



## **TERMS AND CONDITIONS**

The following terms and conditions govern all contracts for the sale or supply of Goods by Hydro Aluminium Extrusion Limited (“the Seller”).

In these terms and conditions: “Buyer” means any party at whose request Goods are supplied by the Seller; and “Goods” means any goods or replacements therefor supplied to the Buyer under the Contract.

These terms and conditions shall apply to every contract for the sale or supply of Goods entered into by the Seller. No variation shall be binding unless agreed in writing by the Seller and signed by a Director or other authorised person on behalf of the Seller. Any terms or conditions proffered at any time by the Buyer are hereby excluded. The headings are for convenience only shall not affect the construction or interpretation of these terms and conditions.

### **1. CONTRACT**

- 1.1 The Buyer’s order to the Seller is an offer to enter into the Contract upon these terms and conditions. Acceptance occurs and the Contract is formed only upon the Seller sending to the Buyer its Order Confirmation. A quotation by the Seller does not constitute an offer.
- 1.2 No servant of the Seller has any authority to give any representation or warranty relating to the Goods unless such representation or warranty is in writing and signed by a Director or other authorised person on behalf of the Seller.
- 1.3 The Contract is not cancellable by the Buyer.
- 1.4 The Buyer shall not assign the benefit of the Contract without the Seller’s prior written consent.

### **2. DELIVERY**

- 2.1 Save in relation to conditions 2.3, 3 and 9, time shall not be of the essence in this Contract. Any date, time or period given for delivery by the Seller shall be an estimate only and the Seller shall not be liable to the Buyer for any loss or damage sustained by the Buyer as a result of the Sellers failure to comply with such delivery dates, times or periods. The Buyer shall not be entitled to refuse to accept late delivery or to treat late delivery as a breach of contract.
- 2.2 Unless otherwise stated, the Goods shall be despatched by the Seller carriage paid to the address notified by the Buyer or so near thereto as the vehicle carrying the Goods can reasonably and safely get.
- 2.3 Where any drawing, design, specification, instructions, approvals or materials (the “Buyer’s Particulars”) are to be supplied by the Buyer, the same shall be supplied promptly and in any event within and at such reasonable times as will enable the Seller to effect delivery within the period specified for delivery.
- 2.4 The Seller may at its option deliver by instalments. Where Goods are delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat this Contract as a whole as repudiated.
- 2.5 The Buyer shall take delivery of the Goods with reasonable dispatch and subject to written advice from the Buyer in accordance with Condition 9, the Goods shall be deemed to have been delivered complete and in a satisfactory condition.
- 2.6 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions, then without prejudice to any other right or remedy available to the Seller may store the Goods and charge the Buyer for the cost of storage or without incurring any liability to the Buyer, to obtain the best price sell the Goods at such price as the Seller thinks fit or scrap or sell the Goods for scrap in each case the Seller shall be entitled to retain the proceeds of sale.
- 2.7 Deviations in quantity of Goods delivered of plus or minus 10% or less by value from the set out in the Contract shall not entitle the Buyer to reject the Goods delivered or to claim damages and the Buyer shall be obliged to accept and pay for the Goods so delivered at the Contract price.

### **3. PRICE**

- 3.1 Subject as hereinafter provided, the price payable shall mean the Seller’s price on the Seller’s Order Confirmation plus value added tax and any other sales taxes from time to time in force and costs in accordance with Conditions 3.3 and 3.4.
- 3.2 The price may be varied by the seller without notice if before delivery there is any increase in raw material costs; in the case of any product manufactured outside the United Kingdom, any fluctuation in the rate of exchange value; in the case of any product, goods or future services not manufactured or performed by the Seller any increase in the price paid by the Seller; any increase in the cost of transportation of the Goods to the Buyer or any fluctuation in any customs and excise duty and/or value added tax payable on the Goods.
- 3.3 Price quoted includes packing and carriage (if agreed to be made or arranged by the Seller). In all cases prices quoted exclude the costs of stillage’s, baseboards, crates and cases. The costs of stillage’s, baseboards, crates and cases are payable by the Buyer in addition to the price if not returned in good condition within eight weeks of delivery.

