

# ALUMINIUM PROFILES UK LTD ('the seller')

## TERMS AND CONDITIONS OF SALE ('the conditions')

### 1. ACCEPTANCE

- (a) All quotations given and all orders are accepted only upon these conditions to the exclusion of any other terms and conditions including Buyers terms and conditions of purchase.
- (b) Quotations expire seven (7) days from the date thereof. No quotation given is an order of sale capable of acceptance so as to create a binding contract.
- (c) All orders placed with Seller require its acceptance in writing before any contract arises. Each accepted order constitutes an entire and separate contract to which these conditions shall apply. Where no formal acceptance is given, by its acceptance of delivery of the goods, Buyer is deemed to accept these conditions as the only terms and conditions governing its contract with Seller.
- (d) Acceptance of Buyers orders is subject to supplies and services being available and unsold.
- (e) Buyer acknowledges that in entering into any contract hereunder, it does not rely on any representation or statement concerning the goods unless confirmed in writing by Seller and waives any claim for breach of any such representations or statements not so confirmed.
- (f) Where order and acceptances are to be communicated via electronic data interchange (EDI) messages any order transmitted to Seller requires its acceptance to be transmitted to Buyer before any contract arises. Each order so accepted will be governed by these Conditions.

### 2. PRICE

Goods and any other services in respect thereof will be invoiced at the prices ruling at the date of acceptance of order. Where a fixed price has been agreed with respect to an order, Seller may increase the price before or after acceptance of the order without notice, to the extent that the cost of Seller of producing or procuring the goods or services (if any) has increased or is due to any other circumstances beyond the control of the Seller.

### 3. PAYMENT

- (a) Unless otherwise agreed, prices quoted are exclusive of VAT and accounts are due for payment by the 30<sup>th</sup> day of the month following month of invoice. All payments shall be made without any deduction or set-off whatsoever.
- (b) If any payment is overdue the credit facilities, previously granted, will be cancelled and all amounts that have been invoiced, but are not yet due, become immediately due for payment. The Seller also reserves the right to suspend any further contracted deliveries to the Buyer and shall charge interest (from due date of payment to date of actual payment) on the full amount due, on a daily basis at 10% p.a above the base rate of the National Westminster Bank PLC from time applicable until the amount due (including interest) is paid.
- (c) Seller reserves the right at any time to demand full or partial payment before proceeding or proceeding further with an order.

### 4. DELIVERY

- (a) Unless otherwise agreed, any delivery date or period specified by Seller is an estimate only and Seller shall not be liable for any loss or damage sustained by Buyer as a result of any delay in delivery.
- (b) Delivery shall be made by Buyer collecting the goods at Sellers works after Seller has advised that goods are available for collection. Buyer shall be responsible for effecting insurance therefrom irrespective of carriage by Sellers Buyers or a carrier's transport.
- (c) If an order is accepted on basis that delivery be at some place other than Sellers premises delivery shall be made by seller delivering the goods to that place. Seller reserves the right to charge transport, insurance and other costs for goods requiring expedition or special risk.
- (d) Where drawings, specifications or other information or data are to be supplied. Buyer shall supply the same in sufficient time to enable Seller to deliver the goods and carry out any services in

- respect thereof. If not, so supplied Seller may rescind the contract without liability whatsoever and Buyer shall pay for all costs incurred in respect of the order up to the date of rescission.
- (e) Buyer shall accept delivery whenever seller prefers delivery. If Buyer fails to provide the information to enable delivery to occur or shall otherwise cause or request a delay in delivery of the goods, Buyer shall pay in addition to the price referred to in Condition 2, all storage, insurance, transportation and other relevant costs incurred as a result thereof including the costs of suspending or cancelling any further contracted deliveries.
- (f) Seller reserves the right to make delivery by instalments and these conditions shall apply with appropriate amendments to each instalment delivery. Seller is entitled to tender an invoice for each instalment which shall be paid by Buyer in accordance with Condition 3.

