

## **Terms and Conditions Applicable to the Purchase of Goods:**

**Seller's Acceptance:** Seller's commencement of work on the goods subject to any purchase order or shipment of such goods, whichever occurs first, shall be deemed acceptance. Acceptance of any purchase order is limited to acceptance of the express terms contained in any purchase order and all terms herein. Any proposal for additional and/or different terms, or any attempt by Seller to vary the terms of any purchase order or the terms contained herein is hereby rejected, but such proposals shall not operate as a rejection of this offer and this offer shall be deemed accepted by Seller without said additional or different terms. If, however, such variances are in the terms of price, such variance shall be deemed a material alteration, and MCP's purchase order will thereby be revoked.

**Payment Terms:** MCP's standard payment terms will be Net 45 days from the date the invoice is received from Seller in MCP's Accounts Payable, or from the date the goods are delivered, whichever is later.

**Termination:** If Seller fails to comply with the terms herein or of any purchase order, MCP may terminate any part or the whole of any purchase order, without regard to what constitutes a commercial unit.

**Proprietary Information/Confidentiality:** Seller shall consider all information furnished by MCP or any drawings, specifications, or other documents prepared by Seller to MCP to be confidential and shall not disclose any such information to any other person, or use such information itself for any purpose other than performing under the terms herein and any purchase order. Seller shall not advertise or publish the fact that MCP has contracted with Seller, nor shall any information relating to any purchase order be disclosed to any third party. Unless otherwise agreed in writing, no commercial, financial or technical information disclosed by Seller to MCP shall be deemed confidential.

**Intellectual Property:** Any copyrightable works, ideas, discoveries, inventions, patents, products, or other information developed in whole or in part by or on behalf of Seller in connection with or relating to the goods as described in any purchase order shall be the exclusive property of MCP.

**Warranties:** Seller expressly warrants that all goods furnished shall conform to all specifications and applicable standards, will be new, will be free from defects in material or workmanship, and will conform to samples. Seller warrants that all such goods or services will conform to any statements made on the containers, labels or advertisements for such goods or services, and that any goods will be adequately contained, packaged, marked and labeled in accordance with industry standards and other such governing customs and applicable state and federal laws. Seller warrants that all goods furnished hereunder will be merchantable, safe and appropriate for the purpose for which the goods of that kind are normally used. If Seller knows or has reason to know the particular purpose for which MCP intends to use the goods, Seller warrants that such goods will be fit for such particular purpose. Inspection, test, acceptance or use of the goods shall not affect Seller's obligation under this warranty, and such warranties shall survive any inspection, test, acceptance and use. Seller's warranty shall run to MCP, its customers, and users of goods.

**Inspection-Testing-Nonconforming Goods:** Payment shall not constitute MCP's acceptance. MCP shall have the right to inspect any goods and to reject the whole, accept the whole, or accept any part of and reject the rest of any goods that are, in MCP's judgment, defective, nonconforming, or fail in any respect to conform to the terms herein and any purchase order. Upon MCP's election, Seller agrees to replace or correct defects of nonconforming goods, without expense to MCP. But, this provision shall not be deemed to force an election of remedies. MCP may require Seller to replace or correct any defect and still reserve its right to pursue all other remedies available to it. If Seller fails to correct defects in or replace nonconforming goods promptly, MCP may, after notice to Seller, make such corrections or replace such goods and Seller shall be responsible for MCP's cost of cover. Because time is of the essence, MCP will not be required to replace or correct the nonconforming goods at the lowest possible price and Seller agrees that any method employed by MCP and amount spent by MCP to replace or correct defective or nonconforming goods is reasonable and chargeable to Seller. Goods rejected and goods supplied in excess of quantities called for herein may be returned to Seller at its expense and, MCP may charge Seller all expenses of unpacking, examining, repacking, and reshipping such goods. If goods accepted by MCP are subsequently found to be nonconforming, MCP may revoke acceptance of any or all goods in any purchase order, without regard to what constitutes a commercial unit or the feasibility of segregating conforming from nonconforming items. Nothing contained herein shall relieve Seller from the obligation of testing, inspection and quality control, and MCP shall have the right to audit product quality at Seller's premises and inspect all traceability documentation related to MCP's supply chain.

