

CONDITIONS OF SALE

1. Interpretation

In these Conditions:-

'Buyer' means the person, partnership or company who accepts a quotation of the Company for the sale of Goods or whose order for the Goods is accepted by the Company.

'Company' means Aluminium & Plastics Systems Limited having its registered office at Enterprise Crescent, Ballinderry Road, Lisburn, Co. Antrim, BT28 2SA.

'Goods' means the goods (including any instalment of the goods or any parts for them) which the Company is to supply in accordance with these Conditions.

'Conditions' means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Company and the Buyer.

'Contract' means the contract for the purchase and sale of the Goods.

2. Basis of the Sale

2.1 The Company shall sell and the Buyer shall purchase the Goods in accordance with any written quotation of the Company which is accepted by the Buyer, or any written order of the Buyer which is accepted by the Company, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made by the Buyer.

2.2 No variation to these Conditions shall be binding unless agreed in writing between the authorised representatives of the Buyer and the Company.

2.3 The Company's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Company in writing. In entering into the Contract the Buyer acknowledges that it does not rely on such representations which are not so confirmed.

2.4 Any advice or recommendation given by the Company or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in writing by the Company is forwarded or acted upon entirely at the Buyer's own risk and accordingly the Company shall not be liable for any such advice or recommendation which is not so confirmed.

2.5 Any typographical, clerical or other error or commission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.

3. Orders and Specifications

3.1 All quotations are subject to confirmation in writing by the Company, on receipt of the order from the Buyer.

3.2 The Buyer shall be responsible to the Company for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Company any necessary information relating to the Goods within a sufficient time to enable the Company to perform the Contract in accordance with its terms.

3.3 The quantity, quality and description of any specification for the Goods shall be those set out in the Company's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Company).

4. Price of the goods and Terms of payment

4.1 Payment shall be made at the time specified. The amount of the price to be paid is that specified on the face of the contract or calculated in accordance with the formula therein specified. That amount shall not be subject to any discount or deduction except as agreed in writing by the Company. The Company shall be entitled to charge interest on overdue amounts at the rate of 8% above base rate, in accordance with The Late Payment of and Commercial Debts (Interest) Act 1998.

4.2 Where the Company's quotations are based on prices quoted from non-Sterling areas, they will be subject to revision up or down if any different rate of exchange is ruling on the day of delivery.

4.3 The Company reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Company adequate information or instructions.

4.4 Subject to any special terms agreed in writing between the Buyer and the Company, the Company shall be entitled to invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Company shall be entitled to invoice the Buyer for the price at any time after the Company has notified the Buyer that the Goods are ready for collection or (as the case may be) the Company has tendered delivery of the Goods.

5. Delivery

5.1 The Company will use its best endeavours to deliver the Goods at the date and within the time specified in the contract, but the Company shall not be liable for any expense, loss or damage whatsoever suffered by the Buyers as a result of the Company for whatever reason not delivering at the date or within the time so specified.

5.2 Should the availability of any of the Goods at any of the Company's works or the delivery thereof, whether by the Company or an independent Carrier be prevented or hindered directly or indirectly by fire, the elements, war, civil commotion, strikes or lock-outs, industrial dispute, shortage of raw materials or fuel notwithstanding that the Company has taken all reasonable steps to procure the same, break-down or partial failure of plant or machinery, acts, orders or regulations of any Government, delay on the part of any independent sub-contractor or supplier, or any other cause whatsoever beyond the reasonable control of the Company, then the time for delivery of the Goods shall be extended for a reasonable period having regard to the effect of the delaying cause on the availability or delivery of the Goods. If the availability or delivery of the Goods is still prevented or hindered at the end of that period, the Company may cancel any deliveries not made.

5.3 Each part delivery or instalment of the Goods shall be deemed to be sold under a separate contract and no default by the Company in respect of any part delivery or instalment shall entitle the Buyer to treat the contract as repudiated in regard to any balance or instalment remaining deliverable.

6. Warranties and limitations of liability

6.1 Any condition, warranty or statement as to the quality of the Goods or their fitness for any purpose whether express or implied by statute, custom of the trade or otherwise is hereby excluded unless given expressly in writing by the Company.

