



## Sapa Extrusion India Private Limited Terms and Conditions of Sale

**1. Contract.** These Terms and Conditions are automatically incorporated by reference into any and all quotes issued by Sapa Extrusion India Private Limited ("Sapa"). Acceptance by Customer of any Sapa quote is expressly limited to these Terms and Conditions and Sapa objects to and rejects any different or additional terms provided in response. In addition, acceptance by Sapa of any Customer purchase order is expressly conditioned on Customer's agreement that its contract with Sapa is controlled by Sapa'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these Terms and Conditions, such that any additional or different terms provided by Customer are automatically voided, superseded and of no legal force or effect.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 products sold to and purchased by Customer ("*Products*") shall be conclusive evidence of Customer's acceptance of these Terms and Conditions. The contract between Sapa and Customer shall consist of: (a) Sapa's quote; (b) these Terms and Conditions; (c) Customer's purchase order, along with any specifications referenced therein, all to the extent accepted by Sapa ("*Purchase Order*"); (d) Sapa's written acknowledgement, if any, of Customer's Purchase Order; and (e) any other specifications expressly accepted by Sapa 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 Sapa quote, a Sapa order acknowledgement or otherwise in a writing expressly authorized by a Sapa Managing Director or Business Area President ("*Authorized Sapa Signatories*").

**2. Standard Quality Tolerances.** Unless otherwise agreed in writing, the goods shall meet the Seller's standard tolerances in respect of measurements and dimensions as well as the Seller's normal quality of the goods ordered. Delivered goods may differ by up to ten (10) percent as compared with the ordered quantity. Any information of weight on drawings is indicative unless otherwise specifically agreed in writing.

**3. Prices; Taxes.** Prices are as set forth in Sapa's quote and exclude any national, state, provincial or local sales, excise or use taxes. The prices shall be adjusted to the prices in effect at the time Sapa acknowledges Customer's Purchase Order. If taxes are later imposed on the sale of the Products, Customer shall reimburse Sapa promptly on demand. Customer acknowledges and agrees that Sapa 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 Sapa 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 Sapa's request within thirty (30) days after the date of Sapa's notice, Sapa may elect to terminate its obligations under the Contract for convenience in accordance with the provisions of Section 15.

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

**5. Packing & Shipping.** Sapa shall designate commercially reasonable packaging and shipping methods, all at Customer's cost. Unless otherwise agreed in writing by Sapa, Products shall be delivered Free Carrier (FCA) (Incoterms® 2010) Sapa's plant and title to, and risk of loss of, the Products shall pass to Customer upon receipt by the freight carrier. All shipping weights shall be conclusively determined by Sapa unless Customer provides a timely written objection, along with commercially reasonable supporting documentation.

**6. Payment Terms.** Customer shall remit payment to Sapa within thirty (30) days after the invoice date. If Customer fails to pay amounts when due, late fees 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 Sapa may, among other things, impose different payment terms, require additional assurances of due payment, suspend shipment and cease production. In addition, Customer shall reimburse Sapa 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 Sapa a security interest in (a) all Products, (b) all equipment including, without limitation, jigs, dies, and tools that Sapa acquires, develops or constructs for use in the manufacture of Products for Customer ("*Equipment*"), (c) any

proceeds of the Products and Equipment, and (d) any intellectual property or other rights incorporated therein, until all amounts due to Sapa are paid in full. To perfect Sapa's security interest, Customer (i) shall execute documents reasonably requested from time to time, and (ii) hereby authorizes Sapa to make any filings or recordation in any appropriate jurisdiction.

**7. Materials & Equipment.** Any materials furnished by Customer to Sapa will be stored by Sapa to the extent necessary for use in the manufacture of Products for Customer. All Equipment shall be acquired, developed or constructed at Customer's sole cost and shall be deemed to be Sapa's property for use in connection with the manufacture of Products 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, Sapa does not receive from Customer acceptable Purchase Orders requiring the use of any such materials or Equipment or (b) immediately if Sapa exercises its right to terminate the Contract pursuant to Section 15 following an uncured breach or default, Sapa may, in its option, elect to either use (including, without limitation, for other customers of Sapa) or dispose of such materials or Equipment without liability or obligation to Customer.

**8. Customer Cooperation.** Customer acknowledges and agrees that Sapa shall manufacture the Products 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 Sapa in order to allow Sapa to complete its manufacturing.

