

**UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
(LUFKIN DIVISION)**

In re:	)	
	)	<b>JOINTLY ADMINISTERED</b>
TEXAS PELLETS, INC. <sup>1</sup>	)	under Case No. 16-90126
	)	
Debtors.	)	Chapter 11
	)	

**SUPPLEMENT TO MOTION FOR ENTRY OF AN ORDER AUTHORIZING DEBTORS  
TO ENTER INTO WOOD PELLET SALE AND SUPPLY AGREEMENT**

COMES NOW Texas Pellets, Inc. (“TPI”) and German Pellets Texas, LLC (“GPTX”) (collectively, the “Debtors”), as debtors and debtors in possession in the above-captioned cases, and hereby file this *Supplement* to their previously filed *Motion for Entry of an Order Authorizing Debtors to Enter into Wood Pellet Sale and Supply Agreement* (the “Motion”) [Dkt. 196]. In support of the Motion, the Debtors respectfully state:

**I. BACKGROUND**

1.1. On September 20, 2016, Debtors filed the *Motion* seeking an order approving their entry into a short-term Wood Pellet Purchase and Supply Agreement (“Pellets Agreement”) with SELLER, a redacted copy of which was attached as Exhibit “1” to the Motion.

1.2. Since the filing of the Motion, negotiations have continued with respect to the terms and conditions of the Pellets Agreement. Certain minor modifications to such terms and conditions have been agreed to by Debtors and Louisiana Pellets, Inc., and German

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<sup>1</sup> The jointly-administered Chapter 11 Debtors, along with the last four digits of each such Debtor’s federal tax identification number, are Texas Pellets, Inc. (3478) and German Pellets Texas, LLC (9084). The corporate headquarters and service address for the jointly-administered is: 164 CR 1040, Woodville, TX 75979.

Pellets Louisiana, LLC. Debtors seek approval by the Court for the additional modifications for the reasons set forth more fully in the previously filed Motion. This Supplement is filed out of an abundance of caution to give notice of the negotiated modifications.

1.3. A redline version of the Pellets Agreement reflecting the modifications additionally sought to be approved is attached hereto for review and consideration by the Court in conjunction with the Motion. Certain provisions in the redline Pellets Agreement attached have been redacted in accordance with the Court's *Order Granting Debtors' Motion For Order Authorizing Debtors To File Wood Pellet Sale And Supply Agreement Under Seal* entered September 20, 2016 [Dkt. 199].

WHEREFORE, the Debtors respectfully request that the Court enter an Order granting the relief requested in the Motion, and provide such other relief as appropriate and just.

DATED: September 30, 2016.

***SEARCY & SEARCY, P.C.***

**/s/ Joshua P. Searcy**

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**LOCAL AND CONFLICTS COUNSEL FOR  
TEXAS PELLETS, INC. AND GERMAN  
PELLETS TEXAS, LLC**

**CERTIFICATE OF SERVICE**

I hereby caused a true and correct copy of the foregoing *Supplememt* to be served upon the parties listed on the attached Combined Master Service List via ECF Notification on September 30, 2016 and (for those parties who do not receive ECF notification) by United States regular mail, postage prepaid, on September 30, 2016.

/s/ Joshua P. Searcy

Joshua P. Searcy

## WOOD PELLET PURCHASE AND SUPPLY AGREEMENT

This Wood Pellet Purchase and Supply Agreement ("Agreement") is entered into by and between Texas Pellets, Inc., and German Pellets Texas, LLC, with a business address at 164 County Road, 1040, Woodville, TX 75979 (together and hereinafter "BUYER"), and Louisiana Pellets, Inc., and German Pellets Louisiana, LLC (together and hereinafter "SELLER") with a business address at 4915 Highway 125, Urania, Louisiana 71480 and is entered into this \_\_\_ day of \_\_\_\_\_ 2016 and effective as of August 22, 2016 (the "Effective Date"). Sometimes both BUYER and SELLER are referred to as a "Party" or collectively as the "Parties".

### RECITALS

German Pellets Louisiana, LLC is a Delaware limited liability company and a producer of wood pellets operating a production facility located at 4915 Highway 125, Urania, Louisiana 71480 ("URA"). Louisiana Pellets, Inc. is a Delaware corporation and owns URA. SELLER may from time to time sell wood pellets to BUYER for resale including but not limited to through BUYER's Agreement for the Sale and Purchase of Biomass with Drax Power Limited ("Drax Power" or "Buyer's Customer") dated March 29, 2012 ("Drax Agreement"). The wood pellets subject to this Agreement may ship through BUYER's terminal facility located at 489-A West Lakeshore Dr., Port Arthur TX 77640 ("POPA") or to the extent agreed to by Buyer's Customer, a Drax Biomass ("Drax Biomass") transit facility located in Baton Rouge, LA on the Mississippi River at the Port of Greater Baton Rouge in Port Allen, Louisiana ("Baton Rouge").

