

Standard Terms of Sale

Tokai Carbon CB Ltd.

(Master Purchase and Sale Agreement)

- 1. CONTROLLING AGREEMENT.** This Master Purchase and Sale Agreement (the “Agreement”) by and between Customer (“Purchaser”) and Tokai Carbon CB Ltd. (“Seller”), governs the purchase by Purchaser and the sale by Seller, from time to time hereafter, of carbon black (the “Product”). This Agreement sets forth the terms and conditions of such purchases and sales and supersedes any subsequent purchase order of Purchaser or confirmatory terms of Seller, whether contained in an invoice or otherwise.
- 2. VARIABLE TERMS.** Purchaser may, from time to time, pursuant to a purchase order or other authenticated record, request Seller to ship for sale to Purchaser Product having specifications as mutually agreed by Seller and Purchaser, in the quantity, and subject to the delivery dates and delivery locations, specified by Purchaser. If Seller is willing to sell Product to Purchaser as requested, Seller will specify the price per quantity and associated freight charges, using, if applicable, any special carrier requested by Purchaser and acceptable to Seller. The only variable terms for the purchases and sales of Product are the Product quantity, the unit price per quantity, the Product specifications, the delivery date and location, and the carrier freight charges. This Agreement sets forth all the other terms and conditions of purchases by Purchaser and sales by Seller of the Product.
- 3. EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION.** This Agreement incorporates by reference, and as applicable, (a) 41 C.F.R. § 60-1.4, pertaining to the equal opportunity clause under Executive Order 11246, as amended, (b) 41 C.F.R. §§ 60-250.4 and 60-250.5, pertaining to the equal opportunity clause under the Vietnam Era Veterans Readjustment Assistance Act, and (c) 29 U.S.C. § 793(a) and 41 C.F.R. § 60-741.1(a) pertaining to the affirmative action and advancement of qualified individuals with disabilities under the Rehabilitation Act. Seller complies with applicable provisions of Executive Order 11246 (including but not limited to applicable affirmative action provisions), the Vietnam Era Veterans Readjustment Assistance Act, and the Rehabilitation Act (including but not limited to applicable affirmative action provisions). Seller does not discriminate in employment based on race, religion, color, sex, national origin, disability, or Vietnam era veteran status. Seller files EEO-1 reports, does not maintain segregated facilities, and maintains required records.
- 4. OCCUPATIONAL SAFETY AND HEALTH ACT.** Seller, and any Product supplied by Seller, shall comply with all applicable laws, rules, regulations, orders or ordinances including, but not limited to, Occupational Safety and Health Act of 1970, and all amendments and regulations issued pursuant thereto, including Hazard Communication (29 C.F.R. 1910.1200) and sections 6, 7 and 12 of the Fair Labor Standards Act, as amended, and regulations and orders of the United States Department of Labor issued under section 14 thereof.

5. CONTAINERS. Product may be shipped in Seller's railroad hopper cars or by Seller's or third party's hopper trailers. After constructive delivery to Purchaser of Product in a hopper car of Seller, Purchaser shall have thirty (30) free days to unload the car and return it to Seller's control. After thirty (30) days, Purchaser will be charged \$100.00 a day demurrage per car until Purchaser returns it to Seller. After forty-five (45) days the charge to the Purchaser will increase to \$250.00 a day demurrage per car until Purchaser returns it to Seller. After sixty (60) days the charge to the Purchaser will increase to \$500.00 a day demurrage per car until Purchaser returns it to Seller. As an additional remedy, Seller may delay shipment of additional Product until Purchaser returns to Seller hopper cars that have been in Purchaser's possession for more than sixty (60) days. Any such delay will not be a default by Seller under this Agreement.

After delivery on site to Purchaser of Product in a hopper trailer of Seller, Purchaser shall have three (3) free days to unload the trailer and return it to Seller's control. After three (3) days, Purchaser will be charged \$150.00 a day demurrage per trailer until Purchaser returns it to Seller. As an additional remedy, Seller may delay shipment of additional Product until Purchaser returns to Seller hopper trailers that have been in Purchaser's possession for more than three (3) days. Any such delay will not be a default by Seller under this Agreement.

6. INVOICES. Seller's invoices will set forth the quantity of Product, price per quantity of Product, Product ASTM grade or code, freight charges, per diem demurrage, and, if open credit terms are applicable, the due date for payment.

7. CREDIT TERMS. Open credit terms are available at Seller's discretion and only if Purchaser's creditworthiness, financial condition and payment history are satisfactory to Seller. Purchaser agrees to deliver to Seller such information as Seller may reasonably request concerning Purchaser's financial condition. If Seller deems itself insecure about Purchaser's creditworthiness or financial condition, or if Purchaser's payment history is unsatisfactory to Seller, or if Purchaser becomes insolvent, or if Purchaser becomes the subject of a bankruptcy proceeding, open credit terms will immediately terminate. If open credit terms are not available, Purchaser must pay for Product in advance, before shipment by Seller.

