

## TERMS AND CONDITIONS OF SALE (NOVEMBER 2014)

### 1 CONTRACT

- 1.1 All orders will only be accepted on the following terms and conditions ("the Conditions") being the only Conditions on which Capital Aluminium Extrusions Limited ("the Seller") is prepared to accept orders from its customer named in the Seller's quotation or placing an order ("the Buyer").
- 1.2 The conditions may only be altered by a written agreement signed on behalf of the Seller by one of its Directors and no other action on the part of the Seller shall be construed as an acceptance of any other conditions. These Conditions supersede all previous Conditions of the Seller.
- 1.3 Should any of the Conditions be in conflict with those of the Buyer, the Seller's Conditions will prevail.
- 1.4 The contract ("the Contract") which exists between the parties will incorporate the Conditions, any quotation supplied by the Seller which states it is to form part of the contract and any variations to the quotation agreed by the Buyer and Seller which are set out in the Seller's confirmation of order.

### 2 PRICES

- 2.1 The Seller reserves the right to increase the contract price notified to the Buyer by the Seller for the Goods, die and tool costs, carriage, package and any other costs ("the Contract Price") at any time to cover such additional sums as may from time to time be necessary because of any variation in the costs of materials, labour, overheads, transport and delivery or quality tolerances as set out in clause 4.1.
- 2.2 The Contract Price is exclusive of Value Added Tax.

### 3 PAYMENT

- 3.1 If goods supplied under the Contract ("the Goods") are supplied on credit (subject to satisfactory references), payment is to be made not later than 30 days following the invoice date; otherwise payment is to be made by cash before the Seller will deliver the Goods. No discounts or other deduction are allowed unless agreed in writing by the Seller. Time is of the essence for payment. Payment will only be deemed received when the Seller receives cleared funds.
- 3.2 If Goods are delivered on returnable wooden pallets or in returnable wooden cases, a charge may be made. This charge will be credited to the Buyer when the pallets or cases are returned to the Seller's place of business.
- 3.3 The Goods are at the risk of the Buyer from the time of delivery.
- 3.4 Ownership of the Goods shall not pass to the Buyer until the Seller has received in full (in cash or cleared funds) all sums due in respect of: -
- 3.4.1 The Goods; and
- 3.4.2 all other sums which are or become due to the Seller from the Buyer on any account.
- 3.5 Until ownership of the Goods has passed to the Buyer, the Buyer must: -
- 3.5.1 hold the Goods on a fiduciary basis as the Seller's bailee;
- 3.5.2 store the Goods (at no cost to the Seller) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Seller's property;
- 3.5.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 3.5.4 maintain the Goods in satisfactory condition insured on the Seller's behalf for their full price against all risks to the reasonable satisfaction of the Seller. On request the Buyer shall product the policy of insurance to the Seller; and
- 3.5.5 hold the proceeds of the insurance referred to in condition 3.5.4 on trust for the Seller and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.
- 3.6 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:-
- 3.6.1 any sale shall be effected in the ordinary course of the Buyer's business at full market value; and
- 3.6.2 any such sale shall be a sale of the Seller's property on the Buyer's own behalf and the Buyer shall deal as principal while making such sale.
- 3.7 The Buyer's rights to possession of the Goods shall terminate immediately if the Seller could exercise any of its rights under condition 10.1.

- 3.8 The Seller shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Seller.

- 3.9 The Buyer grants to the Seller, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.

### 4 MANUFACTURE

- 4.1 The manufacturing process used by the Seller to produce the Goods ordered by the Buyer results in quantity variations in the number of items produced. Accordingly the Buyer acknowledges and accepts manufacturing quantities are subject to a tolerance of plus or minus 10 per cent, the surplus or shortage will be charged to the Buyer pro rata. The Buyer undertakes to hold the Seller harmless in the event of a shortage or excess in the quantity of goods supplied within the tolerances set out above.
- 4.2 Unspecified dimensions are subject to British Standard Tolerances BSEN 755 or its replacement, unless noted otherwise.