6.2 If the Buyer alleges that the Goods or any part thereof are not in accordance with the Contract and shall give notice to the Company and its Agents and afford them the facilities to inspect the Goods and investigate the complaint before the Goods are used, processed, sold or otherwise dealt with, PROVIDED the Buyer has complied with this condition and if the Goods or any part thereof are proved not to be in accordance with the Contract of specification then the Company will accept the rejection of the relevant Goods and replace the Goods within a reasonable time. The Buyer shall not in any case return any of the Goods to the Company unless the Company has agreed in writing to accept their return.

6.3 The Buyer shall not be entitled to withhold payment of any amount payable under the Contract to the Company because of any disputed claim of the Buyer nor shall the Buyer be entitled to set off against any amount payable under the contract to the Company or any monies which are not presently payable by the Company or for which the Company disputes liability.

6.4 The Company shall not be liable for loss of profit, damage to plant, or any expenditure incurred on Goods supplied or any consequential or special loss or damage sustained by the Buyer by reason of any breach of the Contract by the Company.

7. Right of Company to Terminate or Suspend

7.1 The Company shall be entitled without prejudice to its other rights and remedies to terminate either wholly or partly every Contract between itself and the Buyer or to suspend any further deliveries under any or every Contract if:-

7.1.1 any debt is overdue and unpaid by the Buyer to the Company, or

7.1.2 the Buyer has failed to provide any letter of credit, bill of exchange or any other security required by the Contract; or

7.1.3 the Buyer has rejected, returned or failed to take delivery of any Goods tendered by the Company otherwise than in accordance with the Buyer's contractual rights; or

7.1.4 the Buyer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for purposes of amalgamation or reconstruction) or undergoes any analogous act, event or proceeding under foreign law; or

7.1.5 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or

7.1.6 the Buyer ceases or threatens to cease to carry on business.

7.2 If this clause applies then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

8. Risk and Property

8.1 Risk of damage to or loss of the Goods shall pass to the Buyer:

8.1.1 in the case of Goods to be delivered at the Company's premises, at the time when the Company notifies the Buyer that the Goods are available for collection; or

8.1.2 in the case of Goods to be delivered otherwise than at the Company's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Company has tendered delivery of the Goods.

8.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Company has received in cash or cleared funds payments in full of the price of the goods and all other goods agreed to be sold by the Company to the Buyer for which payment is then due.

8.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Company's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Company's property, but the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business. The proceeds arising from any sale in the ordinary course of business of the Buyer shall be held on trust for the Company and the Buyer hereby assigns to the Company absolutely (and the Company hereby accepts such assignment) the benefit of any claim which the Buyer has against such third party arising from such sale and or delivery.

8.4 If the Buyer:-

1.manufactures another article or articles from the Goods with or without the addition of other materials; and/or

2.mixes the goods in any way whatsoever with other materials; and/or

3.incorporates the Goods into any other article as a component part, the property in the products of such manufacture, mixing or incorporation (hereinafter referred to as "the Products") shall be transferred to the Company at the time of such manufacture, mixing or incorporation.

The Buyer shall keep the Products as bailee and trustee for the Company until the Buyer has paid to the Company any sums due to the Company whether under this contract or howsoever otherwise in full and without any reduction or deferment on account of any dispute

8.5 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Company shall be entitled at any time to require the Buyer to deliver up the Goods to the Company and, if Buyer fails to do so forthwith to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

8.6 The Buyer shall not be entitled to pledge or in any way charge by the way of security for any indebtedness any of the Goods which remain the property of the Company, but if the Buyer does so all moneys owing by the Buyer to the Company shall (without prejudice to any other right or remedy of the Company) forthwith become due and payable.

9. General

9.1 Any notice required or permitted to be given by either party to the other party under these Conditions shall be in writing addressed to the other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

9.2 No waiver by the Company of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of same or any other provision.

9.3 The Contract shall be governed by and construed in accordance with the laws of Northern Ireland and the parties thereto submit to the exclusive jurisdiction of the Courts of Northern Ireland in determining matters thereunder.