



## **ALUCOM TERMS OF TRADE**

**These Terms of Trade govern the relationship between you (Customer), any Guarantor, and Canberra Aluminium Centre Pty Ltd (ABN 82 008 644 059) trading as ALUCOM (ALUCOM). Part A – Credit Application, Part B - Guarantee and this Part C together form the agreement between the parties.**

### **1. Quotation**

- 1.1 All Quotations are valid for 30 days from the date of the Quotation.
- 1.2 All prices quoted are valid for 30 days from the date of Quotation, excluding errors and omissions.

### **2. Acceptance**

- 2.1 Any instructions received by ALUCOM from the Customer for the supply of goods, the acceptance of a Quotation and/or the Customer's acceptance of goods supplied by ALUCOM shall constitute acceptance of these terms of trade.
- 2.2 Where more than one customer has entered into this agreement, the Customer's shall be jointly and severally liable for all payments of the price of the goods.

### **3. Goods and services**

- 3.1 The goods and services are as described on the invoices and Quotation as provided by ALUCOM to the Customer.
- 3.2 The goods may vary from the samples supplied. ALUCOM gives no guarantee (expressed or implied) that colour samples supplied will match the finished goods.
- 3.3 Custom orders of goods or other materials for the manufacture of the goods may be subject to delay. Such a delay shall not be a breach of these Terms of Trade.
- 3.4 All goods can have minor imperfections, including cosmetic imperfections and the Customer acknowledges and accepts that such minor imperfections are acceptable, provided they meet the manufacturer's standards.
- 3.5 If a Customer provides measurements to ALUCOM, then ALUCOM relies on the measurements provided by the Customer to manufacture the goods.

### **4. Price and Payment**

- 4.1 The Customer shall pay ALUCOM 50% of the total price set out in the Quotation as a deposit, at the time of acceptance. ALUCOM will not commence work, including any fabrication, until the deposit is paid in full.
- 4.2 ALUCOM may, by giving notice to the Customer at any time before production commences, increase the Price of the goods to reflect any variation beyond the reasonable control of ALUCOM, such as changes in the price of

the raw materials for the goods, which increases the cost of the goods by more than 10% of the quoted Price. In the event of such an increase the customer will be given the option of cancelling their order.

4.3 A final payment of the balance outstanding will be payable on delivery.

4.4 Unless credit terms are agreed ALUCOM may withhold delivery of the goods until the Customer has paid for them in full, in which event the full final payment shall be made on or before the delivery date.

4.5 The customer is not entitled to defer, offset or withhold payment in whole or in part for any reason unless agreed to by ALUCOM.

4.6 The Customer shall not set off against the Price amounts due from ALUCOM.

### **5. Delivery of goods/services**

5.1 Delivery of the goods shall be made to the Customer's nominated address. The Customer shall make all arrangements necessary to take delivery of the goods (Including, but not limited to, payment of the Price) whenever they are tendered for delivery, or unless otherwise agreed, delivery of the goods shall be made to the Customer FOB (Incoterms 2018).

5.2 Delivery of the goods to a third party nominated by the Customer is deemed to have been delivered to the Customer.

5.3 All dates and times quoted for delivery or installation services are estimates only. ALUCOM shall not be liable in any way for the failure to deliver or supply the goods and/or services within the stated time and the customer shall accept and pay for the goods and/or services notwithstanding such failure to deliver within the stated time.

5.4 ALUCOM will not be liable for any loss or damage whatsoever due to failure by ALUCOM to deliver the goods (or any of them) promptly or at all.

5.5 Additional charges for delivery may be payable, as shown in the Quotation.

### **6. Risk & Title**

6.1 Whilst the Customer has not paid for the goods supplied in full at any time, the Customer agrees that property and title in the goods shall not pass to the Customer and ALUCOM retains the legal and equitable title in those goods supplied and not yet sold.

6.2 Until payment in full has been made to ALUCOM, the Customer will hold the goods in a fiduciary capacity for ALUCOM and agrees to store the goods in such a manner that they can be identified as the property of ALUCOM, and shall not mix the goods with other similar goods.



6.3 The Customer shall be entitled to sell the goods in the ordinary course of its business, but until full payment for the goods has been made to ALUCOM, the Customer shall sell as agent and bailee for ALUCOM and the proceeds of sale of the goods shall be held by the Customer on trust for ALUCOM absolutely.

