



Producers of Specialty Chemicals

# Struktol Company of America

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

## TERMS AND CONDITIONS OF SALE

- 1. Formation.** An order placed by Buyer with Seller will be accepted only upon Seller's written acceptance thereof, and the terms of that acceptance by Seller shall govern over the terms of Buyer's order. Seller accepts orders from, or supplies materials (the "Materials") to, Buyer only upon the condition that Buyer agrees to be bound by and comply with these Terms and Conditions of Sale (the "Terms"). Stenographical and clerical errors are subject to correction. Seller's receipt of a purchase order or its shipment of Materials to Buyer does not constitute an acceptance by Seller of any term or condition of such purchase order or any proposed terms and conditions. Reference in Buyer's order to any such terms and conditions or proposal shall in no way constitute a modification of any of these Terms. ANY ATTEMPTED MODIFICATION OF THESE TERMS PROPOSED BY BUYER IN A PURCHASE ORDER CONTAINING TERMS AND CONDITIONS INCONSISTENT WITH OR IN ADDITION TO THESE TERMS SHALL NOT BE BINDING UPON SELLER UNLESS SPECIFICALLY ACCEPTED BY SELLER IN WRITING. SELLER HEREBY OBJECTS TO ANY TERMS AND CONDITIONS INCONSISTENT WITH OR IN ADDITION TO THESE TERMS.
- 2. Payment Terms.** Payment terms are Net 30 days unless otherwise stated herein. Customer will incur interest charges in the amount of 1.5% per month on all unpaid balances beyond the payment due date.
- 3. Shipping Terms.** Except in instances of consignment, delivery is F.O.B. city and state shipping point stated on the Invoice unless otherwise stated herein, and risk of loss or damage to and responsibility for the Materials shall pass to Buyer upon Seller's delivery of the Materials to the carrier at the 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 these Terms.
- 4. 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 the Materials 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.
- 5. LIMITED WARRANTY; DISCLAIMER AND LIMITATION OF LIABILITY.** SELLER WARRANTS ONLY THAT THE MATERIAL TO BE SUPPLIED WILL CONFORM TO THE SELLER'S SPECIFICATIONS (EXCEPT WHEN SUPPLIED IN ACCORDANCE WITH BUYER'S SPECIFICATIONS) AND THAT TITLE THERETO WILL BE GOOD AND MARKETABLE AND FREE AND CLEAR OF ALL LIENS AND ENCUMBRANCES. THIS LIMITED WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND SELLER DISCLAIMS ALL OTHER WARRANTIES, EXPRESS AND/OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND MERCHANTABILITY. Any recommendations or technical advice provided by Seller is believed reliable, but Seller makes no warranty thereto and Buyer accepts such recommendations/advice at Buyer's sole risk. The exclusive remedy for breach of the above stated limited warranty shall be limited to the return of the purchase price or repair or replacement of the Materials in Seller's sole discretion. Seller will not accept any claims for adjustment under the limited warranty, including, without limitation, any requests for return of Material or issuance of credit on any material, which are not made in writing within 30 days from the date of shipment of the Materials giving rise to such claim. Returned shipments will not be accepted by Seller unless



Producers of Specialty Chemicals

# Struktol Company of America

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

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. Before any limited warranty claim will be honored, Seller must be given an opportunity to inspect the Materials giving rise to the claim in the form in which delivered after receiving written notice of Buyer's claim. IN NO EVENT WILL SELLER BE LIABLE FOR ANY INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THESE TERMS OR THE SALE OF THE MATERIALS, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND IN NO EVENT WILL THE SELLER'S TOTAL LIABILITY HEREUNDER, WHETHER ARISING UNDER TORT, CONTRACT, SECTION 9 OF THESE TERMS OR SOME OTHER LEGAL THEORY, EXCEED THE PURCHASE PRICE RECEIVED BY SELLER FOR THE MATERIALS GIVING RISE TO SAID LIABILITY.

