

NOVA

ALUMINIUM SYSTEMS

NOVA ALUMINIUM SYSTEMS LIMITED
11 LAWFORDS GATE, ST. JUDES, BRISTOL BS2 0DY
TELEPHONE: 0117 955 6463 FAX: 0117 955 6472
sales@nova-aluminium.com

GENERAL

In these Conditions 'the Seller' means 'Nova Aluminium Systems Limited' 'the Buyer' means the person to whom the goods are to be invoiced and (unless the context otherwise requires) any person to whom or for the benefit of whom the goods may be delivered and 'the Goods' means the goods which are the subject of this contract.

1. CONTRACT

- (a) These conditions are the only express conditions upon which the Seller is prepared to deal with the Buyer and they shall govern this contract to the entire exclusion of any other expenses or implied conditions.
- (b) The Seller shall sell and the Buyer shall purchase the goods on the basis of these Terms and Conditions which shall govern the contract to the exclusion of any other terms and conditions which the Buyer may purport to impose subsequently. No variation to these Conditions shall be binding unless agreed in writing between the authorized representatives of the Buyer and the Seller.
- (c) If the Buyer submits any document containing terms inconsistent with or purporting to override these Conditions then these Conditions shall prevail.

2. PRICE VARIATION

The Seller reserves the right, by written notice at any time before despatch, to vary the price of the Goods to take account of any increases in the costs of materials, manufacture, packing, transport or wages. The price of the goods is exclusive of Value Added Tax or any other tax duty tariff or charge arising in the United Kingdom or elsewhere which shall be borne by the Buyer.

3. PAYMENT

- (a) Unless the Seller otherwise agrees payment is due in full within 30 days of invoice. In respect of this Contract or any particular part of this Contract.
- (b) If payment is not made in accordance with these terms, or if at any time the credit standing of the Buyer has (in the opinion of the Seller) been impaired, the Seller may refuse delivery of any Goods required under the Contract until arrangements as to payment or credit have been established which are reasonably satisfactory to the Seller.
- (c) The Seller shall be entitled to charge simple interest on any part of the price of the goods which is not paid by its due date from that date until payment at the rate of 4% over the base rate of HSBC Bank Plc for the time being.
- (d) The time mentioned above for payment for goods is of the essence of this Contract.

4. DELIVERY

- (a) Unless the Seller otherwise agrees, delivery shall be made to the Buyers site.
- (b) Stated delivery times are estimates only and shall not be binding upon the Seller which shall not be liable for any costs or damage caused by reason of any delay in delivery. Time of delivery shall not therefore be of the essence of the Contract and the Buyer shall accept delivery of the goods when tendered.
- (c) Where postponement of delivery is agreed by the Seller or occasioned by the Buyer, the Buyer shall if required by the Seller pay all costs and expenses incurred by the Seller (including a reasonable charge for storage of Goods) occasioned thereby but the Goods shall be held at the Buyers risk as from the date of the postponement.

5. PASSING OF RISK

The risk in the goods shall pass to the Buyer when the Goods are tendered for delivery at the Buyer's site. In the event that the Goods are collected by the Buyer from the Seller's site the risk in the Goods shall pass to the Buyer when they are tendered by the Seller for collection by the Buyer or his carrier or other agent.

6. PASSING OF TITLE

Until full payment has been made of all monies outstanding on any account from the Buyer to the Seller;

- (i) the property of the Goods shall remain in the Seller;
- (ii) the Buyer shall keep and store the Goods in such a manner that they can be identified as being the property of the Seller.

8. WARRANTIES AND LIABILITY

8.1 Subject to the conditions set out below the Seller warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of 6 months from the date of their initial use or 6 months from delivery, whichever is the first to expire.

8.2 The above warranty is given by the Seller subject to the following conditions;

- 8.2.1 The Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;
- 8.2.2 The Seller shall be under no liability in respect of any defect arising from fair wear and tear, willful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration or repair of the goods without the Seller's approval;
- 8.2.3 The Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment.
- 8.2.4 The above warranty does not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller.

8.3 Subject as expressly provided in these conditions, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

8.4 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 3 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after the discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

8.5 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Seller in accordance with these Conditions, the Seller shall be entitled to replace the Goods (or the part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), but the Seller shall have no further liability to the Buyer.

