



## Extrusion North America Standard Terms & Conditions of Sale

**1. Contract.** These Terms and Conditions are automatically incorporated by reference into any and all quotes issued by Hydro. Acceptance by Customer of any Hydro quote is expressly limited to these Terms and Conditions and Hydro objects to and rejects any different or additional terms provided in response. In addition, acceptance by Hydro of any Customer purchase order is expressly conditioned on Customer's agreement that its contract with Hydro is controlled by Hydro's quote, along with these Terms and Conditions, such that any additional or different terms provided by Customer are automatically voided, superseded and of no legal force or effect. No prior course of dealings between the parties or usage of trade shall be relevant to supplement or amend these Terms and Conditions. In addition, Customer's acceptance of the extrusions including any finishing, fabricating or other post-processing of the extrusions by Hydro sold to and purchased by Customer (the "Goods") shall be conclusive evidence of Customer's acceptance of these Terms and Conditions. The contract between Hydro and Customer shall consist of: (a) Hydro's quote; (b) these Terms and Conditions; (c) Customer's purchase order, along with any specifications referenced therein, all to the extent accepted by Hydro ("Purchase Order"); (d) Hydro's written acknowledgement, if any, of Customer's Purchase Order; (e) any fixed metal price agreement between the parties, which shall govern and control with respect to the base metal price for the volume commitment set forth in such agreement; and (f) any other specifications expressly accepted by Hydro in writing (collectively, "Contract"). Any changes to these Terms and Conditions or other portions of the Contract shall not be effective unless expressly included in a Hydro quote, a Hydro order acknowledgement or otherwise in a writing expressly authorized by a Hydro Sales Director, Hydro Customer Service Director, Hydro Customer Service Manager, Hydro Plant Manager, Hydro General Manager or Hydro Business Unit President ("Authorized Hydro Signatories"). The term "Hydro" refers solely to the Hydro legal entity that ultimately manufactures and sells the Goods to Customer.\*

**2. Standard Quality Tolerances; Claims Handling Guidelines; Technical Specifications.** Applicable standard quality tolerances in effect at the time of shipment, as specified by Hydro, shall apply to the Goods. All claims for non-conforming Goods will be handled in accordance with the Extrusion North America Customer Claims Guidelines available at [www.hydro.com/en-US/products-and-services/extruded-profiles/north-america-resources/](http://www.hydro.com/en-US/products-and-services/extruded-profiles/north-america-resources/). Further information on Hydro's processing, testing and inspection of

the Goods is available at [www.hydro.com/technicalspecificationsENA](http://www.hydro.com/technicalspecificationsENA).

**3. Prices; Taxes.** The prices and charges stated on Hydro's quote will be adjusted to, and the Goods and other items covered by the order will be invoiced at, the prices and charges in effect at the time of scheduled shipment under the order, provided that such prices and charges will not exceed the prices and charges included in Hydro's applicable price schedule, if any, in effect at the time of shipment. Prices are as set forth in Hydro's quote and exclude any federal, state, provincial or local sales, excise or use taxes. The prices shall be adjusted to the prices in effect at the time Hydro acknowledges Customer's Purchase Order. If taxes or tariffs are later imposed on the sale of the Goods, Customer shall reimburse Hydro promptly on demand. Customer acknowledges and agrees that Hydro does not control raw material costs including, without limitation, billet premium charges and shall be allowed to pass through such costs directly to Customer. If Hydro experiences significant increases in costs in addition to raw material costs (e.g., energy or transportation costs), it may request a price increase through a written notice to Customer that includes a reasonably detailed explanation of such increases. If the parties are unable to reach agreement on Hydro's request within thirty (30) days after the date of Hydro's notice, Hydro may elect to terminate its obligations under the Contract for convenience in accordance with the provisions of Section 17.

**4. Delivery Date; Partial Shipments.** Hydro shall use commercially reasonable efforts to fill Customer's Purchase Order by the estimated shipping date. So long as Hydro engages in such efforts, Customer shall not be entitled to any damages relating to any Purchase Order not filled by the estimated shipping date. Hydro may fill a Purchase Order through partial shipments, each of which may be separately invoiced.

