

TERMS OF TRADE

Version: May 2024

The Terms below must be read by the Buyer before placing an Order

Important Information

The following is a summary of important terms affecting your (the 'Buyer', 'you') rights that we ('Seller', 'we', 'us') particularly draw your attention to:

- **clause 2.9 – Buyer's default**
If you default, we may withhold further deliveries from you, or withdraw any credit facilities, without any liability to you.
- **clause 2.10 – Restocking incorrect Orders or change of mind returns**
Any Order made incorrectly or because you have changed your mind and returned to us may be subject to a restocking fee of up to 30% of the purchase price (excluding GST).
- **clauses 3.2 and 3.3 – Passage of risk**
Risk passes to you when the Goods are delivered to the address you provide and you are responsible for unloading the Goods. If you collect the Goods ex-store, you must collect them within the agreed or reasonable time.
- **clause 3.4 – Consequences of your failure to take delivery**
If you fail to accept delivery, you may be charged a fee or we may arrange for the Goods to be stored at your own cost and risk.
- **clause 5 – Limitation of liability**
This clause limits the remedies available to you (to the extent the law allows us to) if the Goods supplied by us are defective. For example, we may replace the Goods or pay the cost of doing so.
- **clause 7.2(a)7 – Cancellation**
If you cancel or vary an Order before production of the Goods and/or tooling, you may be charged a cancellation fee of 10%. If you cancel or vary an Order after production has started, you may be charged the full price if the Goods cannot be resold by us for the same price or at least the difference between what the Goods actually were resold for and what we would have received from you (our loss).
- **clause 8.2 – Intellectual property indemnity**
You must indemnify us for losses arising out of any claim made against us if the method of manufacture or design of the Goods Ordered based on what you have provided to us infringe any intellectual property rights.
- **clauses 11 - Delays beyond our reasonable control**
We are not liable for any delays that are beyond our reasonable control.

These Terms apply (unless otherwise previously agreed in writing) to the supply of goods and / or services (collectively, "Goods") by **ALUMINIUM SPECIALTIES GROUP PTY. LTD. (ACN 001 252 259)** ("the Seller") to a Buyer from time to time. Any supply of Goods by the Seller to the Buyer made after the date of acceptance of these Terms is a supply pursuant to this master supply agreement constituted by these Terms and the relevant order accepted by the Seller, and any such supply does not give rise to a separate agreement.

Except as otherwise agreed upon in writing between a duly authorised officer of the Seller and the Buyer:

- (i) these are the entire Terms that apply to the Goods supplied or to be supplied by the Seller to the Buyer; and
- (ii) these Terms shall apply notwithstanding and to the exclusion of any terms and conditions which may appear on any Order or other document issued by the Buyer to the Seller.

1. DEFINITIONS

Unless the context requires otherwise:

'Buyer' means the buyer of Goods from Aluminium Specialties Group Pty Ltd.

"Business Day" means a day that is not a Saturday, Sunday or public holiday in New South Wales.

'Consequential Loss' has the meaning ascribed to it in clause 5.2.

'Default Event' means any of the following:

- (a) The Buyer does not make a payment due to the Seller under this or any other contract;
- (b) The Buyer is unable to pay its debts as and when they fall due;

- (c) The Buyer ceases or suspends conduct of its business, or threatens to;
- (d) A resolution is passed or proposed, or a summons is presented to wind up the Buyer;
- (e) A receiver and/or manager or other form of insolvency administrator is appointed over the Buyer or all or part of Buyer's assets;
- (f) The Buyer makes or proposes to make any arrangement with its creditors;

- (g) The Buyer commits an act of bankruptcy; or
- (h) Execution is levied on any of the Buyer's assets.

'Goods' means the goods and / or services (unless the context provides otherwise) the Seller sells or supplies to the Buyer provided that:

- (a) any reference to 'Goods' where it relates to goods provided by the Seller includes all proceeds of such Goods; and
- (b) for the purposes of the PPSA, where Goods are supplied to a Buyer as inventory, then all references to the Goods will be to them as inventory only while they are held as inventory by the Buyer.

'GST' means Goods and Services Tax as defined by *A New Tax System (Goods and Services Tax) Act 1999* (Cath).

