Permitted Lien; or (v) except as set forth on Schedule 3.3, require any consent, approval, or authorization of, or filing of any certificate, notice, application, report, or other document with, any Governmental Authority or other Person.

3.4 Title and Condition of Personal Property. Schedule 3.4 contains a description of all material items of Personal Property, including Inventory but excluding the Excluded Assets, as of the date specified in such Schedule (which date shall be no earlier than September 30, 2001). Except as described on Schedule 3.4, Seller has good, marketable and indefeasible title to (or, in the case of Personal Property that is leased, valid leasehold interests in) all of the Personal Property, free and clear of all Liens, except Permitted Liens. Except as described on Schedule 3.4, all of the Personal Property conforms with all Legal Requirements but is otherwise sold on an "as is, where is" basis. To Seller's knowledge, the Personal Property comprises all of the tangible personal property necessary to conduct the Business and operations of

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the Facilities as now conducted and in compliance in all material respects with all Legal Requirements, Licenses and Contracts.

### 3.5. Licenses and Contracts.

3.5.1. Licenses and Contracts. Schedule 3.5 contains a description of all of the Licenses and Contracts as of the date of this Agreement, except for: (i) Contracts entered into in the ordinary course of Business which may be canceled by Seller without penalty on not more than 30 days' notice; (ii) Contracts not involving any material monetary or non-monetary obligation; (iii) miscellaneous service contracts terminable at will without penalty; and (iv) Contracts constituting Excluded Assets. Seller has delivered to Buyer true and complete copies of each of the Licenses and written Contracts, including in each case any amendments thereto, together with written summaries of any oral Contracts, other than Contracts described in clauses (i) through (iv) above and other than bank financing documents. Except as described on Schedule 3.5: (a) each of the Licenses and Contracts is valid, in full force and effect, and enforceable in all material respects in accordance with its terms against the parties thereto, and Seller has fulfilled when due, or has taken all action necessary to enable it to fulfill when due, all of its material obligations thereunder; (b) there has not occurred any default (without regard to lapse of time, the giving of notice, the election of any Person other than Seller, or any combination thereof) by Seller nor, to the knowledge of Seller, has there occurred any default (without regard to lapse of time, the giving of notice, the election of Seller, or any combination thereof) by any Person other than Seller under any of the Licenses and Contracts; and (c) neither Seller nor, to the knowledge of Seller, any other Person is in arrears in the performance or satisfaction of its obligations under any of the Licenses and Contracts, and no waiver or indulgence has been granted by any of the parties thereto.

3.5.2. Except as listed on Schedule 3.5, none of the Licenses or Contracts is held in any name other than EDC's or NWF's name.

3.6. Litigation. Except as described on Schedule 3.6, (i) there is no outstanding Judgment against Seller requiring Seller to take any action of any kind with respect to the Assets or the operation of the Business, or to which the Assets or the Business are subject or by which they are bound or affected; and (ii) there is no Litigation pending or, to Seller's knowledge, threatened, against Seller which individually or in the aggregate might result in any materially adverse change in the financial condition or operation of the Business or adversely and materially affect the Assets or the ability of Seller to perform its obligations under this Agreement.

### 3.7. Employment Matters; Employee Benefits.

3.7.1. Schedule 3.7 contains a complete list of the names, positions and rates of compensation of all Persons employed by Seller as of the date of this Agreement who are primarily employed with respect

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to the Business. Except as set forth on Schedule 3.7, Seller is not a party to any employment agreement, written or oral, relating to employees of the Business which cannot be terminated at will by Seller.

3.7.2. Except as described on Schedule 3.7, there are no collective bargaining agreements applicable to any Persons employed by Seller who render services in connection with the Business, and Seller has not bargained, and has no duty to bargain,

with any labor organization with respect to any such Persons.

3.7.3. There is not pending any demand for recognition or any other request or demand from a labor organization for representative status with respect to any Persons employed by Seller that render services in connection with the Business.

3.7.4. With respect to any Persons employed by Seller that render services in connection with the Business, Seller is in material compliance with all applicable Legal Requirements respecting employment conditions and practices, has withheld all amounts required by any applicable Legal Requirements or Contracts to be withheld from wages or salaries, and is not liable for any arrears of wages or any Taxes or penalties for failure to comply with any of the foregoing.

3.7.5. Neither Seller nor any Employee Benefit Plan or Multiemployer Plan (as those terms are defined in ERISA) maintained by Seller or to which Seller has or has had the obligation to contribute is in violation of the provisions of ERISA. No reportable event, within the meaning of Section 4043 of ERISA, has occurred and is continuing with respect to any such Employee Benefit Plan or Multiemployer Plan. No prohibited transaction, within the meaning of Title I of ERISA, has occurred with respect to any Employee Benefit Plan or Multiemployer Plan. Except as disclosed on Schedule 3.7, Seller has not had and does not currently have any pension, profit sharing, post-retirement or other employee benefit plan relating to employees of the Business.

3.8. Taxes. Except as described on Schedule 3.8, (i) Seller has duly and timely paid all Taxes with respect to the Business and the Assets which have become due and payable by it; (ii) Seller has received no notice of, nor does Seller have any knowledge of, any notice of deficiency or assessment of proposed deficiency or assessment from any taxing Governmental Authority with respect to the Business; (iii) there are no audits pending with respect to the Business and there are no outstanding agreements or waivers by Seller that extend the statutory period of limitations applicable to any federal, state, local, or foreign tax returns or Taxes with respect to the Business; (iv) Seller has duly and timely filed in true and correct form all Tax returns and Tax reports required to be filed by Seller; and (v) Seller has collected and remitted to taxing Governmental Authorities all sales tax amounts required by Legal Requirements to be collected and remitted in connection with the Business.

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3.9. Financial Statements. Seller has delivered to Buyer true, complete and correct copies of its internally prepared revenue and expense statements, and management reports, relating to the Business for the years ending December 31, 1999 and 2000 and for the six-month period ending June 30, 2001. Such statements and reports accurately and completely present all revenues generated by and expenses incurred in connection with the Business at the respective dates thereof. Seller has delivered to Buyer a true, complete and correct copy of the 2001 budget for the Business.

3.10. No Material Adverse Change. Except as described on Schedule 3.10, there has been no material adverse change in the Assets or the financial condition or operations of the Business since July 1, 2001, and since such date, the Assets and the financial condition and operations of the Business have not been materially and adversely affected as a result of any fire, explosion, accident, casualty, labor trouble, flood, drought, riot, storm, condemnation or act of God or public force or otherwise.

3.11. Compliance with Legal Requirements. The operation of the Business as currently conducted does not violate or infringe in any material respect any Legal Requirements currently in effect. Except as described on Schedule 3.11, Seller has received no notice of any violation by Seller or the Business of any Legal Requirement applicable to the operation of the Business as currently conducted, and knows of no basis for the allegation of any such violation. Seller is not in default of or in violation with respect to any Judgment.

3.12. Environmental Laws and Regulations.

3.12.1. Seller is not the subject of any "Superfund" evaluation or investigation in connection with the Real Property and, to Seller's knowledge, is not the subject of any investigation or proceeding of any Governmental Authority evaluating whether any remedial action is necessary to respond to any release of Hazardous Substances on or in connection with the Real Property.

3.12.2. Except as set forth on Schedule 3.12, (i) Seller has not generated, used, transported, treated, stored, released or disposed of any Hazardous Substance from, on or to the Assets in violation of any Legal Requirement; (ii) to Seller's knowledge, there has not been any generation, use, transportation, treatment, storage, release or disposal of any Hazardous Substance by any Person in connection with the operation of the Business that has created or might reasonably be expected to create any liability under any Legal Requirement; (iii) no underground storage tank is or, to Seller's knowledge, has been contained in or located at any Real Property; and (iv) any Hazardous Substance handled or dealt with in any way in connection with any of the Assets has been and is being handled or dealt with in all material respects in compliance with all applicable Legal Requirements.

3.12.3. All material permits, licenses, permissions, and other authorizations relating to the Real Property or Personal Property which are required under applicable Legal Requirements with respect to

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pollution or protection of the environment have been obtained, including Legal Requirements relating to actual or threatened emissions, discharges, or releases of Hazardous Substances into ambient air, surface water, ground water, land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of Hazardous Substances. Seller is in compliance in all respects with all terms and conditions of such permits, licenses, permissions, and authorizations, and is in material compliance in all respects with all other limitations, restrictions, obligations, schedules, and time-tables of such Legal Requirements or of any other environmental, health, or safety Legal Requirements relating to the Real Property or Personal Property. Except as described on Schedule 3.12, Seller has not received notice of, and has no knowledge of circumstances relating to, any past, present, or future events, conditions, circumstances, activities, practices, incidents, actions, or plans, including the presence, use, generation, manufacture, disposal, release, or threatened release of any Hazardous Substances from the Real Property or Personal Property, which is likely to interfere with the operation of the Business or prevent continued compliance with any Legal Requirement, or which are reasonably likely to give rise to any liability, based upon or related to the processing, distribution, use, treatment, storage, disposal, transport, or handling, or the emission, discharge, release, or threatened release into the environment, of any Hazardous Substance from or attributable to the Real Property or Personal Property.

3.12.4. Seller has delivered to Buyer copies of all environmental reports and studies that Seller has received with respect to the Real Property or Personal Property, and such copies are true, complete and accurate copies of such reports and studies, and, to Seller's knowledge, there are no other material environmental reports or studies with respect to the Real Property or Personal Property.

3.13. Real Property. Schedule 3.13 contains complete and accurate descriptions of all the Real Property and Seller's interest therein. Except as otherwise disclosed on Schedule 3.13, Seller holds fee simple title to the Real Property disclosed as being owned by Seller or any affiliate of Seller on Schedule 3.13 (the "Owned Real Property"), and the valid and enforceable right to use and possess such Real Property, subject only to Permitted Liens. Except as otherwise disclosed on Schedule 3.13, Seller has valid and enforceable leasehold interests in Real Property disclosed as being leased by Seller on Schedule 3.13. Except as otherwise disclosed on Schedule 3.13, to Seller's knowledge, there is no easement or other real property interest, other than the Real Property, that is required, or that has been asserted by a Governmental Authority or other Person to be required, to conduct the Business. Seller has delivered to Buyer true and complete copies of all deeds, leases, easements, rights-of-way or other instruments pertaining to the Real Property (including any and all amendments and other modifications of such instruments). All Real Property (including the improvements thereon) (i) is in usable condition, (ii) is available to Seller for immediate use in the conduct of the Business, and (iii) complies in all material respects

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with all applicable building or zoning codes and the regulations of any Governmental Authority having jurisdiction except for such noncompliance as would not have a material adverse effect on the operation of the Business at any of the Real Property.

3.14. Non-Infringement; Intellectual Property. The operation of the Business as currently conducted does not infringe upon, or otherwise violate, the rights of any Person in any patent, copyright, trade name, trademark right, service mark, service name, patent right, license, trade secret or franchise, and there is not pending or, to Seller's knowledge, threatened any action with respect to any such infringement or breach. Except as disclosed on Schedule 3.14, and except for the Excluded Assets, Seller does not possess any Intellectual Property material to the operation of the Business, and Seller is not a party to any material license or royalty agreement with respect to any patent, trademark or copyright.

3.15. Spare Parts. Seller has, and at Closing will have, an inventory of spare parts and other materials relating to the Business of the type and nature and maintained at a level consistent with past practices in the ordinary course of the Business and otherwise in accordance with Seller's practices.

3.16. Books and Records. All of the books, records, and accounts of the Business are in all material respects true and complete, are maintained in accordance with good business practices and all applicable Legal Requirements, and accurately present and reflect in all material respects all of the transactions therein described.

3.17. Bonds. Except as set forth in Schedule 3.17, there are no construction, fidelity, performance or other bonds, or letters of credit, posted or required to be posted by Seller in connection with the Business or the Assets.

3.18. No Rights of First Refusal. There is no right of first refusal, option or other similar right granting any Person the right or option to purchase, lease or obtain any other ownership interest in any of the Assets or Business.

3.19. Finders and Brokers. Seller has not employed any financial advisor, broker or finder or incurred any liability for any financial advisory, brokerage, finder's or similar fee or commission in connection with the transaction contemplated by this Agreement for which Buyer will in any way have any liability.

3.20. Accuracy of Schedules. All Schedules to this Agreement relating to Seller's representations and warranties are accurate and complete in all material respects as of the date of this Agreement.

3.21. No Misrepresentations. No representation or warranty by Seller in this Agreement, nor any statement or certificate furnished to Buyer by Seller pursuant hereto or in connection with the transactions contemplated hereby, contains any untrue statement of a material fact, or omits to state a material fact necessary to make the statements contained therein not misleading.

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3.22. Taxpayer Identification Number. Seller's U.S. Taxpayer Identification Number is as set forth in the introductory paragraph of this Agreement.

#### **ARTICLE 4 BUYER'S REPRESENTATIONS AND WARRANTIES**

Buyer represents and warrants to Seller, as of the date of this Agreement and as of Closing, as follows:

4.1. Organization and Qualification of Buyer. Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, and has all requisite power and authority to own and lease the properties and assets it currently owns and leases and to conduct its activities as such activities are currently conducted.

4.2. Authority. Buyer has all requisite corporate power and authority to execute, deliver, and perform this Agreement and consummate the transactions contemplated hereby. The execution, delivery, and performance of this Agreement and the consummation of the transactions contemplated hereby on the part of Buyer have been duly and validly authorized by all necessary action on the part of Buyer. This Agreement has been duly and validly executed and delivered by Buyer, and is the valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms.

4.3. No Conflict; Required Consents. The execution, delivery, and performance by Buyer of this Agreement do not and will not (i) conflict with or violate any provision of the articles of incorporation or bylaws of Buyer; (ii) violate any provision of any Legal Requirements; (iii) conflict with, violate, result in a breach of, constitute a default under (without regard to requirements of notice, lapse of time, or elections of third parties, or any combination thereof), accelerate, or permit the acceleration of the performance required by, any agreement to which Buyer is a party or by which Buyer or the assets or properties owned or leased by it are bound or affected; or (iv) except as set forth on Schedule 4.3, require any consent, approval or authorization of, or filing of any certificate, notice, application, report, or other document with, any Governmental Authority or other Person.

4.4. Taxpayer Identification Number. Buyer's U.S. Taxpayer Identification Number is as set forth in the introductory paragraph of this Agreement.

#### **ARTICLE 5 COVENANTS**

5.1. Certain Affirmative Covenants of Seller. Except as Buyer may otherwise consent in writing, between the date of this Agreement and Closing, Seller shall (i) preserve intact and operate the Business only in the usual, regular, and ordinary course (including maintaining equipment and inventory at historic levels consistent with past practices), (ii) continue normal marketing, advertising, and promotional expenditures with

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respect to the Business, (iii) maintain the Assets in good condition and repair, ordinary wear excepted, (iv) duly comply with all applicable Legal Requirements, (v) perform its obligations under all the Contracts without default, (vi) give to Buyer and its Affiliates, and its and their counsel, accountants, and other representatives, reasonable access upon reasonable advance notice during normal business hours to the Facilities, all of the Assets, and Seller's books and records relating to the Business and the Assets, (vii) furnish to Buyer, its Affiliates and such representatives all such additional documents and other information with respect to the Business or the Assets as Buyer may from time to time reasonably request, (viii) use commercially reasonable efforts to preserve the good will of existing relationships with suppliers, customers and others having business dealings with the Business, (ix) use reasonable efforts to keep available the services of its employees with respect to the Business, (x) maintain in full force and effect policies of insurance with respect to the Business in such amounts and covering such risks as are customarily maintained by manufacturers, storers/warehousemen, and distributors of explosives, and (xi) take all steps necessary to convey the Assets to Buyer.

5.2. Certain Negative Covenants of Seller. Except as Buyer may otherwise consent in writing or as contemplated by this Agreement, between the date of this Agreement and Closing, Seller shall not (i) modify, terminate, renew, suspend, or abrogate any Assumed Contract or License, except in the ordinary course of business, (ii) transfer, convey, or otherwise dispose of any of the Assets, except in the ordinary course of business, (iii) take any action that would result in the creation of a Lien on any of the Assets, (iv) engage in any marketing, customer-related, or collection practices that are inconsistent with the past practices of Seller, (v) solicit or participate in negotiations or knowingly permit any other person to so do with any third party with respect to the sale

of the Assets or the Business or any transaction inconsistent with those contemplated hereby, or (vi) enter into any single Contract involving a commitment of more than \$5,000 or any Contracts which in the aggregate involve a commitment of more than \$25,000.

5.3. Bulk Sales. Seller shall comply with all Legal Requirements relating to bulk sales applicable to the transactions contemplated hereby.

5.4. Transfer Taxes. All sales, use, transfer, and similar Taxes, fees, and assessments arising from or payable in connection with the transfer of the Assets shall be paid by Seller.

5.5. Consents. Seller shall use commercially reasonable efforts to obtain, in form and substance satisfactory to Buyer, as promptly as possible all Consents. If Buyer so requests, the form of Consent shall include a request for the consent of each Governmental Authority or other Person to a transfer to an Affiliate of Buyer. Buyer shall be afforded the opportunity by Seller to be involved in the process of obtaining Consents. Seller shall give Buyer reasonable prior notice of all meetings and hearings scheduled with any Governmental Authorities, and Buyer shall have the right to participate therein.

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5.6. Employment Matters. Without Buyer's prior written consent, Seller shall make no change in the compensation or other benefits payable or available or to become payable or available by Seller to any Person employed in connection with the conduct of the business or operations of the Business, except in accordance with past practices.

5.7. Changes in Condition. Seller shall promptly inform Buyer in writing of any materially adverse change in the condition (financial or otherwise), operations, assets, liabilities or business of the Business after the date of this Agreement and prior to Closing.

5.8. Financial Information. At Buyer's request, Seller shall promptly deliver to Buyer true and complete copies of all internal divisional financial statements (including such statements for the three-month period ended September 30, 2001) as may be reasonably requested by Buyer and any reports with respect to the operation of the Business prepared by or for Seller at any time from the date of this Agreement until Closing.

5.9. Employees of the Business; Severance Costs.

5.9.1. Effective as of November 1, 2001, Buyer will, or Buyer will cause the Designee to, offer employment, at Buyer's or Designee's usual pay rates and benefits, to those of Seller's employees who render services in connection with the operation of the Business and who are listed in Schedule 5.9 hereto, all of whom shall be terminated by Seller immediately prior to November 1, 2001. Any of Seller's employees in the Business who do not become employees of Buyer or the Designee ("Retained Employees") shall remain employees of Seller or shall be terminated by Seller. Seller shall provide Buyer and the Designee with the opportunity to make such appropriate pre-hire investigation of Seller's employees as Buyer or the Designee deems necessary, including the right to review personnel files (except to the extent prevented from doing so by applicable Legal Requirements) and the right to interview such employees during normal working hours so long as such interviews do not interfere with Seller's operations.

5.9.2. Seller shall pay, discharge and remain solely responsible for, and shall indemnify and hold harmless Buyer from and against all Losses arising with respect to, all salaries and wages, and all severance, vacation, sick pay, holiday pay, and other benefits, to which employees of Seller may be entitled as a result of their employment by Seller up to and including October 31, 2001, or the consummation of the transaction contemplated hereby, other than the current year's vacation earned, but not taken, by Seller's employees, which vacation Buyer or the Designee shall permit such employees to take subject to and following commencement of employment with Buyer. Except with respect to the current year's vacation entitlement and for cooperation in arranging transfers between Seller's 401(k) plan and Buyer's or the Designee's 401(k) plan with respect to employees hired by Buyer or the Designee, and except as provided in Section 5.9.3, neither Buyer nor the Designee will have or assume any obligation or liability under or in connection

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with any employee benefit plan that is sponsored or maintained by Seller or an Affiliate or to which Seller contributes. In respect of those of Seller's employees hired by Buyer or the Designee, Buyer or the Designee will immediately after such hiring enroll such hired employees in Buyer's or the Designee's standard health and benefit plans (waiving any applicable waiting periods) and recognize past service with the Seller for the purpose of determining the entitlement of such employees to paid vacation under Buyer's or the Designee's vacation plan. Seller shall satisfy any legal obligation with respect to the continuation of group health coverage required pursuant to Section 4980B of the Code or Section 601, *et seq.* of ERISA. Any liability under the Worker Adjustment and Retraining Notification Act, 29 U.S.C. Sections 2101, *et seq.* ("WARN") with regard to any employee terminated on or prior to November 1, 2001, or not hired by Buyer or the Designee on or after the Closing Date, will, as a matter of contract

between the parties, be the responsibility of Seller. Buyer will, and Buyer will cause the Designee to, cooperate with Seller, if reasonably requested, in the giving of WARN notices on behalf of Seller.

5.9.3. On or before the Post-Closing Payment Date, Buyer shall pay Seller the sum of \$95,763.23 in partial reimbursement of severance costs borne or to be borne by Seller in connection with Retained Employees who are terminated by Seller.

5.10. Cooperation in the Obtaining of Consents.

5.10.1. Buyer shall fully cooperate with Seller, do all things reasonably necessary to assist Seller, and use its commercially reasonable efforts at its expense to assist Seller in obtaining all Consents necessary for the transfer of or assignment to Buyer of the Licenses and Assumed Contracts, including the furnishing of all financial and other information reasonably required by the party whose Consent is being sought.

5.10.2. Subsequent to Closing, Seller shall continue to use its commercially reasonable efforts at its own expense to obtain in writing as promptly as possible any Consent required to be obtained that was not obtained on or before Closing. The obligations set forth in this subsection shall survive Closing and shall not be merged in the consummation of the transactions contemplated hereby.

5.10.3. From Closing until each Consent is obtained, at the reasonable request of Buyer, Seller shall, to the extent it deems reasonable in the exercise of its good faith discretion, and consistent with applicable Contracts and Legal Requirements, act as the agent for Buyer, and shall preserve the benefit of and enforce the Assumed Contract or other right to which such Consent pertains to the fullest extent permissible under the applicable Assumed Contract or other right. Upon request by Buyer, at Closing Buyer

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and Seller shall enter into an agency agreement in a form mutually satisfactory to each party specifying the terms of such agency.

5.11. Transitional Services. Upon the written request of Buyer delivered to Seller at least two Business Days prior to Closing, Seller shall provide to Buyer, at the cost of Buyer (not to exceed the actual reasonable, direct cost to Seller of providing such services), certain accounting, management, operational, human resource and other transitional services in connection with the Business for a period following Closing to be agreed by the parties to allow for conversion of existing arrangements, as more specifically set forth in a transitional services agreement in a form to be agreed by the parties (the "Transitional Services Agreement"); provided that amounts paid by Buyer for such transitional services shall not include any amounts taken into account in calculating the Current Items Amount.

