

## Terms and Conditions of Sale

### 1. Terms and Conditions

These conditions of Sale apply to all transactions between the Customer and **SAS International (Australia) Pty Ltd (SAS)** ABN 40 161 601 350, including all quotations, offers, orders or sales.

These conditions (which may only be waived or varied in writing signed by SAS shall prevail over all conditions of the transaction to the extent of any inconsistency.

The supply of all Goods by the Supplier, SAS to the Customer shall be subject to these Terms and Conditions whether in the past, present or in the future and any terms and conditions or the Customer's order deviating from or inconsistent with these Terms and Conditions are expressly excluded, obviated and rejected by the Supplier, (SAS). This exclusion and rejection includes any statement by the Customer that the Customer's terms and conditions will prevail despite any stipulation by the Customer regarding the manner of declaring such rejection. These Terms and Conditions shall prevail over any terms and conditions including those implied by Statute to the extent permissible at Law. The Customer acknowledges having read the Terms and Conditions of Credit prior to signing the Application for a Commercial Credit Account.

### 2. Legal Rights

These Terms and Conditions do not detract from the Supplier, SAS and common law rights and are in addition to those rights and not in substitution for them.

### 3. Termination / Modification

The Agreement may be modified or terminated only upon Supplier's, SAS written consent. If all or part of the Agreement is terminated, the customer, in the absence of contrary written agreement with Supplier, SAS, shall pay termination charges based upon actual expenses and costs incurred in the production of the Product to the date such termination is accepted by Supplier, SAS plus a reasonable profit, except that any Product completed on or prior to Supplier, SAS's acceptance of such termination shall be accepted and paid in full by Customer.

### 4. Acceptance

- (a) Acceptance of the quotation shall be in acceptance of these terms and conditions of sale and the "Project Specific Terms" contained in the SAS Quotation unless otherwise expressly agreed in writing by Supplier, SAS.
- (b) Prices quoted are in Australian Dollars and are firm for the period nominated in the Quotation.
- (c) Prices are inclusive of import duty, but do not include any other form of taxes or duties which are applicable now or in the future that the Customer may be subject to.

### 5. Quotations

- (a) Unless previously withdrawn, a quotation will be open for acceptance by the Supplier, SAS within the period stated therein, or, when no period is stated, within 30 days after its date.
- (b) All quotes are based on costs of labour, materials and services at the date of quotation and are subject to adjustment for variation in costs of labour, materials and services after that date.
- (c) The quoted price is subject to the Customer taking delivery of the whole amount of the goods or services to be supplied under the quotation on the agreed dates for delivery of the service. Any increased cost incurred by the Supplier, (SAS) because the Customer is not ready to accept delivery on the due date or requested delivery on an earlier date shall be paid by the Customer.

### 6. Description of Goods, Orders and Variations

- (a) The descriptions, illustrations and Specifications contained in the Supplier, SAS's catalogues, price lists and other advertisements are approximate only. Goods and services are supplied in accordance with normal industry standards.
- (b) The parties acknowledge that the process of powder coating is such that any imperfections or variations of the base material will still be visible after powder coating and there may be a range of colour tonalities within batches of aluminium. Further, it is a natural feature of powder-coated aluminium that there may be changes in colour or shade under different light conditions.
- (c) The Customer agrees that they have checked all details of the goods or services as shown on the quotation and/or order and unless otherwise agreed, the Customer will be responsible for the accuracy of all specifications including but not limited to measurements.
- (d) All orders and any variation to orders must be in writing and where verbal instructions are received from the Customer the Supplier, SAS will not be responsible for any error or omission due to the Supplier, SAS's misinterpretation of these instructions.
- (e) The Supplier, SAS may charge the Customer for any work required because of a Customer's variation or correction of an order.
- (f) If a Customer varies an order after production is commenced the Supplier, SAS may require payment for all work carried out up to the time of variation.
- (g) If a Customer cancels an order the Supplier, SAS may require payment for work done under the order up to the date of cancellation together with compensation for any loss incurred as a result of the cancellation.

### 7. Patterns, Templates, Jigs etc

All jigs, tools, templates, patterns etc, manufactured by Supplier, SAS in the process of fulfilling a customer's order will remain the property of the Supplier, SAS unless prior arrangements have been made and payment is received for said terms.

