
Terms and Conditions of Purchase

Birla Carbon/Columbian Chemicals Company

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Application of Terms. These Terms and Conditions are between

("Seller") and Columbian Chemicals Company, for itself and on behalf of its affiliates engaged in the production of carbon black (collectively, "Birla Carbon"), and together with the Purchase Order into which they are incorporated, form the parties' agreement ("Agreement"). Written acknowledgment of these Terms and Conditions or Seller's performance under the Purchase Order, whichever occurs first, constitutes Seller's acceptance of the Agreement. These Terms and Conditions shall prevail over any other agreement or terms and conditions

Time for Performance. TIME IS OF THE ESSENCE IN SELLER'S PERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT. Birla Carbon is not bound to pay for goods or services delivered in advance of schedule or in excess of ordered amounts.

Scope of the Agreement. Seller intends to provide Birla Carbon with the specific goods and related services described within the Agreement, and Birla Carbon agrees to pay for such goods and services under the terms of this Agreement. This Agreement does not create an exclusive arrangement nor obligate Birla Carbon to purchase in any minimum amounts. Nothing in this Agreement may be construed as obligating Birla Carbon to purchase a particular quantity, volume, or value of goods or services and this Agreement must not be construed as a "take-or-pay" agreement.

Term of the Agreement. This Agreement expires when performance under it is complete; however, the parties' rights and obligations that are intended by their nature to continue beyond the term of the Agreement, such as warranties, indemnification, and records retention, survive the Agreement's expiration or termination.

Cancellation for Convenience. Unless otherwise stated in the Purchase Order, Birla Carbon reserves the right to cancel this Agreement upon 30 days' written notice to Seller. Upon cancellation, Birla Carbon's sole responsibility is to pay for the goods and services that have been provided as of the effective date of cancellation. Seller is required to mitigate its damages.

Termination for Breach. If Seller is in breach of any provision hereof, Birla Carbon is entitled to terminate this Agreement upon written notice to Seller. If either party dissolves, becomes insolvent, makes an assignment for the benefit of creditors, or becomes the subject of bankruptcy proceedings, whether voluntary or involuntary, including reorganization or receivership, the other party is entitled to terminate this Agreement immediately by written notice to the party presumed to be insolvent. If Birla Carbon terminates this Agreement because of Seller's breach, Birla Carbon is responsible to pay Seller only for the percentage of services completed through the effective date of termination, less any damages allowed as stated within this Agreement, without regard to Seller's other expenses incurred or profit anticipated.

MSDSs. Seller is responsible to provide Birla Carbon with any applicable Material Safety Data Sheets ("MSDS") immediately upon the delivery of goods or materials to Birla Carbon's premises. Seller must maintain file copies of those MSDSs as well as any MSDSs provided by Birla Carbon to Seller.

Compliance.

(a) Seller must comply with all applicable laws, statutes, rules, and regulations regarding its activities under this Agreement.

(b) Birla Carbon is committed to conducting its business fairly, impartially and in an ethical and proper manner and expects the same level of ethics from its suppliers and service providers. Seller must not offer or accept gifts, money, loans, unusual hospitality, or any other products or services of monetary value, either directly or indirectly, to or from any party that could influence Birla Carbon's business or operations, including governmental authorities, or Birla Carbon's employees, representatives, and subcontractors. If Seller suspects that any Birla Carbon employee, representative, or subcontractor has acted improperly or unethically in its transactions with Seller, Birla Carbon requests that Seller report that conduct using Birla Carbon's hotline. Birla Carbon's Code of Global Business Ethics and Compliance Standards and the appropriate hotline telephone numbers are available at <http://www.birlacarbon.com/pdf/Birla-Carbon---Code-of-Ethics-pdf>.

Prices. Fees or charges calculated on a periodic basis must be pro-rated for any partial periods of beginning or ending service or for the duration of any period in which services are abated. Unless otherwise stated in the Purchase Order, if the performance of this Agreement is intended to continue for longer than one year, then:

(a) Seller cannot increase its prices to Birla Carbon until the second year of the Agreement;

(b) Seller may increase prices no more than once annually after the first year of the Agreement; and

(c) Seller must give Birla Carbon at least 90 days' prior written notice of any approved price increase.

Payment and Invoicing. Before any payment may begin under this Agreement, Seller must provide Birla Carbon with any tax form or certification that Birla Carbon requires. Unless otherwise stated in the Purchase Order:

(a) Birla Carbon will pay Seller the amounts due within 45 days after invoice approval; and

(b) Seller is responsible for all of its costs and out-of-pocket expenses incurred in connection with its performance under this Agreement.

Status of the Parties. Seller is acting under this Agreement in the capacity of an independent contractor, and nothing contained within this Agreement may be interpreted or construed to create any relationship of employment, partnership, joint venture, or agency.

Confidentiality. In addition to and not in lieu of any other confidentiality agreement signed by Seller and Birla Carbon, both parties agree to treat as confidential all information supplied by the other party, and not in the public domain, in connection with the Agreement. Each party agrees to limit: (a) the use of such information to the performance of the Agreement and (b) the disclosure of such information to only those employees necessary for the performance of the Agreement, unless prior written consent has been granted by the disclosing party to permit other use or disclosure. Each party shall return such information, and all copies thereof, upon the other party's written request. Seller shall not in any manner advertise or publish or release for publication any statement mentioning Birla Carbon or the fact that Seller has furnished or contracted to furnish articles required by this Agreement.