6.4 The Customer agrees that whilst property and title in the goods remains with ALUCOM, ALUCOM has the right, with prior notice to the Customer, to enter upon any premises occupied by the Customer (or any receiver, receiver and manager, administrator, liquidator or trustee in bankruptcy of the Customer) to inspect the goods of ALUCOM and to repossess the goods which may be in the Customer's possession, custody or control when payment is overdue.

6.5 The Customer will be responsible for ALUCOM's reasonable costs and expenses in exercising its rights under clause 6.4. Where ALUCOM exercises any power to enter the premises, that entry will not give rise to any action of trespass or similar action on the part of the Customer against ALUCOM, its employees, servants or agents.

6.6 The Customer agrees that where the goods have been retaken into the possession of ALUCOM, ALUCOM has the absolute right to sell or deal with the goods upon reasonable notice to the Customer, and if necessary, sell the goods with the trademark or name of the Customer on those goods, and the Customer hereby grants an irrevocable licence to ALUCOM to do all things necessary to sell the goods bearing the name or trademark of the Customer.

6.7 Risk in relation to any goods passes to the Customer on delivery or collection of the goods. If ALUCOM has expressly agreed to ship the goods, risk in the goods passes immediately on delivery of the goods to the Customer's designated place of delivery by ALUCOM or its agent.

#### **7. Defect / Returns**

7.1 The Customer shall inspect the goods on delivery and shall within twenty-four (24) hours of delivery, notify ALUCOM of any alleged defect, shortage in quantity, or damage. The Customer shall afford ALUCOM an opportunity to inspect the goods including reasonable access within a reasonable time following delivery if the Customer believes the goods are defective in any way. If the Customer fails to comply with these provisions, the goods shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.

7.2 Subject to clause 9, custom made and special order goods are non-refundable or returnable.

7.3 Cancellation of orders is at ALUCOM's discretion and may be subject to a re-stocking fee. In the event that the Customer cancels delivery of goods and ALUCOM accepts such cancellation, the Customer shall be liable for any costs incurred by ALUCOM up to the time of cancellation

#### **8. Warranty**

8.1 For goods not manufactured by ALUCOM, the warranty shall be the current warranty provided by the manufacturer of the goods. ALUCOM shall be under no liability whatsoever, except for the express conditions as detailed and stipulated in the manufacturers' warranty.

8.2 For goods manufactured by ALUCOM, ALUCOM provides a 12 month warranty that goods shall be reasonably free from defects except such defects that are normally regarded as being commercially acceptable.

#### **9. Warranties under the Competition and Consumer Law Act 2010**

9.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Competition and Consumer Law Act 2010 except to the extent permitted by these Acts where applicable.

9.2 To the extent permitted by law, ALUCOM excludes all representations and warranties, express or implied, other than those contained in these Terms of Trade. Where ALUCOM is found to be liable for breach of any warranty or condition implied by statute and which it cannot lawfully exclude (such as under the Competition and Consumer Law Act 2010 (Cth)), ALUCOM's liability is limited (to the extent permitted by law) at its option to the following:

- (a) in the case of goods supplied or offered by it:
  - (i) to the supply of those goods again; or
  - (ii) to the payment of the cost of having those goods supplied again; or
- (b) in the case of services supplied or offered by it:
  - (i) to the supply of the services again; or
  - (ii) to the payment of the cost of having services supplied again.

#### **10. Intellectual Property**

10.1 Where ALUCOM has designed or drawn goods for the Customer, then the copyright in those designs and drawings shall remain vested in ALUCOM, and shall only be used by the Customer at ALUCOM's discretion.



10.2 The Customer warrants that all designs or instructions to ALUCOM will not cause ALUCOM to infringe any patent, registered design or trademark in the execution of the Customer's order.

10.3 The Customer indemnifies ALUCOM for all loss, claims and damages, direct or indirect, including legal costs on a solicitor-client basis for any breach of the warranty in 10.2.

#### **11. Default & Consequences of Default**

11.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and shall accrue at such a rate after as well as before any judgement.

11.2 In the event the customer defaults in payment of any invoice when due any discounts as shown on the Quotation become invalid and the full price becomes applicable.

