

**General Trading Terms and Conditions  
for Sale of DDGS**

**Ethanol Energy a.s.**

**with its registered office at Vrdy, Školská 118,**

**Post Code 285 71, ID: 25502492, VAT ID:**

**CZ25502492**

**registered in the Commercial Register kept by the  
Municipal Court in Prague, Section B, File No.**

**5098**

**effective from 1st November 2014**

**Preamble**

1. These General Trading Terms and Conditions for Sale of DDGS (hereinafter referred to as "GTTCS") govern the legal relations of Ethanol Energy a.s., with its registered office at Vrdy, Školská 118, Post Code 285 71, ID: 25502492, VAT ID: CZ25502492, registered in the Commercial Register kept by the Municipal Court in Prague, Section B, Insert 5098 (hereinafter referred to as "Seller") and the Buyer in sale of dried animal fodder - DDGS (Dried Distillers Grains with Solubles) based on the Purchase Contract made between the Seller and the Buyer.
2. Any annexes to the Purchase contract form its integral part.
3. These GTTCS will apply in sale of DDGS (hereinafter also referred to as "Goods") provided that the Seller and Buyer agree in writing in the Purchase Contract, General Contract or purchase order (hereinafter referred to as "Purchase Contract" or also "Contract") that these GTTCS will be applied.
4. The Contract is also considered executed provided that the Seller and the Buyer agree on the entire contents of the Contract in writing. Any comments or amendments to the draft from the other contracting party are always considered to be a new draft of the contracting party.
5. Should the contract be made in a form of a confirmed written order, the Buyer's order must contain
  - a) full identification of the Buyer, (business name and registered office, ID, VAT ID provided that the Buyer is a VAT payer, registration in the Commercial Register, contact including phone contact and e-mail),
  - b) exact identification of the subject of order,

- c) quantity of the goods ordered,
- d) place and method of performance,
- e) delivery terms according to INCOTERMS 2010,
- f) name, surname and signature of the Buyer's authorised representative (in case of an e-mail order name, surname and title will do).

The Purchase Contract is concluded by written confirmation of the Buyer's order by the Seller.

6. If these GTTCS are applied, any diverging arrangements in the Contract will take precedence over the text of these GTTCS.

**Article I**

**1. Definition of certain terms**

- 1.1 DDGS delivery - an individual delivery of DDGS based on the Contract.
- 1.2 Total quantity of DDGS - the quantity of DDGS, which the Seller is obliged to supply with monthly tolerance of +/- 5 % at the Seller's discretion.
- 1.3 Unit purchase price - the purchase price (in CZK or EUR) for 1 ton of DDGS.
- 1.4 Total purchase price - the purchase price for delivery of DDGS determined as a multiple of the unit purchase price and weight of DDGS delivery.
- 1.5 Place of delivery
  - a) Seller's warehouse in the place of its office or any other place determined in the Contract with FCA delivery term, or EXW according to INCOTERMS 2010, as appropriate, or
  - b) Buyer's warehouse in the place of its office or any other place determined in the Contract with DAP delivery term, or DDP according to INCOTERMS 2010, as appropriate.
- 1.6 Weekly schedule (hereinafter referred to as "Schedule") - weekly time schedule of DDGS deliveries made by the Seller, determining the date and quantity of DDGS, which the Buyer is obliged to take from the Seller in a specific calendar week.

**Article II**

**1. Delivery of goods**

- 1.1 Each DDGS delivery is made on the basis of the weekly schedule made by the Seller for the relevant calendar week. The weekly schedule must be sent to the buyer no later than 04:00 PM on Tuesday in the week preceding the week, in which DDGS deliveries according to the schedule are to be made. The Buyer is obliged to confirm such compiled and submitted schedule in writing or by e-mail to the Seller no later than 12:00 on

Thursday in the week preceding the week, in which DDGS deliveries according to this schedule are to be made. If the Buyer fails to deliver the confirmation of schedule to the Seller within the given deadline, the Seller is entitled not to perform any of the deliveries specified in the relevant schedule. The Buyer is obliged, in confirmation of the schedule, to specify the correct order number communicated to the Buyer by the Seller along with submission of the first weekly schedule at the latest. If the Buyer fails to confirm the schedule within the specified date at least twice within duration of the Contract and fails to deliver the written confirmation of the relevant schedule to the Seller, the Seller will be entitled to withdraw from the Contract.

