



ECOM USA, LLC

THIS CONTRACT ("Agreement") made and entered into on **January 3, 2018** between: **ECOM USA, LLC** (Buyer) whose address is **12312 Slide Road, Lubbock, Texas 79424**, and _____ (Seller) whose address is _____, and _____ (Agent) whose address _____.

IN CONSIDERATION of mutual promises and obligations contained herein, the sufficiency of which is acknowledged, the parties agree as follows:

- 1. **SALE AND PURCHASE:** Buyer agrees to purchase and Seller agrees to deliver 100% of the production from the acres (the "Acres") listed on Exhibit A to fulfill the terms of this contract. **It is Seller's responsibility to choose between the following:**
 - A) All production contracted from the Acres using basis in Item 2, with deliveries exceeding **xxx** bales ("The Overage"), to be fixed once final production is known applying basis.
 - B) All production contracted BUT NOT TO EXCEED a Maximum Deliverable Amount of **xxx** bales. Any production over the Maximum Deliverable Amount ("The Overage") will be producer's responsibility to sell on the open market and Buyer shall have no obligation to purchase such bales. Seller agrees that the overage cannot be sold or obligated until all production has been delivered to satisfy this contract. **Farms with landlords must be contracted individually.**

Seller will not be held liable if production is below Fixable Amount/Maximum Deliverable Amount provided that not less than one-hundred percent (100%) of the production from the contracted farm(s) has been delivered to satisfy this contract.

- 2. **PRICE:** Buyer will pay Seller, ginner, or other agent invoicing for Seller the price **350** points per pound off NY **DEC18**; F.O.B. **CARS**, Texas Cotton Association Rules, based on original USDA official government class on all Acceptable Cotton (as such term is herein defined) produced on the Acres during the **2018** crop year.

- 3. **PRICE TERMS: BASED ON QUALITY 31-3-36; 3.5-4.9 MICRONAIRE; 26.0 MIN GPT; 80.0 MIN UNIFORMITY.** 2018 USDA GOVERNMENT LOAN DISCOUNTS AND PREMIUMS WILL APPLY ON ALL OTHER GRADES, MICRONAIRE, GPT, UNIFORMITY, REDUCTIONS AND EXTRANEOUS MATTER. **ADDITIONAL MICRONAIRE DISCOUNTS AS FOLLOWS:**
50-99 = -100 pts; 33-34 = -200 pts; 30-32 = -300 pts; 00-29 = -400 pts

USDA Remark "61" (or any remark the USDA designates as contamination) and Below Grades (BG's) are not deliverable on this contract. Buyer may, at his sole discretion, agree to accept Remark "61" or BG's. If accepted, the price for below grades shall be: **market price at time of delivery.**

- 4. **FIXATION PROCEDURES:** Seller may fix the Call Price on one or more occasions provided that the fixation is for a minimum of 100 bales or any odd lot to complete fixable quantity before 4 pm of normal operating business days. Seller must maintain a margin of 10 cents between the provisional price paid and the amount that price fixations can be made on the contract. Unless otherwise stipulated, calls by Buyer to Seller for margin against open contracts (i.e. contracts in which the Seller has not fixed the Call Price) will be met within 24 hours after notification. Failure to maintain minimum margin within 24 hours of notification of margin call will cause buyer to fix remaining on call balance. **Seller may NOT fix more than permitted in paragraph 1 unless in bale form.** Seller is to make a final price fixing prior to the close of the market on the last trading day before the first notice day of the contract futures month. With Buyer's consent, Seller may transfer (roll) the call from one futures month to another futures month at the market difference between the respective futures months plus a 10 basis points transfer fee to be paid to Buyer. The Seller may not improve the basis as a result of transferring call months. In the event the Seller has not fixed the contract price or transferred call to another futures month, Buyer shall have the right to fix the price (based on the then current futures month) or transfer (at a market difference plus 10 points) to the next futures month on the close of the market of the last trading day prior to the first notice day of the futures month the contract is based. Such action by the Buyer shall be binding on the Seller. Seller will not be able to transfer the call month beyond the July ICE Futures Contract price of the crop year of the contracted cotton without permission from Buyer pursuant to paragraph 5 of this contract. Fixing and/or transfer orders may be placed only during Buyer's normal hours of operation and will be executed only while the Intercontinental Exchange ("ICE") is open and trading. Rolling of unfixed portions of the 100% APH will be the responsibility of the Seller prior to first notice day. **Bales rolled until in bale form.**