### 5 DELIVERY

- 5.1 Subject to condition 3.1, every effort will be made by the Seller to deliver the Goods within the agreed delivery period but no guarantee of delivery date is implied and the Seller shall not be liable for loss or damage occasioned by any delay in delivery whether or not the Seller was aware of this risk.
- 5.2 Where the Buyer fails to accept deliveries in accordance with the Contract, the balance of undelivered Goods shall be invoiced to the Buyer, the Goods being held at the Buyer's risk and any storage and additional carriage costs being charged to the Buyer.
- 5.3 Delivery will be made to the place of business of the Buyer in the United Kingdom during normal business hours, unless otherwise agreed in writing. Where the Buyer has no usual place of business in the UK all deliveries will be made 'ex-works' at the place of business of the Seller. Where a Buyer with no usual place of business in the UK requests delivery to be made to third parties within the UK, Value Added Tax on the Goods will be payable by the Buyer for the delivery unless satisfactory proof of shipping is supplied in the usual means by supply of airweighbill or equivalent document to certify export of the goods from the UK customs area.
- 5.4 Other than an 'ex works' delivery it is the responsibility of the Buyer to arrange the offloading of the Goods at the point of delivery and the Buyer assumes all liability for offloading and indemnifies the Seller for any increased delivery charges if the Goods are not off loaded in a timely manner.

- 5.5 Any special requirements of the Buyer for packaging and transport of the Goods must be specified in writing at the time of placing the Order.

### 6 INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS

- 6.1 In this Contract 'Intellectual Property Rights' ("IPR") means all copyright, registered or unregistered design rights, topography rights, patents and any other intellectual property rights of a similar nature (whether or not registered) subsisting anywhere in the world in or associated with the Goods.
- 6.2 The Buyer shall promptly and fully notify the Seller of any actual, threatened or suspected infringement of any IPR which comes to the Buyer's notice and any claim by any third party that comes to the Buyer's notice that the sale of the Goods infringes the rights of any person.
- 6.3 The Buyer warrants and represents to the Seller, that in requesting the Seller to prepare the Goods to the Buyer's specification, it owns or has obtained all necessary IPR rights and agrees to fully indemnify the Seller on demand in resisting any proceedings in relation to any infringement or claim for breach of any third party's IPR. The Buyer undertakes on an indemnity basis to reimburse the Seller on demand with an amount equal to any cost, expense, penalties or legal fees incurred by the Seller by any allegation of infringement of any third party IPR in connection with the Goods.
- 6.4 In the event of any claim by a third party alleging breach of IPR, on a full indemnity basis from the Buyer, the Seller can defend, settle or dispose of the claim as it sees fit.

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### 7 TOOLING AND DIES

7.1 Tooling and dies remain the exclusive property of the Seller. Should the Buyer fail to comply with the Contract the Seller shall be entitled at its sole discretion to either vary the proportion of tooling and die costs or to claim the total amount of the relevant costs without prejudice to any other claim or right which the Seller might make or exercise.

### 8 QUALITY AND CLAIMS

8.1 The Seller warrants that (subject to the provision of these Conditions) upon delivery the Goods will be of satisfactory quality within the meaning of the Sale of Goods Act 1994.

8.2 The Seller shall not be liable for a breach of the warranty in condition 8.1 unless:

8.2.1 the Buyer gives written notice of the defects to the Seller, and (if a defect is as a result of damage in transit) to the carrier within four days of the time when the Buyer discovers or ought to have discovered the defect; and

8.2.2 the Seller is given a reasonable opportunity, after receiving the notice, to examine such Goods and the Buyer (if asked to do so by the Seller) returns such Goods to the Seller's place of business at the Buyer's cost for the examination to take place there; and

8.2.3 the Buyer obtains a unique returns number from the Seller and display this on any Goods returned to the Buyer under condition 8.

