

## TERMS AND CONDITIONS

### 条款和条件

These terms and conditions (the “Terms and Conditions”) apply to and govern all purchases of goods and services by **[BIRLA CARBON ENTITY]** (“Birla Carbon”) from **[FULL LEGAL NAME]** (“Vendor”), as referenced in any purchase orders or statements of work (collectively, the “Purchase Order”) executed by the parties (the Terms and Conditions and the Purchase Orders being collectively referred to as the “Agreement”). Birla Carbon’s acceptance of the Agreement is expressly limited to these Terms and Conditions and the Purchase Orders. **ANY TERMS AND CONDITIONS CONTAINED IN ANY OFFER TO SELL, QUOTATION, INVOICE, ACCEPTANCE, ORDER ACKNOWLEDGEMENT, PROPOSAL, OR OTHER DOCUMENTS OF VENDOR WILL NOT CONSTITUTE A PART OF THE AGREEMENT AND ARE HEREBY REJECTED.** The signature of an employee of Birla Carbon on a document presented by Vendor in connection with the delivery of any goods shall only constitute acknowledgement that such goods have been delivered and shall not constitute Birla Carbon’s assent to any terms and conditions different from or in addition to those stated in the Agreement.

下述经**[博拉炭黑实体]** (“博拉炭黑”) 和**[完整法定名称]** (“供应商”) 签署的任何采购订单或工作说明 (统称为“采购订单”) 中引用的条款和条件 (“条款和条件”) 适用于博拉炭黑从供应商处购买所有商品和服务 (本条款和条件以及采购订单统称为“协议”)。博拉炭黑对协议的接受明确限于该等条款和条件以及采购订单的规定。**供应商提供的要约、报价、发票、承诺、订单确认函、提议或其他文件中的任何条款和条件将不构成本协议的一部分, 博拉炭黑特此拒绝该等条款对其适用。** 博拉炭黑雇员在供应商因交付货物而出具的文件中的签名仅表示对该等货物已交付的确认, 不构成博拉炭黑对任何不同于或补充于本协议条款和条件的认可。

**Packaging and Risk of Loss.** All goods must be sufficiently packed, at Vendor’s expense, and all packaging, cartons, and containers must be adequately labeled to identify their contents and origin. Unless otherwise set forth in the applicable Purchase Order, title to and risk of loss for the goods remains with Vendor until the goods are delivered at the point specified in the Purchase Order, or if no point is specified, when the goods are delivered to Birla Carbon. If the goods are of an explosive, flammable, toxic, or otherwise dangerous nature, Vendor must indemnify and hold Birla Carbon harmless from any claims for personal injury or property damage caused by the goods or by their transportation before they are unloaded at Birla Carbon’s plant or warehouse. Vendor must provide Birla Carbon with any applicable Material Safety Data Sheet (“MSDS”) forms immediately upon the delivery of materials to Birla Carbon’s premises. Vendor must maintain file copies of those MSDSs as well as any MSDSs provided by Birla Carbon to Vendor.

**包装和损失风险。** 所有商品必须经过充分包装, 费用应由供应商承担, 且所有包装、纸箱和容器必须充分标识以标注其产品内容和来源。除非适用的采购订单中另有规定, 在货物交付至采购订单中的指定地点前, 货物的所有权和损失风险仍由供应商承担; 若未指定地点, 当货物交付至博拉炭黑时, 所有权和风险转移。如果货物具有爆炸性、易燃性、毒性或其他危险属性, 对于在博拉炭黑工厂或仓库卸货前因货物或货物运输造成的任何人身损害或财产损失索赔, 供应商应对博拉炭黑进行赔偿并确保其不受任何损失。在向博拉炭黑交付材料后, 供应商必须立即向博拉炭黑提供任何适用的材料安全数据表 (“安全数据表”)。供应商必须保留上述安全数据表以及任何博拉炭黑向供应商提供的其他安全数据表。

**Shipment and Inspection.** Birla Carbon may inspect any goods at Vendor’s place of business or after the goods have been delivered, at its discretion. Payment for the goods does not constitute acceptance of the goods. Birla Carbon may reject any portion of a shipment containing defective or non-conforming goods or, at Birla Carbon’s option, return it for prompt credit or replacement at Vendor’s cost and risk. Birla Carbon’s failure to inspect any goods shall not be construed as an acceptance of defective or non-conforming goods or as a waiver of any of Birla Carbon’s rights and remedies hereunder.