5.12. Title Insurance; Title Defects; Bonne Terre Title Matters.

5.12.1. Buyer shall have the right to obtain commitments for title insurance and surveys with respect to all or any portion of the Real Property. The cost to obtain such title insurance and surveys shall be borne by Buyer, save and except that the cost to delete or insure over any Title Defects shall be borne by Seller. At the request of Buyer, Seller shall exercise commercially reasonable efforts to (a) remove any Title Defect, or (b) with the consent of Buyer, cause the title company issuing the title insurance to commit to insure over each such Title Defect prior to Closing. If a Title Defect cannot be removed prior to Closing or the title company does not commit to insure over such Title Defect prior to Closing, and if acceptable to Buyer in the exercise of its reasonable discretion, Buyer and Seller shall enter into a written agreement containing Seller's commitment to use commercially reasonable efforts for 180 days following Closing to remove the Title Defect following Closing on terms reasonably satisfactory to Buyer, and thereafter, if necessary, to permit Buyer to remove such Title Defect at the expense of Seller.

5.12.2. Buyer acknowledges that Seller has negotiated an agreement with an adjacent landowner to the Facility located in Bonne Terre, Missouri concerning *inter alia* restrictions on the ability of such landowner to construct surface improvements near such Facility. Seller and Buyer acknowledge and agree that such agreement shall bind and benefit Buyer after the Closing.

5.13. Capital Leases. Buyer shall assume or pay the remaining balance on the capital leases for equipment listed on Schedule 5.13 and included in the Assets. Schedule 5.13 sets out a complete listing of all such capital leases.

5.14. Use of Names and Logos. For a period of 90 days after Closing, except with respect to Assets which are Trademarks, Buyer shall be entitled to use the trademarks, trade names, service marks, service names, logos, and similar proprietary rights of Seller to the extent incorporated in or on the Assets transferred to it at Closing, provided that Buyer shall exercise reasonable efforts to remove all such names,

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marks, logos, and similar proprietary rights of Seller from the Assets as soon as reasonably practicable following Closing.

5.15. Supplements to Schedules. Seller shall, from time to time prior to Closing, supplement the Schedules to this Agreement with additional information that, if existing or known to it on the date of this Agreement, would have been required to be included in one or more supplements to this Agreement. For purposes of determining the satisfaction of any of the conditions to the obligations of Buyer in Section 6.1 and the liability of Seller following Closing for breaches of its representations and warranties under this Agreement, the Schedules to this Agreement shall be deemed to include only (i) the information contained therein on the date of this Agreement and (ii) information added to the Schedules by written supplements to this Agreement delivered to Buyer prior to Closing that (a) are accepted in writing by Buyer or (b) reflect actions permitted by this Agreement to be taken prior to Closing.

5.16. Notification of Certain Matters. Seller shall promptly notify Buyer of any fact, event, circumstance, action or omission (i) which, if known at the date of this Agreement, would have been required to be disclosed in or pursuant to this Agreement, or (ii) the existence or occurrence of which would cause any of the disclosing party's representations or warranties under this Agreement not to be true in any material respect, and with respect to clause (ii), use commercially reasonable efforts to remedy the same.

5.17. Commercially Reasonable Efforts. Buyer and Seller shall each use commercially reasonable efforts to take all steps within its power, and will cooperate with the other party, to cause to be fulfilled those of the conditions to the other party's obligations to consummate the transactions contemplated by this Agreement that are dependent upon its actions, and to execute and deliver such instruments and take such other commercially reasonable actions as may be necessary to carry out the intent of this Agreement and to consummate the transactions contemplated hereby.

5.18. Environmental Assessments. Buyer may elect to cause to be performed, at Buyer's expense, such Environmental Assessments of the Real Property and improvements thereon as Buyer determines, in its sole discretion. Seller shall cooperate with all reasonable requests of Buyer and its consultants with respect to the conduct of such Environmental Assessments. For purposes of this Agreement, an "Environmental Assessment" means: (i) a Phase I report in accordance with a scope of work provided by Buyer, and (ii) if warranted by the facts discovered in the Phase I report, as determined in Buyer's sole discretion but subject to obtaining the consent of Seller, both acting reasonably, a Phase II report in order to identify the existence and extent of Hazardous Substances at the Real Property or improvements thereon. Such a Phase II report may include the physical sampling and analytical analysis necessary to determine the existence and extent of particular types of contamination. Buyer and Seller agree to maintain in strict confidence the Environmental Assessment and the information contained therein, except in connection with consummation of the transactions contemplated hereby, and except as otherwise required by any Legal Requirement, in which

latter event the party proposing to make the disclosure agrees to notify the other party of such requirement, and give the other party the opportunity to review and comment in advance on the content and timing of any such disclosure the disclosing party proposes to make.

5.19 Post-Closing Access to Personnel Records. For a period of one year from the Closing Date, except to the extent prevented from doing so by applicable Legal Requirements, Seller shall provide Buyer from time to time, during normal business hours and upon reasonable notice from Buyer, with access to, and the right to make copies or extracts of, pertinent information from the personnel files and records of Seller relating to employees of the Business who are hired by Buyer in connection with any Litigation, payment of Taxes or any other valid business reason.

5.20 Confidentiality and Publicity. Unless and until Closing occurs, any non-public information that either party may obtain from the other in connection with this Agreement shall be confidential, and following Closing, each party shall keep confidential any non-public information that such party may receive from another party in connection with this Agreement unrelated to the Business or Assets as well as any non-public information in the possession of such party related to the Business and Assets (any such information that a party is required to keep confidential pursuant to this sentence shall be referred to as "Confidential Information"). Each party shall not disclose any Confidential Information to any other Person (other than its affiliates and its and their directors, officers and employees, and representatives of its advisers and lenders, in each case, whose knowledge thereof is necessary in order to facilitate the consummation of the transactions contemplated hereby) or use such information to the detriment of the other; provided that (i) such party may use and disclose any such information once it has been publicly disclosed (other than by such party in breach of its obligations under this Section) or which, to its knowledge, rightfully has come into the possession of such party (other than from the other party), (ii) to the extent that such party may, in the reasonable judgment of its counsel, be compelled by Legal Requirements to disclose any of such information, such party may disclose such information if it has used commercially reasonable efforts, and has afforded the other the opportunity, to obtain an appropriate protective order, or other satisfactory assurance of confidential treatment, for the information compelled to be disclosed, and (iii) such party may disclose such information to the extent required to comply with any Legal Requirement or regulatory inquiry or investigation. In the event of termination of this Agreement, the obligation set forth in this Section shall continue for a period of two years after such termination.

**ARTICLE 6**  
**CONDITIONS PRECEDENT**

6.1. Conditions to Buyer's Obligations. The obligation of Buyer to consummate the transactions contemplated by this Agreement shall be subject to the following conditions, any of which may be waived by Buyer in its sole discretion to the extent not prohibited by applicable Legal Requirements:

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6.1.1. Accuracy of Representations and Warranties. The representations and warranties of Seller in this Agreement or in any Transaction Document shall be true and accurate at and as of Closing with the same effect as if made at and as of Closing, except for changes permitted or contemplated by this Agreement.

6.1.2. Performance Of Agreements. Seller shall have performed all obligations and agreements and complied with all covenants in this Agreement or in any Transaction Document to be performed and complied with by it at or before Closing.

6.1.3. Legal Proceedings. There shall be no Legal Requirement, and no Judgment shall have been entered and not vacated by any Governmental Authority with legal jurisdiction in connection with any Litigation, which (i) enjoins, restrains, makes illegal, or prohibits consummation of the transactions contemplated by this Agreement, or (ii) requires separation or divestiture by Buyer of all or any significant portion of the Assets after Closing, and there shall be no Litigation pending or threatened seeking, or which if successful would have the effect of, any of the foregoing.

6.1.4. Consents. Buyer shall have received evidence, in form and substance satisfactory to it, that all Consents (other than the Consents of (i) The Associates with respect to a May 19, 1999 Lease Agreement with EDC concerning a forklift, (ii) Personal Attention Leasing with respect to a November 18, 2000 Lease Agreement with EDC concerning certain trailers, (iii) Hazard Petroleum Company with respect to a January 1, 1999 Lease Agreement with EDC concerning Combs, Kentucky, and (iv) Union Pacific Railroad Company with respect to Contract Nos. 80191.006 and 80637.007 dated January 1 and 9, 2001, respectively, concerning rail rates for Combs, Kentucky and Williamson, West Virginia, respectively, the receipt of each which is hereby waived by Buyer for purposes of Closing subject to Seller's covenants set forth in Sections 5.10.2 and 5.10.3) have been obtained.

6.1.5. Lien Releases. Buyer shall have received the results of searches of the appropriate public records (as determined and paid for by Buyer), or other evidence satisfactory to it, that there exist no Liens other than Permitted Liens affecting the Assets or reasonable assurances that any such Liens affecting the Assets will be terminated at or prior to Closing.

6.1.6. Non-Competition Covenant. Seller shall have delivered an executed Non-Competition Covenant in the form attached as Exhibit A to this Agreement (the "Non-Competition Covenant").

6.1.7. Deliveries. Seller shall have made or stand willing to and able to make all of the deliveries to Buyer set forth in Section 7.2, including the Transitional Services Agreement, if any.

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6.1.8. Environmental Assessment. If Buyer, at its option, shall have conducted any Environmental Assessments, the results of each such Environmental Assessment, and the results of any environmental assessment, study or survey conducted by or on behalf of Seller with respect to the Assets, shall in each case be satisfactory to Buyer in its reasonable discretion.

6.1.9. Title Defects; Title Encumbrances. There shall exist no Title Defects which the title company shall not have deleted from the title insurance commitments or, with the consent of Buyer, committed to insure over, and Seller shall have secured the termination of all material Liens on the Assets other than Permitted Liens.

6.1.10. No Material Adverse Change. There shall have been no material adverse change in the Assets or the financial condition or operations of the Business since the date of this Agreement.

6.1.11. AN Supply Agreement. EDC shall have executed and delivered an AN Supply Agreement substantially in the form attached hereto as Exhibit B (the "AN Supply Agreement").

6.1.12. Bonne Terre Facility. Seller shall have conveyed, or shall have caused or made arrangements to be conveyed, to Buyer, under terms and conditions reasonably acceptable to Buyer, a parcel of land located adjacent to the Bonne Terre, Missouri Facility (the "Bonne Terre Parcel") sufficient to ensure that Buyer shall own in fee after Closing all real property underlying all buildings and other surface improvements constituting Assets comprising the Bonne Terre, Missouri Facility, such real property to include a reasonable buffer zone around such buildings and other surface improvements.

6.2. Conditions to Seller's Obligations. The obligation of Seller to consummate the transactions contemplated by this Agreement shall be subject to the following conditions, any of which may be waived by Seller in its sole discretion to the extent not prohibited by applicable Legal Requirements:

6.2.1. Accuracy of Representations and Warranties. The representations and warranties of Buyer in this Agreement or in any Transaction Document shall be true and accurate at and as of Closing with the same effect as if made at and as of Closing, except for changes permitted or contemplated by this Agreement.

6.2.2. Performance of Agreements. Buyer shall have performed all obligations and agreements and complied with all covenants in this Agreement or in any Transaction Document to be performed and complied with by it at or before Closing.

6.2.3. Legal Proceedings. There shall be in effect no Legal Requirement, and no Judgment shall have been entered and not vacated by any Governmental Authority with legal jurisdiction in connection with any Litigation, which enjoins, restrains, makes illegal, or prohibits consummation of the transactions

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contemplated hereby, and there shall be no Litigation pending or threatened seeking, or which if successful would have the effect of, the foregoing.

6.2.4. AN Supply Agreement. Buyer shall have executed and delivered the AN Supply Agreement.

6.2.5. No Material Adverse Change. There shall have been no material adverse change in the financial condition or operations of Buyer since the date of this Agreement.

## ARTICLE 7 CLOSING

### 7.1. Closing; Time and Place; Boonville Closing.

7.1.1. The Closing of the transactions contemplated by this Agreement shall take place on the last Business Day of the month in which satisfaction or waiver of the conditions set forth in Sections 6.1 and 6.2 occurs, or on such other date as Buyer and Seller may mutually agree, at the offices of Buyer, 9781 South Meridian Boulevard, Suite 400, Englewood, Colorado 80112, or by fax and mail, as Buyer and Seller may mutually agree; provided, however, that, except as provided in Section 7.1.2 with respect to the Boonville Facility, in no event shall Closing take place later than November 30, 2001 (the "Outside Closing Date").

7.1.2. If on or prior to the Closing Date, the closing condition set forth in Section 6.1.8 has not been satisfied or waived by Buyer with respect to the Boonville Facility, then the parties shall proceed to Closing (subject to satisfaction of the other conditions set forth in Sections 6.1 and 6.2 hereof); provided that, with respect to the Boonville Facility, unless the parties shall have otherwise agreed in writing, Buyer shall have the right, at its option, exercisable by written notice to Seller prior to the Closing, to relocate the Boonville Facility to an alternate site, in which event Seller shall (i) convey to Buyer at Closing all Assets (other than all Real Property, which shall be retained by Seller and treated as an Excluded Asset (the "Retained Boonville Real Property")) relating to or comprising the Boonville Facility, (ii) allow Buyer to use a portion of the Retained Boonville Real Property for transition purposes, and (iii) reimburse to Buyer 50% of all reasonable out-of-pocket costs and expenses incurred or to be incurred by Buyer, including real property acquisition or leasing costs, in relocating the Boonville Facility to an alternate site; provided that Seller's reimbursement obligation under this Section 7.1.2 shall not exceed \$50,000.

### 7.2. Seller's Obligations. At Closing, Seller shall deliver or cause to be delivered to Buyer, the following:

7.2.1. Bill of Sale and Assignment. A fully-executed Bill of Sale and Assignment in the form of Exhibit C transferring the Assets from Seller to Buyer.

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7.2.2. Non-Competition Covenant. An executed Non-Competition Covenant.

7.2.3. Officer's Certificate. A certificate executed by an officer of Seller, dated as of Closing, reasonably satisfactory in form and substance to Buyer, certifying that the conditions specified in Sections 6.1.1 and 6.1.2 have been satisfied.

7.2.4. Vehicle Titles. Title certificates, endorsed in blank, to those owned vehicles reflected on Schedule 3.3 for which Seller has title certificates in Seller's name as of Closing. To the extent Seller does not have title certificates in Seller's name to any of those owned vehicles reflected in Schedule 3.3 as of Closing, Seller shall use its commercially reasonable efforts to (i) obtain title certificates in Seller's name on any such owned vehicles that require a title certificate, and (ii) deliver such title certificates, endorsed in blank, to Buyer as soon as reasonably practical after Closing. The cost and any taxes attributable to obtaining any such title certificates in Seller's name shall be borne by Seller.

7.2.5. Deeds. Executed deeds, in form and substance reasonably satisfactory to Buyer, conveying to Buyer, subject only to Permitted Liens and Liens for *ad valorem* Taxes not yet due and payable and the permitted exceptions reflected on the

updated Title Commitments and on Schedule 3.13 hereto, each parcel of the Owned Real Property.

7.2.6. Books and Records. To the extent not previously delivered, copies of all Licenses, Assumed Contracts, customer lists, engineering records, files and records used by Seller in connection with the operation of the Business.

7.2.7. FIRPTA Certificate. An executed FIRPTA Non-Foreign Seller Certificate from Seller certifying that it is not a foreign person within the meaning of Section 1445 of the Code reasonably satisfactory in form and substance to Buyer.

7.2.8. Transitional Services Agreement. If timely requested by Buyer, an executed Transitional Services Agreement.

7.2.9. Assumption Agreement. Seller's consent to the Assumption Agreement (as defined below).

7.2.10. Other. Such other documents and instruments, including an assignment of Trademarks, as shall be necessary to effect the intent of this Agreement and consummate the transactions contemplated hereby.

7.3. Buyer's Obligations. At Closing, Buyer shall deliver or cause to be delivered to Seller the following:

7.3.1. Purchase Price. The Purchase Price, as adjusted.

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7.3.2. Officer's Certificate. A certificate executed on behalf of Buyer, dated as of Closing, reasonably satisfactory in form and substance to Seller, certifying that the conditions specified in Sections 6.2.1 and 6.2.2 have been satisfied.

7.3.3. Assumption Agreement. An Assumption Agreement (the "Assumption Agreement"), duly executed by Buyer, in form and substance reasonably acceptable to Seller, pursuant to which Buyer shall assume the Assumed Obligations and Liabilities.

7.3.4. Other. Such other documents and instruments as shall be necessary to effect the intent of this Agreement and consummate the transactions contemplated hereby.

## **ARTICLE 8 TERMINATION AND DEFAULT**

8.1. Termination Events. This Agreement may be terminated and the transactions contemplated hereby may be abandoned:

8.1.1. at any time, by the mutual written agreement of Buyer and Seller;

8.1.2. by either Buyer or Seller, upon written notice to the other, at any time, if the other is in breach or default of its respective covenants, agreements, or other obligations herein, or if any of its representations herein are not true and accurate in all material respects when made or when otherwise required by this Agreement to be true and accurate, and such breach, default or failure is not cured within 30 days of receipt of notice that such breach, default or failure exists or has occurred;

8.1.3. by either Buyer or Seller upon written notice to the other, if Closing shall not have occurred on or before the Outside Closing Date for any reason other than a breach or default by such party of its respective covenants, agreements, or other obligations hereunder, or any of its representations herein not being true and accurate in all material respects when made or when otherwise required by this Agreement to be true and accurate in all material respects; or

8.1.4. as otherwise provided herein.

8.2. Effect of Termination.

8.2.1. Buyer's Remedies. If both (i) this Agreement is terminated by Buyer pursuant to Section 8.1.2 or 8.1.3 and (ii) Seller is in breach in any material respect of any of its representations and warranties made herein or its covenants or agreements made herein (and Buyer is not in breach in any material respect of any of its representations and warranties or covenants made herein), then Buyer shall have all remedies available at law or in equity, including the right of specific performance and/or the right to

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seek money damages from Seller for any Losses incurred by Buyer. Seller acknowledges the unique nature of the transactions contemplated by this Agreement and the circumstances under which this Agreement has been entered into may render money damages for a breach of Seller's obligation to consummate the transactions contemplated by this Agreement an inadequate remedy,

and Seller agrees that Buyer will be entitled to pursue specific performance as a remedy for such breach without the requirement of posting a bond or other security therefore.

8.2.2. Seller's Remedies. If both (i) this Agreement is terminated by Seller pursuant to Sections 8.1.2 or 8.1.3, and (ii) Buyer is in breach in any material respect of any of its representations and warranties made herein or its covenants or agreements made herein (and Seller is not in breach in any material respect of any of its representations and warranties or covenants made herein), then Seller shall have the right to seek money damages from Buyer for any Losses incurred by Seller.

## ARTICLE 9 INDEMNIFICATION

9.1. Indemnification by Seller. From and after Closing, and regardless of any investigation made at any time by or on behalf of Buyer or any information Buyer may have, Seller shall defend, indemnify and hold harmless Buyer, its Affiliates, partners, officers, directors, employees, agents, and representatives, and any third party claiming by or through any of them, as the case may be, from and against any and all Losses arising out of or resulting from:

9.1.1. any representations and warranties made by Seller in this Agreement or in any Transaction Document not being true and accurate when made or when required by this Agreement or such Transaction Document to be true and accurate;

9.1.2. any failure by Seller to perform any of its covenants, agreements, or obligations in this Agreement or in any Transaction Document;

9.1.3. all actual or purported liabilities and obligations of Seller, and all claims and demands made in respect thereof, whether or not known or asserted at or prior to Closing (other than the Assumed Obligations and Liabilities);

9.1.4. the operation of the Business prior to the Adjustment Time, including under any environmental Legal Requirement to the extent attributable to actions occurring or conditions existing on or prior to the Adjustment Time (including matters disclosed or required to be disclosed in Schedule 3.12);

9.1.5. any liabilities relating to Seller's employees asserted under any Legal Requirement or otherwise pertaining to any labor or employment matter arising out of actions occurring prior to November 1, 2001; and

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9.1.6. all obligations and liabilities arising out of or relating to the Excluded Assets.

If, by reason of the claim of any Person relating to any of the matters subject to such indemnification, a Lien is placed or made upon any of the properties or assets owned or used by Buyer or any other indemnitee hereunder, in addition to any indemnity obligation of Seller under this Article, if the Lien is not released within 30 days after Seller is made aware of the Lien, Seller shall furnish a bond sufficient to obtain the prompt release thereof within 10 days from receipt of notice relating thereto.

9.2. Indemnification by Buyer. From and after Closing, Buyer shall defend, indemnify and hold harmless Seller, its Affiliates, shareholders, officers, directors, employees, agents, and representatives, and any third party claiming by or through any of them, as the case may be, from and against any and all Losses arising out of or resulting from:

9.2.1. any representations and warranties made by Buyer in this Agreement or in any Transaction Document not being true and accurate when made or when required by this Agreement or such Transaction Document to be true and accurate;

9.2.2. any failure by Buyer to perform any of its covenants, agreements, or obligations in this Agreement or in any Transaction Document;

9.2.3. the operation of the Business after the Adjustment Time; and

9.2.4. the Assumed Obligations and Liabilities.

9.3. Claims for Indemnity; Third Party Claims.

9.3.1. Whenever a claim for Losses shall arise for which one party ("Indemnitee") shall be entitled to indemnification under this Article 9, Indemnitee shall notify the indemnifying party ("Indemnitor") in writing promptly after the first receipt of notice of such claim, and in any event within such period as may be necessary for Indemnitor to take appropriate action to resist such claim. Such notice shall specify all facts known to Indemnitee giving rise to such indemnification rights. The right of Indemnitee for indemnification, as set forth in the notice, shall be deemed agreed to by Indemnitor unless, within 30 days after receipt of such notice, Indemnitor shall notify Indemnitee in writing that it disputes the right of Indemnitee to indemnification. If Indemnitee shall be duly notified of such dispute, the parties shall attempt to settle and compromise the same first by referring such matters to an executive officer of each party prior to commencing any Litigation to interpret the terms of this Agreement.

otherwise) of Indemnitee's right to indemnification hereunder with respect to such claim, Indemnitor shall assume the defense of such claim with counsel reasonably satisfactory to Indemnitee and Indemnitee shall cooperate to the extent reasonably requested by Indemnitor in defense or prosecution thereof and shall furnish such records, information and testimony and attend all such conferences, discovery proceedings, hearings, trials and appeals as may be reasonably requested by Indemnitor in connection therewith. If Indemnitor shall acknowledge Indemnitee's right to indemnification and elect to assume the defense of such claim, Indemnitee shall have the right to employ its own counsel in any such case, but the fees and expenses of such counsel shall be at the expense of Indemnitee. If Indemnitor has assumed the defense of any claim against Indemnitee, Indemnitor shall have the right to settle any claim for which indemnification has been sought and is available hereunder; provided that, to the extent that such settlement requires Indemnitee to take, or prohibits Indemnitee from taking, any action or purports to obligate Indemnitee, then Indemnitor shall not settle such claim without the prior written consent of Indemnitee, such consent not to be unreasonably withheld. If Indemnitor does not assume the defense of a third party claim or disputes Indemnitee's right to indemnification, Indemnitee shall have the right to defend against such claim until Indemnitor's obligation to indemnify is established pursuant to this Section 9.3, and Indemnitor shall have the right to participate in the defense of such claim through counsel of its choice, at Indemnitor's expense, but Indemnitee shall have control over the defense and authority to resolve such claim subject to this Section 9.3.

