

**FUTUREFUEL CHEMICAL COMPANY**

**GENERAL TERMS AND CONDITIONS  
FOR  
BIOFUEL PRODUCT SALES**

**EFFECTIVE JANUARY 16, 2009**

These General Terms and Conditions apply to biofuel product sales by FutureFuel Chemical Company (FFCC.) The parties, contract date, contract number, product, quality, quantity, price, delivery mode, delivery location, delivery period, specifications or any other special terms and conditions will be furnished in writing by e-mail, TWX, telex, facsimile or other electronic means upon confirmation of the agreement for the purchase or sale of biofuel products and are referred to as the "Special Provisions". The Special Provisions incorporate by reference these General Terms and Conditions for biofuel product sales (the "General Conditions"). The Special Provisions together with these General Conditions constitute the parties' Purchase and Sale Agreement ("Agreement"). Any conflict between the Special Provisions and these General Conditions are to be resolved in favor of the Special Provisions.

**1. Title, Risk of Loss, and Delivery.**

**1.1 Title.** Title to, and all risk of loss of or damage to, any product delivered under this Agreement passes as follows: (a) when into any truck or tank car, at the time when the product passes the last flange of the delivery vehicle's facility; or (b) when into storage tank; or (c) when by book/stock transfer, on the effective date of the transfer. All sales are F.O.B. Batesville unless otherwise agreed to by the parties.

**1.2 Deliveries.** Deliveries will be made within FFCC's usual business hours and at such times as may be required by the buyer, provided that such time of delivery is made part of the Special Provisions. The seller will prepare and furnish the buyer with copies of bills of lading and other shipping papers.

**1.3 Default.** Failure to deliver product in accordance with the Special Provisions for any reason other than those included in Section 8 Force Majeure of these General Conditions constitutes a default under this Agreement.

**2. Acceptance.** Delivery or receipt of the product hereunder constitutes acceptance of these General Conditions unless written rejection of any provision herein is received within forty-eight (48) hours after receipt by the other party of the Special Provisions applicable hereto of this Agreement. Acceptance of the terms of this Agreement by either the buyer or seller is expressly limited to the terms set forth in this Agreement, and any additional or different terms proposed by a party other than FFCC are rejected unless expressly agreed to in writing by FFCC.

### **3. Quality, Quantity and Inspection.**

**3.1 Quality.** Quality of the product sold hereunder and delivered from any FFCC facility is to be determined by seller's existing BQ 9000 certification unless additional specifications are agreed to by seller and buyer.

**3.2 Quantity.** All volumes or quantities of product shall be net volumes or quantities as adjusted by API/ASTM Standards. Metering systems must conform to the API/ASTM Standards applicable to meter calibration/accuracy. The volume or quantity of the product shall be determined by seller's bill of lading for tank truck or railcar.

**3.3 Inspection.** Unless otherwise agreed in the Special Provisions, seller's certificate of analysis shall be provided in lieu of third-party inspection.

### **4. Payment Terms.**

**4.1 Payment.** Unless otherwise specified in the Special Provisions, following physical movement of all product purchased hereunder, the buyer must make payment via wire transfer, Automated Clearing House transfer, or receipt of valid check of immediately available federal funds to the seller (at such address or depository as the seller may designate in writing) in U.S. dollars within ten (10) working days of ship date, but not prior to receipt of invoice and supporting documents. Book/stock transfer receipts must be paid on the effective date of the transfer. If the payment due date falls on a Saturday, a Sunday or on a day which is a bank holiday in the place where payment is to be made, payment may be made in immediately available funds to the seller on the next banking day after such payment due date.

**4.2 Credit Arrangements; Assurance.** The buyer will establish and maintain credit satisfactory to the seller during the term of the Agreement. If the buyer fails to maintain satisfactory credit, the seller may suspend deliveries of product until satisfactory credit is reestablished. In the absence of satisfactory credit arrangements, at any time prior to commencement of loading of the product, the seller has the right to require the buyer to establish in the seller's favor for any shipment either: (a) a parent company assurance in form and substance satisfactory to the seller of the prompt payment, when due, of any and all present or future indebtedness of the buyer as a result of any sale of product hereunder; or (b) a standby letter of credit in form and substance specified by the seller issued or confirmed by a bank acceptable to the seller and in an amount sufficient to cover the estimated invoice amount of the shipment. All bank charges attendant to such letter of credit will be for the account of the buyer. If the seller elects to load or discharge the product, any demurrage resulting from delays to the seller's tank truck or railcar pending receipt by the seller of required credit document in form and substance acceptable to the seller is for the account of the buyer. In the event of breach of this Section 4.2 by buyer, the buyer shall be liable to pay seller incidental, exemplary or consequential damages, including lost profits, incurred by the seller as a result of such breach.

