

# FIXED PRICE REFINED FUELS PURCHASE AGREEMENT

Customer: \_\_\_\_\_

Account Number: \_\_\_\_\_

Type of Fuel:

Off-Road Dyed Diesel       On-Road Clear Diesel  
 Ruby Fieldmaster Premium       Roadmaster XL Premium  
 #2 Dyed Diesel       #2 Clear Diesel  
  
 Bio Blend (Specify) \_\_\_\_\_  
 Super Unleaded Gasoline E10  
 Other (Specify) \_\_\_\_\_

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

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

Contracted Quantity (Gal): \_\_\_\_\_

Price Per Gallon: \_\_\_\_\_

Prepayment Full / 10c: \_\_\_\_\_  
(Circle One) (Amount Prepaid)

Type of Delivery:  Tankwagon       Transport Load Direct

Bulk Plant:  Estherville       Pocahontas

**THIS AGREEMENT** made and entered into on the date set forth below, by and between the customer(s) who has signed this Agreement (hereinafter the "Customer") and the **Pro Cooperative** (hereinafter the "Coop").

**WHEREAS**, the Customer has agreed to purchase from the Coop, and the Coop has agreed to sell and supply to the Customer, the quantity and type of fuel specified in this Agreement.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which consideration is acknowledged, the Customer and the Coop agree as follows:

**SECTION 1. TERM OF AGREEMENT.** The term of this Agreement shall begin on the date set forth above (hereinafter the "Beginning Date") and shall end on the date set forth above (hereinafter the "Ending Date") (the period from the Beginning Date to the Ending Date being herein referred to as the "Term").

**SECTION 2. PURCHASE AND SALE OF FUEL.** During the Term the Customer agrees to purchase from the Coop, and the Coop agrees to sell and supply to the Customer, the type of fuel set forth above (the type of fuel set forth above being hereinafter referred to as the "Fuel") and the number of gallons of Fuel set forth above (the number of gallons of Fuel set forth below being hereinafter referred to as the "Contracted Quantity of Fuel").

**SECTION 3. PURCHASE PRICE OF CONTRACTED QUANTITY OF FUEL.** The Customer agrees to pay the Coop the amount per gallon set forth above for the Contracted Quantity of Fuel (the per gallon price of Fuel set forth above being hereinafter referred to as the "Price"). The total price for the Contracted Quantity of Fuel owing by the Customer to the Coop shall be in an amount equal to the product obtained by multiplying the Price by the total number of gallons of the Contracted Quantity of Fuel (the product obtained by this multiplication being herein referred to as the "Total Purchase Price").

**SECTION 4. PAYMENT OF PURCHASE PRICE.** The Customer shall pay the purchase price for the Contracted Quantity of Fuel, in full, by the 20<sup>th</sup> of the month following delivery. The Customer further agrees to pay interest to the Coop at the rate of one and one-half percent (1½%) per month (eighteen percent (18%) per annum) from the due date of any payment owing by the Customer until such payment is paid in full. In the event the Customer defaults in the Customer's payment for Fuel delivered to the Customer, the Coop may immediately discontinue further deliveries of Fuel to the Customer, and, in addition, the Coop may declare the remaining unpaid Total Purchase Price payable in full, on five (5) days' written notice.

**SECTION 5. FAILURE TO ACCEPT DELIVERY.** In the event the Customer has not accepted delivery of, and paid for, the Contracted Quantity of Fuel by the expiration of the Term, then the Coop shall have the right to charge the Customer the difference between the Price and the price of Fuel charged by the Coop at the expiration of the Term, multiplied by the number of gallons of the Contracted Quantity of Fuel the Customer has failed to purchase from the Coop during the Term. Alternatively, the Coop may, at its sole option, require that the Customer accept delivery of, and pay for, the number of gallons of the Contracted Quantity of Fuel the Customer has not purchased from the Coop during the Term at the Price.

**SECTION 6. COSTS AND ATTORNEY FEES.** The Customer agrees to pay all costs and expenses, including attorney fees, incurred by the Coop in any action brought by the Coop to enforce the provisions of this Agreement.

