

## TERMS AND CONDITIONS OF SALE

- 1 Dubai Aluminium ("DUBAL") agrees to sell to Purchaser according to these terms and conditions of sale ("Conditions"), which, along with DUBAL's sales contract or other documentation (if attached hereto shall constitute the entire contract between DUBAL and Purchaser with respect to the purchase of the Products to the exclusion of all other documents ("Contract"). To the extent of any inconsistency between these Conditions and DUBAL's sales contract, the provisions of DUBAL's sales contract shall prevail. By signing and returning DUBAL's sales contract to DUBAL or by purchasing the Products, Purchaser is accepting these Conditions. In these Conditions, "Purchaser" shall have the meaning specified in DUBAL's sales contract and "Products" shall mean the products described under the heading **Material Details** in DUBAL's sales contract.
- 2 To the extent permitted by applicable laws, DUBAL and Purchaser (together the "Parties"), shall not be bound by or liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth in the Contract unless such statement, representation, promise, inducement or understanding was made fraudulently or was to a fundamental matter including a matter fundamental to DUBAL's ability to perform its obligations under the Contract and Purchaser's only remedies shall be for breach of contract as provided for in these Conditions. Any specifications, terms and conditions, documentation and instructions that, pursuant to clause 1, do not form part of the Contract shall be deemed to have no application. If it is found necessary to make any alterations to the Contract this shall be done by written amendment. Any variation to these conditions (including any special terms and conditions agreed between the Parties) shall be inapplicable unless first agreed in writing by DUBAL.
- 3 **Title and Ownership**
- 3.1 The Products shall remain the property of DUBAL until any and all claims of DUBAL arising under its business relationship with Purchaser have been paid in full (including all cheques and negotiable instruments) (the "Relevant Date") ("Products Subject to Retention of Title").
- 3.2 Prior to the Relevant Date Purchaser shall maintain in its custody an inventory of the Products and the Products shall be prominently identifiable at all times. Purchaser shall, so far as reasonably practicable, store the Products separately from similar goods of the Purchaser, mark the Products as the property of DUBAL (if not already marked by DUBAL) and shall not remove, obliterate or in any manner alter any label, mark or other means DUBAL may have of identifying the Products.
- 3.3 In the case of current accounts, this retention of title shall be deemed to be security of the claim for the balance to which DUBAL is entitled.
- 3.4 Purchaser shall only be allowed to sell the Products Subject to Retention of Title within normal and proper business transactions. Purchaser is not entitled to pledge the Products Subject to Retention of Title, grant chattel mortgages on them or make other dispositions endangering DUBAL's title to such Products. Purchaser hereby assigns its claim under the resale of the Products to DUBAL, and DUBAL hereby accepts such assignment. Should Purchaser sell the Products Subject to Retention of Title after processing or transformation or joining or mixing of such Products with other products or together with other products, this assignment of claim shall only be agreed to in the amount of the portion equivalent to the price agreed to between DUBAL and Purchaser plus a safety margin of 10% (ten per cent) of this price. Purchaser is granted the revocable authorisation to collect in trust the claims assigned to DUBAL in its own name. DUBAL may revoke such authorisation and the right to resell the Products if Purchaser is in default of the performance of material obligations such as making payment to DUBAL.
- 3.5 Any processing or transformation of the Products Subject to Retention of Title by Purchaser shall always be performed for DUBAL. If Products Subject to Retention of Title are processed with other products, DUBAL shall acquire joint ownership of the new products in the ratio of the value of the Products Subject to Retention of Title to the other processed products at the time of processing. The new products created by way of processing shall be subject to the same provisions as applicable to the Products Subject to Retention of Title.
- 3.6 Should the Products Subject to Retention of Title be joined or mixed with other products, DUBAL shall acquire joint ownership of the new products in the ratio of the value of the Products Subject to Retention of Title to the other products at the date of joining or mixing. Should the joining or mixing of the products occur in such manner that Purchaser's products are to be viewed as the main products, it shall be deemed to be agreed that Purchaser assigns proportionate joint ownership to DUBAL. Purchaser shall hold the joint ownership created in such manner in custody for DUBAL.
