



## General Purchasing Terms and Conditions of Showa Denko Carbon Inc.

(version September 2019)

**1. ACCEPTANCE.** This purchase order (“order”) is an offer by Showa Denko Carbon, Inc. (“Buyer”) to the Seller to form a contract for the purchase of goods and/or services as specified on the face of this order. For any future orders, the then current version of the Buyer’s Terms and Conditions at the time an order is issued shall be applicable.

In making this offer, Buyer expressly limits acceptance thereof to the terms and conditions contained in these Terms and Conditions. Buyer does not accept any prior offers from Seller relating to the material and services described herein that may be contained in Seller’s quotations, correspondence, specifications or discussions. This order constitutes the entire agreement between Buyer and Seller relating to the purchase and sale of the material and services described herein. No modification of this order shall be of any force or effect unless it is in writing and signed by the party to be bound thereby, and no modification shall be effected by the acceptance of any form of acknowledgement or order containing different or additional provisions.

Orally agreed conditions are not binding. Buyer’s placing this order constitutes the contract with Seller. ANY CONFLICTING OR ADDITIONAL TERMS AND CONDITIONS SUPPLIED BY SELLER ARE HEREBY EXPRESSLY OBJECTED TO AND REJECTED BY BUYER. Seller must advise acceptance of this order within 5 business days of receipt. Any objection by Seller is only valid upon submitting explicit reasons to Buyer in writing within 5 business days after receipt of the order. If Seller cannot make delivery at the time stipulated in the order, Seller must advise Buyer in writing as to the earliest possible date on which delivery can be made for Buyer’s approval.

Without Buyer’s prior written consent, Seller is not allowed to integrate OSS (Open Source Software) into the delivered goods. In the context of this provision OSS means any software that is provided royalty-free by the respective licensor to any user on the basis of a license or another agreement with the right to modify and to use the software. The integration of OSS into the delivered goods without Buyer’s prior written consent shall be deemed as a fundamental breach of the contract.

**2. DELIVERY.** Observe specified shipping instructions. The time or times specified for delivery shall be of the essence of this order, and Buyer reserves the right to cancel the order, or any portion thereof, if materials are not shipped or services provided within the time or times specified in the order. Further, Buyer reserves the right to cancel the order in the event that operation of the plant or facility for which it was placed shall be interrupted or shut down for any cause beyond Buyer’s reasonable control.

If in the event of late delivery Seller cannot prove that it is not responsible for the delay, Buyer may charge a late fee against Seller for each business day (or part thereof) of delay amounting to 0.3%, but not exceeding a total of 5%, of the net contract value. This late fee may still be claimed until the date of final payment and may be offset by Buyer against the purchase price due to Seller. Buyer reserves the right to claim damages in excess of the late fee, in which case the amount of the late fee will be taken into account.

Seller shall comply with all applicable export control, customs and foreign trade regulations (“Foreign Trade Regulations”). Seller shall advise Buyer in writing within two weeks of receipt of the order and, in case of any changes without undue delay, of any information and data required by Buyer to comply with all Foreign Trade Regulations in case of export and import as well as re-export, including without limitation: (i) all applicable export list numbers, including the Export Control Classification Number according to the U.S. Commerce Control List (ECCN); (ii) the statistical commodity code according to the current commodity classification for foreign trade statistics and the HS (Harmonized System) coding; (iii) the country of origin (non-preferential origin); and (iv) upon Buyer’s request, Seller’s declaration of preferential origin (in case of European suppliers) or preferential certificates (in case of non-European suppliers). Without Buyer’s prior written consent, Seller may not carry out the import clearance in Buyer’s name. If Buyer allows Seller to carry out the import clearance in Buyer’s name, Seller undertakes to promptly deliver Buyer all documents and other import relevant information which Seller has obtained in connection with the import clearance (e.g., tax bill). If Seller does not comply with this obligation, even after a reasonable grace period, Buyer may terminate contract in whole or in part without prior notice.