**4.3 Default Interest.** Any amount payable for any product or otherwise payable by the buyer to the seller hereunder, if not paid when due, bears interest from the due date until the date payment is received by the seller at an annual rate (based on a 360-day year)

equal to the rate of two (2) percentage points above the prime rate of interest effective for the payment due date as published in The Wall Street Journal, but not more than the maximum rate of interest permitted under applicable law. The buyer must pay such interest within five (5) days following receipt of the seller's invoice for such interest.

**4.4 Offset.** The buyer hereby grants to the seller the right to set off and to apply any money, accounts payable or product balance owed by the seller to the buyer or any collateral of every description held by the seller to secure any indebtedness or obligation owed by the buyer to the seller against any unpaid money or accounts receivable owed to the seller by the buyer.

**4.5 Insolvency.** In the event either party becomes insolvent, makes an assignment or any general arrangement for the benefit of creditors, or if there are instituted by or against either party proceedings in bankruptcy or under any insolvency law or law for reorganization, receivership or dissolution, the other party may withhold shipments or cancel this Agreement to the fullest extent permitted by law.

**5. Taxes.** Any and all taxes, fees or other charges imposed or assessed by governmental or regulatory bodies, the taxable incident of which is the transfer of title or the delivery of the product hereunder, or the receipt of payment therefore regardless of the character, method of calculation or measure of the levy or assessment, will be paid by the party upon whom the tax, fee or charge is imposed by law, except that the buyer must reimburse the seller for all federal, state and local taxes, fees or charges which are imposed by law on the seller (other than taxes based on or measured by income). The importer of record is responsible for and will pay all custom duties, import fees, environmental fund fees and other assessments pertaining to the importation of the products.

**6. Warranty.** The seller warrants that it has good and marketable title to the product, that the product conforms to the seller's specifications set forth in the Special Provisions and that such product will be delivered free from lawful security interests, liens, taxes and encumbrances. The seller warrants that the delivered product will meet the specifications for that product at the delivery location and the delivery time as required by any governmental regulations. THE SELLER MAKES NO OTHER WARRANTY OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY EXPRESSLY DISCLAIMED BY THE SELLER AND EXCLUDED FROM THIS AGREEMENT.

**7. Nonperformance and Liquidation.** Notwithstanding any other provision of this or any other commodity contract between the parties, if either party (the "Non-performing Party") (i) defaults in the payment or performance of any obligation to the other party (the "Performing Party") under this or any other agreement after two business days notice of such failure, (ii) files a petition or otherwise commences or authorizes the commencement of a proceeding or case under any bankruptcy, reorganization or similar law for the protection of creditors or has any such petition filed or proceeding commenced against it, (iii) otherwise becomes bankrupt or insolvent (however evinced), (iv) is unable to pay its debts as they fall due or (v) fails to comply with the seller's requirements pursuant to Section 4.2 of these General Conditions within forty-eight (48) hours of such request to

comply, the Performing Party has the right immediately to liquidate and close out any or all forward contracts then outstanding between the parties. The Performing Party will: (a) close out each such forward contract at its market value as reasonably determined by the Performing Party at such time (so that a settlement payment in an amount equal to the difference, if any, between such then prevailing market value and the value specified in such contract will be due to the buyer under that forward contract if such market value is greater than such contract value and will be due to the seller under that forward contract if the opposite is the case); (b) set off all market damages so determined and payable by each of the parties to the other; and (c) set off all margin held by either to secure the obligations of the other party (including all payments due to the other party with respect to deliveries received from such other party, which payments, prior to payment, will be deemed to be held by each as margin to secure the other party's obligations from time to time incurred). All such amounts will be aggregated or netted to a single liquidated amount payable within one business day by the party owing the greater such amount to the other. The Non-Performing Party will indemnify and hold the Performing Party harmless from all costs and expenses (including reasonable attorney's fees) incurred in the exercise of any remedies hereunder. The parties acknowledge that this Agreement constitutes a forward contract for the purposes of §556 of the U.S. Bankruptcy Code.

## **8. Force Majeure.**

**8.1 Effect of Force Majeure.** If either party is rendered unable by force majeure to perform or comply fully or in part with any obligation or condition of the Agreement, the affected party must give written notice to the other party of such force majeure event within forty-eight (48) hours after receiving notice of the occurrence of the force majeure event relied upon. In such event, both parties will be relieved of liability and will suffer no prejudice for failure to perform their obligations hereunder during such period, except for the obligations to make payment for any and all product received pursuant to this Agreement prior to the occurrence of such force majeure event. In the event that such period of suspension continues in excess of thirty (30) calendar days, this Agreement may be canceled at the option of either party, without further liability of either party.