- 3.7 Purchaser shall provide DUBAL at all times with all desired information concerning the Products Subject to Retention of Title or claims assigned to DUBAL under the Contract. Purchaser shall immediately notify DUBAL of any attachments of or claims to the Products Subject to Retention of Title by third parties and shall provide the necessary documents in this regard. Purchaser shall at the same time advise the third party of DUBAL's retention of title. The costs of a defense against attachments and claims shall be borne by Purchaser.
- 3.8 Purchaser assigns its claims from the Products Subject to Retention of Title - also processed ones - with all ancillary and security rights as well as all balance claims from current accounts as a security to DUBAL, which accepts them. Until revocation, without prejudice to Purchaser's right to collect, Purchaser is entitled to collect the claims in its own name as long as and insofar as it fulfills its contractual duties towards DUBAL in a timely manner; however it is not entitled to factoring with regard to the assigned claims. It shall inform DUBAL upon request about sales with indication of the invoiced amount and naming of the customer, including address.
- 3.9 Purchaser is obliged to treat the Products Subject to Retention of Title with care for the duration of the retention of title.
- 3.10 Should the realisable value of the Products Subject to Retention of Title exceed all of DUBAL's claims that are to be secured by more than 10% (ten per cent), DUBAL shall be entitled to demand a release to such extent.
- 3.11 Should Purchaser be in default of material obligations such as payment to DUBAL, and should DUBAL rescind the contract, DUBAL may, notwithstanding any other rights, request surrender of the Products Subject to Retention of Title and may make use of them otherwise for the purpose of satisfying its matured claims against Purchaser. In such case, Purchaser shall grant DUBAL or DUBAL's agents immediate access to the Products Subject to Retention of Title and surrender the same.
- 3.12 In the case of deliveries to jurisdictions in which any of the foregoing provisions governing the retention of title do not have sufficient security effect, Purchaser shall do everything to create equivalent security rights for DUBAL without undue delay. Purchaser shall cooperate in all measures such as registration, publication, etc. that are necessary and beneficial to the validity and enforceability of such security rights.
- 3.13 Purchaser is obliged to appropriately insure the Products Subject to Retention of Title and upon DUBAL's demand provide DUBAL with the respective proof of such insurance and assign the claims arising under such insurance to DUBAL.
- 4 The Products shall be delivered upon the delivery terms (Incoterms 2010 unless otherwise stated) specified in DUBAL's sales contract. Risk in the Products and all liabilities to third parties thereof shall pass to the Purchaser upon delivery according to said named Incoterms. At the time of despatch of any Products to be delivered elsewhere than at DUBAL's works or FOB, FCA or FAS (Incoterms 2010), DUBAL will notify Purchaser of the estimated date of arrival thereof. Taxes and duties incurred solely by reason of export of the Products from the United Arab Emirates shall be borne by DUBAL and all other duties, taxes, levies or impositions whatsoever shall be borne by Purchaser (at the applicable rate on the relevant date(s)). If applicable, DUBAL may charge Purchaser a financial arrangement fee for any forward price fixing, hedging or any other usance costs, which fee shall be included in the price quoted in DUBAL's sales contract. In the event of any inconsistency between the Contract and Incoterms 2010, the Contract prevails. The United Nations Convention on Contracts for the International Sale of Goods 1980 does not apply to the Contract.
- 5 DUBAL shall make all reasonable endeavours to deliver the Products within the time or times specified in the Contract. DUBAL shall in no event be liable to the Purchaser for any loss or damage resulting directly or indirectly from late delivery of the Products. Purchaser must accept and pay for the Products even if DUBAL delivers late. The delivery may exceed or fall short of the stipulated quantity in accordance with DUBAL's standard shipping tolerance of  $\pm 5\%$  (plus/minus five per cent) and the Purchaser shall accept such different quantity and the Contract price shall be adjusted accordingly. If DUBAL delivers a quantity of Products in excess of  $+5\%$  (plus five per cent) Purchaser may accept such excess quantity but must pay for it at the contract rate.