**Shipment/Delivery:** If in order to comply with MCP's required delivery date it is necessary for Seller to ship the goods in a more costly manner than specified in any purchase order, any increased transportation costs shall be paid for by Seller unless the necessity for such rerouting or expedited handling is caused by MCP. Time is of the essence of this contract. If delivery of items is not completed by the time contemplated by any purchase order, MCP reserves the right, without liability, and in addition to its other remedies, to terminate this contract. Seller will be responsible for MCP's cost of cover.

**Risk of Loss:** Seller shall bear all risk of damage or loss with respect to goods until MCP receives and accepts the goods or services.

**Changes:** MCP shall have the right at any time to make changes in drawings, designs, specifications, materials, packaging, time and place of delivery and method of transportation. If any such changes cause an increase or decrease in the cost, or the time required for the performance, an equitable adjustment shall be made and this agreement shall be modified in writing accordingly.

**Force Majeure:** MCP's performance is excused during causes beyond its control, including governmental interference, action or inaction, restrictions, regulations, war, civil commotion, act of God, strike or other labor delay, fire, or other casualty. If directed by MCP, Seller shall hold such goods and deliver them when the cause affecting the delay has been removed and MCP shall be responsible only for Seller's direct additional costs in holding the goods.

**Duty to Defend/Indemnify:** **TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, SELLER SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS MCP AGAINST ALL DAMAGES, CLAIMS OR LIABILITIES AND EXPENSES, INCLUDING COURT COSTS AND ATTORNEYS' FEES ARISING OUT OF MCP'S USE OF SELLER'S PRODUCT, SELLER'S OPERATIONS IN MANUFACTURING OR TRANSPORTING ITS PRODUCT, AND MCP'S PRESENCE AT SELLER'S FACILITY FOR PRODUCT INSPECTION AND/OR PICK-UP. IN THE EVENT THAT ANY EMPLOYEE OF SELLER IS INJURED DURING THE COURSE OF MANUFACTURING OR TRANSPORTING ITS PRODUCT, SELLER SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS MCP**

**EVEN FOR MCP'S OWN NEGLIGENCE (WHETHER JOINT/CONCURRENT OR SOLE AND WHETHER ALLEGED OR ACTUAL). SELLER AGREES THAT UPON THE WRITTEN REQUEST FROM MCP, SELLER WILL ASSUME FULL RESPONSIBILITY FOR THE DEFENSE OF ANY PROCEEDING WHICH MAY BE BROUGHT AGAINST MCP. MCP MAY ELECT TO BE REPRESENTED AND ACTIVELY PARTICIPATE IN ANY PROCEEDING BY AND THROUGH ITS OWN COUNSEL AT ITS SOLE EXPENSE. IT IS MUTUALLY UNDERSTOOD AND AGREED THAT THE ASSUMPTION OF LIABILITIES AND INDEMNIFICATION PROVIDED FOR IN THIS AGREEMENT SHALL INDEFINITELY SURVIVE ANY EXPIRATION, COMPLETION OR TERMINATION OF THIS AGREEMENT.**

Insurance: Seller shall maintain Commercial General Liability (CGL) for Bodily Injury and Property Damage with an occurrence limit of \$1,000,000 and a general aggregate of \$2,000,000 and a products and completed operations aggregate of \$2,000,000. Seller shall also maintain a Commercial Auto liability policy for all owned, hired and non-owned autos with a combined single limit of \$1,000,000, and a Workers' Compensation policy with Employer's Liability limits of \$1,000,000 for each occurrence, each employee for injury by Disease, and aggregate for injury by disease. The CGL policy shall name MCP as an Additional Insured for on-going operations (utilizing endorsement CG 20 10 10 01) and completed operations (utilizing endorsement CG 20 37 10 01) and each policy shall provide a Waiver of Subrogation in favor of MCP. Each coverage shall be primary and non-contributory with regards to any insurance maintained by MCP, and each policy shall be endorsed to provide MCP with a 30 days' Notice of Cancellation for any material change in the policy conditions or reduction of policy limits.

Assignment: No purchase order is assignable without the prior written approval of MCP.

Setoff: All claims for money due or to become due from MCP shall be subject to deduction or set-off by MCP by reason of any claim, demand or counterclaim arising out of any purchase order, the terms herein, or any other transaction with Seller.