**装运和检验。** 博拉炭黑可以自行决定在供应商营业地点或货物交付后检查任何货物。支付货款不构成对货物的接受。博拉炭黑可以选择拒收任何有缺陷或不合格的货物的部分, 或选择在供应商承担费用和风险的前提下, 将货物及时退还并获记账存款或要求换货。博拉炭黑未检查货物的行为不得被解释为其对有缺陷或不合格的货物的接受或放弃其在本协议项下拥有的任何权利和可采取的任何补救措施。

**Prices and Payment.** Vendor warrants that the prices set forth in the Agreement are complete and that no additional charge of any kind will be added. Unless otherwise set forth in the applicable Purchase Order, the payment terms are sixty (60) days after Birla Carbon’s receipt of a valid invoice from Vendor. Fees or charges calculated on a periodic basis must be pro-rated for any partial periods or for the duration of any period in which services are abated. Unless otherwise set forth in the applicable Purchase Order, Vendor cannot increase its prices under this Agreement without the prior written consent of Birla Carbon.

**价格和支付。** 供应商承诺协议中规定的价格是货物的总价, 不会增加任何额外费用。除非适用的采购订单中另有规定, 博拉炭黑的付款期限为收到供应商有效发票后的六十 (60) 天。对于任何不完整的期间或就服务减少的任何期间, 按期计算的费用或收费应同比作出相应的调整。除非适用的采购订单中另有规定, 未经博拉炭黑事先书面同意, 供应商不得提高本协议约定的价格。

**Timing. TIME IS OF THE ESSENCE IN VENDOR’S PERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT.**

**时间。** 时间是本协议项下供应商履行义务的关键。

**Termination.** Birla Carbon may terminate this Agreement for any reason upon 30 days’ prior written notice to Vendor. Birla Carbon may terminate this Agreement immediately if (i) Vendor is in material breach of this Agreement, or (ii) Vendor is adjudicated bankrupt, files a petition in bankruptcy, or makes an assignment for the benefit of creditors. Within thirty (30) days after any termination, Vendor shall provide Birla Carbon with (i) any completed goods or other deliverables, and (ii) a detailed summary of the actual, reasonable, direct costs of Vendor’s performance under this Agreement prior to the effective date of the termination (the “Termination Costs”) for which Vendor seeks reimbursement from Birla Carbon, provided that the Termination Costs shall not exceed the price set forth in the applicable Purchase Order. Birla Carbon shall pay all undisputed Termination Costs to Vendor within thirty (30) days of receipt.

**终止。** 博拉炭黑可以在提前三十 (30) 日向供应商发出书面通知后以任何原因终止本协议。博拉炭黑可以基于以下情况立即终止本协议: (i) 供应商实质违反本协议, 或(ii) 供应商被裁定破产、提交破产申请、或为债权人的权益进行转让。在任何终止情形发生后的三十 (30) 天内, 供应商应向博拉炭黑提供(i) 任何已完成的货物或其他可交付物, 以及(ii) 在本协议终止生效日之前, 供应商因履行本协议项下义务而产生的实际、合理、直接成本 (“终止成本”) 的详细汇总, 从而据此从博拉炭黑处获得补偿, 但终止成本不得超过适用的采购订单中规定的价格。博拉炭黑应在收到上述详细汇总文件后的三十 (30) 天内向供应商支付所有无争议的终止成本。