9.4. Survival of Representations and Warranties; Limitations. Unless specified otherwise in this Agreement, the representations and warranties of Seller and Buyer in this Agreement shall survive the Closing for a period of 12 months, except for (i) those contained in Sections 3.1, 3.2, 3.3, 3.4, 4.1, 4.2 and 4.3, which shall survive indefinitely, and (ii) those contained in Sections 3.7, 3.8, 3.11 and 3.12, which shall survive for the applicable statute of limitations. Seller and Buyer shall have no liability under Sections 9.1.1 and 9.2.1, respectively, unless a claim for Losses for which indemnification is sought thereunder is asserted by Buyer or Seller, as the case may be, within the applicable survival period. Seller shall have no liability under Section 9.1.1, and Buyer shall have no liability under Section 9.2.1, unless, and only to the extent that, the aggregate amount of Losses otherwise subject to its indemnification obligations thereunder exceeds \$70,000 (the "Deductible"); provided that the Deductible shall not apply to any Losses resulting from or arising out of Seller's breach of the representations and warranties contained in Sections 3.8 and 3.19.

9.5. Sole Remedy. Each party acknowledges and agrees that, should the Closing occur, its sole and exclusive remedy against the other with respect to any breach of representation, warranty, covenant, agreement or obligation will be pursuant to the indemnification provisions set forth in Section 5.9.2 and this Article 9.

## ARTICLE 10 MISCELLANEOUS PROVISIONS

10.1. Expenses. Except as otherwise provided in this Agreement, each of the parties shall pay its own expenses and the fees and expenses of its counsel, accountants, and other experts in connection with this Agreement.

10.2. Waivers. No action taken pursuant to this Agreement, including any investigation by or on behalf of any party hereto, shall be deemed to constitute a waiver by the party taking the action of compliance with any representation, warranty, covenant or agreement herein. The waiver by any party hereto of any condition or of a breach of another provision of this Agreement shall not operate or be construed as a waiver of any other condition or subsequent breach. The waiver by any party of any of the conditions precedent to its obligations under this Agreement shall not preclude it from seeking redress for breach of this Agreement other than with respect to the condition so waived.

10.3. Notices. All notices, requests, demands, applications, services of process, and other communications which are required to be or may be given under this Agreement shall be in writing and shall be deemed to have been duly given if sent by facsimile transmission, courier, certified first class mail, postage prepaid, return receipt requested, or overnight delivery service to the parties hereto at the following addresses:

To Seller: El Dorado Chemical Company  
16 South Pennsylvania  
Oklahoma City, Oklahoma 73107  
Attention: James Wewers  
Facsimile: 405-236-1209

Copy to: Northwest Financial Corporation  
16 South Pennsylvania

Oklahoma City, Oklahoma 73107  
Attention: David Shear, Esq.  
Facsimile: 405-236-1209

To Buyer:

Orica USA Inc.  
9781 South Meridian Boulevard  
Suite 400  
Englewood, Colorado 80112  
Attention: President  
Facsimile: 303-268-5251

Copy to:

Legal Department  
(at the address above)  
Attention: General Counsel  
Facsimile: 303-268-5252

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or to such other address as any party shall have furnished to the other by notice given in accordance with this Section. Such notice shall be effective, (i) if sent by facsimile transmission, when confirmation of transmission is received, or (ii) otherwise, upon actual receipt or rejection by the intended recipient.

10.4. Publicity. Seller and Buyer shall consult with and cooperate with the other with respect to the content and timing of all press releases and other public announcements, and any oral or written statements to Seller's employees concerning this Agreement and the transactions contemplated hereby. Except as required by applicable legal requirements, neither Seller nor Buyer shall make any such release, announcement, or statements without the prior written consent and approval of the other, and each shall keep the existence and terms of this Agreement confidential.

10.5. Risk of Loss. The risk of any loss or damage to the Assets resulting from fire, theft or any other casualty (except reasonable wear and tear) shall be borne by Seller at all times prior to the Adjustment Time. In the event that any such loss or damage shall be sufficiently substantial so as to preclude and prevent resumption of normal operations of any material portion of the Business or the replacement or restoration of the lost or damaged property within 30 days from the occurrence of the event resulting in such loss or damage, Seller shall immediately notify Buyer in writing of its inability to resume normal operations or to replace or restore the lost or damaged Assets, and Buyer, at any time within 30 days after receipt of such notice, may elect by written notice to Seller to either (i) waive such defect and proceed toward consummation of the transaction in accordance with terms of this Agreement, or (ii) terminate this Agreement. If Buyer elects to so terminate this Agreement, Buyer and Seller shall stand fully released and discharged of any and all obligations hereunder (except for obligations intended to survive hereunder). If Buyer shall elect to consummate the transactions contemplated by this Agreement notwithstanding such loss or damage and does so, all insurance proceeds payable as a result of the occurrence of the event resulting in such loss or damage shall be delivered by Seller to Buyer, or the rights thereto shall be assigned by Seller to Buyer if not yet paid over to Seller, and Seller shall pay to Buyer an amount equal to the difference between the amount of such insurance proceeds and the full replacement cost of the damaged or lost Assets.

10.6. Assignment; Binding Effect. This Agreement shall not be assignable by any of the parties hereto without the prior written consent of the other party, which consent shall not be unreasonably withheld; provided that, without the consent of Seller, Buyer may assign its rights to acquire certain of the Assets (the "Designated Assets"), and delegate its obligation to perform the Assumed Obligations and Liabilities relating to the Designated Assets, to a designee, including, without limitation, Nelson Brothers, LLC (the "Designee"); provided that such assignment and delegation shall not be deemed to release Buyer from its obligations hereunder, including the obligation to pay the Purchase Price. Without limiting the generality of the foregoing and notwithstanding anything to the contrary in this Agreement, at or prior to the Closing Date, Buyer may deliver written notice to Seller identifying the Designated Assets to be assigned by Seller directly to the Designee identified in such notice. In the event Buyer delivers such notice, (i) Seller shall, on the

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Closing Date, execute and deliver such bills of sale and general assignments, general warranty deeds and other instruments of conveyance or otherwise as shall be necessary to or appropriate to vest in Designee title to the Designated Assets and to convey to such Designee the benefit of Seller's representations, warranties, covenants and agreements herein which relate to the Designated Assets, subject to the execution and delivery by such Designee of an assumption agreement substantially similar to the Assumption Agreement by which the Designee agrees to assume and perform the Assumed Obligations and Liabilities relating to the Designated Assets; and (ii) Buyer shall cause the Designee to pay, on the Closing Date, the allocated share of the Purchase Price

relating to the Designated Assets (being 50 percent of the Purchase Price) directly to Seller. From and after the Closing Date, Buyer shall have no obligations or liabilities with respect to the Designated Assets.

10.7 Certain Taxes. Property and *ad valorem* Taxes levied or assessed against the Assets for periods ending on or before the Adjustment Time shall be for the account of Seller; provided that if such Taxes are payable after the Adjustment Time, Buyer shall receive a credit for the estimated amount of such Taxes in the calculation of the Current Items Amount, and Buyer shall pay such Taxes when due.

10.8 No Benefit to Others. Except as may pertain to the Designated Assets, the representations, warranties, covenants and agreements contained in this Agreement are for the sole benefit of the parties hereto, and they shall not be construed as conferring any rights on any other Persons. The representations, warranties, covenants and agreements contained in this Agreement, insofar as they pertain to the Designated Assets, may be enforced by the Designee directly against Seller.

10.9 Entire Agreement; Amendments. This Agreement and the Exhibits and Schedules hereto, together with the Confidentiality Agreement dated August 14, 2001 between Buyer and EDC and the Confidentiality Agreement dated August 15, 2001 between Nelson Brothers, LLC and EDC, embody the entire agreement between the parties hereto with respect to the subject matter hereof and supersede all prior agreements and understandings, oral or written, with respect thereto. This Agreement may not be modified orally, but only by an agreement in writing signed by the party or parties against whom any waiver, change, amendment, modification, or discharge may be sought to be enforced.

10.10. Governing Law. The validity, performance, and enforcement of this Agreement shall be governed by the laws of the State of Colorado, without giving effect to the principles of conflicts of law of such state.

10.11. Counterparts. This Agreement may be executed in any number of counterparts, each of which, when executed, shall be deemed to be an original and all of which together will be deemed to be one and the same instrument. This Agreement will become binding when one or more counterparts, individually or taken together, bear the signatures of all parties to this Agreement. Delivery of an executed signature page of this Agreement by facsimile transmission will constitute effective and binding execution and delivery of this Agreement.

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10.12. Further Assurances. From time to time after Closing, Seller shall, if requested by Buyer, make, execute and deliver to Buyer such additional assignments, bills of sale, deeds and other instruments of transfer, as may be necessary or proper to transfer to Buyer all of Seller's right, title, and interest in and to the Assets. Without limiting the generality of the foregoing, Seller shall, if requested by Buyer, take such actions and execute and deliver, or cause to be executed and delivered, such deeds or other instruments of transfer as shall be necessary or proper to insure that Buyer receives fee simple title to the Bonne Terre Parcel free and clear of all Liens (except Permitted Liens and Liens for *ad valorem* Taxes not yet due and payable, and subject to the permitted exceptions reflected on the Updated Title Commitments and Schedule 3.13 hereto).

10.13. Attorneys' Fees. The prevailing party in any action to enforce the terms of this Agreement shall be entitled to reimbursement by the other party for all costs (including reasonable attorneys' fees) incurred in connection with such proceeding, in addition to any other remedies to which it may be entitled.

10.14. Schedules and Exhibits; Headings. All references herein to Schedules and Exhibits are to the Schedules and Exhibits attached hereto, which shall be incorporated in and constitute a part of this Agreement by such reference. The headings in this Agreement are for the purpose of reference only and shall not limit or otherwise affect the meaning of this Agreement. Seller and Buyer acknowledge and agree that the Personal Property, Inventory, Contracts, Licenses and Real Property have been described and segregated on Schedules 3.4, 3.5, and 3.13 with reference to which of EDC or NWF is the owner, lessor or party to such Asset.

10.15. Remedies Cumulative. Except as expressly provided otherwise in this Agreement, in addition to any remedies provided in this Agreement, the parties will have all remedies provided at law or in equity. The rights and remedies provided in this Agreement or otherwise under applicable laws will be cumulative and the exercise of any particular right or remedy will not preclude the exercise of any other rights or remedies in addition to, or as an alternative of, such right or remedy, except as expressly provided otherwise in this Agreement.

10.16. Construction. This Agreement has been negotiated by Buyer and Seller and their respective legal counsel, and legal or equitable principles that might require construction of this Agreement or provision hereof against the party drafting this Agreement will not apply in any construction or interpretation of this Agreement.

10.17. Commercially Reasonable Efforts. For purposes of this Agreement, unless a different standard is expressly provided with respect to any particular matter, any requirement herein that a party use "commercially reasonable efforts" will not be deemed to require that party to undertake extraordinary measures, including the initiation or prosecution of legal proceedings or the payment of amounts in excess of normal and usual filing and processing fees, if any.

**[SIGNATURE PAGE FOLLOWS]**

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The parties have executed this Agreement as of the date set forth above.

**SELLER:**

EL DORADO CHEMICAL COMPANY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

NORTHWEST FINANCIAL  
CORPORATION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**BUYER:**

ORICA USA INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SCHEDULE 1.1**

**TRADEMARKS**

THE INFORMATION CONTAINED WITHIN THIS SCHEDULE HAS BEEN OMITTED; HOWEVER THIS SCHEDULE WILL BE FURNISHED IN ITS ENTIRETY TO THE COMMISSION UPON REQUEST.

**SCHEDULE 2.2**

**EXCLUDED ASSETS**

THE INFORMATION CONTAINED WITHIN THIS SCHEDULE HAS BEEN OMITTED; HOWEVER THIS SCHEDULE WILL BE FURNISHED IN ITS ENTIRETY TO THE COMMISSION UPON REQUEST.

Asset Purchase Agreement  
Schedule 2.2  
Page 1 of 2

### **SCHEDULE 3.3**

#### **SELLER'S CONSENTS**

THE INFORMATION CONTAINED WITHIN THIS SCHEDULE HAS BEEN OMITTED; HOWEVER THIS SCHEDULE WILL BE FURNISHED IN ITS ENTIRETY TO THE COMMISSION UPON REQUEST.

Asset Purchase Agreement  
Schedule 3.3  
Page 1 of 10

#### **SCHEDULE 3.4-A - PERSONAL PROPERTY - PAGE 1**

THE INFORMATION CONTAINED WITHIN THIS SCHEDULE HAS BEEN OMITTED; HOWEVER THIS SCHEDULE WILL BE FURNISHED IN ITS ENTIRETY TO THE COMMISSION UPON REQUEST.

## **SCHEDULE 3.5**

### **LICENSES AND CONTRACTS**

THE INFORMATION CONTAINED WITHIN THIS SCHEDULE HAS BEEN OMITTED; HOWEVER THIS SCHEDULE WILL BE FURNISHED IN ITS ENTIRETY TO THE COMMISSION UPON REQUEST.

Asset Purchase Agreement  
Schedule 3.5  
Page 1 of 5

## **SCHEDULE 3.6**

### **LITIGATION**

THE INFORMATION CONTAINED WITHIN THIS SCHEDULE HAS BEEN OMITTED; HOWEVER THIS SCHEDULE WILL BE FURNISHED IN ITS ENTIRETY TO THE COMMISSION UPON REQUEST.

Asset Purchase Agreement  
Schedule 3.6  
Page 1 of 2

## **SCHEDULE 3.7-A**

### **COLLECTIVE BARGAINING AGREEMENTS**

THE INFORMATION CONTAINED WITHIN THIS SCHEDULE HAS BEEN OMITTED; HOWEVER THIS SCHEDULE WILL BE FURNISHED IN ITS ENTIRETY TO THE COMMISSION UPON REQUEST.

**SCHEDULE 3.7-B**

**PENSION, PROFIT SHARING, POST-RETIREMENT OR  
OTHER EMPLOYEE BENEFIT PLANS**

THE INFORMATION CONTAINED WITHIN THIS SCHEDULE HAS BEEN OMITTED; HOWEVER THIS SCHEDULE WILL BE FURNISHED IN ITS ENTIRETY TO THE COMMISSION UPON REQUEST.

**SCHEDULE 3.7-C  
EMPLOYEE LIST**

\*\*\*

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**SCHEDULE 3.7-D**  
**EMPLOYEE COMPENSATION**

\*\*\*

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**SCHEDULE 3.8**

**TAXES**

THE INFORMATION CONTAINED WITHIN THIS SCHEDULE HAS BEEN OMITTED; HOWEVER THIS SCHEDULE WILL BE FURNISHED IN ITS ENTIRETY TO THE COMMISSION UPON REQUEST.

**SCHEDULE 3.10**

**MATERIAL ADVERSE CHANGES**

THE INFORMATION CONTAINED WITHIN THIS SCHEDULE HAS BEEN OMITTED; HOWEVER THIS SCHEDULE WILL BE FURNISHED IN ITS ENTIRETY TO THE COMMISSION UPON REQUEST.

Asset Purchase Agreement  
Schedule 3.10  
Page 1 of 1

**SCHEDULE 3.11**

**LEGAL REQUIREMENTS**

NONE

Asset Purchase Agreement  
Schedule 3.11  
Page 1 of 1

**SCHEDULE 3.12**

**ENVIRONMENTAL LAWS AND REGULATIONS**

\*\*\*

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Asset Purchase Agreement  
Schedule 3.12  
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### **SCHEDULE 3.13**

#### **REAL PROPERTY**

THE INFORMATION CONTAINED WITHIN THIS SCHEDULE HAS BEEN OMITTED; HOWEVER THIS SCHEDULE WILL BE FURNISHED IN ITS ENTIRETY TO THE COMMISSION UPON REQUEST.

Asset Purchase Agreement  
Schedule 3.13  
Page 1 of 5

### **SCHEDULE 3.14**

#### **INTELLECTUAL PROPERTY**

THE INFORMATION CONTAINED WITHIN THIS SCHEDULE HAS BEEN OMITTED; HOWEVER THIS SCHEDULE WILL BE FURNISHED IN ITS ENTIRETY TO THE COMMISSION UPON REQUEST.

Asset Purchase Agreement  
Schedule 3.14  
Page 1 of 1

### **SCHEDULE 3.17**

#### **CONSTRUCTION, FIDELITY, PERFORMANCE OR OTHER BONDS**

NONE

Asset Purchase Agreement  
Schedule 3.17  
Page 1 of 1

### **SCHEDULE 4.3**

#### **BUYER'S CONSENTS**

NONE

## **SCHEDULE 5.9**

**\*\*\***

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## **SCHEDULE 5.13**

### **CAPITAL LEASES**

THE INFORMATION CONTAINED WITHIN THIS SCHEDULE HAS BEEN OMITTED; HOWEVER THIS SCHEDULE WILL BE FURNISHED IN ITS ENTIRETY TO THE COMMISSION UPON REQUEST.

**EXHIBIT A**

**FORM OF NON-COMPETITION COVENANT**

THE INFORMATION CONTAINED WITHIN THIS EXHIBIT HAS BEEN OMITTED; HOWEVER THIS SCHEDULE WILL BE FURNISHED IN ITS ENTIRETY TO THE COMMISSION UPON REQUEST.

**EXHIBIT B**

**AN SUPPLY AGREEMENT\*\*\*\***

\*\*\*\*THE INFORMATION CONTAINED WITHIN THIS EXHIBIT HAS BEEN OMITTED BECAUSE THIS DOCUMENT IS FILED AS EXHIBIT 99.2 TO THE COMPANY'S CURRENT REPORT ON FORM 8-K; HOWEVER THIS EXHIBIT WILL BE FURNISHED IN ITS ENTIRETY TO THE COMMISSION UPON REQUEST. CERTAIN INFORMATION IN THIS DOCUMENT HAS BEEN OMITTED FROM THIS PUBLIC FILING PURSUANT TO A REQUEST BY THE COMPANY FOR CONFIDENTIAL TREATMENT BY THE SECURITIES AND EXCHANGE COMMISSION. THE OMITTED INFORMATION HAS BEEN FILED SEPARATELY WITH THE SECRETARY OF THE SECURITIES AND EXCHANGE COMMISSION FOR PURPOSES OF SUCH REQUEST.

# **AN SUPPLY AGREEMENT\***

BETWEEN

**ORICA USA INC.**

AND

**EL DORADO CHEMICAL COMPANY**

**NOVEMBER 1, 2001**

\*INFORMATION IN THIS DOCUMENT HAS BEEN OMITTED FROM THIS PUBLIC FILING PURSUANT TO A REQUEST BY THE COMPANY FOR CONFIDENTIAL TREATMENT BY THE SECURITIES AND EXCHANGE COMMISSION. THE OMITTED INFORMATION HAS BEEN FILED SEPARATELY WITH THE SECRETARY OF THE SECURITIES AND EXCHANGE COMMISSION FOR PURPOSES OF SUCH REQUEST

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Schedule "A"	Definitions
Schedule "B"	Product Specifications
Schedule "C"	***
Schedule "D"	Liquidated Damages Calculation
Schedule "E"	Measurement of Ammonia, Ammonium Nitrate and Additive Deliveries
Schedule "F"	Types of Unusual Incidents to be Reported to Orica

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**Page 3**

This AN Supply Agreement is made as of the 1<sup>st</sup> day of November, 2001

**BETWEEN:**

**ORICA USA INC.,**  
a corporation incorporated under the laws of Delaware  
("Orica")

**AND:**

**EL DORADO CHEMICAL COMPANY,**  
a corporation incorporated under the laws of Oklahoma  
("EDC")

**WHEREAS:**

- (a) Orica desires to supply quantities of Ammonia and Additives to EDC for manufacturing by EDC into AN Prills and AN Solution for delivery to Orica; and
- (b) EDC desires to receive Ammonia and Additives from Orica and to manufacture such Ammonia and Additives into AN Prills and AN Solution for delivery to Orica.

**NOW THEREFORE**, in consideration of the mutual covenants contained in this Agreement, Orica and EDC agree as follows:

**1.0 REFERENCES AND DEFINITIONS**

**1.1** Capitalized words used in this Agreement and the Schedules hereto, unless otherwise defined herein, have the definition given to those words in Schedule "A".

**1.2** This Agreement has the following Schedules which are a part hereof:

Schedule "A"	Definitions
Schedule "B"	Product Specifications
Schedule "C"	***
Schedule "D"	Liquidated Damages Calculation
Schedule "E"	Measurement of Ammonia, Ammonium Nitrate and Additive Deliveries
Schedule "F"	Types of Unusual Incidents to be Reported to Orica
Schedule "G"	Receipt and Unloading of Ammonia and Additives
Schedule "H"	Form of Warehouse Lease

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## 2.0 TERM

**2.1** This Agreement shall become effective as of November 1, 2001 and, unless earlier terminated in accordance with the provisions hereof, shall continue for an initial term ("Initial Term") ending December 31, 2006. Thereafter, unless earlier terminated in accordance with the provisions hereof the term of this Agreement shall automatically extend for one year periods on the anniversary of the last day of the Initial Term (as so extended the "Term"). Either party may, at any time, deliver a written notice of termination to the other; provided that, except as provided in Section 16 hereof, the effective date of termination shall never be earlier than December 31, 2006 and such notice shall be given at least 2 years prior to the intended date of termination. For example only, if Orica or EDC gives the other notice of termination on July 15, 2005, the effective date of termination would be July 15, 2007.

**2.2** During the period November 1, 2001 to November 30, 2001, the parties will prepare for the full implementation of this Agreement in accordance with the terms hereof. During that period, EDC shall manufacture Ammonium Nitrate for Orica pursuant to the terms of this Agreement. At the request of Orica, EDC shall arrange for the supply of Ammonia for manufacturing into Ammonium Nitrate during this period, and Orica shall reimburse EDC in accordance with Section 3.1.3. The quantity and supply commitments and related obligations of Orica and EDC hereunder including, without limitation, those in Section 4 and Schedule "D" hereto, shall commence on November 1, 2001.

**2.3** Notwithstanding the termination of this Agreement, the unfulfilled rights and undischarged obligations of the parties that accrue during the Term shall continue following the termination hereof until fulfilled or discharged.

## 3.0 SUPPLY OF AMMONIA, ADDITIVES AND ADDITIONAL TECHNOLOGY BY ORICA

**3.1** Until at least 60 days after the date, if any, that Orica has given EDC notice of its intention to supply Ammonia for toll manufacturing into Ammonium Nitrate, EDC shall acquire and supply Ammonia for manufacturing into Ammonium Nitrate for Orica pursuant to the terms of this Agreement. Orica shall give EDC at least 45 days' advance notice of the quantities of Ammonia to be acquired and used by EDC for manufacturing AN for Orica. To the extent Ammonia is available from EDC's supplier or suppliers at costs acceptable to Orica (which shall not exceed EDC's acquisition cost from its Ammonia supplier), EDC shall acquire such Ammonia for use to manufacture AN for Orica under this Agreement for such periods and in such amounts as shall be requested by Orica. Subject to Section 3.2 hereof, notwithstanding any other provision of this Agreement and unless otherwise agreed in writing, EDC shall not be obligated to supply Ammonia hereunder for the manufacture of AN for Orica upon the earlier of

a) December 31, 2002 or b) the date specified in a notice by Orica to EDC for EDC to cease supplying Ammonia to Orica. In the event that EDC's Ammonia supplier fails to supply Ammonia to EDC for the manufacture of AN for Orica the Minimum Quantity and Liquidated Damages (as defined in Schedule D hereto) shall be reduced insofar and only insofar as (x) such failure is due to an act or omission of EDC or the breach by EDC of the supply contract with the Ammonia supplier or (y) EDC is able to recover insurance proceeds to cover its Claim associated with the non-delivery of such Ammonia and then only to the extent of such net recovery after payment of applicable deductibles. Except as provided in the preceding sentence, there shall be no other consequence to EDC for failing to deliver Ammonia as provided hereunder.