- 6 DUBAL shall attach with each delivery an Analysis Certificate, Shipping List and Weight Certificate (as appropriate and contained in one document). If Products are not delivered or upon delivery are found to be damaged or there is a discrepancy by comparison with the weight stated in the aforesaid Weight Certificate, DUBAL shall not be liable unless: (a) in the case of damaged Products or a discrepancy in weight, Purchaser gives written notice to DUBAL and the carrier within 7 (seven) days of receipt of the Products by Purchaser and gives DUBAL a reasonable opportunity to inspect the Products in the state and condition (and location in case of damaged Products) in which they were delivered; or (b) in the case of non delivery, Purchaser gives written notice to DUBAL and the carrier within 14 (fourteen) days of aforesaid estimated date of arrival. In the case where DUBAL concludes the contract for carriage of the Products and/or arrangements for the insurance of the Products during transit, subsections (2) and (3) of Section 32 of the Sale of Goods Act 1979 shall not be applicable and DUBAL may insure the Products on such terms as it sees fit. DUBAL shall charge to Purchaser any costs incurred by DUBAL as a result of vehicle or wagon detention, demurrage of ships, warehousing (including charges for storage in DUBAL's own warehouse), insurance and/or handling in consequence of any act or omission of Purchaser or its servants or agents or as a result of special requirements or stipulations of Purchaser not provided for in the Contract.
- 7 Upon giving notice to Purchaser, DUBAL shall be entitled to suspend delivery and then to recommence delivery or instead of after such suspension to cancel or rescind the Contract in whole or in part without liability for loss or damage resulting therefrom if: (a) the performance of its obligations under the Contract or its ability to manufacture the Products is in any way affected by any event beyond DUBAL's reasonable control including (but not limited to) act of God, fire, flood, act of government or state, war, act of terrorism, civil commotion, insurrection, embargo, prevention from obtaining/shortage of any raw material or power, failure of any operating requirement and labour dispute, lockout or strike (a "Force Majeure event"); (b) if Purchaser shall commit any breach of any term hereof (including without limitation any term concerning the time for payment) of the whole or any part of the purchase price of the Products) or of any other contract between Purchaser and DUBAL (provided that if such breach is remediable DUBAL has previously given Purchaser notice thereof and the same has not been remedied within 7 (seven) days thereafter); (c) if Purchaser (i) makes or proposes any voluntary arrangement with one or more of its creditors; (ii) permits any judgment against it to remain unsatisfied for seven days; (iii) being an individual has a receiving order made against him or commits any act of bankruptcy; (iv) being a company or similar entity, shall have an administrative receiver or a receiver appointed over all or any of its assets or enter into any liquidation or winding up proceedings or have an administrator appointed to it or come under the jurisdiction, management or control of any court or insolvency official; or (v) is party to any equivalent or analogous event or proceeding in any other applicable jurisdiction; or (d) if there is a change of Control of Purchaser. For such purposes, "Control" shall mean the direct or indirect ownership of at least fifty percent (50%) of the voting interest in Purchaser or the power in fact to control the management directions of Purchaser.
- 8 DUBAL warrants that all Products supplied shall be in conformity with the Contract Specification. The "Contract Specification" shall mean the specification of the Products as defined by reference to the "Dubai Designation" specified in DUBAL's sales contract and to the attached alloy data sheet. DUBAL's liability under the Contract shall be limited to replacing or refunding (at the option of DUBAL) the purchase price of any Products which are in breach of this warranty (less the scrap value of the Products). Purchaser shall inspect and examine the Products for conformity with the Contract Specification promptly and within 30 (thirty) days after receipt of Products. DUBAL shall be under no such liability unless: written notice of the alleged breach of warranty is given to DUBAL within 7 (seven) days of receipt of the Products by Purchaser in the case of a breach apparent on reasonable visual examination, or within 30 (thirty) days of such receipt in any other case; DUBAL is given a reasonable opportunity to inspect in the state and condition (and location in case of breach apparent on reasonable visual examination) in which they were delivered; and upon any such replacement or refund the defective Products shall be made available for collection by DUBAL or if DUBAL so instructs in writing shall be returned to DUBAL at its cost. The foregoing warranty is given in lieu of and shall be deemed to exclude all other warranties and conditions (including without limitation fitness for any particular purpose and satisfactory quality) whether express or implied and whether arising by common law, statute, custom or otherwise.