**Compliance.** Vendor and its employees, agents, and subcontractors must comply with all applicable laws, regulations, permitting requirements, and other governmental requirements (including, without limitation, labor and employment, anti-corruption, tax, anti-bribery, data protection, and environmental laws and regulations) in its performance under this Agreement. Before beginning any work at a Birla Carbon facility, Vendor’s site management and supervisory personnel must receive an orientation on Birla Carbon’s rules and policies. While at Birla Carbon’s facility, Vendor and its employees, agents, and subcontractors must comply with all such rules and policies, including Birla Carbon’s policies regarding safety and security, ethical business practices, anti-harassment, misuse of company equipment, unauthorized photography, and tobacco, alcohol, and illegal drugs. If Vendor suspects that any Birla Carbon employee, representative, or subcontractor has acted improperly or unethically in its transactions with Vendor, Birla Carbon requests that Vendor 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://birlacarbon.com/pdf/Code\\_of\\_Ethics/Birla-Carbon---Code-of-Ethics-.pdf](http://birlacarbon.com/pdf/Code_of_Ethics/Birla-Carbon---Code-of-Ethics-.pdf). Birla Carbon may remove any of Vendor’s employees or its subcontractor’s employees from Birla Carbon’s premises as Birla Carbon determines in its sole discretion.

**合规。** 供应商与其雇员、代理和分包商在履行本协议的过程中, 必须遵守所有适用的法律法规、许可要求和其他政府要求 (包括但不限于劳动就业、反腐败、税收、反贿赂、数据保护和环境相关的法律法规)。在博拉炭黑工厂开始任何工作之前, 供应商的场地管理人员和监督人员必须接受博拉炭黑相关规则 and 政策的培训。供应商及其雇员、代理和分包商在博拉炭黑工厂工作时必须遵守该等规则和政策, 包括博拉炭黑关于安全保障、道德商业惯例、反骚扰、公司设备误用、未经授权摄影、烟草、酒精及毒品的相关政策。如果供应商怀疑任何博拉炭黑的雇员、代表或分包商在与供应商的交易中行为不当或不道德, 博拉炭黑要求供应商通过其热线报告该等行为。博拉炭黑的全球商业道德与合规标准代码以及相应的热线电话号码在 [http://birlacarbon.com/pdf/Code\\_of\\_Ethics/Birla-Carbon---Code-of-Ethics-.pdf](http://birlacarbon.com/pdf/Code_of_Ethics/Birla-Carbon---Code-of-Ethics-.pdf) 网址上列明。博拉炭黑可以自行决定将任何供应商的雇员或其分包商的雇员从博拉炭黑的经营场所移除。

## TERMS AND CONDITIONS

### 条款和条件

**Status of the Parties.** Vendor is acting under this Agreement as 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.

**双方地位。** 供应商为本协议项下的独立承包商，本协议中的任何内容均不得解释为或视为建立任何雇佣、合伙、合资或代理关系。

**Subcontractors.** Vendor may not subcontract any of its obligations under this Agreement without Birla Carbon's prior written consent. Vendor will be responsible for (i) the compliance of its subcontractors with this Agreement, (ii) the services performed by its subcontractors, and (iii) the acts and omissions of its subcontractors. Vendor must indemnify Birla Carbon from claims of subcontractors for payment.

**分包商。** 未经博拉炭黑事先书面同意，供应商不得将其本协议项下的任何义务分包给其他人。供应商将对以下事项负责(i)其分包商遵守本协议(ii)其分包商提供的服务，及(iii)其分包商的行为及不作为。供应商必须赔偿博拉炭黑因分包商索赔而支付的款项。

**Assignment.** This Agreement is personal to Vendor and Vendor must not assign it, nor any portion of it, without Birla Carbon's prior written consent. This Agreement binds and benefits the parties and their respective representatives, successors, and permitted assigns.

**转让。** 本协议仅针对供应商本人，未经博拉炭黑事先书面同意，供应商不得转让本协议或其任何部分。本协议对双方及其各自的代表、继承人和被许可受让人具有约束力且使上述主体获益。

**Changes.** Birla Carbon may make minor changes to the goods or services provided under this Agreement so long as such changes do not involve extra time or cost and are not inconsistent with the terms of this Agreement. Either party may request changes that involve additional time or cost through written notice to the other party (a "Change Order"). A Change Order must include any changes to price and timing and must be signed by both parties before that Change Order is effective. If Vendor provides any additional goods or services without first obtaining a Change Order, Vendor waives any claim for additional payment for those goods or services.