8. PAYMENTS. Standard payment terms are net 30 days from date of invoice. If open credit terms are available to Purchaser, payments are due by the date set forth on Seller's invoices. Payments must be made by wire transfer, ACH transfer or by check to a post office box in the manner indicated on Seller's invoice. Payments not received by the due date will accrue interest at the rate of one and one-half percent (1 and ½%) per month.

If any portion of an invoice is contested by Purchaser, payment of the uncontested portion remains due according to the invoice terms and Purchaser must notify Seller in writing of the amount being contested and the reasons therefore.

If a payment is not received by the due date, Seller will send a separate invoice identified as "Past Due Interest Charges" after the earlier of payment of the original invoice or the end of the month after the due date.

9. SHIPPING. Unless otherwise agreed to by both parties, all shipments are Ex Works (EXW), Seller's facility Incoterms 2010®. Title to the Product will transfer to Purchaser upon shipment from Seller's

facility. Seller agrees to mail the original bill of lading to Purchaser not later than the day following shipment marked to the attention of Purchaser's designee. The Purchaser's purchase order number must be identified on the bill of lading.

10. PRICES. The price per quantity of Product will be mutually agreed to by Purchaser and Seller in separate negotiations and will be reflected on Seller's invoices. Seller warrants that said prices are not in excess of the maximum established by any applicable regulation or order issued by any governmental agency. If Purchaser's purchase order reflects a price different from that mutually agreed to, the price reflected on the purchase order shall be disregarded.

11. SPECIFICATIONS. Approval of samples by Purchaser will not relieve Seller of responsibility if Product furnished is not to specifications mutually agreed to by Purchaser and Seller.

12. TIME OF DELIVERY. Minimum lead time for orders is 14 business days. Deliveries are to be made both in approximate quantities, having due regard for capacities of available shipping containers, and at times specified in purchase orders or other authenticated records from Purchaser. Purchaser shall not be liable for any Product delivered by Seller in excess of Purchaser's orders and Purchaser may return the excess Product at Seller's expense. Purchaser may from time to time change delivery schedules or direct temporary suspension of scheduled shipments. If Seller realizes that Product will not be shipped in time to meet, under reasonably expected transit delivery times, the delivery times specified by Purchaser, Seller will notify Purchaser. Purchaser will then have the option to either accept Seller's shipment of Product on a delayed delivery schedule or cancel the order for the Product.

13. INSPECTION. Product that does not meet specifications on inspection may be returned by Purchaser for credit, all transportation charges to be borne by Seller.

14. FORCE MAJEURE. Seller shall not be liable for any failure to perform or delay in performance due to the occurrence of any act, event or circumstance outside of its control (each, a "Force Majeure Event"). Force Majeure Events include, but are in no way limited to, those caused by fire; explosion; flood, storms, hurricane, tornado, earthquake, landslide, soil erosion or other natural disaster; adverse weather conditions; accident; acts of God; labor disputes; strikes, shortage or unavailability on reasonable commercial terms acceptable to Seller of utility, facility, raw materials or labor; delay in or unavailability on reasonable commercial terms acceptable to Seller of transportation; breakdown, malfunction or destruction of any facilities, equipment or machinery (regardless of fault); interruption of utility services, compliance with or other action taken in furtherance of or to comply with any court order, law, statute, ordinance, rule, regulation or directive; acts of war (whether declared or undeclared), armed conflict, embargo, blockade, civil unrest, sabotage, riot or terrorism (or threat thereof); restraints or requirements of any government or governmental authority or their agents (including, but not limited to, the issuance or promulgation of any court order, law, statute, ordinance, rule, regulation or directive, the effect of which would prevent, delay, or make unlawful Seller's performance hereunder, or would require Seller, in order to comply with said act, to take measures which are unreasonable in the circumstances); or any other acts, events or circumstances, whether similar or dissimilar, outside of Seller's control. In the case of a Force Majeure Event, Seller may, in its sole discretion, cancel, reduce or modify its deliveries to Purchaser without any liability whatsoever for any damages of any kind or nature.

15. CANCELLATIONS. Purchaser has the unrestricted right to cancel and terminate this Agreement in the event of (a) Seller's insolvency; (b) the voluntary filing of a bankruptcy petition by Seller; or (c) the filing of a bankruptcy petition against Seller, provided that, in the case of clause (c), such petition is not vacated within 60 days of filing. Seller has the unrestricted right to cancel and terminate this Agreement in the event of (i) Purchaser's insolvency; (ii) the voluntary filing of a bankruptcy petition by Purchaser; or (iii) the filing of a bankruptcy petition against Purchaser, provided that, in the case of clause (iii), such petition is not vacated within 60 days of filing.