**8.2 Definition.** As used herein, the term "force majeure" includes, by way of example and not in limitation, fire, acts of god, adverse weather, navigational accidents, truck or tank damage or loss, accidents at or closing of a navigational or transportation mechanism, strikes, grievances or actions by or among workers, lock-outs or other labor disturbances, explosions or accidents to storage depots, machinery and other facilities, actions of any government or by any person purporting to represent a government, shortage, interruption or curtailment of crude oil, acts of terrorists or other causes not reasonably within the control of the affected party and which such party, by the exercise of reasonable diligence, could not have prevented or overcome. Force majeure specifically excludes increases or decreases in market prices or the availability of alternate supplies or markets at the same or different prices.

**9. Health, Safety and the Environment.** The seller has provided or will provide to buyer upon the buyer's request the seller's Material Safety Data Sheets ("MSDS") for the product to be delivered hereunder. The buyer acknowledges that there may be hazards associated with the loading, unloading, transporting, handling or use of the product sold

hereunder, which may require that warning be communicated to or other precautionary action taken with all persons handling, coming into contact with or in any way concerned with the product sold hereunder. The buyer assumes as to its employees, independent contractors and subsequent purchasers of the product sold hereunder all responsibility for all such necessary warnings or other precautionary measures relating to hazards to person and property associated with the product sold hereunder. Nothing herein excuses the buyer from complying with all laws, regulations and decrees which may require the buyer to provide its employees, agents, contractors, users and customers who may come into contact with the product with a copy of the MSDS and any other safety information provided to it by the seller, or which require the buyer to ensure that the recommendations relating to the handling of the product are followed. Compliance with any recommendation contained in the MSDS or other safety information does not excuse the buyer from complying with all laws, statutes, regulations or decrees of any state or territory having jurisdiction over the buyer. The buyer agrees to defend at its own expense, indemnify fully and hold harmless the seller and its parents, subsidiaries, and affiliates and its and their agents, officers, directors, employees, representatives, successors and assigns, from and against any and all liabilities, losses, damages, demands, claims, penalties, fines, actions, suits, legal, administrative or arbitration proceedings, judgments, orders, directives, injunctions, decrees or awards of any jurisdiction, costs and expenses (including attorneys' fees and related costs) arising out of or in any manner related to the buyer's failure to provide necessary warnings or other precautionary measures in connection with the product sold hereunder as provided above.

**10. Limitation of Liability.** Except as expressly provided herein to the contrary, in no event will either party be liable for specific performance or for incidental, exemplary or consequential damages, including lost profits, except as expressly so provided in Section 4.2 of these General Conditions. However, this Section does not apply to such damages asserted by third parties against one or both of the parties. Notice of claim as to defect in quantity or quality with respect to any delivery of product must be made in writing to the seller immediately after such apparent defect is discovered. Any such notice of claim must be followed promptly by a formal written claim with all necessary details to properly process such claim. **IF NO FORMAL WRITTEN CLAIM IS RECEIVED WITHIN TWENTY (20) DAYS AFTER DELIVERY OF THE PRODUCT TO THE BUYER, THE CLAIM WILL BE DEEMED TO HAVE BEEN WAIVED.** Further, any actions to enforce any rights or obligations under this Agreement must be filed in court against the other party no later than twenty-four (24) months after the date on which the alleged breach of this Agreement occurred. For purposes of this Agreement, the date of the completion of loading or discharging, as applicable, with all hoses disconnected, will be deemed the date of delivery. The seller's liability in the event of breach of its warranty set forth in Section 6 is limited to replacement of the products supplied by it and any costs directly associated with the removal of product. No claim hereunder for shortage in quantity may exceed the purchase price of such product under the Agreement.

**11. Plant Regulations.** All employees of each party when on the property of the other will conform to the other party's rules and regulations concerning safety, routing procedures, product handling, vehicle parking and the like.