6. 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 Materials 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.
7. Price Revision. Prices are subject to revision by Seller at any time upon written notice.
8. Special Materials. Notwithstanding anything in these Terms to the contrary, if Materials are manufactured specifically for Buyer and the order is terminated or otherwise cancelled by Buyer for any reason or for no reason in accordance with these Terms, Buyer will take delivery of and make payment to Seller for said Materials which have been manufactured and/or are in the process of being manufactured on the date notice of such termination or cancellation is received by Seller.
9. Intellectual Property. With respect to Materials manufactured in whole or in part to Buyer's designs and/or specifications, Buyer will indemnify, defend, protect, and hold Seller harmless against all damages, claims, demands, losses, liabilities 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 those Materials furnished hereunder. With regard to Materials that are solely manufactured in accordance with Seller's designs and/or specifications, Seller represents and warrants to Buyer that, to Seller's knowledge, said Materials, in the form in which they are furnished, do not infringe any valid United States patent. Notwithstanding, Seller does not represent or warrant against infringement by reason of Buyer's use of said Materials in combination with other materials or in the operation of any process. Seller will indemnify, defend, protect, and hold Buyer harmless against all damages, claims, demands, losses, liabilities or actions arising out of a breach of the forgoing representation by Seller. Seller's indemnity obligation hereunder 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 to the extent of Seller's liability hereunder. The parties obligations under this Section 9 shall survive the consummation of the sale of the Materials.
10. Weight of Shipment. Weights of all shipments of materials hereunder 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.
11. Claims. All claims by Buyer hereunder including, without limitation, claims made under Section 5 of these Terms must be made in writing within 120 days after delivery of the Materials hereunder, and failure to do so shall



Producers of Specialty Chemicals

# Struktol Company of America

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

constitute a waiver by Buyer of any such claims. If applicable, claims for any damages to Materials in transit by carrier must be substantiated by notated freight bills, carriers over, short and damage inspection report, and any other supporting documents which, in Seller's opinion, are necessary. 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.

12. Default. If Buyer becomes insolvent, files or has filed against it a petition in bankruptcy or is in default of any of these Terms not excused by Section 6 hereof, Seller may upon notice to Buyer defer shipments until such condition or default is cured, or at its option, may immediately terminate Buyer's order 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.
13. Cancellation. An order 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.
14. 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.
15. Assignment. These Terms shall not be assigned by Buyer except with the prior written consent of Seller.
16. Amendment. No waiver, alteration or modification of these Terms, 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 these Terms shall not constitute a waiver, alteration or modification of any other term.
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. Buyer's obligations under this Section 17 shall survive the consummation of the sale of the Materials.
18. Demurrage and Detention Charges. If the Materials covered by these Terms 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: Notwithstanding any other provision in these Terms, Buyer agrees to defend, indemnify and hold Seller harmless from any and all damages, claims, demands, losses, liabilities or actions of whatsoever nature including but not limited to injuries (including death) to employees 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 the Materials. Buyer's obligations under this Section 19 shall survive the consummation of the sale of the Materials.
20. Product Warnings and Instructions. Seller agrees to furnish Buyer with Material Safety Data Sheets ("MSDS's") for the materials supplied hereunder where applicable. The materials may be, or become, considered hazardous materials or hazardous substances under various laws and regulations when handled or processed. Buyer agrees to familiarize itself (without further reliance on Seller) with any hazards of the materials, their processing and applications and the containers in which the materials are shipped. Buyer agrees to pass the MSDS's to all those required by law to receive same and to inform and train its employees, and properly warn and instruct its customers,



Producers of Specialty Chemicals

# Struktol Company of America

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

as to hazards identified in the MSDS's or discovered by Buyer in its investigations. Buyer further agrees to properly manage and dispose of all wastes and residues resulting from its use of the materials in accordance with applicable laws and regulations.

21. **Security and Title.** Seller shall retain a purchase money security interest in the materials sold hereunder and all proceeds arising from Buyer's sale of such materials until all payments therefor (including deferred payments, whether evidenced by notes or otherwise) shall have been received in full by Seller and, if requested in writing to do so, Buyer agrees to do all acts necessary to perfect and maintain Seller's security interest in such collateral.
22. **Government Procurement Requirements.** Buyer acknowledges that materials supplied by Seller may not meet applicable government procurement requirements and that Seller may not be able to supply information required by government procurement regulations. Only if Seller has expressly agreed in writing with Buyer that its materials will meet certain government procurement requirements or that Seller will provide Buyer with information under government procurement regulations, Seller will have no liability or responsibility to Buyer whatsoever with respect to any requirements related to or arising from government procurement regulations.
23. **International Trade.** Buyer will insure that all Seller's products, materials, exported from the United States are exported in accordance with the U.S. Export Administration Regulations. Buyer understands and agrees that any diversion or distribution contrary to U.S. Law is prohibited.
24. **Governing Law and Jurisdiction:** All disputes arising out of and/or concerning these Terms or any order shall be governed by Ohio law. If the issue is not addressed by these Terms, 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. Any dispute between the parties arising out of or relating to these Terms, a breach hereof, or the sale of the materials must be resolved by either the federal or state courts of Ohio and the parties consent to the exclusive jurisdiction of such courts, agree to accept service of process by mail, and hereby waive any jurisdictional or venue defenses otherwise available to it.

Revised Effective 03-01-11

«AK3:1048391\_v3»