'Order' means any purchase order, request, instructions, direction to proceed in any form used by the Buyer from time to time for ordering goods and services.

'PPSA' means the *Personal Property Securities Act 2009* (Cath), and as may be amended from time to time and any regulations made under it.

'Product Data' means the Seller's technical manuals including product drawings, loadings, test results, disclaimer and care and maintenance sections, as updated by the Seller from time to time. 'Seller' means Aluminium Specialties Group Pty Ltd (ACN 001 252 259).

'Refunds and Returns Policy' means the Seller's policy with respect to refunds and return of its Goods and found on its website at www.alspec.com.au or available on request, and as may be updated from time to time.

'Terms' means these Terms of Trade, and as amended by the Seller in writing from time to time.

2. PAYMENT, CREDIT AND PRICE

- 2.1 The Buyer must pay the Seller for all Goods, without set off or deductions, on or before the last working day of the calendar month following the month in which the Seller:
 - (a) supplies the Goods; or
 - (b) invoices the Buyer for the Goods,
 whichever comes first.
- 2.2 All Orders are subject to such limits as to minimum quantity or cash value of Order as the Seller fixes from time to time.
- 2.3 Orders received by the Seller will be deemed accepted by, or binding on, the Seller when the Seller accepts the Order in whole or in part by oral or written notice to the Buyer.
- 2.4 The Seller may reject an Order in its reasonable discretion, including for reasons such as the unavailability of Goods, an error in the description of the Goods on the Seller's website, catalogue or proposal, or an error in the Order. The Seller may require additional verification or information from the Buyer before accepting an Order.
- 2.5 Unless agreed in writing or otherwise, the price for Goods will be Seller's then current list price in effect at the time of order of the Goods.
- 2.6 At its discretion the Seller may withdraw any credit or limit the amount of credit extended to the Buyer at any time a Default Event occurs.
- 2.7 Where applicable, the Buyer is liable for any GST on the Goods.
- 2.8 Where the total mass or length of any item of Goods supplied includes a fraction of a kilogram or metre, the Buyer will be invoiced for and must pay for that fraction as a whole kilogram or metre.
- 2.9 If a Default Event occurs:
 - (a) at its option, the Seller may withhold further deliveries of Goods and/or withdraw any credit facilities and the Buyer shall make no claim against the Seller for loss or damage as a result of the Seller exercising this option; and
 - (b) all amounts outstanding to the Seller by the Buyer, even if not otherwise due for payment, will become immediately payable.
- 2.10 If an Order was made incorrectly by the Buyer or the Buyer changes its mind and wishes to return Goods, the Seller may accept a return at its discretion and in accordance with the Seller's Refunds and Returns Policy and may charge a restocking fee of up to 20% of the price of an Order (excluding GST). The Buyer is liable for the cost of returning the Goods to the Seller, the subject of the incorrect Order or change of mind.

3. DELIVERY

- 3.1 Unless otherwise agreed, the Seller will deliver the Goods to the address the Buyer specifies, at the cost to the Buyer set out in the Seller's current price list for the Goods.
- 3.2 If specifically agreed that the Goods are sold ex Seller's store, then the Buyer must, at the Buyer's cost and risk collect the Goods within the time agreed or, if no time is agreed, within a reasonable time.