11.3 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify ALUCOM from and against all ALUCOM's costs and disbursements including costs on a solicitor and own client basis and in addition, all of ALUCOM's costs of collection and enforcement.

#### **12. Lien**

12.1 Where ALUCOM has not received or been tendered the whole of the price, or the payment has been dishonoured, ALUCOM shall have:

- (a) a lien on the goods;
- (b) the right to retain the goods for the price while ALUCOM is in possession of them;
- (c) a right of stopping the goods in transit whether or not delivery has been made or ownership has passed; and
- (d) a right of resale and disposal of the goods.

#### **13. Credit Terms**

13.1 This clause 13 only applies if credit terms are extended to the Customer, and shall be read together with Part A and Part C.

13.2 The credit terms of payment are strictly thirty (30) days (or such other period agreed by ALUCOM) after the end of month following the date of invoice supplied to the Customer.

13.3 The Customer has no entitlement to credit unless in ALUCOM's sole discretion ALUCOM extends credit to the Customer. If in a particular case, ALUCOM gives the Customer credit, ALUCOM still reserves the right at any time and for any reason in ALUCOM's sole discretion to refuse to supply any further goods or services to the Customer and to refuse to supply any goods or services or both to the Customer on credit terms. If ALUCOM does decline to give the Customer further credit then that decision does

not affect the credit terms which apply to any amounts the Customer then owes to ALUCOM.

13.4 If the Customer fails to comply with any of the terms of these Terms and Conditions, suffers an Event of insolvency or makes any misrepresentation to ALUCOM, the balance of the Customer's account to ALUCOM will become due and payable immediately.

13.5 The Customer agrees that it must:

- (a) pay any stamp duty assessed on this document or fee to register or maintain any security interest held by ALUCOM in respect of goods or services supplied to the Customer; and
- (b) advise ALUCOM in writing of the occurrence of any Event of insolvency, any change in its name, ownership or control, or any step being taken to sell an asset or assets (separately or together having a value being greater than 20% in value of its gross assets) as soon as practicable and not later than within two business days of such event, change or step occurring. The Customer acknowledges that, despite any such event, change, or step the Customer remains liable to pay the price for all goods or services supplied.

13.6 The Customer acknowledges and agrees that the credit to be provided to the Customer by ALUCOM is to be applied wholly or predominantly for commercial purposes.

#### **14. Security Interest & PPSA**

14.1 The retention of title arrangement described in clause 6 constitutes the grant of a purchase money security interest by the Customer in favour of ALUCOM in respect of all present and after acquired goods supplied to the Customer by ALUCOM.

14.2 The Customer must immediately, if requested by ALUCOM, sign any documents, provide all necessary information and do anything else required by ALUCOM to ensure that ALUCOM's purchase money security interest is a perfected security interest.

14.3 The Customer will not enter into any security agreement that permits any other person to have or to register any security interest in respect of the goods or any proceeds from the sale of the goods until ALUCOM has perfected its purchase money security interest.

14.4 For any Goods supplied that are not goods that are used predominately for personal, domestic or household purposes, the parties agree to contract out of the application of ss 95,



118, 121(4), 130, 132(4), 135, 142 or 143 of the PPSA in relation to the goods.

14.5 The Customer hereby waives any rights the Customer may otherwise have to: (a) receive any notices the Customer would otherwise be entitled to receive under ss 95, 118, 121, 130, 132 or 135 (b) apply to a Court for an order concerning the removal of an accession under section 97 (c) object to a proposal of the Customer to purchase or retain any collateral under ss 130 and 135 (d) receive a copy of a verification statement confirming registration of a financing statement, or a financing change statement, relating to any security interest ALUCOM may have in goods supplied to the Customer from time to time.

14.6 For the purposes of this clause 14, "PPSA" means the Personal Property Securities Act 2009. The expressions "accession", "collateral", "financing statement", "financing change statement", "security agreement", "security interest", "perfected security interest" and "verification statement" have the meanings given to them under, or in the context of the PPSA. References to sections are to sections of the PPSA.

## **15. Privacy Act & Privacy Statement**

15.1 The Customer, Guarantors and signatories on behalf of the Customer and Guarantors in their personal capacity, agree to the terms of the Privacy Statement pursuant to the Privacy Act 1988 (Privacy Act) contained in this document.