**5. Packing & Shipping.** Hydro shall designate commercially reasonable packaging and shipping methods, all at Customer's cost. Unless otherwise agreed in writing by Hydro, Goods to be shipped either domestically or internationally shall be delivered Free Carrier (FCA) (Incoterms® latest version in effect when shipped) Hydro's plant. Hydro's title to, and risk of loss of, the Goods shall pass to Customer upon receipt by the freight carrier. All shipping weights shall be conclusively determined by Hydro unless Customer provides a timely written objection, along with commercially reasonable supporting documentation.

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\*Hydro Extrusion Canada, Inc. = Mississauga, ON & Pointe Claire (Montreal), QC

Hydro Extrusion Portland, Inc. = Portland, OR & Vancouver, WA

Hydro Extrusion USA, LLC = Belton, SC; Burlington, NC; City of Industry, CA; Connersville, IN; Cressona PA; Delhi, LA; Elkhart, IN; Gainesville, GA; Kalamazoo, MI; Magnolia, AR (Alumax); Mountain Top, PA; North Liberty, IN; Phoenix, AZ; St. Augustine, FL; Sidney, OH; Spanish Fork, UT; & Yankton, SD

**6. Payment Terms.** Customer shall remit payment to Hydro within thirty (30) days after the invoice date. If Customer fails to pay amounts when due, interest shall accrue at the higher of one and a half percent (1.5%) per month (18% per annum) or the highest amount permitted by applicable law and Hydro may, among other things, impose different payment terms, require additional assurances of due payment, suspend shipment and cease production. In addition, Customer shall reimburse Hydro on demand for all costs incurred to collect amounts past due including, without limitation, reasonable attorneys' fees, court costs and other collection costs (including any such fees related to any insolvency proceeding involving Customer). Customer grants Hydro a security interest in (a) all Goods, (b) all equipment including, without limitation, jigs, dies, and tools that Hydro acquires, develops or constructs for use in the manufacture of Goods for Customer ("*Equipment*"), (c) any proceeds of the Goods and Equipment, and (d) any intellectual property or other rights incorporated therein, until all amounts due to Hydro are paid in full. To perfect Hydro's security interest, Customer (i) shall execute documents reasonably requested from time to time, and (ii) hereby authorizes Hydro to make any filing or recordation in any appropriate jurisdiction.

**7. Materials & Equipment.** Any materials (*e.g.*, packaging materials, customized labels, etc.) and Equipment furnished by Customer to Hydro will be stored by Hydro to the extent necessary for use in the manufacture of Goods for Customer. All materials and Equipment shall be acquired, developed or constructed at Customer's sole cost and shall be deemed to be Hydro's property for use in connection with the manufacture of Goods for Customer. If either (a) for a period of at least thirty-six (36) months from the date of Customer's most recent Purchase Order, Hydro does not receive from Customer acceptable Purchase Orders requiring the use of any such materials or Equipment or (b) immediately if Hydro exercises its right to terminate the Contract pursuant to Section 17 following an uncured breach or default, Hydro may, in its option, elect to either use (including, without limitation, for other customers of Hydro) or dispose of such materials or Equipment without liability or obligation to Customer. Hydro may, but shall not be required to, send written notice to Customer prior to using or disposing of such materials or Equipment as provided in the preceding sentence.

**8. Customer Cooperation.** Customer acknowledges and agrees that Hydro shall manufacture the Goods based on specifications, designs and other requirements that Customer provides. In the event any such requirements require modification for the proper manufacture from aluminum, Customer shall reasonably cooperate with Hydro in order to allow Hydro to complete its manufacturing.

**9. Inspection.** Upon at least five (5) business days' advance written notice, Hydro will allow Customer to perform an inspection of Hydro's manufacturing processes with respect to the Goods for the sole purpose of confirming Hydro's compliance with its obligations under the Contract. Any inspection shall be scheduled by Hydro at a time and in a manner that minimizes any disruption of Hydro's business operations. In addition, Hydro may restrict Customer's access as necessary to protect proprietary information and to comply with export regulations.

