

SGL CARBON – US COMPANIES (“OFFEROR”) - TERMS AND CONDITIONS OF SALE

NOTICE: THIS SALES TRANSACTION, INCLUDING, BUT NOT LIMITED TO, ANY OFFER, QUOTATION, ORDER CONFIRMATION, ORDER ACCEPTANCE, OR INVOICE FOR THE SALE OF ANY PRODUCTS THEREIN (“PRODUCTS”) (COLLECTIVELY, “OFFER”) IS SUBJECT TO AND CONDITIONED UPON ACCEPTANCE OF THE TERMS AND CONDITIONS CONTAINED IN THIS DOCUMENT. ANY ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS PROPOSED BY AN OFFEREE OF PRODUCTS (“OFFEREE”), ARE OBJECTED TO BY, AND WILL NOT BE BINDING UPON, OFFEROR. THESE TERMS AND CONDITIONS OF SALE ARE INCORPORATED INTO THIS OFFER AND SHALL APPLY TO THIS OFFER WHETHER OR NOT THEY APPLIED TO A PRIOR PURCHASE BY OFFEREE, UNLESS EXPLICITLY OBJECTED TO IN WRITING BY OFFEREE, WHICH WRITING MUST BE RECEIVED BY OFFEROR WITHIN FIVE (5) DAYS AFTER THE DATE OF THIS DOCUMENT AND MUST BE SUBSEQUENTLY AGREED TO IN WRITING BY OFFEROR TO APPLY TO THIS OFFER. OFFEROR’S SILENCE OR FAILURE TO RESPOND TO ANY SUCH TERMS OR CONDITIONS PROPOSED BY OFFEREE SHALL NOT BE DEEMED AN ACCEPTANCE OR APPROVAL OF SUCH ADDITIONAL TERMS OR CONDITIONS THEREOF.

1. **Acceptance.** All Offers received by Offeror are subject to final acceptance or confirmation by Offeror and no terms or Offers are binding upon Offeror until so accepted in writing by Offeror. Neither the conduct of the Offeror nor any prior course of dealing between the Offeror and Offeree shall be deemed acceptance of an Offer.
2. **Deliveries.** Unless otherwise specified by Offeror in writing, all deliveries are CPT Offeree’s facility designated on the face of this Offer (Incoterms® 2020). All deliveries shall be via common carrier or some other reasonable means chosen by Offeror. All risk of loss to Products shall pass to Offeree by Offeror upon delivery of such Products to a common carrier. Delivery is conditional on Offeree’s compliance with these terms and on the timely receipt by Offeror of documents necessary for the completion of an Offer and of any down payment. Partial deliveries of Products are permissible. Offeror will not be liable for any delay in the performance of Offers, or in the delivery or shipment of Products, or for any damages suffered by Offeree by reason of such delay. Delivery is subject to Offeree maintaining credit satisfactory to Offeror. Offeror may suspend or delay performance or delivery at any time pending receipt by Offeror of assurances from Offeree of the ability of Offeree to pay, including the payment to Offeror of the purchase price of Products, in full or in part, or the payment to Offeror of any outstanding amounts owed to Offeror. Failure of Offeree to provide such assurances to Offeror shall entitle Offeror to delay delivery and/or cancel this Offer or any other Offer without further liability or obligation to Offeree.
3. **Prices.** Unless otherwise specified by Offeror in writing, prices and quantities are quoted CPT Offeree’s facility (Incoterms® 2020) excluding freight costs which will be prepaid by Offeror and invoiced to Offeree. Prices are subject to change by Offeror without notice to Offeree. Prices are for custom, made-to-order Products and Offeree shall be responsible for the total price of all Products once an Offer is accepted by Offeror. Unless otherwise specified, prices do not include any packing or handling charges, any sales, use, excise, privilege, or similar tax, or any export or import tax or duty levied by any government; and Offeree shall pay any such applicable charges, taxes, and duties. Upon the request of Offeror, Offeree shall provide Offeror with a tax exemption certificate acceptable to the appropriate taxing authorities.
