

# HULAMIN

## GENERAL CONDITIONS FOR THE DOMESTIC SALE OF ALUMINIUM

THE FOLLOWING TERMS AFFECT THE RIGHTS AND OBLIGATIONS OF THE BUYER AND LIMIT THE LIABILITY OF HULAMIN.

1.

### **Definition:**

The person, firm, company, close corporation or trust purchasing is referred to below as "the BUYER" and Hulam Operations Proprietary Limited and /or any subsidiary of Hulam Operations Proprietary Limited is referred to below as "the SELLER". Any reference to "parties" is a reference to both the BUYER and the SELLER.

2.

### **Legal Construction:**

- 2.1. In these General Conditions
- 2.2. No terms or conditions appearing in any of the BUYER's documents, including the BUYER'S buying order, which are different from these terms and conditions shall be binding upon the SELLER.
- 2.3. No alteration, amendment, modification or variation of these terms and conditions shall apply either at the time the contract is concluded or at any time afterwards, unless the alteration, amendment, modification or variation in question is expressly agreed to in writing and signed by an authorised representative of the SELLER.
- 2.4. The contract between the SELLER and the BUYER shall mean the terms of any aluminium sales contract, credit application form and other documents signed by the Seller's duly authorised representative and shall further be governed by and construed in accordance with the provisions of South African Law and shall be enforceable in the Courts of the Republic of South Africa.
- 2.5. No relaxation which the SELLER may have permitted on any one occasion in regard to the carrying out of the BUYER's obligations shall prejudice (*i.e. take away from*) or be regarded as a waiver (*i.e. abandonment*) of the SELLER's rights to strictly enforce those obligations on any subsequent occasion.
- 2.6. Nothing in these terms and conditions shall be construed as binding the SELLER and the BUYER to the provisions of the Consumer Protection Act No. 68 of 2008 (referred to below as the "Consumer Protection Act") in instances where the Consumer Protection Act would not otherwise be binding on them by virtue of its provisions. Explanatory notes in italics are intended for guidance for the purposes of the Consumer Protection Act only and are not to be taken as an exhaustive explanation of the correct legal meaning of any term or concept.

3.

### **Delivery:**

- 3.1 In this clause "delivery point" shall mean the delivery point referred to in the Application for Credit form, or the point of delivery as otherwise agreed upon by the parties.
- 3.2 Delivery predictions are only an approximate indication of the expected date and / or time for delivery. Delivery after the expected date and / or time shall not invalidate the contract nor shall delivery after the expected date and / or time render the SELLER liable for any damages whatsoever.
- 3.3 Delivery shall be Ex-Works (Incoterms 2010) at the premises nominated by the SELLER. Where delivery is not governed by an Incoterm, delivery shall take place when the goods are tendered for delivery at the delivery point (see clause 3.1 above), risk in and to the goods shall pass to the BUYER on such delivery and the loading and off-loading of the goods at the delivery point shall be the responsibility of the BUYER and shall be performed at its cost and risk.

4.

### **Claims:**

- 4.1. If delivery by the SELLER to the BUYER is Ex Works, FOB or CIF Incoterms 2010, the SELLER shall not be liable for any loss or damage to goods occurring in transit after delivery. The BUYER acknowledges that all goods are carefully inspected before despatch and they shall be deemed to have been received by the carrier in good condition unless the BUYER proves the contrary (*i.e. to prove a claim against the SELLER in these circumstances, the BUYER will first have to prove that the SELLER did not deliver the goods to the carrier in good condition; only if the BUYER is able to do so will the SELLER be called upon to respond to the claim*).
- 4.2. If the goods suffer patent damage in transit or are wet at the time of delivery or the moisture indicator label indicates that to be the case, the BUYER must advise the SELLER accordingly in writing within twenty four (24) hours of receipt of the goods.
- 4.3. If goods suffer latent damage in transit, the BUYER shall advise the SELLER of such fact within forty eight (48) hours of becoming aware of the damage.
- 4.4. If goods supplied are otherwise patently defective, including water stained, or if they are latently defective, the BUYER shall advise the SELLER of such fact within forty eight (48) hours of becoming aware of the defect.
- 4.5. The BUYER shall have no claim against the SELLER for patent or latent defects in goods unless the goods in respect of which the claim is made are preserved intact and are not moved from their place of storage for a period of fourteen (14) days after the BUYER becomes aware of the defect concerned.
- 4.6. In advising the SELLER of any defect in goods supplied, whether occurring in transit or otherwise, the BUYER shall provide as much detail thereof to the SELLER as is possible.
- 4.7. If the quantity or mass of goods supplied is less than the contracted quantity and/or mass (short delivery), the BUYER shall advise the SELLER of such fact within forty eight (48) hours of becoming aware thereof.
- 4.8. The BUYER shall have no claim against the SELLER for short delivery unless:
  - a) The goods in respect of which the claim is made are preserved intact and are not moved from their place of storage for a period of fourteen (14) days after receipt;
  - b) The SELLER is permitted to check and weigh the goods delivered, using the BUYER's weighing and apparatus free of charge; and
  - c) The BUYER provides the SELLER with all available documentation in its possession or under its control relevant to such claim.
- 4.9. If the BUYER is found to have a valid claim for short delivery, the contract between the parties shall not be invalidated because of the short delivery but the BUYER shall be entitled to a pro rata reduction in the purchase price payable in lieu of the short delivery.