**3.1.1** Upon at least 60 days' advance notice to EDC, and subject to the terms and conditions hereof, Orica shall have the right to supply to EDC, and EDC shall receive from Orica, Ammonia in the quantities and at the times as required by EDC for toll conversion by EDC to meet Orica's demand for AN Solution and AN Prills. At all times after receipt of Orica's notice, EDC shall provide Orica with at least 30 days' advance notice of (a) the quantities of Ammonia it requires during the succeeding one-month period to meet Orica's demand and (b) the required delivery dates of such Ammonia. The parties shall cooperate in arranging such Ammonia deliveries. Title to all Ammonia supplied by Orica to EDC under this Agreement shall remain in Orica at all times.

**3.1.2** If from time to time Orica is unable to supply the Ammonia as required herein, or EDC is unable to acquire sufficient Ammonia from its supplier when EDC is supplying Ammonia to Orica in accordance with Section 3.1 hereof, Orica may request EDC to utilize EDC's Ammonia stored at the EDC Site intended for the production of products other

than AN, and upon such request and to the extent EDC has available undedicated Ammonia, EDC shall supply such Ammonia for use under this Agreement.

**3.1.3** If EDC is supplying Ammonia from its supplier or from storage to Orica, Orica shall reimburse EDC for its actual out of pocket delivered costs of such Ammonia within the earlier of (a) seven days of invoice, or (b) the date required by the payment terms to which EDC is subject with its Ammonia supplier.

**3.1.4** Based on the current Ammonia conversion efficiency of the EDC Plant and with the current onsite equipment, the parties anticipate that for each Ton of AN to be manufactured by EDC for Orica, EDC will require \*\*\* of Ammonia; provided that for the purposes of Schedules "C" and "D" attached hereto, subject to process changes necessary to comply with changes in applicable Law after the date hereof, the conversion efficiency shall \*\*\*

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**3.2** For the purpose of storing the Ammonia delivered by Orica, Orica shall be entitled to 40% of the available Ammonia storage capacity at EDC's Site from time to time during the Term. As of the date of this Agreement, such usable Ammonia storage capacity is 18,000 Tons and Orica is entitled to use storage capacity of 7,200 Tons. EDC shall at all times during the Term maintain an aggregate Ammonia storage capacity at the EDC Site available to Orica of at least 7,200 Tons, less any temporary reduction in Ammonia storage capacity as required by safety, inspection and maintenance procedures. EDC shall use its commercially reasonable efforts to limit the duration of any such storage capacity reductions.

**3.3** During the Term, and subject to the terms and conditions hereof, Orica shall supply and deliver to EDC, and EDC agrees to receive shipments of, Orica's Additives. Orica shall supply such Additives in the quantities and at the times as required by EDC to meet Orica's demand for AN Prills. EDC shall provide Orica with 30 days' advance notice of (a) the quantities of Additives it requires during the succeeding one-month period to meet Orica's demand and (b) the required delivery dates of such Additives. The parties shall cooperate in arranging delivery of such Additives. Title to all Additives supplied to EDC under this Agreement shall remain in Orica at all times. Orica has provided to EDC MSDS for the Additives as well as instructions and procedures respecting the use and injection thereof ("Additive Procedures"), and EDC acknowledges receipt of, and agrees to comply with, the Additive Procedures. Except to the extent such Claims arise out of or relate to the negligence of EDC or any Affiliate, or the breach by EDC or any Affiliate of this Agreement, and provided that EDC complies with the Additive Procedures, Orica agrees to indemnify, defend and hold EDC and its Affiliates harmless from and against any and all Claims threatened in writing against, or incurred or suffered by EDC or any Affiliate to the extent arising out of or relating to a Claim of EDC or a third party for personal injury or property damage arising out of or relating to the use of the Additives by EDC during the Term, provided that written notice of any such Claim shall have been delivered to Orica on or before the first anniversary of the end of the Term. Upon termination of this Agreement, at EDC's request, Orica will continue to supply Additives until EDC locates a new additive supplier and enters into alternative supply arrangements, provided that this period shall not exceed 180 days. The price of the Additives to EDC during the transition period will be equal to the market price of alternative additives.

**3.4** Orica shall provide the necessary equipment and material ("Additive Assets") required in order to enable the Additives to be utilized at the EDC Plant. At all times during the Term, title to the Additive Assets shall be in Orica. After reasonable notice and during usual business hours, Orica shall have the right to enter upon the EDC Site to inspect the Additive Assets and

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the use thereof. Any Additive Assets which are installed at EDC's Plant shall be clearly marked as the property of Orica during the Term, and EDC shall create and maintain written records demonstrating Orica's ownership. At expiration of the Term and subject to Section 3.3 above, Orica shall be entitled to remove the Additive Assets at its cost; provided that the parties may agree that Orica shall sell the Additive Assets to EDC after expiration of the Term on mutually acceptable terms. Prior to installation of any Additive Assets, the parties shall use their reasonable best efforts to agree upon which Additive Assets are to be installed and/or used and the scope of work for the project. Orica shall pay the costs of installing the Additive Assets, and EDC shall pay the costs of using and maintaining the Additive Assets.

**3.5** EDC shall, and shall cause its Affiliates to, (a) treat any information and technology relating to the Additives which they become aware of as a result of the supply by Orica or use by EDC of the Additives in the strictest confidence, (b) not directly or indirectly disclose or release such information or technology to any third party, and (c) not use nor permit the use of such information or technology to the detriment of Orica nor for any purpose other than manufacturing AN Prills in EDC's Plant for Orica under this Agreement; provided that EDC may disclose or release such information only under the circumstances set forth in clauses (a), (c), (d) and (e) of Section 20.1. Unless in connection with the defense of a claim (in which case EDC and Orica shall cooperate to reasonably maintain the results of such analysis confidential), EDC shall not, and shall cause its Affiliates not to, analyze nor cause to be analyzed the Additives for the purpose of determining their chemical composition or structure or for any other purpose. All intellectual property rights in the Additives shall remain vested solely in Orica and its Affiliates, and this Agreement shall in no way confer any such rights upon EDC or any of its Affiliates. EDC agrees that if it breaches or threatens to breach this Section 3.5, Orica may be irreparably harmed and the remedy at law may be inadequate and, therefore, without limiting any other remedy available at law or in equity, an injunction, specific performance, or other forms of equitable relief to prevent further use and/or disclosure of confidential information shall be available to Orica. All rights, powers and remedies provided for herein are cumulative, and Orica shall, in addition to the rights, powers and remedies herein conferred, be entitled to avail itself of all such other rights, powers and remedies as may now or hereafter exist.

**3.6** In addition to the Additives, Orica possesses certain proprietary know-how ("Additional Technology") which may be useful in connection with the operation of EDC's Plant. In the event Orica determines that the use of such Additional Technology at EDC's Plant would be beneficial in the manufacture of AN Prills, the parties shall execute and deliver a license agreement governing the use of the Additional Technology. Such license shall be royalty bearing (provided that any royalties charged by Orica ("Royalties") will be paid by Orica as

provided for in Section 10 of Schedule "C" hereto), non-exclusive, EDC Plant specific, non-assignable and useable only for the purpose of manufacturing AN Prills in EDC's Plant for Orica. Further, subject to the execution and delivery of the license agreement, Orica shall provide and install at its cost the necessary equipment and material ("Additional Technology Assets") required in order to use such Additional Technology, and EDC shall maintain the Additional Technology Assets, the cost of which maintenance shall be an Additional Operating Cost as described in Schedule "C" hereto. At all times during the Term, title to the Additional Technology Assets shall be in Orica. Prior to installation of any Additional Technology Assets, the parties shall use their reasonable best efforts to agree upon which Additional Technology is to be installed and/or used, and the scope of work for the project. To the extent Additional Technology Assets in the form of equipment or other tangible personal property or fixtures are installed at EDC's Plant, such equipment, property or fixtures shall be clearly marked as the property of Orica during the Term, and EDC shall create and maintain written records demonstrating Orica's ownership. All intellectual property rights in the Additional Technology shall remain vested solely in Orica and its Affiliates, and, except as otherwise provided in the license agreement, this Agreement shall in no way confer any such rights upon EDC or any of its Affiliates. Upon termination of this Agreement, EDC's right to use the Additional Technology and Additional Technology Assets shall cease, and Orica shall be responsible, at its cost, for removing the Additional Technology Assets within 90 days of such termination.

**3.7** Except to the extent such Claims arise out of or relate to the negligence of EDC or any Affiliate, or to the breach by EDC or an Affiliate of this Agreement or the license agreement, and provided EDC has complied with procedures supplied by Orica, Orica agrees to indemnify, defend and hold EDC and its Affiliates harmless from and against any and all Claims threatened in writing against, or incurred or suffered by EDC or any Affiliate to the extent arising out of or relating to a Claim of EDC or a third party for personal injury, property damage or infringement of intellectual property rights, arising out of or relating to the use of the Additional Technology and Additional Technology Assets by EDC

during the Term, provided that written notice of such Claims shall have been delivered to Orica on or before the first anniversary of the end of the Term.

#### **4.0 SUPPLY OF AN SOLUTION AND AN PRILLS BY EDC**

**4.1** During the Term, EDC shall commit the full manufacturing capacity of the IGAN Plant to the manufacture of AN for Orica under this Agreement. For the purposes hereof, EDC and Orica agree that such manufacturing capacity is a nominal 200,000 Tons per annum (180,000 Tons for Orica and up to 20,000 Tons for SEC in accordance with Subsection 4.2 hereof). However, in any given Year absent an event of Force Majeure, the parties contemplate the EDC Plant

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shall be capable of manufacturing between 192,000 and 240,000 Tons of AN, with the utilization of the Additional Technology. EDC shall use its commercially reasonable efforts to ensure that the EDC Plant is capable of a manufacturing capacity of a minimum of 192,000 Tons of AN per year at all times during the Term, and that sufficient nitric acid manufacturing capacity at the EDC Site is at all times during the Term made available to allow the manufacturing of between 192,000 and 240,000 Tons of AN, provided Orica supplies, directly or through EDC, the necessary Ammonia and Additives to the EDC Site. During the Term, EDC shall operate the EDC Site in substantial compliance with all applicable Laws and good industry practices, and with all agreements relating thereto or by or to which EDC is bound or a party. The parties acknowledge and agree that Orica shall not participate in, or have any control over, the AN manufacturing process.

**4.2** Orica agrees to make available for sale a minimum of 12,000 Tons of AN and a maximum of 20,000 Tons of AN to EDC for resale to EDC's Affiliate Slurry Explosives Corporation ("SEC"), pursuant to the terms of a purchase order in form and substance reasonably acceptable to Orica and EDC; provided that such minimum and maximum quantities shall be reduced proportionately to the extent the Tons of AN available for delivery by EDC to Orica in any Year are less than 192,000. The per Ton price to EDC for AN sold to EDC for resale to SEC shall be \*\*\*. If SEC elects to take such Tons of AN, EDC shall accept or cause SEC to accept, such Tons on a substantially equal Monthly basis and on a basis *pari passu* with EDC's deliveries of AN to Orica.

**4.3** Orica shall pay to EDC the \*\*\* Fee calculated in accordance with Schedule "C" hereof for each Ton of Ammonium Nitrate delivered to Orica which conforms to the Specifications set forth in Schedule "B" hereto and otherwise in accordance with this Agreement. Orica shall also pay to EDC \*\*\* as set forth in Schedule "C" hereto.

**4.3.1** If, for any reason in any Year, Orica does not take delivery of at least the Minimum Quantity (as defined in and adjusted pursuant to Schedule "D" hereto) (which Minimum Quantity shall be exclusive of the tonnage made available to EDC for resale to SEC), and such failure to take is not excused by another provision of this Agreement or any federal Law prohibiting or preventing the transportation, sale or use of AN generally, or agreed to by EDC, Orica shall pay to EDC an amount calculated in accordance with Schedule "D" hereto as Liquidated Damages in reimbursement of EDC's costs and lost profits, which payments shall be subject to annual reconciliation as provided in Schedule "D."

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**4.3.2** Provided that Orica timely supplies Ammonia and Additives in the quantities required and meeting the quality specifications set forth in Schedule "B" hereto, and Orica is otherwise in compliance with this Agreement, EDC shall deliver to Orica AN Solution and AN Prills produced by EDC in the quantities and at the times provided for herein, except to the extent excused by the terms of this Agreement or any federal Law prohibiting or preventing the manufacture of AN generally, but in no event at a rate in excess of the operating capacity of the EDC Plant and quantities that can be shipped from storage.

**4.3.3** No changes shall be made by EDC to the Additives in, or the coatings on, the Ammonium Nitrate without prior written notice to and the prior written consent of Orica.

**4.4** The Ammonium Nitrate supplied to Orica shall be in the form of AN Solution and/or AN Prills, as designated by Orica at least 15 days in advance of the first day of a production Month. EDC and Orica acknowledge that the mix of AN Solution and AN Prills designated by Orica may vary from Month to Month but in no event shall the AN Prills volume designated by Orica exceed the aggregate of (a) the IGAN Plant capacity plus (b) the AN Prills in storage in the AN Prills Warehouse (as defined in Section 4.6 below) available to Orica, less (c) the volume of AN Prills to be supplied to EDC for resale to SEC. For purposes of the AN to be delivered under this Agreement, one Ton of AN Solution, on a 100% basis, shall be deemed the equivalent replacement of one Ton of AN Prills.

**4.5** Notwithstanding anything to the contrary herein, and subject to EDC having available sufficient quantities of AGAN at EDC's discretion, Orica shall have the right to request EDC to substitute AGAN for AN Prills, and all Tons of AGAN delivered to and purchased by Orica shall be credited to Orica's Minimum Quantity obligation on a Ton for Ton basis up to a maximum of 190,000 Tons of AN and AGAN combined; provided that if in that Year the cost of manufacturing AGAN varies from the cost of manufacturing AN Prills, the \*\*\* to be paid by Orica for any Year in which it takes AGAN in lieu of AN Prills shall be adjusted accordingly. In the event that Orica shall take delivery of at least 190,000 Tons of AN in a given Year, and any explosives customers request EDC or Orica to sell and deliver additional quantities of AN Solution or AGAN, Orica shall use its commercially reasonable efforts to source such AN Solution or AGAN from EDC hereunder, provided that the price to Orica of such AN Solution or AGAN shall be the same as or less than the price Orica could obtain for comparable AN Solution or AGAN from other sources. EDC shall refer to Orica any inquiries EDC receives during the Term concerning the supply by EDC of AGAN or AN Solution from the EDC Site to explosives customers.

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**4.6** The parties acknowledge that EDC does not presently have a warehouse for the storage of AN Prills. Promptly after the date hereof, provided that the parties have agreed upon the contract for its construction and Orica shall have provided credit support in the form of a letter of credit as set forth in Schedule "C", EDC shall construct, at its cost, an AN Prills warehouse as more specifically provided in Section 12 hereof (the "AN Prills Warehouse"), with the cost thereof to be recovered as provided in Part 8 of Schedule "C" hereto. Prior to completion of the Modifications (as defined below), all AN Prills supplied to Orica shall be manufactured using EDC's current technology, and shall meet the specifications set forth in Part I of the AN Prill Specifications set forth on Schedule "B" hereto (the "Interim ANP Specifications"). After (a) completion of the AN Prills Warehouse, (b) EDC's implementation of the use of Orica's Additive, and (c) installation by EDC of a chiller as a pre-cooler at the EDC Plant (which are collectively called Modifications and shall, subject to the foregoing provisions of this Section 4.6, be undertaken by EDC promptly after the date hereof), the specifications set forth in Part II of the AN Prills Specifications set forth in Schedule "B" hereto (the "Final ANP Specifications") shall apply to AN Prills delivered to Orica hereunder. Orica's rights and EDC's liabilities and obligations with respect to AN Prills which do not meet the Interim ANP Specifications or Final ANP Specifications, as applicable, shall be governed by Section 8.1.

## 5.0 REPRESENTATIONS AND WARRANTIES

**5.1** EDC represents and warrants to Orica that:

**5.1.1** EDC is duly organized, validly existing, and in good standing under the laws of the State of Oklahoma, and has all requisite power and authority to own and lease the properties and assets it currently owns and leases, including at

the EDC Site, and to conduct its activities as such activities are currently conducted,

**5.1.2** EDC has all requisite corporate power, authority and capacity to execute, deliver, and perform this Agreement and to consummate the transactions contemplated hereby. The execution, delivery, and performance of this Agreement and the consummation of the transactions contemplated hereby by EDC have been duly and validly authorized by all necessary action on the part of EDC (including approval by the board of directors and shareholders of EDC), and this Agreement has been duly and validly executed and delivered by EDC, and is the valid and binding obligation of EDC, enforceable against EDC in accordance with its terms, subject to applicable laws of bankruptcy, insolvency and similar laws affecting creditors' rights and remedies generally.

**5.1.3** The execution, delivery, and performance by EDC of this Agreement does not and will not (i) conflict with or violate any provision of the articles of incorporation or bylaws of EDC; (ii) violate any provision of any Laws; (iii) conflict with, violate, result in a breach of, constitute a

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default under (without regard to requirements of notice, lapse of time, or elections of other persons, or any combination thereof) or accelerate or permit the acceleration of the performance required by, any material contracts to which either EDC is a party or by which either EDC or the EDC Site are bound or affected; (iv) result in the creation or imposition of any lien against or upon the EDC Site or any component or part thereof, or the Ammonia, Additives or the AN; or (v) require any consent, approval, or authorization of, or filing of any certificate, notice, application, report, or other document with, any Government or other person.

**5.1.4** EDC is currently in compliance with all Laws applicable to the ownership and operation of the EDC Site, except for such non-compliance as would not have a material adverse effect on EDC's ability to perform hereunder, and EDC is not subject to any Law, judgment, decree or sanction that would preclude the delivery, receipt and processing of the Ammonia and Additives, or any of the other activities contemplated to be performed by it under the Agreement.

**5.2** Orica represents and warrants to EDC that:

**5.2.1** Orica is duly organized, validly existing, and in good standing under the laws of the State of Delaware, and has all requisite power and authority to own and lease the properties and assets it currently owns and leases and to conduct its activities as such activities are currently conducted.

**5.2.2** Orica has all requisite corporate power, authority and capacity to execute, deliver, and perform this Agreement and to consummate the transactions contemplated hereby. The execution, delivery, and performance of this Agreement and the consummation of the transactions contemplated hereby by Orica have been duly and validly authorized by all necessary action on the part of Orica (including approval by the board of directors and shareholders of Orica), and this Agreement has been duly and validly executed and delivered by Orica, and is the valid and binding obligation of Orica, enforceable against Orica in accordance with its terms, subject to applicable laws of bankruptcy, insolvency and similar laws affecting creditors' rights and remedies generally.

**5.2.3** The execution, delivery, and performance by Orica of this Agreement does not and will not (i) conflict with or violate any provision of the articles of incorporation or bylaws of Orica; (ii) violate any provision of any Laws; (iii) conflict with, violate, result in a breach of, constitute a default under (without regard to requirements of notice, lapse of time, or elections of other persons, or any combination thereof) or accelerate or permit the acceleration of the performance required by, any material contracts to which either Orica is a party or by which Orica is bound or affected; (iv) result in the creation or imposition of any lien against or upon the Ammonia, Additives, Additive Assets or AN; or (v) require any consent, approval, or

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authorization of, or filing of any certificate, notice, application, report, or other document with, any Government or other person.

**5.2.4** Orica is currently in compliance with all Laws applicable to the ownership and operation of Orica's business, except for such non-compliance as would not have a material adverse effect on Orica's ability to perform hereunder and Orica is not subject to any Law, judgment, decree or sanction that would preclude the delivery of the Ammonia and Additives and receipt of the AN Prills and AN Solution, or any of the other activities contemplated to be performed by it under the Agreement.

5.2.5 \*\*\*

5.2.6 \*\*\*

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## **6.0 AMMONIA AND ADDITIVES PURITY AND WARRANTY**

**6.1** Orica warrants that the Ammonia delivered by Orica to EDC from time to time hereunder will be delivered by pipeline or rail car and will conform to the Ammonia Specifications set forth in Schedule "B" hereto. With respect to Ammonia shipped by Orica by rail, Orica shall use commercially reasonable efforts to utilize dedicated ammonia rail cars leased by Orica or its Ammonia supplier. EDC agrees to use the same efforts it expends on its own behalf to ensure that the Ammonia acquired and supplied by EDC to Orica will conform to the Ammonia Specifications set forth in Schedule "B" hereto. EDC shall reject any ammonia from its supplier which does not conform to such specifications, and shall be responsible for arranging with its supplier adequate supplies of conforming replacement Ammonia. Such Ammonia will be shipped by pipeline provided such pipeline is available for shipments.

**6.2** Orica shall use commercially reasonable efforts, at its own expense, to cause its Ammonia supplier to provide a certificate of analysis and, if the Ammonia is transported by rail, Orica shall use dedicated equipment and implement procedures to protect the quality of Ammonia through delivery to the EDC Site. Further, at its own expense, Orica shall periodically cause such Ammonia to be analyzed prior to delivery into EDC's storage tank as may be reasonably required by EDC and the report of such analysis shall be provided to EDC upon request. Additional sampling and subsequent analysis of the Ammonia may be conducted by EDC in its discretion in accordance with standard methods of the American Society of Testing Materials, or by such other methods as may be agreed by Orica and EDC. EDC and Orica will retain any samples that such party takes for at least 60 days from the date of delivery to be analyzed if a dispute arises as to the quality of the Ammonia.

**6.3** If, based on the supplier's certificate of analysis or the analysis of the samples by EDC, any ammonia delivered by Orica to EDC does not meet the Ammonia Specifications, EDC shall, as soon as practicable following such determination, advise Orica in writing that such ammonia does not meet such Specifications. Orica shall be solely responsible for any

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demurrage, freight or transportation costs, removal costs, tank cleaning costs and other costs which are a direct result of Orica's delivery of nonconforming Ammonia. If EDC does not advise Orica that such ammonia does not meet the Ammonia Specifications within 30 days after delivery to the EDC Site, the Ammonia shall be deemed to meet the Ammonia Specifications. In the event that Orica disagrees with EDC's analysis, Orica will give EDC notice within 30 days of receipt of EDC's notice, in which event the sample retained by EDC will be, and any sample retained by Orica may be, submitted for independent analysis to a mutually acceptable commercial laboratory. The laboratory's analysis of such sample or samples shall be final and binding on the parties. The cost of the laboratory's independent analysis will be borne by Orica if the ammonia is off-specification and by EDC if the Ammonia meets the Specifications.