- 3.4 Where the Seller provides the Buyer with a certificate of conformity and/or a sample at the Buyer's request, the Seller shall be entitled to invoice the Buyer for the cost of doing so which shall be payable by the Buyer in addition to the Price and in accordance with the provisions of Condition 5.

#### **4. BUYER'S PARTICULAR DESCRIPTIONS, INFORMATION AND SAMPLES**

- 4.1 All descriptions of whatever nature applied to the Goods by the Seller with or without notice are merely intended to serve as a guide to the Buyer and the application of such description to the Goods shall not constitute a sale by description and shall not be or be deemed to be a representation by the Seller as to the quality of the goods or their fitness for any particular or other purpose and section 13 of the Sale of Goods Act 1979 (the "Act") shall not apply.
- 4.2 The Seller shall not be liable for any deviation from the Buyer's Particulars unless such deviation substantially deprives the Buyer from the entire benefit of this Contract.
- 4.3 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with the Buyer's Particulars, the Buyer shall indemnify the Seller of an indemnity basis against all claims, costs, demands and expenses of whatever nature arising out of or in connection with or paid by or agreed to be paid by the Seller in settlement of or dealing with any claim relating to the Goods and/or for agreed to be paid by the Seller in settlement of or dealing with any claim relating to the Goods and/or for infringement or alleged infringement or any patent, copyright, design, registered design, trademark or other industrial or intellectual property rights of any person which results from the Seller's use of or the manufacture by the Seller of the Goods in accordance with the Buyer's Particulars.
- 4.4 The Seller reserves the right to make any changes in the Buyer's Particulars where the Goods are made to the Seller's specification provided that such changes do not materially affect their quality or performance; or, the change is required to conform with any applicable safety or other statutory requirements.

#### **5. TERMS OF BUSINESS**

- 5.1 Section 28 of the Act shall not apply to this Contract.
- 5.2 The Seller's accounts are due for cash payment on demand but in any event no later than on the last day of the calendar month following delivery of the Goods. The Seller reserves the right to charge interest at the Bank of England base rate for the time being in force plus 2% on all overdue accounts and shall be calculated and accrue on a day basis from the date on which payments fell due until payment (whether made before or after judgement has been obtained by the Seller against the Buyer).

#### **6. INSPECTION**

- 6.1 The Buyer shall inspect the Goods immediately upon receipt and shall (unless such inspection cannot be carried out and the delivery note is marked "not examined"), and subject to written advice from the Buyer in accordance with Condition 9, be deemed to have accepted the Goods as delivered.
- 6.2 The Seller shall not be liable for defects or shortages discoverable on reasonable inspection unless the Buyer notifies the Seller in accordance with the provisions of Condition 9 below.
- 6.3 The Seller shall make good shortages in excess of the permitted margin notified to it under Condition 6.2 above as soon as reasonably practicable but shall not be liable for any other loss whatsoever arising from such shortage.
- 6.4 The Seller's liability for Goods lost or damaged in transit shall in all circumstances be limited to at the Seller's option, the repair or replacement or crediting the Buyer with the invoice value of the Goods in question.

#### **7. WARRANTIES**

- 7.1 The Seller warrants that the Goods will be free from defects in material and workmanship in each case at the time of delivery subject to the following conditions:
- 7.1.1 the Seller shall be under no liability in respect of any defect in the Goods arising from the Buyer's Particulars whether or not the Seller make any changes to the Buyers Particulars as permitted by Condition 4.4
- 7.1.2 the Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, abnormal working conditions, incorrect storage or handling or processing, failure to follow the Seller's instructions, misuse or alteration or repair of the Goods without the Seller's approval
- 7.1.3 the Seller shall be under no liability if the total price for the Goods has not been paid by the due date for payment.
- 7.1.4 the above warranty does not extend to parts, materials or equipment not manufactured by the Seller
- 7.1.5 the above warranty does not extend to defects appearing after the Buyer or its customers have made any modifications and/or alterations to or have processed the Goods in any way
- 7.1.6 the Buyer notifies the Seller in accordance with the provisions of Condition 9 below
- 7.2 The Seller's liability for defective Goods is limited in all circumstances to at the Seller's option:
- (i) taking such steps as the Seller deems necessary to bring such Goods into a state where they are free from such defects;
- (ii) replacing such Goods found by the Seller not to conform to the warranty contained in this Condition 7
- (iii) taking back such goods found not to conform to the warranty and to refund the appropriate part of the purchase price. and the Buyer shall accept such of the aforementioned remedies as the Seller shall proffer as being in fulfilment of the Seller's obligations under the Contract.