#### 8. Inspection / Claims

The Customer shall inspect the goods immediately after delivery. Claims in respect of faulty Goods or deficient packaging, defect, damage, misdelivered, labelling or delivery must be made in writing to the Supplier, SAS within one working day of the date of delivery of the goods in order to be recognised or binding upon the Supplier, SAS. Any costs incurred or loss suffered by the Supplier, SAS in respect of or arising as a result of any unauthorised return by the Customer may be deducted by the Supplier, SAS from any Credit granted by it to the Customer or add it as a cost to the then amount outstanding.

Failure to comply with these conditions or failure to sign a delivery docket on receipt of the goods will waive all claims for the goods.

#### 9. Credit Terms

Supplier, SAS will invoice the client every month. Payment is due by the last day of the month following the month in which the invoice is received. [E.g. An invoice received on 10th May will be due for payment on 30 June.]

If the Customer fails to make payment in accordance with the terms and conditions of sale, the Supplier, SAS will be entitled to:

- Charge default interest at the rate of 8.5% per annum on all overdue amounts in addition to late payment charges.
- Claim from the Customer all costs including legal costs relating to any action to recover monies or goods due from the Customer.
- Cease further deliveries and to unilaterally terminate any agreements in relation to products that have not been delivered.

#### 10. Payment

The Supplier, SAS may at sole and absolute discretion appropriate any payment received from the Customer against whatever amount is owed by the Customer to the Supplier, SAS under the Terms and Conditions as are due.

#### 11. Defaults

If the Customer defaults in paying any amount owed by the Customer to the Supplier, SAS under these Terms and Conditions, then any amount invoiced to or owed by the Customer to the Supplier, SAS becomes immediately payable and the Customer and or its Guarantors severally or jointly agrees to indemnify the Supplier, SAS against all costs (including legal costs, commercial agent commissions, freight, insurance, loss of profit and interest) incurred by the Supplier, SAS as a result of the Customer's default.

#### 12. Retention of Title

- (a) Until the goods the subject of the contract are paid for:
  - (i) Ownership shall remain with the Supplier, SAS but the risk passes to the Customer;
  - (ii) The relationship between the parties shall be fiduciary and the Customer shall hold the goods as bailee for the Supplier, SAS;
  - (iii) The Customer shall store the Supplier, SAS's goods separately from its own goods and those of any other person or company;
  - (iv) The Supplier, SAS authorises the Customer to on-sell the goods but as an agent for the Supplier, SAS. The Customer shall however, not represent to any parties that it is in any way acting for the Supplier, SAS will not be bound by any contracts with third parties to which the Customer is a party;
  - (v) The proceeds of any sale of the goods shall be paid into a separate account and the Customer shall account to the Supplier, SAS from this fund for the full price of the goods. Records shall be kept by the Customer of any goods owned by the Supplier, SAS;
  - (vi) The Supplier, SAS may, at its discretion, without further notice and without prejudice to any other of its rights re-take possession of the goods and re-sell the same, or any of them, and may enter upon the Customer's premises, by its servants or agents, for that purpose, Without any liability on the part of the Supplier, SAS for any loss or damage suffered as a consequence of such re-entry or re-taking of, possession.
- (b) In the event that the Customer breaches any of these Terms and Conditions or commits an act of bankruptcy or a receiver is appointed, or a voluntary administrator is appointed, or the company goes into liquidation, without prejudice to any other rights the Supplier, SAS may have, the Customer by receiving delivery of the goods authorises the Supplier, SAS to retake possession of any unpaid – for goods and resell them without accounting to the Customer therefore.

#### 13. Withdrawal of Credit

The Supplier, SAS may in its sole and absolute discretion withdraw any credit facilities granted without notice.

#### 14. Right to Refuse to Supply

The Supplier, SAS reserves the right to accept or decline in whole or in any part any order made by the Customer for the supply of goods and to supply the goods ordered in whole or in part.

#### 15. Cancellation of Orders

Orders cannot be cancelled unless agreed to in writing with the Supplier, SAS. Any loss that may be incurred by Supplier, SAS due to the cancellation of any order will be compensated for by the Customer.

**16. No Assignment**

The Customer shall not have the right to assign or transfer any or all of its rights and obligations hereunder without prior written permission from the Supplier, SAS.

**17. Insurance**

It is solely the Customer's responsibility to ensure that all goods supplied under any invoices are insured to their full value, in the name of the Customer and Supplier, SAS jointly, from the time of delivery of the goods for shipment to the Customer, with a reputable insurance company until those goods are either sold or paid for in full.

