

Terms and Conditions of Purchase

1. Acceptance of Terms and Conditions. These specific terms and conditions shall govern all purchase transactions between Extruded Aluminum Corporation (“Buyer”) and the seller party (the “Seller”) identified on the Buyer’s Purchase Order to which these terms and conditions are attached or within which these terms and conditions are referenced, (the “Purchase Order”). By acceptance of the Purchase Order, Seller agrees to be bound by and comply with all of the terms and conditions set forth herein. In addition, any acknowledgment of receipt of the Purchase Order by Seller, shipment of the goods by Seller under the Purchase Order, or commencement of performance and delivery by Seller called for by the Purchase Order shall constitute acceptance of these terms and conditions by Seller. The Purchase Order does not constitute an acceptance by Buyer of any other offer to sell, quotation, or proposal by Seller. Reference in the Purchase Order to any such offer to sell, quotation, or proposal shall in no way constitute a modification of any of these terms and conditions. The Purchase Order, together with these terms and conditions and any additional writing signed by Buyer, represents a complete and exclusive statement of the agreement between the parties. These terms and conditions may not be modified or supplemented by oral representations, Seller’s price quote or order acknowledgment, a prior course of dealing, Seller’s performance or delivery, or in any other way. Objection is made by Buyer to any such attempted modification or supplementation of these terms and conditions and shall not be binding upon Buyer unless specifically accepted in writing by Buyer. To the extent not otherwise provided herein, the terms of all agreements between Buyer and Seller shall be those provided by the Uniform Commercial Code in effect in the State of Michigan on the date hereof which would be provided if the parties were silent as to those terms. These specific terms and conditions shall also govern all future orders between Buyer and Seller unless otherwise agreed to in writing by both Buyer and Seller.

2. Delivery. Time is of the essence under the Purchase Order, and Seller shall immediately notify Buyer in writing of any delay or threatened delay in Seller’s performance. If Seller fails to deliver goods or complete services to be furnished under the Purchase Order, Buyer shall be entitled in addition to any other remedy available at law or equity, to assess such amounts as may be set forth on the face of the Purchase Order as liquidated damages for delay. Seller agrees that such amounts are a reasonable pre-estimate of the damages which Buyer may suffer as a result of such delay, and are assessed as liquidated damages and not as penalty. Unless otherwise stated on the face of the Purchase Order, delivery of goods ordered hereunder shall be made F.O.B. to address of the Buyer that is identified on page 1 in Belding, Michigan, and title will pass to Buyer upon receipt of goods. Transportation charges are to be billed to the Seller by carrier and will be borne by Seller. Risk of loss in transit lies with the Seller. No charges for unauthorized transportation will be allowed. Any unauthorized shipment which results in excess transportation charges must be fully prepaid by Seller. Buyer may cancel the Purchase Order in whole or in part without any liability if the delivery of goods is not complete by the required delivery date. Buyer shall have the right to inspect and test the goods ordered under the Purchase Order at any time prior to delivery, and to inspect such goods within a reasonable time after delivery. The goods shall not be deemed accepted until after such inspection following delivery. The making of any inspection, or the failure of Buyer to make any inspection, payment, or acceptance of the goods delivered shall in no way impair Buyer’s right to reject or revoke its acceptance of nonconforming goods or to seek any other remedies to which Buyer may be entitled.

3. Packaging. All goods shall be packed by Seller for shipment according to Buyer's instructions and, in any event, in a manner sufficient to insure that the goods are delivered in good and undamaged condition. Buyer shall not (unless it agrees otherwise in writing) be required to return any packaging material. Any return of such packaging material shall be made at Seller's expense.

4. Quantity. If Seller delivers less than the quantity of goods ordered, Buyer may reject all or any of the goods. If Seller delivers more than the quantity of goods ordered, Buyer may reject all or any excess goods. Any such rejected goods shall be returned to Seller at Seller's risk and expense. If Buyer does not reject the goods and instead accepts the delivery of goods at the increased or reduced quantity, the price for the goods shall be increased or reduced (respectively) on a pro rata basis pursuant to the relevant Purchase Order.