16. PATENTS, TRADEMARKS AND COPYRIGHTS. Seller warrants that the sale or use of the Product purchased under this Agreement will not infringe any patent, copyright, trademark, trade name or brand name of any other party, and covenants that it will, at its own cost and expense, defend every suit which may be brought against Purchaser (provided the Seller is promptly notified of the institution of such suit) for any alleged infringement of any such patent, copyright, trademark, trade name or brand name, arising out of the sale of said Product, and to pay all expenses and fees of counsel which shall be incurred in connection with the defense thereof, and all costs, damages, and profits recoverable in every such suit, whether litigated, compromised, settled, or otherwise resolved.

17. ASSIGNMENT. Neither Purchaser nor Seller may assign or delegate performance of its obligations under this Agreement, without the prior written consent of the other. Any such assignment or delegation without such prior written consent shall be void. The provisions of this paragraph are not intended to prohibit normal subcontracting.

18. ADVERTISING. Seller shall not advertise or publish in any manner the fact that Seller has contracted to furnish Product to Purchaser under this Agreement, without the prior written consent of Purchaser. If Seller fails to observe this provision, Purchaser shall have the right to terminate this Agreement without any obligation to accept deliveries after the date of termination or to make further payments except for Product ordered and shipped before the date of termination.

19. WARRANTY. Seller warrants that all Products (irrespective of whether design or information has been furnished or approved by Purchaser) will conform in all material respects to all mutually agreed descriptions and specifications; Seller has good title to and the right to sell Products; Purchaser shall have quiet possession of the Products and they shall be free from all liens and encumbrances; Seller will not substitute Products without Purchaser's prior written consent. EXCEPT FOR THE WARRANTIES SET FORTH ABOVE, SELLER DISCLAIMS AND EXCLUDES ANY WARRANTY, EXPRESS OR IMPLIED, OF MERCHANTABILITY OR FITNESS FOR USE.

20. INDEMNIFICATION. Seller agrees to indemnify, defend and save harmless Purchaser, its affiliates, and its and their successors, assigns, officers, directors, employees and agents, against and from all claims, demands, liabilities, actions, damages, losses, costs and expenses of any kind which any of them may sustain, incur, pay in settlement on account of, or be liable for, associated with the Products and resulting from any breach by Seller of the warranties set forth in Section 19 above, or any negligent act or omission by Seller or its agents ("claims") including claims for injury, death (including to the employees of either party thereto), damage, destruction or loss, or loss of use of any property, including property of Purchaser or an affiliate, and in the case of claims by third persons, even if the allegations are groundless, false or fraudulent.

Purchaser agrees to indemnify, defend and save harmless Seller, its affiliates, and its and their successors, assigns, officers, directors, partners, employees, and agents against and from all claims, demands, liabilities, actions, damages, losses, costs and expenses of any kind which any of them may sustain, incur, pay, in settlement on account of, or be liable for, associated with the Products or any use thereof by Purchaser or its affiliates or any negligent act or omission by Purchaser or its agents ("claims"), including claims for injury, death (including to the employees of either party hereto), damage, destruction or loss, or loss of use of any property, including property of Seller or any of its affiliates, and in the case of claims by third persons, even if the allegations are groundless, false or fraudulent; provided, however, that Purchaser's said indemnity obligations shall not apply as to any claim as to which Purchaser is entitled to indemnity from Seller as provided above.

21. LIMITATION ON DAMAGES. Notwithstanding anything to the contrary herein, in no event shall Seller have any obligation or other liability for any lost profits, punitive, consequential, special, exemplary, indirect or similar damages of any kind or nature (even if Seller has been informed of the possibility of such losses or damages, or such losses or damages are foreseeable).

22. GOVERNING LAW. This Agreement shall be governed by, and construed in accordance with, the law of the State of Texas. Exclusive venue and jurisdiction for any and all actions related to the interpretation and enforcement of this Agreement shall be in the state and federal courts located in the City of Fort Worth, Tarrant County, Texas.

23. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between Seller and Purchaser with respect to the matter contained herein and supersedes all prior oral or written representations and agreements. This Agreement may be amended or modified only by a writing signed by the party to be bound.

24. TRANSPORTATION & INSURANCE. In the event Purchaser contracts with a third party to haul Product in Seller's hopper trailers, Purchaser shall provide Seller a Certificate of Insurance from hauler, showing Automobile Liability in an amount not less than \$1,000,000 each occurrence, with no exclusion for Pollution Liability, naming Seller as an Additional Insured, and Worker's Compensation, with a Waiver of Subrogation in favor of Seller. Purchaser's third party hauler shall be responsible for damages to Seller's hopper trailers, while they are in the care, custody, and control of hauler.