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Intellectual Property.

(a) Seller warrants that it has the rights to use (and transfer as necessary) the technology, facilities, know-how, and equipment that will be involved in the performance of the Agreement.

(b) Birla Carbon retains ownership of all intellectual property rights to all designs, drawings, blueprints, descriptions, specifications, samples, or other materials being provided to Seller in connection with, or developments made pursuant to, this Agreement.

(c) Without Birla Carbon's prior written approval, Seller must not:

(i) use Birla Carbon's name, brand names, trademarks, commercial symbols, or copyrighted text, or the names of Birla Carbon's personnel, on Seller's website or in any publicity releases or advertising of any nature;

(ii) represent, directly or indirectly, that any product provided, or any services performed, by Seller has been approved or endorsed by Birla Carbon; or

(iii) take or use photographs or images of Birla Carbon property or of Birla Carbon personnel.

Insurance. Seller shall procure and maintain in full force and effect during the performance of these Terms and Conditions comprehensive General Liability insurance in an amount not less than \$5,000,000 per occurrence as will protect the Seller against all claims for bodily injury (including death) or property damage as may arise from performance of the services under these Terms and Conditions. Such General Liability coverage will include coverage for Products Liability (including complete operations), Contractual Liability, and Personal Injury Liability. Seller shall further procure and maintain Automobile Liability Coverage in an amount not less than \$1,000,000 per accident for any bodily injury (including death) or property damage which may arise from performance of the services under these Terms and Conditions. Seller shall obtain inclusion of Birla Carbon as an additional insured under such General and Automobile Liability policies. Seller shall provide Birla Carbon with copies of a Certificate of Insurance confirming that the coverage is in force and will not be cancelled without thirty (30) days prior written notice to Birla Carbon.

Force Majeure. Neither party is liable for a delay or failure in performance of any part of this Agreement if the delay or failure is caused by:

- (a) acts of governmental authorities, including agencies and political subdivisions;
- (b) revolution, riot, or other civil disturbance or disorder, including acts of enemies or of terrorists;
- (c) strike, or other dispute with or among labor unions;
- (d) Birla Carbon's plant closure;
- (e) storm, fire, flood, explosions, or acts of God; or
- (f) other cause not within the party's reasonable control.

The acting party is excused from further performance of its obligations for the duration of a force majeure event.

Choice of Law; Severability. This Agreement is governed by the substantive laws of the State of Georgia, without reference to its principles of choice or of conflicts of law. If a provision of this Agreement is found to be unenforceable, then that provision either may be enforced to the maximum extent allowed by law or may be considered severed from this Agreement. Any unenforceable provision does not invalidate any other provision of this Agreement.

Audit. Seller must keep accurate records of all transactions in sufficient detail to enable Birla Carbon to determine the amounts that it should be charged under this Agreement. At a reasonable time, and upon reasonable notice, Birla Carbon may audit Seller's records for the transactions handled under this Agreement. If Birla Carbon discovers any overcharges, Seller must reimburse Birla Carbon for the overcharges. If such overcharges exceed five percent of the correct charges, then Seller will be obligated to pay the costs of the audit.

Setoff. Birla Carbon shall have the right at any time to set-off any amount owing by Seller to Birla Carbon or any affiliated company under this Agreement or any other contract, agreement, or purchase/change order between Seller and Birla Carbon against any amount due or owing to Seller.

Notices. Any notices required under this Agreement must be in writing and be sent to Seller at the address shown on the Purchase Order attached and to COLUMBIAN CHEMICALS COMPANY, 1800 West Oak Commons Court, Marietta, Georgia 30062-2253, Attn: Legal Department, with a copy to the Purchasing Department, or to any other address either party substitutes by written notice. Notice must be given in a way that will establish proof of delivery.

Assignment. Seller must not assign this Agreement, nor any portion of it, without Birla Carbon's prior written consent. Birla Carbon is entitled to assign this Agreement to any affiliate or any other party that agrees to honor the terms hereof. This Agreement binds and benefits the parties and their respective representatives, successors, and permitted assigns.

Modifications and Waiver. This Agreement may be modified or supplemented, or rights or duties under the Agreement waived or discharged, only by a written amendment signed by both parties' authorized representatives; no later course of dealing or conduct of the parties may modify or extend this Agreement. If either party fails at any time to enforce any provision of this Agreement, that failure must not be construed as a waiver of that provision or of any other provision.

Entire Agreement. This document, together with the Purchase Order and any other documents identified as being part of this Agreement, states the complete, exclusive, and final terms of agreement between the parties regarding its subject matter. It supersedes all prior and contemporaneous agreements, understandings, negotiations, proposals, letters, e-mails, and representations, whether written or oral, and including any course of dealing established between the parties.

To acknowledge their agreement, the parties' duly authorized representatives have signed below:

Birla Carbon: Columbian Chemicals Company

By: _____

Title: _____ Date Signed: _____

Seller: [Insert Seller's Legal Name]

By: _____

Title: _____ Date Signed: _____