1.2 The Seller is not obliged to perform deliveries in any regular intervals, nor is it obliged to perform deliveries every calendar week.

1.3 In the event of fulfilment of the Contract with FCA, EXW delivery terms according to INCOTERMS 2010, it applies that:

a) transport of DDGS deliveries is performed by the Buyer at its account and cost; the Buyer is obliged to provide the means of transport, by which DDGS delivery will be transported, in the place of delivery, while such means of transport must have a certificate for fodder transport and must be duly cleaned and inspected by the Buyer for any residues of the previous shipment. The Buyer is also obliged to make sure that DDGS delivery is performed by a registered carrier and that all other conditions of transport specified in the Contract are met. If the Buyer fails to meet any of its obligations specified in previous sentences of this clause, the Seller is not obliged to deliver the relevant DDGS delivery to the Buyer according to the weekly schedule and the Seller may proceed in the same manner as if in case of the Buyer's default under 6.1. hereof;

b) the Buyer is obliged to notify the Seller's contact person of the registration number of the means of transport to be laid on in the place of delivery 24 hours prior to the delivery day in the manner agreed for delivery of the weekly schedule;

c) any DDGS delivery may be transported in a manner and by means of any means of transport other than those agreed in the Contract only with prior written consent of the other contracting party.

1.4 In the event of fulfilment of the Contract with FDA, DDP delivery terms according to INCOTERMS 2010 it applies that:

a) the transport of DDGS deliveries to the place of delivery is provided for by the Seller at the Buyer's cost using the means of transport certified for fodder transport. The Buyer is obliged to give the shipping instructions for transport of goods to the place of delivery to the Seller at least 2 days prior to the advised shipment of the goods. Shipping instruction must include information necessary for delivery of goods to the Buyer, particularly the type of means of transport, place of delivery or destination, as applicable, to which the goods are to be transported (address of the place of business, address of the warehouse, etc.) or other specifications, as appropriate.

b) If the Seller incurs any cost in relation to unloading of DDGS in the place of delivery, the beneficiary is entitled to reimbursement of such cost by the Buyer.

1.5 The Seller will issue an individual delivery note for each DDGS delivery, while one (1) corresponding delivery note will be issued for each means of transport regardless of the number of means of transport using which the subject DDGS delivery is transported. A delivery note must contain the data as follows:

a) the Seller's and the Buyer's business names,

b) date and place of delivery,

c) weight of DDGS delivery (net weight net of weight of the means of transport used for transportation of the DDGS delivery),

d) registration number of the means of transport used for transportation of the DDGS delivery,

e) purchase order number.

1.6 A DDGS delivery is considered duly delivered to the Buyer at the moment the Buyer is allowed to handle it at the place of delivery.

1.7 If the Buyer is in default with fulfilment of any of its obligations under these GTTCS or following under the arrangements contained in the Contract, or if the Buyer prevents the Seller in any other manner from meeting the Seller's obligation to deliver the goods, the Seller's obligation to deliver the goods in time will be met provided that the goods are made ready for shipment or handover at the place of performance on the last day of the

deadline for the goods and the Seller sends a message to the Buyer informing it of this fact.

**2. Period of execution (Delivery Date)**

2.1 The Seller is also entitled to provide partial deliveries of the goods until the entire quantity of the ordered and confirmed quantity of DDGS is supplied.

2.2 If the Seller fails to deliver the goods in due and timely manner, the Buyer will provide the Seller with a sufficient adequate period to meet the latter's obligations following from delivery of goods, which must not be shorter than five business days to be counted from the day on which the Seller received the Buyer's written notification regarding the provision of such additional period.

