

Birla Carbon's Standard Terms and Conditions of Sale For North America

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 U.S.A., Inc. or Birla Carbon Canada Ltd. ("Birla Carbon"), these terms form the parties' agreement ("Agreement").

Charges. Charges, surcharges, and upcharges for normal paper bags, polyethylene bags, FIBC (Flexible Intermediate Bulk Containers, i.e., big bags) packaging, Ultra® Products, new product premiums, transportation, warehousing, energy, cancellation, change or rush orders, etc., apply as stated within Birla Carbon's price lists, which are subject to change. Services such as delivery, third-party storage, demurrage past 20 days, or inventory management are not included in pricing.

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 facilities and to make partial shipments, of truckload or carload quantities, as Products are manufactured. If Birla Carbon ships Products in installments, the shipment of part of an order will not obligate Birla Carbon to make further shipment. If Birla Carbon cannot supply the requirements of all of its customers of the Products at any given time due to limited availability, Birla Carbon reserves the right to satisfy its own requirements first and may, but is not obligated to, allocate the available supply of Products among itself and its customers, including Buyer, in such manner as Birla Carbon deems fit in its sole discretion. 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. Buyer should send or transmit its orders to Birla Carbon's Customer Service Department. A minimum aggregate order volume applies as stated in Birla Carbon's price lists.

Changes, Rushes, and Cancellations. Subject to Birla Carbon's approval, Buyer may make a written request to change an order or to cancel all or part of an order. 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. Rush orders or orders for warehoused Products are entered for immediate shipment or production and no changes or cancellations to those orders may be made. For Products sourced from Birla Carbon's plants, no changes or cancellations may be made within five business days before shipment.

Although Birla Carbon desires to meet Buyer's schedule, Birla Carbon is not liable for failure to ship by Buyer's requested shipping date or any other date, and Birla Carbon's

acceptance of any order is not a guarantee that Buyer's desired shipping date will be met. Birla Carbon will use its best efforts to meet the requested shipping date, but if Birla Carbon cannot do so, it will advise Buyer and work to establish an acceptable date.

Packaging. Birla Carbon will label packaging to identify content, weight, and origin. If Buyer requests special packaging, shipping methods, or delivery requirements, it 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 2000). Buyer is responsible to secure transportation services and is responsible to resolve any disputes with the common carriers it uses. Birla Carbon reserves the right to reject any carrier 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 will weigh hopper trucks from Hamilton, Ontario 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. Birla Carbon will invoice demurrage charges separately from material invoices and those invoices will carry same payment terms as product invoices. Emptied hopper cars must be returned to Birla Carbon with valves closed and caps covered; otherwise, Buyer will be held responsible for any damage caused by spills or leaks of the residual carbon black as well as for replacement of any lost or missing caps.

Claims. Buyer must identify apparent errors, shortages, or problems with quantity, quality, weight, or condition when Products are delivered and must make claim, in writing, within 30 days after shipment, use, or alteration, whichever is the earliest to occur. If Buyer fails to do so, Products are considered to be accepted. Birla Carbon does not accept Products for return.

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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 delay or failure in shipment or performance of any part of this Agreement if the delay or failure is caused by:

- (a) an act or omission of Buyer, its agents, employees, or contractors;
- (b) the act of a governmental authority, including agencies and political subdivisions, including any embargo or any directive requiring Birla Carbon's compliance with any industry rationing or supply program;
- (c) war, revolution, riot, or other civil disturbance or disorder, including acts of enemies or terrorists;
- (d) strike, or other dispute with or among labor unions;
- (e) acts of God, storm, fire, flood, or explosions;
- (f) failure or inability to obtain on reasonable terms utilities, raw materials, transportation facilities, storage facilities, or manufacturing facilities;
- (g) delay in transportation or truck or ship shortage; or
- (h) any other similar cause not within Birla Carbon's reasonable control.

Birla Carbon is excused from further performance of its obligations for the duration of a force majeure event but must use reasonable efforts to resume performance at the earliest possible time after the force majeure event abates or is resolved.

Payment terms. Products are invoiced after they are tendered to the carrier and weighed. A minimum order size applies as stated in Birla Carbon's price list. 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. Buyer agrees to provide Birla Carbon appropriate financial information upon request.

If an allowable invoice or weight discrepancy exists, Buyer may deduct only that portion of the invoice relating to the discrepancy. Buyer must promptly notify Birla Carbon, in writing, of the amount in dispute and the reason for dispute so that correction may be made.

If 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 title to Products will be shipped free and clear of any third-party claims, liens, encumbrances, or security interests. Birla Carbon does not warrant that Products will be an exact match to samples, but warrants that its Products will comply with the Birla Carbon standard specifications in effect for those Products when they are shipped, subject to normal manufacturing tolerances. These warranties are not transferable.

Buyer must give Birla Carbon written notice of any Products that fail to meet specifications within 30 days after receipt. Buyer's failure to notify Birla Carbon or Buyer's use or alteration of Products is considered an irrevocable acceptance

of them, and Birla Carbon is automatically released from any liability for them. Buyer must furnish Birla Carbon with samples adequate to test the Products claimed to be not within specifications and must give Birla Carbon the opportunity to take its own samples. Upon proper notice, and if Birla Carbon's tests confirm that Products fail to conform to specifications, Birla Carbon will take return of non-conforming Products, at its expense, 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. If a third party alleges that any Products Birla Carbon furnishes to Buyer under this Agreement infringe on any U.S. patent, Birla Carbon must defend Buyer and indemnify it against the resulting liability, damage, or expense. Buyer must give Birla Carbon prompt notice of any claim and must cooperate with Birla Carbon and its counsel in the defense of the 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. 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.

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.

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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. A notice must be given in a way that will establish proof of delivery.

Confidentiality. Beyond that information already in the public domain, Buyer agrees not to disclose to third parties, directly or indirectly, any items Birla Carbon identifies or labels as "confidential"; 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 ("Confidential Information"). Buyer must take all steps necessary to ensure that confidentiality is maintained by its employees, subcontractors, representatives, and agents.

(a) Unless disclosure is required by law or by governmental or judicial process, or unless Buyer has received Birla Carbon's express written consent, for at least three years after any transaction contemplated by this Agreement, Buyer must not publish or disclose any Confidential Information to any person or legal entity.

(b) If Buyer is required by law or by governmental or judicial process to disclose any Confidential Information, it must give Birla Carbon prompt notice so that it may seek appropriate legal protection for its Confidential Information.

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 calculated off 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) Rebates may only be issued from the Birla Carbon entity that had filled the order to the appropriate entity of Buyer that had purchased the Products. 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 must not exceed the price of the Products 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 BREACH OR FAILURE OF EXPRESS OR IMPLIED WARRANTY, BREACH OF CONTRACT, MISREPRESENTATION, NEGLIGENCE, STRICT LIABILITY IN TORT, OR OTHERWISE ARISING UNDER THIS AGREEMENT OR FROM THE PARTIES' TRANSACTIONS.

Choice of Law. This Agreement is governed by the substantive laws of the State of Georgia, without reference to principles of choice 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. Digital or electronic signatures within electronic communications are not binding to amend this Agreement. 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.

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.