

where it is in compliance with the Laws, or (ii) require the reassignment of the Property at issue from Buyer to Seller. If Seller elects to require the reassignment of the Property at issue, Buyer and Seller will take all necessary action (including without limitation, execution of documentation and conducting an accounting) required to place the parties back into a position with respect to the Property at issue just prior to Closing.

5.3 Waiver. All adverse conditions (including without limitation Alleged Adverse Condition(s)) not raised or referred to binding arbitration, as applicable, by Buyer within the time period provided in Article 5.2 shall be waived by Buyer for all purposes, and Buyer shall have no right to seek an adjustment to the Purchase Price, make a claim (in accordance with Article 18.1 or otherwise) against Seller or seek indemnification (in accordance with Article 8 or otherwise) from Seller associated with the same, and Buyer (on behalf of itself, its officers, agents, employees, Affiliates, successors and assigns) irrevocably waives such claims.

5.4 Acquire Litigation. Notwithstanding anything contained in this Agreement to the contrary, the deductibles and threshold set forth in Article 1.3 above shall not apply to the alleged contamination which is asserted to exist in the *Gabriela C. Aguirre, et al. v. Browning Ferns Industries Inc., et al.*; C.A. No. S-96-5539CV-B; In the 156th Judicial District Court of San Petricio County, Texas.

## ARTICLE 6. ACCOUNTING

6.1 Revenues, Expenses and Capital Expenditures. All merchantable oil, liquid hydrocarbon and non-hydrocarbon substances stored in tanks and vessels on the Properties (including any and all line fill owned by Seller or its Affiliates downstream of the custody transfer point) will be gauged to the bottom of the flange by Seller or the operator of the Properties, as applicable, as of the Effective Time, and Seller shall be entitled to the proceeds associated with such oil, liquid hydrocarbon and non-hydrocarbon substances so gauged when sold. Oil, liquid hydrocarbon and non-hydrocarbon substances in treating equipment and separation equipment below pipeline connections as of the Effective Time shall not be considered to be merchantable and shall become the property of Buyer. Seller shall be entitled to all operating revenues and related accounts receivable arising in the ordinary course of business attributable to the ownership, use or operation of the Properties and shall be responsible for all operating expenses and related accounts payable (except as provided below) arising in the ordinary course of business attributable to the ownership, use or operation of the Properties, in each case to the extent they relate to the period of time prior to the Effective Time. Buyer shall be entitled to all operating revenues and related accounts receivable arising in the ordinary course of business attributable to the ownership, use or operation of the Properties and responsible for the payment of all operating expenses and related accounts payable arising in the ordinary course of business attributable to the ownership, use or operation