**10. Limited Warranty & Disclaimer.** Hydro warrants to Customer, for a period of six (6) months from the respective date of shipment, that the Goods shall, at the time of shipment, conform to the specifications provided in the Contract and be free from defects in material and workmanship. Painted or anodized extrusions are subject to the same limited warranty provided herein unless otherwise set forth in a separate finish warranty document issued by Hydro. In the event that the Goods do not conform to the foregoing warranty, Customer's sole remedy and Hydro's sole obligation shall be, at Hydro's sole discretion, the repair or replacement of the non-conforming Goods. This warranty applies solely to the extent claims relate to the Goods themselves. This warranty does not cover damages arising from or relating to: (a) the end use or ultimate purpose of the Goods; (b) any modifications, alterations or additions made to the Goods by Customer, either directly or through a third party other than Hydro; (c) any accidents, abuse, misuse, mishandling, misconduct, vandalism or negligence relating to the Goods by Customer either directly or through a third party other than Hydro; or (d) acts of God or any other causes outside of Hydro's reasonable control. Notwithstanding anything to the contrary, the foregoing warranty shall automatically terminate once Customer either directly or indirectly (other than through Hydro), changes the mechanical properties of the Goods or welds, heat treats, forms, cuts, bends or coats the Goods (to the extent the defect arises from or relates to the welded, heat treated, formed, cut, bent or coated portions of the Goods). In connection with any repair or replacement, Hydro may require Customer to return the original Goods to Hydro. In the event of any repair or replacement, the warranty period shall continue to remain fixed for the original time period and shall not be extended. This limited warranty is extended personally to Customer such that it may not be assigned or transferred, whether by operation of law or otherwise. **REPAIR OR REPLACEMENT IN THE MANNER DESCRIBED ABOVE WILL CONSTITUTE FULFILLMENT OF ALL OF HYDRO'S OBLIGATIONS WITH RESPECT TO THE GOODS. EXCEPT AS SPECIFICALLY SET FORTH HEREIN, HYDRO HEREBY DISCLAIMS ANY AND ALL OTHER WARRANTIES, GUARANTEES OR CONDITIONS, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE GOODS, WHETHER ARISING UNDER ANY STATUTE, LAW OR OTHERWISE INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE. THIS LIMITED WARRANTY IS NOT A WARRANTY OF FUTURE PERFORMANCE OR A STATEMENT OF THE USEFUL LIFE OF THE GOODS, BUT ONLY A WARRANTY FOR REPAIR OR REPLACEMENT.** Any implied warranty that cannot be disclaimed under applicable law shall be limited in duration to the shortest permissible time period.

**11. Waiver of Consequential Damages; Liability Cap.** IN NO EVENT SHALL HYDRO BE LIABLE FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, PUNITIVE OR INCIDENTAL DAMAGES RELATING TO THE GOODS INCLUDING, WITHOUT LIMITATION, LOSS OF REVENUES OR PROFITS, COSTS OF DELAYS OR DOWN TIME, WHETHER ARISING UNDER

**CONTRACT, WARRANTY, TORT, STRICT LIABILITY OR ANY OTHER THEORY OF LIABILITY, NOR SHALL HYDRO'S LIABILITY EXCEED THE PURCHASE PRICE ACTUALLY PAID BY CUSTOMER UNDER THE RELEVANT PURCHASE ORDER.** Except for any nonpayment by Customer, any claim arising out of the Contract must be made within one (1) year from the date of delivery. The provisions of this Section 11 shall survive the completion of performance under, or the earlier termination of, the Contract.