5. Title and Risk of Loss. Seller agrees to deliver to Buyer, unencumbered title to the goods purchased pursuant to the Purchase Order, free and clear of all liens, claims, and encumbrances. Title and risk of loss to goods delivered hereunder shall pass to Buyer upon receipt by Buyer at Buyer's address, unless otherwise agreed in writing.

6. Right of Rejection. If any goods and services ordered under the Purchase Order are found at any time to be defective, or otherwise not in conformity with any requirements of this order, including applicable drawings and specifications, Buyer, in addition to such other rights, remedies, and choices as it may have by contract or law, may at its option and sole discretion (a) reject and return such goods at Seller's expense; (b) take such action as may be required to cure all defects and bring the goods into conformity with all requirements, in which event all costs and expenses incurred by Buyer including material and handling charges shall be borne by Seller; and (c) require Seller to re-perform at its own expense, any defective portion of the services performed. Seller is required to replace nonconforming goods with goods that conform to the Purchase Order.

7. Right of Suspension. Buyer may, at any time, by written notice to Seller, suspend performance of work required to complete the Purchase Order. Notice of suspension shall specify the date of suspension and the estimated duration of the suspension. Upon receiving any such notice of suspension, Seller shall promptly suspend further performance of the work to the extent specified. During the period of suspension, Seller shall properly care for and protect all work in progress and any materials, supplies, or equipment Seller has on hand for performance of the work. Upon the request of Buyer, Seller shall promptly deliver to Buyer copies of any outstanding purchase orders and subcontracts of Seller for materials, equipment, and service for the work, and shall take action relative to such purchase orders and subcontracts as may be directed by Buyer. Buyer may at any time withdraw the suspension of performance of the work as to all or part of the suspended work by written notice to Seller specifying the effective date and scope of withdrawal, and Seller shall resume diligent performance of the work upon the effective date of withdrawal of suspension.

8. Right of Termination. Buyer may terminate all or any part of the Purchase Order at any time by written notice to Seller. Upon termination (other than due to Seller's insolvency or fault including failure to comply with the Purchase Order), Buyer and Seller shall negotiate reasonable termination costs which will be identified by Seller within thirty (30) days of termination notice.

9. Notice of Default. Time is of the essence for the Purchase Order. Except in instances of delay which are due to causes beyond the reasonable control and without the fault or negligence of Seller and all of its suppliers, Buyer may by written notice of default to Seller, terminate the whole or any part of this order upon the occurrence of any of the following: (a) Seller fails to perform within the time specified in the Purchase Order; (b) Seller fails to make progress so as to endanger performance of the Purchase Order in accordance with its terms; or (c) Seller fails to comply with any of the terms and conditions of the Purchase Order. Termination of the order shall become effective if Seller does not cure such failure within a period of ten (10) days after receipt of notice of default from Buyer. Upon termination, Buyer may procure goods, supplies, or services similar to those terminated, by such terms as it shall deem appropriate. Seller shall continue performance of the Purchase Order to the extent not terminated and shall be liable to Buyer for any excess costs for such similar goods, supplies, or services. As an alternate remedy and in lieu of termination for default, Buyer, at its sole discretion, may elect to extend the delivery schedule and/or waive other deficiencies in Seller's performance in which case an equitable reduction in the Purchase Order price shall be negotiated. In the event Seller for any reason anticipates difficulty in complying with the required delivery date, or meeting any other requirements of this order, Seller shall promptly notify Buyer in writing. If seller does not comply with Buyer's delivery schedule, Seller must provide delivery by the fastest available method and absorb charges resulting from such premium transportation. The rights and remedies of Buyer provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Purchase Order.

10. Payment and Taxes. All prices specified in the Purchase Order are firm and shall not be subject to change. Seller's total price shall be deemed to include all federal, state, and local sales, use, excise, value added, privilege, payroll, or occupational taxes and any other taxes, fees, or duties applicable to the goods furnished to Buyer. No extra charges of any kind will be allowed unless specifically agreed to in writing by Buyer. Buyer shall be entitled at all times to set-off any amount owing at any time from Seller to Buyer or any of its affiliated companies against any amount payable at any time by Buyer in connection with this or any other order between Buyer and Seller.

