

Terms and Conditions

The following terms and conditions shall apply to all sale of products, and this document shall constitute the entire agreement of Seller and Buyer (the "Agreement"), except to the extent superseded by an applicable written agreement executed by Seller and Buyer. No modification of the Agreement shall be effected by any purchase orders, acknowledgments, shipping document or any other documents containing terms and conditions inconsistent with or in addition to those set forth in the Agreement, unless Seller specifically agreed to otherwise in writing.

- (1) **Shipment.** If Seller provides transportation equipment, Buyer shall empty at Buyer's sole risk and make ready for pickup all transportation equipment within the time period specified in the applicable tariff or contract free of demurrage/detention. If any transportation equipment arrives at destination with damage, Buyer shall promptly notify the carrier and Seller. Buyer shall be responsible for all transportation equipment while it is in Buyer's possession or jurisdiction. Seller shall not have to make shipments if Buyer's receiving facility and/or transportation equipment arranged by Buyer do not comply with all applicable laws, ordinances, rulings and regulations or not adequately staffed/insured. If Seller provides any transportation equipment or absorbs any portion of the transportation costs, Seller shall have the right to designate the carrier and routing. Notwithstanding anything seemingly to the contrary herein, when Seller arranges transportation, only standard freight cost for delivery is included in the price/invoice. Any additional cost incurred during the transportation shall be borne by Buyer. In case of marine shipment, unless otherwise mutually agreed, Shintech Marine Terms and Conditions also apply in addition to this Agreement.
- (2) **Weight Measurement; Certificate of Analysis.** Seller's measurements taken at shipping points shall govern concerning the quantity of material sold. Seller's certificates of analysis shall govern concerning compliance of the material with the specifications therefor.
- (3) **Title and Risk of Loss.** In case of railcar and/or truck shipment, unless otherwise mutually agreed, title and risk of loss pass from Seller to Buyer upon delivery to Buyer's facility. In case of marine shipment, unless otherwise mutually agreed, title and risk of loss from Seller to Buyer upon delivery to the carrier, Buyer's equipment or Buyer's representative at Seller's shipping point.
- (4) **Taxes, etc.** Any tax, fee or other governmental charge upon the production, sale and/or shipment of the material sold hereunder, now imposed by federal, state, municipal or any other governmental authorities or hereafter becoming effective for or during the period hereof, shall be added to the price herein provided, and shall be paid by Buyer.
- (5) **Excuse of Performance.** Neither Seller nor Buyer shall be liable for any delay or failure by it to make or take any shipments hereunder, if such delay or failure is caused by any event beyond its reasonable control, including, without limitation, Act of God, war, riot, fire, explosion, mechanical breakdown, strikes or other labor trouble, plant shutdown, unavailability of or interference with necessary transportation, any raw material or power, compliance with any law, regulation, order or other requirement of any governmental authority. Such situation shall not excuse Buyer from responsibilities for transportation equipment nor the demurrage/detention. Regardless of the occurrence or nonoccurrence of any of the causes as set forth above, if for any reason, Seller's supply of the material herein specified shall be insufficient to meet all requirements, including its own, Seller shall have the right, at its option and without liability, to allocate its available sales supply among any and all purchasers, including Seller's affiliated divisions and companies, in such a manner as Seller believes equitable. Such allocation shall not be deemed a breach of the Agreement. Seller shall not be obligated to purchase or otherwise obtain other supplies of the material to make up inadequate supplies or to replace the supplies so curtailed or cut off. In no event shall Seller be obligated to make up shipments omitted or curtailed hereunder, nor shall Buyer be obligated to make up purchases omitted or curtailed hereunder, and any such deficiencies in shipments or purchases shall be deducted from the Agreement with no liability to either party therefor.
- (6) **Credit.** If, in Seller's judgment, Buyer's credit shall become impaired at any time, Seller shall forthwith have the right to decline to make shipments hereunder except for cash until such time as said credit has been reestablished to Seller's satisfaction.
- (7) **Past Due.** Any amount not paid when due hereunder shall bear interest at the maximum lawful rate until paid. Any amounts owed by or due to a party hereunder, or its affiliates, ("First Party") by the other party, or its affiliates, ("Second Party") may be set off against any amounts owed by or due to the Second Party by the First Party.