**3. Quality of goods**

3.1 The Seller is obliged to deliver goods in the quality set forth in the Contract and corresponding to all legal regulations. Quality signs of the goods will be declared in accompanying documents upon delivery of goods.

3.2 The contracting parties may specify a deduction system in the Contract in case that the quality parameters of the goods within the delivery do not meet the parameters specified in the Contract, in which cases the goods will be deemed substandard, and in which cases it may be returned.

**Article III**

**1. Purchase price and terms of payment**

1.1 The purchase price agreed upon in the Contract includes also the cost of transport of the goods to the place of performance unless the contracting parties have agreed otherwise in any particular case. Any amounts specified in these GTTCS or in the Contract are specified exclusive of VAT (hereinafter referred to as "VAT"); therefore, VAT according to applicable legal regulations will be added to individual amounts.

1.2 Total purchase price is determined based on the calculation according to information regarding total weight of DDGS delivery specified in the delivery note and the unit price.

1.3. The Buyer undertakes to pay the purchase price for the goods delivered according to the tax document (invoice) issued by the Seller with due date within 21 days from the date of taxable supply, i.e. takeover of the goods by the Buyer, by cashless transfer to the Seller's bank account

specified in the invoice or otherwise notified to the Buyer unless agreed otherwise. Relevant delivery note will be attached to the invoice and the Buyer undertakes to confirm such delivery note without delay and return the signed original to the Seller without undue delay.

The date of payment is deemed to be the day on which the invoiced amount is put to the Seller's bank account.

1.4. The Seller is entitled to set off any of its claims against the Buyer.

1.5 In the event of the Buyer's default with payment of the purchase price, the Seller is entitled to claim and the Buyer is obliged to pay the Seller a contractual penalty of 0.05% of the outstanding amount for each, even commenced day of default. The title to full damages is not affected thereby.

1.6 The Buyer is not entitled to retain (fail to pay) the purchase price or any part thereof due to its own claims against the Seller. The Buyer is not entitled to set off any of its own claims against the purchase price, not even in the event that such claims rely on the rights following from complaints raised in due time. Any discount from the purchase price due to defect in goods will be settled by a credit note after the purchase price has been paid.

**2. Credit limit**

2.1 The contracting parties may agree a "credit limit" for the Buyer in the Contract. The Seller will then release goods according to individual orders of the Buyer up to the amount of such determined credit limit.

2.2 The credit limit equals the sum of the Seller's outstanding claims against the Buyer resulting from deliveries of goods inclusive of VAT. The Seller's future claims against the Buyer resulting from accepted purchase orders or otherwise concluded agreements, on the basis of which the Seller has an obligation to deliver goods to the Buyer in the future, will be included into the credit limit as well. The Buyer is not entitled to require delivery of the goods and the Seller is not obliged to deliver the goods if the amount of all the Buyer's obligations registered with the Seller after delivery of such goods exceeds the current credit limit specified by the Seller. The Seller is entitled to reduce the amount of credit limit unilaterally at any time without assigning any reason.

**3. Ownership title and danger of damage to the goods**

3.1 The Buyer will acquire the ownership title

to the goods at the moment of full payment of the purchase price.

3.2 The risk of damage to the goods passes to the Buyer according to the INCOTERMS 2010 delivery clause agreed in the Contract.

3.3 If the Seller is obliged, according to the Contract, to hand over the goods to the carrier in a specific place for transport of goods to the Buyer, the risk of damage to the goods passes to the Buyer upon the handover of the goods to the carrier in the place agreed.

3.4 If, however, the Seller is obliged, according to the Contract, to dispatch the goods, but it is not obliged to hand the goods over to the carrier in a specific place, the risk of damage to the goods passes to the Buyer at the moment the goods are given over to the first carrier for transportation to the place of destination.

3.5 Any damage to the goods occurred after the transfer of risk of damage to the goods to the Buyer does not relieve the Buyer of its obligation to pay the purchase price to the Seller.

#### **4. Product liability**

4.1 If the supplied goods do not comply with the conditions specified in the Contract as to the quantity, quality or packaging, the goods are defective. The Buyer is obliged to prove the defects in goods to the Seller in a trustworthy manner.