**12. No Design or End Use Responsibility.** Hydro manufactures the Goods for incorporation into products designed and manufactured by Customer. Hydro does not expect or intend any of its Goods to be used or incorporated into flight critical or structural aerospace applications, nor any tubing Goods to be used or incorporated into structural applications unless they are designated as structural tubing. Hydro expressly disclaims any responsibility or liability for the end use or ultimate purpose of the Goods including the adequacy of any design or specification, as well as any testing or certification requirements unless expressly agreed to in writing by one of the Authorized Hydro Signatories. The provisions of this Section 12 are intended to supplement the provisions of Sections 10, 11 and 19.

**13. Compliance with Laws.** Although Hydro shall comply with applicable laws at the location of its manufacture of the Goods, it shall not be obligated to comply with any laws, ordinances, codes, orders, rules and regulations relating to the design, production, sale, or distribution of the end product into which the Goods are incorporated, nor any aspect of the Goods for which Hydro is not responsible, all of which shall be Customer's responsibility. In addition, the parties shall be responsible for complying with and fulfilling their respective obligations, if any, as well as providing reasonable assistance to each other in meeting the other party's respective obligations under anti-bribery laws such as the Foreign Corrupt Practices Act (FCPA), export control laws such as the U.S. Department of State International Traffic in Arms Regulations (ITAR) and the U.S. Department of Commerce Export Administration Regulations (EAR), and national security laws and regulations such as those administered and enforced by the U.S. Department of Treasury Office of Foreign Assets Control Regulations (OFAC), as well related rules and regulations, each as amended from time to time, and similar Canadian legislation including, but not limited to, the Corruption of Foreign Public Officials Act, the Export Control List, and sanctions against various countries imposed under the United Nations Act or the Special Economic Measures Act, each as amended from time to time. Customer acknowledges that Goods it purchases from Hydro are controlled by either the United States government or the Government of Canada, as applicable. The Goods may not be resold, transferred, or otherwise disposed of, either in their original form or after being incorporated into other items, to any other country or to any person other than Customer, contrary to the law and regulations of the United States or Canada, as applicable.

**14. Government Contracts.** Customer hereby acknowledges and agrees that it has an obligation to notify

Hydro in writing prior to or at the time of placing its Purchase Order if the Goods are (a) to be sold to or used by, or to be incorporated into products to be sold to or used by, the federal government, or a state or local government, in the United States or the federal government, or a provincial or local government, in Canada or (b) otherwise to be part of or governed by a government contract or subcontract, in which case Customer shall also then notify Hydro in writing as to any flow down provisions applicable to Hydro.

**15. Force Majeure.** Notwithstanding anything to the contrary in the Contract, neither party shall be liable for delays in the performance of its obligations caused by accidents, delivery of or performance under a Defense Priorities and Allocation System (DPAS) rated order, labor disputes, embargoes or other U.S. trade-related restrictions, shortages of labor or materials, acts of God or other events beyond such party's reasonable control, including governmental regulations or other acts. In the event of force majeure or some other unforeseen event beyond a party's control which, in its good faith opinion, makes it impossible or impracticable for such party to perform its obligations within the time frames required under the Contract, such party shall provide the remaining party with written notice as soon as reasonably practicable following such event, which notice shall identify the nature of the event, the anticipated duration and the probable effect thereof in reasonable detail.

**16. Defaults.** If either party believes the other is in default or breach of any duty or obligation under the Contract, the party shall send written notice thereof to the remaining party. The defaulting party shall have ten (10) days after delivery of such notice to cure any monetary defaults and shall have twenty (20) days after delivery of such notice to cure any non-monetary defaults. Notwithstanding the foregoing, if a non-monetary default, by its nature, cannot reasonably be cured within such 20-day period, such period shall be extended so long as the defaulting party is diligently prosecuting such cure to completion. If the defaulting party fails to remedy the default within the foregoing cure periods, then the non-defaulting party may immediately terminate the Contract upon written notice to the defaulting party and pursue any and all remedies available at law or in equity. To the extent it exercises these rights, Hydro may: (a) declare all amounts owing from Customer immediately due and payable and demand cash payment with respect to all or part of any Purchase Order; (b) exercise any rights or remedies of a secured party under the Uniform Commercial Code with respect to any of Customer's Goods or Equipment in its possession; and (c) exercise any other remedy at law or equity to which Hydro is entitled under applicable law.

