

# TERMS OF SALE

## 1 General

- 1.1 In these terms of sale, the following words have the following meanings:  
"Customer" means the person, company or other entity named overleaf as the "Customer".  
"Goods" means goods supplied or to be supplied by the Supplier, from time to time, on these terms of sale.  
"GST" means goods and services tax.  
"Services" means work performed or to be performed by the Supplier, on these terms of sale.  
"Supplier" means the person, company or other entity named overleaf as the "Supplier".
- 1.2 All quotations for Goods and Services are subject to these terms of sale. Any Goods or Services supplied by the Supplier to the Customer will be supplied on these terms of sale only. The only circumstance where any variation to these terms of sale will apply is where the Supplier has expressly agreed in writing to that variation.
- 1.3 Cancellation of or variations to an order may be accepted at the sole discretion of the Supplier, on such terms as the Supplier may specify.

## 2 Quotations

- 2.1 Unless otherwise stated in writing by the Supplier:
- (a) quotations will be open for acceptance for 30 days from the date of the quotation;
  - (b) quotations are based on costs at the date of the quotation. Any increase in costs occurring after the date of the quotation will be for the Customer's account;
  - (c) where a quotation is based on measurements or specifications supplied by the Customer, any costs for additional work or Goods required as a result of any inaccuracy in those measurements or specifications will be for the Customer's account;
  - (d) all drawings or details submitted by the Supplier with a quotation are for quotation purposes only and will not form part of any contract; and
  - (e) GST is to be added to the prices quoted.

## 3 Price

- 3.1 The price of the Goods will be the price current at the date of delivery and the price of the Services (described as "labour costs" on the Supplier's quotation form, if any) will be the price current on the date of completion of the Services.
- 3.2 Prices exclude any amount payable in respect of GST, which will be paid by the Customer in addition to the price.

## 4 Payment

- 4.1 If the Supplier is to install the Goods, the Supplier may invoice each month in respect of the Goods delivered during the preceding monthly period.
- 4.2 Unless otherwise agreed, payment is to be made in full no later than the 20th of the month following the date of the relevant invoice. However, the Supplier reserves the right to require payment for any Goods in cash before such Goods are delivered.
- 4.3 The Customer may not deduct or withhold any amount (whether by way of set-off, counterclaim or otherwise) from any money owing to the Supplier. For the avoidance of doubt, if any account is in dispute, the Customer may not withhold payment of the disputed amount.
- 4.4 The Supplier may, at any time, require the Customer to pay for the Goods and/or Services by bank cheque or post dated cheque or secure payment for the Goods and/or Services by way of an assignment of debt, an instrument by way of security, a mortgage, agreement to a mortgage or in any other manner whatsoever. Where the Supplier requires the Customer to secure payment for the Goods and/or Services, it may suspend performance of its obligations under these terms of sale until sufficient security is provided.
- 4.5 If full payment for the Goods and/or Services is not made by the due date, the Customer will pay, at the Supplier's discretion (and without prejudice to any other remedies the Supplier may have), on demand, default interest at a rate of 1.5% per month from the date when payment is due until the date when payment is actually made and all expenses and costs (including legal costs as between solicitor and client and including any debt collection costs, including commission) in connection with the Supplier recovering or attempting to recover any overdue amount.

## 5 Delivery

- 5.1 Unless otherwise agreed, the Supplier will arrange delivery of the Goods. Delivery may be by instalments.
- 5.2 Unless otherwise agreed, the price of the Goods includes the costs of delivery of the Goods by the usual methods of transportation used by the Supplier, between the hours of 8.30am and 5.00pm Monday to Friday, excluding statutory holidays. The Supplier may, at the Customer's request, arrange delivery by other means or at other times but will be entitled to charge the Customer for any additional costs the Supplier may incur.
- 5.3 The Supplier will endeavour to meet agreed delivery dates but will not be liable, nor may the Customer cancel any order, for late delivery.
- 5.4 Delivery will be deemed to have been made when the Goods arrive at the delivery point agreed with the Customer or, if the Customer is to arrange delivery of the Goods, when the Goods are available for collection by the Customer.
- 5.5 If the Customer fails or refuses to take delivery of the Goods, the Supplier may (without limiting any other rights it may have) charge the Customer for any expenses or additional costs incurred by the Supplier as a result of the delay.
- 5.6 The Customer is responsible for ensuring, at its own cost, that all agreed delivery points have unloading facilities together with labour and/or mechanical means to unload the Goods promptly and have suitable access and area for unloading.
- 5.7 All claims for short or defective delivery, or Goods damaged in transit, must be made to the Supplier within 24 hours of delivery.