**6.4** Orica warrants that it has good title to, and the right to supply, all Ammonia and Additives delivered or supplied by Orica to EDC from time to time hereunder free and clear of all Claims, liens, security interests, encumbrances and charges.

**6.5 EXCEPT AS SPECIFICALLY PROVIDED IN SUBSECTIONS 5.2, 6.1 and 6.4  
HEREOF, ORICA MAKES NO, AND HEREBY DISCLAIMS ANY,  
REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED,  
STATUTORY OR OTHERWISE, RELATING TO THE AMMONIA AND  
ADDITIVES DELIVERED BY ORICA OR SUPPLIED TO EDC HEREUNDER  
INCLUDING, WITHOUT LIMITATION, WARRANTIES AS TO CONDITION,  
QUANTITY OR QUALITY, MERCHANTABILITY, FITNESS FOR  
PARTICULAR PURPOSE, OR OTHERWISE.**

## **7.0 AN PRILLS AND AN SOLUTION PURITY AND WARRANTY**

**7.1** Provided that Orica supplies to EDC, or EDC is able to obtain from its supplier, sufficient Ammonia to meet the Monthly forecast requirements and the Ammonia Specifications, EDC warrants that all AN Solution and AN Prills delivered to Orica from time to time hereunder shall conform to the AN Solution Specifications and Interim or Final ANP Specifications set forth in Schedule "B" hereto, as applicable, except to the extent the failure to meet such Specifications is attributable to the addition or use of Additives. EDC shall have the right to conduct performance tests, in form reasonably acceptable to Orica, on AN Solution and AN Prills produced during the first 90 days of the Term in order to confirm that the Additives supplied by Orica will result in the production of AN meeting the AN Solution Specification and the applicable ANP Specification. Orica shall have the right to witness such tests, and the parties will cooperate in good faith to identify mutually acceptable solutions in the event such tests demonstrate that use of the Additives contribute to the production of non-conforming AN.

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**7.2** EDC shall take samples of AN Solution and AN Prills delivered by EDC to Orica from each truck or rail car upon loading at the EDC Plant. Orica may take samples of AN Solution and AN Prills upon arrival at Orica's destination. Analysis of the samples shall be conducted by the sampling party in accordance with the standard methods of the American Society of Testing Materials, or by such other methods as may be agreed by Orica and EDC. Each party shall retain any such samples for at least 60 days from the date of sampling to be analyzed if a dispute arises as to the quality of the AN.

**7.3** If, based on analysis of the samples by EDC, any AN solution or AN prills delivered or to be delivered by EDC to Orica do not meet the AN Solution Specifications or the applicable ANP Specifications, respectively, EDC shall so notify Orica in writing and shall not ship such AN solution or AN prills without Orica's written approval. Subject to the terms of

sale agreed in writing between Orica and EDC regarding such shipments, which terms may vary from those set forth in this Agreement, any nonconforming AN solution or AN prills shipped with Orica's approval shall be deemed to be in compliance with this Agreement, provided that any such acceptance shall not be deemed a waiver for any other nonconforming AN. If Orica does not advise EDC that AN solution or AN prills, as the case may be, do not meet the applicable Specifications within (45) days of the date of receipt thereof, the AN Solution or AN Prills, as the case may be, shall be deemed to meet the relevant Specifications. In the event that either party disagrees with the other party's analysis of the samples, the disagreeing party shall give the other notice within 15 days of receipt of the results of the analysis, in which event the retained sample or samples shall be submitted for independent analysis to a mutually acceptable commercial laboratory. The laboratory's independent analysis shall be final and binding on the parties. The cost of the independent laboratory's analysis will be borne by EDC if the AN is off-Specification and by Orica if the AN meets the Specifications.

**7.4** EDC agrees to apply the same loading inspection standards and procedures to all trucks, tank trucks and rail cars used to transport AN Solution or AN Prills, irrespective of the supplier. EDC agrees to promptly provide to Orica a copy of such standards and procedures in effect as of the Effective Date, together with copies of any revised standards and procedures subsequently adopted by EDC.

**7.5** EDC warrants that it has good title to, and the right to supply, all AN Solution and AN Prills supplied and delivered to Orica from time to time hereunder free and clear of all Claims, liens, security interests, encumbrances and charges, and that EDC has the manufacturing and conversion capability and capacity, and the right, to supply such AN Solution and AN Prills to Orica at the rates, times and quantities contemplated by this Agreement. EDC has all necessary authorizations, approvals and permits to receive the Ammonia at EDC's Site, to

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process the same to produce AN, and to undertake all of the other activities contemplated to be performed by it in accordance with this Agreement.

**7.6 EXCEPT AS SPECIFICALLY PROVIDED IN SUBSECTIONS 5.1, 7.1 and 7.5  
HEREOF, EDC MAKES NO, AND HEREBY DISCLAIMS ANY,  
REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED,  
STATUTORY OR OTHERWISE, RELATING TO THE AN SOLUTION OR  
AN PRILLS DELIVERED BY EDC OR SUPPLIED TO ORICA  
HEREUNDER INCLUDING, WITHOUT LIMITATION, WARRANTIES AS  
TO CONDITION, QUANTITY OR QUALITY, MERCHANTABILITY, FITNESS  
FOR PARTICULAR PURPOSE, OR OTHERWISE.**

## **8.0 REMEDIES FOR NONCOMPLIANCE**

**8.1** Orica's exclusive remedies for any non-conforming AN supplied hereunder, other than any nonconformance to the extent caused by the Additives or non-conforming Ammonia, shall be, at Orica's option, to (a) reject such non-conforming AN without penalty, or (b) accept such AN but at a price per Ton reduced by agreement of the parties. In the event that Orica rejects any nonconforming AN, EDC will cause such nonconforming AN to be promptly removed from its current location at EDC's cost, and EDC will take all necessary measures to promptly provide Orica with replacement AN meeting the applicable Specifications at that location \*\*\*. In the further event that Orica rejects the nonconforming AN, but EDC is unable to deliver replacement AN to Orica within the time period necessary to meet the needs of Orica's customers, Orica shall have the right, commencing on the business day following delivery of written notice to EDC, to purchase a like quantity of AN from an alternative supplier which purchase shall, Ton for Ton, reduce Orica's obligation to purchase the Minimum Quantity as further set forth in Schedule "D" hereto. In the event of production or delivery by EDC of non-conforming AN, the parties shall cooperate in good faith in identifying means by which to mitigate loss or damage attributable to such nonconformance; provided that Orica shall be solely responsible for any nonconformance of AN supplied hereunder to the extent caused by the Additives or non-conforming Ammonia. EDC may dispose of any such non-conforming AN returned to it by sale to SEC or agricultural customers.

**8.2** EDC shall have no liability to Orica for loss of or shortage in quantity of AN supplied or to be supplied hereunder solely as a result of EDC's loading of, or the short-filling of, rail cars or trucks unless Orica notifies EDC in writing within 45 days from the date of receipt of the AN. Provided that Orica has timely given such notice, its exclusive remedy for any loss of or shortage in quantity of AN shall be the refund of the \*\*\* for

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such AN that was invoiced but not delivered, the cost of the Additives and the Ammonia therein plus the cost of freight to the point at which the loss or shortage was detected.

**8.3** EDC shall notify Orica within 45 days of receipt of Ammonia delivered by rail car hereunder of any loss of or shortfall in quantity of Ammonia received as compared to the quantity specified on the bill of lading. Promptly upon receipt of such notice, Orica shall ship an additional quantity of Ammonia to EDC's Plant to make-up any such loss or shortfall, and the delivery to EDC's Plant of such make-up Ammonia shall be EDC's sole remedy for loss of or shortfall in quantity of Ammonia received.

**8.4** Except with respect to Orica's rights set out in Sections 8.1 and 8.2, Orica hereby releases and forever discharges EDC, its agents, employees, successors and assigns, from all Claims relating to non-conformance with Specifications, or loss or shortage in quantity, of AN supplied by EDC pursuant to this Agreement. In no event whatsoever shall either party be liable to the other for loss of profits or special, indirect or consequential damages, except as specifically provided in Schedule "D" hereto with respect to Liquidated Damages.

**8.5** Subject to Section 8.1, following the delivery of AN or AGAN to Orica hereunder and removal of such AN or AGAN from the EDC Site, Orica assumes all risks and responsibility in connection with the further handling or use of such AN or AGAN, whether used singly or in combination with other products. Orica agrees to indemnify, defend and hold harmless EDC and its Affiliates from and against any and all Claims incurred or suffered by, or threatened against EDC or its Affiliates in connection with such further handling or use of AN or AGAN.

## **9.0 QUANTITY MEASUREMENT**

**9.1** Actual measurement of quantities of products delivered and the supplied party's rights to dispute such measurements will be as set out in Schedule "E".

## **10.0 AMMONIA AND ADDITIVES DELIVERY, RISK AND TITLE**

**10.1** Subject to Section 10.6, all Ammonia which is supplied by Orica shall be supplied by pipeline or via rail cars owned or leased by Orica or its suppliers at a maximum of four rail cars per 24-hour period. All Additives shall be supplied by Orica via tank truck or rail car. Orica shall be responsible for making arrangements with the common carrier for routing and shipment of the Ammonia supplied by Orica by rail car and the Additives by rail car or tank truck. All Ammonia acquired and supplied by EDC hereunder shall be supplied by pipeline, and EDC shall be responsible for making the necessary shipment arrangements to the extent Ammonia is available to EDC.

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**10.2** Orica shall deliver the Ammonia it supplies by rail car and the Additives to the unloading facility at the EDC Site. EDC shall use its commercially reasonable efforts to physically segregate all Ammonia and Additives delivered by Orica from all other Ammonia and similar additives located at EDC's Site and shall install signage and otherwise clearly mark such Ammonia and Additives as the property of Orica to the reasonable satisfaction of Orica. All risks of loss or otherwise in relation thereto shall pass to and remain with EDC from the commencement of unloading from Orica's transportation equipment until such time as such Ammonia and Additives are converted into AN.

**10.3** EDC shall unload Ammonia and Additives supplied by Orica in rail cars and release such rail cars within 2 days from the arrival of such rail cars on EDC's Site and shall unload Additives shipped by trucks within the free unloading period allowed by the carrier; provided, however, in no event shall EDC be required to unload more than (a) four rail cars of Ammonia and Additives in any one 24-hour period or (b) one truck of Additives in any one 24-hour period. Should EDC fail to comply with the foregoing, EDC shall reimburse Orica for all demurrage incurred by Orica resulting from such delay within 30 days of receipt of an invoice therefor from Orica. \*\*\*. The cost to handle and unload any rail cars of Ammonia supplied by Orica shall be paid by Orica as an Additional Operating Cost as set forth in Section 9 of Schedule "C" hereto. The procedure for unloading rail cars of Ammonia and for unloading of trucks of Additives is attached hereto as Schedule "G".

**10.4** Ammonia supplied by pipeline shall be delivered to EDC's Ammonia storage tanks and metered by the metering devices currently utilized at the EDC Site or similar metering devices. Absent demonstrable error, EDC and Orica agree that the amount of Ammonia delivered by pipeline shall be conclusively determined by the delivery receipt provided by the pipeline.

**10.5** Orica may from time to time request EDC to assist Orica in obtaining repair of Orica's rail cars at EDC's facilities located at the EDC Site. EDC shall use its commercially reasonable efforts to obtain such services on Orica's behalf, and at Orica's expense.

**10.6** The parties contemplate that up to four rail cars of Ammonia per 24-hour period will be unloaded at EDC's existing unloading facility provided that such facility is upgraded by putting into service the existing unloading arm. The costs incurred by EDC in making serviceable such unloading arm shall be charged to Orica as incurred. In the event Orica requires additional Ammonia storage in rail cars or Ammonia rail car unloading capacity, Orica shall so notify EDC, and EDC shall prepare a proposal to Orica setting forth the additional trackage, facility improvements and unloading arm improvements necessary to accommodate such additional

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capacity, together with the costs thereof. Upon Orica's agreement to such capital improvements, they shall be treated as an Approved Investment Project under Section 8 of Schedule "C" hereto, or as otherwise agreed by EDC and Orica in writing.

**11.0 AN SOLUTION AND AN PRILLS DELIVERY, RISK AND TITLE**

**11.1** Unless otherwise agreed, EDC shall deliver all AN Solution and AN Prills supplied hereunder into trucks, tank trucks or rail cars supplied by Orica.

**11.2** Unless otherwise agreed, EDC shall load (a) AN Solution into Orica's rail tank cars and release such cars within two days from the arrival of such cars at EDC's Site, (b) AN Prills into Orica's rail hopper cars and release such cars within two days from the arrival of such cars at EDC's Site, and (c) AN Solution or AN Prills into Orica's trucks and release such trucks within the free loading period allowed by the carrier; provided, however, that such time frames shall be extended by any intervening weekend, holiday, or Force Majeure event; and provided further that in no event shall EDC be required to load in one day any more than one day's actual production rate of AN Solution and, until the AN Prills Warehouse is built, AN Prills. Should EDC fail to comply with the foregoing, EDC shall reimburse Orica for all demurrage and other out-of-pocket expenses incurred by Orica resulting from such delay within 30 days of receipt of an invoice therefor from Orica. Orica shall use commercially reasonable efforts to schedule rail cars or trucks for the EDC Plant at a rate that will permit EDC to load such cars and trucks within the time frames set forth in clauses (a) through (c) above, taking into account reasonably anticipated AN Solution and AN Prill production rates and the quantity of AN Prills and available AN Prills storage capacity in the Warehouse. \*\*\*.

**11.3** Title to all AN Solution and AN Prills manufactured hereunder shall be in Orica upon and after the earlier of (a) delivery of the AN into Orica's trucks or railcars, or (b) following its construction, delivery of the AN Prills to the AN Prills Warehouse. EDC shall use commercially reasonable efforts to physically segregate all AN Solution and AN Prills manufactured for Orica from all AGAN, and other AN solution located at the EDC Site, and shall install signage and otherwise clearly mark Orica's AN Solution and AN Prills as the property of Orica to the reasonable satisfaction of Orica. Delivery of AN to Orica shall occur and all risks of loss and otherwise in relation thereto shall pass at the earlier of (a) delivery of the AN into Orica's trucks or rail cars at the EDC Site or, (b) following its construction, delivery of the AN Prills to the AN Prills Warehouse.

**11.4** EDC shall weigh, by means of certified scales and otherwise in accordance with Schedule "E", all trucks and rail cars before and after they have been loaded, to determine the net weight of AN delivered to Orica.

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**11.5** EDC shall promptly confirm to Orica any shipment made, specifying the carrier, the date of departure, the weight of AN in each rail car or truck and its destination. EDC shall also promptly forward to Orica one copy of each bill of lading issued with respect to such shipments. Absent demonstrable error, the carrier's weight measurements shall be deemed correct and shall be controlling. The carrier which shall receive delivery of AN at EDC's Plant shall be deemed authorized by Orica to execute the bill of lading for the shipment; provided, however, that authorization shall not affect Orica's rights pursuant to Sections 7 and 8 hereof.

**11.6** EDC shall use its commercially reasonable efforts to minimize loss and shrinkage of AN during storage and handling, but such loss and shrinkage shall be to Orica's account.

## 12.0 STORAGE

**12.1** Subject to the provisions of Schedule "C" hereto, EDC agrees to obtain any required permits for and to construct, in cooperation with Orica, the AN Prills Warehouse with a minimum capacity of 8,500 Tons. Completion of the AN Prills Warehouse is estimated to take six months from commencement of construction. Following the construction of such Warehouse, Orica shall at all times during the Term have exclusive access to the AN Prills Warehouse storage capacity. The AN Prills Warehouse will be equipped as specified by Orica to ensure AN Prill quality is maintained post-manufacture. Orica shall be permitted to store its AN Prills in the AN Prills Warehouse at all times and the costs relating to the operation thereof shall be charged by EDC as Additional Operating Costs. The contents of the AN Prills Warehouse shall be clearly marked by appropriate signage as being the property of Orica, to the reasonable satisfaction of Orica.

**12.2** Upon completion of construction of the AN Prills Warehouse, EDC and Orica shall enter into a Warehouse Lease in substantially the form of Schedule "H" hereto.

## 13.0 FORECASTS

**13.1** No later than August 31 of each Year during the Term for Years following 2001, Orica shall deliver to EDC a forecast of its demands for AN for the succeeding Year, together with a forecast by Month of its demands for AN Solution and AN Prills. The Monthly forecast is an estimate for planning purposes and is not a commitment to take AN Solution and AN Prills at the Monthly rates estimated. Orica shall also provide the forecasts required by Section 4.4 at the time provided for therein.

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**13.2** Notwithstanding Section 13.1, Orica shall use its commercially reasonable efforts to take delivery of AN Solution and AN Prills at generally uniform rates throughout each Year.

## 14.0 PAYMENTS

**14.1** EDC shall invoice Orica for AN Solution and AN Prills delivered during the Month to rail cars, trucks or the AN Prills Warehouse on behalf of Orica. The invoice price for such AN shall be \*\*\* determined in accordance with Schedule "C" hereto. EDC shall also invoice Orica for any other amounts as provided in Schedule "C" or "D" hereto.

**14.2** Orica shall pay to EDC the amount of each such \*\*\* invoice on or before the first day of the second Month succeeding the Month in which such deliveries were made. Orica shall pay to EDC any other amounts owing in accordance with Schedules "C" and "D" hereto when they become due in accordance with such Schedules. If Orica has disputed any invoice in good faith prior to the expiration of the applicable payment period, Orica shall timely pay any undisputed amount, and shall have 30 days from receipt of a corrected invoice within which to remit payment for any agreed-upon amount related to disputed items.

**14.3** \*\*\*.

## 15.0 FORCE MAJEURE

**15.1** Notwithstanding anything herein contained, each party will be excused from performance of its obligations hereunder, other than (a) an obligation to pay money, including, without limitation, Liquidated Damages, or (b) provide indemnity, in the event and to the extent such failure is caused by an event of Force Majeure.

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If an event of Force Majeure occurs, the party whose performance is excused shall immediately provide written notice to the other party of the event of Force Majeure, the nature of the event, the extent to which the event of Force Majeure affects or delays the affected party's performance hereunder, the particular obligations so affected, the steps taken and proposed to be taken to lessen and cure the Force Majeure, and the estimated duration of the event of Force Majeure. If there is any material change, addition or alteration to the circumstances giving rise to, or in the information provided pursuant to, the written notice, the affected party shall provide the other party with written notice of the same.

At all times during an event of Force Majeure, both parties shall use reasonable means to avoid or minimize the consequences of any event of Force Majeure; provided that nothing contained in this Agreement shall be construed as

requiring either party hereto to accede to the demands of labor or labor unions it considers unreasonable. The performance of this Agreement shall be resumed as soon as practicable after such disability has been removed.

**15.2** If an event of Force Majeure impairs EDC's ability to produce nitric acid or deliver AN Solution under this Agreement, EDC shall allocate its available production of nitric acid and AN Solution manufactured at EDC's Site and available for supply among all of EDC's customers then supplied or which are customarily supplied from EDC's Site, including Orica, EDC and Affiliates of EDC. This prorating shall be based on EDC's existing contracts for sale of nitric acid or AN Solution and the previously forecasted requirements of such customers for the period of the Force Majeure.

**15.3** An event of Force Majeure shall not extend the term of this Agreement.

## **16.0 TERMINATION**

**16.1** Either party may terminate this Agreement upon written notice to the other party, in the event the other party shall commence, or there shall be commenced against the other party, any case, proceeding or other action (which shall not have been dismissed within 60 days of commencement) seeking to have an order for relief entered with respect to such party or to adjudicate such party as a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition under any Law relating to bankruptcy, insolvency, reorganization or relief of debtors or seeking appointment of a receiver, trustee, custodian or other similar fiduciary with respect to any part of such party's business or property or the other party makes a general assignment for the benefit of its creditors.

**16.2** If an event of Force Majeure claimed by EDC or Orica persists for a continuous period of at least one hundred eighty (180) days or if the duration of an event of Force Majeure claimed

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by EDC or Orica is estimated by the party claiming Force Majeure to be one hundred eighty (180) days or longer, then the party not claiming the Force Majeure shall have the right, but not the obligation, to terminate this Agreement and the obligations of the parties hereto, except for claims in dispute and payments and other obligations then due and owing, by giving written notice of termination to the other party. For purposes of this Subsection 16.2, if the period between the end of one event of Force Majeure and the commencement of another event of Force Majeure is less than 30 days, the Force Majeure shall be deemed to be continuous, but the time between the Force Majeure periods shall not be counted in determining the one hundred eighty (180) day period required before termination hereunder is allowed.

**16.3** EDC may terminate this Agreement on 14 days prior written notice to Orica if Orica delivers ammonia to EDC which does not meet Ammonia Specifications and if, after EDC has given notice to Orica pursuant to Subsection 6.3, Orica has not within 45 days of receipt of such notice, commenced deliveries of Ammonia meeting the Ammonia Specifications.

Orica may terminate this Agreement on 14 days prior written notice to EDC if EDC delivers AN solution or AN prills to Orica which do not meet the AN Solution Specifications or AN Prill Specifications, respectively, and if, after Orica has given notice to EDC pursuant to Subsection 7.3, EDC has not within 45 days of receipt of such notice, commenced delivery of at least 95% of the prior volumes of AN Solution or AN Prills which meet the relevant Specifications.

**16.4** Either party may terminate this Agreement if the other party defaults in the due and punctual payment of any amounts owing to it or fails to perform any material obligation and such default or failure continues for 30 days after it gives written notice to the defaulting party advising of the default or failure and the intention to terminate this Agreement in the absence of payment or performance.

**16.5** Either party may terminate this Agreement pursuant to a notice given in accordance with Subsection 27.2 hereof.

**16.6** Orica may terminate this Agreement upon five days prior notice to EDC in the event (a) of major damage to, destruction of, or a loss of production capacity at, EDC's Plant, and (b)(i) within 180 days of such damage, destruction or loss of production capacity, EDC's Plant is not or cannot be restored to a level of production sufficient to meet the Minimum Quantity requirement, as determined by Orica acting in good faith and after consultation with EDC, or (ii) the cost to repair such damage, rebuild the Plant or restore the production capacity (after taking into account any insurance recovery by EDC) will result in an increase in the Manufacturing Fee. Nothing in this Section 16.6 shall be deemed to prevent EDC from

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repairing such damage, rebuilding the Plant or restoring its production capacity at its sole cost within a 180-day period, in which event such costs shall not be included in the Manufacturing Fee and Orica shall have no right to terminate under this Section 16.6.

**16.7** The termination of this Agreement for any cause whatsoever shall not release a party from any liability which at the time of termination has already accrued to the other party or which may thereafter accrue in respect of any act or omission prior to termination.