**18. Delivery**

- (i) Notwithstanding that an appropriate date is stipulated in the order for delivery of the goods, the time for delivery of the goods shall not be regarded as the essence.
- (ii) Subject to the clause, the Supplier, SAS shall make all reasonable and commercial efforts to have the goods delivered to the Customer on the day agreed between the parties but the Supplier, SAS, its agents and servants shall be under no liability whatsoever, nor shall the Customer be entitled to treat the contract as repudiated should delivery not be made at that time.
- (iii) Subject to this clause, the Customer acknowledges that the Supplier, SAS does not warrant or represent that the goods will be delivered on the day specified on the face of the invoice and the Supplier, SAS is at liberty to make deliveries within a reasonable period before or after the proposed date for the delivery.

**19. Receipt**

Under no circumstances may the Customer deny signature evidencing receipt of the goods by an employee, agent or carrier utilised or employed by the Customer as the case may be.

**20. Liabilities for Damages and Warranties**

- (i) The Customer and the Supplier, SAS agree that the Supplier, SAS accepts no responsibility or liability whatsoever or howsoever arising whether in contract or tort or otherwise for loss of profits, business or savings or for any indirect or consequential loss of any nature arising out of or from the use, custody, supply or purchase of the goods to the fullest extent permitted by law and the Customer forever discharges the Supplier, SAS from all such responsibilities and liability, claims, demands or action in respect thereof
- (ii) The Supplier, SAS gives no express warranty in relation to the supply of goods except for those provisions expressly stated in the terms and conditions of sale, or separately stated in writing by the Company.
- (iii) Subject to the provisions of terms and conditions of sale where the Trade Practices Act 1974 and similar State and Territory legislation is relevant to the agreement for the Supply of the goods for the benefit of the Customer then to, the extent those conditions and warranties may as between the Customer and the Supplier, SAS be lawfully excluded all such conditions and warranties are expressly excluded.
- (iv) Where the Supplier, SAS becomes liable to the Customer in any manner for any breach of any condition or warranty expressed or implied in relation to the supply of goods then the Supplier, SAS's Liability will be limited, at the Supplier, SAS's sole and absolute discretion to either;
  - (a) The replacement of the goods or the supply of equivalent goods; or
  - (b) The price paid to the Customer for the goods; or
  - (c) The cost of repair to the good; or
  - (d) The cost of the resupply of the goods.

**21. Service**

Service of any notice, document or court proceeding on the Customer shall be deemed to have occurred if they are served to the business address specified on the invoice.

**22. Trusts**

Should the Customer be a Trustee of a Trust then the Customer shall be liable both in its own capacity as Trustee of the Trust for performance of all obligations to the Supplier, SAS.

**23. Credit Reports**

The Supplier, SAS may at its discretion use any credit report concerning or relating to the Customer to facilitate collection of any overdue payment and the Customer agrees and consents to the Supplier, SAS receiving from any credit reporting agency of its choosing any credit report containing personal information about the Customer in relation to the collection of any outstanding amount due to the Supplier, SAS or any other Supplier, SAS to the Customer.

**24. Privacy ACT Authority**

The Customer agrees and consents to the Supplier, SAS seeking from and giving to any credit provider any details concerning or relating to the Customer's credit worthiness. The Customer agrees to sign the attached Privacy ACT Acknowledgement pertaining to same.

## 25. Australian Standards

Supplier, SAS commitment to Quality is assured by the introduction and operation of a Quality Assurance System in accordance with the relevant Australian Standards.

## 26. Confidentiality

- (a) Any specifications, samples, designs, formulations, trade secrets, patents, financial data, or other information that the Supplier, SAS ('Disclosing Party') identifies as or otherwise deems confidential (the 'Confidential Information') and discloses to the other Party ('Receiving Party') in connection with this Agreement or any PO shall remain the exclusive property of the Disclosing Party and shall, along with any information derived from the same, be kept confidential by the Receiving Party and its employees and agents and shall not, without the Disclosing Party's prior written consent, be disclosed to any third party or used except for purposes of PO. The Receiving Party agrees not to chemically analyse or reverse engineer any sample or to assist and/or allow any third party to do so without the express written consent of the Disclosing Party.
- (b) Notwithstanding the foregoing, such information shall not be deemed confidential to the extent that the Receiving Party can demonstrate by written record that it was previously known by the Receiving Party, and became generally available to the public through no fault of the Receiving Party, was disclosed to the Receiving Party by a third party without breach of any confidentiality obligation, or is specifically required to be disclosed by law or legal process.
- (c) The Supplier, SAS and customer agree that the covenant of confidentiality and nondisclosure set forth above shall survive termination of this Agreement and shall remain in effect for so long as the Confidential Information remains confidential. The Parties agree that this covenant shall supersede any contrary duration term set forth in any previously executed Confidentiality Disclosure Agreement.

