



Producers of Specialty Chemicals

Struktol Company of America

201 E. Steels Corners Road • P. O. Box 1649 • Stow, Ohio 44224-0649
www.struktol.com

Terms and Conditions

Each and every component printed hereupon is an integral part of this contract.

1. **Terms.** Net 30 days unless otherwise stated herein. F.O.B. shipping point unless otherwise stated herein. Seller reserves the right to charge interest on all past due accounts.
2. **Deliveries.** Unless otherwise indicated on the face hereof, risk of loss or damage to and responsibility for the material shall pass to Buyer upon delivery to carrier at shipping point. No shipment shall be diverted or reconsigned without Seller's prior written consent. Unless otherwise expressly stated herein, Seller shall select the means of transportation and routing. Seller assumes no responsibility for insuring shipments unless specifically requested by Buyer and, if so requested, Seller will insure shipments only at Buyer's expense and valuation. The delivery dates shown are estimates only and delivery by Seller within a reasonable period before or after such dates shall be considered compliance with this contract.
3. **Taxes.** All quotations and accepted offers are subject to price increase(s): for any tax, excise, duty or levy hereafter imposed by any governmental authority upon the production, storage, withdrawal, sale, transportation or delivery of the material sold hereunder, or for any expenses or charges due to war hostility or other disorder, domestic or foreign, whereby the cost of production, distribution or sale of articles to which prices apply is increased; or resulting from increases in the cost of manufacturing, processing, distribution or wages caused by and federal, state or municipal law or regulatory measure hereafter adopted, or for increased costs of labor, services or materials. All orders will be billed at the price in effect at the time of shipment. Prices quoted do not include any applicable manufacturer's excise taxes. All such taxes, if applicable, shall be added to the price quoted.
4. **WARRANTY.** SELLER WARRANTS ONLY THAT THE MERCHANDISE TO BE SUPPLIED WILL CONFORM TO THE SELLER'S SPECIFICATIONS AND THAT TITLE THERETO WILL BE GOOD AND MARKETABLE AND FREE AND CLEAR OF ALL LIENS AND ENCUMBRANCES. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTY AS TO FITNESS FOR A PARTICULAR PURPOSE, AND/OR MERCHANTABILITY. Any recommendations or technical advice provided by Seller is believed reliable, but Seller makes no warranty of results to be obtained and Buyer accepts such recommendation of advice at Buyer's risk. The remedy for breach of warranty herein shall be limited to the purchase price, repair or replacement at Seller's option. Seller will not accept any claims for adjustment under this warranty, including, without limitation, any requests for return of material or issuance of credit on any material, which are not made within 30 days from the date of shipment. Returned shipments will not be accepted by Seller unless previously authorized by Seller in writing. Seller assumes no responsibility for any charges incurred by Buyer for returns made after delivery is accepted by Buyer. In no event shall Seller's liability exceed the invoice price of the faulty merchandise, and SELLER SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL OR INCIDENTAL DAMAGES. Before any claim will be honored,





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Seller must be given an opportunity to inspect the material in the form in which delivered after receiving notice of Buyer's claim.

5. **Delay or Failure to Perform.** Neither Buyer nor Seller shall be liable for any delay in performance or nonperformance which is due to causes beyond the reasonable control of the party whose performance is so affected, including, without limitation, acts of God, acts of the government or any agency or commission of the government, fires, breakdown of equipment, labor disputes, unusually severe weather or inability to obtain material, labor, equipment or transportation; provided that, any shipments made by Seller before receipt of written notice from Buyer that the latter cannot accept such shipment due to any such cause shall be accepted and paid for by Buyer. In the event of any such excused performance hereunder, either party may eliminate from the contract or cancel any order for any quantity of material affected by such cause. The party whose performance is affected by any such cause shall promptly notify the other party of the occurrence of such cause.
6. **Price Revision.** Prices are subject to revision by Seller at any time upon written notice.
7. **Special Materials.** Notwithstanding anything in this contract to the contrary, if the contract covers materials which are manufactured especially for Buyer and the contract is terminated or an order hereunder cancelled. Buyer will take delivery of and make payment for such material which has been manufactured and which is in the process of being manufactured on the date notice of such termination or cancellation is received by Seller.
8. **Patents.** With respect to goods manufactured in whole or in part to Buyer's designs and/or specifications, Buyer will defend, protect, and save harmless Seller, against all actions or suits at law or in equity and from all damages, claims, demands or actions for alleged infringements of any United States or foreign patent, copyright, trade name, trademark, trade secret or other legal rights resulting or arising from the manufacture, sale, use or other disposition of any goods furnished hereunder. Seller warrants that material furnished hereunder will not, in the form in which furnished, infringe any valid United States patent, but Seller does not warrant against infringement by reason of Buyer's use of the material in combination with other materials or in the operation of any process. This warranty is conditioned upon Buyer's prompt notification in writing to Seller of any claim made against Buyer for such patent infringement, and upon Buyer's authorization of Seller to assume a full and exclusive control of the defense or settlement of such claim or any legal action based thereon.
9. **Weight of Shipment.** Weights of all shipments shall be determined by Seller at point of shipment. Claims on account of weight will be considered only if for one percent or more of entire contents and if examination is made and verified by and authorized agent of the carrier or and independent professional inspector. Claims in relation to materials shipped via tank car or tank truck will be based on weight only.
10. **Claims.** All claims, except for a breach of warranty as set forth in Section 4 or for the infringement of patents as set forth in Section 8, must be made in writing within ten (10) days after delivery of the materials hereunder, or if delivery has not been made, within ten (10) days of the date fixed for delivery, and failure to do so shall constitute a waiver by Buyer of any such claims. If applicable, claims for any damages to materials in transit by carrier must be