8.6 Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any indirect, special or consequential loss or damage (whether for loss of profit or otherwise), costs, expenses, or other claims for compensation whatsoever (whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, and the entire liability of the Seller under or in connection with the Contract shall not exceed the price of the Goods, except as expressly provided in these conditions.

8.7 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control.

9. NOTICE OF NON-DELIVERY

- (a) The provisions of paragraphs (b) and (c) below shall apply where the Buyer alleges that the quantity of Goods delivered does not correspond with the quantity stated on the Delivery Note.
- (b) The Buyer shall have no claim upon the ground mentioned in paragraph (a) unless:
 - (i) the receipt for the Goods is qualified by a remark to that effect; and
 - (ii) The claim is made upon the Seller within 48 hours of order/delivery and is confirmed in writing by letter received by the Seller within 3 days of delivery.
- (c) In no circumstances shall any of the Goods be returned to the Seller without its prior written consent.

10. INDEMNITY

10.1 If any claim is made against the Buyer that the Goods infringe or that their use or resale infringes the patent, copyright, design, trade mark or other industrial or intellectual property rights or any other person, then unless the claim arises from the use of any drawing, design or specification supplied by the Buyer, the Seller shall indemnify the Buyer against all loss, damages, costs and expenses awarded against or incurred by the Buyer in connection with the claim, or paid or agreed to be paid by the Buyer in settlement of the claim, provide that:

10.1.1 The Seller is given full control of any proceedings or negotiations in connection with any such claim;

10.1.2 The Buyer shall give the Seller all reasonable assistance for the purposes of any such proceedings or negotiations;

10.1.3 except pursuant to a final award, the Buyer shall not pay or accept any such claim, or compromise any such proceedings without the consent of the Seller (which shall not be unreasonably withheld);

10.1.4 the Buyer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Buyer may have in relation to such infringement, and this indemnity shall not apply to the extent that the Buyer recovers any sums under any such policy or cover (which the Buyer shall use its best endeavours to do);

10.1.5 the Seller shall be entitled to the benefit of, and the Buyer shall accordingly account to the Seller for, all damages and costs (if any) awarded in favour of the Buyer which are payable by, or agreed with the consent of the Buyer (which consent shall not be unreasonably withheld) to be paid by, any other party in respect of any such claim; and

10.1.6 Without prejudice to any duty of the Buyer at common law, the Seller shall be entitled to require the Buyer to take such steps as the Seller may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which the Seller is liable to indemnify the Buyer under this clause.

11. FORCE MAJEURE

The Seller shall not be liable for any loss or damage caused by delay in the performance or non-performance of any of its obligations hereunder where the same is occasioned by any cause whatsoever that is beyond the Seller's control including but not limited to an Act of God, War, Civil Disturbance, Requisitioning, Government or Parliamentary restrictions, prohibitions or enactment of any kind; import or export regulations, strike, lock-out, or trade dispute (whether involving its own employees or those of any other person); difficulties in obtaining workmen or materials; breakdown of machinery; fire, or accident. Should any such event occur the Seller may cancel or suspend this contract without incurring any liability for any loss or damage thereby occasioned.

12. ASSIGNMENT

This contract is personal to the Buyer and may only be assigned by it with the prior written consent of the Seller.

13. EXPORT

- (a) These Conditions shall apply to all export sales except as varied in the Seller's Acknowledgement of Order.
- (b) It is hereby expressly agreed that the Uniform Law on International Sales shall not apply to this Contract.
- (c) Where Goods are to be delivered outside the United Kingdom:
 - (i) Payment shall be made in the manner specified on the Acknowledgement of Order.
 - (ii) The Goods shall be delivered upon the terms specified in the Seller's Acknowledgement of Order.
 - (iii) The Buyer shall reimburse the Seller for any carriage, freight and insurance and other charges to the extent that any such costs incurred by the Seller are not included in the price of the Goods.

14. GOVERNING LAW

This contract and these conditions are governed in all respects by and in accordance with the Laws of England and the Buyer hereby submits to the non-exclusive jurisdiction of the English Courts.