- 3.3 The Goods the Seller delivers will be taken to be delivered immediately they are unloaded from the delivery vehicle and will be unloaded at the Buyer's cost and risk.
- 3.4 The Buyer's representative must be present at the delivery address at the time the Goods are delivered. The Buyer's representative must sign the delivery advice that the driver of the delivery vehicle presents to acknowledge receipt of the Goods. The Seller's obligation to deliver shall be discharged on arrival of the Goods at the Buyer's nominated delivery destination, nominated transport company, nominated agent or the address appearing on the invoice. The Buyer must unload the Goods upon delivery, provided that if the Buyer fails or refuses to accept physical delivery of the Goods when the Goods are ready for delivery, the Seller shall be entitled to charge a reasonable fee for any delay experienced or to arrange for the storage of the Goods at the risk and cost of the Buyer including all transportation, warehousing and other related costs incurred by the Seller as a result.
- 3.5 The Seller may, where it is reasonable to do so, make and invoice partial deliveries of the Goods and invoice the Buyer for such partial deliveries, and each partial delivery shall be an ongoing supply pursuant to these Terms.
- 3.6 Unless a delivery date has been guaranteed as the date for delivery by the Seller, delivery dates are estimates only based on facts reasonably known to the Seller at the time that an estimated date for delivery is given.
- 3.7 If the Seller fails to deliver an instalment of Goods by the estimated date or fails to deliver an instalment at all, the Buyer is not entitled to terminate the agreement as to any further instalment deliveries.
- 3.8 Despite clause 3.7, the Buyer may terminate the agreement as to any further instalment deliveries if the Seller fails to deliver an instalment within 14 Business Days, or such other reasonable period agreed between the parties, after written notice from the Buyer to do so given on or after the estimated delivery date.
- 3.9 To the extent permitted at law and subject to these Terms, if the Seller fails to deliver any Goods to the Buyer on time or at all the Seller's only obligation is to refund to the Buyer any amount received from the Buyer for the Goods not delivered and the Seller is not be liable for any costs, damage or other loss the Buyer or any other party suffers arising from the Seller's failure to deliver the Goods on time or at all unless that failure was due to a breach of these Terms by the Seller or the Seller's negligence and the costs, damage or other loss were reasonably foreseeable. .

4. TOLERANCES

- 4.1 Unless otherwise stated on the quotation or product drawing, the Goods will be supplied within the tolerances as to quantity, weight, dimensions, gauge, chemical composition physical properties, finish, shearing and degree of flatness specified:

- (a) by the Aluminium Development Council of Australia Limited: and
- (b) in the Seller's published Product Data current at the date of contract (and if none are specified, those tolerances normally regarded as being commercially acceptable).

and if supplied within normal tolerances, the Goods will not be deemed to be defective.

5. WARRANTY AND LIABILITY

- 5.1 The Seller warrants:
- (a) in relation to Goods the subject of an Order valued at less than \$100,000, that the Goods come with guarantees that cannot be excluded under the Australian Consumer Law (**Non-Excludable Provisions**). .
- 5.2 To the extent permitted by law, the liability of the Seller in respect of a breach of a Non Excludable Provision or any warranty made under these Terms for any goods or services not of a kind ordinarily acquired for personal domestic or household use is limited, at the option of Seller to:
- (a) in relation to goods, to:
 - (i) replacing the goods or the supply of equivalent goods;
 - (ii) the repair of the goods;
 - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (iv) the payment of the cost of having the goods repaired.
 - (b) in relation to services, to:
 - (i) the supply of the services again; and
 - (ii) the payment of the cost of having the services supplied again.
- 5.3 To the extent permitted by law, all other warranties whether implied or otherwise, not set out in these Terms are excluded and Seller is not liable in contract, tort (including, without limitation negligence or breach of statutory duty) or otherwise to compensate the Buyer for:
- (a) any increased costs or expenses:

- (b) any loss of profit, revenue, business, contracts or anticipated savings:
- (c) any loss or expense resulting from a claim by a third party; or
- (d) any special, indirect or consequential loss or damage of any nature whatsoever caused by Seller's failure to complete or delay in completing the Order.

('Consequential Loss').

- 5.4 The Seller is given a reasonable opportunity to investigate the claim with respect to the Goods made by a Buyer. To the extent permitted by law and regardless of anything else in the contract, the Seller will not be liable to the Buyer for the Seller's failure to comply with the contract due to any cause beyond the Seller's reasonable control and the Seller's obligations affected by this clause are suspended while the cause continues to hinder or prevent the Seller's performance.
- 5.5 To the extent permitted by law:
- (a) the Buyer will be liable to the Seller if the Buyer wrongfully terminates this contract or refuses to accept all or part of the Goods without any right to do;
 - (b) if the Goods have been made specifically for the Buyer, or are in the process of being made, the Buyer must pay to the Seller as liquidated damages the full contract price of the Goods and any costs incurred by the Seller less the current scrap value of the Goods as determined by the Seller;
 - (c) the Seller is not liable for any loss or damage caused as a result of the Goods being used for purposes other than those for which the Goods are commonly supplied.
- 5.6 All Goods returned by the Buyer must be made accompanied by proof of purchase from the Seller and will be dealt with in accordance with our Refunds and Returns Policy. For the avoidance of doubt, the Seller does not accept return of Goods that have been customised to the Buyer's specific requirements or select colour which the Buyer seeks to return for change of mind, unless those Goods are faulty, damaged, or do not meet the product description.

