

Columbian'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 Columbian Chemicals Company ("Columbian"), 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 orders, rush orders, etc., apply as stated within Columbian's price lists, which may change at any time. Services such as delivery, third-party storage, or inventory management are not included in pricing.

Taxes. Except for taxes measured by Columbian'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. Columbian 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 Columbian ships Products in installments, the shipment of part of an order will not obligate Columbian to make further shipment.

If for reasons beyond its reasonable control Columbian cannot supply the requirements of all of its customers of the Products covered by this Agreement, Columbian will make reasonable efforts to allocate the available supply of Products to Buyer on a nondiscriminatory basis with other Columbian customers. Columbian 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 Columbian's Customer Service Department. A minimum aggregate order volume applies as stated in Columbian's price lists.

Changes, Rushes, and Cancellations. Subject to Columbian'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 Columbian'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 Columbian's plants, no changes or cancellations may be made within five business days before shipment.

Although Columbian desires to meet Buyer's schedule, Columbian is not liable for failure to ship by Buyer's requested shipping date or any other date, and Columbian's acceptance of any order is not a guarantee that Buyer's desired shipping date will be met. Columbian will use its best efforts to meet the requested shipping date, but if Columbian cannot do so, it will advise Buyer and work to establish an acceptable date.

Packaging. Columbian 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.

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. 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 Columbian's plant or warehouse.

Weighing. When Products are released for shipment, they will be weighed by a third-party scale operator; however, Columbian will weigh hopper trucks from Hamilton, Ontario and packaged Products shipped from any plant. Columbian 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. Columbian charges a railcar user fee per loaded mile per hopper car. Prices are based upon a 20-day hopper car turnaround (from arrival at Buyer's plant to release from it). Columbian reserves the right to charge Buyer for hopper car holds of longer duration at a rate commensurate with prevailing railway hopper car hold charges. Columbian 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 Columbian 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. Columbian does not accept Products for return.

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

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Delays. Columbian 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 Columbian'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 Columbian's reasonable control.

Columbian 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 Columbian's price list. All payments must be made in U.S. dollars. Payment terms are subject to Columbian's review and continuing approval of Buyer's credit standing. Buyer agrees to provide Columbian 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 Columbian, in writing, of the amount in dispute and the reason for dispute so that correction may be made.

If payment is overdue, Columbian 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 Columbian's collection costs and reasonable attorneys' fees.

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

Buyer must give Columbian written notice of any Products that fail to meet specifications within 30 days after receipt. Buyer's failure to notify Columbian or Buyer's use or alteration of Products is considered an irrevocable acceptance of them, and Columbian is automatically released from any liability for them. Buyer must furnish Columbian with samples adequate to test the Products claimed to be not within specifications and

must give Columbian the opportunity to take its own samples. Upon proper notice, and if Columbian's tests confirm that Products fail to conform to specifications, Columbian 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 COLUMBIAN WHEN PRODUCTS ARE PURCHASED, AND COLUMBIAN DISCLAIMS ANY OTHER WARRANTY.

Indemnity. If a third party alleges that any Products Columbian furnishes to Buyer under this Agreement infringe on any U.S. patent, Columbian must defend Buyer and indemnify it against the resulting liability, damage, or expense. Buyer must give Columbian prompt notice of any claim and must cooperate with Columbian and its counsel in the defense of the claim. At its sole discretion, Columbian 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 Columbian's formulation or process requested by Buyer and Columbian assumes no liability for patent infringement claims related to them. Columbian's liability under this indemnity provision must not exceed the purchase price of the Products. Columbian 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 identified or labeled as "confidential"; the terms, pricing, or existence of this Agreement; or any terms or pricing mentioned in any discussions that may have preceded it ("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 Columbian'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 Columbian 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, Columbian will review Buyer's purchases that were ordered directly from Columbian.

(a) Upon verification that all conditions have been met, Columbian 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. Columbian 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 Columbian'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, Columbian is not obligated to issue Buyer the full rebate credit but may first apply it to any amounts owed to Columbian and then will remit any remainder to Buyer.

(d) Rebates may only be issued from the Columbian entity that had filled the order to the appropriate entity of Buyer that had purchased the Products. Columbian's obligation to pay any rebate is subject to local laws prohibiting or limiting the practice.

MSDS. Columbian will make available Material Safety Data Sheet ("MSDS") information for Products purchased under this Agreement, which can be accessed in English and in French at on Columbian'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. Columbian'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 Columbian within one year after the circumstances surrounding a claim or cause of action are discovered, then Columbian's liability terminates. COLUMBIAN 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. Columbian 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.

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.