

ALUMINIUM SHAPES LIMITED

CONDITIONS OF SALE

1) APPLICATION OF THESE CONDITIONS

These conditions are the only conditions upon which Aluminium Shapes Limited ("the seller") is prepared to deal with its customer ("the buyer") and they shall govern the contract to the entire exclusion of any other express or implied conditions. These conditions may only be modified by a variation in writing signed on behalf of the Seller by a Director and no other action on the part of the Seller (whether delivery of the goods or otherwise) shall be construed as an acceptance of any other conditions. These conditions (subject to any modification agreed in writing by the Seller as aforesaid) embody the entire understanding of the parties and supersede any prior promises, representations, undertakings or implications.

2) DELIVERY

- (a) Unless otherwise expressly agreed in writing any delivery times specified by the Seller in its quotation or otherwise are business estimates only and the Seller will not be liable to the Buyer for any loss or damage sustained by the Buyer as a result of the Seller's failure to comply with such delivery times.
- (b) If the Buyer being a company shall pass a resolution or suffer an order of court to be made for its winding up, or if a receiver shall be appointed, or being an individual or partnership shall suspend payment or purpose to enter into a composition with creditors or suffer a receiving order in bankruptcy, then the Seller may without prejudice to any other right rescind the contract, or suspend or cancel delivery or recover the possession of any goods for which payment in full has not been received.
- (c) Unless otherwise stated goods will be sent carriage paid or rail or road transport at goods rate.

3) PRICE AND QUANTITY

- (a) The Seller reserves the right to increase the contract price to extent that the cost of the Seller of producing the goods increases between the contract date and the date on which the goods are delivered to the Buyer, including, without prejudice to the generality of the foregoing any increases that is occasioned by reason of production of the goods being suspended on the Buyer's instructions or because of lack of instructions or any modification in instructions.
- (b) Prices are quoted for the quantities stipulated by the Seller, and the Seller reserves the right to supply within plus or minus 20% of such quantities in which event the contract price shall be increased or (as the case may be) decreased proportionately.
- (c) The contract price is exclusive of value added tax or any similar taxes, levies or duties, which will be added to or charged on invoices at the appropriate rates.

4) TOOLING

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.

5) CRADLES AND OTHER PACKAGING

- (a) The contract price is exclusive of the cost of returnable packing cases, cartons and cradles. These must be returned promptly, in serviceable condition, carriage paid. If not so returned within 3 calendar months of delivery these will be charged for at the replacement cost to the Seller as notified to the Buyer from time to time. Property – the same shall not then pass to the Buyer until such charge is paid, and condition (11)(b) shall apply.
- (b) Cradles supplied by the Seller will be specified on its delivery notes. Cradles returned to the Seller will be signed for upon receipt and it shall be the Buyer's responsibility to ensure that such receipt is obtained. Periodic stock-takes of cradles may be carried out at the Seller's request at the Buyer's premises from time to time.

6) TERMS OF BUSINESS

- (a) Unless otherwise stated by the Seller, payment will be made by the Buyer not later than the thirtieth day of the month following the Seller's invoice date. Claims in respect of alleged defects in the goods shall not be a ground for withholding payment and shall not give any right of set-off against payments invoiced by the Seller.
- (b) If any payment that is to be made hereunder by the Buyer to the Seller is overdue, interest will be charged thereon as well after as before judgement on a day to day basis at an annual rate of 4 per cent above the Lloyds Bank P.L.C base rate from time to time applicable until the sum due is paid.
- (c) Should default be made by the Buyer in paying any sum to the Seller, or in observing any other of its obligations under this or any other contract, the Seller may without any deliveries of goods due to be made under this contract until arrangements as to payment or credit have been established, which are satisfactory to the Seller, or may determine this contract without prejudice to any claim or right the Seller may otherwise make or exercise.

7) PERFORMANCE

- (a) The Seller warrants that the goods shall at the time of delivery be free from defects in workmanship and materials, if any goods do not conform to this warranty the Seller will at its option:-
 1. replace the goods found not to conform to the warranty; or
 2. take such steps as the Seller deems necessary to bring the goods into a state where they are free from such defects; or
 3. 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 the Seller's liability under the warranty.
- (b) It is the responsibility of the Buyer to examine the goods thoroughly upon receipt, and the foregoing warranty is conditional upon:-
 1. the Buyer giving written notice to the Seller of the alleged defect in the goods, such notice to be received by the Seller within seven days of receipt of goods in which time the Buyer, his servant or agent ought to have discovered the defect.
 2. the Buyer affording the Seller a reasonable opportunity to inspect the goods and, if so requested by the Seller, returning the allegedly defective goods to the Seller's works in good order, packed and carriage pre-paid, for inspection to take place there; and
 3. the Buyer making no further use of the goods that are alleged to be defective, after the time at which the Buyer discovers that they are defective.
 4. the Buyer giving written notice to the Seller within 48 hours of the receipt of goods to such defects deemed to be inflicted by mechanical handling equipment including, but not limited to surface damage, dents and scratches.