4. **Terms of Payment.** Unless otherwise specified by Offeror in writing, the purchase price shall be due in full by Offeree upon tender of delivery of Products. Extension of credit, if any, may be changed or withdrawn by Offeror at any time. Invoices not paid within thirty (30) days after their due date will be subject to carrying charges. Carrying charges shall accrue and be added to the unpaid balance at the rate of one and one-half percent (1½%) per month of any overdue unpaid balance, or the maximum rate permitted by law, whichever rate is less. Offeree shall reimburse Offeror for the costs of collection, including, without limitation, reasonable attorneys’ fees, of any overdue amount owed by Offeree to Offeror, and such collection costs shall also be subject to carrying charges. Offeree may not retain or set-off any amounts owed to Offeror in satisfaction of any claims asserted by Offeree against Offeror.
5. **Claims and Return of Products.** Within ten (10) days after Offeree’s receipt of Products, Offeree must give written notice to Offeror of any claim by Offeree based upon the condition, grade, or quantity of Products; such notice must indicate the basis of the claim in detail. Offeree’s failure to comply with this paragraph shall constitute irrevocable acceptance by Offeree of Products as delivered and shall bind Offeree to pay to Offeror the full price of such Products. Products shall not be returned to Offeror without Offeror’s prior written consent; and transportation charges for any authorized returns of Products shall be pre-paid by Offeree.
6. **Cancellation/Changes.** Offeree may not cancel or change an Offer once placed with and accepted by Offeror except with the prior written consent of Offeror and upon terms that will indemnify Offeror against any loss. Offeror may correct mathematical or clerical errors. Offeror may make any technical changes to Products as Offeror may deem necessary.
7. **Excusable Delays.** Offeror shall not be liable for delays or failure to perform due, directly or indirectly, to causes beyond Offeror’s control, including the inability of Offeror’s suppliers to deliver goods, services, or raw materials necessary for Offeror to perform an Offer, acts (including failure to act) of any governmental authority, wars (declared or undeclared), strikes or other labor disputes, fires, and natural calamities (such as floods, earthquakes, storms, disease, epidemics, and pandemics). In the event any such circumstance affects only a part of Offeror’s capacity to produce and/or deliver Products, Offeror will allocate production and/or deliveries among the requirements of its customers and Offeror’s own requirements in such manner as Offeror shall deem to be fair and equitable.
8. **Selection and Application.** Offeree is solely responsible for proper selection and application of Products. Offeree agrees that it will use and apply Products only for their intended uses and according to specifications and limitations established by Offeror from time to time. Offeree shall indemnify and hold Offeror harmless from and against any and all damages, claims, or expenses (including reasonable attorneys’ fees) arising out of or relating to improper selection, application, or abuse of Products, or use or application of Products other than according to specifications and limitations established by Offeror from time to time.
9. **EXCLUSION OF WARRANTIES. NO EXPRESS WARRANTY AND NO IMPLIED WARRANTIES OF ANY TYPE, WHETHER OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE, OR OTHERWISE, SHALL APPLY TO PRODUCTS.**
10. **LIMITATION AND EXCLUSION OF DAMAGES. IN NO EVENT SHALL OFFEROR’S LIABILITY TO OFFEREE EVER EXCEED THE PURCHASE PRICE PAID BY OFFEREE TO OFFEROR FOR PRODUCTS. OFFEROR SHALL NOT BE LIABLE TO OFFEREE FOR INJURIES, LOSSES, OR DAMAGES RESULTING FROM THE NEGLIGENCE OR WILLFUL MISCONDUCT OF OFFEREE, NOR SHALL OFFEROR BE LIABLE TO OFFEREE, IN ANY EVENT, FOR CONSEQUENTIAL, INCIDENTAL, OR SPECIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, WHETHER ARISING FROM THE SALE OF PRODUCTS, ANY DEFECT IN PRODUCTS, AND ANY USE OF PRODUCTS, OR FROM OFFEREE’S INABILITY TO USE PRODUCTS, OR OTHERWISE.**
11. **Proprietary Information.** Offeror retains ownership of all intellectual property rights, including, without limitation, patents, trademarks, trade names, trade secrets, and copyrights, and of all drawings, illustrations, dimensions, specifications, copyrights, and performance projections, designs, plans, price lists, customer lists, computations, and descriptions prepared by Offeror in connection with or relating to Products (“Proprietary Information”). Offeree shall not copy or disclose to any other persons or use for any purpose whatsoever any or all of the Proprietary Information without Offeror’s prior written consent. Offeree shall not analyze the chemical composition or the microstructure of the Products.
