

# CONDITIONS OF SALE

## 1. DEFINITION/INTERPRETATION

In these Conditions of Sale "we" and "us" and "ours" refers to Blairs Aluminium Limited, and "you" and "yours" refers to the customer of Blairs Aluminium Limited. Where the context so requires references to the singular shall include the plural and vice versa and references to one gender shall include all other genders. The headings shall not affect the interpretation of these Conditions of Sale.

## 2. CONTRACT

(a) Unless expressly agreed in writing by us these Conditions of Sale apply to all sales or agreements to sell our supplies of goods whether gratuitous or otherwise made by us or our subsidiary or associated companies in the course of trade. In the event of you using order forms or other documents which contain other terms and conditions those terms and conditions shall only be binding in so far as they are not at variance with these Conditions of Sale. For the avoidance of doubt it is confirmed that none of our servants or agents have authority to agree to any oral variation, qualification or addition to these Conditions of Sale and only written variations which have been signed by one of our Directors will be regarded as binding.

(b) The Contract, these Conditions of Sale and any special or additional additions agreed by us will be governed by the law of Scotland and both parties prorate and agree to accept the jurisdiction of the courts of Scotland without prejudice to our right to invoke any competent jurisdiction elsewhere at our sole discretion.

## 3. PRICES

Prices quoted may be SUBJECT TO ALTERATION without notice in the event of a change in specification or of an increase in raw material or labour costs. Therefore we expressly reserve the right to increase prices to compensate for any rise in costs which may come into force between the date we accept your order and the delivery date. Our prices are nett of discount unless otherwise stated. They do not include:

- (a) Value Added Tax at the appropriate rate at the date of delivery.
- (b) Costs of any performance testing requested by you.

## 4. DELIVERY

- (a) We may deliver by part deliveries.
- (b) Each part delivery will be a separate and independent entity. The remainder of the contract cannot be cancelled if we are late or fail to deliver any part.
- (c) You will accept delivery within 7 days of our advice that your goods are ready. Otherwise we may charge you compound interest at 1.5% per month above the current Bank of Scotland base interest rate and a storage charge of 1% per month on the invoice value of the goods. Any delivery date quoted by us is given in good faith but must be regarded as approximate only and we cannot accept responsibility for any loss arising from a delay - unless one of our directors has agreed otherwise in writing. In no circumstances will liability be accepted by us for any delay, expense or damage caused by reason of (a) late, wrong, short or damaged delivery of goods by our suppliers or carriers or (b) shortage or lack of goods, labour or materials due to act of God, war, riot or civil commotion, strike, lockout or other industrial action, fire, flood, drought or any other causes whether or not of a similar kind which are beyond our control or (c) amendments or variations of any matters made at your request.

We cannot accept responsibility for faulty or damaged goods unless the DELIVERY NOTE IS SIGNED ACCORDINGLY and your claim is received by us in writing within 3 DAYS OF RECEIPT OF THE GOODS. If no claim has been received by us in writing within 3 days or if a clear receipt is given on the Delivery Note, you shall be deemed to have accepted the goods. You shall be responsible for all claims for demurrage.

## 5. PASSING OF RISK

Notwithstanding Condition 7 of these Conditions of Sale risk or loss or damage to the goods passes to you on delivery. We will not accept any claim for damage or loss of goods due to unloading or storage. If goods are collected from our premises risk passes to you when the goods are loaded on your or your carrier's vehicle.

## 6. PAYMENT

Payment is due on delivery of the goods by us, the execution of the work by us, or receipt by you of your invoice whichever is the earliest. If after the expiry of 30 days from the due date you have failed to pay our invoiced amount in full we will be entitled to (i) charge you compound interest at 1.5% per month above the Bank of Scotland base interest rate from that due date on the full amount or balance outstanding provided always that payment of such interest does not waive your responsibility to make payment on the due date or limit or prejudice any other act, right or remedy which may be competent to us whether by contract or otherwise in consequence of such delayed payment and (ii) withdraw any discount granted to you. We exclude any "pay when paid" practices. Further we shall be entitled at any time whilst payment is outstanding in respect of goods supplied which notice will specify the appropriation of such payment to the supply of any particular goods. Where an agreement has been made for payment by instalments payment of any instalment on the due date is Condition precedent to future performance of the Contract by us.

