

I. GENERAL

1. These Terms and Conditions of SALE (the "**Terms**") shall apply to sales of any goods and/or services (collectively, the "**Goods**") by **APEX ALUMINUM EXTRUSIONS LTD.** ("**Apex**") to you (the "**Buyer**" and together with Apex, the "**Parties**").

II. GOODS AND SERVICES; PURCHASE ORDERS

1. Apex will supply the Goods in accordance with these Terms and with the specifications, pricing, delivery, and other terms set forth in a purchase order, proposal, request for quotation or other written document that has been: (i) issued by a Buyer and accepted by Apex; or (ii) issued by Apex and accepted by the Buyer or by Buyer Party that has been authorized by the Buyer to do so; or (iii) agreed to in writing by both Apex and the Buyer (each a "**Confirmed Order**"). A Confirmed Order may be amended only by written agreement of Apex. "**Acceptance**" by the Buyer or the authorized Buyer Party for purposes hereof must be in writing, bearing an original or facsimile signature of a person duly authorized to enter in the Agreement, or by email or electronic communication bearing a scanned or electronically verified signature. "**Acceptance**" by Apex for purposes hereof may be in writing, including email or electronic communication. The provisions of these Terms and any Confirmed Orders existing between the Parties are referred to as the "**Agreement**," which shall control and shall constitute the entire agreement between the Parties with respect to the subject matter of each such Confirmed Order; no other terms or conditions, including without limitation terms or conditions set forth in any Buyer documentation, will become a part of the Agreement unless agreed to in writing by both parties. In the event of a conflict between the provisions of a Confirmed Order and these Terms, the provisions of these Terms shall govern and control, and will not affect transactions pursuant to any other Confirmed Order. Apex shall not provide any goods or services unless and until a Confirmed Order with respect thereto exists.
2. Apex objects, in advance, to any terms and conditions set forth in any of Buyer's contract documents, specifications, or purchase orders that may be provided to Apex prior to, contemporaneous with or subsequent to the Confirmed Order from the Buyer, and Apex shall not be bound by any such terms.

III. PRICE AND PAYMENT

1. The price for the Goods will be as stated in the Confirmed Order, exclusive of all applicable taxes or any other applicable costs, including but not limited to any Tooling Service Charges in accordance with Section V hereto (the "**Price**").
2. The Buyer hereby acknowledges and agrees that the Price is subject to change, without prior notice to the Buyer, to reflect any increase or decrease in Apex's actual cost resulting in fluctuations in the price of aluminum. Prices on quotations are good for thirty (30) days subject to the above.
3. Credit terms may be offered to the Buyer, subject to satisfactory credit vetting of the Buyer by Apex.
4. Any offer of credit will be at the sole discretion of Apex.
5. Where credit is offered, payment of the Price, applicable taxes, and any other applicable costs shall be due within thirty (30) days of the date of the invoice supplied by Apex, unless otherwise agreed in writing (the "**Credit Date**"). In cases where credit is not offered, payment of the Price will be required before release or provision of any Goods by Apex (the "**Non-Credit Date**", the Credit Date or the Non-Credit Date, as the case may be, the "**Payment Date**").
6. Apex shall be entitled to charge interest on overdue invoices from the Payment Date until the date payment is received by the Buyer, at an annual interest rate of 28.6%, compounded monthly.
7. If payment of the Price or any part thereof is not made by the Payment Date, Apex shall be entitled to:
 - a. Require payment in advance of delivery in relation to any Goods not previously delivered;

- b. Refuse to make delivery of any undelivered Goods without incurring any liability whatsoever to the Buyer or any other party for non-delivery or any delay in delivery; and
- c. Report payments not made by the Payment Date to a Canadian credit bureau, including any combination of Equifax Canada and TransUnion Canada.

IV. DESCRIPTION, SPECIFICATIONS AND TOLERANCES

1. Any description given or applied to the Goods is given by way of identification only and the use of such description shall not constitute a sale by description. For the avoidance of doubt, the Buyer hereby affirms that it does not in any way rely on any description when entering into the contract for the provision of Goods by Apex.
2. Buyer acknowledges that any order placed by Buyer is accepted by Apex with the understanding that the Goods will be produced in accordance with specifications and/or drawings on hand in Apex's files, or furnished to Apex with Buyer's order and specifically as agreed to and accepted by Apex, in writing. All manufacturing tolerances are to be in accordance with Standard Aluminum Association Tolerances or as detailed on the die drawings.