**变更。** 博拉炭黑可对本协议项下提供的商品或服务进行细微变更，只要该等变更与本协议的条款保持一致且不涉及额外的时间或费用支出。任何一方均可通过书面通知向另一方提出涉及额外时间或费用支出的变更要求（“变更订单”）。变更订单必须包含任何价格和时间的变更，且应经双方签署后生效。如果供应商在未事先获取变更订单的情况下提供任何额外商品或服务，则供应商放弃对这些商品或服务的额外付款的任何权利主张。

**Confidentiality.** Vendor may have access to information that Birla Carbon considers confidential and proprietary. Confidential Information includes the terms of this Agreement and any information obtained in its performance under this Agreement, including visiting or working at Birla Carbon's facilities (collectively, "Confidential Information"). Confidential Information does not include information that (i) is in Vendor's possession without restriction on disclosure before Birla Carbon discloses it to Vendor; or (ii) becomes generally known to the public not due to any unauthorized act or omission of Vendor. Vendor must not use Confidential Information, directly or indirectly, for its own benefit or for the benefit of any other person. Unless disclosure is required by governmental or judicial process, or is required for performance under this Agreement, or unless Vendor has received Birla Carbon's express prior written consent, for ten (10) years after disclosure, Vendor must not use, publish, or disclose, directly or indirectly, any Confidential Information to any third party. Vendor must ensure that confidentiality is maintained by its employees, subcontractors, and agents, and shall exercise the same degree of care that it exercises with respect to its own confidential information (but in no event less than a reasonable degree of care) to prevent its disclosure to any third party. If Vendor is required by governmental or judicial process to disclose any Confidential Information, it must give Birla Carbon prompt written notice so that Birla Carbon may seek appropriate legal protection for its Confidential Information. Immediately upon the assignment, termination, or expiration of this Agreement, or upon Birla Carbon's request, Vendor must return to Birla Carbon any confidential information in Vendor's possession or in the possession of its agents, employees, or subcontractors.

**保密。** 供应商可能获得博拉炭黑认定为保密和专有的信息。保密信息包括本协议的条款以及履行本协议过程中获得的任何信息，包括因访问或在博拉炭黑工厂工作而获得的信息（统称为“保密信息”）。保密信息不包括下列信息：(i) 供应商在博拉炭黑向其披露前就拥有的不受限制的信息；或(ii) 非因供应商的任何未经授权的作为或不作为行为而致公众普遍知晓的信息。供应商不得为自身利益或任何其他人的利益而直接或间接使用保密信息。除因政府或司法程序要求，或因履行本协议需要，或供应商已经收到博拉炭黑明确的事先书面同意，供应商在披露后十（10）年内不得使用、出版、直接或间接地向任何第三方披露任何保密信息。供应商必须确保其获得保密信息的雇员、分包商和代理商将至少以其对待其自身保密信息将尽的相同的注意义务（但不得低于合理注意义务）防止保密信息的泄露。如果政府或司法程序要求供应商披露任何保密信息，供应商必须立即向博拉炭黑发出书面通知，以便博拉炭黑为其保密信息寻求适当法律保护。本协议转让、终止、到期或应博拉炭黑的要求，供应商必须立即向博拉炭黑返还供应商或其代理、雇员或分包商所拥有的任何保密信息。

**Non-Solicitation.** During the term of this Agreement and for a period of two (2) years following the termination or expiration of this Agreement, Vendor must not interfere with Birla Carbon's relationships with its employees or with its independent contractors, agents, or consultants.

**不劝诱。** 在本协议有效期内以及本协议终止或到期后的两（2）年内，供应商不得干涉、影响博拉炭黑与其雇员或其独立承包商、代理商或顾问的关系。

**Insurance.** Vendor must furnish Birla Carbon with a certificate of insurance confirming that the Vendor has obtained the insurance coverage customarily required under the provision of similar goods or services in the PRC.