**16.8** The rights and remedies of the parties under this Agreement are cumulative and, subject to the limitations expressed in this Agreement, the exercise of a remedy by a party shall not preclude the right of such party to exercise any other remedy available to such party in accordance with the terms of this Agreement or otherwise.

## **17.0 HARDSHIP**

**17.1** If, at any time during the term of this Agreement, there occurs a substantial change in the business, technical or commercial conditions which adversely affects the business or financial condition of either party to this Agreement, or a substantial change in Laws applicable to this Agreement or its performance by either party, as a result of which a party incurs or would be likely to incur substantial hardship in complying with the provisions of this Agreement, the party experiencing hardship may notify the other in writing that it wishes to discuss the terms and performance of this Agreement in light of such changed conditions.

**17.2** Within 30 days after any notice under Subsection 17.1 above, the parties shall meet in Oklahoma City at a mutually acceptable time to discuss in good faith appropriate means, if any, to relieve such hardship in a manner equitable to both parties and at such meeting the party alleging hardship shall make available such data and information as it deems necessary to justify its request for relief. For the avoidance of doubt, nothing in this Section 17 shall alter the rights and obligations of the parties to supply and purchase AN or supply Ammonia under this Agreement in any way except to the extent that the parties agree to do so in writing at or following any such meeting.

## **18.0 INSURANCE**

**18.1** EDC shall procure and maintain, at EDC's sole expense (but subject to Schedule "C"), at all times during the term of this Agreement:

### **18.1.1 Commercial General Liability Insurance**

EDC shall provide coverage on a Commercial General Liability Occurrence Coverage Form CG 00 01 01 96 (or equivalent) with limits of not less than \$1,000,000 each occurrence,

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\$1,000,000 products/completed operations aggregate, \$1,000,000 personal injury aggregate and \$2,000,000 general aggregate with deductibles and/or self-insured retentions determined by EDC in the exercise of its reasonable discretion. Railroad Protective Liability is to be included if that exposure exists. Limit of Liability for railroad protective liability required is not less than \$5,000,000 per occurrence and in the aggregate. Any exclusions or amendments to the policy form must be disclosed by EDC. EDC's policy shall be specifically endorsed with Form CG 20 10 10 93 (or equivalent) to include Orica, its directors, officers and employees, as an Additional Insured. EDC's policy shall be specifically endorsed with form CG 24 02 10 93 (or equivalent) to waive any rights of subrogation against Orica.

### **18.1.2 Automobile Liability Insurance**

EDC shall provide coverage on a Business Auto Policy Form CA 00 01 12 93 (or equivalent) for "Any Auto" (auto symbol #1) with a limit of liability in an amount no less than \$1,000,000 each accident with deductibles and/or self-insured retentions determined by EDC in the exercise of its reasonable discretion. EDC shall provide a copy of such policy to Orica promptly after the date hereof.

### **18.1.3 Workers' Compensation Insurance**

EDC shall provide coverage on Workers' Compensation Form WC 00 00 00 A 4 92 (or equivalent) in accordance with the laws of the State of Arkansas, and any other applicable jurisdiction, covering all employees who are engaged by EDC in performing its obligations under this Agreement. Employer's Liability coverage is required with the limits of not less than the following:

Bodily Injury by Accident	\$1,000,000 Each Accident
Bodily Injury by Disease	\$1,000,000 Each Employee

EDC's policy shall be specifically endorsed with Form WC 00 03 13 (or equivalent) to waive any rights of subrogation against Orica. EDC will specifically be required to provide coverage under the Federal Employers Liability Act (FELA), if required, as FELA applies to interstate railroad employees.

#### **18.1.4 Excess Liability Insurance**

EDC shall provide Umbrella Liability coverage with a limit of liability no less than \$10,000,000 each occurrence, and \$10,000,000 aggregate.

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#### **18.1.5 Business Interruption Insurance**

EDC shall maintain business interruption coverage without limit of liability but with deductibles or self-insurance retentions determined by EDC in the exercise of its reasonable discretion. If a business interruption event occurs at the EDC Plant or EDC Site which adversely impacts EDC's ability to manufacture and deliver AN to Orica, EDC shall seek recovery under its business interruption insurance for all Claims arising or resulting therefrom including, without limitation, Manufacturing Fees which would have been paid by Orica had such AN been manufactured and delivered. Orica shall not seek recovery for any Claims under EDC's business interruption insurance.

#### **18.1.6 Property Insurance**

EDC shall provide property insurance (including business interruption insurance) covering all risks of loss and damage to the EDC Plant and EDC Site, including but not limited to plant, equipment, real property, personal property, tools, machinery and electronic data processing equipment. Coverage shall also be provided for any property which is in EDC's care, custody or control, and for which EDC is legally responsible. Insurance valuation shall be for replacement cost with deductibles or self-insurance retentions determined by EDC in the exercise of its reasonable discretion. EDC shall provide a copy of such policies to Orica promptly after the date hereof.

#### **18.1.7 Environmental Impairment Liability (EIL) Insurance**

EDC has, as of the Effective Date, EIL insurance coverage with an aggregate limit of liability of \$20,000,000, subject to certain deductibles and/or self-insured retentions. At the request and expense of Orica, EDC's EIL policy shall be specifically endorsed to include Orica as an Additional Named Insured with regard to exposures in which Orica has a financial interest or for which Orica has or may have any liability. EDC's policy shall be specifically endorsed to waive any rights of subrogation against Orica, its directors, officers and employees.

#### **18.1.8 General Terms**

All insurance companies providing the aforesaid coverages to EDC must be authorized to do business in the State of Arkansas. All insurance companies must be rated A- or better with a financial rating of VIII or better in the most recent A.M. Best's Rating Guide. All insurance companies shall provide 30 days prior written notice to Orica of material modification, cancellation or non-renewal of any of the coverages. Certificates of insurance for all required coverages shall be provided to Orica prior to commencement of the Agreement and renewal

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certificates upon policy renewals. Copies of the required endorsements to the policies also shall be provided to Orica at the same times.

**18.2** Orica shall procure and maintain, at Orica's sole expense, at all times during the term of this Agreement:

#### **18.2.1 Commercial General Liability Insurance**

Orica shall provide coverage on a Commercial General Liability Occurrence Coverage Form CG 00 01 01 96 (or equivalent) with limits of not less than \$1,000,000 each occurrence, \$1,000,000 products/completed operations aggregate, \$1,000,000 personal injury aggregate and \$2,000,000 general aggregate with deductibles and/or self-insured retention determined by Orica in the exercise of its reasonable discretion. Railroad Protective Liability is to be included if that exposure exists. Limit of Liability for railroad protective liability required is not less than \$5,000,000 per occurrence and in the aggregate. Any exclusions or amendments to the policy form must be disclosed by Orica. Orica's

policy shall be specifically endorsed with Form CG 20 10 10 93 (or equivalent) to include EDC as an Additional Insured. Orica's policy shall be specifically endorsed with form CG 24 02 10 93 (or equivalent) to waive any rights of subrogation against EDC.

### **18.2.2 Automobile Liability Insurance**

Orica shall provide coverage on a Business Auto Policy Form CA 00 01 12 93 (or equivalent) for "Any Auto" (auto symbol #1) with a limit of liability in an amount no less than \$1,000,000 each accident with deductibles and/or self-insured retentions determined by Orica in the exercise of its reasonable discretion. Orica shall provide a certificate of insurance respecting such policies to EDC promptly after the date hereof.

### **18.2.3 Workers' Compensation Insurance**

Orica shall provide coverage on Workers' Compensation Form WC 00 00 00 A 4 92 (or equivalent) in accordance with the laws of the State of Arkansas, and any other applicable jurisdiction, covering all employees who are engaged by Orica in performing its obligations under this Agreement. Employer's Liability coverage is required with the limits of not less than the following:

Bodily Injury by Accident	\$1,000,000 Each Accident
Bodily Injury by Disease	\$1,000,000 Each Employee
Bodily Injury by Disease	\$1,000,000 Policy Limit

Orica's policy shall be specifically endorsed with Form WC 00 03 13 (or equivalent) to waive any rights of subrogation against EDC. Orica will specifically be required to provide coverage

under the Federal Employers Liability Act (FELA), if required, as FELA applies to interstate railroad employees.

### **18.2.4 Excess Liability Insurance**

Orica shall provide Umbrella Liability coverage with a limit of liability no less than \$10,000,000 each occurrence, and \$10,000,000 aggregate.

### **18.2.5 Business Interruption Insurance**

Orica shall provide business interruption insurance coverage relating to its explosives business covering Claims against or incurred by Orica arising as a result of a business interruption event at the EDC Plant or the EDC Site which impacts the ability of EDC to manufacture and deliver AN hereunder to Orica. Orica shall seek recovery under such insurance for all such claims resulting from the event, save and except for (a) the monies which would have been paid by Orica to EDC for AN pursuant to the terms of this Agreement had the AN been delivered to Orica, which monies are addressed in Subsection 18.1.5 hereof, and (b) any deductibles paid to and/or retentions held back by Orica's insurer where Orica has made a claim arising from a business interruption event at the EDC Plant or EDC Site, which deductibles and/or retentions will be reimbursed by EDC to Orica.

### **18.2.6 Property Insurance**

Orica shall provide property insurance (including business interruption insurance) covering all risks of loss and damage to its property, including but not limited to plant, equipment, real property, personal property, tools, machinery and electronic data processing equipment. Coverage shall also be provided for any property which is in Orica's care, custody or control, and for which Orica is legally responsible. Insurance valuation shall be for replacement cost with deductibles or self-insurance retentions determined by Orica in the exercise of its reasonable discretion. Orica shall provide a certificate of insurance respecting such policies to EDC promptly after the date hereof.

### **18.2.7 General**

All insurance companies providing the aforesaid coverages to Orica must be authorized to do business in the State of Arkansas. All insurance companies must be rated A or better with a financial rating of VIII or better in the most recent A.M. Best's Rating Guide. All insurance companies shall provide 30 days prior written notice to EDC of material modification, cancellation or non-renewal of any of the coverages. Certificates of insurance for all required coverages shall be provided to EDC prior to commencement of the Agreement and renewal

certificates upon policy renewals. Copies of the required endorsements to the policies also shall be provided to EDC at the same times.

## 19.0 DISPUTE RESOLUTION

**19.1** Except as otherwise provided herein, the parties shall attempt in good faith to promptly resolve any controversy or claim arising out of or relating to this Agreement, or the interpretation, performance or breach hereof (any of the foregoing, a "Dispute"), by negotiations between the Chief Executive Officers of each party. The disputing party shall give the other party written notice of the Dispute. Within 15 days after receipt of such notice, the receiving party shall submit a written response to the other party. The notice and response shall include a statement of each party's position on the Dispute and a summary of the evidence and the arguments supporting its position. The Chief Executive Officer (or his designee) of each party shall meet at a mutually acceptable time and place within 20 days after the date of the disputing party's notice and thereafter as often as they reasonably deem necessary to exchange relevant information and to attempt to resolve the Dispute. All negotiations and discussions pursuant to this subsection 19.1 shall be confidential and shall be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and the Colorado Rules of Evidence.

**19.2** If the Dispute remains unresolved for a period of 60 days following delivery by the disputing party of the notice referred to in Section 19.1, it shall be thereafter be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules. The arbitration shall take place in Denver, Colorado. The parties shall, prior to referring any Dispute to arbitration, agree in writing upon the issue or issues to be arbitrated. The arbitrator(s) shall be instructed to reach a decision based only on the facts and information supplied by the parties during the proceeding. The parties agree that such referral and the arbitration award shall be binding on both parties. Judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Notwithstanding any of the provisions or limitations of Sections 19.1 or 19.2, any demand for arbitration must be filed in writing with the other party and with the American Arbitration Association prior to the date when institution of legal or equitable proceedings based upon the Dispute would be barred by the applicable statute of repose or limitations.

## 20.0 CONFIDENTIAL INFORMATION AND ANNOUNCEMENTS

**20.1** Each of the parties acknowledges that all non-public business, technical, proprietary or other similar information, including production cost and pricing information and data delivered to it by the other party in the course of entering into, performing or enforcing its rights under this

Agreement, as well as the fact and terms of this Agreement, are confidential and shall be treated as confidential and agrees to, and to require its Affiliates, employees, legal, financial and other advisors to, hold such information in strict confidence and to refrain from disclosing or using such information to the detriment of the other party, until the fifth anniversary of the expiration or termination of this Agreement; provided however that a party may disclose confidential information:

(a) if and when required to do so by Laws, provided that the disclosing party shall cooperate with any reasonable requests of the non-disclosing party in connection with a disclosure under this clause (a), including a request to review any securities filings pertaining to the entering into of this Agreement prior to their filing;

(b) to third parties in connection with a proposed sale by such party of its business related to the subject matter of this Agreement, or an interest therein, provided that such third parties agree in writing to keep such information confidential;

(c) which was previously known to it at the time of disclosure as evidenced by pre-existing written materials;

(d) which is received from a third party not under an obligation of confidentiality to the disclosing party with respect to such information as evidenced by pre-existing written materials; or

(e) which has been independently generated by the receiving party without reference to or reliance on any information provided hereunder.

**20.2** Each party agrees that if it breaches or threatens to breach Section 20.1 or any other confidentiality provision of this Agreement, the other party may be irreparably harmed and the remedy at law may be inadequate, and therefore, without limiting any other remedy available at law or in equity, an injunction, specific performance, or other forms of equitable relief to prevent further use and/or disclosure of confidential information, or money damages, shall be

available to the other party. All rights, powers and remedies provided for herein are cumulative, and the other party shall, in addition to the rights, powers and remedies herein conferred, be entitled to avail itself of all such other rights, powers and remedies as may now or hereafter exist.

**20.3** Neither party shall make any announcement in any way concerning this Agreement nor any other transaction related hereto without the prior written consent of the other party hereto, except as may be required by Law or applicable stock exchange rule.

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### **21.0 SECURITY INTEREST**

**21.1** Orica and EDC hereby acknowledge that title to the Ammonia supplied pursuant to Sections 3.1 and 3.1.1 of this Agreement, Additives and AN manufactured for Orica hereunder shall at all times be in Orica. Nevertheless, in order to protect Orica's interest in such Ammonia, Additives, and AN manufactured for Orica hereunder from the claims of creditors of EDC, EDC hereby assigns, pledges and grants to Orica a security interest in such Ammonia, Additives, and AN manufactured for Orica hereunder.

**21.2** Upon Orica's request, EDC shall execute and file any financing and continuation statements, prior to and from time to time after delivery of any such Ammonia or Additives and prior to and from time to time after the conversion of such Ammonia into AN manufactured for Orica hereunder, necessary to perfect such security interest, and EDC shall cooperate with Orica in connection with the execution and delivery of any notifications to any holders of conflicting security interests in such Ammonia, Additives, or AN manufactured for Orica hereunder to the extent such Ammonia, Additives, or AN manufactured for Orica hereunder is considered or could be considered or is determined or could be determined to be the inventory of EDC in order to ensure the priority of Orica's security interest. Upon Orica's request, EDC shall notify its creditors of Orica's ownership and security interest in such Ammonia, Additives, and AN manufactured for Orica hereunder, and shall request any such creditors to subordinate any liens or other security interests they may have in EDC's assets to the security interest of Orica in such Ammonia, Additives, and AN manufactured for Orica hereunder.

**21.3** Orica agrees not to enforce its security interest unless a creditor of EDC asserts an interest in such Ammonia, Additives, or AN manufactured for Orica hereunder or claims that all or part of such Ammonia, Additives or AN constitute the inventory of EDC.

### **22.0 SAFETY, HEALTH AND ENVIRONMENT**

**22.1** Prior to entering into this Agreement, Orica has provided EDC with information regarding the safe transportation, handling, storage and use of Ammonia, Additives and AN (the "SHE Standards"). EDC hereby acknowledges that it has received, read and understood the SHE Standards and agrees to take all such measures as are necessary or desirable in order to safely manufacture, transport, handle, store and/or use the Ammonia, Additives and AN in accordance with the SHE Standards. For the avoidance of doubt, for the purposes of this clause, the term "the safe manufacture, transportation, handling, storage and use" of products relates not only to the safety of those persons who may be affected by the acts or omissions of EDC but also to protection of the Environment generally.

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**22.2** EDC shall comply with all safety and health Laws and Environmental Laws, regulations and codes of conduct applicable to the performance of its duties hereunder, and shall be solely responsible for any Claims howsoever arising in connection with any failure so to do. EDC shall at all times remain responsible for the health and safety of those people affected by its operations and for protection of the Environment.

**22.3** Unusual incidents (as identified in Schedule "F" hereto) at EDC's Plant shall be reported to the Director, Safety, Health, Environment and Quality of Orica promptly. Such reports shall be made initially by telephone, to be followed promptly by a written report.

**22.4** EDC shall indemnify, defend and save and hold harmless Orica and its Affiliates, and each of their respective officers, directors, employees, and agents (each, an "Orica Indemnified Party"), from and against any and all Claims sustained or incurred by any Orica Indemnified Party relating to or resulting or arising, directly or indirectly, from or in connection with, any of the following (provided that EDC shall have no liability under this Section 22.4 for any Claims in respect of which Orica has agreed to indemnify EDC in accordance with Subsections 3.3, 3.7 and 8.5 hereof, or to the extent such Claims relate to or result or arise from the negligent actions or inactions of an Orica Indemnified Party):

**22.4.1** any breach of a representation or warranty made herein by EDC or non-compliance with or breach by EDC of any of the covenants or agreements contained in this Agreement to be performed by EDC;

**22.4.2** the physical or environmental conditions at, on, under or in the EDC Site, and, to the extent such conditions are caused, created or contributed to by EDC, the physical or environmental conditions in the vicinity of the EDC Site;

**22.4.3** the construction, equipping, maintenance, operation or use of the EDC Site, or the manufacturing or storage of Ammonia, Additives or AN, including the transportation of AN Prills between EDC's Plant and the AN Prills Warehouse, in each case in violation of any applicable Environmental Law or Environmental Permit;

**22.4.4** the presence of any Hazardous Material or a Release or Disposal or the threat of a Release or Disposal of any Hazardous Material or waste on, at or from the EDC Site, or the Arrangement for Disposal or treatment of any Hazardous Material owned or possessed by EDC at any facility other than the EDC Site;

**22.4.5** the failure to promptly undertake and diligently pursue to completion all necessary, appropriate and legally authorized investigative, containment, removal, clean up and other remedial actions with respect to a Release or the threat of a Release of any Hazardous Material on, at or from the EDC Site, required by any Environmental Law or Environmental Permit;

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**22.4.6** human exposure to any Hazardous Material, noises, vibrations or nuisances of whatever kind or death, personal injury or damage to property to the extent the same arise from the condition of the EDC Site or the construction, equipping, ownership, use, sale, maintenance, conveyance or operation thereof in violation of any Environmental Law; or

**22.4.7** a violation or asserted violation of any applicable Environmental Law or Environmental Permit at or related to the EDC Site.

**22.5** In addition to Orica's indemnification obligations under Sections 3.3, 3.7 and 8.5 hereof, Orica shall indemnify, defend and save and hold harmless EDC and its Affiliates, and each of their respective officers, directors, employees, and agents (each, an "EDC Indemnified Party"), from and against any and all Claims sustained or incurred by any EDC Indemnified Party relating to or resulting or arising, directly or indirectly, from or in connection with, any of the following (provided that Orica shall have no liability under this Section 22.5 for any Claims to the extent such Claims relate to or result or arise from the negligent actions or inactions of an EDC Indemnified Party):

**22.5.1** any breach of a representation or warranty made herein by Orica or non-compliance with or breach by Orica of any of the covenants or agreements contained in this Agreement to be performed by Orica;

**22.5.2** the physical or environmental conditions at, on, or in the EDC Site to the extent such conditions are caused, created or contributed to by Orica;

**22.5.3** human exposure to any Hazardous Material, noises, vibrations or nuisances of whatever kind, or death, personal injury or damage to property to the extent the same arise from the transportation and delivery of Ammonia, Additives and AN by or for Orica to and from the EDC Site or the rail cars or trucks supplied to the EDC Site by Orica; or

**22.5.4** a violation or asserted violation by Orica of any applicable Environmental Law or other Law, or Environmental Permit or other permit, related to the transportation of Ammonia and Additives to and AN from the EDC Site or the rail cars or trucks supplied to the EDC Site by Orica.

## 23.0 COMMUNICATIONS

**23.1** All notices, requests, waivers, consents, approvals, agreements and other communications under this Agreement must be in writing to be effective and shall be delivered in person or by certified mail with postage prepaid and return receipt requested, courier or overnight delivery service with charges prepaid or facsimile transmission,

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if to Orica, addressed as follows:

Orica USA Inc.  
Attention: VP, Ammonium Nitrate  
9781 S. Meridian Blvd.

Suite 400  
Englewood, CO 80112  
Fax No. (303) 268-5249

with a copy to:

Attention: General Counsel  
Fax No. (303) 268-5252

at the same address;

and if to EDC, addressed as follows:

El Dorado Chemical Company  
Attention: President  
16 S. Pennsylvania  
Oklahoma City, Oklahoma 73107  
Fax No. (405) 235-5067

with a copy to:

Attention: General Counsel  
Fax No. (405) 236-1209

at the same address.

Either party shall have the right to change its address by notice to the other party at the addresses in force hereunder.

**23.2** Any communications shall be deemed to have been received as follows:

**23.2.1** if delivered in person, when delivered;

**23.2.2** if forwarded by facsimile, on the date of transmission thereof as reflected on the confirmation of the transmitting machine;

**23.2.3** if forwarded by certified mail, on the third Business Day following the date of mailing as shown on the certified mail receipt; and

**23.2.4** if forwarded by overnight delivery service, on the Business Day following the date of mailing as shown on the air bill.

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### **24.0 HEADINGS**

**24.1** The headings are inserted for convenience only and are to be ignored in construing this Agreement.

**24.2** References to articles, sections or paragraphs are to articles, sections or paragraphs of this Agreement. The words "hereto", "herein", "hereof", "hereunder", "this Agreement" and similar expressions mean and refer to this Agreement.

### **25.0 RULES OF INTERPRETATION**

**25.1** The singular includes the plural and vice versa, "person" includes any individual, firm, company, partnership, corporation, Government, instrumentality and unincorporated body of persons, or association; and "in writing" or "written" includes printing, typewriting, or any electronic means of communication capable of being visibly reproduced at the point of reception.

**25.2** In the event that there shall be any discrepancies or conflict between the provisions of any Schedule attached to this Agreement and any of the provisions of the Agreement itself, then in every such event the provisions of this Agreement shall prevail and govern.

### **26.0 GOVERNING LAW**

**26.1** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Colorado.

### **27.0 ASSIGNMENT**

**27.1** Neither Orica nor EDC shall transfer, assign, convey or otherwise dispose of all or any portion of its interest in or its rights, benefits or obligations under this Agreement to any person other than an Affiliate unless:

**27.1.1** the prior written consent of the other party hereto has been obtained, which consent shall not be unreasonably withheld; and

**27.1.2** the proposed assignee shall have covenanted in writing to fully assume and perform all of the assignor's obligations under this Agreement.