- 5. **FIXATIONS ON DELIVERIES ABOVE APH (if Applicable - from 1-A):** With respect to fixation of bales delivered over **xxx** bales and if final delivery is not known until after first notice day for the **DEC18** ICE Futures Contract, then unfixed bales will be automatically rolled to the **MAR19** ICE Futures Contract price based on the market differences between the **DEC18** ICE Futures contract price and the **MAR19** ICE Futures Contract price on close of first notice day. If carry in the market exists then the roll will be at market differences but not more than 250 points. If the **DEC18** ICE Futures Contract price is above **MAR19** ICE Futures Contract price (i.e. inverted) then the roll will be based upon the **DEC18** ICE Futures Contract price.

- 6. **MAXIMUM DELIVERY (If Applicable - from 1-B): SELLER IS REQUIRED TO DELIVER THE FIRST xxx BALES PRODUCED FROM THE ACRES.** It shall be delivered as gin-run with no skips in bale numbers. In the event of insurance failed acres, Seller will deliver all bales from the contracted farm(s) up to the Maximum Deliverable Bales. **SELLER WILL NOT BE HELD LIABLE FOR UNDER DELIVERY PROVIDED THAT ALL PRODUCTION FROM CONTRACTED ACRES HAVE BEEN DELIVERED.**

- 7. **ALL INTERESTS COVERED:** Unless specified otherwise, this contract covers 100% of the Acres and production off those Acres up to the Maximum Deliverable Amount in paragraph 1; this includes the shares and interests of all landlords, owners, operators, tenants, partners, lienholders and secured parties. Seller warrants and represents that this Agreement is made with full knowledge, consent and authority of the landlord and all interested parties. Any person executing this Agreement without authority agrees to indemnify and hold Buyer harmless from any and all loss, damage and expense, including reasonable attorneys' fees, suffered by Buyer, by reason of such execution. If a lien or landlord interest is provided to Buyer, the Seller does hereby specifically authorize and direct the Buyer to remit payment jointly to the lienholder or landlord and the Seller from the proceeds due the Seller under the terms of this Agreement. Any such payments made by Buyer to a lienholder or landlord shall be in partial or full satisfaction, as the case may be, of Buyer's obligation to Seller for such cotton. Skip-row acreage shall be net acres as measured by FSA, not gross acres of the field.

- 8. **500 POUND BALES:** The parties intend to deal in bales of 500 pounds average weight, net of tare. If average bale weight is less or more than 500 pounds, then the number of bales delivered will be increased or reduced so that the number of pounds of cotton actually delivered is equal to **xxx** bales, multiplied by 500 plus the number of pounds needed to finish out one 500 pound bale.

- 9. **CONTACTING ECOM:** Fixing and/or transfer orders are to be directed to ECOM USA, LLC. (Phone **806-762-0365** or email **lubbock@ecomtrading.com**). The parties agree that there are risks involved in oral telephonic and other non-written communications and that written communications and confirmations will prevail over verbal communications in the event of a dispute.

- 10. **LIENS AND/OR PRIOR INTEREST:** Seller acknowledges that the following, and only the following liens or prior interest (landlord's lien for cash rent, landlord's crop share in bales, PCA, bank, prior crop contracts, etc.) are in effect against bales delivered to this contract:

Please provide names & address. Unless stated above, Seller warrants there are NONE; or Seller warrants that Seller or Agent will satisfy all liens.