The Buyer is obliged to inspect the goods immediately after the risk of damage to the goods has passed to the Buyer.

The Buyer is obliged to notify the Seller of any defects identifiable upon the acceptance or inspection of the goods in writing without delay (e.g. by fax, wire, e-mail, courier), and no later than 7 calendar days from inspection of the goods, the Buyer is obliged to send the Seller a document of the inspection carried out and claimed defects in goods that have been detected, confirmed by an independent inspection company (professional third person). The Buyer is obliged to notify the Seller of any defects identifiable by means of a laboratory analysis within 14 days from inspection of the goods.

4.2 The Buyer must document the application of weight discrepancies, damage to packages, lack of quality or impairment of the goods in terms of the filed complaint to the Seller also by means of a document certified by an independent inspection company (professional third person). If the Buyer

detects any damage to the means of transport or any circumstances suggesting decrease in goods, the Buyer will be obliged to ask the carrier to check the weight of the shipment and if any deviations from the weight specified in the transport document are found, the Buyer will be obliged to ask for making a relevant record and file a complaint with the carrier.

4.3 In the event of complaint in respect of quality of goods, the Buyer will submit to the Seller, along with the filed complaint, also a sample of the goods complained, which was taken in presence of an independent third person or in presence of the Seller's representative. The Buyer will, in presence of an independent professional third person, divide this average sample into three (3) parts, one (1) of which will be immediately sent to the inspection body (Central Institute for Supervising and Testing in Agriculture or State Phytosanitary Administration), unless the contracting parties agree on a different authoritative inspection institution. The result of the laboratory analysis of this body is subsequently binding for both contracting parties in respect of settlement of the complaint.

4.4 During the period of settlement of complaint regarding the quality of goods until the moment of its full settlement, the Buyer will be obliged, unless the contracting parties have agreed otherwise, store the claimed goods separately and invite the Seller or an independent inspection company (a professional third person) to determine the scope of defects. Unless with prior express consent of the Seller, these goods must not be handled in a manner that could make it difficult or impossible to perform subsequent inspection of the claimed defect. For such purpose, the Buyer is obliged to enable the Seller to inspect the claimed goods in the place of storage.

4.5 The Buyer must file the complaint regarding any latent defect of the supplied goods to the Seller in writing within the guarantee period specified in the Contract at the latest. The Seller guarantees that the goods will have the usual properties for the period specified in the product sheet starting from the date of delivery of such goods.

The Seller will notify the Buyer within 3 days from receipt of the Buyer's due notification of the defects detected of the proposed procedure to solve the complaint, or the

Seller will reject the complaint within the same period. Even after this period, the Seller is obliged to refuse the complaint if it proves to be unjustified.

If the Seller recognizes the complaint to be justified, the Buyer may request the delivery of the missing or replacement goods for the defective goods or it may request a discount from the purchase price.

If the Buyer breaches its obligation to make a timely inspection of the goods or to announce the defects in goods duly in accordance herewith, the Seller will be entitled to reject the complaint and, in such event, no rights of the Buyer under product liability come into existence.

Where it is necessary to prove the existence of defects in goods by an expert opinion, the cost related to such opinion will be borne by the contracting party having assigned such expert opinion, with the right to raise a claim to reimbursement of such cost against the other contracting party in the event that the conclusion of the settled complaint is in favour of such party.

#### **Article IV**

##### **1. Withdrawing from the Contract**

1.1 The Seller and the Buyer are entitled to withdraw from the Contract for legal reasons, for any reasons specified in the Contract or other provisions hereof and further in the event of material breach of the Contract. Material breach of the Contract is understood to mean the following:

- a) any default of the Buyer with payment of the purchase price or any portion thereof or any amount, which the Buyer is obliged to pay under the Contract or these GTTCS, longer than 30 days,
- b) any default of the Seller with delivery of the goods longer than 30 days,
- c) any default of the Buyer with takeover of the goods longer than 30 days.

A withdrawal must be made in writing and must be delivered to the Buyer.