11. Warranty and Liability. Seller warrants and represents that all goods and services provided pursuant to the Purchase Order are of merchantable quality, fit for the particular purpose for which they are intended, and are free from any third party claims. Seller further warrants that all goods and services provided under the Purchase Order are free from defects in design, workmanship, and material, will strictly conform with all requirements of the Purchase Order and all the specifications, samples, drawings, designs and other requirements (including performance specifications) approved or adopted by Buyer. Seller further warrants and represents that all services will be performed by competent personnel in accordance with generally accepted industry standards. Seller shall, at its own expense, promptly repair or replace, at Buyer's option, any delivered goods which shall be found by Buyer to be defective, non-conforming or otherwise not in accordance with this warranty. Seller agrees that all warranties pursuant to the Purchase Order and these terms and conditions shall extend to, and be for the benefit of, Buyer and Buyer's customers. Any attempt by Seller to limit, disclaim, or restrict any warranties or remedies of Buyer, by acknowledgment or otherwise, shall be null, void, and ineffective without the written consent of Buyer.

12. Compliance. Seller warrants and represents that goods delivered pursuant to the Purchase Order, and the sale or use thereof, shall not infringe any patent, trade secret, copyright or trademark, and that Seller will at its own expense defend, indemnify, and hold harmless Buyer and Buyer's customers from and against all claims, demands, actions, and liability based on alleged or actual infringement thereof. Buyer, at its option, may require Seller to deliver non-infringing goods, modify Seller's goods so as to become non-infringing, procure for Buyer the right to continue using Seller's infringing goods, or refund the purchase price thereof upon the return by Buyer of the infringing goods. Seller warrants that all goods delivered under the Purchase Order shall be in strict compliance with all applicable laws and regulations to which the goods are subject. Seller shall indemnify and hold harmless, Buyer and its customers from all loss, liability, and fines incurred by any of them as a result of Seller's failure to so comply.

13. Governing Law. This agreement shall be governed by and construed according to the laws of the State of Michigan. All actions hereunder shall be brought in the state courts of Ionia County, Michigan, or the federal courts in and for the Western District of Michigan.

14. Indemnity. Seller releases Buyer from any liability to Seller, and Seller will defend, indemnify and hold Buyer harmless from and against, all suits, actions, claims and demands, by whomever brought, based on loss for illness, injury or death, property loss or damage whenever occurring, suffered, or incurred by Buyer, its contractors, and subcontractors and the officers, employees, agents and representatives of any of them, arising out of or related in any way to the sale, delivery, performance, or use of the goods, or Seller's performance of any services hereunder. Buyer shall be entitled to control the defense of any claim subject to indemnification hereunder, including the right to compromise with counsel selected by it.

15. Authorizations. Seller is solely responsible for the timely procurement of any necessary government authorizations, including, without limitation, export or import licenses and exchange permits. If Buyer applies for any such authorization, it does so as a convenience for Seller and Buyer shall have no responsibility for any errors therein or failure to pursue or obtain an authorization. Seller will comply with any applicable export control laws and regulations.

16. Seller's Insolvency. If, in the judgment of Buyer, Seller ceases to conduct its operations in the normal course of business, including the failure to meet its obligations as they mature, or if any proceeding under bankruptcy or insolvency law is brought by or against Seller, or if a receiver for Seller is appointed or applied for, or an assignment for the benefit of creditors is made by the Seller, Buyer may terminate the Purchase Order without liability. This section shall not apply to deliveries previously made, or to goods covered by the Purchase Order then completed and subsequently delivered in accordance with these terms and conditions.

17. Assignment and Subcontracting. Assignment by the Seller of the Purchase Order or any interest herein or any payment to become due under the Purchase Order, without written consent of Buyer shall be void. Seller shall not subcontract nor delegate performance of all or any substantial part of the work called for under the Purchase Order without the prior written consent of Buyer.