For Sellers outside of the U.S., in order to guarantee the security in the supply chain according to the requirements of applicable internationally recognized initiatives based on the WCO SAFE Framework of Standards (e.g., AEO, C-TPAT), Seller shall provide the necessary organizational instructions and take measures, particularly with regard to the following security aspects: premises security, packaging and transport, business partner, personnel and related information. Seller shall protect the goods and services provided to Buyer or provided to third parties designated by Buyer against unauthorized access and manipulation. Seller shall only deploy reliable personnel for those goods and services and shall obligate any sub-suppliers to take equivalent security measures. Unless otherwise specified in the order, place of fulfilment for a delivery shall be the place of receipt (delivery address). The date of duly effected payment for a delivery shall be the date of debiting Buyer’s bank account. Bank charges in Buyer’s country are to be paid by Buyer, and those charges outside of Buyer’s country are to be paid by Seller. Fees of correspondent banks are to be paid by Seller.

**3. PRICES.** Seller affirms that, to the best of Seller's knowledge, prices charged hereunder do not exceed the maximum prices established by any applicable regulation of any government agency. If price is omitted, except where the order is given in acceptance of quoted prices, it is agreed that the price will be the lowest prevailing market price. The price stated in Buyer's order is binding. Unless agreed otherwise in writing, this price includes delivery DDP Incoterms 2010 to the address stated in the purchase order including packaging. Unless otherwise agreed by Buyer in writing, VAT as well as customs duties are included and must be stated separately.

The agreed prices include and compensate for all costs, which may occur until the fulfilment of the contractual obligation (e.g., for packaging, transport, insurance, customs clearance, installation and any taxes).

Buyer may deduct any packaging material costs from the amount of the purchase price if any such costs are charged by Seller to Buyer. Unless otherwise agreed in writing, net payments shall be due and payable no later than 30 days from the invoice date after receipt of the goods or services, as provided herein. If payment is made within 14 days, Buyer is entitled to a 3% discount and may apply such discount to the payment due. The payment period shall commence as soon as any delivery or service is completed and a correctly issued invoice is received. Insofar as Seller must provide material certificates, test records or quality control documents or any other documentation, such documentation shall be a part of the requirements of the completeness of the delivery or performance. A discount shall also be allowed if Buyer sets off or withholds any payments to a reasonable extent on account of any deficiency. Any payment obligation of Buyer may be fulfilled by any of Buyer's affiliates.

**4. WARRANTY.** By accepting this order Seller hereby warrants that the items, materials, equipment, work and services to be furnished hereunder will be in full conformity with Buyer's specifications, drawings, and data, or Seller's samples, and in compliance with all applicable codes and standards, and that items furnished hereunder will be fit for the particular purpose and use intended by Buyer. Seller further warrants that all goods and services to be provided hereunder shall be free from defects in title, design, workmanship and materials. Such warranties shall be in addition to any warranties of additional scope given to Buyer by Seller and in addition to and not in limitation of any warranties implied by law, including warranties of merchantability and fitness. The delivery has to be affected without any defects and has to comply with the then current state of art and the agreed specifications. The delivered goods have to comply with the rules of technique, the workers associations and any other safety and accident prevention regulations. Unless otherwise provided by law, the warranty period is 36 months. The warranty period begins to run with the transfer of risk unless otherwise provided by law.

In the event Seller does not fulfill Buyer's warranty claims within a reasonable period of time, not to exceed 30 days, or if a corrective measure is not effective, Buyer is, in addition to its statutory and any other legal rights and remedies, entitled to remedy or to have remedied the defect on its own at Seller's cost. The same shall apply in any urgent cases, which do not allow for a waiting period.

In the event of long-term supply agreements, Buyer shall be entitled to terminate the overall agreement with Seller, in whole or in part, in the event that a defective delivery cannot be remedied within a reasonable period of time.

Deviations of quantity constitute a defect. In the event of deviations in weight, the measures taken from Buyer's weighing machine supersede, unless Seller proves to Buyer's satisfaction that the weight calculated by it was measured correctly using commonly agreed methods.

During ordinary business hours and upon prior notice, Buyer shall be entitled to inspect the product during manufacturing or the completed product. Seller shall arrange to provide Buyer with access, if necessary, to the property of third parties.