1.2 In the event of an immaterial breach of the Contract, i.e. particularly in the event of the Buyer's default with payment of the purchase price or any portion thereof or any amount, which the Buyer is obliged to pay under the Contract or these GTTCS, shorter than 30 days, the Seller is entitled to:

- a) require that an advance payment within an adequate period be made for the next delivery under the Contract, or

- b) suspend any deliveries of goods until all payable claims of the Seller under the Contract have been paid.

1.3. The Seller is entitled to withdraw from the Contract with *ex nunc* consequences also in the event of breach of safety and fire regulations in the place of delivery by the Buyer's staff or other persons by means of whom the Buyer fulfils the Contract as well as the drivers of the means of transport laid on by the Buyer, namely in case of:

- a) breach of smoking ban,
- b) breach of the ban of consumption of alcohol,
- c) breach of other safety and fire regulations of the Seller,
- d) theft of or damage to the Seller's property.

#### **Article V**

##### **1. Miscellaneous**

1.1 If the Buyer gets into default with takeover of any DDGS delivery, i.e. the Buyer fails to take any goods according to the schedule, the Seller will be entitled to store the DDGS delivery at the Buyer's expense, or to sell the DDGS delivery or any part thereof, if applicable, to a third person, while in such case the Buyer is obliged to pay to the Seller any positive difference between the purchase price according to the Contract and the purchase price for which the Seller has sold the unclaimed DDGS delivery to the third persons and further also the cost of storage of such DDGS delivery, which have been incurred from the time of sale of the delivery or any part thereof to a third person.

1.2 If the Buyer gets into default with takeover of any DDGS delivery in at least two cases (which need not to exist concurrently) during the term of the Contract, the Seller is entitled to withdraw from the Contract with *ex nunc* effects. The Buyer loses the title to execution of DDGS deliveries or any part thereof which the Buyer did not take over in due and timely manner, and the total quantity of DDGS is reduced by the quantity of DDGS corresponding to such unclaimed DDGS deliveries. Partial takeover of DDGS deliveries is not permissible.

1.3 The Buyer is entitled, if needed, to shift a takeover of any DDGS delivery in maximum amount of 30% from a specific weekly delivery under the conditions specified below. If the Buyer asks in writing for a shift of any DDGS delivery to a date later than the delivery date specified in the schedule, the Buyer must ask for it, at the latest, within the period in which

the Buyer should have confirmed the submitted weekly schedule to the Seller, while the takeover of the relevant amount of DDGS delivery may be shifted to the date falling to the nearest following week at the latest. If the Buyer complies with the procedure above, the Seller is entitled to request that the Buyer pay the cost of storage incurred by the Seller in relation to the shift of the relevant amount of DDGS delivery to a later date.

1.4 The Seller is obliged to modify the confirmed weekly schedule unilaterally provided that the Seller notifies the Buyer of such modification no later than 48 hours before the date of the originally agreed DDGS delivery date.

1.5 The Seller's exclusive responsibility is the fact that DDGS at the time of delivery to the Buyer meet the quality requirements specified in the Contract. Any description or suggestion made by the Seller in respect of any use of DDGS or suitability of DDGS for any purpose is made by Seller in good faith, but the Seller is not responsible for usability or suitability of DDGS for any purpose.

1.6 The Seller loses its title to all and any DDGS deliveries that the Seller failed to take over for any reasons on its part as well as to all DDGS deliveries which the Seller was not obliged to supply to the Buyer, unless the Seller determines otherwise. Total quantity of DDGS is reduced by the quantity of DDGS corresponding to any DDGS deliveries the title to which the Buyer lost.

#### **Article VI**

##### **1. Damages and Force Majeure**

1.1 If a contracting party breaches any obligation under the Contract, it will compensate the damage incurred thereby to the other contracting party.

1.2 Any contracting party that failed to meet any obligation under the Contract will be released from the obligation to pay damages, save for the payment of purchase prices, if such party proves that it was temporarily or permanently prevented from fulfilling such obligation by an extraordinary unforeseeable and impassable obstacle occurred independently of such party's will.