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

**10. Limited Warranty & Disclaimer.** Sapa warrants to Customer, that the Products shall, only at the time of shipment, conform to the specifications provided in the Contract and be free from defects in material and workmanship. In any event that the Products do not conform to the foregoing warranty, Customer's sole remedy and Sapa's sole obligation shall be, at Sapa's sole discretion, the repair or replacement of the non-conforming Products. This warranty applies solely to the extent claims relate to the Products themselves, and duly accepted by the quality team of Sapa Extrusion. This warranty does not cover damages arising from or relating to: (a) the end use of the Products; (b) any modifications, alterations or

additions made to the Products by Customer, either directly or through a third party other than Sapa; (c) any accidents, abuse, misuse, mishandling, misconduct, vandalism or negligence relating to the Products by Customer either directly or through a third party other than Sapa; or (d) acts of God or any other causes outside of Sapa's reasonable control. Notwithstanding anything to the contrary, the foregoing warranty shall automatically terminate once Customer either directly or indirectly (other than through Sapa), changes the mechanical properties of the Products or welds, heat treats, forms, cuts, bends or coats the Products (to the extent the defect arises from or relates to the welded, heat treated, formed, cut, bent or coated portions of the Products). In connection with any repair or replacement, Sapa may require Customer to return the original Products to Sapa. 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 SAPA'S OBLIGATIONS WITH RESPECT TO THE PRODUCTS. EXCEPT AS SPECIFICALLY SET FORTH HEREIN, SAPA HEREBY DISCLAIMS ANY AND ALL OTHER WARRANTIES, GUARANTEES OR CONDITIONS, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS, 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 PRODUCTS, 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 SAPA BE LIABLE FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, PUNITIVE OR INCIDENTAL DAMAGES RELATING TO THE PRODUCTS INCLUDING, WITHOUT LIMITATION, LOSS OF REVENUES, OPPORTUNITY, REPUTATION OR PROFITS, COSTS OF DELAYS OR DOWN TIME, WHETHER ARISING UNDER CONTRACT, WARRANTY, TORT, STRICT LIABILITY OR ANY OTHER THEORY OF LIABILITY, NOR SHALL SAPA'S LIABILITY EXCEED THE PURCHASE PRICE ACTUALLY PAID BY CUSTOMER UNDER THE RELEVANT PURCHASE ORDER. The provisions of this Section 11 shall survive the completion of performance under, or the earlier termination of, the Contract.

**12. Compliance with Laws.** Although Sapa shall comply with applicable laws at the location of its manufacture of the Products, 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 Products are incorporated, nor any aspect of the Products for which Sapa is not responsible, all of which shall be Customer's responsibility. In addition, the parties shall be responsible for fulfilling their respective obligations, if any, as well as providing reasonable assistance to each other in meeting the other party's respective obligations under all anti-bribery laws, export control laws, and national security laws, as well related rules and regulations, each as amended from time to time.

**13. 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, labor disputes, embargoes, shortages of labor or materials, acts of God or other events beyond such party's reasonable control. 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 so advise the remaining party and request the remaining party's consent, which consent shall not be unreasonably withheld, conditioned or delayed, to a written extension of such deadline.

**14. 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 receipt of such notice to cure any monetary defaults and shall have twenty (20) days after receipt 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, Sapa 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 Products or Equipment in its possession; and (c) exercise any other remedy at law or equity to which Sapa is entitled under applicable law.

**15. 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 Sapa 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 Sapa for any and all damages reasonably incurred by Sapa 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, Sapa, 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 14; (b) Customer fails or refuses to furnish Sapa with such information and assurances as Sapa may reasonably request about the drawings and Products, 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 Sapa 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, 10-12, 14, and 16-22 shall survive the completion of performance under, or earlier termination of, the Contract.

**16. Intellectual Property; Confidentiality.** 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 Products from aluminum (*e.g.*, billet composition, casting extrusion processing and aging) shall remain the exclusive property of Sapa, 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 Sapa, that such Confidential Information does not infringe on the intellectual property rights of others and shall promptly notify Sapa in writing as soon as it learns of any actual or alleged infringement. Customer hereby provides a limited license to Sapa with respect to any Confidential Information provided to Sapa in connection with the acquisition, development or construction for use of Equipment in the manufacture of Products for Customer or the manufacture of

Products for Customer and such license shall continue until the later of Sapa's completion of manufacture of Products for Customer or Sapa'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 16 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.

**17. Indemnification.** Customer shall defend, indemnify and hold harmless Sapa 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 Products, third party claims relating to the Products (to the extent arising from Customer's acts or omissions) or Customer's breach of its obligations under the Contract.

**18. 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 electronic mail (so long as a copy is contemporaneously sent through one of the alternate means specified in this Section 18), addressed to Customer at its address listed in its Purchase Order and addressed to Sapa at its address listed in its quote, provided that a copy is also sent to Sapa AS, PB 81, 0101 Oslo, Norway, Attn.: General Counsel. 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.

**19. Choice of Law; Severability; Choice of Forum.**

These Terms shall be governed by the substantive law of India (without application of any principles on conflict of laws). 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. 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.

**20. 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 Sapa 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 Sapa shall only be bound by amendments executed by Authorized Sapa Signatories. No failure or delay by either party in exercising any right under the Contract shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or future exercise thereof or the exercise of any other right.

**21. 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 Sapa may engage in such an assignment to any of its subsidiaries or affiliates without Customer's consent.

**22. 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.