Texas Pellets, Inc. is a Delaware corporation, and German Pellets Texas, LLC, is a Delaware limited liability company. German Pellets Texas, LLC is a producer of wood pellets. Texas Pellets, Inc. owns a production facility located at 164 County Road, 1040, Woodville, TX 75979 ("WDV") and a POPA terminal facility.

SELLER and BUYER wish to enter in a sales agreement whereby BUYER will purchase SELLER's product for resale including but not limited to through the Drax Agreement.

SELLER and BUYER further wish to set forth herein their agreements regarding BUYER's resale of product produced and provided by SELLER into agreed markets and certain non-exclusive rights of BUYER to purchase any product produced by SELLER meeting applicable certification standards (e.g. Pellet Endorsement Forest Certification ("PEFC"), Sustainable Biomass Partnership ("SBP"), etc.) as required from time to time by Drax or any other customer of BUYER.

Texas Pellets, Inc. is a debtor in possession in Case No. 16-90126, and German Pellets Texas, LLC, is a debtor in possession in Case No. 16-90127, such cases being jointly administered on the docket of the United States Bankruptcy Court for the Eastern District of Texas. SELLER is a debtor in

possession in Case No. 16-80163 (consolidated with In re Louisiana Pellets, Inc., lead Case Number 16-80162) on the docket of the United States Bankruptcy Court for the Western District of Louisiana.

### **AGREEMENT**

In consideration of the mutual covenants and agreements set forth herein, the Parties agree as follows:

1. Description of Goods: SELLER shall supply to BUYER wood pellets tested under standard industry accepted specifications as manufactured by SELLER from clean wood biomass, ground and pressed into pellets as fully specified the Specifications (as defined below) in BUYER's sales contract with a Benchmark CV NAR of 17 Gigajoules / metric ton (the "Product"). For purposes of this Agreement, wood biomass is defined as including without limitation; processed clean soft wood residues (e.g., chips, shavings and sawdust by-products), and clean debarked round soft wood.
2. Term and Committed Volume: The initial term of this Agreement shall commence on the 22<sup>nd</sup> day of August 2016 and continue for a period ending on December 31, 2016 (the "Term"). The Term of this Agreement shall not be automatically extended but may be extended by written agreement of both parties subject to bankruptcy court approval in the parties' respective bankruptcy cases if required. Notwithstanding the foregoing, this Agreement may be terminated by either Party upon written notice to the other Party if that Party commits a breach of any of the terms of this Agreement or any amendments hereto and fails to remedy such breach within the 15-day notice and cure period as provided in section 14 below.

BUYER agrees to purchase, and SELLER agrees to produce and make available to BUYER the Committed Volume (as defined below). Should BUYER fail to purchase from SELLER the Committed Volume on or before December 31, 2016 it shall make payment within 15 days of the date of the mailing of a written notice for payment as given by SELLER to BUYER, of the difference between the Committed Volume and the amount of actual Product purchased on or before December 31, 2016. Should BUYER order Product from SELLER which is not delivered prior to December 31, 2016, then such Product shall be delivered and such sale completed pursuant to the terms of this Agreement.

Product quantities are net of any pallet or added packaging weights, if any. Product shall be transported from URA to POPA (or if applicable Baton Rouge) by truck in bulk at the expense of SELLER.

The total volume that will be supplied by SELLER to BUYER in the period commencing on or before August 22, 2016 and continuing through December 31, 2016 is [REDACTED] and is hereinafter referred to as the "Committed Volume" of this Agreement. Any pellets supplied by SELLER to BUYER after August 22, 2016 (the Effective Date above) and the later of (1) the date this Agreement is fully executed or (2) the date on which this Agreement is approved in both of the Parties' respective bankruptcy cases, shall be included in calculating total purchases of the

**Committed Volume by BUYER.**

If for any reason BUYER fails to purchase the Committed Volume, in addition to all other remedies SELLER may have herein, ~~it~~SELLER may choose to terminate this Agreement. SELLER shall not have the right to terminate this Agreement if BUYER's failure to purchase the Committed Volume is caused by or the fault of SELLER.


Both Parties agree that during the term of this Agreement, BUYER's right to receive the Committed Volume shall be conditioned upon BUYER's compliance with all terms of this Agreement and BUYER's obligation to purchase shall be conditioned upon SELLER's compliance with all terms of this Agreement. A Party's failure to comply with the terms of this Agreement will entitle the other Party to suspend performance until such non-compliant Party becomes compliant. During any such period of time that SELLER has suspended SELLER's performance hereunder due to BUYER's non-compliance, SELLER may provide such product to other customers at its sole discretion. BUYER's obligation to purchase the Committed Volume is limited to that portion of the wood pellets which meet the required Specifications in the Drax Agreement. As with prices paid by Drax Power to Buyer for any wood pellets delivered under the Drax Agreement, the base price referenced in paragraph 3 below shall be adjusted up or down based upon actual CV NAR measurements for product delivered against a benchmark of CV NAR of 17 Gigajoules / metric ton. The benchmark of CV NAR of 17 Gigajoules / metric ton shall be determined by BUYER at the load point.