### 5. SHORTAGES, DAMAGED AND/OR LOSS IN TRANSIT

- (a) Any claims by Buyer in relation to goods damaged awaiting transit (including corrosion thereof), shortages or non-delivery must be made in writing to Seller and the carrier in the case of damaged goods or shortage, the claim must be made within 3 days of delivery and in the case of non-delivery of whole consignment within 3 days of the delivery date specified by Seller or failing such date, the date of invoice.
- (b) The goods in respect of which any claim of damage or shortfall is made must be preserved in tact (including packaging) for a period of 14 days from Sellers receipt of notice of the claim within which time Seller and carrier shall have the right to attend at the Buyers premises to investigate the claim and inspect the goods.
- (c) If the Seller agrees with the Buyer that the goods are damaged or defective and that it is possible to remedy any defect then the seller shall as its sole option, replace the goods or credit the Buyer accordingly.
- (d) If the seller disagrees with the Buyer that the goods are damaged or defective then the dispute shall be referred to an independent third party appointed jointly by the Seller and the Buyer or, failing agreement within 7 days, by a party appointed on an application of either the Seller or the Buyer, by the president for the time being of Institute of Chartered Accountants. Such independent third party shall act as an expert and not as an arbiter and his decision shall be final and binding on, and his costs and expenses shall be borne equally by the seller and the Buyer.

### 6. RISK AND TITLE

- (a) Risk in the goods shall pass to the Buyer upon delivery but where delivery is withheld or delayed by reason of any default of Buyer risk shall pass to Buyer at such time that seller would have delivered had such withholding or delay not occurred. In the absence of written claim described in condition 5(a) and (b) above, the goods shall be deemed to have been delivered and accepted by Buyer complete and satisfactory condition.
- (b) Title to the goods shall remain with the Seller until such time as Seller shall have received payment in cash or cleared funds in full therefore and for all other goods agreed to be sold by Seller to Buyer for which payment is then due.
- (c) If Buyer commits any default (which expression shall without prejudice to the generality thereof includes any failure to pay Seller on due date, the appointment of a receiver or a provisional liquidator or an administrator) the Seller shall be entitled forthwith to recover and resell any or all such goods and in addition all other goods agreed to be sold by the Seller. For such purpose Seller shall have an irrevocable licence or authority to enter upon any premises where those goods may be situated with such transport as may be necessary and Buyer shall render all reasonable assistance to Seller to enable Seller to recover the goods.
- (d) Until such time as title passes to Buyer, Buyer shall store the goods separately from other goods of Buyer and in such manner

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as they can be clearly identified as the property of the Seller.  
Seller shall be entitled to inspect such storage from time to time.

### 7. DIES AND INTELLECTUAL PROPERTY

- (a) Any Die and/or tooling cost paid (whether in part or otherwise) by the Buyer is a contribution to the cost of manufacturing the die including design, programming and machining time to cut the die and associated tooling and does not include ownership by the Buyer of the physical tool steel which is bought and paid for by the extrusion mill company and remains their property. Responsibility for maintaining, repairing and replacing the die during the ongoing production lifetime of the aluminium drawing profile is the responsibility of the extrusion mill company and will be carried out free of charge provided the drawing profile remains in use.
- (b) Shape of the drawing profile and the intellectual property rights in the die belong to the party paying for the manufacture and machining of the die.
- (c) A die print shall be supplied by the seller and approved by the Buyer. The supply by the Seller of a sample from the die does not deem the agreement to be one of sale by sample for the purposes of Section 15 of the Sale of Goods Act 1979 (as amended) and the Seller excludes Section 15 of the sale of Goods Act 1979 (as amended).

### 8. MAINTENANCE OF STOCKS

- (a) Seller will use reasonable endeavours to maintain, upon special request by Buyer, sufficient stocks of goods to meet Buyers written estimated requirements for any particular period not exceeding 60 days.
- (b) Where seller confirms such stocks are held, Buyer shall within 7 days of such confirmation commence call-off of its orders weekly (or as otherwise agreed) against the estimate or a significant (in Sellers opinion) quantity of the estimate for the relevant period, Buyer shall notify Seller in writing prior to the expiry of the particular period referred to in (a) above, if buyer does NOT require any further stocks of goods to be maintained for a subsequent identical period by Seller where upon Seller shall be released from any maintaining of stocks for Buyer for a subsequent period.
- (c) Any failure by Buyer to call-off the amount referred in (b) above at the intervals specified or either of them shall relieve Seller of holding sufficient stock of the goods or any goods for Buyer and shall entitle Seller to sell those goods elsewhere at the best price readily obtainable. Buyer shall pay Seller for all stocks held pursuant to Buyers written estimate (less the value of any proceeds from scrap) or at sellers discretion for the shortfall (if any) below the price which could have been charged for the stock on the date of the Buyers default and that on the date of actual delivery to a third party but Buyer shall not otherwise be liable for breach of contract in any sum greater than the selling price of the stocks held and not called-off.

