

**Spectrum Aluminium (2011) Limited**  
(hereafter called the company)  
Sale with reservation of ownership  
**Conditions of sale**

**1. Payment**

- 1.1 Payment of the full amount of the invoice must be made by the 20<sup>th</sup> of the month following delivery.
- 1.2 Failure to pay on the due date will incur interest and liability pursuant to clause 4.
- 1.3 No retention by way of deduction or set off will be permitted, unless specified and agreed upon prior to any orders being accepted by the company.
- 1.4 The Company may, at any time, require the Customer to pay for goods by cash before delivery, or letter of credit or bank cheque or post dated cheque or secure payment for goods by way of an assignment of debt, an instrument by way of security, a mortgage or agreement to a mortgage, or in any other manner whatsoever.

**2. Ownership**

- 2.1 Risk in any goods supplied by the Company to the Customer shall pass when such goods are delivered to the Customer or into custody on the Customer's behalf.
- 2.2 The Customer shall keep all goods supplied to it by the Company separately identified from all other goods until such time as they have been paid for.
- 2.3 The Company shall have the right to enter onto the premises of the Customer at any time to inspect the unsold goods.
- 2.4 Subject to clause 2.7 the Customer shall have the right to undisturbed possession of the goods. In the event that the goods recovered have been damaged or have suffered a loss in value the Company shall be entitled to be compensated by the Customer for such damage or loss of value.
- 2.5 The Customer shall have the right to sell the goods prior to making payment to the Company for them but in doing so the Customer will be deemed to be acting as mercantile agent for the Company and shall hold the proceeds of sale (less reasonable commission) in trust for the Company and will, on demand of the Company, provide full details of all sales so made and the account in which those proceeds are held.
- 2.6 The conditions of sale shall apply notwithstanding that the goods may be amalgamated with or attached to other goods.
- 2.7 The Company and its agents shall at all times have the right to enter the Customer's premises without notice to take possession of any goods in which ownership has been retained under these conditions of sale.
- 2.8 Cancellation of an order will only be accepted by the Company if:
  - a) The company has received written notice of cancellation prior to the commencement of production of the Goods; and
  - b) The Goods from part of the Company's stock and trade and are not custom made.

**3. Liability**

- 3.1 No warranty or assurance whether express or implied is given by the Company that goods and/or services are fit for any particular purpose to which they may be put or utilised by the Customer or any third party, other than to the extent specifically agreed in writing between the Company and the Customer.
- 3.2 The Company shall not be liable for any act, omission, or failure (and the consequences thereof) to perform any term or condition entered into between the Company and the Customer if such act, omission, or failure arises from any cause reasonably beyond the control of the Company and without limiting the generality the foregoing are acknowledged as being reasonable beyond the control of the Company.
  - a) Any latent defect in any product supplied to the Company;
  - b) Any error in any information or specification supplied by the Customer by the Company and relied upon by the Company in the provision of goods and/or services to the Customer.
  - c) Any failure by the Customer to supply to the Company any information or specifications agreed or ordinarily required by the Customer to enable the Company to supply goods and/or services to the Customer.
  - d) The physical state and composition of any equipment, machinery, building or structure into or onto which any goods and/or in respect of which services are supplied by the Company;
  - e) Any event in the nature of Act of God.
- 3.3 In addition to clause 3.2 the Company shall not be liable for any loss, damage, injury or claim of any kind (whether direct, indirect, consequential or special) however caused (whether arising in contract, tort or otherwise) suffered by or made against the customer or any third party and arising in connection with or flowing from any goods, service or information supplied or the use or disclosure of any such information by the Company.
- 3.4 Notwithstanding clauses 3.2 and 3.3, in the event that the Company is found to be liable for any loss, damage, injury or claim of any kind including but not limited to the subject matter of clauses 3.2 and 3.3, then the liability of the Company whether negligence or in any other circumstances whatsoever arising under this contact or otherwise in connection with goods and/or services supplied shall not in any event exceed the cost to the Customer of the relevant goods and/or service or at the sole discretion of the Company the replacement or re-provision of such goods or services but in no circumstances whatsoever shall the Company be liable to the Customer for any consequential, incidental or special loss or damage.
- 3.5 If the Customer fails or refuses to take delivery of the Goods, the Company may (without limiting any other rights it may have) charge the Customer for any expenses or additional costs incurred by the Company as a result of the delay.