- 11. **GINNING/WAREHOUSING:** Seller will gin cotton at _____ (Gin) and warehouse the cotton at _____ (Warehouse). Notwithstanding any provision of the Agreement, including price terms, Buyer will not pay or provide any transportation or other thing of

value, nor advance any part of purchase price before Seller's delivery of the cotton to Buyer. Seller may not change the place of ginning or the place of storage of contracted cotton without written consent of Buyer prior to ginning and storage of cotton. Failure to deliver to the above gin and/or warehouse without prior consent will cause Seller to be in breach of this Agreement.

12. **PAYMENT/INDEMNITY:** Buyer will pay the Seller or an agent invoicing for Seller the price for the bales upon delivery of electronic warehouse receipts. Seller represents and acknowledges that if an agent is invoicing for the Seller such agent shall have been appointed by the Seller to act for the Seller's sole benefit. **Any payments made pursuant to the terms of this Agreement by the Buyer to the agent for Acceptable Cotton shall be deemed to be full and final payments to the Seller. Seller shall have no recourse against the Buyer in the event that the agent fails to remit to the Seller all or any portion of such payments made by the Buyer to the Agent on behalf of the Seller for the Acceptable Cotton.** The Seller agrees to indemnify and hold the Buyer harmless from any and all loss, damage and expense, including reasonable attorneys' fees, suffered by the Buyer as the result of (i) the failure of the agent and/or the Seller to account to any interested party; (ii) the failure of the agent and/or the Seller to pay and discharge any lien or security interest against the cotton; or (iii) by reason of Seller's sale or contract to sell the cotton to any party other than the Buyer.
13. **WEIGHT PENALTIES:** Bales weighing less than 450 lbs. or more than 550 lbs net weight will be penalized as follows: **Lightweight bales:** bales weighing 426 to 449 lbs will be penalized \$5.00 per bale; bales weighing 400 to 425 lbs. will be penalized \$10.00 per bale; bales weighing less than 400 lbs. may be rejected or if accepted will be penalized \$20.00 per bale. **Heavyweight bales:** bales weighing 550 to 575 lbs will be penalized \$5.00 per bale; bales weighing 576 to 650 lbs will be penalized \$10.00 per bale; bales weighing more than 650 lbs. may be rejected or if accepted will be penalized \$20.00 per bale. Accepting or rejecting bales based on weight issues is at the sole discretion of the Buyer.
14. **TIME FOR DELIVERY:** Seller understands that the intentional delay in harvest, ginning, or delivery of cotton under contract is not permissible without express written permission of buyer. Delivery of the cotton shall take place not later than the 28th day after the date of the original USDA classification for such cotton. Seller must notify buyer immediately of any expected unavoidable delay in the harvest, ginning or delivery of contracted cotton. **Cotton delivered later than 28th day after date of original USDA classification shall be discounted two cents per pound. Cotton delivered after March 1st, 2019 may be rejected by Buyer or may be accepted with a three cents per pound discount.** Delivery date is the date Buyer receives electronic warehouse receipts in its EWR, Inc. account from Seller.
15. **OMITTED PRICE:** The parties intend that the specified prices apply to all contracted cotton. In the event of an omission to specify a price for any bale of cotton, the price for such bale shall be a reasonable price based on its grade, staple and micronaire and commensurate with the expressed contract prices and with the market price existing at the time of execution of the Agreement. It is not the intent of the parties to leave the price open on any cotton, nor to provide for payment based on market price at time of delivery. Nor is it the parties' intent to exclude any cotton from the Agreement because of a failure to specify a price.
16. **AUTHORITY:** If Seller is a partnership, joint venture or corporation, the person signing for such party warrants his authority to execute this contract and to convey the cotton specified. Further the party executing this Agreement agrees to individually indemnify and hold the Buyer harmless against any and all claims, suits, causes of action or damages (including, but not limited to, reasonable attorneys' fees) in the event that the Seller is not authorized to execute this Agreement.
17. **FARMING METHODS:** Seller will practice normal, good farming methods in the production and harvesting of the crop. Seller agrees to harvest and gin all cotton in a normal manner and deliver as quickly as practicable after maturity. No cotton shall be harvested in a wet condition, or be manually or mechanically picked up off the ground. Seller agrees that the cotton will be chemically or naturally defoliated before machine harvesting and Seller further agrees that the subject cotton will not be defoliated by use of arsenic acid. Seller agrees to use all reasonable efforts to protect cotton from damage by exposure or any other cause from the time it is harvested to the time it is delivered to the warehouse. Cotton sold as irrigated acres will be watered following normal, good farming methods of irrigation for irrigated crops.