## 27. Governing Law

Any dispute, claim or controversy arising out of, or between the Parties during the execution of or interpretation of this Agreement shall be resolved by arbitration in accordance with the Australian Arbitration Association Dispute resolution procedures in effect at the time of arbitration. All settlement proceedings will be governed by laws state in Australia.

## 28. Intellectual Property

The Customer acknowledges that the Supplier, SAS shall retain all copyright and other intellectual property in any documents or things created by the Supplier, SAS in the course of providing its Services pursuant to these terms and conditions.

## 29. Succession in Title

Any change in the shareholding or directorship altering the effective control of the Company of the company or the holding company if any, the signatories herewith shall immediately advise the Supplier, SAS of such change in the shareholding and/or directorship and complete all necessary further documentation that is required by the Supplier, SAS.

## 30. Company Customers

Where the Customer is a company the Directors of the Company agree to guarantee all the company debts to the Supplier, SAS as if it were their own personal debt and shall sign the Guarantee Form annexed to the Credit Application and SAS International (Australia) Pty Ltd Terms and Condition of Sale.

## 31. Force Majeure

Supplier, SAS shall not in any circumstances whatsoever be liable for any loss damage or injury (direct, indirect or consequential) howsoever caused arising from or otherwise in connection with any delay in shipment or delivery, or non-shipment or non-delivery of all or any part of the goods, or any other default or part thereof on the part of Supplier, SAS, or any other act or omission whatsoever of Supplier, SAS whether or not made under or pursuant to this quotation and terms and conditions of sale, caused or due (directly or indirectly) by or to the occurrence of any event of force majeure (hereinafter called 'Force Majeure') including without limitation any flood, drought, ice, frost, fog, wind, typhoon, hurricane, tidal wave, landslide, earthquake, or any other act of god, prohibition of export or import, refusal of or delay in the issue of export and/or license, law regulation order the direction or guidance by or of any government or instrumentality thereof, intervention of civil naval or military authorities, act of war or hostilities or the threat or apprehension thereof, warlike condition, riot or civil commotion, insurrection, mobilization, revolution, blockade, embargo, strike, lockout, slowdown, stoppage or restraint of labour from whatsoever cause whether partial or general, arrest or restraint of princes rulers or people, seizure under legal process, sabotage, fire, explosion, plague, or other epidemic, quarantine, prolonged failure or shortage of electric current, shortage of petroleum products fuel or energy sources or other raw materials, accidents to or breakdown of machinery or plant, unavailability or shortage of shipping space or transportation facilities, port facilities or loading or unloading facilities, perils of the seas, accident of navigation, act or omission (whether or not due to negligence) or any carrier of it's agents or servants in the navigation or management of the ship or any other mode of transport, act of neglect or default of any carrier shipper consignee manufacturer Supplier, SAS forwarding or transport agent of the commodity, or any other event of whatsoever find or nature the occurrence of which shall be or was beyond the reasonable control of SAS, the manufacturer or any other person, firm or company directly or indirectly connected with the sale, manufacture, shipment or delivery of the goods.

In the occurrence of any Force Majeure, Supplier, SAS shall have the option to:

- i. Extend the time of delivery and/or shipment of the goods or part thereof or time or performance of other obligations under this contract during such period as the event of Force Majeure shall exist or continue

- ii. Terminate unconditionally this contract partially or wholly. In the event of Supplier, SAS exercising any such option, the buyer shall accept such extension of time or termination, without any claim whatsoever against Supplier, SAS or its Supplier.

### 32. Jurisdiction

The Customer hereby submits to non-exclusive jurisdiction of the Courts of the State or Territory of Australia within which the Supplier, SAS has received this Credit Application.