18. Changes to Order. The Purchase Order shall not be changed or otherwise modified except upon the prior written authorization of a duly authorized representative of Buyer. Buyer shall have the right to make any changes to the goods and services ordered under the Purchase Order, including changes to the method of shipment or packing, place and time of delivery, or the quality of goods ordered, and Seller agrees to perform the Purchase Order in accordance therewith. If in Seller's opinion such change will cause an increase or decrease in the cost of, or time required for performance and delivery hereunder, Seller shall notify Buyer promptly. If additional cost or time is required for performance or delivery under the Purchase Order, Seller shall not proceed without written authorization from Buyer, directing Seller to proceed. If any such changes cause an increase or decrease in the cost of, or the time required for the performance of any work under the Purchase Order, whether changed or not changed, an equitable adjustment shall be made in the contract price, delivery schedule, or both, and the Purchase Order shall be modified in writing accordingly. Any claim by the Seller for adjustment under this clause must be asserted within thirty (30) days from the date of receipt by the Seller of the notification of change. Any change to the Purchase Order shall be authorized only by a duly executed Purchase Order amendment thereto.

19. Confidentiality and Title to Technical and Confidential Information of Buyer. All non-public, confidential and/or proprietary information of the Buyer, including, but not limited to, specifications, samples, patterns, designs, plans drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Buyer to Seller, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with the Purchase Order and/or otherwise, is confidential and is solely for the use of performing the Purchase Order and may not be disclosed or copied or otherwise used by Seller or its representatives and agents unless authorized by Buyer in writing. Upon Buyer's request, Seller shall promptly return all documents and other materials received from Buyer. All rights and title to such confidential information including intellectual property rights to any Buyer drawings, specifications, or other Buyer technical or confidential information shall remain the sole and exclusive property of Buyer. Seller agrees not to use such information for any purpose other than with respect to performing the Purchase Order and Seller agrees not to disclose such information to any third party, without the prior written consent of Buyer. Buyer shall be entitled to injunctive relief for any violation of this Section.

20. Purchaser's Property. Unless otherwise agreed in writing, all goods, equipment, or material of every description furnished to Seller by Buyer or specially paid for by Buyer, and any replacement thereof, or any materials affixed or attached thereto, shall be and remain the personal property of Buyer. Such property and, whenever practical each individual item thereof, shall be plainly marked or otherwise adequately identified by Seller as the property of Buyer and shall be safely stored separate and apart from Seller's property. Such property, while in Seller's custody or control, shall be held at Seller's risk and kept insured by Seller at its own expense in an amount equal to replacement cost, with loss payable to Buyer. Such property shall be subject to removal at Buyer's written request, in which event Seller shall prepare such property for shipment and shall redeliver to Buyer in the same condition as originally received by Seller, reasonable wear and tear excepted, all at Seller's expense.

21. Waiver. No claim or right arising out of a breach of the Purchase Order or these terms and conditions can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. The failure of Buyer to enforce at any time or for any period of time any of the provisions hereof shall not be construed to be a waiver of such provisions or of the right of Buyer to thereafter enforce each and every such provision.

22. Payment Terms. Seller shall issue an invoice to Buyer on or any time after the completion of delivery under the Purchase Order and only in accordance with the terms. Buyer shall pay all properly invoiced amounts due to Seller within thirty (30) days after Buyer's receipt of such invoice, unless a different period is specified by Buyer in the Purchase Order, except for any amounts disputed by Buyer in good faith. All payments under the Purchase Order must be in U.S. dollars, unless a different currency is specified by Buyer in the Purchase Order, and made by bank transfers such other means of payment as Buyer chooses from time to time. In the event of a payment dispute, Buyer shall deliver a written statement to Seller providing reasonable particulars of such dispute. The parties shall seek to resolve all such disputes expeditiously and in good faith. Seller shall continue performing its obligations under the Purchase Order notwithstanding under any such dispute.