BUYER shall submit a purchase order for Product (each a "PO"). SELLER shall submit to BUYER, with each shipment of Product hereunder, Scale Receipts. In exchange for the supply and inventory of Product by SELLER as detailed in this Agreement, BUYER agrees and guarantees to purchase the Committed Volume and is bound to supply POs for the same within the Term.



BUYER'S obligation to purchase the Committed Volume is set forth herein is specifically subject to URA ~~being~~continuing to be approved by Drax as a facility from which wood pellets may be sourced for resale pursuant to the Drax Agreement.

This Agreement and any term contained herein may be extended or modified by mutual written agreement of the Parties hereto, including that the Parties may agree to extend the term of this agreement past December 31, 2016, such that additional Product may be purchased or sold on the terms herein by agreement.

3. Pricing: Pricing for the Product for the Term will be as described herein, for each respective shipment. Product shall be loaded at URA in bulk onto trucks supplied by SELLER.

<b>Product</b>	<b>Base Price</b>
wood pellets meeting the product and loading Specifications shipped through POPA - FOB	


wood pellets meeting the product and loading Specifications shipped through Drax Facility – shipping terms to be determined by mutual agreement	
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- Additional Volumes: In addition to the Committed Volume under this Agreement, SELLER may at its option make available an additional volume of  if requested by BUYER at its option, such additional volume hereinafter referred to as the "Additional Volume" of this Agreement. The Additional Volume shall be requested by BUYER at its option, if at all, as a one-time election for the entire volume of . When requesting the Additional Volume BUYER shall provide SELLER with a minimum of 14 calendar days' notice of such request. For any additional volume BUYER chooses to take there will be issued a separate purchase order(s), and all other terms of this Agreement will be the same for additional volumes as for the Committed Volume.
- Shipment Schedules: All shipments of Product shall be by SELLER loaded on SELLER's designated trucks at URA (whether or not such trucks be owned by SELLER), which trucks shall be unloaded at POPA (or Baton Rouge as applicable) on the dates, times, and schedule, and using procedures and methodology, as outlined in that certain Wood Pellets Storage and Handling Agreement between GPLA and GPTX dated December 5, 2013 as amended or modified.

Planned monthly shipments for the Committed Volume are shown in Schedule 2 to this Agreement (the "Planned Shipments"). While BUYER commits to take the Committed Volumes over the Term of this Agreement, some shifting of volumes between months is expected in the normal course of business.

BUYER will confirm volume requirements monthly at least 15 days prior to the start of any month (the "Required Volume") asup to the amounts estimated on Schedule 2 attached hereto.

Monthly variation does not relieve BUYER's obligation to purchase the total Committed Volume. SELLER commits to make available up to 75% of the monthly Planned Shipments in any given month, providing that BUYER provides the required advance Required Volume purchase order notice noted above.

The Committed Volume is fixed and cumulative regardless of monthly volume swings. Once the Committed Volume of  has been reached the BUYER is not obligated to make any further purchase unless BUYER elects to order additional volumes as prescribed and allowed under the "Additional Volumes" section above. SELLER shall provide to BUYER 21 days' written advance notice of the estimated date by which SELLER calculates it will have sold the Committed Volume to BUYER.

Both BUYER and SELLER must strictly adhere to delivery and pick up commitments

to avoid demurrage and/or related storage costs.

6. Supply Interruptions: SELLER will advise BUYER of any supply interruptions that may interfere with its ability to meet shipment schedules under this Agreement within 24 hours of any significant change in production scheduling. SELLER will notify BUYER if it cannot guarantee the scheduled shipments if there is a major interruption due to fire, mechanical failure, a material loss of the required raw material supply, or Force Majeure.
7. Storage at SELLER's Location: SELLER will if requested by BUYER provide storage at its facility for up to 30 days of not more than [REDACTED] of Product at no charge to Buyer. BUYER may request either or both additional storage time or additional tonnage at the time of BUYER's submittal of a Purchase Order, but this will be subject to SELLER's acceptance. Product will be invoiced as provided in this Agreement based at the time of manufacture upon SELLER's Certified Scales. If required by BUYER, BUYER will provide and SELLER will execute a Bailee and Storage agreement covering BUYER's product stored at URA. However, all Product stored on SELLER's premises of more than [REDACTED] and/or beyond 30 days will incur a [REDACTED] US charge per/ton per month storage fee.
8. Product Specifications and Quality Control Requirements:
  - (a) Specifications: The Product shipped under this Agreement will meet the pellet specifications as well as any and all sustainability requirements and specifications as required by Drax in the Drax Agreement including but not limited to those specifications attached hereto as Schedule 1 (the "Specifications"). Such Specifications are intended to be and should be construed as being incorporated by reference as if set forth fully herein. The parties recognize that such Specifications may be adjusted from time to time by BUYER's purchaser.
  - (b) Product Testing Requirements: SELLER will periodically test for compliance with the Specifications at its production facility. In addition, SELLER will perform routine ash and moisture testing during the manufacture of all Product covered under this Agreement to determine compliance and conformity with the Specifications. This testing will be conducted by SELLER utilizing their normal quality control processes. Additionally, BUYER (and/or its or Drax's representatives) will conduct periodic sampling and testing of all product purchased at the time of shipment from POPA or to Baton Rouge as applicable. SELLER and BUYER shall share the costs of such sampling proportionate to each Parties' share of product per shipment to Drax or any other customer of Buyer.
  - (c) Reporting & Tracking: All Product testing data performed by SELLER at its production facility as described above for Product that is sold to BUYER will be retained and forwarded to BUYER upon request. Moreover, SELLER will have the ability to account for each ton of product shipped to Buyer under this Agreement.
  - (d) Shipping and Quality Documentation: SELLER will promptly forward the following documents to BUYER prior to or immediately or as soon as possible upon shipment to the extent applicable: Scale Tickets or a summary thereof; and a Commercial Invoice.



