

## TERMS AND CONDITIONS

These terms and conditions (the "Terms and Conditions") apply to and govern all purchases of good and services by **BIRLA CARBON U.S.A., INC.** ("Birla Carbon") from the vendor providing goods or services ("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.

**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 FOB point specified, 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.

**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 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.

**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.

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

**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.

**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.

**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.

**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.

**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.

**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 good or services.

**Lien Waiver.** So long as Birla Carbon is not in breach of its payment obligations under this Agreement, Vendor must keep Birla Carbon's premises free from any claims for liens relating to labor or materials furnished under this Agreement. Birla Carbon may require Vendor to supply releases, satisfactions, or partial or final lien waivers from any persons or entities that furnish services or materials to Vendor as a condition precedent to any periodic or final payment to Vendor. Final payment to Vendor does not relieve it of its obligation to discharge any lien filed before or after final payment is made. If any subcontractor, laborer, material supplier, or other person refuses to furnish a lien waiver, and if Birla Carbon is not in breach of its payment obligations under this Agreement, Vendor must, at Birla Carbon's option, either furnish a bond satisfactory to Birla Carbon to indemnify Birla Carbon against claims or liens, or reimburse Birla Carbon for all reasonable costs incurred in discharging any lien, including attorneys' fees.

**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.

**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.

**Equitable Remedies.** In the case of a breach of the Confidentiality or Non-Solicitation sections of this Agreement, the parties hereby agree that their respective remedies at law are inadequate, and consent to equitable enforcement of their obligations under said sections, as applicable, by a court of appropriate jurisdiction.

**Insurance.** Vendor must furnish Birla Carbon with a certificate of insurance confirming at least the minimum applicable insurance coverage required in the attached Appendix II and comply with the other requirements set forth in Appendix II.

## TERMS AND CONDITIONS

**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, in equity, 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.

**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 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.

**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.

**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.

**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.

**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.

**Choice of Forum, Venue, and Consent to, Jurisdiction.** 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. Georgia state courts and United States federal courts located in Cobb County, Georgia are the exclusive forums for the adjudication of any disputes arising out of any goods or services ordered under this Agreement. Vendor consents to the exercise of jurisdiction over it by these courts and waives any objection to that jurisdiction.

**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.

**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:

to Birla Carbon at:  
1800 West Oak Commons Ct.  
Marietta, Georgia 30066  
Attn: Legal Department

**Additional Terms.** The additional terms and conditions attached to this Agreement as Appendix I are incorporated herein by reference and form an integral part of this Agreement (the "Additional Terms"). If the Additional Terms directly conflict with the main body of these Terms and Conditions, the Additional Terms will control.

**Miscellaneous.** 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 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.

## Appendix I – Additional Terms

**Services Performed in Louisiana.** If any services are performed in or offshore the State of Louisiana, or in any other situation in which the Louisiana Worker's Compensation Act may be applicable, then: (a) all work and operations performed by Vendor and its employees under this Agreement are an integral part of and are essential to the ability of Birla Carbon to generate Birla Carbon's products or services. The employees of Vendor (and of any of its subcontractors), whether direct, statutory, borrowed, or otherwise, are statutory employees of Birla Carbon according to the Louisiana Worker's Compensation Act and the protections given a statutory employer under the Louisiana Worker's Compensation Act apply to those employees, and (b) in further consideration of the amount to be received by Vendor under this Agreement, Vendor is responsible for the payment of all compensation benefits and medical benefits paid to or for the benefit of Vendor's employees. Vendor and/or Vendor's underwriter agree that they must defend and indemnify Birla Carbon and all other Birla Carbon indemnitees, and have no right to seek any contribution or indemnity from Birla Carbon or any other Birla Carbon indemnitees for any compensation benefits or medical benefits paid by Vendor and/or Vendor's underwriters. The recognition of Birla Carbon's statutory employer status is made under the Louisiana Worker's Compensation Act and Birla Carbon is not the actual employer of any of Vendor's employees or of any of its subcontractors. Vendor is an independent Vendor, and Birla Carbon has no control or involvement in the hiring, firing, supervision, or direction of any of Vendor's employees.