### 33. Charge

The Customer hereby charges in favour of the Supplier, SAS all of its estate and interest in any real and personal property that it owns either beneficially and/or as trustee of any trust at present and in the future with due payment to the Supplier, SAS of all monies that may become payable to the Supplier, SAS by virtue of this Credit Application or otherwise arising from the Supplier, SAS providing credit to the Customer prior to or after the date hereof and hereby irrevocably appoints as its duly constituted attorney any of the Supplier, SAS's directors, secretaries, employees or solicitors nominated by the Supplier, SAS from time to time to execute in the Customer's name, and as the Customer's act and deed, any real property mortgage, bill of sale or consent to any caveat the Supplier, SAS may choose to lodge against real property that the Customer may own in any Land Titles Office in any State or Territory of Australia even though the Customer may not have defaulted in carrying out its obligations hereunder.

### 34. Notices

Any Notice given under these Terms and Conditions shall be given in writing and delivered, mailed or faxed to the respective parties at their address set out in any Application for Commercial Credit or at such other address as either party may designate to the other, by notice, in writing.

### 35. Australian Consumer Law

The goods supplied by the Supplier, SAS come with guarantees that, on or after 1 January 2012, cannot be excluded under the Australian Consumer Law ("ACL").

- (a) On or after 1 January 2012, the Customer is entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. The Customer is also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure. This is without prejudice to any abatement of price or other settlement the Customer and Supplier, SAS may agree in writing to accept in full and final satisfaction of any objection in which case no additional claims of any nature whatsoever may be made against the Supplier, SAS.
- (b) On or before 31 December 2011, in the event of justified objection notified by the Customer to Supplier, SAS the determination of which shall be in Supplier, SAS 's absolute discretion, in accordance with these terms, Supplier, SAS may, at its absolute option:
  1. reduce the purchase price by agreement with the Customer;
  2. accept the return of the goods and, subject to the goods being returned in the same condition as when they were delivered to the Customer, refund to the Customer the purchase price; or
  3. replace the goods

and no additional claims of any nature whatsoever may be made against Supplier, SAS.

- (c) Where this New Account/Credit Application and Agreement and Customer! Directors' Guarantee is executed simultaneous to or in contemplation of a General Deed of Guarantee and Indemnity, then they shall be read together, to the extent of any inconsistency between this document and the General Deed of Guarantee and Indemnity, this document shall prevail. This document together with any General Deed of Guarantee and Indemnity (if any) constitutes the entire agreement of the parties and supersedes any other prior writing or agreement or representation.

### 36. Permission

I/We consent to Supplier, SAS (as named in the Terms and Conditions of Sale the Supplier, SAS)

- a) Making such enquiries as the Supplier deems necessary including but not limited to obtaining reports from persons nominated as trade credit referees, bankers and financiers. Credit providers, mortgage and trade insurers and credit agencies ("the information Sources")
- b) Obtaining from the information sources such as required by the Supplier, SAS.
- c) Disclosing the content of any report from an information source in whole or in part to any credit reporting agency for the purpose of allowing that credit reporting agency to create or add to any credit information file or database in relation to me/us.

### 37. Acceptance / Acknowledgment by Customer for Credit

I / We authorise Supplier, SAS

- a) to obtain from a credit reporting agency a credit report containing personal information about me/us containing consumer credit information in order to assess my/our application for credit. (Section 18K(l)(b) Privacy Act 1988)
- b) to obtain a report containing information about my/our commercial activities or commercial creditworthiness from a business that provides information about the commercial creditworthiness of a person/entity in order to assess my/our application for credit. (Section 18L(4) Privacy Act 1988)
- c) to give to and obtain from credit providers named in my/our application and with any credit provider that may be named in a credit report issued by a credit reporting agency personal information about me/us. (Section 18N(l)(b) Privacy Act 1988.)

- i. I / We acknowledge that this information can include any information about my creditworthiness, credit standing, credit history, or credit capacity that credit providers are allowed to give or receive from each other under the Privacy Act 1988.





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- ii. I / We understand that the information may be given and used for purposes which include the following:
  - 1. to assess my/our creditworthiness
  - 2. to assess an application for credit by me/us
  - 3. to assist m/use to avoid defaulting on my/our credit obligations;
  - 4. to notify other credit providers of a default by me/us
- d) I authorise SAS to carry out all and any relevant searches under the Personal Property Securities Act 1999 (Cth) and to undertake registration and discharge of any interest as necessary pursuant to this new account/credit application terms and conditions.