V. SAMPLE

1. Where a sample of the Goods is shown to and inspected by the Buyer, the parties hereto accept that such a sample is representative in nature and that the Goods received may differ slightly as a result of the manufacturing process.

VI. TOOLS AND DIE

1. Tooling purchased by Apex for a Buyer shall remain the exclusive property of Apex and its' possession. Apex agrees to maintain tooling in condition to furnish material to original specifications subject to tolerances on approved drawings. Any charge implemented by Apex for tooling will be considered a "**Tooling Service Charge**" and does not affect ownership of the tooling, however the production of extrusions from the die will be for the exclusive benefit of the Buyer. Should Apex not receive an order for any die within a two-year time frame, the tooling will be scrapped or otherwise disposed of without reference or accounting to the Buyer.

VII. DELIVERY AND INSPECTION

1. Unless otherwise agreed in writing, delivery of the Goods shall take place at the address specified by the Buyer on, or as close as possible to, the date required by the Buyer. The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.
2. The standard shipping tolerances are +/- fifteen percent (15%) on weight.
3. If Apex is unable to deliver the Goods because of actions or circumstances under the control of the Buyer, then Apex shall be entitled to place the Goods in storage until such times as delivery may be affected and the Buyer shall be liable for any expense associated with such storage and any such associated expense must be paid by the Buyer prior to delivery of the Goods.
4. Buyer shall inspect the Goods upon receipt and notify Apex in writing of any damages, shortages, over deliveries and duplicated orders within thirty (30) days of signed receipt to enable replacement or credit if appropriate in the circumstances as determined by Apex in its sole and absolute discretion, whose decision shall be final and binding. Apex shall be allowed a reasonable opportunity to inspect the Goods, and cure any claim of alleged non-conformity, including reasonable access to the Goods whether on Buyer's premises, at a storage facility or on the job site.
5. However, if there is visible damage to the outside of the crate, the damage must be reported to Apex in writing within 48 hours after delivery.
6. Delivery dates indicated on quotations and on acknowledgements of orders are approximate and not guaranteed. Apex will do everything possible to maintain the shipping dates given herein, but Apex shall not

be liable for delays in delivery or in performance or failure to manufacture or deliver due to causes beyond its reasonable control such as acts of God, civil or military authority, priorities, fires, strikes or other labor disturbances, floods, epidemics/pandemics, war, riot, delays in transportation, or inability to obtain necessary labor, materials and components. In the event of such delay, the date of delivery or performance shall be extended. Apex shall be entitled to partial deliveries.

7. The Buyer's failure to inspect (or, if applicable, its failure to inspect timely) shall be tantamount to a waiver of such non-conformity and shall relieve Apex of any liability for such non-conformity.

VIII. RISK

1. Risk in the Goods shall pass to the Buyer upon receipt of the Goods. Where the Buyer chooses to collect the Goods itself, risk will pass when the Goods are entrusted to it or set aside for its collection, whichever happens first.

IX. TITLE

1. Title in the Goods shall not pass to the Buyer until Apex has been paid in full for the Goods, including any amounts owed pursuant to these Terms.
2. On passing of the title in the Goods to the Buyer, Apex shall assign to the Buyer any assignable rights Apex may have under any warranty extended by a third party covering the subject Goods sold by Apex. Materials or Goods manufactured by others and resold by Apex do not carry any additional warranty by Apex unless specifically granted in writing by Apex.
3. If, prior to the Buyer's full payment of the Goods:
 - a. The Buyer commingles the Goods with its own products, Apex shall grant the Buyer a security interest and lien on the new commingled product(s), with Apex's interest being commensurate to the percentage of the value of the Goods on the date of the commingling in comparison with the value of the Buyer's products on the date of commingling; or
 - b. The Buyer sells the Goods to a third party without Apex having received payment in full for them, the Buyer shall hold in trust for Apex any proceeds received as a result of such sale.