6. STOCKING

- 6.1 If the Buyer does not request delivery of the Goods within 60 days of the Goods becoming available for delivery the Seller may, at its option, after giving the Buyer 5 Business Days' Notice in writing:
- (a) deliver the Goods to the Buyer; or
 - (b) treat the Buyer as having cancelled the Order and invoice the Buyer for an amount determined in accordance with paragraph 7.2(b).
- 6.2 The Buyer is aware that while aluminium products will not rust, moisture trapped between articles when stored may lead to staining or soiling which is not easily removed, and the Seller will not be required to remove any stains.
- 6.3 The Seller will not be liable for any loss or damage the Buyer sustains arising out of anything referred to in this clause 6 or arising from incorrect or careless storage by the Buyer.

7. VARIATIONS AND CANCELLATIONS

- 7.1 Subject to clause 7.2(b), the Seller will not accept alterations to Orders which are in production or completed.
- 7.2 To the extent permitted by law, if the Buyer cancels all or part of an Order.
- (a) before the Seller has started producing the Goods and/or tooling, the Buyer must pay the Seller at the Seller's discretion, acting reasonably, as liquidated damages an amount equal to up to 10% of the price of the cancelled Goods and/or tooling for the cost to the Seller to process any cancellation of the Order; or
 - (b) after the Seller has started producing the Goods and/or tooling, the Buyer must pay to the Seller as liquidated damages the full price of the Goods cancelled, where those Goods cannot be resold for the same price, or the difference between the amount the Goods were able to be resold for and the amount the Seller would have received from the Buyer had the Buyer not cancelled the Order.

8. EXTRUSION TOOLS, DIES AND OTHER EQUIPMENT

- 8.1 The Buyer must bear the cost of extrusion die development in accordance with the Seller's charges in effect at the time of manufacture. Extrusion tools, dies and other equipment remain the Seller's property and will not be released to Buyer. Any amount the Buyer pays in relation to them will be treated as a charge for their use.
- 8.2 Any Order the Buyer places that requires using extrusion tools, dies or other equipment which have been scrapped will be treated as a new request. The Buyer must pay for any extrusion tools, dies or other equipment made to supply that Order at the Seller's then current charges.

9. PATENTS AND DESIGNS

- 9.1 The Buyer must indemnify, and keep the Seller indemnified against all damages, losses and expenses which the Seller incurs arising out of any claim made against the Buyer or the Seller that the Goods, their method of manufacture or their design infringe any industrial or intellectual property rights with respect to Goods or

tooling that are not described as standard products in the Seller's published Product Data or which the Buyer has contributed or provided a design or method manufacturing to be used.

9.2 Paragraph 9.1 does not apply in relation to Goods described as standard products in the Seller's published Product Data.

10. THIRD PARTIES - AT BUYER'S REQUEST

If at the Buyer's request the Seller arranges for any goods to be provided by a third party to the Seller to be used in the supply of the Goods or arranges for any Goods to be supplied by the Seller to a third party in relation to an agreement the Buyer has with that third party:

- (a) the Buyer must indemnify and keep indemnified the Seller in respect of any claims, actions, suits, demands, orders for costs or damages the Seller may incur or suffer relating to or arising out of the terms of the arrangement between the Buyer and that third party; and
- (b) the Goods will be taken to be delivered by the Seller when the Seller delivers them to the third party.

11. FORCE MAJEURE

The Seller shall not be liable for any failure or delay in supply or delivery of the Goods where such failure or delay is wholly or partly due to any cause or circumstance whatsoever outside the reasonable control of the Seller including, but not limited to, war, strikes, lockouts, industrial disputes or unrest, government restrictions or intervention, transport delays, fire, act of God, breakdown of plant, shortage of supplies or labour, storm or tempest, theft, vandalism, riots, civil commotions or accidents of any kind ("**Force Majeure Event**").