## 7. RETENTION OF TITLE

Until you have paid us the full purchase price of the goods which are subject of this contract and all other interest and charges payable under these Conditions of Sale and all other sums due to us in respect of any other goods supplied by us to you under any other contract.

- (a) The ownership of the goods shall not pass to you.
- (b) You shall hold the goods only as agent for us and will store the goods at no cost to us so that they are clearly identified as belonging to us.
- (c) You shall not remove the goods or allow them to be removed from the address to which they are delivered and shall keep the goods in good condition and properly insured and shall not allow them to become the subject of any charge of lien whether by operation or law or otherwise.
- (d) You may sell the goods in the ordinary course of your business (but not otherwise) to a Bona Fide purchaser and the proceeds of such sale or your claim for such proceeds shall be held by you as our agent until full payment to us has been made and our property in the goods that have been resold shall be transferred from the goods to the proceeds of such resale or the claim for such proceeds and shall attach thereto until payment of all sums due to us as foreshad has been received, further, if in the event of such resale, you are unable for any reason to immediately remit the proceeds of such resale to us then you will arrange for those proceeds to be credited to a separate bank account opened by you as our agent until payment of the said proceeds to us; if requested so to do you will execute a formal assignment in our favour of all claims you may have against the sub-purchaser.
- (e) We reserve the right at any time to terminate your power of sale by notice to you if you are in default for longer than seven days in the payment of any sum whatsoever due to us for whatsoever reason or if we (in our sole discretion) have doubts as to your solvency.
- (f) Your power of sale shall automatically terminate if you become apparently insolvent as defined in Section 7(1) of the Bankruptcy (Scotland) Act 1985 or the subject of liquidation, bankruptcy or other insolvency procedures or a receiver or administrator is appointed over any of your assets or you make any arrangement or composition with creditors.
- (g) If the power of Sale is so terminated you shall immediately make the goods available for collection by us and you hereby authorise us to enter any premises occupied or owned by you for the purpose of recovering the goods.

## 8. MEASUREMENTS

The taking of size is your responsibility. We shall provide advice, but this in no way absolves you of responsibility for supplying accurate measurements. Advice is offered free but abortive time incurred will be charged plus expenses.



## 9. ACKNOWLEDGEMENTS

If you have not completed and signed a Quotation Acceptance Form, you will receive an acknowledgement of order. You are responsible for checking the acknowledgement to ensure that your requirements are being met and signing it as evidence thereof. Any variation must be notified in writing to us within 3 days of receipt of the acknowledgement otherwise we will accept no claim arising from any variation.

## 10. TECHNICAL DATA/REPRESENTATIONS

Descriptions, weights, dimensions, colours, prices, illustrations, etc., in our sales literature or in any correspondence preceding this contract are solely for information and do not imply any warranty. Our agents and employees are not authorised to make any representations as to the quality, or fitness for any particular purpose, of any goods. If any representation is made, or opinion expressed, by any such agent or employee is a material matter you shall ensure that it is confirmed in writing at the time the Contract between us is entered into, failing which we can accept no liability therefore.

## 11. LIABILITY FOR DEFECTS

- (a) WE CANNOT ACCEPT RESPONSIBILITY for faulty material where it has been fitted, fixed, painted or in any way altered, nor can such goods be accepted back or replaced by us. Liability shall be limited to REPLACEMENT OF DEFECTIVE MATERIAL and we shall in no circumstances whatsoever be liable, in contract or otherwise, for any loss, damage, expense or injury of any kind whatsoever whether consequential, direct, indirect or otherwise - however caused and whether arising out of or in connection with the installation, use or failure of the goods or any components comprised therein and whether or not due to our act or omission or that of our agents, employees or contractors. In any event our liability shall be restricted to the invoice value of the particular goods concerned.
- (b) When you claim that goods do not conform to your specification you must allow us the opportunity to inspect and test the goods.
- (c) We will decide what remedial work is necessary. No claim will be considered for work carried out by other parties without our prior approval.
- (d) Glazing work by others should conform to BS6262. No claim will be considered for damage to the goods when this requirement has not been met.
- (e) If our installation and operation instructions, when issued, are not followed, we will not accept claims for damage and reserve the right to charge for remedial works.
- (f) Where attachments are supplied for site fixing they are securely enclosed. Any deficiency should be notified to us in writing within 3 days of receipt.
- (g) No claim will be considered unless you have complied with all of the conditions of the Contract between us and you.
- (h) Except in the case of consumer sales the above provisions shall be accepted in substitution for and to the entire exclusion of all conditions and warranties whatsoever express or implied by Statute or Common Law or otherwise.