**5. INVOICES.** Except as otherwise stated in this Agreement, Seller shall submit invoices upon delivery of all Goods and/or completion of all Services. Each such invoice shall be submitted by Seller to the location shown in the order and shall include: (i) the purchase order number, (ii) an itemization of the specific Goods and/or Services provided by Seller; and (iii) an itemization of the respective unit prices, if applicable, for which payment or partial payment is invoiced. Render invoices, as required herein, with bill of lading or other shipping papers attached. Payment of an invoice does not constitute acceptance of materials or an approval of the services covered by this order and is without prejudice to any and all claims Buyer may have against Seller in connection therewith.

**6. INSPECTION.** All materials furnished and services performed hereunder must be as specified herein and will be subject to inspection and approval by Buyer after delivery or performance. Such inspection shall include determining whether a delivery corresponds to the quantity and type of products ordered and whether there are any external recognizable deficiencies or other apparent defects. Buyer reserves the right to reject and return at Seller's risk and expense all or such portion of any shipment as may be defective or fail to comply with any specifications, terms or conditions required by Buyer, without invalidating the remainder of the order. Buyer further reserves the right to withhold payment for, or require the correction of, services performed hereunder which fail to comply with any specifications, terms or conditions required by Buyer or agreed to by Seller. Buyer's failure to inspect, however, shall not release Seller of any of Seller's responsibilities hereunder.

**7. LOSS, TRANSFER OF TITLE AND RISK.** Seller shall bear the risk of loss of or damages to all goods until received by Buyer. If the materials shipped hereunder are shipped in any way other than by rail freight, the full invoiced value of the materials must be declared

at the time of shipment for protection against loss or damage and Seller shall be liable to Buyer for any and all loss or damage sustained by Buyer by reason of Seller's failure to so declare the full invoiced value. Unless otherwise agreed, for deliveries involving installation, commissioning or services, the transfer of risk occurs on final acceptance and for deliveries not involving installation or commissioning, the transfer of risk shall be upon receipt by Buyer at the designated place of receipt (DDP Incoterms 2010). Transfer of title shall be upon delivery of the goods.

**8. COMPLIANCE WITH LAWS.** Seller shall comply with all applicable federal, state and local laws, rules, regulations, orders and standards, including, but not limited to, those relating to occupational health and safety, transportation, labor (including the Fair Labor Standards Act), products liability, labeling, hazardous substances, environmental laws and any and all other applicable laws and governmental regulations which may in any way affect or be applicable to Seller or the services or goods covered by this order.

In addition to the aforementioned measures, Seller guarantees that, to the extent applicable, Seller and any of its suppliers (i) are aware of the obligations under the EC regulation on chemicals and their safe use (EC 1907/2006 – "REACH") for pre-registration, registration and investigations of the respective substances, (ii) have and will at all times comply with the provisions of REACH and (iii) are sufficiently prepared to pre-register and/or register any applicable substance sold to us. Seller will inform us about any measures taken under REACH and especially will report, (i) which measures have been taken to comply with REACH and (ii) which substances in Seller's products are subject to REACH (e.g SVHC, Authorization, Restriction).

Seller agrees to comply with Buyer's Code of Conduct for Subcontractors and Suppliers ("SupplierCoC") available on the internet at [http://www.showadenkocarbon.com/Supplier\\_CoC-2017\\_English.pdf](http://www.showadenkocarbon.com/Supplier_CoC-2017_English.pdf).

Seller shall indemnify and hold Buyer harmless from and against any third-party claims which arise out of Seller's actual or alleged noncompliance with this section 8. Upon Buyer's request, Seller shall provide Buyer with certificates and other documents proving compliance of its goods with any applicable legal requirements, including those listed in this section

Seller complies with Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 and its implementing regulations and rules as well as any EU directives and regulations or any applicable country laws relating to "Conflict Minerals" (especially columbite-tantalite (coltan), cassiterite, gold, wolframite or their derivatives including tungsten, tin, tantalum and gold if trading with them directly or indirectly finances or benefits armed groups). Seller guarantees that the goods supplied to Buyer are free from Conflict Minerals. Furthermore, Seller has established an effective program to ensure that its suppliers of raw materials or goods which will be incorporated into products supplied to Buyer will comply with the requirements of this section 8.