(e) Resolution of Quality Issues and Remedies: BUYER and SELLER will cooperate to contain and resolve any quality issues that may arise with the Product. In particular, if a quality issue is discovered that affects existing inventory, the Parties will work together to identify affected Product, to resolve the quality issues and to return the inventory to a salable condition.

(f) In the event that SELLER is unable to reliably meet the quality expectations identified in this section (as verified by a random sampling showing more than 0% of any shipment or truckload out of compliance with the Specifications), then and in that event BUYER shall have the option to either: (a) obtain credit for the Product with quality issues; or (2) require that SELLER remedy quality issues within 15 days and if SELLER is unable to remedy such issues within such 15-day period, BUYER may terminate this Agreement.

9. Force Majeure:

(a) Neither Party will incur any liability to the other under this Agreement to the extent its performance of any obligation hereunder is delayed or prevented by any of the following events: a change in any applicable law, rule, regulation or ordinance; any new law, rule, regulation or ordinance; the requirements of any government or governmental entity or authority; war, riot, civil disorder, acts of terrorism or other hostilities; hurricanes, typhoons or other severe weather conditions; fire; earthquakes, floods and other natural disasters; epidemics and quarantines; damage to or destruction of a Party's facilities; interruption of electricity or of the supply of oil or gas; failure of or delay by carriers to transport; any other event or circumstance beyond the control of the Party affected - provided however, that neither Party will be excused, for any reason whatsoever, from any obligation that has accrued to make any payment in accordance with the terms of this Agreement.

(b) If either Party's performance under this Agreement is delayed or prevented by any of the events described in paragraph (a) above, that Party shall immediately notify the other in writing of the event, of its expected effect on that Party's performance, and when (if known) that Party expects to resume its performance under and in accordance with this Agreement.

(c) If the performance by a Party under this Agreement is delayed by any one or more of the events described in paragraph (a) above, then if any such delay continues without interruption for a period of fifteen (15) days during the term of this Agreement, the other Party may terminate this Agreement by giving written notice of termination to the affected Party at any time prior to the affected Party's notifying the other Party in writing that it has resumed its performance under and in accordance with this Agreement.

10. Delivery and Risk of Loss: The delivery of the wood pellets will be to POPA and all title, ownership, and risk of loss or damages will completely transfer to BUYER upon passing the ship rails as part of loading for shipment from POPA. In the event the delivery of wood pellets will be to Baton Rouge, then all title, ownership, and risk of loss or damages will completely transfer to BUYER upon delivery to Baton Rouge.

11. Payment Terms: The Parties agree that payment of the purchase price for pellets as

reflected in a Purchase Order shall be made by wire transfer to SELLER's designated bank account within 5 calendar days after BUYER's collection and receipt of payment from Buyer's Customer for pellets re-sold pursuant to the terms of the Drax Agreement. The Parties understand and agree that payment to SELLER by BUYER is subject to receipt of payment by BUYER from Buyer's Customer for such pellets pursuant to the terms of the separate contract between them. For example, if BUYER's customer pays 90% of the purchase price for pellets within 10 days of delivery of pellets at Buyer's Customer's port, then BUYER would thereafter pay SELLER within 5 calendar days 90% of the purchase price for the pellets sold by SELLER to BUYER as reflected in the Purchase Order between BUYER and SELLER. If the remaining 10% of the purchase price is paid to BUYER by Buyer's Customer 20 days after receipt of the first 90% payment, then the remaining 10% of the purchase price for the pellets sold as reflected in the Purchase Order between BUYER and SELLER would thereafter be paid by BUYER to SELLER within 5 calendar days after receipt of the remaining 10% from Buyer's Customer. The Parties understand and agree that all payments to SELLER from BUYER are net of all shipping, transportation, logistics, or other costs which BUYER is responsible for pursuant to the terms of its customer contract (the "Shipping Costs"). The Shipping Costs shall be shared between BUYER and SELLER in proportion to the percentage of total pellets sold to Buyer's Customer (1) originally purchased by BUYER from SELLER under this Agreement versus (2) pellets manufactured by BUYER or acquired by BUYER from any source other than SELLER under this Agreement. The seller's proportionate share of Shipping Costs (and any other Shipping Costs outstanding) to the extent not already deducted by Drax Power from payments made to BUYER shall be deducted by BUYER from any payments due to SELLER before payments is sent to SELLER under this Agreement. Each PO shall be deemed to constitute a separate order for which BUYER will pay SELLER on the terms set forth in this paragraph. If Product in excess of [REDACTED], or for longer than 30 days, is to be stored on SELLER's site a separate invoice for storage will be remitted to the BUYER under the provisions outlined in Section 8 of this Agreement. Where payment is made by wire transfer, the Party initiating a wire shall pay all of its bank charges for the issuance of the wire and the Party receiving the wire shall pay all of its bank charges for the receipt of the wire into its account; provided, however, that should BUYER initiate more than one wire transfer in payment of a single invoice from SELLER, then BUYER will pay the wire transfer fees charged to SELLER for the additional wire transfers.