### 9. WARRANTY

- (a) Seller warrants that goods at the time of delivery shall be free from significant defect in material or workmanship. If any goods do not conform to that warranty Seller will at its option:
  - (i) Replace the goods found not to conform to the warranty
  - (ii) Take such steps as Seller deems necessary to bring the goods into a state where they are free from such defects; or
  - (iii) Take back the goods found not to conform to the warranty and refund the appropriate part of the purchase price PROVIDED THAT the liability of the seller shall in no event exceed the purchase price of the goods and performance of any one of the above options shall constitute an entire discharge of Sellers liability under this warranty.
- (b) The foregoing warranty is conditional upon:
  - (i) Buyer giving written notice to seller of the alleged defect within seven days of the time when Buyer

discovers or ought to have discovered the defect and in any event within 28 days of delivery of the goods  
Buyer affording Seller, its agents or insurers agents a reasonable opportunity to inspect the goods during a period of 14 days and, if so requested by the Seller, returning the allegedly defective goods to sellers works, carriage pre-paid (subject to refund in the event that the claim is found to be justified), for inspection to take place there

- (ii) The goods having been stored carefully and in accordance with any instructions issued by the Seller and so as to not allow deterioration or damage.
- (c) Seller will use reasonable endeavour to pass on to Buyer the guarantee of any benefit condition, warranty or servicing arrangement acquired from the supplier of the goods. Goods may not always be provided from source that has been independently assessed to ISO 9001: 2015 unless specially requested by the Buyer in writing.
- (d) Save as provided above all conditions and warranties, express or implied as to the quality, fitness for purpose, merchantability or durability are hereby expressly excluded to the extent permitted by law.
- (e) All information as to the methods of storing, applying or using the goods, the purpose to which the goods may be applied, the suitability of using the goods in any manufacturing process or in conjunction with any other materials are given by Seller to its agent in good faith but it is for the Buyer to satisfy itself of the suitability of the goods for any particular purpose.

### 10. DAMAGES

- (a) Save as described in condition 9, Seller shall not be liable in contract or tort or delict or otherwise for any loss or damage whether consequential or indirect loss or damage or otherwise howsoever caused.
- (b) In any event Sellers liability to Buyer in respect of any breach or non-performance of Sellers obligations howsoever caused or arising shall be limited to the price of the goods
- (c) Nothing herein shall affect the liability of Seller for death or personal injury caused by Sellers negligence.

### 11. SET-OFF

The Seller shall be entitled but not obliged at any time or times without notice to the Buyer to set off any liability of the Buyer to the Seller against any liability of the Seller to the Buyer and may for such purpose convert or exchange any currency. Any exercise by the Seller of its rights under this clause shall be without prejudice to any other rights or remedies available to the Seller under this agreement or otherwise howsoever, at law or in equity.

### 12. FORCE MAJEURE

Seller shall not be liable for any loss or damage if Seller is prevented from, or hindered in, or delayed in performing its obligations hereunder where the same is occasioned by any cause whatsoever that is beyond the Sellers reasonable control including but not limited to an act of God; severe weather; war (whether declared or not); civil disturbance; requisitioning; governmental or other authority's regulations, restrictions or enactments of any kind; import or export regulations; strike; lock out; or trade dispute (whether involving its own employees or those of any other person); power or machinery breakdown, accident, non-availability or delay of vessels or other transport. Should any such event occur Seller shall confirm the same in writing to the Buyer and Seller may cancel or initially suspend then, if necessary, cancel the performance of the contract without incurring any liability for any loss or damage thereby occasioned.

### 13. TESTS AND INSPECTIONS

Unless other wise agreed all testing and inspection specified by the Buyer, implied by the order or customary to Sellers practice

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shall be at the Sellers works and shall be final. Seller reserves the right to make a reasonable charge thereof.

### 14. ALTERATION IN SPECIFICATION

Seller reserves the right to make any changes in the specification of the goods which do not materially alter their quality or performance, or where specification is to conform to any applicable safety or other statutory requirements. If Buyer requires any further information or advice on safe use of goods in question Buyer shall forthwith contact the Seller.

