

# CONDITIONS OF SALE ALUMINATE LIMITED

## 1. DEFINITIONS

The Seller means ALUMINATE LIMITED

The Purchaser means the person firm or company to be supplied with the Goods by the Seller.

Goods means the goods materials, services and/or other items to be supplied pursuant to the Contract.

The Contract means the Contract for sale and the purchase of the Goods made between the Seller and the Purchaser to which these Conditions apply.

## 2. SCOPE

These conditions apply to all sales of Goods by the Seller and shall prevail over any inconsistent terms or conditions contained or referred to in the Purchaser's Order or in Correspondence or elsewhere or implied by trade custom practice or course of dealing unless specifically agreed to in writing by the Seller and any purported provisions to the contrary are hereby excluded or extinguished.

## 3. QUOTATIONS

A quotation or tender by the Seller does not constitute an offer and the Seller reserves the right to withdraw or amend the same at any time prior to the Seller's acceptance of the Purchaser's order.

## 4. PRICES

The prices payable for the Goods shall be those charged by the Seller at the time of despatch. The Seller shall have the right at any time to revise prices to take account of increases in costs including (without limitation) costs of any goods or materials carriage labour or overheads the increase or imposition of any tax duty or other levy and any variation in exchange rate. Unless otherwise stated prices are exclusive of value added tax.

## 5. TERMS OF PAYMENT

(a) All prices are quoted nett. Unless specifically stated payment of invoices shall be made without any deduction of set-off so as to be received by the Seller within thirty days of the date thereof. In the event of any such payment becoming overdue any and all other invoices submitted by the Seller to the Purchaser shall immediately become due and payable. Interest shall be payable on overdue accounts at the rate of three per cent per month to run from the due date for payment thereof until receipt by the Seller of the full amount whether or not after judgement.

(b) The Seller reserves the right to re-possess any of the Goods in respect of which payment is overdue and thereafter to re-sell the same and for this purpose the Purchaser hereby grants an irrevocable right and licence to the Seller's servants and agents to enter upon all or any of its premises with or without vehicles during normal business hours. This right shall continue to subsist notwithstanding the termination of the contract through the happening of any of the events specified in Condition 15 or otherwise and without prejudice to any accrued rights of the Seller thereunder.

(c) The Seller reserves the right to require the Purchaser to identify and return in good condition and at his own expense any of the Goods in respect of which payment is overdue.

## 6. DELIVERY

(a) Delivery dates mentioned in any quotation or acceptance form or elsewhere are approximate only and not of any contractual effect and the Seller shall not be under any liability to the Purchaser in respect of any failure to deliver on any particular date or dates. If delivery shall not have taken place within a reasonable time the Seller's liability shall be limited to the value of the Goods specified in the Seller's quotation.

(b) If the Purchaser refuses or fails to take delivery of Goods tendered in accordance with the Contract the Seller shall be entitled to immediate payment in full for the goods so tendered. The Seller shall be entitled to store at the risk of the Purchaser any Goods of which the Purchaser refuses or fails to take delivery and the Purchaser shall in addition to the purchase price pay all costs of such storage and any additional cost or carriage incurred as a result of such refusal or failure. Refusal by the Purchaser to take delivery will relieve the Seller from the obligation to make any further deliveries without prejudice to the Seller's right to recover damages for such refusal.

(c) The Goods shall unless delivered by the Seller's own transport or by a carrier on behalf of the Seller be deemed to have been delivered and the risks therein to have passed to the Purchaser upon their transfer to the carrier named by the Purchaser or (in the case of delivery ex works) upon the Seller notifying the Purchaser that the Goods are available for collection.

(d) Where the Goods are to be delivered by a carrier on behalf of the Seller the risk therein shall pass to the Purchaser upon delivery. The Seller shall advise the Purchaser of the scheduled date of despatch from the Seller's works and unless the Purchaser notifies the Seller in writing within 5 days the Seller shall not be liable for any loss or damage to the Goods in transit nor for failure of the Goods to be delivered and such Goods shall be deemed to have been delivered in good order and condition.

(e) If in the case of the Contract of any order involving more than one delivery default is made in payment on the due date the Seller shall have the right to suspend all or any further deliveries pending payment or to terminate the contract in its entirety by notice in writing to the Purchaser.

## 7. TITLE

Title to the Goods shall only pass to the Purchaser upon payment in full of the price thereof together with any and all other sums owing and or due to the Seller of whatsoever nature and whether under the Contract or otherwise. Until such payment the Purchaser shall keep the Goods in good condition and store the Goods in such a way as to show clearly that they are the property of the Seller PROVIDED THAT the Purchaser may sell and deliver the Goods to a third party in the ordinary course of the Purchaser's business on condition that until such payment as aforesaid the Purchaser shall hold all proceeds of such sales on trust for the Seller and in a separate account. The Purchaser hereby assigns all rights and claims which the Purchaser may have against its customers arising from such sales to third parties until payment is made in full as aforesaid. Where the Goods are combined by the Purchaser with other items or materials the resulting items shall be deemed to be the property of the Seller subject to and on the terms aforesaid.

