

# Birla Carbon's Standard Terms and Conditions of Sale

**Application of Standard Terms.** Only the standard terms and conditions of sale stated below apply to Buyer's transaction for the purchase of carbon black ("Products"), and unless these terms are modified or supplemented by a written document signed by an officer of Birla Carbon, these terms form the parties' agreement with respect thereto ("Agreement").

**Taxes.** Except for taxes measured by Birla Carbon's net income, Buyer is responsible for any local sales, use, value-added tax, import charges, or other similar taxes or fees imposed on transactions under this Agreement.

**Allocation.** Birla Carbon reserves the right to ship from any of its approved facilities and to make partial shipments, of truckload or carload quantities, as Products are manufactured. If for reasons beyond its reasonable control Birla Carbon cannot supply the requirements of all of its customers of the Products covered by this Agreement, Birla Carbon reserves the right to satisfy its own requirements first and will make reasonable efforts to allocate the available supply of Products to Buyer on a nondiscriminatory basis with other Birla Carbon customers. Birla Carbon is not obligated to purchase Products from third parties to enable it to make shipments to Buyer.

**Order Procedures.** Buyer must place its orders in writing or by other electronic method that documents the request and establishes an audit trail. Orders must clearly state the grade, quantity, price, transportation method, and any packaging, shipment, or delivery requirements. A minimum aggregate order volume applies as stated in Birla Carbon's price lists.

**Changes, Rushes, and Cancellations.** All orders are subject to a minimum lead time of 14 calendar days or other minimum lead times that are stated in Birla Carbon's price lists unless otherwise approved in writing by Birla Carbon. No changes or cancellations may be made within five business days before shipment. Birla Carbon's acceptance of any order is not a guarantee that Buyer's desired shipping date will be met. Birla Carbon will use commercially reasonable efforts to meet the requested shipping date, but will not be liable if it cannot do so.

**Packaging.** Birla Carbon will label packaging to identify content, weight, and origin. If Buyer requests special packaging, shipping methods, or delivery requirements, then Buyer is responsible for any extra costs that result. Birla Carbon's packaging items are designed for single use only and Buyer must not reuse them for any other purpose. Unless they are returned to Birla Carbon for recycling, Buyer must properly dispose of all packaging items after breaking them open and/or emptying them.

**Shipping.** Products are shipped FOB plant, freight collect. Any order for export is shipped Ex Works plant or warehouse (Incoterms 2010). Birla Carbon reserves the right to reject any carrier it deems unable to transport Products in a safe and environmentally sound manner. Buyer is responsible for transportation, insurance, and related expenses. Buyer obtains title to Products and assumes the risk of loss for them upon loading or upon tender to the carrier at Birla Carbon's plant or warehouse.

**Weighing.** When Products are released for shipment, they will be weighed by a third-party scale operator; however, Birla Carbon may weigh hopper trucks and packaged Products shipped from any plant. Birla Carbon reserves the right to use its own scales to determine the weight of any shipment. The parties agree to accept those weights to determine the price for Products furnished under this Agreement and agree that delivered weight and volume may vary from stated quantities by up to two percent.

**Hopper cars.** Birla Carbon charges a railcar user fee per loaded mile per hopper car. Demurrage charges are included for a 20-day hopper car turnaround (from arrival at Buyer's plant to release from it). Birla Carbon reserves the right to charge Buyer demurrage for hopper car holds of longer duration at a rate commensurate with prevailing railway hopper car hold charges. Emptied hopper cars must be returned to Birla Carbon with valves closed and caps covered; otherwise, Buyer will be liable for any damage caused by spills or leaks of residual carbon black and for the replacement of any lost or missing caps.

**Claims.** Buyer must notify Birla Carbon of any errors, shortages, or problems with the quantity, quality, weight, or condition of Products when delivered, and must make a claim there for in writing within 30 days after shipment, use, or alteration, whichever occurs first; otherwise, such Products are deemed accepted. Birla Carbon does not accept returns.

**No analysis.** Without Birla Carbon's prior written approval, Buyer must not analyze Birla Carbon's Products to determine the specific chemical composition or properties of them.