Seller shall indemnify and hold Buyer harmless from and against any third party claims which arise out of Seller's actual or alleged noncompliance with this section

Seller shall notify Buyer promptly upon discovering or having reason to believe that any good fails to comply with the representation and warranty in this section 8.

**9. SAFETY REQUIREMENTS.** The products to be provided and/or the services to be performed hereunder are each warranted by Seller to equal or surpass all federal, state and local occupational safety and health standards applicable thereto. Seller agrees to maintain adequate safeguards and use reasonable care to protect all persons and property. Seller agrees that these safeguards include compliance with Buyer's general safety and health guidelines and rules. While on Buyer's premises, Seller shall keep Buyer's premises and the vicinity thereof clean of debris and rubbish caused by Seller's work and, upon completion of Seller's work, Seller shall leave the premises clean and ready for use. Upon request by Buyer or agent, and at no cost or expense to Buyer, Seller shall promptly remove from said premises any person under Seller's control who violates any of the aforesaid health, safety and environmental or plant laws, regulations, ordinances or rules or who may cause or threaten to cause a breach of the peace, or who is otherwise objectionable to Buyer or to agent. In addition, Seller shall notify Buyer in writing, subject to Buyer's approval, if Seller intends to furnish any goods that are subject to laws or regulations relating to hazardous or toxic substances, or when disposed of, to regulations governing hazardous wastes, or to any other health, safety and/or environmental regulations.

**10. OTHER PLANT REQUIREMENTS.** Seller shall comply with all rules, policies and requirements posted by Buyer for access and entry to Buyer's plant facilities and otherwise provided to Seller in writing, including any requirements for insurance.

**11. INTELLECTUAL PROPERTY.** Seller hereby guarantees and agrees that the materials furnished or used in the performance of Seller's duties hereunder will not infringe any third party intellectual property right, and Seller will indemnify and save harmless Buyer, Buyer's customers and those for whom Buyer acts as agent in the purchase of such materials, against any claim or demand of any kind, together with costs and expenses, including counsel fees, involving any asserted infringement of any third party intellectual property right; and Seller will, at Seller's own expense, by counsel satisfactory to Buyer defend any and all actions or any suits charging such

infringement. Seller shall not use or infringe any of Buyer's intellectual property, including any patents, trademarks, trade names or logos.

**12. OWNERSHIP AND USE OF PROVIDED MATERIAL.** Title to material provided by Buyer remains with Buyer. Such material will be, at no cost to Buyer, separately stored and marked as Buyer's property and the stored documents shall also be kept separately. Any processing and machining of material supplied by Buyer shall only occur in accordance with the order. Seller is liable for any reduction in value or loss respectively. Any processing or transformation of such materials shall at all times take place for Buyer as the producer, but the responsibility remains with Seller. Buyer shall immediately become owner of the new or transformed product. Should this be impossible for legal reasons, Buyer and Seller hereby agree that Buyer shall be the owner of the new product at all times during the processing or transformation. Seller shall keep any such product safe for Buyer at no extra cost and in so doing shall exercise the duty of care of a merchant.

Title to and any property rights to drawings, pictures, calculations, descriptions, models, tools and all other documents and resources supplied by Buyer vests with Buyer. Without Buyer's express written consent, Seller is not entitled to provide third parties

access thereto, to disclose such by itself or through third parties or to use such on its own or through third parties by others for other than the purposes defined by Buyer.

Seller must return these items upon Buyer's request at any time to Buyer and moreover if these are no longer required within the ordinary course of business. Buyer reserves title to any other materials, tools and other supplied items. In the event these supplied items are mixed with other items irreversibly, processed or manufactured, it is agreed that Buyer receives co-ownership pro rata from Seller.