- 9 Except as provided in Clause 8 (above), DUBAL shall not be liable for, and Purchaser shall indemnify DUBAL against all damages, losses, actions, liabilities, suits, claims, demands, charges, costs (including legal fees and disbursements incurred as a result of defending or settling any claim alleging any such liability) and expenses of any nature whatsoever whether direct or consequential arising out of or in connection with: (a) any breach of any term of the Contract or negligence by Purchaser; (b) DUBAL's compliance with Purchaser's instructions, specifications or drawings regarding the manufacturing or sale of the Products (including any infringement or alleged infringement of any patent, trademarks, registered designs or other proprietary rights); (c) Purchaser's failure to provide or display safety information on or relating to the Products, to comply with laws relating to the use, sale, marketing, labeling or marking of the Products or to bring to DUBAL's attention matters for which DUBAL may become liable, whether for negligence, under legislation or otherwise; (d) any statement Purchaser makes about the Products without DUBAL's written approval; or (e) the use of the Products by Purchaser or a third party. Purchaser agrees that the Products are not of a kind ordinarily acquired for personal, domestic or household use or consumption and that Purchaser is acquiring the Products for resupply or for using it or transforming it in the course of a process or manufacture in Purchaser's business. Nothing in these Conditions shall exclude or limit DUBAL's liability for: fraud; death or personal injury caused by its negligence (including negligence as defined in s.1 Unfair Contract Terms Act 1977); breach of terms regarding title implied by the Sale of Goods Act 1979 and/or Supply of Goods and Services Act 1982; or any other liability to the extent that the same may not be excluded or limited as a matter of law.
- 10 **Payment**
- 10.1 The Purchaser shall ensure that Payment for Products supplied hereunder is received into DUBAL's nominated bank account, by electronic transfer or equivalent, no later than the Invoice Payment Date relating to the supply of such Products and payment shall be made in the currency specified in the invoice and shall be immediately available and freely transferable and free and clear of all deductions and withholdings ("Payment Obligation"). The Invoice Payment Date is provided by the payment terms of DUBAL's sales contract ("Invoice Payment Date"). DUBAL shall provide written notice to Purchaser following any failure by Purchaser to meet any Payment Obligation and, if payment is not received within 7 (seven) days of such notice ("Payment Default") then Purchaser accepts that DUBAL shall be entitled to: (a) refuse to make any further deliveries; and/or (b) demand a more secured form of payment from the Purchaser, which DUBAL may decide upon at its absolute discretion; and/or (c) demand full payment in advance of making any further deliveries ("Remedies for Payment Default"). If DUBAL agrees to continue to make deliveries in accordance with (b) or (c) above, then Purchaser shall promptly undertake any necessary procedures and actions, and produce and furnish any required documentation so that deliveries may be resumed. The Purchaser will bear all costs arising from its failure to meet any Payment Obligation.
- 10.2 Without prejudice to DUBAL's rights, Purchaser shall inform DUBAL by written notice promptly and within seven (7) days should any insolvency event as specified in Clause 7(c) occur and upon such notice DUBAL shall be entitled to immediately utilize any of the aforementioned Remedies for Payment Default.
- 10.3 If DUBAL elects not to continue to make deliveries under Clauses 10.1(b) or 10.1(c) above, following Purchaser's Payment Default; or upon notice of the occurrence of any insolvency event as specified in Clause 7(c); DUBAL may, in addition to its other rights and remedies and in accordance with Clause 3.10, (a) terminate the Contract effective immediately and demand a return of Products Subject to Retention of Title to the destination specified by DUBAL, freight prepaid by Purchaser; (b) take possession of and remove all Products Subject to Retention of Title, without notice to or consent of Purchaser, and for that purpose, enter upon any premises owned or leased by Purchaser or such other place where the Products are stored without liability for any damages occasioned thereby; (c) prevent the handing over of Products to Purchaser where DUBAL has already despatched the Products even though Purchaser may hold documents which entitle it to obtain them; (d) prevent the handing over of Products Subject to Retention of Title by Purchaser to any third party; and (e) sue for damages, plus the costs and expenses incurred including reasonable legal fees.
- 10.4 Payment anytime after the Invoice Payment Date shall be regarded as a Late Payment ("Late Payment"). Purchaser shall inform DUBAL promptly if it knows in advance that it will make a Late Payment or if Purchaser has any difficulty (whatsoever) in making a payment. Late Payment by Purchaser of the purchase price of the Products shall bear interest calculated from the date such payment was due on a day by day basis at (1%) one per cent above the London Interbank Offered Rate (LIBOR), Euro Interbank Offered Rate (EURIBOR) or the Emirates Interbank Offered Rate (EIBOR) (as applicable) for deposits of such duration not exceeding 6 (six) months or such other rate as DUBAL may from time to time select and shall be compounded at the end of each period of 6 (six) months or such other period that DUBAL may select (at its discretion).