- (8) **Warranty.** SELLER WARRANTS ONLY THAT THE MATERIAL SOLD HEREUNDER WILL CONFORM TO THE WRITTEN PRODUCT SPECIFICATIONS FOR THE MATERIAL PUBLISHED BY SELLER FROM TIME TO TIME. SELLER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE MATERIAL, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, BOTH OF WHICH ARE EXPRESSLY DISCLAIMED.
- (9) **Indemnity.** Buyer agrees to indemnify Seller and its affiliates against any claim, loss, liability and expense on account of any damage to persons or property resulting from handling, storage, transportation, use, sale or disposal of the material. Buyer represents to Seller that it has used its own independent skill and expertise in connection with the selection and use of material purchased pursuant to the Agreement, and that it possesses skill and expertise in handling, storage, transportation, treatment, use and disposal of the material.
- (10) **Prohibited Uses.** Buyer agrees that the material sold hereunder will be consumed by Buyer at the location(s) described in the Agreement. Without limiting the foregoing, Buyer warrants that it shall not cause or permit the material purchased hereunder to be shipped directly or indirectly through or to, or to be resold, exchanged, bartered or otherwise supplied to, any country, government, governmental entity, company, or national thereof subject to U.S. trade sanctions, or to any country, government, governmental entity, company, or national thereof with whom U.S. persons are prohibited from trading or dealing with under U.S. law. Upon Seller's request, Buyer agrees to notify Seller of the final destination of the material sold to Buyer by Seller and to provide Seller with relevant documentation adequate to verify such destination. In the event that Buyer is in breach of any provisions of this undertaking, Seller shall be entitled to terminate the Agreement immediately without any liability to Buyer, and Buyer shall hold Seller harmless and indemnify Seller from any damages, losses, inclusive of legal costs, costs, fines or penalties incurred by Seller, resulting from Buyer's breach.
- (11) **Safety.** Buyer shall (a) familiarize itself with MSDS supplied by Seller, (b) handle, store, transport, use and dispose the material in accordance with all applicable laws, rules and regulations, and (c) take appropriate action to prevent spills or other dangers to persons, property or the environment.
- (12) **Limitation of Actions.** Claims on account of weight, loss of or damage to the material are waived by Buyer unless made in writing within three (3) days after arrival thereof at destination, and any action for breach of the Agreement, other than for nonpayment hereunder, must be commenced within one (1) year of the date of shipment, or due date of delivery in the event of non-delivery, of the particular shipment upon which such claim is based.
- (13) **Limitation on Buyer's Remedies.** In the event the material sold hereunder does not conform to the specifications therefor, Buyer's remedy shall be limited to either a refund of the purchase price of the non-conforming material or, at Seller's option, the replacement of the non-conforming material with conforming material. In no event shall Seller be liable for special, incidental, indirect, consequential or punitive damages under the Agreement, all of which are expressly waived by Buyer.
- (14) **No Disclosure.** Except as may be compelled by a court or governmental agency of competent jurisdiction, or when written approval is given by the other party, neither party hereto will disclose the contents of the Agreement to any third party with the exception of the portions of the Agreement which must be disclosed in order to carry out the purpose of the Agreement.
- (15) **Severability.** If any provision of the Agreement, including any provision of the General Terms and Conditions, is held to be void, voidable or unenforceable by any court or governmental agency of competent jurisdiction, such holding shall not affect other provisions or the application or enforcement which can be given effect without the invalid provision. If such invalidity becomes known or apparent to Seller and to Buyer, they agree to negotiate promptly and in good faith to make appropriate changes to achieve the intent and spirit of the provision held to be invalid, consistent with applicable law.
- (16) **Governing Law.** The Agreement shall be governed by the laws of the State of Texas, including, without limitation, the Texas Business and Commerce Code (Uniform Commercial Code).
- (17) **Assignability.** The Agreement, and all rights incident thereto are for the benefit of Buyer and shall not be assignable to any third party, or to any successor or assignee of Buyer (by merger, consolidation, liquidation, operation of law or otherwise), without the prior written consent of Seller. Seller shall have the right to terminate the Agreement upon a written notice to Buyer in the event there is a change of ownership or managerial control of Buyer.