### 15. INDEMNITY

- (a) Where the Buyer provides drawings, specifications, information or data to Seller for the purpose of any orders Buyer shall indemnify Seller against any and all claims, damages, loss, costs and expenses for which Seller may become liable as a result of the infringement of any patent, copyright, design right or other intellectual property of any third party.
- (b) Buyer shall indemnify Seller against any and all claims, damages, loss, costs and expenses suffered or incurred by Seller as a result of any claim by a third party arising out of or in connection with the sale of goods including any claim under the Consumer Protection Act 1987.
- (c) Buyer shall be responsible for effecting and maintaining insurance cover as appropriate in particular in respect of condition 15(a) and (b) and upon request shall provide a copy of the insurance policy and evidence of premiums paid in respect thereof.

### 16. CANCELLATION

No order which has been accepted by the Seller may be cancelled by Buyer except with the agreement in writing of seller and on terms that the Buyer shall indemnify inter alia the Seller in full including but not limited to, for and against all loss or damage (whether consequential or indirect loss or damage or otherwise), costs (including those of labour and materials used), damages, charges (including forward currency exchange) and expenses incurred by Seller as a result of cancellation.

### 17. BREACH

Seller shall be entitled by notice in writing to terminate any contract with Buyer and that without any liability whatsoever to the buyer if:

- (a) Buyer shall commit any breach or default whether material or otherwise of its obligations to the Seller in terms of any contract with the Seller; or
- (b) Any distress or execution shall be levied on, or any diligence in Scotland be executed against Buyer or any of its assets; or
- (c) Buyer makes or attempts to make any arrangement or composition with its creditors: or
- (d) Where Buyer is a public or private limited company, any resolution is passed or Petition presented to wind up its business (except for the purpose of reconstruction or amalgamation) or a receiver or administrator or a liquidator or a provisional liquidator is appointed of Buyer or of any of its undertakings, property or assets or any part thereof or Buyer ceases or threatens to cease business; or
- (e) Where Buyer is an individual, a partnership including a dissolved partnership, a corporation or local authority, or an unincorporated body. Buyer or any partner or any member thereof signs a Trust Deed for the behoof of its creditors or is subject to a Petition for Bankruptcy or becomes apparently insolvent.
- (f) The Buyer ceases or threatens to cease carrying on business. In the event of termination in terms hereof Buyer shall become liable for immediate payment for all goods delivered and services provided by Seller at the date of said termination.

### 18. ASSIGNMENT AND SEVERABILITY

- (a) Buyer shall not assign or transfer or purport to assign or transfer any contract to which these Conditions apply without the Sellers prior written consent.

- (b) If any provision or term of these Conditions is or shall become or be declared illegal, invalid or unenforceable in whole or in part by any court or other authority having jurisdiction over the parties hereto the same shall be divisible from this agreement in the jurisdiction in question to the extent (but not greater) necessitated by the Court of other authority.

### 19. WAIVER AND AMENDMENT

- (a) No failure or delay on the part of Seller to exercise any right or remedy under any contract governed by these Conditions (whether a single or partial or further exercise) shall be construed or operated as a waiver thereof. The rights and remedies provided are cumulative and are not exclusive of any rights or remedies provided by law.
- (b) These Conditions shall not be amended, modified or varied except in writing signed by Seller.

### 20. NOTICES

Any notices to be given shall be in writing and be deemed to be given if left at last known address of Seller or, as the case may be, the Buyer (marked for the attention of the company secretary or the individual carrying on the business as appropriate) or sent to the same by first class post, or email and shall be deemed to have been received five days after despatch if by post, or six hours after receipt of a transmission in legible form if by email, or after delivery if by hand.

### 21. GOVERNING LAW

- (a) This contract should be governed by the Laws of England
- (b) In any case where the Buyer is domiciled out with the United Kingdom, and has no place of business there and performance of the contract is entirely outwith the United Kingdom, then the construction, validity and performance of these Conditions shall be governed by the law of England and the Buyer submits to the exclusive jurisdiction of the courts of England.

### 22. EXPORT CONTRACTS

The following additional provisions apply to any order for the sale of goods when goods are exported outside the United Kingdom:

- (a) Buyer shall be solely responsible for the obtaining of any necessary import licences or authorisations in respect of the goods and Seller shall be under no liability whatsoever in respect of goods exported without the necessary licences.
- (b) Where goods are sold FOB or CRF Seller shall be under no obligation to give Buyer the notice specified in Section 32(3) of the Sales of Goods Act 1979.
- (c) Incoterms (1990) shall apply except and to the extent that they may be inconsistent with these Conditions.
- (d) All claims for damages or loss incurred awaiting or in transit must be made in accordance with the instruction of Sellers insurance company, details of which are given on the insurance certificate with the applicable shipping documentation