8.3 The Seller shall not be liable for breach of the warranty in condition 8.1 if:

8.3.1 the Buyer makes any further use of such Goods after giving such notice; or

8.3.2 the defects arise because the Buyer failed to follow the Seller's oral or written instructions as to the storage, installation, commission, use or maintenance of the Goods or, if there are none, good trade practice; or

8.3.3 the Buyer alters or repairs such goods without the written consent of the Seller.

8.4 Subject to conditions 8.2 and 8.2, if any of the Goods do not conform with the warranty in condition 8.1, the Seller shall at its option repair or replace such goods (or the defective part) or refund the price of such goods at the pro-rata Contract Price provided that, if the Seller so requests, the Buyer shall at the Buyer's expense return the Goods or the part of such Goods which is defective to the Seller.

8.5 If the Company complies with condition 8.4 it shall have no further liability for a breach of the warranty in condition 8.1 in respect of such Goods. Any Goods which are replaced will belong to the Seller.

### 9 LIMITATION OF LIABILITY

9.1 The following provisions set out the entire financial liability of the Seller (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:

9.1.1 any of the Conditions; and

9.1.2 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

9.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by Section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from these Conditions.

9.3 Nothing in these Conditions excludes or limits the liability of the Seller for death or personal injury caused by the Seller's negligence or fraudulent misrepresentation.

9.4 The Seller's total liability for damage to the Buyer's or a third party's property caused by the Seller's negligence is limited to the level of any valid insurance cover held by the Seller against the actual liability incurred.

#### **The Buyer's attention is in particular drawn to the provision of Condition 9.5**

9.5 Subject to conditions 9.2 and 9.3:

9.5.1 the Seller's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of this Contract shall be limited to the Contract Price; and

9.5.2 the Seller shall not be liable to the Buyer for any indirect or

consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (or whosoever caused) which arise or are in connection with the Contract.

### 10 BUYERS INSOLVENCY OR FAILURE TO PAY

The Seller shall have the right to suspend or cancel further deliveries or end the Contract, if the Buyer is dissolved, becomes insolvent, fails or is unable or admits in writing its inability to pay debts, or has instituted against it proceedings seeking a judgment of insolvency; has a resolution passed for its winding up or liquidation; seeks, or becomes the subject of the appointment of an administrator, receiver, administrative receiver or similar official in respect of its assets; suffers similar proceedings in any jurisdiction; or fails to make due payment in the time and manner specified by the Seller.

### 11 GOVERNING LAW

The Contract, its formation and interpretation shall be governed by English Law, and save where the Seller elects otherwise shall be subject to the exclusive jurisdiction of the Courts of England.

### 12 FORCE MAJEURE

The Seller reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Seller including, without limitation, acts of God, Government actions, war or national emergency, riot, civil disputes (whether or not relating to either party's workforce), or restraint or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials provided that, if the event in question continues for a continuous period in excess of 60 (Sixty) days the Buyer shall be entitled to give notice in writing to the Seller to terminate the Contract.

### ANTI-BRIBERY AND CORRUPTION

The Seller is committed to carrying out business fairly, honestly and openly with a zero tolerance of any form of bribery or corruption whatsoever. The Buyer is also to conduct business in the same manner and under the terms of The Bribery Act 2010. The Buyer warrants to the Seller that it has not at any time engaged in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010.

### 14 GENERAL CLAUSE

14.1 Any notices required or permitted to be given by the other party under the Conditions shall be in writing addressed to the party at its registered office or principal place of business or such other address as may have been notified to the other party giving them notice.

14.2 If the Buyer provides to the Seller an e-mail address for communication purposes the Seller reserves the right to communicate with the Buyer by e-mail and the Buyer agrees that all agreements, notices and other information supplied by this means shall satisfy any legal requirements regarding the need for such communications to be in writing.

14.3 No waiver by the Seller of any breach of the Conditions by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

14.4 If any provision of the conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Conditions and the remainder of the Conditions shall not be affected.

14.5 The Buyer may not assign the Contract.