Drawings, plans, specifications, design and technical documents and other data prepared or developed by Seller and furnished to Buyer in performance of the work under this order shall be Buyer's property and may be used by Buyer without any restriction. To the extent any such drawings or documents contain restrictions on use to the contrary, such restrictions shall be deemed waived by Seller and ineffective as to Buyer

**13. SALES AND USE TAX EXEMPTION.** It is hereby certified that the above described property is exempt from the sales and use tax, unless otherwise noted for the reason that such property is purchased for resale or will become an ingredient or component part of, or be incorporated into, or used or consumed in, a manufactured product produced for ultimate sale at retail. If the property described on this order is purchased tax exempt and subsequent use makes this property taxable, Buyer will access and pay tax to the appropriate state. Certificate # 1708016-000 (19)

**14. CANCELLATION.** In addition to any other rights which Buyer may have, Buyer reserves the right to cancel this order, or any portion hereof, and hold Seller responsible for all liability, loss, damage and expense (including reasonable attorney's fees), (a) if the goods furnished pursuant to this order or any shipments hereunder are defective in any manner or are not in compliance with this order; (b) if the shipping date specified is not satisfactory or if delivery is not made when and as specified, or within a reasonable time if not specified; (c) if the services performed pursuant to this order are unsatisfactory or not performed when and as specified; (d) if Seller is otherwise in breach of this order; or (e) if Seller is deemed insolvent. For purposes of this order, Seller shall be deemed insolvent if any other following events occur: (i) Seller becomes or is adjudicated bankrupt; (ii) a petition under the Bankruptcy Act is filed by or against Seller; (iii) Seller makes any assignment for the benefit of creditors; (iv) a receiver of Seller's property is appointed; (v) action is taken under any law for the relief of debtors; or (vi) Seller admits in writing that Seller is insolvent or unable to pay any of Seller's debts as they may become due. Buyer may also suspend performance and delivery hereunder upon notice to Seller of such suspension for up to 120 days. Buyer may also cancel this order or any portion thereof for convenience, without any other cause, upon 10 days written notice to Seller.

**15. REMEDIES.** Buyer shall have available all rights and remedies at law and in equity, including all remedies provided under the South Carolina Uniform Commercial Code, notwithstanding any provision in Seller's invoice or other form relating to this order which seeks to limit Seller's liability. Buyer shall be entitled to recover any expenses (including reasonable attorney's fees) incurred by Buyer in enforcing Buyer's rights hereunder and all other costs and damages related thereto. Buyer's remedies herein reserved shall be cumulative and additional to any other or further remedies provided in law or equity. No waiver of a breach of any provision of these terms shall constitute a waiver of any other breach, or of such provision.

**16. ASSIGNABILITY.** This order is not assignable or transferable by Seller without Buyer's express written consent, including, but not limited to any subcontracting by Seller to a third party. Buyer may freely assign or transfer this order to any successor in interest of a part or all of Buyer's assets by way of merger, consolidation, sale or similar corporate reorganization. If Seller subcontracts a third party without Buyer's prior written consent, Buyer shall be entitled to rescind the contract in whole or in part and to claim damages.

**17. FORCE MAJEURE.** Buyer shall not be held responsible for acceptance of all or any part of the materials tendered for delivery under this order due to federal, state or municipal action, statute, ordinance or regulation, strike or other labor trouble, fire, windstorm or other incidents outside of Buyer's control which shall make Buyer's acceptance impossible or impractical.

**18. RIGHT OF SET-OFF.** Buyer shall have a right of set-off hereunder and shall be entitled, at any time and from time to time, to set-off against all amounts owing from Seller to Buyer, any amount owing or payable by Buyer to Seller in connection with the services or goods purchased hereunder.

**19. CHANGES IN QUALITY.** Seller shall notify Buyer in advance in writing of all changes in raw materials, processing operations, material specification, or other changes which could in any way affect the quality of the goods or services delivered hereunder. Changes in specification must be mutually agreed upon in a writing signed by both parties. Buyer shall have the right by written direction to make changes in the specification and drawings for goods or services covered by this order. If Seller believes that such change affects the price or delivery date for such goods or services, Seller shall notify Buyer in writing (with adequate supporting documentation) within 5 business days after receipt of such written direction. Seller shall suspend performance of the change unless thereafter released in writing to perform said change, and the parties shall mutually agree in writing upon an equitable adjustment in the price and/or delivery date to reflect the effect of such change. Seller's request for any adjustments shall be deemed waived unless submitted in writing within such 5 day period. Seller shall not suspend performance of the unaffected portion of this order while the parties are in the process of making such changes and any related adjustments or at any time thereafter unless so instructed in writing by Buyer. No agreement or understanding modifying the terms or conditions of this order shall be binding nor will extra compensation be paid unless the agreement or understanding is made in writing. Seller undertakes to grant Buyer the right to place a last order with reasonable quantities (Last-Call Right) prior to any significant reduction in production or adjustments in the composition or production procedures of any goods supplied to Buyer in the course of the ongoing business relationship.