12. SERVICE DOCUMENTS

The Buyer agrees that service of any notices may be effected by forwarding same by pre-paid post or email to the last known address of the Buyer.

13. PURPOSE OF CREDIT

The Buyer warrants to the Seller that the credit to be provided to the Buyer by the Seller is to be applied wholly or predominantly for commercial purposes and that it has been given an opportunity to seek legal advice if there is any doubt as to the giving of this warranty.

14. INSOLVENCY

If the Buyer becomes insolvent, the Buyer remains liable under these Terms for payment of all liabilities incurred hereunder. The Buyer remains liable under these Terms even if the Seller receives a dividend or payment as a result of the Buyer being insolvent.

15. WAIVER

- (a) A waiver by the Seller of a breach by the Buyer of these Terms must be made by an authorised officer of the Seller in writing.
- (b) The Seller's waiver of a clause of these Terms must not be construed as a waiver of any other clause of these Terms.

16. COSTS

- (a) The Buyer must pay for its own legal, accounting and business costs arising from any default by the Buyer under these Terms. The Buyer must also pay for all duties and other taxes payable (if any) on the sale of Goods to it by the Seller.
- (b) The Buyer will pay the Seller's costs and disbursements incurred in pursuing any recovery demands or action or any other claim or enforcement or remedy sought by the Seller against the Buyer arising from the Buyer's breach of these Terms, including debt recovery fees and legal costs on an indemnity basis, except to the extent the breach is caused by the fraud, negligence or wilful misconduct of the Seller. Such costs and disbursements will be due and payable by the Buyer to the Seller irrespective of whether pursuit of the recovery action, claim or remedy is successful except where a court orders otherwise.

17. INTEREST ON UNPAID AMOUNTS

The Buyer agrees that it will pay to the Seller interest at the rate of 10% per annum on any unpaid monies, being monies not paid when due to the Seller under these Terms or in the event of a default under clause 2.1 herein.

18. JURISDICTION

18.1 The Buyer acknowledges and agrees that these Terms shall be governed by the laws of New South Wales, and the laws of the Commonwealth of Australia which are in force in New South Wales.

18.2 The Buyer and the Seller agree to submit to the non-exclusive jurisdiction of the courts of New South Wales and the relevant federal courts and courts competent to hear appeals from those courts in relation to any matter arising from or related to these Terms and any supply made under these Terms.

19. RETENTION OF TITLE

- (a) The Buyer agrees that until payment in full has been made for the Goods purchased from the Seller in accordance with these Terms and any other sums whatsoever outstanding by the Buyer to the Seller from time to time, property and title in the Goods shall not pass to the Buyer and the Seller retains the legal and equitable title in those Goods supplied.
- (b) Until payment in full has been made to the Seller, the Buyer will hold the goods in a fiduciary capacity for the Seller and agrees to store the Goods in such a manner that they can be identified as the property of the Seller, and shall not mix the Goods with other similar goods.
- (c) The Buyer shall be entitled to sell the Goods in the ordinary course of its business, but until full payment for the Goods has been made to the Seller, the Buyer shall sell as agent and bailee for the Seller and the proceeds of sale of the Goods shall be held by the Buyer on trust for the Seller absolutely.
- (d) Pending payment in full for the Goods, the Buyer must not supply any of the Goods to any person outside of its usual course of business,
- (e) Despite 19(d) above, if the Buyer supplies any of the Goods to any person before all monies payable by the Buyer have been paid to the Seller, the Buyer agrees
 - (i) the Seller retains title in any proceeds, including but not limited to sale monies or an account for such monies and insurance monies: and
 - (ii) to either pay the amount of the proceeds of re-supply to the Seller immediately when they are received or pay those proceeds into an account with a bank or financial institution or deposit taking institution as trustee for the Seller.
- (f) The Buyer's indebtedness to the Seller, whether in full or in part, shall not be discharged by the operation of clause 19(c) unless and until the funds held on trust are paid to the Seller.
- (g) The Buyer agrees that whilst property and title in the Goods remains with the Seller, the Seller has the right, with or without prior notice to the Buyer, to enter upon any premises occupied by the Buyer (or any receiver, receiver and manager, administrator, liquidator or trustee in bankruptcy of the Buyer) to inspect the Goods of the Seller and to repossess the Goods which may be in the Buyer's possession, custody or control when payment is overdue.
- (h) The Buyer will be responsible for the Seller's costs and expenses in exercising its rights under clause 19(g). Where the Seller exercises any power to enter the premises, that entry will not give rise to any action of trespass or similar action on the part of the Buyer against the Seller, its employees, servants or agents.
- (i) The Buyer agrees that where the Seller has recovered possession to the Goods, the Seller has the absolute right to sell or deal with the Goods, and if necessary, sell the Goods with the trademark or name of the Buyer on those Goods, and the Buyer hereby grants an irrevocable licence to the Seller to do all things necessary to sell the Goods bearing the name or trademark of the Buyer.