1.3 To avoid any doubts, Force Majeure for the purpose of this Contract means particularly the following:

a) natural disasters, fires, earthquakes, landslips, floods, storms or other atmospheric

disorders and phenomena of considerable scope, or

b) wars, riots, disturbances, civil commotions or strikes, or

c) decisions of normative acts of public government bodies, regulations, limitations, bans or other interventions of the government, public administration bodies or autonomous administration, or

d) explosions or other damages of defects of the relevant production or distribution facility.

1.4 Any contracting party that breached, breaches or expects, with regard to all known circumstances, that it will breach its obligation under the contract due to an occurred act of god, it is obliged to inform the other contracting party of such breach without delay and to take any reasonable efforts to avoid such event or its consequences and to eliminate them.

#### **Article VII**

##### **1. Contractual penalties**

1.1 In the event of failure to meet safety and fire regulation by any of the above-mentioned persons, the Seller undertakes to pay to the Buyer the following contractual penalties for each individual breach:

a) smoking in the premises of the place of delivery, bringing-in or consuming alcoholic beverages in the premises of the place of delivery, in the amount of CZK 10,000.

b) staying out of the workplace for corn unloading without the Buyer's consent, failure to observe the safety rules at work, in the amount of CZK 5,000.

This agreement on contractual penalty will not affect the Buyer's right to be paid damages in full scope.

1.2 The contracting parties undertake to provide necessary coordination to each other while fulfilling the obligations under the Contract and to notify each other of any circumstances and information that might affect the fulfilment of terms and conditions agreed in the Contract.

1.3 The Contracting parties have agreed that any information provided to each other in relation to the Contract and identified as confidential, or where it will follow from the nature of such information that it is confidential, will be used by the parties only in relation to fulfilment of their obligations and exercise of their rights under the Contract and they will not use such information in

contradiction to its purpose; however, provision of information to third persons in cases and within the scope set forth by legal regulations or to third persons who are or will be (by law or based on agreement with the contracting party providing the information) bound by confidentiality obligation will not be considered a breach of this obligation. The same confidentiality and non-disclosure obligation will apply even after termination of the Contract.

## **Article VIII**

### **1. Special arrangements**

1.1 The Seller undertakes to ensure that its employees and the employees of the Seller's carriers observe the rules specified in the document titled "Safety instructions to be kept in the premise of Ethanol Energy a.s." in the premise of the Buyer's contractual partners. The document referred to in the previous sentence is available on the Buyer's Internet webpage at [www.ethanolenergy.cz](http://www.ethanolenergy.cz).

1.2 Compliance with safety and fire regulations in the place of delivery is supervised by the guard and the engineer for fire protection and safety and protection at work.

## **Article IX**

### **1. Choice of law and settlement of disputes**

1.1 Rights and obligations of the contracting parties following from the Contract are governed by law of the Czech Republic, particularly the Act No. 89/2012 Coll., Civil Code, as amended (hereinafter referred to as "NOZ").

1.2 If any dispute arises between the contracting parties in relation to the Contract, the contracting parties will make efforts to resolve the dispute in an amicable way. If the dispute fails to be resolved in an amicable way, any of the contracting parties is entitled to submit the dispute to be resolved by the court of relevant subject-matter jurisdiction and venue.

### **2. Final provisions**

2.1 The text of these GTTCS is published on the Buyer's website at [www.ethanolenergy.cz](http://www.ethanolenergy.cz).

2.2 The Seller is entitled to modify the wording hereof unilaterally. Such change comes into effect in respect of the Buyer at the moment of delivery of notification of such modification unless the Buyer expressly rejects such modified GTTCS in writing within 3 days from the notification thereof. The Seller will publish

the full text of GTTCS, immediately after their acceptance or the Buyer's failure to reject the same, on the Seller's website at [www.ethanolenergy.cz](http://www.ethanolenergy.cz).

2.3 The contracting parties have agreed on exclusion of the application of Sections 1764 – 1766 NOZ and Sections 1798 – 1801.