BUYER's first payment to SELLER for any Product supplied by SELLER to BUYER after August 22, 2016 (the Effective Date above) and the later of (1) the date this Agreement is fully executed or (2) the date on which this Agreement is approved in both of the Parties' respective bankruptcy cases, shall be due as set forth herein five (5) calendar days after the later of (1) the date this Agreement is fully executed or (2) the date on which this Agreement is approved in both of the Parties' respective bankruptcy cases.

BUYER shall provide clear instructions to SELLER on all documentation provided to SELLER for each shipment or lot. Correct treatment of the transport related

documents by SELLER is essential and a condition for payment by BUYER where such obligation is in turn required by BUYER's respective customers. SELLER shall have access to storage facilities at POPA in connection with its performance (including but not limited to delivery of pellets purchased) under this Agreement on the same terms and conditions as set forth in the certain Storage and Handling Agreement between the Parties hereto dated December 5, 2013, as amended or modified, except to the extent that such agreement is replaced or becomes no longer effective. Nothing herein is intended to nor should be construed as prejudicing the rights of either party with respect to assumption, rejection, assignment, or other treatment of such Storage and Handling Agreement in either of the above described bankruptcy cases.

If BUYER shall fail to make a payment for any Product delivered by SELLER hereunder when due, and such failure shall continue ten (10) days after BUYER receives written notice of such failure, then until such payment has been made: (i) such unpaid amount shall bear interest from the original due date of such payment at five percent (5%) per annum until so paid; and (ii) SELLER shall be entitled to suspend further Product deliveries hereunder until such delinquent payment is made, without waiving its right to recover any damages incurred.

SELLER shall be responsible for any taxes, duties, excises, charges, sales taxes, and other governmental assessments, of whatever kind and nature involved in the manufacture, supply, and delivery of the Product to BUYER. BUYER will be responsible for any additional taxes, duties, excises, charges, or other governmental assessments (excluding any Shipping Costs shared proportionately as set forth above payable as to any governmental or quasi-governmental authority, including but not limited to the Port of Port Arthur Navigation District of Jefferson County, Texas) arising relative to the sale of the Product to BUYER, and/or the BUYER's resale of the Product to Buyer's Customer(s). The Parties agree to cooperate with each other and to provide tax exemption certificates where applicable in order to minimize sales or other taxes applicable to the transactions contemplated by this Agreement. Property taxes to which the Product or POPA may be subject shall be shared proportionately in accordance with that certain Storage and Handling Agreement between the Parties hereto dated December 5, 2013, as amended or modified, except to the extent that such agreement is replaced or becomes no longer effective.

All amounts payable pursuant to this Agreement shall be in U.S. dollars.

12. Buyer's Rights Conditioned on Compliance: Both Parties agree that during the Term of this Agreement, each Party's rights under this provision shall be conditioned upon the other Party's compliance with all terms of this Agreement, including without limitation (1) prompt payment for Product produced and delivered by SELLER under this Agreement consistent with the payment terms as set forth in section 4211 above, and (2) meeting or exceeding the Specifications for pellets produced and delivered by SELLER. Either Party's failure to comply with the terms of this Agreement will entitle the other party to exercise those remedies as are provided herein including but not limited to suspending delivery of Product for payment for Product until the other

Party becomes compliant.

13. Warranties / Disclaimer: SELLER warrants that SELLER will convey good and merchantable title to the Product to BUYER free from liens, bonds and claims of third parties upon delivery of the Product to BUYER, and that the Product will fully conform to the Specifications required and stated in this Agreement.
14. Default: For purposes of this Agreement, a Party shall be in default if: (a) it materially breaches a term of this Agreement and such breach continues for a period of fifteen (15) days after it has been notified of the breach as is discussed above; or (b) it shall cease conducting business in the normal course, make a general assignment for the benefit of creditors, or suffered or permitted the appointment of a receiver for its business or assets. Upon the occurrence of an event of default as described in this section, the Party not in default may immediately terminate this Agreement by giving written notice to the Party in default. It is expressly agreed and recognized that the filing and participation of the Parties in their respective bankruptcy cases shall not be a term of default.