20. STATEMENT OF DEBT

A certificate signed by a Director, Secretary, Financial Controller or Credit Manager of the Seller shall be prima facie evidence of the amount of indebtedness of the Buyer to the Seller at that time, in the absence of manifest error.

21. MISCELLANEOUS

21.1 These Terms and any Orders do not constitute a sale by sample even if a sample was inspected by the Buyer or exhibited.

The Seller's waiver of any clause or breach of any clause, of these Terms must not be construed as a waiver of any other clause, or a breach of any other clauses, or subsequent breach of the same or any other clause of these Terms.

21.2 Where these Terms conflict with anything set out in the Seller's current published Product Data as at the date of any Order, these Terms prevail to the extent of the conflict.

22. CHARGE

Separately, the Buyer hereby charges in favour of the Seller, all its right, title and interest to and in the proceeds of sale of Goods, as original collateral.

23. PPSA

23.1 Defined terms in clause 23 have the same meaning as given to them in the PPSA.

23.2 The Seller and the Buyer acknowledge that these Terms and all Orders together constitute a Security Agreement and entitle the Seller to claim:

- (a) a Purchase Money Security Interest ("PMSI") in favour of the Seller over the Goods supplied or to be supplied to the Buyer as Grantor pursuant to these Terms; and
- (b) a Security Interest over the Proceeds of sale of the Goods as original collateral.

- 23.3 The Goods supplied or to be supplied under these Terms fall within the PPSA classification of "Other Goods" acquired or to be acquired by the Buyer.
- 23.4 The Proceeds of sale of the Collateral referred to in clause 23.2(b) fall within the PPSA classification of "Account".
- 23.5 The Seller and the Buyer acknowledge that the Seller, as Secured Party, is entitled to register its Security interest in the Goods supplied or to be supplied to Buyer, as Grantor, under these Terms on the PPSA Register as Collateral and in the relevant Proceeds.
- 23.6 To the extent permissible at law, the Buyer:
- (a) waives its right to receive notification of or a copy of any Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to a Security Interest granted by the Buyer, as Grantor, to the Seller.
 - (b) shall be responsible for all reasonable costs and expenses, including legal costs and expenses on a solicitor / client basis, associated with the:
 - (i) registration or amendment or discharge of any Financing Statement registered by or on behalf of the Seller: and
 - (ii) enforcement or attempted enforcement of any Security Interest granted to the Seller by the Buyer.
- 23.7 The Buyer agrees:
- (a) that, to the extent permitted at law, nothing in sections 130 and 143 of the PPSA will apply to these Terms or the Security Interests arising under these Terms:
 - (b) to waive its right to do any of the following under the PPSA;
 - (i) receive notice of removal of an Accession under section 95;
 - (ii) receive notice of an intention to seize Collateral under section 123;
 - (iii) object to the purchase of the Collateral by the Secured Party under section 129;
 - (iv) receive notice of disposal of Collateral under section 130;
 - (v) receive a Statement of Account under section 132(3)(d) following a disposal showing the amounts paid to other Secured Parties and whether Security Interests held by other Secured Parties have been discharged.
 - (vi) receive a Statement of Account if there is no disposal under section 132(4);
 - (vii) receive notice of retention of Collateral under section 135;
 - (viii) redeem the Collateral under section 142: and
 - (ix) reinstate the Security Agreement under section 143;
- 23.8 All payments received from the Buyer must be applied in accordance with section 14(6)(c) of the PPSA.