X. RETURN OF DEFECTIVE GOODS

1. Subject to applicable laws, all Goods are sold on a firm sale basis. Apex will not accept return of, and shall not credit the Buyer for, any purchased Good, unless otherwise agreed in writing, in which case the following terms apply
2. Any returns must be accompanied by provision of a Returned Material Authorization Number and be authorized in writing by a representative of Apex before any credit will be given. Any such return or credit given shall be authorized by a representative of Apex at Apex's sole and absolute discretion, whose discretion shall be final and binding.
3. Where Apex agrees to accept the return of Goods, the Buyer will be responsible for the cost of carriage and will ensure that the returned Goods are carefully packaged to avoid any damage in transit, and the Buyer remains liable for the returned Goods until such a time as they are accepted by Apex. Apex will not be obliged to accept any Goods and will only accept returns that appear in Apex's current sales record.
4. Goods so returned will be repaired or replaced at Apex's option as determined by Apex in its sole and absolute discretion, whose discretion shall be final and binding.

XI. LIMITED WARRANTY, DISCLAIMERS, EXCLUSIVE REMEDY AND LIMITATION OF LIABILITY

1. Apex warrants that the Goods are manufactured free from defects in materials and workmanship under normal use, and, if used as specified will remain in such condition for a period of thirty (30) days from the date of manufacture. This limited warranty extends only to the original Buyer. **THERE ARE NO OTHER WARRANTIES EXPRESSED OR IMPLIED.**

2. Damage and/or injury due to or resulting from shipment, and/or use not in accordance with specifications including, but not limited to, faulty installation, adjustments, repair, exposure to excessive pressure or temperature, exposure to moisture and/or corrosive chemicals, improper application, misuse or abuse, non-specified product or part modification or the negligence of others are not covered by the warranty and are not the responsibility of Apex.

3. **THE EXCLUSIVE REMEDY FOR BREACH OF THIS WARRANTY OR ANY OTHER APEX OBLIGATION IS, AT APEX'S SOLE OPTION, REPAIR, REPLACEMENT, OR REFUND OF THE PRICE OF THE GOODS DIRECTLY CAUSING THE BREACH. THIS WARRANTY DOES NOT COVER LABOR OR OTHER COSTS INCURRED IN REPAIRING, REMOVING, INSTALLING, SERVICING, OR HANDLING OF ANY GOODS. THIS IS THE LIMIT OF APEX'S LIABILITY.**

4. **UNDER NO CIRCUMSTANCES OR EVENT SHALL APEX OR ITS AFFILIATES, EMPLOYEES, AGENTS, OR SUPPLIERS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, RELIANCE, COVER OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING BUT NOT LIMITED TO, DAMAGES FOR: LOSS OF PROFITS; LOSS OF SAVINGS; LOSS OF CONFIDENTIAL OR OTHER INFORMATION; BUSINESS INTERRUPTION; PERSONAL INJURY; LOSS OF PRIVACY; LOSS OR DAMAGE OF OR TO PROPERTY, SYSTEMS, RECORDS, OR DATA; FAILURE TO MEET ANY DUTY INCLUDING OF GOOD FAITH OR OF REASONABLE CARE; NEGLIGENCE; AND ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER) INCURRED OR SUFFERED BY THE BUYER OR ANY OTHER PERSON ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF OR INABILITY TO USE THE GOODS PROVIDED, THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT SERVICES WITH RESPECT TO THE GOODS, THIRD PARTY CLAIMS, LIABILITIES RELATED TO AN INDIVIDUAL'S PRIVACY RIGHT, OR OTHERWISE UNDER OR IN CONNECTION WITH ANY PROVISION OF THE GOODS, EVEN IN THE EVENT OF THE FAULT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, BREACH OF WARRANTY OF APEX OR ITS AFFILIATES, EMPLOYEES, AGENTS, OR SUPPLIERS, EVEN IF APEX OR ITS AFFILIATES, EMPLOYEES, AGENTS, OR SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE BUYER IS SOLELY RESPONSIBLE AND LIABLE FOR VERIFYING THE SECURITY, ACCURACY AND ADEQUACY OF ANY GOODS, AND FOR ANY RELIANCE THEREON.**