18. **ACCEPTABLE COTTON:** As used herein the term "Acceptable Cotton" shall mean: (i) only that cotton produced on those acres that is hand or conventional spindle picked or stripped picked, and gin universal density; (ii) cotton that is not grown under the ultra-narrow row farming methods; and (iii) cotton which is not below grade, false-packed, water-packed, repacked, re-ginned, cotton with arsenic used as a desiccant, seedy or oily cotton, or cotton exceeding 7.5% in moisture content. The original Smith-Doxey Class shall be final. All Acceptable Cotton must be packaged in bagging and ties approved by the Joint Industry Committee on Bale Packaging. Cotton ginned at gins with lint retrieval systems is unacceptable.
19. **PLACE OF PERFORMANCE:** Seller will deliver negotiable electronic warehouse receipts care of Buyer's EWR, Inc. account.
20. **SUBSIDY PAYMENTS:** As between the parties, Seller, not Buyer, is entitled to the Loan Deficiency Payment, if any. Buyer, not Seller, is entitled to the First Handler Payment, if any. This Agreement is not conditioned on Seller's entitlement to any USDA loan deficiency payment, cotton allotment or subsidy payment, whether in cash or in kind. Seller's obligation to plant, cultivate, harvest and deliver, together with all other obligations under this Agreement, shall not be decreased or increased on account of any transfer, loss, decrease or increase of any cotton allotment or any entitlement to any subsidy payment.
21. **STATUS OF PARTIES:** Each party hereto acknowledges that it is a "Forward Contract Merchant" as such term is defined in Title 11, Section 101(26) of the U.S. Bankruptcy Code (the "Code") and that this Agreement is a "Forward Contract" as such term is defined in Title 11, Section 101(25) of the Code. The parties further acknowledge that all payments made in connection by Buyer to Seller constitute "Settlement Payments" as such term is defined in Title 11, Section 101(51A) of the Code. Upon the insolvency of the Seller, in addition to any other remedies set forth herein, the Buyer is entitled to all rights and remedies specified in the Code with respect to those sections governing Forward Contracts. Buyer and Seller further acknowledge and agree that each is a "Merchant" as such term is defined in the Uniform Commercial.
22. **REMEDIES:** It is agreed that irreparable harm may be suffered by either party in case of nonperformance of this Agreement and that either party shall be entitled to obtain specific performance in the event of repudiation or failure or refusal of performance by the other party. The aggrieved party shall be entitled to temporarily and permanently enjoin violation of this Agreement. However, this paragraph shall not be taken to limit the right of a party to recover damages. Filing of a suit for alternative relief, injunction and/or specific performance shall not constitute an election of remedies, nor a waiver of the right to arbitrate, and a party may in a proper case recover specific performance of a part of the Agreement and damages for that part of which the other party has failed or is unable to perform.
23. **COVER:** In the event of repudiation or failure of performance by Seller, followed by Buyer's procurement of substitute cotton as cover, it is agreed by and between the parties that any contract or purchase by Buyer in covering that occurs within thirty (30) days after learning of Seller's breach or within 30 days after the expected time of delivery under the contract, whichever is later, shall be considered made without unreasonable delay on the part of Buyer in effecting cover. This paragraph shall not limit Buyer's rights to elect to recover market price damages.
24. **HEIRS/SUCCESSORS AND ASSIGNS:** This Agreement is binding on the heirs, successors and assigns of the parties and runs with the land. Buyer may assign rights and delegate performance under this Agreement. Buyer may execute this Agreement as agent for an undisclosed principal. Any succession, assignment or agency shall not relieve any party of any duty to perform or liability for breach.
25. **JURISDICTION:** This contract is made and accepted in the State of Texas and shall be governed by the laws of the State of Texas. The parties agree to submit to the jurisdiction and venue of the courts sitting in Lubbock County, State of Texas, with any non-resident party hereby agreeing that service of process upon the Secretary of State of Texas shall be sufficient to establish personal jurisdiction.
26. **ARBITRATION/ATTORNEYS' FEES:** Except as otherwise superseded by the specific terms of this Agreement, the rules of the Texas Cotton Association shall govern this Agreement. **All disputes shall be resolved pursuant to binding arbitration under the Texas Cotton Association Rules.** The cotton sold herein is purchased for shipment out of the state of origin in interstate or foreign commerce. Any court having or claiming jurisdiction, whether state or federal, shall apply the substantive provisions of the United States Arbitration Act, 9 U.S.C. 1, et seq. In the event of breach of this

