



81 Chimney Rock Road Bridgewater, NJ 08807

Sales Terms and Conditions

1. Agreement

Any term or condition of this Agreement shall supersede any term or condition of your purchase order and any conflicting or additional terms or conditions contained in your purchase order are hereby rejected. Our acceptance of your purchase order is conditioned upon your agreement that terms and conditions stated in this Agreement constitute the sole terms and conditions with respect to the sale and purchase of the product designated herein. All agreements predating this one between the parties hereto and relating to the sale and purchase of the product herein, including those covering credit terms, freight allowances and waivers of any other standard charges, are hereby declared void. No course of dealing, usage of trade or course of performance is relevant to explain or supplement any term hereof. This Agreement (including, without limitation, the specifications for the products being sold hereunder) shall not be amended, modified, canceled, or rescinded except in a writing signed by buyer and seller. This Agreement shall be interpreted and enforced in accordance with the laws of the state of New Jersey. The parties hereto consent to the exclusive jurisdiction of the Superior Court, Law Division of Somerset County, New Jersey or the United States District Court for the state of New Jersey in any and all actions and proceedings arising hereunder and waive the right to object that the venue or forum is improper or inconvenient. The parties hereto further consent to service of process by certified mail, return receipt requested to their respective addresses on the original invoice.

2. Price

Except as otherwise expressly provided on the original quote, all materials and products will be invoiced at seller's prices and charges in effect at the time of the shipment. Buyer agrees to accept all materials and products when available for shipment by Seller. If Buyer requests that such shipments be delayed for any reason and Seller, in Seller's sole discretion, agrees to delay such shipments, then Seller shall be entitled to increase the price to Buyer hereunder to reflect any increase in Seller's prices through the date of the shipment and any costs to Seller resulting from such delay.

3. Tolerances

The total order hereunder shall be subject to the standard quantity, specifications and dimension tolerances customary for the aluminum extrusion industry. Buyer shall pay Seller for all material within specified tolerance. Without limiting the generality of the foregoing, the applicable standard quantity tolerance stated below shall apply to each line item specified on the original invoice. Without limiting the generality of the foregoing, the applicable standard quantity tolerance stated below shall apply to each line item specified on the original invoice.

999 pounds or less- plus or minus 35%
1000 – 1999 pounds – plus or minus 15%
2000 pounds or more – plus or minus 10%

4. Payment

Except as otherwise expressly provided on the original invoice, invoices are payable only in United States dollars net 30 days from the date of the applicable invoice. Seller may from time-to-time demand different terms of payment from those specified in this Agreement, stop production or defer or decline to make any shipment pending receipt of current assurances acceptable to Seller of Buyer's financial responsibility. Further, Seller shall have no further obligation to continue production or to make any shipment if Buyer is overdue on any payments due from Buyer to Seller, whether under this Agreement or otherwise. Buyer agrees to pay all costs and expenses, including reasonable attorney's fees, incurred by Seller in the collection of any sum payable by Buyer to Seller, any overdue payment shall accrue interest at the lesser of 1 ½ % per month or the maximum interest rate permitted by applicable law.

5. Cancellation

Buyer acknowledges that the goods being manufactured hereunder are specifically for Buyer and, therefore, this agreement is not cancelable by Buyer.

6. Taxes

Applicable federal, state and local taxes now or hereinafter enacted, in connection with the purchase hereunder are not included in the price, are the sole responsibility of Buyer and whenever possible will be added to the invoice to be paid by Buyer unless, with respect to taxes due to a particular taxing authority, Buyer provides Seller with a valid tax exemption certificate number indicating that the sale of the product is not subject to such taxation. Failure of Seller to add any such taxes to an invoice shall not relieve Buyer of its obligation to pay such taxes.

7. Delivery

The delivery dates as agreed constitute good faith estimates only. Failure to deliver on the specified delivery dates shall not be cause for cancellation by Buyer or for assertion of damages, charges or liability of any kind whatsoever (including, without limitation, consequential damages) against Seller. Seller shall exercise its best efforts to notify Buyer of any material delay in delivery. Seller shall not be entitled to make partial shipments.