Rights and Remedies Cumulative/Waiver: The rights and remedies provided herein are cumulative and are given in addition to any other rights MCP may have by law, statute, ordinance, or otherwise. Nothing herein shall limit the remedies available to MCP. MCP's exercise of any right or remedy will not preclude or waive its right to exercise any other right or remedy. MCP's failure to insist on performance of any of the terms herein or to exercise any right or privilege hereunder shall not thereafter waive any other terms or privileges whether of the same or similar type. No waiver by MCP of a breach of the terms herein or any purchase order may be construed as a waiver of any succeeding or preceding breach.

Limit on MCP's Liability/Statute of Limitations: MCP shall not be liable for anticipated profits, lost profits, incidental damages, consequential damages or penalties of any description. MCP's liability on any claim for any loss shall not exceed the price allocable to the goods giving rise to the claim. Any lawsuit against MCP arising out of the terms herein or any purchase order must be filed within one year after the cause of action has accrued.

Compliance with Applicable Laws: Seller will perform its obligations herein in strict compliance with applicable local, state, and federal laws, and laws of non-U.S. jurisdiction(s), if any, in which the goods are produced and delivered. If MCP determines that Seller is in violation of this section, MCP shall have the right to terminate, without penalty, any purchase order with Seller.

Choice of Law/Service of Suit: Any dispute between Seller and MCP shall be subject to the exclusive jurisdiction of the Courts of Harris County, Texas and governed by and interpreted according to the laws of the State of Texas, without regard to principles of conflict of law. Seller agrees to submit itself to the jurisdiction of the state courts of Texas and will comply with all requirements necessary to give such court jurisdiction.

Attorneys' Fees and Costs: If MCP employs an attorney to enforce its rights pursuant to the terms herein or any purchase order, Seller agrees to pay MCP's reasonable attorneys' fees and costs.

Severability: Any provision found to be invalid by a competent court of law shall be severable and shall have no effect on the validity of the remaining terms and conditions.

**THIS FORM CONSTITUTES THE ENTIRE AGREEMENT AND SUPERSEDES ALL PRIOR AGREEMENTS, EITHER WRITTEN OR ORAL. MCP'S OFFER IS EXPRESSLY MADE CONDITIONAL ON SELLER'S ASSENT TO THE TERMS HEREIN AND IN ANY PURCHASE ORDER ("THE TERMS"). MCP AGREES TO PURCHASE THE GOODS ONLY UPON THE TERMS, AND NO OTHERS. SELLER'S ASSENT TO THE TERMS SHALL BE DEEMED GIVEN UNLESS SELLER NOTIFIES MCP IN WRITING WITHIN TEN (10) DAYS AFTER THIS FORM IS ISSUED OF SELLER'S SPECIFIC OBJECTIONS TO CERTAIN TERMS. IN ALL INSTANCES, SELLER'S COMMENCEMENT OF WORK ON THE GOODS SUBJECT TO ANY PURCHASE ORDER OR SHIPMENT OF SUCH GOODS WILL BE DEEMED SELLER'S ASSENT TO THE TERMS. THE MERE TENDER BY SELLER OF ITS OWN TERMS AND CONDITIONS OR OTHER SUCH FORM SHALL NOT BE DEEMED A SPECIFIC OBJECTION.**

## **Terms and Conditions Applicable to the Sale of Goods:**

Purchaser's Acceptance: By accepting delivery of goods supplied by Mammoth Carbon Products, LLC ("MCP"), Purchaser agrees to be bound by these terms and conditions and any purchase order (the "Terms"). Terms contained in any purchase order or other document submitted by Purchaser which are inconsistent with or in addition to these Terms are rejected, objected to and shall be deemed void and of no force or effect.

Pricing: Any quote provided by MCP is firm only if Purchaser places a corresponding order within the time specified on the quote or, if no time period is mentioned, within 5 days.

Changes: Once submitted to MCP, any changes to any purchase order may be made only with written approval of MCP. Such changes may require different Terms, including a change in the price and/or time of delivery.

Cancellation: Once submitted to MCP, Purchaser may not cancel any order unless expressly approved by MCP in writing. Approval may be contingent on Purchaser's payment of MCP's costs and other charges, including, but not limited to, storage and shipment costs, costs of producing non-standard materials, costs of purchasing non-returnable materials, cancellation costs imposed on MCP by its suppliers, and all other costs resulting from Purchaser's cancellation. A verified bill of costs issued by an authorized representative of MCP shall be conclusive as to the amount of such costs. MCP reserves the right to cancel any purchase order, in whole or in part, upon Purchaser's breach of these Terms or Purchaser's bankruptcy, insolvency, dissolution, receivership proceedings, or upon the occurrence of any event leading MCP to reasonably question Purchaser's willingness or ability to perform.