12. **Patents, Trade Secrets, and Copyright Indemnity.** Offeree shall hold Offeror harmless against any claim, and at Offeree’s expense defend any suit or proceeding, brought against Offeror based on an allegation that any of the designs, drawings, specifications provided by Offeree to Offeror, or any Products resulting therefrom, or any part thereof, or the application or use of Products for the intended purpose, constitute an infringement of any patent or copyright or misappropriation or misuse of any trade secret.
13. **Security Agreement.** Offeree hereby grants to Offeror a purchase money security interest in Products and to the proceeds thereof. Offeree shall execute and deliver any financing statements and other documents that Offeror may reasonably require for the protection of the security interest hereby granted to Offeror by Offeree, and Offeree hereby authorizes Offeror to do all other acts reasonably necessary for the establishment, perfection, preservation, and enforcement of such security interest. Offeree shall maintain adequate insurance against casualty, loss, fire, or theft of Products for so long as the security interest is in effect.
14. **Assignment.** Offeree may not assign its rights or obligations hereunder without the prior written consent of Offeror and any purported assignment by Offeree without the consent of Offeror shall be of no effect. Offeror may assign this Offer to (i) any affiliated company of Offeror or (ii) the successor of all or substantially all of Offeror’s business or the business division to which this Offer relates, without prior written consent of the Offeree. This Offer shall inure to the benefit of and be binding upon each of the parties hereto and its successors and assignees.
15. **Limitations.** Any action by Offeree under this Offer or relating to Products must be commenced within one (1) year after acceptance by Offeror of the respective Offer at issue.
16. **Choice of Law.** This Agreement and any dispute or claim relating to it shall in all respects be governed by and construed according to the laws of the State of North Carolina, excluding its conflict of law principles.
17. **Choice of Forum, Venue, and Consent to Jurisdiction.** Except with respect to an action instituted by Offeror for equitable relief, including, without limitation, an action for temporary or permanent injunctive relief, Offeree and Offeror agree that the General Courts of Justice of the State of North Carolina and the United States District Courts situated in Charlotte, North Carolina, shall constitute the exclusive forum(s) for the adjudication of any and all disputes or controversies arising out of or related in any way to the subject matter of this Offer, the Products or the relationship of Offeror and Offeree. Offeree and Offeror consent to the exercise of jurisdiction over them by such courts with respect to any dispute or controversy, and Offeree and Offeror waive any objection to the assertion or exercise by such court of such jurisdiction.
18. **Construction of Agreement.** The provisions contained in this Offer are incorporated into these terms and conditions of sale by reference, and in the event any provisions of this Offer conflict with any provisions of these terms and conditions, the provisions of this Offer shall control (with the other provisions of these terms and conditions continuing to apply to this Offer). These terms and conditions of sale may not be amended, modified, or supplemented except by written agreement executed by Offeree and Offeror. The provisions of this Offer are hereby deemed by the parties to be severable and the invalidity or unenforceability of one provision shall not affect the validity or enforceability of any other provision. Offeree and Offeror acknowledge that these terms and conditions of sale, together with the Offer, constitute the entire Agreement between Offeree and Offeror with regard to the sale or transfer of Products, and supersede (i) all prior agreements and understandings, both oral and written, with respect to the subject matter hereof, made by the parties or their representatives; and (ii) the terms of any “click through” or similar agreement related to any online or internet-based process or other repository of terms and conditions for the purchase and sale of the Products.