**17. Termination.** Either party shall have the right to terminate the Contract for convenience upon sixty (60) days' advance written notice. In addition, Customer may terminate any particular Purchase Order if it provides Hydro with at least ten (10) days' prior written notice. Any termination by Customer of the Contract or any Purchase Order shall also require it to reimburse Hydro for any and all damages reasonably incurred by Hydro in connection with its performance in filling Customer's Purchase Orders as of its receipt of the notice including, without limitation, any finished goods, safety stock, work in progress, raw materials and anticipated profit margin. Further, Hydro, in its sole discretion, may immediately terminate any particular Purchase Order or the Contract

immediately by written notice to Customer, without liability or further obligation, if: (a) Customer breaches its obligations under the Contract and fails to cure this breach within the time period set forth in Section 16; (b) Customer fails or refuses to furnish Hydro with such information and assurances as Hydro may reasonably request about the drawings and Goods, as well as Customer's financial condition; or (c) to the extent permitted by law, in the event of (i) Customer's insolvency or impairment of Customer's financial condition (as determined by Hydro in its reasonable discretion), (ii) the filing of a voluntary or involuntary petition in bankruptcy by or against Customer, (iii) the appointment of a receiver or trustee for all or substantially all of Customer's assets, or for Customer generally, (iv) Customer's execution of an assignment for the benefit of creditors, or (v) a comparable event occurring by or against Customer. The provisions of Sections 1, 3, 5-7, 10-13, 16, and 18-24 shall survive the completion of performance under, or earlier termination of, the Contract.

**18. Intellectual Property; Confidentiality; Data Privacy.**

All drawings, prints, Equipment, resulting products, trade secrets and other confidential information provided by either party to the other including, without limitation, the Contract (collectively, the "Confidential Information") shall be used for the sole and exclusive purpose of allowing each other to do business together and shall remain the property of the party disclosing such Confidential Information. Notwithstanding anything to the contrary, any work product and intellectual property relating to the manufacturing or processing of the Goods from aluminum (e.g., billet composition, casting extrusion processing, including extrusion die design and extrusion tooling, and aging) shall remain the exclusive property of Hydro, even if developed after the parties begin doing business together. Customer represents and warrants that it has the right to use Confidential Information it provides to Hydro, that such Confidential Information does not infringe on the intellectual property rights of others and shall promptly notify Hydro in writing as soon as it learns of any actual or alleged infringement. Customer hereby provides a limited license to Hydro with respect to any Confidential Information provided to Hydro in connection with the acquisition, development or construction for use of Equipment in the manufacture of Goods for Customer or the manufacture of Goods for Customer and such license shall continue until the later of Hydro's completion of manufacture of Goods for Customer or Hydro's continued use of the Equipment pursuant to Section 7. The receiving party shall keep the Confidential Information confidential and shall not copy, exhibit or disclose it unless: (a) it obtains the prior written consent of the disclosing party; (b) such disclosure is required in order to perform the receiving party's obligations, or to enforce the receiving party's rights, under the Contract; or (c) such disclosure is required by applicable law or by legal, judicial, administrative or regulatory process, provided that the receiving party, to the extent not prohibited by applicable law or the relevant authority, promptly notifies the disclosing party so that it may, if it so elects, seek a protective order or other appropriate relief, in which case the receiving party shall

reasonably assist and cooperate with the disclosing party. Except as otherwise expressly provided herein, the provisions of this Section 18 shall survive two (2) years from the completion of performance under, or earlier termination of, the Contract or the expiration of any trade secrets included within the Confidential Information, whichever is longer. Customer acknowledges and agrees that Hydro collects, uses and processes personal information in accordance with Hydro's privacy policy, which is available at: [www.hydro.com/en/privacy/privacy-statement/](http://www.hydro.com/en/privacy/privacy-statement/). Customer hereby consents to Hydro's use of Customer's email address for marketing purposes. Customer may withdraw its consent at any time by submitting an email to [dataprivacyNA@hydro.com](mailto:dataprivacyNA@hydro.com).