## 8. LIMITS OF LIABILITY

- 8.1 The Goods are supplied strictly on the terms that the Buyer has satisfied itself of their suitability for the Buyer's purposes. The Buyer acknowledges that all specifications and details and catalogues, quotations and acknowledgement of orders or similar documents or by word of mouth and all forecasts of performance howsoever given are approximate only and do not form part of the Contract and that in respect of such specifications, details and forecasts, the Seller shall be under no liability nor shall the Buyer be entitled to any remedy under the provisions of the Misrepresentation Act 1967 save for the Seller's liability for fraudulent misrepresentation.
- 8.2 The Seller's liability under Conditions 7 and 9 shall be accepted by the Buyer in lieu of any warranty or condition whether express or implied by law as to the quality or fitness for any particular purpose of the Goods and save as provided in these Conditions, the Seller shall not be under any liability to the Buyer whether in contract, tort or otherwise for any defects in the Goods, materials supplied or workmanship performed by the Seller or for any damage, loss death or injuries resulting from such defects and the Buyer shall indemnify the Seller against any claims in respect thereof.
- 8.3 The Seller shall not be liable whether by way of indemnity or by reason of breach of contract, tort or breach of statutory duty or in any other manner for consequential or indirect loss of whatsoever nature suffered by the Buyer or for special damages, loss of use (whether complete or partial) of the Goods or loss of profit or of any contract. Nothing in this condition 8.3 shall be construed as limiting or excluding the Seller's liability under Part 1 of the Consumer Protection Act 1987 or for death or personal injury resulting from its negligence (as defined in Section 1 of the Unfair Contract Terms Act 1977).
- 8.4 The Seller's total liability for the aggregate claims of the Buyer arising out of a single act or default of the Seller whether due to the Seller's negligence or otherwise shall not exceed the Contract price.
- 8.5 The Buyer shall indemnify and keep indemnified the Seller against all actions, claims, costs, damages, demands and expenses or other loss arising out of a defect in the Goods (including without limitations all liabilities incurred under the Consumer Protection Act 1987) to the extent occasioned or contributed to by an act or omission of the Buyer, its servants, agents or persons under its control.
- 8.6 Except in respect of death or personal injury caused by the Sellers negligence the Seller shall not be liable to the Buyer by reason of any representation or any implied warranty condition or other term or any duty at common law or under the express terms of this Contract for any consequential compensation whatsoever (and whether caused by the negligence of the Seller its employees or agents or otherwise) which arose out of or in connection with the supply of the Goods or their use or resale by the Buyer except as expressly provided in the Terms and Conditions.
- 8.7 The Seller shall not be liable for any loss or damage arising directly or indirectly from act of God explosion flood tempest fire or accident war or threat of war sabotage insurrection civil disturbance or requisition acts restrictions regulations bye-laws prohibitions or measures of any kind on the part of any governmental parliamentary or local authority import or export regulations or embargoes strikes lock-outs or other industrial actions or trade disputes whether involving employees of the Seller or supplier to the Seller or any third party upon whose performance the Seller depends difficulties in obtaining raw materials labour fuel parts or machinery power failure or breakdown in machinery or any other cause or contingency beyond the control of the Seller whether of the same nature as the above or not.

## 9. GOODS DAMAGED OR LOST IN TRANSIT

- 9.1 Notwithstanding the provisions of Conditions 1, 4 and 7, no claim by the Buyer for Goods alleged to be damaged or lost in transit or for non delivery of the whole or part of a consignment will be entertained unless a separate notice in writing ('the Defect Notice') is given by the Buyer to the carrier concerned upon delivery and to the Seller within 14 days of delivery and a complete claim in writing is made to the Seller within 28 days of the delivery.

### 9.2 **Claims for Defective Goods**

Notwithstanding the provisions of Conditions 1, 4 and 7, no claim by the Buyer based on any defect in or failure of the Goods shall (whether or not delivery is refused by the Buyer) be entertained except in accordance with the provisions of Condition 9.1 or (where the defect or failure was not apparent upon reasonable inspection) within 14 days after discovery of the defect or failure.