**保险。** 供应商必须向博拉炭黑提供保险凭证以证明其已购买在中国提供类似商品或服务惯常要求的保险。

**Indemnification.** Vendor agrees to defend, indemnify, and hold harmless Birla Carbon and its affiliates, and their officers, directors, employees, agents, representatives, and insurers (collectively the "Indemnitees"), from and against any Loss arising out of or resulting from (a) a breach of the Agreement by Vendor; (b) any act or omission of Vendor or Vendor's employees, agents, representatives, or subcontractors; and/or (c) Vendor's breach of any representation, warranty or covenant. This indemnification provision is in addition to any other right of indemnification or contribution that any of the Indemnitees may have at law, or otherwise, and will survive expiration or termination of the Agreement. In addition, Birla Carbon shall be entitled to all costs, expenses, and fees (including attorneys' fees) reasonably incurred in connection with the enforcement of this right of indemnification. "Loss" means all liabilities, losses, costs, claims, proceedings, demands, penalties, damages, causes of action, suits, judgments and settlements, and the costs and expenses incident thereto, including attorneys' fees, and any other cost of litigation. "Loss" also includes any injury or death to any person or any damage to property, including that of Vendor or of its subcontractors, agents, or employees while at Birla Carbon's premises in connection with performance under this Agreement. Birla Carbon shall provide Vendor with reasonable notice of any claim for which Birla Carbon seeks indemnification, and will not settle any third party claim for which it seeks indemnification without the prior written consent of Vendor, which consent shall not be unreasonably withheld.

**赔偿。** 供应商同意对博拉炭黑及其关联方、管理人员、董事、雇员、代理、代表和保险公司（统称为“受偿者”）因(a)供应商违反本协议;(b)供应商或其雇员、代理、代表或分包商的任何行为或不作为；和/或(c)供应商违反任何陈述、保证或义务，而产生或导致的任何损失予以赔偿并保护他们的利益和使他们免受损害。本赔偿条款是对受偿者在法律或其他方面可能拥有的任何其他赔偿或赔款的补充，并且将在本协议到期或终止后继续有效。此外，博拉炭黑有权获得因主张本赔偿权利而产生的所有合理成本、开支和费用（包括律师费）。“损失”系指所有责任、损失、成本、索赔、诉讼、要求、处罚、损害赔偿、诉因、诉讼、判决和和解，以及与此相关的成本和费用，包括律师费和任何其他诉讼费用。“损失”还包括在博拉炭黑的经营场所内与履行本协议相关的任何人员受伤或死亡或供应商、其分包商、代理或雇员的任何财产损失。博拉炭黑应就索赔的相关事项向供应商作出合理通知，且未经供应商事先书面同意，不得对其寻求索赔的任何第三方索赔进行和解，但供应商不得无理拒绝该等同意。

**Warranty.** Vendor warrants that, for a period ending on the earlier of 18 months from delivery or 12 months from the date that a goods are first put into use by Birla Carbon, all goods are (i) free from defects in material, workmanship, and title, (ii), produced in material compliance with applicable law (iii) new, (iv) free from all liens and encumbrances, and (v) meet the specifications agreed by the parties, and will be fit for their intended purposes. Vendor warrants that for a period of 1 year after the completion of any services, the services will be (i) performed in a professional and workmanlike manner in accordance with generally accepted industry practices, and (ii) performed in compliance with applicable

## TERMS AND CONDITIONS

### 条款和条件

law. At Birla Carbon's option, Vendor shall, at no cost to Birla Carbon, promptly repair or replace any defective or non-conforming goods, or reperform any non-conforming services. If Vendor fails to do so within a reasonable time, Birla Carbon may do so at Vendor's expense.

**保证。** 供应商保证，自交付之日起 18 个月或自博拉炭黑将货物首次投入使用之日起 12 个月，以两者中结束较早的期间为准，所有货物均(i)没有材料、工艺和所有权瑕疵，(ii)是在符合适用法律的情况下生产的，(iii)是全新的，(iv)没有任何留置权和产权负担，且(v)符合双方约定的规格且符合其预期的使用目的。供应商保证，在服务完成后的 1 年内，服务是(i)按照公认的行业惯例以专业和熟练的方式提供的，并且(ii)是在符合适用法律的情况下提供的。根据博拉炭黑的自行选择，供应商在不向博拉炭黑收取任何费用的前提下，立即修理或更换任何有缺陷或不合格的货物，或者就任何不合格的服务重新提供服务。如果供应商未能在合理的时间内履行上述义务，博拉炭黑有权在供应商承担所有费用的前提下代为履行上述义务。

