

HULAMIN

GENERAL CONDITIONS FOR THE INTERNATIONAL SALE OF ALUMINIUM

1.

Parties:

The person, firm, company, corporation or other juristic person purchasing shall hereinafter be termed "the BUYER" and Hulamin Operations Proprietary Limited and /or any subsidiary of Hulamin Operations Proprietary Limited shall hereinafter be termed "the SELLER".

2.

General:

- 2.1. In these General Conditions (the "General Conditions"), "Special Terms" shall mean the terms of any aluminium sales contract, credit application form and other documents signed by the SELLER's duly authorised representative.
- 2.2. Each contract for the international sale of aluminium (the "goods") between the SELLER and the BUYER (the "contract") shall be governed by the Special Terms, the General Conditions and UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS ("CISG") as modified by the Special Terms and the General Conditions. Should a conflict arise between the Special Terms, the General Conditions and/or CISG, then the Special Terms shall prevail over the General Conditions and CISG and the General Conditions shall in turn prevail over CISG.
- 2.3. No term, specification or condition appearing in any of the BUYER's documents, including the BUYER's purchase conditions, buying order, confirmation, memorandum or other document, which is at variance with the contract shall be binding upon the SELLER unless agreed to in writing by the SELLER and signed by its duly authorised representative.
- 2.4. No term, specification, condition, agreement, conversation or understanding in any way modifying the contract shall be binding upon the SELLER unless agreed to in writing by the SELLER and signed by its duly authorised representative.
- 2.5. No relaxation which the SELLER may have permitted on any occasion in regard to the carrying out of the BUYER's obligations shall be regarded as a waiver of the SELLER's rights to enforce those obligations on any subsequent occasion.

3.

Transportation Charges:

- 3.1. Unless otherwise specified, all transportation charges once goods have been loaded onto the first carrier shall be paid by the BUYER.

4.

Delivery:

- 4.1. Any delivery date given by the SELLER to the BUYER is approximate and is only an indication of the expected date of delivery or of shipment or of "ex-works" availability unless otherwise stated in writing by the SELLER.
- 4.2. The SELLER shall not be liable to the BUYER for any loss or damage of whatsoever nature which the BUYER may sustain arising out of delays in delivery or failure to deliver.
- 4.3. The BUYER shall not be entitled to cancel the contract by reason of any delay in delivery howsoever caused unless agreed to in writing by the SELLER and signed by its duly authorised representative.

5.

Claims:

- 5.1. 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*).
- 5.2. 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.
- 5.3. 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.
- 5.4. 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.
- 5.5. 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.
- 5.6. 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.
- 5.7. 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.
- 5.8. The BUYER shall have no claim against the SELLER for short delivery unless:
 - 5.8.1. 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;
 - 5.8.2. the SELLER is permitted to check and weigh the goods delivered, using the BUYER's weighing apparatus free of charge; and
 - 5.8.3. the BUYER provides the SELLER with all available documentation in its possession or under its control relevant to such claim.

- 5.8.4. 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.
- 5.8.5. 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.
- 5.9. 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 within 90 days 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 within 6 months of the Effective Date.
Painted Product Performance Failure	The period applicable is in terms of the Hulamín 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 within 12 months of the Effective Date.

- 5.10. 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

- 5.11. If the BUYER fails to give written notice of a claim:
- 5.11.1. Within the time limits set out in the table above in clause 5.9; and in accordance with the time limits set out in accordance with the time limits set out in clauses 5.2, 5.3 and 5.4 above, the SELLER shall be discharged from all liability in connection with the claim.
- 5.11.2. The SELLER shall not be liable to the BUYER for any loss of profits, loss of contracts, loss of reputation, consequential indirect losses and damages claims howsoever arising. The limitation of liability provisions contained in this clause shall be subject to the provisions of the Consumer Protection Act but only to the extent applicable.
- 5.11.3. 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.
- 5.11.4. 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.
- 5.12. Claims will be dealt with in accordance with the Hulamín Claims Policy and Procedure in force from time to time, a copy of which will be made available upon request.
- 5.13. The provisions of this clause 5 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

6.

Reservation of Ownership:

- 6.1. 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.

7.

Payment:

- 7.1. Payments may not be withheld pending the settlement of any dispute or claim.
- 7.2. In the event of the BUYER being in default of any payment due in terms of the contract, the SELLER shall be entitled to an injunction or interdict in terms of which the BUYER shall be restrained from using or in any other manner dealing with the goods in respect of which ownership has not passed.
- 7.3. The BUYER shall be obliged to pay interest to the SELLER on all amounts which are overdue at the rate of 2 % per month.

8.

Hedging Costs:

- 8.1. 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 in respect of the dates and quantities of the BUYER's order. If the BUYER cancels the order, varies the quantity, pulls forward the delivery or delays acceptance of delivery, the SELLER shall be entitled, without prejudice to any other claim, to be paid compensation by the BUYER of an amount equivalent to the cost of cancelling or adjusting the

hedging arrangement.

9.

Indemnity:

The buyer indemnifies the SELLER and holds it harmless against all costs, losses or expenses incurred or suffered by the SELLER arising out of the furnishing by the BUYER of incomplete or erroneous information 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.

10.