- 4.10. If the SELLER delivers more than the contracted quantity of goods, the SELLER shall at its election be entitled to uplift the surplus goods or the BUYER shall accept the surplus goods and pay an additional purchase price pro rata to the SELLER in respect thereof, provided such surplus does not exceed 10% of the contracted quantity. The BUYER shall not have any claim against the SELLER connected with the delivery of surplus goods.
- 4.11. The time limit for the submission of claims for latently defective or non-conforming product is as follows:

Type of Complaint/ Claim	Time Limit
Water Stained Product	Complaint must be lodged in writing <u>within 90 days</u> of the Effective Date.
Applied Finish – Coating, Wax, Post Lubricant, DOS	Due to shelf life limitations of applied finishes and the potential impact of storage conditions, complaints related to the performance of product with applied finishes (e.g. coatings, wax and post lubricant oils on can end stock, tab stock or can body stock products) must be lodged in writing <u>within 6 months of the Effective Date</u> .
Painted Product Performance Failure	The period applicable is in terms of the Hulamin Painted Product Warranty provided to the BUYER. Such claim must be made within 3 months after the failure came to the BUYER's attention or ought to have come to its attention by the exercise of reasonable care.
Inherent Product Non-Conformance and any other defects	Complaints relating to product non-conformances such as metallurgical properties, manufacturing defects (e.g. surface, edge), dimensional non conformances, or failure to meet the product specifications - must be lodged in writing <u>within 12 months of the Effective Date</u> .

- 4.12. For the purposes of this clause "Effective Date" has the meaning indicated below, depending on which Incoterm applies to the contract with the BUYER:

Incoterm	Effective Date
Delivered terms, for example, DDP, DAP, Delivered	Date of delivery to the BUYER
C terms, for example, CIF	Bill of lading date
F terms, for example, FOB	Bill of lading date
Ex Works	Date of delivery to the BUYER
None	Date of delivery to the BUYER

- 4.13. If the BUYER fails to give written notice of a claim:
- within the time limits set out in the table above in clause 4.11; and
  - in accordance with the time limits set out in clauses 4.2, 4.3 and 4.4 above, the SELLER shall be discharged from all liability in connection with the claim.
- 4.14. The SELLER shall not be liable to the BUYER for any loss of profits, loss of contracts, loss of reputation, consequential or indirect losses and damages claims howsoever arising. The limitation of liability provisions contained in this clause 4.14 shall be subject to the provisions of the Consumer Protection Act but only to the extent applicable.
- 4.15. The liability of the SELLER for defective goods shall be limited to, at the election of the SELLER, the supply of replacement goods or the passing of a credit equal to the purchase price payable in respect of the defective goods.
- 4.16. The liability of the SELLER connected with short delivery or a failure to deliver shall be limited to the amount by which the cost incurred by the BUYER in sourcing alternative goods from a third party supplier exceeds what it would have cost the BUYER had the SELLER supplied the goods.
- 4.17. Claims will be dealt with in accordance with the Hulamin Claims Policy and Procedure in force from time to time, a copy of which will be made available upon request.
- 4.18. The provisions of this clause 4 are subject to any rights in respect of delivered goods or goods tendered for delivery which the BUYER may have by operation of the Consumer Protection Act but only to the extent applicable.

5.

**Non-performance or delay:**

The SELLER reserves the right to cancel any contract (or any incomplete part of it) with the BUYER should its fulfilment be delayed or rendered more onerous to the SELLER for any reason (including but not limited to an adverse exchange rate fluctuation) or rendered impossible by war, invasion, insurrection, riot, order of any government, municipal or civil authorities, breakdown of plant, equipment or machinery, accidents, labour disputes, boycotts, economic sanctions, or by any other cause beyond the reasonable control of the SELLER and/or the SELLER's suppliers. The BUYER agrees that the SELLER shall have no responsibility or liability under or arising out of the contract in the event of notice of cancellation being given by the SELLER under this clause.

6.