**Intellectual Property.** Vendor warrants that it has the rights to use (and transfer as necessary) the technology, software, facilities, know-how, and equipment that will be involved in the performance of this Agreement. If a third party alleges that any goods or services furnished by Vendor infringe on any patent, trademark, copyright, or any other intellectual property right, Vendor must defend Birla Carbon and indemnify it against the resulting liability, damage, or expense. At its option, Birla Carbon may require Vendor to (i) obtain for Birla Carbon the right to continue using those goods or Services, (ii) substitute or modify goods or services so that they remain equivalent but are no longer subject to the infringement claim, or (iii) refund the purchase price and other applicable fees paid by Birla Carbon for those goods or services. Birla Carbon retains ownership of all intellectual property rights to all designs, drawings, blueprints, descriptions, specifications, samples, or other materials being provided to Vendor by Birla Carbon in connection with this Agreement (the "Plans"), which shall be considered Confidential Information for purposes of this Agreement, and Vendor may only use the Plans to benefit Birla Carbon. Vendor may not use the Plans in the production of materials or deliverables for any third party without Birla Carbon's prior written consent.

**知识产权。** 供应商保证其有权使用（和在必要时转让）履行本协议所涉及的技术、软件、设施、商业秘密和设备。如果第三方声称供应商提供的任何商品或服务侵犯任何专利、商标、版权或任何其他知识产权，供应商必须为博拉炭黑进行抗辩，并博拉炭黑对因此产生的责任、损害或费用作出赔偿。博拉炭黑可以选择要求供应商(i)为博拉炭黑取得继续使用这些商品或服务权利，(ii)向其提供其他替代或经修改的商品或服务，该等商品或服务应与原商品或服务等同但不再受制于侵权索赔，或者(iii)退还博拉炭黑为这些商品或服务支付的购买价格和其他费用。博拉炭黑保留对提供给供应商与本协议有关的所有设计、图纸、蓝图、说明、规格、样品或其他材料的所有知识产权（“方案”）的所有权，上述内容均属于本协议规定的保密信息，供应商仅可为博拉炭黑的利益使用上述方案。未经博拉炭黑事先书面同意，供应商不得将上述方案用于为任何第三方材料或可交付物品的生产。

**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: (i) an act or omission of the other party or its agents, employees or contractors; (ii) acts of governmental authorities, including agencies and political subdivisions; (iii) revolution, riot, or other civil disturbance or disorder, including acts of enemies or of terrorists; (iv) strike, or other dispute with or among labor unions; (v) Birla Carbon's plant closure; (vi) storm, fire, flood, explosions, or acts of God; or (vii) other extraordinary causes not within the acting party's reasonable control and not caused by the acting party's fault or negligence. The party claiming relief hereunder due to force majeure is excused from further performance for the duration of a force majeure event described above affecting its performance.

**不可抗力。** 如果迟延或未能履行本协议的任何部分是由以下原因造成的，任何一方均不承担责任：(i)另一方或其代理、雇员或承包商的行为或不作为；(ii)政府当局（包括专门机构和政治分支）的行为；(iii)革命、暴乱、其他内乱或民事骚乱，包括敌人或恐怖分子的行为；(iv)罢工，或与工会之间的其他纠纷；(v)博拉炭黑工厂的关闭；(vi)风暴、火灾、洪水、爆炸或天灾；或(vii)其他不在行为方合理控制范围内且不是由行为方的过失或疏忽引起的特殊原因。在上述影响其履行的不可抗力事件期间，因不可抗力主张救济的一方可免于继续履行本合同。

**Severability.** 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.

**可分割性。** 如果本协议的某项条款不可执行，则该条款可以在法律允许的最大范围内执行，或可以视为与本协议相分离。任何不可执行的条款并不使本协议的任何其他条款无效。

**Audit.** Vendor must keep accurate records of its transactions with Birla Carbon in sufficient detail to enable Birla Carbon to determine the amounts that it should have been charged under this Agreement (the "Records"), and must keep the Records for at least 36 months after the termination of this Agreement. At a reasonable time, and upon reasonable notice, Birla Carbon may audit Vendor's Records, and Vendor must pay Birla Carbon for any overcharges; if the overcharges exceed five percent (5%) of the correct charges, Vendor must pay the costs of the audit. Any amounts due to Birla Carbon under this provision are payable upon demand.