Warranties:

10.1 The SELLER warrants to the BUYER that –

- (a) unless special tolerances are stated in the Special Terms or have been agreed to by the SELLER in writing and signed by its duly authorised representative, all goods supplied by the SELLER are subject to the SELLER's specifications or where the SELLER has not published its specifications, then to the current specifications and data manual published by The Aluminium Association Inc. or in the case of drawn or extruded sections to the British Standard 1471:1972 or British Standard 1474 : 1972;
- (b) good title in the goods is conveyed in terms of article 42 and 43 of CISG.

10.2 The BUYER agrees –

- (a) that the foregoing warranties are in lieu of and exclude any and all other warranties, express or implied, arising by operation of law, in terms of CISG or otherwise including without limitation any warranties of fitness or merchantability or any guarantees of performance of the goods, whether or not the purpose of the goods is known to the SELLER;
- (b) that no representations have been made by the SELLER nor by 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 made by the SELLER or any of its employees shall be binding unless agreed to in writing by the SELLER and signed by its duly authorised representative.
- (c) that the design or manufacture of any dies and preparation of drawings for the purpose of producing the goods shall not give rise to any claim of whatever nature against the SELLER, including without limitation, any claim based upon a breach of warranty of fitness or merchantability or performance of the goods produced from the die and drawings, whether or not the purpose of the goods is known to the SELLER;
- (d) 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 whatsoever nature against the SELLER; and
- (e) to indemnify the SELLER, as it hereby does, against all and any claims of whatsoever nature which may be made against the SELLER by any person arising out of the use of the goods.

11.

Charges and Duties:

Unless otherwise agreed, all import duties, licenses, taxes, permits and any other incidental charges shall be the BUYER's responsibility and for the BUYER's account. If the SELLER accepts responsibility for payment of import duties, licenses, taxes and permits and any other incidental charges, then any increase in such costs between the date of the Aluminium Sales Contract and the due date of payment of such charges, shall be for the BUYER's account.

12.

Insurance of Goods:

Where marine insurance or war risk insurance is taken out by the SELLER for the BUYER's benefit, any amounts so expended by the SELLER for such insurance shall be paid by the BUYER on presentation of the SELLER's invoice to the BUYER. The SELLER shall not be responsible for any damage or loss not covered by the aforementioned insurance.

13.

Default:

13.1 If any amount owed to the SELLER by the BUYER in respect of any claim is not paid on due date, or the SELLER is entitled to void or cancel the contract, then, without prejudice to any other claim -

- (a) all amounts owed to the SELLER by the BUYER shall immediately become due and payable;
- (b) any discount or preferential price which the BUYER may have been entitled to claim shall be forfeited in respect of all incomplete contracts;
- (c) the SELLER shall be entitled to withhold delivery of goods in respect of outstanding orders; and
- (d) in the case of a Fixed Price Contract, the SELLER shall be entitled to be paid compensation by the BUYER of the amount equivalent to the cost of cancelling all hedging arrangements in respect of all incomplete contracts.

13.2 Upon the termination of the contract, for any reason whatsoever, the SELLER may retake possession of the goods in respect of which ownership has not passed to the BUYER.

14.

Non Performance or Delay:

The SELLER reserves the right to void or cancel the contract or any incomplete part thereof should its fulfilment be delayed or rendered more onerous to the SELLER including, without limitation, adverse exchange rate fluctuations, adverse metal price fluctuations and delayed supply of or increased cost of primary aluminium ingot, electricity, gas, fuel, water and other such resources or should its fulfilment be 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 cause or impediment beyond the reasonable control of the SELLER 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 written notice of cancellation or avoidance being given by the SELLER in terms of this clause.

15.

Extrusion Dies and Drawings:

15.1 Irrespective of any charge paid by the BUYER, all extrusion dies and drawings remain the sole property of the SELLER and without prejudice

to any other proprietary rights, the SELLER shall be entitled to manufacture or supply sections or extrusions from the extrusion dies or drawings and to scrap any die which has not been used for five years, unless otherwise agreed to in writing by the SELLER and signed by its duly authorised representative.

- 15.2 Extrusion dies and drawings are prepared for the BUYER on condition that they shall not be copied unless otherwise agreed to in writing by the SELLER and signed by its duly authorised representative.
- 15.3 The BUYER hereby indemnifies and holds harmless the SELLER for and against any claims which may be made against the SELLER for infringement of patents, trademarks or any other intellectual property rights associated with the sections or extrusions produced from the dies or drawings.

16.

Arbitration:

- 16.1 Any dispute arising out of or in connection with the contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the LCIA Arbitration International Rules, which rules are deemed to be incorporated by reference in this clause.
- 16.2 To the extent that the Special Terms, General Conditions and CISG do not determine the rights and obligations of the parties, the governing law of the contract shall be the law of South Africa.
- 16.3 Where the dispute relates to –
- (a) an amount less than USD one million, there shall be one arbitrator and no right of appeal; and
 - (b) an amount equal to or greater than USD one million, there shall be one arbitrator of first instance and a right of appeal to an arbitration appeal tribunal of three arbitrators.
- 16.4 The place where the arbitration shall be held is Pietermaritzburg, South Africa, unless the SELLER gives notice to the BUYER that it elects the place of arbitration to be a city or town in the BUYER's country, London, New York or Singapore in which event the place nominated by the SELLER shall be the place where the arbitration shall be held. The SELLER's right of election shall be made within 30 days of the date of the referral of the dispute to arbitration in terms of 16.1 above.
- 16.5 The language of the arbitration shall be English.