## 8. INSPECTION

Any testing and/or inspection required under the Contract shall be carried out at the Seller's works or such other place or places as the Seller may appoint and shall be accepted as final by both parties.

## 9. VARIATIONS

All lengths per piece stated on the Seller's quotations and/or acceptance of order forms are approximate only and are subject to dimensional tolerances.

## 10. THIRD PARTY RIGHTS

(a) The Purchaser shall indemnify the Seller against any and all claims costs demands and expenses incurred by or made against the Seller as a direct or indirect result of the carrying out of any work required to be done on or to the Goods in accordance with the requirement or specifications of the Purchaser involving any infringement or claim of infringement of any intellectual or industrial property right vested in any third party.

(b) In any case where the goods are or are capable of becoming the subject of any industrial or intellectual property right of any third party the Seller warrants that it shall transfer to the Purchaser only such title as it may have to the Goods.

## 11. LIABILITY

(a) The Seller shall not be liable for any shortage in quantities delivered nor for any defect in the quality nature or condition of the Goods nor for failure of the Goods to comply with any specification unless a claim in writing shall have been received by the Seller from the Purchaser within five days of delivery of the Goods.

(b) In event of any shortage defect or failure as aforesaid the Seller shall subject to Condition 11(a) make good the shortage and/or as appropriate replace or repair free of charge any Goods found to be defective by reason of faulty material or workmanship provided that as a condition thereof the Seller may require that the Goods concerned are returned to the Seller's works carriage paid within one month of discovery of the defect.

(c) Subject to the foregoing all conditions warranties or representations express or implied by statute, common law or otherwise in relation to the Goods are hereby excluded and the Seller shall be under no liability to the Purchaser for any loss damage or injury direct or indirect resulting from defective material faulty workmanship or faulty fabrication or from use with unspecified accessories or gaskets not supplied by ALUMINATE LTD or otherwise howsoever arising out of the Contract and whether or not caused by the negligence of the Seller his servants or agents.

(d) The Contracts (Rights of Third Parties) Act 1999 is specifically excluded from all contracts.

## 12. LICENCES AND CONSENTS

If any licence or consent of any government or other authority shall be required for the acquisition or use of the Goods by the Purchaser the Purchaser shall obtain the same at its own expense and if necessary or so required produce evidence of the same to the Seller on demand.

## 13. FORCE MAJEURE

(a) The Seller shall not be liable to the Purchaser for any loss or damage which may be suffered by the Purchaser as a direct or indirect result of the supply of the Goods by the Seller being prevented hindered delayed or rendered uneconomic by reason of any force majeure circumstances.

(b) In this condition "Force Majeure Circumstances" shall mean any Act of God, riot, strike, lock-out, trade dispute or labour disturbance; accident, break-down of plant or machinery; fire, flood, difficulty or increased expense in obtaining workmen, materials or transport; or other circumstances whatsoever outside the reasonable control of the Seller affecting the provision of the Goods or of raw materials therefore by the Seller's normal source of supply or the manufacture of the goods by the Seller's normal means or the delivery of the Goods by the Seller's normal route or means of delivery.

## 14. TERMINATION

If the Purchaser enters into a Deed of arrangement or commits an act of bankruptcy or compounds with his creditors or if a receiving order is made against him or (being a company) it shall pass a resolution or the Court shall make an order that the Purchaser shall be wound up (other than for the purposes of amalgamation or reconstruction) or if a receiver shall be appointed of any of the assets or undertaking of the Purchaser or if circumstances shall arise which entitle the Court or a creditor to appoint a receiver or manager or which entitle the Court to make a winding-up order or if the Purchaser takes or suffers any similar action in consequence of debt or commits any breach of the Contract the Seller may stop any Goods in transit and suspend further deliveries and by notice in writing to the Purchaser may forthwith determine the Contract without prejudice to the provisions of Condition 5(b) hereof and to any existing claim.

## 15. WAIVER

The failure by either party to the Contract to exercise or enforce any rights conferred by the Contract shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof at any time or times thereafter.

## 16. NOTICES

Any notices hereunder shall be in permanent readable form and shall be deemed properly addressed if addressed to the party concerned at its principal place of business or last known address.

## 17. PATENTS

The Purchaser shall indemnify the Seller against all actions, claims and costs damages or losses arising from any infringement of letters patent design trade mark or copyright protected by law in respect of any Goods made or supplied by the Seller.

## 18. GOVERNING LAW

The Contract shall in all respects be governed by and construed and interpreted in accordance with the Laws of England.

I have retained a copy of ALUMINATE LTD. terms and conditions and have read the above document.

Signed \_\_\_\_\_

Company \_\_\_\_\_

Dated \_\_\_\_\_