**审计。** 供应商必须对其与博拉炭黑的交易进行足够详细的准确记录（“记录”），以使博拉炭黑能够确定其根据本协议应支付的金额，并且必须在本协议终止后将该记录保存至少 36 个月。博拉炭黑可以在合理的时间，经合理通知审计供应商的记录，且供应商必须向博拉炭黑返还其向博拉炭黑收取的超额费用；如果超额费用超过正确费用的百分之五（5%），供应商必须支付审计费用。根据本条应支付给博拉炭黑的任何款项应在博拉炭黑要求时马上支付。

**Choice of Forum, Venue, and Consent to, Jurisdiction.** This Agreement is governed by the substantive laws of the People's Republic of China, without reference to the principles of choice of or conflicts of law. Any dispute arising out of the Purchase Orders and this Agreement shall be governed by the People's court with jurisdiction at the Vendor's domicile.

**法院选择、审判地和管辖权的同意。** 本协议受中华人民共和国实体法管辖，但排除选择原则和冲突法原则的适用。因采购订单和本协议引起的任何争议应由供应商住所地有管辖权的人民法院管辖。

**Modification.** The Agreement shall not be modified or supplemented by any course of dealing, usage of the trade, or otherwise, except by a writing signed by authorized representatives of both Birla Carbon and Vendor.

**修改。** 除非由博拉炭黑和供应商的授权代表签署书面协议，不得通过任何交易过程、交易惯例或其他方式修改或补充本协议。

**Notices.** All notices and other communications under this Agreement shall be deemed to have been duly given three (3) days after being sent by certified mail, postage prepaid, or one day after being sent by overnight courier, and addressed to the parties as set forth above. Any notices required under this Agreement must be in writing and be sent to the following address, or such other address as may be provided by the parties:

**通知。** 本协议项下的所有通知和其他通信应视为在通过挂号信（预付邮资）寄出后三（3）天或通过隔夜快递寄出后一（1）天正式发出并送达给上述双方。本协议所要求的任何通知必须以书面形式发送至以下地址或双方可能提供的其他地址：

to Vendor at:

给供应商：

[Full Legal Name]

[完整法定名称]

[Full Address]

[完整地址]

Attn: [Vendor Contact Person]

收件人：[供应商联系人]

to Birla Carbon at:

给博拉炭黑：

1800 West Oak Commons Ct.

Marietta, Georgia 30066

Attn: Legal Department

**Miscellaneous.** This Agreement is being executed in English and has been translated into Chinese for convenience only. In the case of any conflict between the two versions, the English version will control. 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. This Agreement may be executed in two or more counterparts, each of which shall be deemed and original, but all of which together shall constitute one and the

## TERMS AND CONDITIONS

### 条款和条件

same instrument. To facilitate the execution of this Agreement, the parties may execute and exchange by facsimile or by PDF counterparts of the signature pages, and such execution shall be deemed an original by the parties.

**其他事项。**如果任何一方在任何时候未能根据本协议的任何条款主张权利，则该未主张权利的行为不得解释为对该条款或任何其他条款的放弃。本协议可签署两份或多份副本，每份副本均应视为本协议的原件，但所有原件将构成一份协议。为便于本协议的签署，双方可通过传真或 PDF 副本的方式签署和交换签字页，且该等签署应视为本协议的原件。

**[Birla Carbon Legal Entity]**

**[博拉炭黑法人实体]**

By/签名 \_\_\_\_\_

Title/职位 \_\_\_\_\_

Date/日期 \_\_\_\_\_

**[Vendor Legal Entity]**

**[供应商法人实体]**

By/签名 \_\_\_\_\_

Title/职位 \_\_\_\_\_

Date/日期 \_\_\_\_\_