- 11 Lack of or insufficient credit insurance. Purchaser agrees that, in the event that DUBAL does not have credit insurance, or such insurance is in an amount that is insufficient for the required volume of Products to be purchased, as determined by DUBAL in its sole discretion, DUBAL in such case may require different payment terms, including, without limitation, requiring an earlier payment date or cash terms, as it deems appropriate, and/or may require an agreed form of security to be in place prior to delivering the products.
- 12 Purchaser may not assign or transfer all or any part of its rights or obligations hereunder without prior written consent of DUBAL. DUBAL may at any time assign, transfer, novate and/or change the Contract and/or any of its present or future rights, interests and/or benefits under the Contract to any person and Purchaser agrees to provide all reasonable assistance required by DUBAL in this regard. The Contracts (Rights of Third Parties) Act 1999 shall not apply to the Contract.
- 13 Purchaser acknowledges that DUBAL may review the financial position of the Purchaser in connection with the Contract at its sole discretion, but in any event at least annually, and Purchaser agrees to provide all assistance requested by DUBAL in this regard.
- 14 The Products to be supplied are in compliance with EU Regulation 1907/2006 on the Registration, Evaluation, Authorization and Restriction of Chemicals ("REACH") and Purchaser agrees that it shall be considered an Importer for the purposes of Regulation (EC) No 1272/2008 on the classification, labelling and packaging of substances and mixtures (the "CLP" Regulation). DUBAL has appointed an "only representative" legal entity to handle its requirements under REACH: Dubai EU Imports S.r.l. of Viale F. Caprioli 13, 20148 Milan, Italy (tel: +39 0245471435; email: REACH@dubal.ae). DUBAL and Purchaser agree to fulfill their respective obligations under REACH and to exchange any necessary non-competitive information on a confidential basis. It is acknowledged and understood that if the Products are not supplied in compliance with REACH, they cannot be placed on the European Union market and/or imported into the European Union.
- 15 All notices by one party to the other hereof shall be in writing and shall be deemed to be duly given or served when delivered in the case of personal delivery (including courier) or letter, and when despatched in the case of facsimile transmission provided that, in the case of facsimile transmission, the sender receives a successful transmission slip. The Parties hereby agree to keep the other Party informed at all times of their respective delivery addresses and facsimile numbers and any changes thereto. Failure by a Party to inform the other Party promptly of a change to the respective delivery address or facsimile number shall not be a defence against having received notice.
- 15.2 The failure to exercise or delay in exercising a right or remedy provided by this Agreement or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies and a waiver shall only be effective if given in writing. A waiver on one or more occasions of a right or remedy, or any single or partial exercise of a right or remedy provided by this Agreement or by law shall not prevent further exercise of the right or remedy or the exercise of another right or remedy.
- 15.3 Each provision or part thereof of these Conditions is severable and distinct from the others. If a provision of these Conditions shall be, or shall be found by any court or authority of any competent jurisdiction to be, to any extent illegal, invalid or unenforceable, it shall to that extent be deemed not to form part of this Agreement but that will not affect the legality, validity or enforceability of any other provision of this Agreement or of the remainder of the relevant provision, which shall continue in force and effect provided that the operation of this clause would not negate the commercial intent and purposes of the Parties under this Agreement. DUBAL shall be entitled to set-off any substantiated claim which DUBAL has against the Purchaser against any substantiated claim which the Purchaser may have as against DUBAL.
- 16 Any dispute arising out of or in connection with the Contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the LCIA Rules to be administered by the Dubai International Arbitration Centre, as amended from time to time and by the rest of this clause. The number of arbitrators shall be three (3) ("Tribunal"). One arbitrator will be appointed by each of the parties. The two arbitrators so appointed will choose the third arbitrator, who will act as the Chairman of the Tribunal. The seat of arbitration shall be the Dubai International Arbitration Centre. The language to be used in the arbitral proceedings shall be English.
- 17 The Contract and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with the laws of England and Wales and all references herein to statutes shall be deemed to be references to English statutes. In the event of conflict between the English original version of the Contract and any translation the English version shall prevail. However if any competent court nevertheless determines that such Arabic or other translation shall prevail the English version shall nevertheless be used to assist in any interpretation.