**27.2** Any purported transfer or assignment in violation of the foregoing shall be void and of no effect and the non-transferring party shall have the right to terminate this Agreement upon giving the other party 30 days written notice thereof.

**27.3** A transfer or assignment by a party of all of its interests, rights and benefits under this Agreement to an Affiliate shall be permitted if the proposed assignee shall have covenanted in writing to fully assume and perform all of the assignor's obligations under this Agreement.

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**27.4** No transfer or assignment shall discharge or relieve the assignor from any of its covenants or obligations as are contained or provided within this Agreement which arise, are incurred, or are to be performed, prior to the date of the transfer or assignment unless specifically agreed to in writing by the other party.

### **28.0 TIME OF ESSENCE**

**28.1** Time shall be of the essence of this Agreement.

### **29.0 EFFECT OF THIS AGREEMENT**

**29.1** The provisions of this Agreement shall be binding upon the parties hereto and their respective successors and permitted assigns.

**29.2** Nothing herein is intended to create a partnership for the purposes of subchapter K and Section 761 (a) of the Internal Revenue Code.

### **30.0 WAIVER**

**30.1** No waiver by either party of any breach hereof or of any claim, right or remedy provided for hereunder shall be deemed a waiver unless such waiver is in writing and signed by the party to be bound. The failure of a party to assert or exercise any claim, right or remedy shall not be deemed a waiver of such claim, right or remedy in the future.

### **31.0 AMENDMENT AND SEVERABILITY**

**31.1** This Agreement may only be altered, modified, amended or changed by written agreement executed by both parties.

**31.2** If any court or arbitrator declares the invalidity of any provision of this Agreement, such provision shall be either amended to make it valid or enforceable, respecting the intention of the parties expressed in that provision to the greatest extent possible, or, if this is not possible, deleted with the remainder of the Agreement remaining in full force, validity and effect.

### **32.0 ENTIRE AGREEMENT**

**32.1** The parties hereto agree that the terms and provisions of this Agreement together with the Schedules hereto constitute the entire agreement between the parties hereto concerning the subject matter hereof and supersede any and all prior negotiations, understandings and agreements, whether written oral, between the parties with respect thereto. There is no warranty, representation, collateral agreement or condition affecting this Agreement other than those herein set forth.

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### **33.0 CONFLICTS**

In the event of a conflict between the terms and provisions of this Agreement and any of Schedules "A" through "H" hereto, the terms and provisions of the applicable Schedule shall govern and control the point in conflict to the extent allowable under applicable Law.

**IN WITNESS WHEREOF** the parties hereto have executed this Agreement in the presence of their respective officers duly authorized in this regard on the day and Year first above written.

**ORICA USA INC.**

**EL DORADO CHEMICAL COMPANY**

By: \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

Title:

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**SCHEDULE "A"**

**DEFINITIONS**

In the Agreement to which this Schedule is attached and in all Schedules thereto, the following words have the meanings given to such words below:

**"Additive Assets"** shall have the meaning set forth in Section 3.4 of this Agreement;

**"Additive Technology"** shall have the meaning set forth in Section 3.6 of this Agreement;

**"Additives"** means the proprietary and non-proprietary additives provided by Orica to EDC from time to time and used by EDC to manufacture AN Prills for Orica;

**"Affiliate"** means any person which, directly or indirectly, Controls, is Controlled by or is under common Control with a party to this Agreement;

**"AGAN"** means agricultural grade ammonium nitrate manufactured by EDC at the EDC Site, and sometimes known as "E2";

**"Agreement"** means this Agreement, including the Schedules hereto, and any future amendments or supplements;

**"Ammonia"** means fertilizer grade anhydrous ammonia (82-0-0) which meets or exceeds the specifications set out in Schedule "B" hereto;

**"Ammonium Nitrate" or "AN"** means AN Prills and/or AN Solution;

**"AN Prills"** means industrial grade ammonium nitrate which meets or exceeds the AN Prills Specifications in Schedule "B" hereto;

**"AN Prills Warehouse"** shall have the meaning set forth in Section 4.6 of this Agreement;

**"AN Solution"** means ammonium nitrate solution which meets or exceeds the AN Solution Specifications in Schedule "B" hereto, except that "Tons of AN Solution" shall be measured on a one hundred percent (100%) basis;

**"Arrangement for Disposal"** has the same meaning as given to that term in the case law interpreting Section 107(a) (3) of CERCLA;

**"Avoided Costs"** shall have the meaning given in Schedule "D" hereto;

**"Business Day"** means a day on which banking institutions in Denver, Colorado are open for business;

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**"CERCLA"** means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601(22), and the regulations and agency guidance promulgated thereunder;

**"Claim"** means any claim, demand, suit, action, cause of action, assessment, loss, cost, expense, liability (whether contingent, fixed or unfixed, liquidated or unliquidated, or otherwise), obligation, fine, penalty, interest, payment, damage, requirement to do work or requirement to perform an activity (whether as a result of civil action, criminal action, Government order or on any other basis whatsoever), including costs or expenses of any and all investigations or proceedings and reasonable fees and expenses of attorneys, accountants and other experts, but excluding special, consequential, incidental or punitive damages claimed by a party to this Agreement;

**"Controls", "is Controlled by" and "is under common Control with"** means, with respect to either party to this Agreement, the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a party, whether through ownership of voting securities, by contract or otherwise;

**"Disposal"** has the same meaning as given to that term in CERCLA;

**"Dollar"** shall mean dollars in United States currency;

**"EDC's Plant" or "EDC Plant"** means the portion of the EDC Site usable by Orica for the storage of Ammonia pursuant to Section 3.2 of the Agreement, the portion of the nitric acid production facilities at the EDC Site utilized to supply nitric acid for the production of AN for Orica, the portion of the AN Solution production facilities at the EDC Site utilized to supply AN Solution for the production of AN for Orica, the allocated AN Solution Storage, the portion of the EDC Site dedicated to the manufacture of AN, including the IGAN Plant, the AN Prills Warehouse (once constructed), the portion of the supporting facilities at the EDC Site used to manufacture steam, to unload Ammonia and Additives, to load and ship AN manufactured for Orica and for ingress and egress from the IGAN Plant and any assets that Orica requests EDC to add to the EDC Site as a result of this Agreement;

**"EDC's Site" or "EDC Site"** means the land and facilities operated by EDC at or near El Dorado, Arkansas for the manufacture of nitric acid, sulfuric acid, AGAN, AN Solution and AN Prills;

**"Effective Date"** means November 1, 2001;

**"Environment"** means any water or water vapor, any land, including land surface or subsurface, air, fish, wildlife, flora, fauna, biota and all other natural resources;

**"Environmental Law"** means any and all federal, state or local environmental, land use, zoning, health, chemical use, safety and sanitation laws, statutes, ordinances, codes, and regulations, whether currently in effect or enacted or amended after the effective date of this Agreement, relating to the protection, preservation or remediation of the Environment and/or

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governing the use, storage, treatment, generation, transportation, processing, handling, production, Disposal, or Arrangement for Disposal of Hazardous Materials and the rules, regulations, written and published notices, guidelines, decisions, orders and directives of federal, state and local governmental agencies and authorities with respect thereto;

**"Environmental Permit"** means all permits, licenses, approvals, authorizations, consents or registrations required by any applicable Environmental Law in connection with the ownership, development, construction, equipping, use and/or operation of the EDC Site or the EDC Plant, as applicable, for the storage, treatment, generation, transportation, processing, handling, production or Disposal of Hazardous Materials;

**"Force Majeure"** means any cause or causes beyond the reasonable control of the party claiming such Force Majeure which prevents the performance by such party of any obligation under the Agreement, other than an obligation to pay money or to indemnify, including, without limiting the generality of the foregoing, acts of God, compliance with Laws, including Environmental Laws, or any order or directive of any Government which, in the reasonable judgement of the party affected, makes it necessary to cease or reduce production or delivery, storm, lightning, riot, sabotage, rebellion,

insurrection, war, threat of war, embargo, flood, fire, lightning, accident, explosion, inability to obtain sufficient fuel, transportation equipment, power or raw materials, including specifically Ammonia, to maintain production of AN at EDC's Plant or to deliver AN to Orica's customers, breakdown of machinery or equipment and shutdown or partial shutdown of EDC's Plant, provided that lack of funds shall not be a cause beyond the reasonable control of a party. Labor Difficulties shall be events of Force Majeure if they occur within the regular operations of a party and significantly affect such party's ability to perform its obligations hereunder. Labor Difficulties affecting transportation facilities with respect to both the delivery and supply of goods, raw material supplies and services to EDC's Plant or Orica's customers and Labor Difficulties affecting the operations of Orica's or its Affiliates' (including, without limitation, Nelson Brothers, LLC) eastern coal customers shall constitute events of Force Majeure to the extent that such Labor Difficulties affect a party's ability to perform its obligations hereunder;

**"Government"** means federal, state and municipal governments and authorities, whether executive, administrative, municipal or quasi-judicial, and departments, organizations and agencies of such governments and authorities;

**"Hazardous Material"** means, without limitation, any element, compound, mixture, solution, substance, product, waste or byproduct designated as "hazardous" or "toxic" or as a pollutant or contaminant pursuant to any Environmental Law or Environmental Permit, and the AN, and any element, compound, mixture, solution, substance, product, waste or byproduct produced therefrom or created thereby;

**"IGAN Plant"** means the AN Prill tower and related equipment used to manufacture AN Prills located on the EDC Site, sometimes referred to as the "KT Plant";

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**"Initial Period"** means the period from November 1, 2001 to December 31, 2002;

**"Labor Difficulties"** means strikes and lockouts, both legal and illegal, and other forms of organized actions, howsoever called, by labor or other personnel to stop or significantly reduce or slow-down work or production or to withdraw or withhold labor or services;

**"Laws"** means common law, statute law, other laws, rules, regulations, by-laws, ordinances, orders, codes, licensing requirements, and other lawful enactments promulgated by any Government and published guidelines or standards set by any Government;

**"Month"** means a calendar month;

**"Plant Turnaround"** means the voluntary shutdown by EDC of the EDC Plant for maintenance, repairs or improvements;

**"Release"** has the same meaning as given to that term in CERCLA;

**"Ton"** means 2000 pounds;

**\*\*\*\*** shall mean, as the context requires, the \*\*\* Fee or the Actual Toll Fee determined in accordance with Schedule "C" hereto; and

**"Year"** means a 12 month period beginning each January 1<sup>st</sup> and ending on December 31<sup>st</sup>.

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## SCHEDULE "B"

**PRODUCT SPECIFICATIONS  
AMMONIA**

Fertilizer Grade Anhydrous Ammonia  
(82-0-0)

<b>Parameter</b>	<b>Specification</b>
Purity (wt%)	99.5% NH3 Minimum
Nitrogen (wt%)	81.8% Minimum
Moisture (wt%)	0.2% Minimum to 0.5% Maximum
Oil	6 parts per million Maximum
Iron	1 part per million Maximum

**INTERIM ANP**

(34-0-0)

UN NUMBER 1942

PART I

\*\*\*

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**FINAL ANP**

(34-0-0)

UN NUMBER 1942

PART II

White to off-white free flowing AN Prills with the following characteristics:

\*\*\*

**Note:** Orica's Additive had not been used in the EDC Plant prior to the preparation of this Schedule and accordingly these Specifications are subject to change to conform to actual results achieved.

**AN SOLUTION**

<b>Parameter</b>	<b>Specification</b>
------------------	----------------------

AN Concentration (wt%)	85%-90%
pH Range	4.5 -- 6
Loading Temperature	110 --120 degrees C

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**SCHEDULE "C"**

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## **SCHEDULE "D"**

### **LIQUIDATED DAMAGES CALCULATION**

#### **Payment by Orica**

In the event that Orica takes delivery in any Year from EDC's Plant of less than 180,000 Tons (not including Tons purchased by EDC for resale to SEC) of AN ("Minimum Quantity"), and subject to the remainder of this Schedule "D", the following calculation shall be made.

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Reduction of Orica's Obligations to EDC

If EDC has failed to supply 180,000 Tons of AN to Orica which has been ordered pursuant to the terms of this Agreement, and such failure is not due to any actions or omissions of Orica, then, subject to the next following paragraph, Orica may reduce the Minimum Quantity to the extent that (1) Orica or its Affiliates (including, without limitation, Nelson Brothers, LLC) or distributors have been required to purchase substitute AN to supply their customers or (2) they have not purchased substitute AN but have lost a sale which cannot be replaced, provided that any reduction in the Minimum Quantity hereunder shall correspond to the number of Tons of AN which EDC failed to supply to Orica and for which substitute AN was purchased or a sale was lost which cannot be replaced. A demand by Orica for AN production in excess of the EDC Plant's practical capacity, considering seasonality and weather, shall not cause a reduction of Liquidated Damages.

Orica will provide EDC with a forecast Monthly off-take of its 180,000 Tons plus 1,000 Tons per Month for SEC (or such additional amount per Month as EDC may advise). In the event Orica has taken delivery of less than the cumulative amount reflected in its forecast (such Tons not taken being referred to as "Shortfall"), and EDC declares Force Majeure under this Agreement, upon cessation of the event of Force Majeure EDC may request Orica to take additional quantities of AN in subsequent Months, according to an agreed schedule, to "make-up" Tons not manufactured during the period of Force Majeure. Orica will use its best efforts, without expenditure of funds, to take additional "make-up" Tons of AN in subsequent Months, up to a maximum of the Shortfall. In the event there has been no Shortfall at the date EDC declares Force Majeure, Orica shall have no obligation to take "make-up" Tons and Orica shall be entitled to reduce its Minimum Quantity obligation in accordance with the preceding paragraph.

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If, for any reason, Orica forecasts that it will not take delivery on a Monthly basis of its Annual Estimate, Orica shall promptly so advise EDC.

\*\*\*

Payment

Any payments which Orica may make pursuant to the provisions of this Schedule "D" shall constitute Orica's sole obligation to compensate EDC for Orica's failure to take delivery of the Minimum Quantity of AN. EDC shall prepare a calculation of any Liquidated Damages for each Year ("Annual LD Report"), which will be delivered by EDC to Orica by February 28 of each Year (except that the first such Annual LD Report shall be issued by February 28, 2003) and shall be subject to Orica's Verification Right which Orica may exercise in a similar manner to its right in respect of the Manufacturing Fee. Any amounts owed by Orica to EDC as shown by the Annual LD Report shall be paid to EDC within thirty (30) days of Orica's receipt of the Annual LD Report, subject to Orica's Verification Right. In the event that Orica wishes to exercise its Verification Right, Orica shall pay all undisputed amounts owing to EDC within such 30 day period which payment shall not waive Orica's right to dispute the remainder.

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## SCHEDULE "E"

### MEASUREMENT OF AMMONIA DELIVERIES

EDC shall maintain appropriate metering facilities designed to measure the quantities of Ammonia delivered by pipeline pursuant to the Agreement. The metering facilities shall include a device which records the quantities of product delivered, with automatic temperature compensation near the meter intake, a gas eliminator, and other appropriate devices, all of said equipment to be of standard manufacture and reasonably acceptable to Orica. Orica acknowledges that the equipment installed as of November 1, 2001 is acceptable.

All metering equipment shall be tested by EDC in a manner consistent with manufacturer's recommendations, but no less frequently than once a Year, and EDC will give Orica reasonable notice of the date and approximate hour of each test. The testing method and facilities will be those agreed between the parties. Orica may have representatives present to witness all metering equipment tests and shall have the right to inspect metering equipment in the presence of EDC's representatives. Orica may request special tests of the metering equipment in addition to the regular Monthly tests. The expense of special tests will be borne by Orica unless such tests show that the metering equipment is in error by an amount in excess of the rated accuracy of the metering system, in which case the expense of the special test shall be borne by EDC.

If any test shows that the metering equipment is in error by an amount exceeding the rated accuracy of the system, the equipment shall be adjusted to record accurately, and the previous readings of such equipment shall be corrected to zero error for any period of error that is known definitely or agreed upon. If the period of error is not known definitely or agreed upon, the correction shall be for a period comprising the last half of the time elapsed since the date of the last test.

If the metering equipment becomes inoperative, or outside the rated accuracy of the metering system, the quantities of product so delivered hereunder for each day during which the metering equipment is inoperative or outside the rated accuracy of the meter system shall be estimated and agreed upon on the basis of the best data available, using the first of the following methods which is feasible:

1. By using the registration of EDC's check meters if accurately registering;
2. By correcting the error if the percentage of error is ascertainable by calibration, test or mathematical calculations; or
3. Other mutually agreeable means.

On a daily basis, EDC shall determine the quantities delivered to EDC. Monthly statements for Ammonia shall show deliveries on a daily basis.

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If Orica does not protest within 30 days after receipt of EDC's notice of the quantities delivered, then the quantities of Ammonia as computed by EDC shall be final and conclusive. In the event of any dispute, the parties shall endeavour to resolve such dispute and mutually agree on the appropriate measurement to be used for invoicing purposes. If the parties hereto cannot agree on such quantities, then they shall select a disinterested technically appropriate third party which shall re-compute the quantities in dispute. The quantities re-computed by such disinterested third party shall be accepted by the parties hereto as final and conclusive. The charges made by such disinterested third party shall be borne equally by the parties hereto. EDC shall retain quantity measurement records hereunder for a period of at least one Year from the date on which such measurements were made.

### MEASUREMENT OF AMMONIUM NITRATE DELIVERIES

EDC shall maintain appropriate scale facilities designed to measure the quantities of AN Solution and AN Prills delivered by rail car and truck pursuant to the Agreement. Orica acknowledges that the scale available as of November 1, 2001 is acceptable. Orica shall have the right to independently meter or weigh AN delivered hereunder.

EDC agrees to provide copies of available testing records respecting its measurement facilities to Orica upon Orica's written request.

Monthly invoices for AN Solution and AN Prills shall show deliveries on a daily basis.

If Orica does not protest within the time specified in Subsection 8.2 of the Agreement in respect of quantities delivered, then the quantities as computed by EDC shall be final and conclusive. In the event of any dispute, the parties shall endeavour to resolve such dispute and mutually agree on the appropriate measurement to be used for invoicing purposes. If the parties hereto cannot agree on such quantities, then they shall select a disinterested technically appropriate third party which shall re-compute quantities in dispute. The quantities computed by such disinterested third party shall be accepted by the parties hereto as final and conclusive. The charges made by such disinterested party shall be borne equally by the parties hereto. EDC shall retain quantity measurement records hereunder for a period of at least one Year from the date on which such measurements were made.

#### **MEASUREMENT OF ADDITIVE DELIVERIES**

EDC shall maintain appropriate scale facilities designed to measure the quantities of Additives supplied by Orica pursuant to the Agreement. Orica acknowledges that the scale available as of November 1, 2001 is acceptable. EDC shall weigh trucks in and out and compare the result thereof to the quantity specified on the bill of lading and advise Orica of any discrepancies.

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#### **SCHEDULE "F"**

##### **TYPES OF UNUSUAL INCIDENTS TO BE REPORTED TO ORICA**

1. Any incident at the EDC Site associated with the operation which results in a fatality.
2. Any injury at the EDC Site which results in a person being admitted to hospital for 24 hours or more associated with the operation of the EDC Plant.
3. Any explosion or fire at the EDC Site which results in the interruption of normal work.
4. Any uncontrolled release of materials at the EDC Site likely to threaten the external environment, including incidents that occurred during the transport of hazardous substances.
5. The explosion or collapse of any pressure vessel at the EDC Site.
6. Any material unexplained or abnormal occurrence associated with the operation of the EDC Plant.
7. OSHA Recordable cases at the EDC Site.
8. Transportation/distribution incidents related to shipments to or from the EDC Site.

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#### **SCHEDULE "G"**

## RECEIPT AND UNLOADING OF

### AMMONIA AND ADDITIVES

#### Ammonia

1. Orica shall route Ammonia rail cars at its own transportation cost to Monsanto Junction siding in El Dorado, Arkansas. Orica shall provide EDC the car number and expected delivery date when shipped from the car's routing origination point.
2. EDC shall be responsible for movement of Ammonia cars from Monsanto Junction onto the EDC Site and for all movement within the Site. The actual costs incurred by EDC for movement and unloading of cars shall be included in the Additional Operating Costs in the Manufacturing Fee calculation. The actual cost as of the Effective Date is \*\*\* per car delivered to EDC, net of railroad company switching credits. Capital Recovery Costs for a new Ammonia rail car unloading facility are not included in this rate.
3. After repair, EDC's Ammonia rail car unloading facilities shall have capacity to unload, at a minimum, four rail cars in any consecutive twenty-four hour period, excluding Sundays and holiday periods when the rail car switching service is not scheduled to move cars. EDC shall use reasonable and prudent efforts to promptly unload Ammonia rail cars as received. EDC shall be responsible for demurrage charges in accordance with Section 10.3 of the Agreement except those arising from:
  - a) receipt of more than four Ammonia cars for unloading in any twenty-four hour period,
  - b) cars which cannot be safely moved or unloaded due to mechanical or other defect,
  - c) cars arriving at Monsanto Junction after normal switching hours on days prior to Sundays and holiday periods when the rail car switching service is not scheduled to move cars, or
  - d) rail car unloading facility repairs that impede the unloading of any Ammonia rail cars.
4. Rail cars transporting Ammonia to EDC shall be built to meet at least one of the following U.S. DOT specifications: 105A300W, 105J400W, 112S340W or 112J340W. The Ammonia rail cars shall also conform to U.S. DOT specifications 173.304, 173.314 and 173.315. Gross rail car weights shall not exceed 263,000 pounds (80 net short ton car) and 315,000 pounds (100 net short ton car).
5. Inbound rail car shipments shall meet all regulatory requirements including, but not limited to proper documentation, required placards, and both sides of the car marked with "Anhydrous Ammonia" and "Inhalation Hazard".
6. EDC will accept 80 net ton and "jumbo" 100 net ton Ammonia rail cars conforming to the above specifications). In addition, each Ammonia rail car must be equipped with the following

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fittings for unloading and transfer of Ammonia to storage: one 2-inch liquid valve and one 1.5-inch vapor valve.

7. EDC will visually inspect each Ammonia car received and promptly report noted defects to Orica.

Additives

1. Orica shall review its plans and procedures for new Additive Assets with, and obtain written permission from, EDC prior to installation of any new Additive Assets. EDC shall not unreasonably withhold installation permission if the planned facilities and procedures do not compromise the safety, operations, maintenance or regulatory compliance activities at the plant.
2. For any Additives delivered by truck, the costs incurred by EDC for unloading shall be included in the Bulk Shipping Costs in the Manufacturing Fee.
3. Any new Additive unloading facilities shall comply with all OSHA Process Safety Management and other regulatory requirements.
4. If any new Additive unloading facilities significantly increase operating or maintenance costs, the Manufacturing Fee shall be adjusted accordingly.
5. Orica shall provide written instructions and training to EDC personnel in the proper operation and maintenance of the new Additive unloading facilities.
6. Shipments shall meet all regulatory requirements including, but not limited to, proper documentation and required placards.