Agreement by either party, the losing party agrees to pay all arbitration and court costs, if any, and the reasonable attorneys' fees and litigation and arbitration expenses of the winning party. **The foregoing arbitration language has been read, understood and agreed to by Seller. The Seller acknowledges that certain filing fees are required when initiating an arbitration procedure. The seller affirmatively states that he has the financial ability to pay the filing fees and such other costs and expenses that may be associated with the arbitration proceeding. Buyer and Seller each acknowledge and agree that arbitration provides them the opportunity for a quicker resolution of any potential claim of breach than might otherwise be expected upon filing litigation.**

- 27. **WAIVER OF JURY TRIAL. THE PARTIES HEREBY (A) COVENANT AND AGREE NOT TO ELECT A TRIAL BY JURY OR ANY ISSUE TRIABLE OF RIGHT BY A JURY, AND (B) WAIVE ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY THE PARTIES AND THIS WAIVER IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A JURY TRIAL WOULD OTHERWISE ACCRUE. BUYER IS HEREBY AUTHORIZED AND REQUESTED TO SUBMIT THIS AGREEMENT TO ANY COURT HAVING JURISDICTION OVER THE SUBJECT MATTER AND THE PARTIES HERETO, SO AS TO SERVE AS CONCLUSIVE EVIDENCE OF THE PARTIES' WAIVER OF THE RIGHT TO JURY TRIAL.**
- 28. **BUYER: Buyer is an equal opportunity employer, and this Agreement is subject to the rules and regulations imposed upon contractors and subcontractors pursuant to 41 CFR Chapter 60. Unless this Agreement is exempt, there is incorporated herein by reference: 41 CFR Section 60-1.4, Section 60-250.4 and 41 CFR Section 60-741.4.**
- 29. **PLANTING AND REPLANTING: Seller agrees to plant, cultivate and harvest cotton on the entire Acres. If necessary, Seller must replant through the end of their county crop insurance deadline on any of the acres. If Seller anticipates any decrease in harvestable acreage from the Acres, Seller shall so notify Buyer of the amount of the decrease and the reason therefore in writing within seven (7) days of the occurrence causing the decrease. Seller must plant the minimum number of acres listed. Failure to do so will require Seller to offer replacement acres to satisfy the minimum acres to be planted. No alternative crops may be planted on this acreage until appraised and released by the USDA-Risk Management Agency or one of its approved crop insurance companies. "Prevented Planting" will not apply to acres listed on this contract.**
- 30. **INCREASE OF PLANTED ACRES: Seller agrees to notify Buyer in writing of any increase in total planted acreage on the enumerated farms on the described acreage in paragraph 1 covered under this contract within seven (7) days after planting. Increase in planted acres on contracted tracts will be delivered under this contract up to the Maximum Deliverable Amount.**
- 31. **FARM INFORMATION: Seller must provide FSA Form 578 within seven (7) days of certification on all farms that are listed on the described acreage. Any change in Farm #, Tract #, or CLU/Field # from original contract should be brought to Buyer's attention immediately. Upon Buyer's written request, Seller shall within seven (7) days thereafter to inform Buyer in writing as to the number of acres planted, number of acres standing, condition of the crop and estimated number of bales expected to be harvested. The growing crop in all conditions shall be accessible to representatives of the Buyer, who may enter the fields at any time to inspect the crop.**