## 10. TESTS OR INSPECTION

Unless expressly agreed otherwise the Seller shall make only such tests or inspections in the terms notified to the Buyer or deemed by the Seller to be applicable and suitable in the circumstance's and the Buyer shall be deemed to accept the results where not in attendance personally.

## 11. TOOLING AND DIES

Tooling and dies remain the property of the Seller. Notwithstanding the foregoing the Buyer shall pay to the Seller a sum to be determined by the Seller in respect of the tooling and die costs. If the Buyer wrongfully fails to take delivery of the Goods in accordance with the provisions of this Contract the Seller shall be entitled at its sole discretion either to vary the proportion of tooling and die costs or to claim the total amount of the relevant costs without prejudice to any claim or right which the Seller might otherwise make or exercise.

## 12. TITLE TO GOODS

- 12.1 Risk of damage to or loss of the Goods shall pass to the Buyer:-

- 12.1.1 in the case of Goods to be delivered at the Seller's premises at the time when the Seller notifies the Buyer that the Goods are available for collection; or
- 12.1.2 in the case of Goods to be delivered otherwise than at the Sellers premises at the time of delivery or if the Buyer fails to take delivery of the Goods the time when the Seller has tendered delivery of the Goods.

- 12.2 Until such time as the Seller shall have received payment in full of all sums owed to it on any account by the Buyer (whether arising under this or any other contract) legal title in all Goods supplied shall remain in the Seller.
- 12.3 The Buyer shall at its risk and expense insure all Goods supplied by the Seller's from the date of delivery for their full replacement value against all the usual risks and keep all Goods safe and in good condition stored separately and clearly identifiable as the Sellers property with all identifications marks intact and legible.
- 12.4 The Buyer may use or sell Goods or any of them in the ordinary course of its business on the Basis that any proceeds of the sale shall be held in trust by the Buyer for the Seller absolutely. The Buyers rights under this Condition shall be conditional upon the Buyer including a retention of title condition substantially in the form of that contained at Condition 12.2 above in all contracts entered into by the Buyer for the sale of the Goods or any of them.
- 12.5 The Buyers rights under Condition 12.4 shall terminate immediately on notice from the Seller or immediately and automatically on the presentation of a petition for the winding-up of the Buyer or for the appointment of an administrator of its undertaking (whether it be a company or a partnership) or if the Buyer is an individual on the presentation of a bankruptcy petition or an application for an interim order under Part VIII of the Insolvency Act 1986 or if the Buyer has an administrator, receiver or administrative receiver appointed over any of its assets or undertaking or if the Buyer resolves to or goes into voluntary liquidation (other than for the purposes of bona fide reconstruction or amalgamation of a solvent company) or if the Buyer proposes or makes any voluntary arrangement with its creditors or if the Buyer ceases or threatens to cease to carry on business or if the Buyer is unable to pay its debts (in the case of a company) within the meaning of Section 123 of the Insolvency Act 1986 or (in the case of an individual) Section 268 of the Insolvency Act 1986 or upon the happening of any equivalent event under the laws of any relevant jurisdiction.
- 12.6 The Seller may at any time enter the Buyer's premises for the purpose of inspecting the Goods and identifying them as the Sellers property and the Buyer irrevocably authorises the Seller to enter upon it's premises for the purpose.
- 12.7 Upon the termination of the Buyer's powers of use and sale under Condition 12.5 above the Seller shall be entitled at its option (a) to cancel all or any part of any orders for goods placed with it by the Buyer and not yet delivered (whether or not accepted or whether or not under the Contract or any other contract) and/or (b) to deal directly with any customers of the Buyer in which case any proceeds of any sale to such customers shall belong to the Seller absolutely.