15.2 The privacy statement encompasses consents, notifications and disclosures under or in relation to the Privacy Act.

15.3 The terms of this statement operate concurrently with any pre-existing privacy statement, authorisation or notification, whether contained in our credit application, terms and conditions of trade or otherwise, save to the extent of any inconsistency in which case the terms of this privacy statement shall prevail.

15.4 For the purpose of this statement, the terms "personal information", "sensitive information", "credit eligibility information", "credit information", "commercial credit purpose", "consumer credit purpose", "credit reporting body", "credit provider", "credit reporting information", "credit reporting code" carry the same meaning as under the Privacy Act and the term "information" means personal information, sensitive information, credit eligibility information, credit reporting information and credit information, both severally and collectively.

15.5 ALUCOM may collect personal information about the Customer and Guarantor for ALUCOMs primary purposes which include the assessment of a credit application, reviewing existing credit terms, assessing credit worthiness, collecting overdue payments, assessing credit guarantees (current and prospective), internal management purposes, marketing, sales and business development purposes and direct marketing.

15.6 The Customer and Guarantor consent to ALUCOM collecting, using and disclosing personal information (including sensitive information) for both the primary purposes specified herein and purposes other than the primary purposes, including the purpose of direct marketing.

15.7 ALUCOM may collect, and may have already collected, information from the Customer and Guarantor, other credit providers, credit reporting bodies and other third parties for the purpose of its functions and activities including, but not limited to, credit, sales, marketing and administration. If the information was not collected by ALUCOM it may restrict or impede upon ALUCOM trading with, extending credit to, continuing to extend credit to or extending



further credit to the Customer and Guarantor or their related bodies corporate,

**15.8** The Customer and Guarantor consent to ALUCOM obtaining and making disclosure of information about the Customer and Guarantor from and to a credit reporting body and another credit provider for a commercial credit related purpose and a credit guarantee purpose and a consumer credit purpose and another related purpose. ALUCOM the Customer and Guarantor that it may use and disclose credit eligibility information under section 21G of the Privacy Act.

**15.9** ALUCOM may provide personal information about the Customer and Guarantor to any registered credit reporting body in Australia. The Customer and Guarantor consent to such disclosure.

**15.10** ALUCOM may disclose information to, and about them and the Customer and Guarantor hereby acknowledge that they consent to the disclosure of such information to ALUCOM's employees, subsidiaries, employees, agents and related bodies corporate, past, present or prospective credit providers of the Customer and Guarantor or their related bodies corporate, including for the purpose of that person considering whether to offer to act as guarantor or offer security for that credit, and overseas recipients and recipients who do not have an Australian link.

**15.11** By reason of the Customer's and Guarantor's consent to the disclosure to overseas recipients hereunder, APP 8.1 will not apply to ALUCOM's dealing with the Customer's and Guarantor's information

**15.12** A full copy of ALUCOM's privacy policy and credit reporting policy can be obtained from ALUCOM's website or by making a request in writing directed to ALUCOM's privacy officer.

## **16. General**

16.1 If any provision of these Terms of Trade is held to be invalid, void or illegal or unenforceable by a Court or tribunal of competent jurisdiction, the validity existence, legally and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

16.2 This agreement shall be governed by the laws of the State of New South Wales, Australia, and parties agree to submit to the jurisdiction of the Courts of that State.

16.3 ALUCOM shall be under no liability whatsoever to the Customer for any indirect loss and/or expense (including consequential loss or loss of profit) suffered by the Customer arising out of a breach by ALUCOM of these terms and conditions.

16.4 In the event of any breach of this contract by ALUCOM the remedies of the Customer shall be limited to damages. Under no circumstances shall the liability of ALUCOM exceed the price of the goods or services.

16.5 ALUCOM may license or sub-contract all or any part of its rights and obligations without the Customer's consent.

16.6 Neither party shall be liable for any default due to any act of God, war terrorism, strikes, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.

## **17. Indemnity**

The Customer and the Guarantors agree to indemnify ALUCOM and keep ALUCOM indemnified against any loss, claim or damage that arises in connection with these Terms of Trade. This indemnity includes any enforcement or legal fees and expenses ALUCOM incurs in order to enforce its rights, on an indemnity basis.

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