- 32. **RIGHT TO INFORMATION: Seller hereby grants a Power of Attorney, coupled with an interest, to Buyer and constitutes and appoints Buyer acting through its designated employees and duly authorized representatives as Agent(s) and Attorney(s)-In-Fact for and on behalf of Seller for the purposes of noting upon the warehouse receipts (including electronic warehouse receipts) the true facts regarding liens upon cotton; manually endorsing receipts in the name of the undersigned Seller and conducting title transfers of cotton electronic warehouse receipts as Agent(s) or Attorney(s)-in-Fact for and on behalf of Seller or for the protection of any persons who may lawfully come into possession of the receipts: requesting, receiving and inspecting from any cotton gin, warehouse, classing office, or representative of the CCC, USDA, broker, merchant, agent, insurance agent, cooperative, FSA office, RMA office, Cotton Board or other person or other source, data and information, including, but not limited to, any document or form pertaining to the number of bales of cotton ginned, warehoused or produced; the financing of the cotton, the number of acres of cotton planted, certified and harvested; the eligibility for cotton loan payment programs; and classing information; CCC, RMA, FSA and USDA forms relevant to Seller's cotton crop for 2018 and taking delivery of cotton samples and cotton warehouse receipts or equivalent. The Seller hereby gives and grants to such Attorney(s)-in-fact full power and authority to do and perform all acts and things requisite and necessary to be done as fully and to all intent and purposes as Seller might or could do if personally present. The Seller hereby specifically waives any privacy rights under any applicable law with respect to any of the foregoing information.**
- 33. **SEVERABILITY: If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance (other than a term, covenant, condition or application which affects the essence of this Agreement) shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition to those persons or circumstances other than those as to which it has been held invalid or unenforceable, shall not be affected thereby, and each term, covenant and condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.**
- 34. **REVIEW OF AGREEMENT: Seller represents that he is experienced in cotton production and sale, and that based on Seller's experience and knowledge of the cotton market Seller has elected to sell cotton to Buyer in full awareness of risks thereof.**

BY SIGNING BELOW, ALL PARTIES HEREBY AGREE THAT THEY HAVE CAREFULLY READ AND FULLY UNDERSTAND ALL OF THE TERMS AND PROVISIONS CONTAINED ON THIS AND ALL PREVIOUS PAGES OF THIS CONTRACT. FURTHERMORE, BOTH PARTIES AGREE THAT TOGETHER WITH EXHIBIT A AND A PRICING SCHEDULE TO BE PROVIDED ONCE 2018 USDA LOAN PREMIUM AND DISCOUNTS BECOME AVAILABLE; THIS WILL CONSTITUTE THE ENTIRE AGREEMENT BETWEEN THE PARTIES AND THERE MAY BE NO MODIFICATIONS OF THIS CONTRACT EXCEPT IF IN WRITING AND IF AGREED TO BY BOTH PARTIES. TIME IS OF THE ESSENCE IN THE PERFORMANCE OF THIS CONTRACT.

****Seller must choose between option A or B below and initial one****

- Seller chooses (A) to sell all bales produced on "the acres" listed at the basis of **-350 Dec18** with any "overs" to be fixed at harvest. _____(initial)
- Seller chooses (B) to market all bales over the Maximum Delivery Amount on their own. Buyer has no obligation to purchase. _____(initial)

SELLER

DATE

SELLER'S AGENT

by _____

DATE

LANDLORD (if needed)

DATE

LANDLORD (if needed)

DATE

BUYER: ECOM USA, LLC

by _____

January 16, 2018
DATE