**Default:**

- 6.1. The SELLER may cancel any contract or any incomplete part of it, if:
- the BUYER commits any breach of the terms or conditions of the contract or of any other contract between the SELLER and the BUYER;
  - the BUYER fails to act with the utmost good faith towards the SELLER (the BUYER shall be regarded as having failed to act with the utmost good faith towards the SELLER where it, amongst other things, offers alternative employment opportunities to the employees of the SELLER without first notifying the SELLER in writing, or continues to claim preferential discounts in circumstances where the BUYER directly or indirectly commences a business in competition with the SELLER);
  - the BUYER, being an individual, dies or is provisionally or finally sequestered or surrenders his or her estate; or
  - the BUYER is a partnership and the partnership is terminated; or
  - the BUYER, being a company or close corporation, is placed under provisional or final order of liquidation, or is voluntarily wound up or is subject to an offer of compromise sanctioned by a court; or
  - the BUYER, being a trust, is provisionally sequestered; or
  - judgment is granted against the BUYER which is not paid or rescinded within fourteen (14) days of the date of the judgment.
- 6.2. All contracts shall terminate automatically on the initiation (by any lawful means) of business rescue proceedings in respect of the BUYER pursuant to chapter 6 of the Companies Act No. 71 of 2008 and all amounts outstanding under contracts in force up until that time shall become immediately due and payable by the BUYER.

- 6.3. If any amount owed to the SELLER by the BUYER is not paid on due date or the SELLER is entitled to cancel any contract in terms of 6.1 above, then –
- (a) all amounts owed to the SELLER by the BUYER shall at once become due and payable;
  - (b) any discount or preferential price which the BUYER may have been entitled to claim shall be forfeited; and
  - (c) the SELLER shall be entitled to withhold delivery of goods in respect of outstanding orders.
- 6.4. Upon the termination of a contract, for any reason whatsoever, the SELLER may retake possession of the SELLER's goods in respect of which ownership has not passed to the BUYER, except to the extent impermissible in terms of section 51(1)(i)(l) of the Consumer Protection Act to the extent that section applies.
- 6.5. If the SELLER instructs its attorneys with regard to any claim against the BUYER, the BUYER shall be obliged to pay all such attorneys' costs as between attorney and own client (i.e. costs will not necessarily be limited to any amount set in terms of public regulation), including collection commission, which the SELLER is by agreement obliged to pay to its attorneys.
- 6.6. The BUYER hereby agrees and consents that the SELLER shall be entitled at the SELLER's option to institute any legal proceedings which might arise out of or in connection with any contract in any magistrate's court in the Republic of South Africa having jurisdiction in respect of the BUYER notwithstanding that the claim or value of the matter in dispute might exceed the jurisdiction of such magistrate's court (the SELLER will not be obliged to proceed in a magistrate's court, but if the SELLER does not wish to proceed in the High Court, the SELLER will be able to rely on this clause to gain access to the magistrate's court where the SELLER otherwise would not be entitled to proceed in the lower courts).

7.

**Interest:**

The BUYER shall be obliged to pay interest to the SELLER on all amounts which are overdue, at the maximum permissible rate in law.

8.

**Quality:**

All materials supplied by the SELLER are subject to the SELLER's or the supplier's (if the SELLER is not the manufacturer) standard manufacturing tolerances unless special tolerances are stated in the BUYER's order and have been agreed to by the SELLER in writing.

9.

**Charges and duties:**

When payment is made by negotiable drafts (*such as a cheque*), the relevant Bank charges and cost of stamps shall be for the account of the BUYER. Import duties and licences, taxes, permits or any other incidental charges shall also be the BUYER's responsibility and for the BUYER's account.

10.

**Ownership:**

Notwithstanding the delivery of any goods to the BUYER, ownership thereof shall not pass until the SELLER has received payment of the full contract price, except to the extent that, in the circumstances of a particular case, ownership passes to the BUYER by operation of section 21(6)(a) of the Consumer Protection Act.

11.

**Payment:**

- 11.1 Payment shall be made by the BUYER to the SELLER in South African currency, without deduction or demand and free from bank exchange.
- 11.2 Payment may not be withheld pending the settlement of any dispute or on the basis of any counterclaim of the BUYER.
- 11.3 In the event of the BUYER being in default of any payment, the SELLER shall be entitled to interdict the BUYER from using or in any other manner dealing with goods which have been delivered to the BUYER but in respect of which ownership has not passed.
- 11.4 All payments made by the BUYER shall be applied to such debt owed by the BUYER to the SELLER which the SELLER may determine at any time without notice to the BUYER or, where no determination has been made, to the most onerous debt owed by the BUYER to the SELLER and the BUYER shall not be entitled to demand that any payment made by the BUYER to the SELLER be applied to a debt of the BUYER's choice, unless the SELLER agrees in writing to accept payment from the BUYER on that basis.