**12. Equal Opportunity and Affirmative Action.** If the following conditions for a regulation are applicable, the parties must comply with that regulation: (i) if this Agreement is \$10,000 or more, Affirmative Action Compliance (48 CFR 52.222-25), Certificate of Non-Segregated Facilities (41 CFR 60-1.8 and 48 CFR 52.222-21), Affirmative Action for Special Disabled and Vietnam Era Veterans (41 CFR 60-250-1 & 4 and 48 CFR 52.222-35), Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (48 CFR 52.219-8 and 48 CFR 19.702), and Utilization of Women Owned Small Businesses (Executive Order 12138 and 48 CFR 52.219-13); (ii) if the annual aggregate value of this Agreement exceeds \$10,000, Equal Opportunity Clause (Executive Order 11246, 41 CFR 60-1.4, and 48 CFR 52.222-26); (iii) if this Agreement is \$25,000 or more, Utilization of Labor Surplus Area Concerns (48 CFR 52.220-3) and Drug Free Work Place Act; (iv) if the other party has 50 or more employees and if the annual aggregate value of this Agreement exceeds \$50,000, Affirmative Action Programs (41 CFR 60-1.7 & 60-1.40, 48 CFR 22.804-1, and 48 CFR 52.222-25 & 27); (v) if the annual aggregate value of this Agreement exceeds \$100,000 and if any facility used herein has been the subject of a conviction under the Clean Water Act or Clean Air Act and is listed by the U.S. EPA as a violating facility, the Clean Air and Water Certification (48 CFR 52.223-1) and the Clean Air and Water (48 CFR 52.223-2) sections apply; and (vi) if this Agreement exceeds \$500,000, Labor Surplus Area Subcontracting Program (48 CFR 52.220-4) and Small Business and Small Disadvantaged Business Subcontracting Plan (48 CFR 52.219-9) and all other applicable sections in 41 CFR 60.

**13. Commissions and Gifts.** No director, officer, employee or agent of either party may give or receive any commission, fee, rebate, gift or entertainment of significant value or cost in connection with this Agreement. Further, neither party may make any commission, fee, rebate, gift or entertainment of significant value or cost to any governmental official or employee in connection with this Agreement.

**14. Compliance with Laws.** During the performance of this Agreement, each party hereto agrees to comply with all laws, rules, regulations, ordinances and requirements of federal, states and local governmental or regulatory bodies which are applicable to this Agreement, including the provisions contained in the regulations identified in Section 12, to the extent that such regulation or regulations are applicable to this Agreement.

**15. Dispute Resolution.**

**15.1 Resolution by the Parties.** The parties will attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement promptly by negotiations. If a controversy or claim should arise, the representatives of the parties who negotiated the same, or their respective successors (“Principal Contacts”), will discuss or meet at least once and will attempt to resolve the matter. If no resolution results, either Principal Contact may request that the other meet within 14 days, at a mutually agreed time at the offices of FFCC. If the other party agrees to do so, and if the matter has not been resolved within twenty (20) days of their first meeting, the Principal Contacts must refer the matter to senior executives of their respective companies who have authority to settle the dispute (the “Senior Executives”). Thereupon, the Principal Contacts will promptly prepare and exchange memoranda stating the issues in dispute and their positions, summarizing the negotiations which have taken place and attaching relevant

documents. The Senior Executives will meet for negotiations within fourteen (14) days of the end of the twenty (20) day period referred to above, at a mutually agreed time. The first meeting will be held at the offices of FFCC.

**15.2 Resolution by Third Parties.** If the Senior Executives cannot amicably resolve a dispute within 30 days of the meeting of the Senior Executives (which period may be extended by mutual agreement), either party may invoke alternative dispute resolution (“ADR”) hereunder. The party invoking ADR (the “Invoking Party”) must provide to the other party a written notice that the Invoking Party is seeking ADR, which notice must explicitly identify the issue or issues in dispute and appoint a knowledgeable, neutral ADR panel member. Within thirty (30) days of receipt of such notice, the other party must appoint a knowledgeable, neutral ADR panel member. Promptly thereafter, the two ADR panel members must appoint a third knowledgeable, neutral ADR panel member. The parties will split the costs of the ADR panel. The members of the ADR panel must agree to adhere to “The Code of Ethics for Arbitrators in Commercial Disputes” published by the American Arbitration Association. Within 30 days after the appointment of the third ADR panel member, each party must submit to the ADR panel and the other party a brief containing its last and final position pertaining to the issue in dispute, and such brief cannot be longer than ten double spaced typed pages per issue in dispute. After receipt of the briefs, the ADR panel by majority rule must rule in favor of one party’s position on each issue in dispute. However, the ADR panel may not compromise or create its own resolution to an issue in dispute. Any ADR proceeding shall take place in Batesville, AR or Little Rock, AR as the parties shall mutually agree. Such ADR panel decision on each issue is binding and enforceable hereunder unless a party appeals that ADR panel decision on an issue to a court of general jurisdiction within 90 days after the panel has rendered its ruling pertaining to the issue in dispute. The party appealing the ADR panel decision to a court of general jurisdiction is entitled to a trial de novo on the issue in dispute.