The rights and remedies provided to the Parties in case of such a Default shall not be exclusive and are in addition to any other rights and remedies provided by this Agreement or by law or in equity.

15. Entire Agreement: This Agreement constitutes the entire agreement between the Parties hereto pertaining to the subject matter hereof, superseding any and all previous proposals, representations or statements, oral or written. ~~Any previous written agreements between the Parties pertaining to the subject matter of this Agreement are hereby expressly incorporated herein.~~ Any modifications of this Agreement must be in writing and signed by authorized representatives of both Parties hereto. This Agreement is expressly subject to any terms or provisions contained in the Drax Agreement whether or not SELLER has any prior notice of such terms or provisions.

Nothing herein is intended to nor should be construed as prejudicing the rights of any party hereto with respect to the assumption, rejection, assignment, or other treatment of any two or more of the parties hereto in either of the above described bankruptcy cases.

16. Governing Law: This Agreement shall be construed and enforced in accordance with the laws of the United States of America and the State of Texas.
17. Dispute Resolution: Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by a Court of competent jurisdiction which in any event shall be the federal or bankruptcy courts of the Eastern District of Texas. Each Party shall bear their own attorneys' fees, expert and non-expert witness costs and expenses and other costs and expenses incurred in connection with any such controversy or claim.

18. Remedies: NEITHER PARTY SHALL BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF SALES OR LOSS OF PROFITS) OF THE OTHER.
19. Modifications: This Agreement can be modified or rescinded only by a writing signed by both Parties. No modification of terms shall be effected by the acknowledgement or acceptance of purchase order, scale ticket, or similar contractual forms containing different terms or conditions. Any purchase orders issued and accepted during the Term of this agreement will incorporate and be bound by the terms of this Agreement.
20. Assignability: This Agreement may not be assigned without the express written consent of the other Party.
21. Waiver: No claim or right arising out of a breach of this Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved Party. The failure of either Party at any time to require performance by the other Party of any provision hereof shall not affect in any way the right to require such performance at any time thereafter. The waiver by either party of a breach of any provision hereof shall not be taken, construed, or held to be a waiver of the provision itself or a waiver of any breach thereafter or any other provision hereof.
22. Construction: Captions and section headings used herein are for convenience only, are not a part of this Agreement, and shall not be used in construing it.
23. Severability: A judicial determination that any provision of this Agreement is invalid in whole or in part shall not affect the enforceability of those provisions found not to be invalid.
24. Notices: All notices sent to SELLER pursuant to this Agreement shall be sent to SELLER as follows:

Chip Cummins  
RPA Advisors, LLC  
45 Eisenhower Drive  
Paramus, New Jersey 07652  
D: 201-527-6652 | M: 201-675-0815  
[ccummins@rpaadvisors.com](mailto:ccummins@rpaadvisors.com)

*with a copy to:*

H. Kent Aguillard  
Attorney at Law  
P.O. Box 391

Eunice, LA 70535  
tel. 337.457.9331  
fax 337.457.2917  
[kaguillard@yhalaw.com](mailto:kaguillard@yhalaw.com)

All notices sent to BUYER pursuant to this Agreement shall be sent as follows:

Bryan M. Gaston  
Opportune LLP  
711 Louisiana Street  
Suite 3100  
Houston, TX 77002  
Direct: (713) 237-4982  
[bgaston@opportune.com](mailto:bgaston@opportune.com)

*with a copy to:*

Joshua P. Searcy  
Searcy & Searcy, P.C.  
P. O. Box 3929  
Longview, TX 75606  
903/757-3399 PHONE  
903/757-9559 FAX  
Email: [joshsearcy@jrsearcylaw.com](mailto:joshsearcy@jrsearcylaw.com)

Notice must in all cases also be sent to:

C. Davin Boldissar  
Locke Lord LLP  
601 Poydras Street, Suite 2660  
New Orleans, LA 70130  
504-558-5111 Direct  
504-681-5211 Fax

[dboldissar@lockelord.com](mailto:dboldissar@lockelord.com)

and

Frank Ledermüller  
Chief Executive Officer USA  
German Pellets GmbH  
Verwaltung Wismar  
Am Torney 2a  
23970 Wismar / Germany  
Tel.: +49 3841 30306 301  
Fax: +49 3841 30306 9300  
Mobil: +49 151 1715 2084  
E-Mail: [frank.ledermueller@german-pellets.de](mailto:frank.ledermueller@german-pellets.de)

All notices shall be sent via overnight courier, registered certified mail, email, or delivered in person and shall be deemed received upon receipt to the addresses listed above. Either Party may designate alternate address by giving notice in writing to the other Party.