12.

**Variation of contract price:**

Should the SELLER, between the date of order and the date of delivery, wish to increase the contract price on which the BUYER'S order is accepted, the SELLER may withdraw from the contract in question without liability to the BUYER, if the BUYER does not agree to abide by the increase in the contract price.

13.

**Hedging costs:**

The SELLER, according to the industry standard business practice for fixed price contracts, shall be entitled to hedge metal and currencies with smelters, brokers and banks respectively having regard to the dates and quantities of the BUYER'S order. If the BUYER cancels the order, varies the quantity or pulls forward the delivery or delays acceptance of delivery, the SELLER shall be entitled, without prejudice to (*i.e. without taking away from*) any other claim which the SELLER may have, to be paid compensation by the BUYER in an amount equivalent to the cost of cancelling or adjusting the hedging arrangement put in place by the SELLER.

14.

**Indemnity:**

The BUYER indemnifies the SELLER and holds it harmless against all claims, costs, losses or expenses incurred or suffered by the SELLER arising out of the provision of incomplete or erroneous information by the BUYER to the SELLER or a failure on the part of the BUYER to provide information to the SELLER timeously, including, without limitation, losses attributable to changes in the SELLER's input costs and in particular changes in the price of aluminium (*i.e. the BUYER will be obliged to compensate the SELLER for any such losses or expenses*).

15.

**Discounts:**

- 15.1 The contract price is strictly net and not subject to any discount unless otherwise agreed in writing by the SELLER and the BUYER. The issuing of invoices and statements by the SELLER reflecting or allowing a discount shall not be construed as an agreement to grant any discount in future.

- 15.2 If any discount is agreed in writing, it shall only be given if payment is received by the SELLER on or before the due date, and shall only be calculated on the "net price" of the goods themselves. The "net price" excludes VAT, customs and excise charges, transport and packaging costs and the like.

16.

**Collection from the SELLER's premises:**

When collecting material from the SELLER's premises, the BUYER shall ensure that the driver of each vehicle is in possession of a valid exemption certificate for the vehicle in respect of the route to be travelled, or of a temporary certificate issued by the Local Road Transportation Board for the area in which the SELLER's premises are situated and that all other regulatory approvals are in place.

17.

**Patents, Designs and Specifications:**

Orders are accepted to the BUYER's designs or metallurgical or other specifications in good faith by the SELLER and the BUYER warrants that no patent or registered design, rights or registered trade or merchandise marks will be infringed by the SELLER in the manufacture and/or delivery of the material or goods in accordance with the BUYER's designs or specifications (*to warrant something is to undertake that it is true; if it turns out not to be true, the person giving the undertaking will be liable for breach of that undertaking and may therefore be liable for damages resulting from that breach*). The BUYER hereby indemnifies the SELLER against all loss suffered and expenses and/or legal costs incurred by the SELLER in consequence of any such infringement (*i.e. the BUYER will be obliged to protect the SELLER against any claim by a third party in respect of any such infringement*).

18.

**Warranty:**

Subject to any express warranty or guarantee given by the SELLER in writing and to any warranty implied by the Consumer Protection Act and applying for the benefit of the BUYER, the BUYER agrees:

- 18.1 that no warranty or guarantee whether express or implied against latent defects or in respect of the fitness of the goods for any particular purpose has been given by the SELLER, whether or not that purpose is known to the SELLER;
- 18.2 that no representations have been made by the SELLER or any of its employees in respect of the fitness of the goods for any particular purpose whether or not that purpose is known to the SELLER and that no representation of whatsoever nature which may be made by the SELLER or any of its employees shall be binding unless reduced to writing and signed by a duly authorised official of the SELLER;
- 18.3 that any advice given by the SELLER or any of its employees as to the use to which the goods may be put is given without prejudice and shall not give rise to any claim of whatever nature against the SELLER;
- 18.4 that no claim of whatever nature shall lie against the SELLER as a result of the goods being put to a use to which they are not suited; and
- 18.5 to indemnify the SELLER, as it hereby does, and hold it harmless against all and any claims of whatever nature, including without limitation any claims under the Consumer Protection Act, which may be made against the SELLER by any person arising out of the use of the goods, unless precluded under the Consumer Protection Act and then only to the extent applicable.

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**Extrusion dies and drawings:**

- 19.1 Irrespective of any charge paid by the BUYER, all extrusion dies remain the sole property of the SELLER unless otherwise agreed in writing by the parties.
- 19.2 Extrusion die drawings are prepared for the BUYER on condition that they shall not be copied without the SELLER's authority.