**4. Late Payment**

- If the goods are not paid for in full by the due date the Company may:
- 4.1 Forfeit any discount agreed to between the Company and the Customer.
  - 4.2 Charge the Customer interest (plus GST calculated thereon) if applicable calculated on a daily basis billable monthly on the outstanding balance of the debt from due date until payment in full is made. Interest charged will be at a rate of 1.5% per calendar month or such other rate as notified to the Customer by the Company from time to time.
  - 4.3 Charge the Customer on a full indemnity basis the cost of:
    - a) recovering or attempting to recover any outstanding debt.
    - b) repossessing or attempting to repossess any goods eligible for repossession pursuant to these Terms of Trade;
    - c) imposing or executing or attempting to impose and execute a possessory lien against any property of the Customer eligible for such imposition and execution pursuant to these Terms of Trade; cost charged pursuant to this sub clause shall be payable up on demand and in the absence of such payment shall bear interest upon and subject to the same terms as apply to the failure by the Customer to comply with payments for goods supplied by due date.
  - 4.4 Stop supplying further goods to the Customer whilst monies remain owing to the Company beyond due date. The foregoing entitlement of the Company to suspend supplies of goods shall apply not withstanding contractual arrangement between the Company and the Customer in the contrary
  - 4.5 If 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 of otherwise) appointed in place under statutory of official management, or any equivalent or analogous event occurs under the law of any jurisdiction in which the Customer is incorporated, domiciled, resident or carries on business or has assets,

**Then:**

- i) The company may cancel any outstanding order with the Customer (without prejudice to the Company's other remedies);
- ii) All amounts owing to the Company, whether due for payment or not, will immediately become due and payable; and
- iii) The Company may repossess and dispose for its own benefit any Goods in the Customer's possession or control which have been supplied by the Company and for such purpose the Company 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 anyway, being liable to any person.

**5. CONSUMER GUARANTEES ACT**

- 5.1 The Customer acknowledges that unless the Company is notified to the contrary in Writing the Customer is acquiring goods from the Company for the purpose of a business and agrees with the Company that the statutory guarantees as contained in the Consumer Guarantees Act 1993 are excluded accordingly.
- 5.2 Not withstanding any provision contained in these Terms of Trade to the contrary, where a Customer is not acquiring goods from the company for the purpose of a business, the statutory guarantees contained in the Consumer Guarantees Act 1993 will apply to the goods supplied by the Company and any restriction of liability imposed or sought to be imposed by the Company pursuant to these terms of trade is expressly excluded to the extent that some are inconsistent with the statutory guarantees contained in the Consumer Guarantees Act 1993.
- 5.3 Where a Customer is not acquiring goods from the Company for the purpose of a business the Customer acknowledges:
  - a) Receipt of a copy of these Terms of Trade
  - b) Receipt of oral advise from the Company relating to the effect and operation of clause 2 of these Terms of Trade to the effect that:
    - 1) the Company reserves the right to attach a possessory lien against goods, owned by the Customer and in the possession of the Company in respect of which invoices for the provision of such goods by the Company remain unpaid;
    - 11) the Company retains title to goods supplied until such goods are paid in full; and that such retention of title and lien entitlement limits the Customer's right to undisturbed possession of such goods accordingly.

**6. SEVERABILITY OF TERMS**

- 6.1 Any part of these conditions are several and if any provision herein is held to be illegal or unenforceable for any reason, such illegality or unenforceability shall effect only that portion of these conditions which is in conflict and the remainder of these conditions that shall remain in full force and effect.
- 6.2 If at anytime the Company does not enforce any of these terms of sale or grants the Customer time or other indulgence, the Company will not be construed as having waived that term or its rights to later enforce that or any other term.
- 7. **Personal Guarantee of Company Directors or Trustees:**
  - a) If the Buyer is a company or trust, the director(s) or trustee(s) signing this contract, in consideration for the Supplier agreeing to supply Goods and Services and grant Credit to the Buyer at their request, also sign this contract In their personal capacity and jointly and severally personally undertake as principal debtors to the Supplier

The payment of any and all monies now or hereafter owed by the Buyer to the Supplier and indemnify the Supplier against non-payment by the Buyer. Any personal liability of a signatory hereto shall not exclude the Buyer in any way whatsoever from the liabilities and obligations contained in this contract.

The signatories and Buyer shall be jointly and severally liable under the terms and conditions of this contract and for payment of all sums due hereunder.

<i>I/we declare that I/we have read and understand your Terms and Conditions of Sale and agree to abide by them.</i>			
<i>AUTHORISED APPLICANTS FULL NAME</i>	<b>SIGNATURE</b>	<b>POSITION</b>	<b>DATE</b>