Delivery/Claims: Unless otherwise noted, all sales will be delivered at MCP's shipping point. If shipping and handling charges are quoted or invoiced, they will include charges in addition to actual freight costs. Delivery of goods to the carrier at MCP's shipping point shall constitute delivery to Purchaser and Purchaser shall bear all risk of loss or damage in transit. The general method of shipment for each item is listed in MCP's product directory. However, MCP reserves the right, in its sole discretion, to determine the exact method of shipment. MCP reserves the right to make delivery in installments, all such installments to be separately invoiced and paid for when due per invoice, without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve Purchaser of its obligations to accept remaining deliveries. Immediately upon Purchaser's receipt of any goods shipped hereunder, Purchaser shall inspect the same and shall notify MCP in writing of any claims for shortages, defects or damages and shall hold any such nonconforming goods for MCP's written instructions concerning disposition. If Purchaser fails to notify MCP of any nonconformance within five days after receipt of the goods, such goods shall be conclusively deemed to conform to the Terms and are irrevocably accepted by the Purchaser.

Delays: Any specified delivery dates are estimates only and do not represent a promise by MCP to deliver goods at a date certain. MCP's performance is excused and MCP shall not be liable for any loss, damage or penalty as a result of any delay in or failure to manufacture, deliver or otherwise perform hereunder during causes beyond its control, including without limitation, unsuccessful reactions, acts of Purchaser, embargo or other governmental act, regulation or request affecting the conduct of MCP's business, fire, explosion, accident, theft, vandalism, riot, acts of war, strikes or other labor difficulties, acts of God, delay in transportation, or inability to obtain necessary labor, fuel, materials, supplies or power at current prices. If any such event continues for longer than 180 days, either party may terminate the purchase order and Purchaser will pay MCP for work performed prior to termination. In the event of delays in delivery or performance caused by force majeure or by Purchaser, the date of delivery or performance shall be extended by the period of time MCP is actually delayed or as mutually agreed. If, for reasons other than the foregoing, MCP should default or delay or not deliver goods, Purchaser's sole remedy against MCP is an option to cancel the purchase order, through written notice to MCP.

Payment and Interest: Unless otherwise stated, payment in full shall be made within 30 days of invoice. MCP reserves the right to require an advanced deposit of up to 100% of the purchase price at the time of order or any time prior to delivery as a condition of performance. Invoices remaining unpaid after their due date will be subject to an interest charge of 1.5% per month (or the maximum rate allowed by law). If for any reason, in its sole and unfettered discretion, MCP deems the collectability of the purchase price to be in doubt, MCP may, without notice to Purchaser, delay or postpone the delivery of the goods and at its option may demand payment in full or in part in advance, with respect to the entire undelivered balance of goods.

Purchaser Default: In the event of default by Purchaser in the payment of the purchase price or otherwise, MCP may, at its option, defer delivery, cancel Purchaser's order and any other order of Purchaser, or sell any undelivered goods for the account of Purchaser and apply such proceeds as a credit, without set-off or deduction of any kind, against the agreed upon purchase price, and Purchaser agrees to pay the balance then due to MCP on demand. Purchaser agrees to pay all costs, including, but not limited to, reasonable accounting and attorneys' fees and other expenses of collection resulting from any default by Purchaser in any of the Terms.

Taxes and Other Charges: MCP shall not be responsible for the payment of any use tax, sales tax, excise tax, duty, custom, inspection or testing fee, or any other tax, fee or charge of any nature whatsoever imposed by any governmental authority, on, or measured by, the sale of goods, with the sole exception of any sales taxes invoiced and collected by MCP from Purchaser. All other such charges must be paid by Purchaser separately and in addition to the prices quoted or invoiced. In the event MCP is required to pay any such tax, fee or charge, Purchaser shall reimburse MCP; or, in lieu of such payment, Purchaser shall provide to MCP, at the time the order is submitted, an exemption certificate or other document acceptable to the authority imposing the tax, fee or charge.