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substantiated by notated freight bills, carriers over, short and damage inspection report, and any other supporting documents which, in Seller's opinion, are necessary. No claim of any kind shall be greater in amount than the purchase price of the materials in respect of which the claim is made. Any such claim which is not asserted as a claim, counterclaim, defense, or set-off in a judicial proceeding instituted within one year after Seller's denial thereof, shall be forever waived, barred and released.

11. **Default.** If Buyer becomes insolvent, files or has filed against it a petition in bankruptcy or is in default of any of the terms of this contract not excused by Section 5 hereof. Seller may upon notice to Buyer defer shipments until such condition or default is cured, or at its option, may immediately terminate this contract at any time after the occurrence of said condition or default; provided, however, such termination shall not relieve Buyer from payment for all material delivered. Seller's right to strict performance of Buyer's obligations hereunder shall not be affected in any way by any previous waiver, forbearance or course of dealing.
12. **Cancellation.** This contract may not be cancelled by Buyer, nor may materials be returned, except by mutual consent in writing and upon payment by Buyer of reasonable cancellation charges.
13. **Other Rights of Seller.** The rights and remedies of Seller herein set forth shall not be exclusive and shall be in addition to any other rights and remedies provided by law.
14. **Assignment.** This contract shall not be assigned by Buyer except with the prior written consent of Seller.
15. **Amendment.** No waiver, alteration or modification of the terms of this contract as herein set forth, nor any understanding or agreements not set forth herein shall be valid and binding upon Seller unless made in writing and signed by a duly authorized representative of Seller. Waiver, alteration or modification of one or more of the above terms shall not constitute a waiver, alteration or modification of any other term.
16. **Acceptance.** All quotations are made and all offers are accepted subject to the approval of Seller's credit department. Stenographical and clerical errors are subject to correction.
17. **Secret Matter.** Buyer agrees to be responsible for the safeguarding of all secret, confidential trade secrets restricted matter that may be disclosed or developed in connection with this order and will bring to the attention of all persons connected with the performance of the order the provisions of any government regulations in connection therewith.
18. **Demurrage and Detention Charges.** If the materials covered by this contract are shipped in rail cars furnished by Seller, Buyer shall pay to Seller a detention charge for each 24 hours that the rail cars or other transportation equipment are detained by Buyer after the lapse of allowable free time, which free time shall be computed from the date of arrival of said rail cars or other transportation equipment at point of destination. Allowable free time and detention charge shall be computed at Seller's then current rate. Buyer shall be liable to the transportation company for all demurrage or detention charges made by the transportation company.
19. **Indemnification:** Buyer agrees to defend, indemnify and hold harmless Seller from any and all claims of whatsoever nature including but not limited to injuries (including death) to employees



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of Buyer or Seller or third parties, or for damages to any property arising directly or indirectly from or occurring in any delivery, handling or use of said material.

20. **Governing Law and Jurisdiction:** All disputes arising out of and/or concerning this contract shall be governed by the express terms of this contract. If the issue is not addressed by the terms of the contract, the laws of the State of Ohio and the Uniform Commercial Code shall apply. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply to this contract. All parties hereby submit and consent to the venue and the jurisdiction of the Courts of the State of Ohio. Under no circumstances shall Seller be subjected to the jurisdiction of foreign courts without prior written consent.
21. **CONDITIONS. THE FOREGOING TERMS AND CONDITIONS SHALL CONSTITUTE THE FINAL AND EXCLUSIVE AGREEMENT BETWEEN THE PARTIES AND SHALL PREVAIL NOTWITHSTANDING CONTRARY PROVISIONS IN BUYER'S PURCHASE ORDER OR OTHER DOCUMENTATION, UNLESS EXPRESSLY WAIVED IN WRITING BY SELLER. ANY ORDER PLACED IN RESPONSE TO ANY OR ALL OF THE QUOTATIONS HEREIN CONTAINED SHALL BE DEEMED TO BE AN ACCEPTANCE BY BUYER OF THE FOREGOING TERMS AND CONDITIONS AS THE SOLE AND COMPLETE AGREEMENT BETWEEN THE PARTIES. ANY ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS CONTAINED IN BUYER'S ORDER OR OTHER DOCUMENTS ARE HEREBY REFUSED AND REJECTED (WITHOUT ANY REQUIREMENT OF FURTHER NOTICE OF SUCH REFUSAL AND REJECTION) AND SHALL NOT BIND SELLER. If Seller fulfills any requirement that an acceptance copy of Buyer's purchase order or any other quotation documents supplied by Buyer be signed and returned, Seller does so as a courtesy to and for the convenience of Buyer and such action shall not subject Seller to any additional or different terms or conditions other than those contained herein. Seller expressly disclaims any prior course of dealing, trade, custom or other transaction between any party as an alteration or addition to the terms and conditions contained herein.**

This contract shall be governed by the laws of the State of Ohio.

BMD/cjw
01/07/2008