**16. Indemnification.** The buyer agrees to indemnify and hold the seller harmless from liability for any and all losses, demands or claims arising from injuries or damages which occur after title is transferred to the buyer and in connection with the transportation, use or handling of any product covered by this Agreement, whether deliveries are made to the buyer, its assigns or nominees.

**17. General Provisions.**

**17.1 Amendment and Modification.** No amendment, modification, supplement, termination, consent or waiver of any provision of this Agreement, nor consent to any departure therefrom, will in any event be effective unless the same is in writing and is signed by the party against whom enforcement of the same is sought. Any waiver of any provision of this Agreement and any consent to any departure from the terms of any provision of this Agreement is to be effective only in the specific instance and for the specific purpose for which given. No waiver by either party of any breach by the other party of any of the covenants or conditions herein contained is a waiver of any succeeding breach of the same or any other covenants or conditions contained herein.

**17.2 Assignments.** No party may assign or transfer any of its rights or obligations under this Agreement to any other person without the prior written consent of

the other party, which consent may not be unreasonably withheld, delayed or conditioned. Notwithstanding the preceding sentence, either party may assign its rights under this Agreement without consent, including the performance thereof, in whole or in part to (a) its parent corporation or any affiliate of such party; (b) the successor of all or of substantially all of its entire business and assets; or (c) an entity which either party may merge into or be consolidated in, provided that the other party is not prevented by any applicable law from doing business with the assignee, and that any such assignment does not release the assigning party of any of its obligations hereunder.

**17.3 Captions.** Captions contained in this Agreement have been inserted herein only as a matter of convenience and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision hereof.

**17.4 Construction.** Unless the context of this Agreement clearly requires otherwise: (i) references to the plural include the singular and vice versa; (ii) references to any person include such person's successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement; (iii) references to one gender include all genders; (iv) "including" is not limiting; (v) "or" has the inclusive meaning represented by the phrase "and/or"; (vi) the words "hereof", "herein", "hereby", "hereunder" and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement; (vii) section references are to this Agreement unless otherwise specified; (viii) reference to any agreement (including this Agreement), document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof; and (ix) general or specific references to any law mean such law as amended, modified, codified or reenacted, in whole or in part, and in effect from time to time.

**17.5 Counterpart Facsimile Execution.** For purposes of this Agreement, a document (or signature page thereto) signed and transmitted by e-mail, facsimile machine, telecopier or similar means is to be treated as an original document. The signature of any party thereon, for purposes hereof, is to be considered as an original signature, and the document transmitted is to be considered to have the same binding effect as an original signature on an original document. No party may raise the use of e-mail, a facsimile machine or telecopier or similar means of transmission, or the fact that any signature was transmitted through the use of e-mail, a facsimile or telecopier machine or similar means of transmission, as a defense to the enforcement of this Agreement or any amendment or other document executed in compliance with this Section.

**17.6 Counterparts.** This Agreement may be executed by the parties on any number of separate counterparts, and all such counterparts so executed constitute one agreement binding on all the parties notwithstanding that all the parties are not signatories to the same counterpart.

**17.7 Entire Agreement.** This Agreement, consisting of the Special Provisions and these General Conditions, constitutes the entire agreement among the parties pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions of the parties, whether oral or written.

**17.8 Failure or Delay.** No failure on the part of any party to exercise, and no delay in exercising, any right, power or privilege hereunder operate as a waiver thereof; nor does any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof, or the exercise of any other right, power or privilege. No notice to or demand on any party in any case entitles such party to any other or further notice or demand in similar or other circumstances.

**17.9 Governing Law and Jurisdiction.** This Agreement and the rights and obligations of the parties hereunder are to be governed by, construed, interpreted, and enforced in accordance with the laws of the State of Arkansas applicable to contracts made and to be performed wholly within Arkansas, without regard to choice or conflict of laws rules. The parties agree that any dispute, claim, or cause of action between the parties arising out of this Agreement or to enforce this Agreement may be brought in the State of Arkansas or in any state of competent jurisdiction. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not in any way apply to or govern this agreement.

**17.10 Notices.** All notices, invoices and other communications under this Agreement are deemed given on the date of the addressee's receipt thereof and may be given only by letter, telegram, cable, telex, facsimile, e-mail or similar electronic transmission.

**17.11 Remedies Not Exclusive.** Each and every right granted hereunder and the remedies provided for under this Agreement are cumulative and are not exclusive of any remedies or rights that may be available to any party at law, in equity or otherwise.

**17.12 Successors and Assigns.** All provisions of this Agreement are binding upon, inure to the benefit of and are enforceable by or against the parties and their respective successors and assigns.

[end of the General Conditions]