**20. INDEMNITY.** Seller shall protect, indemnify and hold Buyer, and any of Buyer's subsidiaries, affiliates, officers, directors, shareholders, employees, agents, workmen and servants ("Covered Parties") harmless from and against any loss, cost, damage or expense, including reasonable attorneys' fees, and costs arising from: (i) any and all claims which may be made against Buyer, or any other Covered Parties, by reason of injury or death to person, or damage to property, suffered, or claimed to have been suffered, by any person, firm, corporation, or other entity, caused by or alleged to have been caused by, any act or omission, negligent or otherwise, of Seller or any of Seller's employees, workmen, servants or agents; (ii) any and all damage to Buyer's property, or any property of any Covered Parties, including property occupied or used by or in the care, custody or control of Seller, caused by, or alleged to have been caused by, any act or omission, negligent or otherwise, of Seller or any of Seller's employees, workmen, servants or agents; (iii) to the extent Seller is liable for a product defect, a recall of the delivered goods from Buyer's side; and (iv) any and all penalties or fees imposed on account of the violation of any law, rule or regulation, compliance with which is required by Seller, or any of Seller's employees, workmen, servants or agents. Any claim made by Buyer under this section or for indemnification as provided in this order shall survive termination of this order. Seller shall maintain product liability insurance including but not limited to recall risk with a coverage of at least 1,000,000 USD for each occurrence.

**21. CONFIDENTIAL INFORMATION.** "Information" means any business, financial, technical, operating or descriptive information and concepts or know-how disclosed to Seller in performance of this order. Seller agrees to maintain the Information in confidence and not to disclose it to any third party or use such Information for any other purpose, except as authorized by Buyer for the performance of this order. Seller shall not publicize the existence or scope of this order without Buyer's written consent, and Seller shall require these same agreements on the part of any supplier to whom the Information is disclosed. Upon written request, Seller shall return all Information and copies thereof to Buyer. Only upon Buyer's prior written consent, Seller shall be allowed to mention Buyer as a reference customer and/or to make reference to products or services which Seller has developed during the performance of a contract with Buyer. This section also applies to press releases and other public announcements. Seller shall ensure that its employees and subcontractors comply with these obligations. The confidentiality obligation shall apply even after completion of the contractual obligations.

**22. DATA PROTECTION.** Seller shall comply with all federal and state applicable data protection laws, rules and regulations. In case personal data of EU citizens are processed, Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation GDPR). Seller agrees that Buyer may process disclosed its or its employees' personal data, including data relating to its user behaviour (transmission data), as far as legally permitted under the applicable data protection legislation, i.e. where Buyer's knowledge of the aforementioned data is necessary for the performance of the contract to which Seller is party (e.g. ordering processes) or in order to take steps at the request of Seller prior to entering into the contract. In addition, Seller shall develop and produce any ordered software or software incorporated in the ordered goods under the data protection principles of Privacy of Design and Privacy by Default as set out in the GDPR.



**23. SURVIVAL.** In the event any part or portion of this order shall be held to be invalid, void or otherwise unenforceable, such holding shall not affect the remaining part or portions of the order. The provisions of this order which by their nature are intended to survive the termination, cancellation, completion or expiration of this order shall continue as valid and enforceable obligations of the parties notwithstanding any such termination, cancellation, completion or expiration.

**24. LAW; JURISDICTION.** Unless provided otherwise by mandatory laws, the exclusive and sole place of jurisdiction for all disputes between Seller and Buyer shall be Charleston, South Carolina, United States of America. Buyer is also entitled to file suits or actions at Seller's general venue or its place of business. The contractual relationship between Seller and Buyer shall exclusively be governed by the laws of the state of South Carolina upon exclusion of the conflict-of-laws rules and the UN Convention on Contracts for the International Sale of Goods (CISG).