## 6 Installation

- 6.1 Where the Supplier is to install the Goods, the Customer is responsible for ensuring, at its own cost, that:
- (a) the structure is prepared to the satisfaction of the Supplier;
  - (b) the Supplier (and its employees and contractors) has such access to the structure as the Supplier may reasonably require; and
  - (c) the Supplier has such facilities and equipment as the Supplier may reasonably require, which may include, without limitation, scaffolding, 230 volt AC electric power, safe on-site storage for the Goods and means to lift the Goods.
- If, in the reasonable opinion of the Supplier, the Customer fails to comply with this clause 6.1, the Supplier may (without limiting any other rights it may have) charge the Customer for any expenses or additional costs incurred by the Supplier as a result of such failure.
- 6.2 If required by the Supplier, the Customer will supply, at its own cost, the applying sealants, screws, fastenings, scribes, architraves, flashings and any other accessories or materials which may be required by the Supplier to install the Goods.
- 6.3 Where the Supplier is not installing the Goods, the Customer will compile, or will procure that the installer of the Goods complies, as the case may be, with the Architectural Aluminium Association installation code, and all installation drawings provided by the Supplier.

## 7 Ownership and Risk

- Ownership of any Goods supplied by the supplier will not pass to the Customer until all amounts owing by the Customer to the supplier in respect of those Goods, and all other Goods supplied by the supplier, have been received by the supplier and all other obligations of the Customer to the supplier in respect of the Goods have been met.
- 1.1 Until ownership of the Goods passes, the Customer:
- (a) waives its right under the PPSA:
    - (i) to receive a copy of any verification statement;
    - (ii) to receive a copy of any financing change statement;
    - (iii) to receive any notice that the supplier intends to sell the Goods or to retain the Goods on enforcement of the security interest (as defined in the PPSA) granted to the supplier under these terms of sale;
  - (iv) to object to the supplier proposal to retain the Goods in satisfaction of any obligation owed by the Customer to the supplier;
  - (v) to receive a statement of account on sale of the Goods;
  - (vi) to redeem the Goods; and
  - (vii) where any Goods become an accession, as defined in the PPSA, to not have any Goods damaged when the supplier removes the accession, to receive notice of removal of the accession and to apply to the court for an order concerning the removal of the accession;
- (b) must not:
- (i) give the supplier a written demand or allow any other person to give the supplier a written demand, requiring the supplier to register a financing change statement; or
  - (ii) lodge a change demand or allow any other person to lodge a change demand, in each case in relation to a financing statement registered by the supplier under the PPSA;

- (c) enter into, or accept, or allow any other person to enter into or accept, a financing change statement in relation to a financing statement registered by, or on behalf of, the supplier;
  - (d) consent to or enter into any agreement which permits any supplier or other person to register a security interest in respect of the Goods (whether in an accession or otherwise) which ranks in priority to the supplier rights as first ranking security holder.
- 1.2 The Customer acknowledges that it has received value as at the date of first delivery of the Goods and has not agreed to postpone the time for attachment of the security interest (as defined in the PPSA) granted to the supplier under these terms of sale.
- 1.3 Risk in the Goods will pass to the Customer on delivery of the Goods.

## 8 Drawings, Details and Specifications

- 8.1 Any drawings or details supplied by the Customer must be shown, and will be interpreted by the Supplier as, viewed from the outside. No drawing or details supplied by the Customer or submitted by the Supplier will form part of the contract between the Supplier and the Customer.
- 8.2 The Customer acknowledges that if the Supplier is required to match the colour or shade of the Goods with a particular colour or shade, the colour or shade of the Goods may not be an exact match. The Supplier will endeavour to ensure that any colour or shade variation is within limits agreed with the Customer or where there is no such agreement, is reasonable.