8. Warranty

At the time of shipment, Sellers's products covered by this Agreement will be free from defects in material and workmanship and shall conform to industry standards and to any written specifications referenced on the invoice. SELLER MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, STATUTORY, EXPRESSED OF IMPLIED, AND SELLER SPECIFICALLY NEGATES ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. Seller does not warrant that product covered by this Agreement are in conformance with federal, state or local laws, regulations or requirements and Buyer assumes all risk and liability for results obtained by the use of Sellers products covered by this Agreement, whether used singly or in combination with other products. Sellers's liability and Buyers remedies under this agreement shall be limited solely to, at Sellers option, the replacement or repair (reprocessing) of the products not complying with the warranty set forth in this paragraph, or the refunding of the purchase price of such faulty products or of products covered by this Agreement which are not delivered to Buyer. Sellers's liability hereunder shall not in any event exceed the purchase price of such faulty or non-delivered products. In the event Seller refunds to Buyer the purchase price of certain products, then such products will be returned to Seller or, at Sellers option, scrapped by Buyer with the scrap value being paid by Buyer to Seller. SELLER SHALL NOT BE LIABLE FOR ANY LOSS OF PROFIT, REVENUE OR BUSINESS OR FOR ANY INCIDENTAL, DIRECT, PERSONAL INJURY OR CONSEQUENTIAL DAMAGES. Buyer further acknowledges that, in the event Seller is painting, anodizing or performing other services on aluminum not extruded by Seller and during such processes, such aluminum is lost, damaged or otherwise rendered unusable, Buyer's remedy and Sellers's liability shall be limited solely to the return to Buyer of such aluminum not lost, damaged or otherwise unusable.

9. Claims

Any course of dealing between the parties to the contrary notwithstanding, all claims of any kind shall be deemed waived by Buyer unless made in writing within (30) days after delivery specifying any claimed defect or default. No inspection or investigation of claim by Seller occurring after the period specified shall be deemed a waiver of this provision. Products may be returned only after written notice and opportunity for inspection by Seller and upon receipt by Buyer of written authorization and definite shipping instructions from Seller.

10. Buyer's Design

Buyer has engaged Seller to manufacture material to Buyer's specifications and requirements. Buyer recognizes that the Seller is not responsible for the prints, drawings, specifications and requirements or for the design represented thereby and that materials with such design were requested and specified by the Buyer. Buyer is responsible for testing or otherwise determining the sufficiency and applicability of the design. Buyer recognizes that the Buyer and not the Seller, is responsible for determining the sufficiency and applicability of the material for the Buyer's intended use. Buyer represents that it is not relying on the skill or judgment of any person employed by the Seller in selecting work or furnishing goods suitable to Buyer's need and Buyer has not relied on any statement by any such person in connection with this sale. Buyer will defend, indemnify and hold Seller harmless from any claim, liability or damage arising in whole or in part from the insufficiency or unacceptability of the requested design and materials made with such design and Buyer's failure to test or determine the sufficiency or acceptability of the materials for the Buyer's intended use. The parties further hereby acknowledge and agree that Seller, as a sub-component supplier of extrusion to Buyer, shall bear no liability whatsoever for Buyer's ultimate part or component into which Seller's extrusions are incorporated. Buyer hereby agrees to release, indemnify, defend and hold Seller harmless for any warranty claims or causes of action arising out of the fabrication, manufacture, installation or use of the goods supplied hereunder.

11. Infringement

Buyer agrees to indemnify, defend, protect and save harmless Seller against all suits at law or in equity and from all attorney's fees, damages, claims and demands for actual or alleged infringement of any United States or foreign patent, copyright or trademark or other rights of any third party in connection with the manufacture, advertisement use or sale of any material, product, design, name or printed matter furnished, specified or designed pursuant to this agreement.

12. Equipment

Any equipment, jigs, tools or dies which Seller specifically constructs or acquires for use on Buyer's order shall be and remain Seller's property and in Seller's sole possession and control, regardless of whether some or all of the costs thereof are paid for by Buyer. When for three (3) consecutive years no goods are sold to Buyer which are made with any such equipment, Seller may dispose thereof as Seller desires without liability to Buyer.

13. Force Majeure

Seller shall not be liable for any failure to discharge its obligation hereunder due to strikes, labor shortages, differences with workmen, war, accidents, fires or other casualties, mechanical failure of machinery or equipment, shutdowns of its manufacturing plant or plants supplying it, orders or requirements of the United States government, embargoes, inability to secure transportation facilities, failure of the usual sources of supplies of raw materials, supplies and equipment, restrictions imposed by federal, state or local law, acts of God, acts of governmental authority, or other causes beyond the control of seller.

14. Government Contracts

Seller shall use its best efforts to comply with all provisions which are mandatorily imposed on Buyer by any applicable federal statute but only in the event Buyer has informed Seller in writing of all such requirements prior to the date hereof.

15. Non-Exclusive Remedies: Waiver

No remedy or right herein conferred upon, or reserved to, Seller is intended to be to the exclusion of any other remedy or right, but each and every such remedy or right shall be cumulative and shall be in addition to every other remedy or right hereunder or at law or in equity. Any failure or delay by Seller in exercising and right or remedy shall not constitute a waiver thereof.

16. Assignment

Any assignment of this Agreement, or any rights hereunder, by Buyer without written consent of Seller shall be void. This Agreement is for the exclusive benefit of Buyer and Seller and not for the benefit of, nor does it grant any rights to, any other person, corporation, firm, organization or entity.

17. No Cancellation

Buyer acknowledges that the goods being manufactured hereunder are specifically manufactured for Buyer and, therefore, this Agreement is not cancellable.