**Delays.** Birla Carbon is not liable for a failure in the performance of any part of this Agreement if such failure is due to a cause beyond its reasonable control, including, without limitation, acts of God or acts of a public enemy, fires, floods, earthquakes, wars, civil disturbances, sabotage, insurrections, blockades, embargoes, storms, explosions, damage to its plants, acts of any governmental body, delay in transportation or truck or ship shortage, or any other cause not within Birla Carbon's reasonable control. Birla Carbon is excused from further performance of its obligations for the duration of any such force majeure event, but must use reasonable efforts to resume performance at the earliest possible time after the force majeure event is resolved.

**Payment Terms.** Products are invoiced after they are tendered to the carrier and weighed. All payments must be made in U.S. dollars. Payment terms are subject to Birla Carbon's review and continuing approval of Buyer's credit standing, and Buyer agrees to provide financial information appropriate for such review to Birla Carbon upon request. If any payment is overdue, Birla Carbon may charge interest at the rate of two percent per month on the overdue amount, or the legal rate, whichever is lower. Buyer is also responsible for Birla Carbon's collection costs and reasonable attorneys' fees.

**Warranties.** Birla Carbon warrants that it has good title to the Products and that the Products will comply with Birla Carbon's standard specifications in effect for those Products when they are shipped, subject to normal manufacturing tolerances. Buyer must give Birla Carbon written notice of any Products that fail to meet specifications within 30 days after receipt. Buyer's failure to so notify Birla Carbon, or Buyer's use or alteration of Products, is considered an irrevocable acceptance, and Birla Carbon is thereby released from any liability related to the Products. Buyer must furnish Birla Carbon with samples adequate to test allegedly non-conforming Products and must give Birla Carbon the opportunity to take its own samples. If, after proper notice, Birla Carbon's tests confirm that the Products do not conform to the specifications, Birla Carbon will accept the return of such non-conforming Products and replace them with conforming Products, or refund the purchase price, at its option. The terms of this section are Buyer's exclusive remedy for warranty claims.

**THERE ARE NO OTHER WARRANTIES EXCEPT AS EXPRESSLY STATED ABOVE, EITHER EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE, EVEN IF THE PURPOSE IS KNOWN TO BIRLA CARBON WHEN PRODUCTS ARE PURCHASED, AND BIRLA CARBON DISCLAIMS ANY OTHER WARRANTY.**

**Indemnity.** Birla Carbon will defend and indemnify Buyer against liability, damage, or expense, resulting from any third party claim that Products shipped hereunder infringe upon any U.S. patent; provided, however, that Buyer first must give Birla Carbon prompt notice of any claim and must cooperate with Birla Carbon and its counsel in the defense of such claim. At its sole discretion, Birla Carbon may:

- (a) obtain for Buyer the right to continue using Products;
- (b) substitute or modify Products so they remain equivalent but no longer subject to the infringement claim; or
- (c) refund the purchase price of the Products affected by the claim, less a reasonable sum for use, damage, and obsolescence.

This protection does not apply to any Products manufactured to Buyer's formulation or process or to changes in Birla Carbon's formulation or process requested by Buyer and Birla Carbon assumes no liability for patent infringement claims related to them. Birla Carbon's liability under this indemnity provision must not exceed the purchase price of the Products subject to such claim hereunder. Birla Carbon is not liable for any infringement claim for the use of Products in any process, the use of Products in combination with any other material, or for any other type of intellectual property infringement claim.

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**Arbitration.** The parties must arbitrate any dispute arising out of or related to this Agreement or its breach that cannot be resolved by negotiation between them within 60 days after either party gives the other party written notice of the dispute and a request to negotiate; however, this provision does not preclude either party from taking any action necessary to prevent immediate and irreparable harm to it. Taking into account the proximity to witnesses and to evidence, the arbitration may be held in the Atlanta, Georgia metropolitan area or other mutually agreeable location by a single, neutral arbitrator, and be held according to the Commercial Arbitration Rules of the American Arbitration Association. Unless the arbitrator awards costs to the prevailing party, the parties will equally bear arbitration expenses. The arbitrator's decision is final and binding on the parties and is enforceable in any court of competent jurisdiction.

**Notices.** Each party must send the other party any written notices or communications required under this Agreement to the other party's headquarters address or to any other address that a party may later substitute in writing, in a way that will establish proof of delivery.

**Confidentiality.** Beyond information already in the public domain, Buyer agrees not to disclose to third parties, directly or indirectly, or use except in furtherance of this Agreement, any confidential information of Birla Carbon including, without limitation, any terms or pricing mentioned in any negotiation,; the terms or prices of this Agreement, or any information obtained through visiting Birla Carbon's facilities. Buyer must take all steps necessary to ensure that such confidentiality is maintained by its employees, subcontractors, representatives, and agents.