**SCHEDULE "H"**  
**Form of Warehouse Lease**  
**(ATTACHED)**

**SCHEDULE "H"**

**FORM OF  
WAREHOUSE LEASE AGREEMENT**

**WAREHOUSE LEASE AGREEMENT**

THE INFORMATION CONTAINED WITHIN THIS EXHIBIT HAS BEEN OMITTED; HOWEVER, THIS EXHIBIT WILL BE FURNISHED IN ITS ENTIRETY TO THE COMMISSION UPON REQUEST.

## SALES AGREEMENT\*

**THIS AMMONIUM NITRATE SALES AGREEMENT** (the "Agreement") is made and effective this 1st day of October, 2001 (the "Effective Date"), by and between **NELSON BROTHERS, LLC**, a Delaware limited liability company ("NB") and **Cherokee Nitrogen Company**, an Oklahoma Corporation ("CN"). NB and CN shall be collectively referred to throughout this Agreement as the "Parties."

### **WITNESSETH THAT:**

**WHEREAS**, NB conducts business related to the manufacture, distribution, sale and use of Ammonium Nitrate based explosives products and desires to purchase Ammonium Nitrate Solution "AN" from CN for use in its operations; and

**WHEREAS**, CN is engaged in the manufacture of AN and desires to sell such AN as required by NB, on the terms and conditions hereof;

**NOW, THEREFORE**, for and in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the Parties agree as follows:

### ARTICLE I INTERPRETATION

#### **Section 1.01 Definitions**

"**Agreement**" means this Agreement, including the Schedules hereto, and all amendments made hereto by written agreement between NB and CN.

"**AN**" or "**Products**" means bulk Ammonium Nitrate solution on a 100% basis.

"**Confidential Information**" means any and all information, technical knowledge, know-how, business plans, pricing guides, pricing strategies, market designs, marketing strategies, trade secrets, product specifications, product concentrations, product compositions, chemical compositions, data, drawings, sketches, flow sheets, formulas, processes, manufacturing processes, quality control specifications, raw materials, concentrations of raw materials, communications of a sensitive or private nature relating to or useful in connection with the manufacture of AN, the design, construction, and/or operation of any of the Parties' facilities, products, business plans, and/or general business and, for avoidance of doubt, includes the provisions of this Agreement; provided that the term "Confidential Information" does not include any of the foregoing that (i) at the time of disclosure or thereafter were generally available to the public (other than as a result of disclosure directly or indirectly by the Receiving Party or its Representatives); (ii) were or become

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available to the Receiving Party from a source other than the Disclosing Party or its Representatives; or (iii) are independently developed by the Receiving Party without violating any of its obligations under this Agreement.

"**Party**" means either NB or CN, as applicable.

"**Specifications**" means the specifications for AN as set forth on Schedule A, attached hereto, as the same may be amended by mutual agreement between the Parties from time to time.

#### **Section 1.02 Headings**

The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and will not affect the construction or interpretation of this Agreement. The terms "this Agreement," "hereof," "hereunder" and similar expressions refer to this Agreement and not to any particular Article, Section or other portion hereof and include any agreement supplemental hereto. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles and Sections are to Articles and Sections of this Agreement.

#### **Section 1.03 Schedules**

The following is the Schedule attached hereto and incorporated by reference and deemed to be part hereof:

Schedule A

AN Specifications

**ARTICLE II**  
**SUPPLY OF PRODUCTS**

**Section 2.01 Products and Quantity.**

During the term hereof, CN agrees to manufacture and supply or cause to be manufactured and supplied, deliver and sell to NB, and NB agrees to purchase, accept and pay for, all AN required by NB's Cherokee, AL emulsion plant at the prices and otherwise in accordance with the provisions of this Agreement.

**Section 2.02 Forecasts**

NB shall provide to CN, at least 30 days in advance, a forecast of NB's requirements of Product on a monthly basis broken out by week based on NB's best estimates.

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**Section 2.03 Alternate Supply**

In the event that CN's plant is shut down, resulting in NB's inability to fulfill its Product requirements for the Cherokee, AL emulsion plant, or if CN's production capacity is insufficient to meet NB's Cherokee, AL emulsion plant requirements, NB shall have the right to acquire such tons of AN that cannot be supplied by CN ("NB's Excess Requirements") from third party suppliers. During the pendency of such event, NB shall be relieved from any of its obligations pursuant to this Agreement related to NB's Excess Requirements.

**Section 2.04 Shipping, Title and Risk of Loss**

AN shall be shipped via the pipeline that exists between CN's manufacturing facility and NB's Cherokee, AL emulsion plant ("Pipeline"). The quantity of product actually delivered by CN shall be determined by NB's meter installed at the interface of the Pipeline and NB's receiving equipment. At any such time, title and risk of loss of the Product shall pass from CN to NB at the downstream flange of such meter. At any time which such meter is inoperative (and pending repair of same) or in need of calibration, the quantity of Product delivered by Pipeline hereunder shall be determined by the meter installed at the CN plant end of the Pipeline.

In the event of any spilled product at points between the CN meter and the NB meter, NB shall pay for 50% of any such product spilled. The amount of such spilled product shall be determined by the difference between the two meter readings.

**ARTICLE III**  
**SPECIFICATIONS**

**Section 3.01 Quality Control**

Except as hereinafter provided, CN will be responsible for supplying AN to NB that meets the Specifications as set forth in Schedule A attached hereto. CN will promptly notify NB of any known material nonconformance to Specifications of AN and advise NB of the proposed corrective actions to be taken.

**Section 3.02 Failure of Product to Meet Specifications**

(a) NB shall have the right, exercisable upon written notice delivered within ten days from the date on which NB becomes aware of any material non-conformance to Specifications of any AN delivered to it, to notify CN of any such non-conformance and to reject any such non-conforming AN.

(b) NB may reject any non-conforming AN which it cannot use, after utilizing commercially reasonable efforts to do so. NB shall not be responsible for payment for any such rejected AN. CN shall be responsible at its cost for reprocessing or disposal of any rejected AN.

(c) NB shall use commercially reasonable efforts to mitigate costs incurred as a result of non-conforming AN and shall assist CN and cooperate as necessary to enable CN to minimize its loss, including by retaining samples of such non-compliant AN. The Parties shall cooperate to reprocess or dispose of non-conforming AN in the most cost effective manner possible.

## ARTICLE IV TERM AND TERMINATION

### **Section 4.01 Term**

Unless earlier terminated in accordance with this Article IV, the term of this Agreement shall commence on the Effective Date of October 1, 2001 and shall continue for 5 years until September 30, 2006. Thereafter, this Agreement shall automatically renew for successive 1 year terms, unless cancelled by either party by providing written notice 1 year prior to September 30<sup>th</sup> of the succeeding contract year.

### **Section 4.02 Discretionary Termination**

(a) Either Party may terminate this Agreement upon the occurrence of any of the following events:

- (i) subject to clause (b) hereof, material failure of performance by the other Party; or
- (ii) subject to clause (b) hereof, breach of a material term, condition or provision of the Agreement by the other Party.

(b) If one of the events described in Section 4.02(a)(i) or 4.02(a)(ii) occurs, the terminating Party shall notify the other Party of its intent to terminate this Agreement, and shall specify in writing the basis for termination (a "Default Notice"). The Party receiving a Default Notice shall then have 30 days from receipt of the Default Notice to cure the failure of performance or breach. If such failure of performance or breach is timely cured, this Agreement shall remain in force and effect. If the Party receiving the Default Notice fails to timely cure the performance or breach, the notifying Party may terminate this Agreement effective on the 31<sup>st</sup> day following receipt of the Default Notice. Any dispute concerning whether a Party failed to perform or is in breach of this Agreement or whether any such breach has been cured shall be subject to the provisions of Section 9.01 of this Agreement.

(c) This Agreement may be terminated at any time by mutual agreement of the Parties.

### **Section 4.03 Post Termination**

Upon the termination of this Agreement, whether at the expiration of its term or earlier, NB will purchase, accept and pay for all AN ordered prior to the termination date by NB. Notwithstanding any termination of this Agreement, Articles VI, VII and VIII shall continue in force and effect.

## ARTICLE V PRICE

### **Section 5.01 Pricing**

- (a) The price billed to NB shall be calculated according to \*\*\*
- (b) \*\*\*. The price resulting from this formula shall be referred to as the "Base Price".

\*\*\*

\*\*\*INDICATES INFORMATION IN THIS DOCUMENT WHICH HAS BEEN OMITTED FROM THIS PUBLIC FILING PURSUANT TO A REQUEST BY THE COMPANY FOR CONFIDENTIAL TREATMENT BY THE SECURITIES AND EXCHANGE COMMISSION. THE OMITTED INFORMATION HAS BEEN FILED SEPARATELY WITH THE SECRETARY OF THE SECURITIES AND EXCHANGE COMMISSION FOR PURPOSES OF SUCH REQUEST.

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(c) Each shipment of AN shall constitute a separate sale, obligating NB to pay therefor, whether said shipment be in whole or only partial fulfillment of any order or confirmation issued in connection therewith. NB shall not be obligated to pay for any Product that is not shipped to it.

(d) \*\*\*

**Section 5.02 \*\*\***

**Section 5.03 \*\*\***

\*\*\*

**Section 5.04 Payment and Settlement**

CN shall invoice NB weekly. NB shall pay CN's Base Price invoices, net 15 days FOB NB's Cherokee, AL emulsion plant delivered as specified in this Agreement. CN may levy finance charges for any payments which are 15 days past due, not to exceed 1-1/2% per month or the highest rate permitted by law. At the end of each month, CN shall calculate the actual average cost of AN pursuant to the formula set forth in Section 5.01 or 5.02 as the case may be. Any adjustment to the Base Price paid by NB shall be billed or credited within 15 days of the end of the applicable month and shall be paid net 15 days.

\*\*\*INDICATES INFORMATION IN THIS DOCUMENT WHICH HAS BEEN OMITTED FROM THIS PUBLIC FILING PURSUANT TO A REQUEST BY THE COMPANY FOR CONFIDENTIAL TREATMENT BY THE SECURITIES AND EXCHANGE COMMISSION. THE OMITTED INFORMATION HAS BEEN FILED SEPARATELY WITH THE SECRETARY OF THE SECURITIES AND EXCHANGE COMMISSION FOR PURPOSES OF SUCH REQUEST.

**Section 5.05 Cost Adjustment**

CN shall make commercially reasonable efforts to reduce the cost figures and conversion factors comprising the Base Price. The parties shall meet on a quarterly basis to review the cost figures and conversion factors. CN shall provide NB with the information necessary to allow informative discussion pertaining to these issues. After review of the cost figures and conversion factors, the Parties may agree on the adjustment, if any, to the variable items contained in the formula used to establish the Base Price.

**Section 5.06 Audits**

Either party hereto shall have the right, upon 30 days prior written notice and during regular business hours, to conduct, or to have such party's duly authorized independent representatives conduct, an audit of such portion of the other party's books and records as are directly relevant to the calculation of costs, pricing, fees and adjustments hereunder or sale of the Products to other third parties for the prior 12 month period. In the absence of a bona fide dispute between the parties, no party will request or conduct such an audit more frequently than once per contract year. For purposes of any such audit, the Parties shall use United States Generally Accepted Accounting Principles consistently applied "GAAP".

**ARTICLE VI**  
**LIMITED WARRANTIES; LIMITATION; DISCLAIMER**

**Section 6.01 Limited Warranties**

CN WARRANTS THAT ALL PRODUCT SOLD TO NB IS FREE AND CLEAR OF ALL LEINS AND ENCUMBRANCES, CLEAR TITLE EXISTS AS TO ALL PRODUCTS AND ALL PRODUCTS CONFORM TO THE SPECIFICATIONS SET FORTH IN SCHEDULE A. EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, CN MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER MATTER WITH RESPECT TO THE PRODUCTS. CN SHALL NOT BE LIABLE TO NB FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES RESULTING FROM THE HANDLING, POSSESSION OR USE OF THE GOODS BY NB.

**Section 6.02 Claims Process**

CN shall have no liability to NB for any non-compliance with the Specifications unless: (a) NB gives CN notice in writing of NB's claim, setting forth fully the facts on which it is based, as soon as practicable after NB becomes aware of such claim and in any event within 45 days of the date of use of any AN, and (b) CN is given a reasonable opportunity to inspect the AN alleged to be defective if available.

**Section 6.03 Limitation on Remedies**

Notwithstanding anything to the contrary herein (other than Section 3.02), NB's sole and exclusive remedy and CN's sole and exclusive obligation and liability for breach of the limited warranties under this Article VI, or upon the rejection of any Products pursuant to Section 3.02 hereof, are limited to, upon the mutual agreement of the Parties, one of the following: (i) replacement of the Products by CN without cost to NB; (ii) refund to NB of the invoice price of the particular Products; or (iii) credit toward future purchases of Products by NB in the amount of the invoice price of the non-conforming Products. If the Parties cannot agree upon the remedy within ten days of NB's notification to CN of the breach or rejection, clause (iii) shall automatically apply.

**Section 6.04 CONSEQUENTIAL LOSSES**

IN NO EVENT SHALL EITHER PARTY BE LIABLE IN CONTRACT, TORT OR OTHERWISE, FOR INCIDENTAL, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES UNDER THIS AGREEMENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY LOSS, OR ALLEGED LOSS, OF PROFIT.

**ARTICLE VII**  
**INDEMNIFICATION**

**Section 7.01 General Indemnity**

(a) CN shall indemnify, defend, and save harmless, NB, its parents and affiliates and its and their members, shareholders, officers, directors, employees and agents from and against any and all claims, demands, suits, losses, and damages (including, but not limited to, claims, demands, suits, losses, and damages for bodily injury, illness, disease or death) and expenses (including reasonable attorneys' fees) (collectively "Claims") which may be brought against them (individually or jointly) or in which they may be named a party defendant, in any way arising out of the AN supplied under this Agreement, but only to the extent such Claim arises out of, results from or is attributable to the actions, omissions, or willful misconduct, of CN.

(b) NB shall indemnify, defend, and hold harmless, CN, its parent and affiliates and its and their members, shareholders, officers, directors, employees and agents from and against any and all Claims which may be brought against them (individually or jointly), or in which they may be named a party defendant, in any way arising out of the use or sale of the AN to be supplied under this Agreement, but only to the extent such Claim arises out of, results from or is attributable to the actions, omissions, or willful misconduct, of NB.

**Section 7.02 Demand for Indemnity**

Promptly after receipt of any notice concerning the commencement of any event for which a Party believes it is or may be entitled to indemnity, the Party seeking indemnification (the "Indemnitee") shall give prompt written notice thereof to the Party from which it is seeking indemnification (the "Indemnitor"), provided that failure to give such prompt notice shall not relieve the Indemnitor from any liability it may have to the Indemnitee hereunder, except to the extent that the Indemnitor is prejudiced in its defense of such indemnity Claim as a result of such failure. The Indemnitor may assume the defense of any indemnity Claim with counsel reasonably satisfactory to the Indemnitee and shall not be obligated to furnish separate counsel to the Indemnitee in any action in which the Indemnitor and the Indemnitee are joined unless the Indemnitee reasonably concludes that there may be a conflict of interest between the Indemnitee and the Indemnitor. No settlement of any Claim shall be made without the mutual approval of the Indemnitor and the Indemnitee, but neither of them shall unreasonably condition, delay or withhold their consent to any settlement which the other has proposed.

**ARTICLE VIII**  
**CONFIDENTIAL INFORMATION**

**Section 8.01 Disclosure of Confidential Information**

The Parties realize that during the course of their supply and purchase relationship, it may become necessary for the Parties to disclose Confidential Information to each other ("Disclosing Party") or the Parties may otherwise become privy to certain Confidential Information ("Receiving Party").

**Section 8.02 Use of Confidential Information**

In consideration for the necessity of any disclosure of Confidential Information, the Parties agree that during the term of the Agreement and for a period ten years after termination of this Agreement they will treat the Confidential Information as strictly confidential and will not divulge to any third party nor publish or reproduce any of the Confidential Information disclosed by either party, nor make use of any such Confidential Information for any purpose except as required to fulfill the purpose of this Agreement, without the Disclosing Party's prior written consent. The above prohibition includes, without limitation, the inclusion of any of the Confidential Information in any present or future documents, strategies, pricing guides, or any other matter applicable to either Party's business. In the event that a Receiving Party is requested or required by law to disclose Confidential Information, the Party shall provide the Disclosing Party with notice of such request or requirement within two Business Days after the Receiving Party has received, or received notice of, such request or requirement so that the Disclosing Party may object to the request or requirement, seek an appropriate protective order, or provide its consent to the disclosure.

**Section 8.03 Return of Confidential Information**

At the termination of in this Agreement, any Confidential Information which has been received by either Party shall either be destroyed by the Party or returned to the Disclosing Party, at the Disclosing Party's option. In the event that a Disclosing Party fails to notify a Receiving Party of its option within 30 days of termination of this Agreement, the Receiving Party shall return all such Confidential Information to the Disclosing Party.

**Section 8.04 Access to Confidential Information**

The Parties shall restrict access to the Confidential Information to only those employees, officers and directors ("Representatives") who have a clear need to know the same for the purpose of this Agreement, provided that the Receiving Party guarantees the adherence of such Representatives to the terms of this Agreement. The Receiving Party shall be responsible for ensuring that all Representatives are under a written confidentiality obligation of sufficient scope to obligate them to comply with the terms and conditions of this Agreement.

**Section 8.05 Proprietary Nature of Confidential Information**

Any and all Confidential Information disclosed is proprietary and the Disclosing Party reserves full rights to the Confidential Information and remains the sole owner of the Confidential Information and does not assign to the Receiving Party any rights to the Confidential Information.

**ARTICLE IX**  
**MISCELLANEOUS**

**Section 9.01 Dispute Resolution and Arbitration**

The Parties agree that this Agreement affects interstate commerce. The Parties further agree that all disputes or controversies of any kind or nature between the Parties hereto, whether in contract or tort, arising out of or in connection with this Agreement, the relationships formed as a result of this Agreement, its subject matter or its negotiation, any disputes, disagreements or controversies as to the existence, construction, validity, interpretation or meaning, performance, non-performance, enforcement, operation, breach of contract, continuance or termination thereof, or any claims alleging fraud in fact, fraud in the inducement, deceit, suppression of any material fact, or any claims arising out of or based on violation of any state, federal, or local statute, rule or regulation, including claims relating in any way to the supply or performance of AN referenced in this Agreement, (collectively, "Disputes"), shall be settled exclusively by binding arbitration in Dallas, Texas pursuant to the provisions of the Federal Arbitration Act and according to the Commercial Rules of the American Arbitration Association then in effect in the State of Alabama. The arbitrator shall be chosen from a panel of licensed attorneys having at least 15 years of legal experience and

who are familiar with the subject matter of this Agreement and shall be appointed within 60 days of the date of the demand for arbitration by one of the Parties to this Agreement. Additionally, any questions relating to the arbitrability of the claims will be decided by the arbitrator. Such arbitration proceedings may be initiated by either Party, by notice in writing to the other, and to the American Arbitration Association. Each Party shall bear its own arbitration costs and expenses, except to the extent the arbitrator rules otherwise.

**Section 9.02 Assignment**

Neither Party may assign this Agreement without the prior written consent of the other Party. Such consent shall not be unreasonably withheld. Upon making a decision to offer its Cherokee, AL production facility for sale, CN shall promptly notify NB of its decision to offer to sell the facility.

**Section 9.03 Compliance with Laws**

Both CN and NB shall comply with all laws, orders, rules, regulations and requirements of every duly constituted governmental authority, agency or instrumentality, which may be applicable to this Agreement or its subject matter.

#### **Section 9.04 No Waiver**

The failure of either Party to insist in any one or more instances upon strict performance of any of the provisions of this Agreement or to take advantage of any of its rights hereunder or the failure to object to the nature of performance or lack thereof shall not be construed as a waiver of any such provision or the relinquishment of any such right, but the same shall continue and remain in effect. If the waiver of any right is made, it shall be done expressly in writing by the Party entitled to the enforcement thereof.

#### **Section 9.05 Severability of Provisions**

If any provision in this Agreement is held invalid, the remaining provisions shall continue in full force and effect.

#### **Section 9.06 Governing Law**

This Agreement is deemed to be made under the laws of the State of Alabama for all purposes, including interpretation, performance and enforcement, and shall be construed in accordance with the laws of the State of Alabama. Venue of any legal action to enforce an arbitration award relating to this Agreement shall be in the State of Alabama.

#### **Section 9.07 No Third-Party Beneficiaries**

This Agreement is for the sole benefit of the Parties and their permitted successors and assigns, and nothing herein, express or implied, is intended to or shall confer upon any person or legal entity not a Party

hereto any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of the Agreement.

#### **Section 9.08 Force Majeure**

Except as provided herein, it shall not be a breach of this Agreement by a Party if said Party is unable to perform its obligations due to causes beyond its reasonable control. Causes beyond its reasonable control shall include, but not be limited to, inclement weather, floods, civil disturbances, strikes or other labor actions, or other acts of God. In the event of force majeure, the Party claiming such shall give the other detailed written notice of the events constituting force majeure, and thereafter diligently pursue remedying the event of force majeure, provided, however, this shall not require such Party to settle strikes or other labor actions on terms it deems unacceptable. The Parties' obligations under this Agreement shall be suspended during the period of force majeure, provided however, that an event of force majeure shall not relieve a Party of any obligation to honor its indemnities and warranties hereunder or to make any payment due pursuant to this Agreement.

Any notice as required by this section shall be given as soon as practicable of any such anticipated delay in its ability to perform hereunder.

In the event of an interruption of delivery, receipt, storage or shipment of the Products hereunder due to an event of force majeure, the party unable to perform shall notify the other party in writing as far in advance as practicable of its ability to resume delivery, receipt, storage or shipment of the Products.

#### **Section 9.09 Financial Hardship**

Notwithstanding the other provisions of this Agreement, a party may be excused from performance under the Agreement in the event that market conditions cause extreme financial hardship.

In the event of a condition of extreme financial hardship, the Party claiming such shall give the other detailed written notice of the events constituting the extreme financial hardship, and thereafter diligently pursue remedying the event of hardship. The Parties' obligations under this Agreement shall be suspended during the period of financial hardship, provided however, that an event of extreme financial hardship shall not relieve a Party of any obligation to honor its indemnities and warranties hereunder or to make any payment due pursuant to this Agreement.

#### **Section 9.10 Entire Agreement**

This Agreement and the Schedules hereto represent the entire Agreement between the Parties, and there are no other covenants, promises, agreements, conditions or understandings, either oral or written, between them. Neither Party may modify this Agreement except by written agreement signed by both Parties. In the



Date: \_\_\_\_\_

Date: \_\_\_\_\_

**SCHEDULE A**  
**AMMONIUM NITRATE SOLUTION SPECIFICATIONS**

<u>Parameter</u>	<u>Specification/Range</u>
Concentration Ammonium Nitrate:	82.5 - -- 83.5
Specific Gravity:	1.40 @ 212 degrees F @ 83%
Melting point, salt out temperature:	154 degrees F at 83%, curve dependent
Temperature at operating conditions:	Maximum 205 F Minimum 10 F < Crystallization Point Pipeline Minimum 195 F
pH:	4.0 - -- 6.0
Appearance:	Clear Liquid