Cont'd.

- (c) Save as provided in paragraph (a) of this condition:-
 - 1. all conditions and warranties, expressed or implied, as to the quality of fitness for any purpose of the goods are hereby expressly excluded; and
 - 2. the Seller shall be under no liability for any loss or damage (whether direct, indirect or consequential) howsoever arising which may be suffered by the Buyer.
- (d) In the event that not withstanding the forgoing provision of this condition, the Seller is found liable for any loss or damages suffered by the Buyer that liability shall in no event exceed the purchase price of the goods.
- (e) All recommendations and advice given by or on behalf of the Seller to the Buyer as to the methods of storing, assembling, applying or using the goods or the purpose for which the goods may be applied are given without liability on the part of the Seller, its employees or agents.

8) FORCE MAJEURE

The Seller shall have the right to cancel or to reduce the volume of the goods delivered if it is prevented from or hindered in delivering the goods through any circumstances beyond its control including (but not limited to) industrial action, war, fire, or prohibition or enactment of any kind, without incurring any liability for any loss or damage whatsoever resulting therefrom.

9) SHORTAGES, DAMAGE AND/OR LOSS IN TRANSIT

- (a) No claim for non-delivery of a part consignment or for damage in transit will be entertained unless separate notices in writing are given to the carrier concerned and to the Seller within three days and a complete claim in writing is made to the Seller within five days, of receipt of the goods. Such claims shall quote the delivery note number and particulars and shall state when and where the Seller may inspect the goods in respect of which the claim is made. Pending such inspection, damaged goods and packing materials must be retained.
- (b) Non-Delivery of a whole consignment must be notified in writing to the carrier concerned and to the Seller within seven days of receipt of the Seller's invoice.
- (c) The giving of the notice and (where applicable) claim referred to in the foregoing provision of this condition precedent to any claim for non-delivery or (as the case may be) damage in transit, and in default thereof the Seller shall not be liable in respect thereof.

10) TEST AND INSPECTION

Unless otherwise agreed all testing and inspection specified by the Buyer or implied by the order or customary to the Seller's practice shall be at the Seller's works and shall be final.

11) INFRINGEMENT OF PATENTS ETC.

The Buyer shall indemnify the Seller against all damages, penalties, costs and expenses to which the Seller may become liable as a result of work done in accordance with the Buyer's specifications or instructions which involves infringement or alleged infringement of a patent, registered design or other intellectual property right.

12) RISK AND PROPERTY

- (a) The risk in the goods shall pass to the Buyer upon delivery of such goods to the Buyer or any carrier acting on the Buyer's behalf. However, notwithstanding delivery and the passing of risk in the goods, title and property in the goods, including full legal and beneficial ownership, shall not pass to the buyer until the seller has received in cash or cleared funds payment in full for all goods delivered to the buyer under this and all other contracts between the seller and the buyer for which payment of the full price of the goods thereunder has not been paid. Payment of the full price of the goods shall include the amount of any interest or other sum payable under the terms of this and all other contracts between the seller and the buyer under which the goods were delivered. Until such time as the goods are paid for they shall be stored by the Buyer at its premises in such a way that they are clearly identifiable as the goods of the seller and shall be held by the Buyer as bailee. In the event of the Buyer failing to pay for the goods, then all such goods of the Seller not paid for shall be handed over to the Seller on demand and the Seller is hereby granted license to enter into the Buyer's premises for the purpose of recovering such property.
- (b) Without prejudice to the generality of the foregoing, if the goods are sold by the Buyer then the Seller's beneficial interest shall attach to any proceeds of such sales and the Buyer shall forthwith hand over to the Seller any proceeds of such sale and the Seller shall be entitled to call upon the Buyer to assign all claims that the Buyer may have in respect of such sale.

13) CANCELLATION

Contracts are not subject to cancellation without the Seller's written consent. Where cancellation is accepted the Seller shall in addition to any express terms of acceptance of cancellation be entitled to reimbursement of any costs incurred by the Seller in connection with the contract.

13) ARBITRATION AND GOVERNING LAW

The construction, validity and performance of this contract shall be governed by the law of England and any question, dispute or difference which may arise under, out of or in connection with or in relation to this contract or touching the meaning and construction of the same shall be referred to the arbitration of a person to be appointed (failing agreement of the parties) by the President of the Law Society for the time being and the decision of such an arbitrator shall be binding on both parties and shall be a submission to arbitration within the meaning of the Arbitration Acts 1950 – 1979 or any statutory modification thereof for the time being in force.

NOTE

The Seller's prices are calculated on the basis that the above Conditions apply. Buyer's requiring prices to be quoted on a different basis should inform the Seller.

These terms are effective from 1st September 2019