25. Counterparts: This Agreement may be executed in counterparts each of which shall be deemed an original, but all of which together shall constitute one agreement, and counterparts signed and transmitted electronically shall be binding.
26. BUYER's Resale of Product. BUYER shall not be prohibited from reselling Product purchased from SELLER to other customers of BUYER.
27. Certification and SELLER's Sale of Certified Product. SELLER agrees to cooperate with BUYER and provide to BUYER such information, documentation and materials as BUYER may request in order for BUYER to obtain and maintain applicable certification standards (e.g. Pellet Endorsement Forest Certification ("PEFC"), Sustainable Biomass Partnership ("SBP"), etc.) as required from time to time by Drax or any other customer of BUYER pursuant to this Agreement.
28. Bankruptcy Court approval. This Agreement is expressly subject in its entirety to approval by each of the Bankruptcy Courts in which the Parties' respective bankruptcy cases are pending. In the event that either of the Bankruptcy Courts in which the Parties' respective bankruptcy cases are pending fails to approve this Agreement, that such agreement shall be unenforceable.

29. Confidential Information. The Parties acknowledge that they may each receive Confidential Information in connection with this Agreement. As used herein, "Confidential Information" means, without limitation, all confidential and proprietary information, inventions, financial data, pricing, know-how and other trade secrets furnished or made available between Louisiana Pellets, Inc. / German Pellets Louisiana, LLC and Texas Pellets, Inc. / German Pellets Texas, LLC, whether in oral, written, electronic or machine-readable or other form, including, without limitation, information concerning, production and marketing strategy and considerations, financial results and forecasts, business plans, costs, profits, products, operational methods or other business affairs and methods and plans for future developments, as well as all documents, notes, analyses, studies and other materials produced by a Party hereto incorporating or otherwise derived from Confidential Information. Notwithstanding the foregoing, Confidential Information shall not include information (i) in the public domain (other than as a result of a breach of this Agreement), (ii) independently developed by a Party or known through a Party, or (iii) which is received from a third party whose disclosure does not violate any confidentiality obligation.
30. Non-Disclosure; Non-Circumvention. Each Party agrees to maintain the confidentiality of the Confidential Information and shall not, directly or indirectly, except as provided herein, (i) disclose the Confidential Information to any person, except to the extent necessary to persons involved in performing pursuant to this Agreement, and then only to such persons who are bound by confidentiality obligations with respect thereto, (ii) use the Confidential Information for any purpose other than performing this Agreement, (iii) attempt to intentionally circumvent or exploit the Confidential Information in connection with projects substantively similar to one derived from the Confidential Information, or (iv) take any other action with respect to the Confidential Information that would be inconsistent with the confidential and proprietary nature of such information. Should a Party receive a request to disclose Confidential Information through judicial process or otherwise, such Party shall notify the other Party no later than fourteen (14) days prior to the disclosure and shall take such reasonable action as may be necessary to protect the disclosure of Confidential Information. The Parties acknowledge that as a result of each being in chapter 11 there is the distinct possibility that one or all of the Parties' assets will be sold or they may be sold as going concerns. In the event of such a sale pursuant to 11 U.S.C. §363 then the Parties agree to not unreasonably withhold information which may be required to be released as part of the due diligence component of such a sale(s).

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the date first above written.

German Pellets Texas, LLC, and  
Texas Pellets, Inc.

"BUYER"

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



Name: Bryan M. Gaston

Their: CRO

German Pellets Louisiana, LLC, and  
Louisiana Pellets, Inc.

"SELLER"

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

Name: Chip Cummins

Their: CRO

### **Schedule1 - General Product Specifications**

Wood pellets delivered under this Agreement shall (in addition to the Specifications outlined in the Agreement):

1. be manufactured from legally harvested and additive free raw material that is 100% clean, virgin softwood under the form of whole logs, round wood, sawdust, wood chips or other fresh wood residues, ground and pressed into pellets meeting the Specifications;
2. be of substantially uniform quality and durability;
3. be contaminant-free, i.e., free of debris such as metal (ferro and non-ferro), any synthetic or fossil fuels, glue, resin, other binders, paint, bone, stone, slate, earth, rock, pyrate, pebbles, gravel, plastics, sacks, dunnage, process chemicals, demolition wood or wood containing halogenated compounds or wood preservatives or other foreign objects or material or any other extraneous materials.