### **13. STILLAGES, BASEBOARDS, CRATES AND CASES**

- 13.1 The price for the Goods does not include the costs of the stillages, baseboards, crates or cases ("Stillages") provided to the Buyer with the Goods at delivery.
- 13.2 The risk of damage to or loss of the Stillages shall pass to the Buyer at the same time as delivery of the Goods in accordance with paragraph 12 of these Terms.
- 13.3 For the avoidance of doubt the Seller provides the Buyer with the use of Stillages for the purposes only of packaging and carriage of the Goods and as such legal title to such Stillages supplied to the Buyer in accordance with these Conditions shall remain with the Seller.
- 13.4 The ownership of the Stillages shall only pass to the Buyer upon the event of the Buyer having to make the payment to the Seller for the Stillages in accordance with paragraph 3.3 of these Terms, until such time, the Buyer must:-
- 13.4.1 hold the Stillages on a fiduciary basis as the Sellers bailee;
- 13.4.2 store the Stillages separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Seller's property;
- 13.4.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Stillages;
- 13.4.4 maintain the Stillages in satisfactory condition and keep them insured on the Seller's behalf for their full price against all risk to the reasonable satisfaction of the Seller;
- 13.4.5 the Seller shall be entitled to recover payment for the Stillages, notwithstanding ownership of any of the Stillages not passed from the Seller as per these Conditions;
- 13.4.6 the Buyer grants the Seller its agents and employees and an irrevocable licence at any time to enter any premises where the Stillages are/or maybe stored in order to inspect them or where under these Conditions the Buyer's right to possession is terminated to recover them.

### **14. BUYER'S INSOLVENCY**

On the presentation of a petition for the winding-up of the Buyer or for the appointment of an administrator of its undertaking (whether it be a company or a partnership) or if the Buyer is an individual on the presentation of a bankruptcy petition or an application for an interim order under Part VIII of the Insolvency Act 1986 or if the Buyer has an administrator, receiver or administrative receiver appointed over any of its assets or undertaking or if the Buyer resolves to or goes into voluntary liquidation (other than for the purposes of a bona fide reconstruction or amalgamation of a solvent company) or if the Buyer proposes or makes any voluntary arrangement with its creditors or if the Buyer ceases or threatens to cease to carry on business or if the Buyer is unable to pay its debts (in case of a company) within the meaning of Section 123 of the Insolvency Act 1986 or (in the case of an individual) Section 268 of the Insolvency Act 1986 or upon the happening of any equivalent event under the laws of any relevant jurisdiction; or the Seller reasonably apprehends that any of the event mentioned above is about to occur in relation to the Buyer then without prejudice to any other right or remedy available to the Seller the Seller shall be entitled to cancel the Contract or suspend any further delivery under the Contract without any liability to the Buyer and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

### **15. BUYERS DEFAULT**

Without prejudice to any other right or remedy the Seller has hereunder if the Buyer is in breach of any of the terms hereunder the Seller may without notice and at its sole discretion determine any contract with the Buyer so far as any goods remain to be delivered thereunder or may suspend performance of its obligations hereunder until the Buyers default has been made good and demand immediate payment of any amount due or accruing due to the Seller.

## 16. NOTICES

Any notice required to be given by either party to the other hereunder shall be in writing and shall be deemed to be properly given if compliance is made with Section 196 of the Law of Property Act 1925 (as amended by the Recorded Delivery Services Act 1962)

## 17. MISCELLANEOUS

- 17.1 No warranty is given by the Seller that the Goods or the use of the Goods by the Buyer will not infringe any patent, copyright, design, trade mark or other industrial or intellectual property rights of any third party.
- 17.2 The Seller reserves the right to affix tablets bearing either its name or trade mark or both to any of the Goods and/or to otherwise identify the Goods.
- 17.3 The Seller expressly reserves the right, and the Buyer hereby acknowledges the Seller's right, to sub-contract the manufacture of, or any process to be applied to, the Goods.
- 17.4 No waiver by the Seller of any breach of this Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 17.5 If any provision of these terms and conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these terms and conditions and the remainder of the provision in question shall not be affected thereby.
- 17.6 Any dispute arising under or in connection with these terms and conditions or the sale of the Goods shall be referred to Arbitration by a single arbitrator by agreement or (in default) nominated on the application of either party by the President for the time being of the Law Society of England and Wales in accordance with the rules of the Law Society.
- 17.7 This Contract shall be governed by and shall be construed in accordance with the laws of England and Wales and the parties hereby submit to the exclusive jurisdiction of the courts of England and Wales.