Warranties: MCP warrants that its goods shall, at the time of delivery, conform to the description of such goods as provided to Purchaser by MCP through MCP's product directory, analytical data or other then-current literature. **THIS WARRANTY IS EXCLUSIVE, AND MCP MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF ANY THIRD-PARTY PATENT OR INTELLECTUAL PROPERTY RIGHTS.** Any warranty made by MCP in connection with this sale shall not be effective if

MCP has determined, in its sole discretion, that Purchaser has misused the goods in any manner, has failed to use the goods in accordance with industry standards and practices, or has failed to use the goods in accordance with instructions, if any, furnished by MCP.

**MCP's Liability and Purchaser's Remedies: MCP'S SOLE AND EXCLUSIVE LIABILITY AND PURCHASER'S EXCLUSIVE REMEDY WITH RESPECT TO GOODS PROVED TO MCP'S SATISFACTION TO BE NONCONFORMING SHALL BE REPLACEMENT OF SUCH GOODS WITHOUT CHARGE OR REFUND OF THE PURCHASE PRICE UPON THE RETURN OF SUCH GOODS IN ACCORDANCE WITH MCP'S INSTRUCTIONS. MCP SHALL NOT IN ANY EVENT BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES OF ANY KIND RESULTING FROM ANY USE OR FAILURE OF THE GOODS, EVEN IF SUCH DAMAGES ARE FORESEEABLE, INCLUDING, WITHOUT LIMITATION, LIABILITY FOR LOSS OF USE, COST OF CAPITAL, LOSS OF WORK IN PROGRESS, DOWN TIME, LOSS OF REVENUE OR PROFITS, FAILURE TO REALIZE SAVINGS, ANY LIABILITY OF PURCHASER TO A THIRD PARTY, OR FOR ANY LABOR OR OTHER EXPENSE, DAMAGE OR LOSS OCCASIONED BY SUCH GOODS, INCLUDING, BUT NOT LIMITED TO, PERSONAL INJURY OR PROPERTY DAMAGE, UNLESS SUCH PERSONAL INJURY OR PROPERTY DAMAGE IS CAUSED BY MCP'S GROSS NEGLIGENCE. THE EXCLUSION OF SUCH DAMAGES AND/OR CLAIMS SHALL BE DEEMED INDEPENDENT OF, AND SHALL SURVIVE, ANY FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY ARISING FROM THE PURCHASE AND/OR THESE TERMS. MCP'S LIABILITY FOR DAMAGES SHALL IN NO CASE EXCEED THE CONTRACT PRICE FOR THE SPECIFIC GOODS THAT GIVE RISE TO THE BREACH. THESE EXCLUSIONS AND LIMITATIONS ON DAMAGES SHALL APPLY REGARDLESS OF HOW THE LOSS OR DAMAGE MAY BE CAUSED AND AGAINST ANY THEORY OF LIABILITY, WHETHER BASED IN CONTRACT, INDEMNITY, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER THEORY.**

Statute of Limitation: Any claim against MCP must be brought within one (1) year of shipment, regardless of its nature.

Returns: Goods may not be returned for credit except with MCP's written authorization. The return of goods must be accompanied by a written return authorization document in the form then in use by MCP, and only in strict compliance with MCP's return shipment instructions. Certain goods and quantities may not be returned for credit under any circumstances. These items include, but are not limited to, custom goods or special orders. Any returned goods may be subject to a 20% processing fee and must be returned within 90 days of purchase.

Waiver/Rights and Remedies Cumulative: The rights and remedies provided MCP herein are cumulative and are given in addition to any other rights MCP may have by law, statute, ordinance, or otherwise. Nothing herein shall limit the remedies available to MCP. MCP's exercise of any right or remedy will not preclude or waive its right to exercise any other right or remedy. MCP's failure to insist on performance of any of the terms herein or to exercise any right or privilege hereunder shall not thereafter waive any other terms or privileges whether of the same or similar type. No waiver by MCP of a breach of the terms herein or any purchase order may be construed as a waiver of any succeeding or preceding breach.

Choice of Law/Service of Suit: Any dispute between Purchaser and MCP shall be subject to the exclusive jurisdiction of the Courts of Harris County, Texas and governed by and interpreted according to the laws of the State of Texas, without regard to principles of conflict of law. Purchaser agrees to submit itself to the jurisdiction of the state courts of Texas and will comply with all requirements necessary to give such court jurisdiction.

Severability: Any provision found to be invalid by a competent court of jurisdiction shall be severable and shall have no effect on the validity of the remaining terms and conditions.