**19. Indemnification.** Customer shall defend, indemnify and hold harmless Hydro from and against any and all claims, losses, damages, liabilities, costs and expenses including, without limitation, reasonable attorneys' fees, arising out of or relating to Customer's design of the Goods, the end use or ultimate purpose of the Goods, third party claims relating to the Goods (to the extent arising from Customer's acts or omissions) or Customer's breach of its obligations under the Contract.

**20. Notices.** All notices under the Contract shall be in writing and shall be deemed to have been duly delivered if sent by certified mail, return receipt requested, by nationally recognized commercial overnight courier or by facsimile (so long as a copy is contemporaneously sent through one of the alternate means specified in this Section 20), addressed to Customer at its address listed in its Purchase Order and addressed to Hydro at its address listed in its quote, provided that a copy is also sent to Extrusion North America, 6250 N. River Road, Suite 5000, Rosemont, Illinois 60018, Attn.: Legal Department. Each party may, from time to time, change its address for purposes of providing notice hereunder by delivering written notice thereof in accordance with the foregoing provisions.

**21. Choice of Law; Choice of Forum; Severability.** The Contract shall be governed by and construed in accordance with the laws of the state of Illinois without regard to conflict of law principles. In addition, the parties expressly exclude and waive the application of the United Nations Convention on Contracts for the International Sale of Goods (1980) (Vienna Sales Convention), as amended from time to time. **ALL DISPUTES, WHETHER IN CONTRACT, TORT OR OTHERWISE, SHALL BE BROUGHT EXCLUSIVELY IN THE STATE AND FEDERAL COURTS LOCATED IN CHICAGO, ILLINOIS, UNLESS HYDRO ELECTS TO BRING AN ACTION AGAINST CUSTOMER IN ANOTHER COURT OF COMPETENT JURISDICTION.** If anything in the Contract is held invalid, the invalid portion shall be severable from, and shall not in any way affect, the remainder of the Contract.

**22. Entire Agreement; Modifications; Non-Waiver.** The Contract constitutes the entire agreement between the parties relating to the subject matter hereof and any prior agreements, whether verbal or written, have been superseded, merged and integrated into the Contract, except for any confidentiality agreement between the parties, which shall remain in effect to the extent not in conflict with the Contract. The Contract will

supersede and have precedence over any terms and conditions contained in any other forms submitted by Customer even though Hydro may (without waiving its rights under this provision) provide services to Customer in response to the same. Any modifications or amendments to the Contract may only be made by a mutually executed written amendment, provided that Hydro shall only be bound by amendments executed by Authorized Hydro Signatories. No failure or delay by either party in exercising any right or remedy under the Contract shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy preclude any other or further exercise of any right or remedy, nor shall the waiver of any breach be deemed to be a waiver of any subsequent breach.

**23. *Independent Contractor; Successors & Assigns.*** Both parties acknowledge and agree that the parties are independent contractors and neither party has the authority to bind or make any commitment on behalf of the other. The Contract shall be binding upon and inure to the benefit of both parties and their respective successors and permitted assigns. Neither party may

assign the Contract without the prior written consent of the remaining party, although Hydro may engage in such an assignment to any of its subsidiaries or affiliates without Customer's consent.

**24. *No Third Party Beneficiaries.*** The Contract is for the sole benefit of and binding upon the parties and their successors and permitted assigns; and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal right or equitable right, benefit or remedy of any nature whatsoever under or by reason of the Contract.

**25. *Language.*** Each Customer who is a resident of Quebec agrees that it is such Customer's desire that these Terms and Conditions, along with all agreements and all other documents relating thereto, be written in the English language only. *Chaque client résident du Québec a qu'il est de sa volonté que les présentes, de même que toutes les ententes et tous les autres documents s'y rattachant, soient rédigés en anglais seulement.*