## Appendix II - Insurance

**Insurance Requirements:** During the term of this Agreement, Vendor shall maintain all insurance and/or bonds required by law or this Agreement, including but not limited to the following coverage:

Type of Insurance	Minimum Coverage Amounts	Applicability
Workers' compensation insurance	Statutory Limits	All vendors
Employer's liability insurance	\$ 1,000,000 each accident; \$ 1,000,000 each employee by disease; \$ 1,000,000 aggregate by disease	All vendors
Commercial general liability insurance (must include contractual liability; excess liability insurance is acceptable)	\$2,000,000 per occurrence bodily injury and property damage; \$2,000,000 products and completed operations; \$2,000,000 general aggregate	All vendors
Comprehensive Automobile Liability Insurance (including operation of owned, non-owned, and hired automobiles)	\$1,000,000 combined single limit	All vendors
Professional Liability Insurance (must include acts and errors and omissions of its employees, agents and subcontractors)	\$2,000,000 per occurrence	Vendors providing professional services (e.g. consulting, engineering)
Cyber Liability	\$2,000,000 per occurrence	Vendors providing IT services or hosting Birla Carbon's information or data

All insurance provided by Vendor shall be written by companies authorized to do business in the state or states where the work is to be performed. Birla Carbon reserves the right to refuse policies from companies with a rating of less than A- VII by the A.M. Best Company. Indigold Carbon (Netherlands) BV and its subsidiaries shall be named as an additional insured to the Vendor's Commercial General Liability and Commercial Automobile Liability with respect to work performed under this Agreement. Coverage for the additional insured shall be at least as broad as that afforded the named insured. In the event that any insurance policy states that the insurance afforded to an additional insured will not be broader than that required by this Agreement, the parties agree that nothing in this Agreement is intended to restrict or limit the breadth of such coverage. The limits of insurance provided to the additional insured shall be the greater of the minimum amount required by this Agreement, or the full per occurrence limit set forth in the policy. Vendor and its insurers hereby waive any and all rights of subrogation against Birla Carbon.

Vendor shall require its agents or subcontractors who may enter upon Birla Carbon's premises or conduct work associated with this Agreement to maintain the same coverage required herein. Should insurance policy limits be exhausted or should Vendor or its agents or subcontractors fail to maintain the required insurance coverage, neither Vendor nor any of its agents and subcontractors will in any way be relieved from liability under this Agreement. For any claims relating to this Agreement, the Vendor's insurance shall be deemed to be primary and not contributing to or in excess of any similar coverage purchased by Birla Carbon. All policy deductibles will remain the responsibility of the Vendor, its agents or its subcontractors.

Vendor shall provide to Birla Carbon certificates of insurance evidencing the required coverage (including evidence that Birla Carbon has been included as an additional insured) prior to execution of this Agreement. Vendor's insurers will be required to give 30 days' written notice to Birla Carbon prior to any policy cancellation, non-renewal or material change. Failure of Birla Carbon to demand such certificates or to identify any deficiency in the insurance provided shall not be construed as or deemed to be a waiver of the Vendor's (or its agents' or subcontractors') obligation to maintain such insurance. The entity and address to be shown on the certificates of insurance:

Birla Carbon  
Attn: Risk Management Department  
1800 West Oak Commons Court  
Marietta, GA 30062

Birla Carbon has the right, but not the obligation, to prohibit the Vendor or any agents or subcontractors from performing work under this Agreement until evidence that the insurance has been placed in complete compliance with these requirements is received and approved by Birla Carbon. If any of the coverage is required to remain in force after termination of this Agreement, Vendor shall submit additional certificates evidencing continuation of coverage until such obligation ends. If the Vendor fails to maintain the insurance as set forth herein, Birla Carbon shall have the right, but not the obligation, to purchase said insurance at Vendor's expense and to deduct the premiums therefore from any amounts otherwise due to Vendor.