Schedule1 Continued - Product Specifications

GERMAN PELLETS PRODUCT QUALITY				
Analysis Description	Specification			Standard Method
	Min	Max	Exemption Max	
<b>Proximate Analysis</b>				
Total moisture (% a.r.b.)	4	10		EN 14774-1 : 2009
Ash (% a.r.b.)	0	2		EN 14775 : 2009
Volatile matter (% a.r.b.)	70	85		EN 15149 : 2009
CV Net MJ/kg	16	n.a		EN 14918 : 2009 Net Calorific Value Constant Pressure
<b>Ultimate Analysis</b>				
Chlorine (% a.r.b.)	0	0.02	0.03	EN 15289 : 2011
Sulphur (% a.r.b.)	0	0.05		EN 15289 : 2011
Nitrogen (% a.r.b.)	0	0.4	0.5	DD CEN/TS 15104 : 2005
Oxygen (% a.r.b.)	28	46		EN 15286 :2011
<b>Trace Metals</b>				
Arsenic (mg/kg d.b.)	0	1.3		EN 15297 : 2011
Aluminium (mg/kg d.b.)	0	500		EN 15290 : 2011
Cadmium (mg/kg d.b.)	0	0.3	0.5	EN 15297 : 2011
Calcium (mg/kg d.b.)	0	3500		EN 15290 : 2011
Chromium (mg/kg d.b.)	0	10		EN 15297 : 2011
Copper (mg/kg d.b.)	0	4	10	EN 15297 : 2011
Iron (mg/kg d.b.)	0	700		EN 15290 : 2011
Lead (mg/kg d.b.)	0	10		EN 15297 : 2011
Magnesium (mg/kg d.b.)	0	500		EN 15280 : 2011
Mercury (mg/kg d.b.)	0	0.1		EN 15297 : 2011
Nickel (mg/kg d.b.)	0	6	10	EN 15297 : 2011
Phosphorous (mg/kg d.b.)	0	200		EN 15290 : 2011
Potassium (mg/kg d.b.)	0	1400		EN 15290 : 2011
Silica (mg/kg d.b.)	0	1800		EN 15290 : 2011
Sodium (mg/kg d.b.)	0	180		EN 15290 : 2011
Tin (mg/kg d.b.)	0	1		EN 15297 : 2011
Titanium (mg/kg d.b.)	0	100		EN 15290 : 2011
Vanadium (mg/kg d.b.)	0	4		EN 15297 : 2011
Zinc (mg/kg d.b.)	0	40	50	EN 15297 : 2011
<b>Ash Fusion</b>				
Shrinkage °C	-	-		
Deformation °C	1200	-		DD CEN/TS 15370 - 1 : 2006 (EN Revised Version still undergoing further proving work). Test to be carried out in a reducing atmosphere
Hemisphere °C	-	-		
Flow °C	-	-		
<b>Physical Properties - all materials</b>				
Tamped Bulk Density, kg/m³	630	730		EN 15103 : 2009
<b>DSEAR information</b>				
Cloud Ignition Temperature, °C	400	-		
5mm Layer Ignition Temperature, °C	210	-		
Min. Ignition Energy, mJ (capacitive)	30	-		
Max Explosion Pressure, bar	-	10.5		
Specific Dust Constant, KSt, bar.m/sec	-	200		
Explosibility Rating (ST-0 non-expl.) (ST-3 strongly expl.)	St-0	St-1		
<b>Physical Characteristics</b>				
	Pellets can be accepted in sizes from 8mm up to 12 mm diameter			EN 14961-1 : 2010
Component Particle Size of Pellets delivered	The fine content of the consignment will not exceed 5% by weight of the delivered volume. The 5% being the proportion by weight that will pass through 3.15mm round sieve screens.			EN 15149 - 1 : 2010
Component Particle Size of feedstock used in pellet production	Absolute			
Sizing <85µm, %	<5**			Malvern "Mastersizer" 2000 is used,
Sizing <0.5mm, %	>20			
Sizing <1mm, %	>50*			or EN 16126: 2011 Draft for Public Comment, sample preparation standard, EN 15149-1:2010,
Sizing <2.0mm, %	>92.50*			EN 15149-2:2010
Sizing <4.0mm, %	>99.50			
Mean particle size, µm	>420**			Malvern "Mastersizer" 2000 is used,
Max linear dimension, mm	<20			
* Particles having at least one dimension less than 600µm shall be acceptable. Optical Graticular Analysis is used				
**If, either 5% by weight of the Particle Size Distribution is < 85µm, or the mean particle size is <420µm, then the material shall be considered as explosive in its bulk form.				
<b>Durability of pellets</b>				
	DU>97.5			EN 15210 - 1 : 2009

**Schedule 2**

**Committed Volume and Monthly Purchase Schedule**

**Committed Volume:** [REDACTED] as set forth in section 3 of the Agreement

**Monthly Purchase Schedule:** It is anticipated that between August 22, 2016 to the following December 31, 2016, Product quantities to be supplied by SELLER to BUYER shall be as presented below:

**Additional Volume:** [REDACTED] as set forth in section 3 of the Agreement.

Shipment	original Drax Laycan		revised Drax Laycan (proposed)		Volume (mt)			
	Start	End	Start	End	Min	Optional	Total	
1	8/7/16	8/20/16	8/7/16	8/20/16	[REDACTED]	-	[REDACTED]	Actual shipped 8/22/16
			8/7/16	8/20/16	[REDACTED]	-	[REDACTED]	Actual shipped 8/29/16
2	9/3/16	9/16/16	9/3/16	9/16/16	[REDACTED]	[REDACTED]	[REDACTED]	
3	9/18/16	10/1/16	10/6/16	10/18/16	[REDACTED]	[REDACTED]	[REDACTED]	
4	10/6/16	10/19/16	10/28/16	11/10/16	[REDACTED]	[REDACTED]	[REDACTED]	
5	11/4/16	11/17/16	11/18/16	12/1/16	[REDACTED]	[REDACTED]	[REDACTED]	
Total					[REDACTED]	[REDACTED]	[REDACTED]	