**SECTION 7. DELIVERY.** The Customer and the Coop agree that the Coop will deliver Fuel to the Customer (up to the Contracted Quantity of Fuel) within five (5) business days after the Customer contacts the Coop and requests the Coop to make a tank wagon delivery of Fuel to the Customer. In the case of tank wagon delivery, the delivery of Fuel to the Customer occurs on the date when the Customer receives Fuel from the Coop's tank wagon. The Customer agrees that the Customer will provide the Coop free and unimpeded access to the Customer's fuel tank and that the Customer will promptly remove all snow and other forms of impediments to the Customer's fuel tank in order that deliveries of Fuel may be promptly made by the Coop to the Customer.

**SECTION 8. FORCE MAJEURE.** The Coop shall not be liable for any delay or failure of performance of its obligations under this Agreement if such failure or delay is due to "force majeure". "Force majeure" shall mean acts of God, weather conditions, strikes, lockouts, or industrial disputes or disturbances, civil disturbances, arrests and restraints, interruptions by government or court orders, present and future valid orders of any regulatory body having proper jurisdiction, acts of the public enemy, wars, riots, acts of terrorism, insurrections, inability to secure labor or inability to secure Fuel, including inability to secure Fuel by reason of allocations promulgated by authorized governmental agencies, epidemics, fires, explosions, natural disasters, breakage or accident to machinery, or any other cause, whether of the kind herein enumerated or otherwise, not reasonably within the control of the Coop.

**SECTION 9. RISK OF LOSS AND INDEMNIFICATION.** The Customer shall bear all risk of loss, liability, cost, and expense, arising out of, relating to, or resulting from the Fuel from and after the date the Fuel is delivered by the Coop to the Customer. The Customer agrees to indemnify, defend and hold harmless the Coop from and against any and all claims, demands, actions, suits, proceedings, losses, costs, expenses, obligations, liabilities and damages, including attorney fees, that the Coop may incur or suffer which arise out of, relate to or result from the Fuel and/or the Customer's use and/or storage of the Fuel from and after the date the Fuel is delivered by the Coop to the Customer.

**SECTION 10. SEVERABILITY.** Whenever possible, each provision of this Agreement shall be interpreted in a manner as to be effective and valid under the laws of the State of Iowa. Should any portion of this Agreement be declared invalid for any reason whatsoever, such declaration of invalidity shall have no effect on the remaining portions of this Agreement, and the remaining portions of this Agreement shall remain in full force and effect as if this Agreement had been executed with any invalid portions hereof deleted.

**SECTION 11. GOVERNING LAW.** This Agreement, and the transactions contemplated hereby, will be governed by, and construed in accordance with, the laws of the State of Iowa.

**SECTION 12. BENEFIT.** This Agreement shall be binding on, and inure to the benefit of, the Customer and the Coop and their respective heirs, beneficiaries, successors, transferees, and assigns.

**SECTION 13. USE OF FUEL.** The Customer represents to the Coop that all Fuel purchased by the Customer pursuant to this Agreement will be used only by Customer, and that the Fuel purchased by the Customer pursuant to this Agreement is not purchased for the purpose of resale other than in the ordinary course of the Customer's business. **THE CUSTOMER SPECIFICALLY REPRESENTS TO THE COOP THAT THE FUEL PURCHASED BY THE CUSTOMER PURSUANT TO THIS AGREEMENT IS NOT BEING PURCHASED FOR THE PURPOSE OF SPECULATION. THE CUSTOMER FURTHER ACKNOWLEDGES THAT THE RIGHTS GRANTED TO THE CUSTOMER BY THIS AGREEMENT ARE NOT ASSIGNABLE OR TRANSFERABLE.**

**SECTION 14. BINDING EFFECT.** This Agreement is not binding until this Agreement has been signed by both the Coop and the Customer.

**SECTION 15. TAKE OR PAY CONTRACT.** The Customer understands that this is a "TAKE OR PAY CONTRACT". The Customer understands that if the Customer refuses to accept delivery of, and pay for, the Contracted Quantity of Fuel by the expiration of the Term the Customer will be liable to the Coop for the damages specified by Section Five (5) of this Agreement.

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**PRO COOPERATIVE:**

**CUSTOMER:**

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

Its: \_\_\_\_\_

**THIS AGREEMENT MUST BE SIGNED BY THE CUSTOMER AND FEES PAID WITHIN 24 HOURS OF VERBAL AGREEMENT OR AT THE OPTION OF THE COOP, BE OF NO FORCE AND EFFECT.**

Draft Date: March 15, 2006

Revision Date: March 9, 2023