**Rebates.** If a rebate is offered, at the end of the established purchase period, Birla Carbon will review Buyer's purchases that were ordered directly from Birla Carbon.

(a) Upon verification that all conditions have been met, Birla Carbon will issue Buyer a rebate credit that may be applied to Buyer's future orders within 12 months after the rebate issue date.

(b) Buyer's purchases are determined by the ship date of Products and are based on Buyer's aggregate weight purchases, as invoiced. Products that Buyer cancels, rejects, or returns are not included in calculating Buyer's aggregate weight purchases. Birla Carbon will also exclude non-standard products and all volume from invoices that have been paid outside of payment terms. The rebate amount will be based on Birla Carbon's invoice price for Products and packaging upcharges, after deducting all freight, taxes, and other non-product charges.

(c) If Buyer is not current or has taken unauthorized deductions, Birla Carbon is not obligated to issue Buyer the full rebate credit but may first apply it to any amounts owed to Birla Carbon and then will remit any remainder to Buyer.

(d) Birla Carbon's obligation to pay any rebate is subject to local laws prohibiting or limiting the practice.

**MSDS.** Birla Carbon will make available Material Safety Data Sheet ("MSDS") information for Products purchased under this Agreement, which can be accessed on Birla Carbon's website. Buyer must disseminate each relevant current MSDS to its customers and employees in a manner and in language in which the information is likely to be seen and understood.

**Limitation of Damages.** BIRLA CARBON'S LIABILITY FOR ANY CLAIM RELATED TO THE PRODUCTS OR THIS AGREEMENT MUST NOT EXCEED THE PRICE OF THE PRODUCTS PURCHASED OR SERVICES GIVING RISE TO THE CLAIM; if Buyer does not begin action against Birla Carbon within one year after the circumstances surrounding a claim or cause of action are discovered, then Birla Carbon's liability terminates.

**BIRLA CARBON IS NOT LIABLE FOR LOSS OF TIME, INCONVENIENCE, LOST PROFITS OR OTHER INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE, OR INCIDENTAL DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE, BASED ON BUYER'S CLAIMS OR THE CLAIMS OF ITS CUSTOMERS (INCLUDING CLAIMS FOR LOSS OF GOODWILL, INTERRUPTION IN USE, STOPPAGE OF OTHER WORK, OR IMPAIRMENT OF OTHER ASSETS), ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE PARTIES' TRANSACTIONS, OR THE PRODUCTS SOLD HEREUNDER.**

**Choice of Law.** This Agreement is governed by the substantive laws of the State of Georgia, without reference to principles of choice of law or of conflicts of law, and of the United States of America, including any applicable export and import regulations and boycott restrictions. The parties specifically exclude the application of the United Nations Convention of 11 April 1980 on Contracts for the International Sales of Goods. 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.

**Modification and Waiver.** This Agreement may be modified, or rights or duties under the Agreement waived or discharged, only by a written amendment signed by both parties' authorized representatives. If either party fails to enforce any provision of this Agreement, that failure must not be construed as a waiver of that provision or of any other provision.

**Assignment.** This Agreement binds and benefits the parties and their successors and permitted assigns. Birla Carbon reserves the right to assign this Agreement to any affiliated company and to assign any accounts receivable resulting from this Agreement to a third party. Neither party may otherwise assign this Agreement, nor any portion of it, without the other party's written consent and that consent must not be unreasonably withheld. As used herein, "Birla Carbon" refers to Columbian Chemicals Company and those of its affiliates engaged in the development, manufacture, marketing, and sale of carbon black products under the name "Birla Carbon."

**No Distributorship Created.** Products purchased under this Agreement are intended for Buyer's own use in its manufacturing processes and not for resale to third parties.

**Entire Agreement.** This document is the complete, exclusive, and final statement of the terms of agreement between the parties regarding its subject matter. It supersedes all prior and contemporaneous agreements, understandings, letters, e-mail, negotiations, proposals, and representations, whether written or oral, and including any course of dealing established by the parties. Any terms in Buyer's purchase order, including pre-printed terms, additional to or contrary to the terms of this document are not effective.

\_\_\_\_\_ ("Buyer")

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_ ("Birla Carbon")

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_