## 9 Warranties

- 9.1 If the Customer is a consumer under the Consumer Guarantees Act (the "Act"):
- (a) the Act will not apply between the Supplier and the Customer, in relation to the supply of Goods, where the Customer is acquiring or holding itself out as acquiring the Goods for a business purpose;
  - (b) the Act will not apply between the Supplier and the Customer, in relation to the supply of Services, where the Customer is acquiring or holding itself out as acquiring the Services for a business purpose; and
  - (c) the Supplier does not undertake that facilities for repair and parts for the Goods will be available.
- 9.2 If the Customer is acquiring the Goods for the purposes of resupplying them in trade, the Customer will:
- (a) include in its conditions of sale a clause to the effect that the Act will not apply where a customer of the Customer acquires or holds itself out as acquiring the Goods for a business purpose;
  - (b) notify its customers of the effect of clause 9.2(a);
  - (c) take reasonable action to notify its customers at or before the time the Goods are supplied to such customers that the Supplier does not undertake that facilities for repair and parts for the Goods will be available; and
  - (d) indemnify the Supplier against all losses, costs, damages or liabilities which the Supplier may incur or be liable to pay arising out of the Customer's failure to take the action required under this clause 9.2.
- 9.3 If the Customer is acquiring the Goods for the purposes of resupplying them in trade, the Customer will not give to its customers an express guarantee (as defined in the Act) from the Supplier in respect of the Goods unless the Supplier has approved such guarantee in writing. The Customer will indemnify the Supplier against all losses, costs, damages or liabilities which the Supplier may incur or be liable to pay arising out of the Customer's failure to comply with this clause 9.3.
- 9.4 Subject to clause 9.5:
- (a) all warranties (other than any express warranty that may be given by the Supplier in writing to the Customer), descriptions, representations or conditions whether implied by law or otherwise are, and all other liability of the Supplier, whether in tort (including negligence), contract or otherwise is, expressly excluded to the fullest extent permitted by law;
  - (b) insofar as the Supplier may be liable notwithstanding clause 9.4(a), to the extent permitted by law, the total liability of the Supplier whether in contract, tort or otherwise for any loss, damage or injury arising directly or indirectly from any defect in the Goods, any failure in respect of the Services or any breach of the Supplier's obligations to the Customer is limited to:
    - (i) the price of the Goods or Services complained of; or
    - (ii) the cost of repairing or replacing the defective Goods or remedying the failure or breach; or
    - (iii) the actual loss or damage suffered by the Customer, whichever is the lesser;
  - (c) except where statute expressly requires otherwise, the Supplier is not liable in any event for any loss of profits or any consequential, indirect or special damage, loss or injury of any kind suffered by the Customer or any other person;
  - (d) while the Supplier will make every effort to ensure the accuracy of any advice, recommendation, information, assistance or service provided by the Supplier in relation to the Goods supplied by it or their use or application, to the extent permitted by law, the Supplier does not accept any liability or responsibility in respect of such advice.

- 9.5 Subject to clause 9.1, nothing in these terms will affect any rights a person, who is a consumer, may have under the Act.

## 10 Returns

- Subject to clause 5.7, Goods may be accepted for return at the sole discretion of the Supplier, on such terms as the Supplier may specify.

## 11 Other Rights of the Supplier

- If:
- (a) any amount payable by the Customer to the Supplier is overdue, or
  - (b) the Customer becomes bankrupt, insolvent, has a receiver appointed in respect of all or some of its assets, makes or is likely to make an arrangement with its creditors, has a liquidator (provisional or otherwise) appointed or is placed under statutory or official management,

then:

- (i) the Supplier may cancel or suspend any outstanding order with the Customer (without prejudice to the Supplier's other remedies);
- (ii) all amounts owing to the Supplier, whether due for payment or not, will immediately become due and payable;
- (iii) all costs incurred by the Supplier as a result of the cancellation or suspension of any order will be payable by the Customer, and will become immediately due and payable; and
- (iv) The Supplier may repossess and dispose for its own benefit any Goods in the Customer's possession or control and for such purpose the Supplier will be entitled to enter, directly or by its agents, upon any premises where it believes Goods which it has supplied may be stored, without, in any way, being liable to any person.

## 12 Miscellaneous

- 12.1 The Customer will be responsible for disposing, at its own cost, of materials used in the packaging or delivery of the Goods.
- 12.2 If at any time the Supplier does not enforce any of these terms of sale or grants the Customer time or other indulgence, the Supplier will not be construed as having waived that term or its rights to later enforce that or any other term.
- 12.3 Where any provision of these terms of sale (including, without limitation, any provision in clause 7) is rendered void, unenforceable or otherwise ineffective by operation of law, that shall not affect the enforceability or effectiveness of any other provision of these terms of sale.
- 12.4 The Customer is to execute documents and do such further acts as may be required by the supplier to register the security interest granted to the supplier under these terms of sale under the PPSA or for any other purpose whatsoever.

## 13 Finishing

- 13.1 Anodising  
Aluminium extrusion is anodised according to WANZ SFA 3503-03:2005. Anodising of aluminium profiles is an electro-chemical batch process. As such there may be noticeable variation in colour on individual profiles.  
Variations in brightness, banding, streaking and other visual defects, may be observed, from close inspection or from certain viewing angles. These variations seldom impair the performance of the anodised coating.  
A viewing distance of not less than 2 metres is required when viewing external architectural applications
- 13.2 Powdercoating  
Architectural aluminium extrusions are coated according to WANZ Endurocolour standard.  
Application of powder coatings are applied in a factory environment, and as such the coated surface should be viewed at a distance of not less than 1 metre, provided that further distance be allowed commensurate with the use of product and in situ viewing distances.
- 13.3 Maintenance  
Care and maintenance of all aluminium joinery should be as per the suppliers recommendations.