## 12. INVESTIGATION OF DEFECTS

If it is found after investigation that any defect is the result of circumstances outwith our control, we reserve the right to charge for the investigation and any remedial work required.

## 13. SUSPENSION OF DELIVERIES/PERFORMANCE

We may withdraw our quotation and/or withhold delivery of goods if any account is outstanding by you to an extent which we (in our sole discretion) regard to be unreasonable. If you shall default in or commit any breach of any of your obligations to us or commit an act of bankruptcy or commence liquidation or have a receiver or administrator appointed we shall thereupon become entitled but not bound without prejudice to our other claims and rights under the Contract to suspend further performance thereof for such time as we in our absolute discretion shall think fit or (whether or not notice of such suspension shall have been given) to treat the Contract as wrongfully repudiated by you and forthwith determine the same.

## 14. CANCELLATION OF ORDERS

Except where otherwise agreed in writing you shall be liable for the full price of all goods sold or agreed to be sold or supplied by us notwithstanding cancellation by you of such sale or agreement to sell or supply. Return of materials manufactured to your instruction will not be accepted.

## 15. CONTRA CHARGES

Contra charges ARE NOT ACCEPTED unless previously agreed in writing by a Director of ours and formally invoiced. If such charges are not agreed you shall have no right to set off other claims against, or withhold payment of sums due in terms of our invoice. Any money withheld by you under such circumstances will be subject to compound interest at 1.5% per month above the Clydesdale Bank base interest rate.

## 16. INDUSTRIAL RIGHTS

Our goods are subject to patent rights, registered design rights and copyright. Any infringement of these rights will render the perpetrator liable to legal action. You expressly indemnify us against any claim whatsoever in respect of liability for any infringement or alleged infringement of patent rights or other industrial or intellectual property rights resulting from our compliance with your express or implied instructions or stipulations.

## 17. SEVERABILITY OF CONDITIONS

For the purpose of this condition 17 an "unenforceable provision" is a provision of the Contract containing these Conditions of Sale which is reducible, invalid or unenforceable in terms of the Unfair Contract Terms Act 1977 or other similar legislation and each and every provision of any contract containing these Conditions of Sale or any of them shall be read (wherever possible) in relation to each and every individual case instanced by each and every individual word or combination of words contained in that provision as a combination of separable provisions and each and every such separable provisions shall be read as entirely independent and severable from the other or others. In all cases where an unenforceable provision forms part of the Contract between us and you the unenforceable provision shall not affect the validity of the remaining portion of the Contract which shall remain in full force and effect as if the Contract shall be deemed to have agreed that they would have executed the remaining portion of the Contract without including therein any such parts or portions which may be an unenforceable provision.

## 18. CONSUMER PROTECTION ACT 1987

Nothing in these Conditions of Sale is intended to or shall exclude or restrict any liability that we may have by virtue of the Consumer Protection Act 1987. In the event that any claim under the said Act shall be made against us in respect of goods supplied by us you shall:

- (i) Fully indemnify us against all costs, loss or damages and expense suffered or incurred by us in respect of any claims by third parties (which shall include your employees) which indemnity shall apply to any lawful claim made under the Consumer Protection Act 1987 and shall continue for a period equivalent to the maximum period during which a lawful claim can be made under the Act or any subsequent consolidating or amending legislation; and
- (ii) Provide us with all available records and documentation which is required to assist in identifying the destination of any goods supplied to you by us.