5. **APEX WILL IN NO EVENT OR CIRCUMSTANCES BE LIABLE FOR ANY LOSS, DAMAGE, COST OF REPAIR INCIDENTAL, CONSEQUENTIAL, SPECIAL, DIRECT OR INDIRECT DAMAGES OF ANY KIND CAUSED BY DEFECTIVE PRODUCTS OR PARTS, DELAY OR DEFAULT IN DELIVERY, OR OTHERWISE AND ALL OBLIGATIONS OF APEX FOR DAMAGES (INCLUDING LEGAL FEES ON A SOLICITOR AND OWN CLIENT BASIS) EXCEEDING THE PURCHASE PRICE ARE EXCLUDED AND DISCLAIMED. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, AND APEX DISCLAIMS ALL OTHER EXPRESS WARRANTIES, AND ALL IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE OTHER THAN AS SET OUT IN SECTION XI(1) HERETO.**

XII. INTELLECTUAL PROPERTY RIGHTS; PATENTS; TRADEMARKS AND COPYRIGHTS

1. All intellectual property rights, including, without limitation, moral rights, produced from or arising as a result of the performance of this Agreement shall, so far as not already vested, become the absolute property of Apex, and the Buyer shall do all that is reasonably necessary to ensure that such rights vest in Apex by the execution of appropriate instruments or the making of agreements with third parties.
2. All patents, trademarks, copyrights and other industrial property rights existing with respect to the Goods and all information and documents pertaining to development, production and sale of the Goods shall remain the exclusive property of Apex, the Buyer declares and warrants that it shall not use any information received from Apex with respect to the Goods in order to develop or manufacture Goods, which compete with Apex products. The Buyer shall hold Apex free and harmless from all costs and shall indemnify Apex for all losses or loss of profit directly

or indirectly due to any infringement by the Buyer for patents or other protective rights of Apex.

3. The Buyer shall give Apex immediate written notice of all third-party allegations of infringement with respect to the Goods. If any such claims are made against the Buyer for infringement of the intellectual property or other rights of third parties in the use of the Goods, Apex shall decide, at its sole discretion, if and how any litigation arising there from is to be conducted. In this respect, the Buyer shall not settle or make any other concession without the prior written consent of Apex, which consent Apex may withhold in its sole and absolute discretion. Apex's vis-à-vis the Buyer for infringement of the intellectual property or other rights of third parties is in any case limited to the Price of the Goods.

4. Apex shall not be liable for infringement of intellectual property or other rights in connection with the delivered Goods, if they are not used in a way specified by Apex, or if the infringement is caused by utilization or linking of the Goods with other products neither generated, nor specified in writing, by Apex.

XIII. CANCELLATION

1. In the event the Buyer cancels an order, Buyer shall pay Apex, as liquidated damages, the full Price for such materials as are completed and an equitable price for such materials as are in process at the time of cancellation.

XIV. INDEMNIFICATION

1. The Buyer agrees to indemnify, defend, protect and hold Apex, and its respective officers, directors, owners, employees, representatives, attorneys, subsidiaries and affiliated companies (collectively, "**Indemnified Parties**") harmless from and against any and all liabilities, costs, claims, causes of action, suits and other damages (including costs of defense, settlement and attorneys' fees) that the Indemnified Parties may suffer, incur, become responsible for, or pay, arising out of or in connection with any breach of any representation warranty, covenant or agreement of the Buyer in the Agreement, any taxes that are the responsibility of the Buyer, and/or the negligence, reckless conduct or willful acts or omissions of the Buyer, its subcontractors or suppliers, or any of its or their agents, employees or representatives, or any other party for which or whom Buyer is legally responsible, to the extent connected in any manner to the performance of the Agreement by the Buyer, its subcontractors or suppliers, agents, employees or representatives.

XV. FORCE MAJEURE

1. Apex shall not be liable for any delay or failure to perform any of its obligations hereunder if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, disease, pandemic, epidemic/pandemic, lock outs, accidents, war, fire, governmental acts and/or regulations, breakdown of plant or machinery or shortage or unavailability of raw materials from a natural source of supply, and Apex shall be entitled to a reasonable extension of its obligations without any additional compensation to the Buyer for any such extension. If the delay persists for such time as Apex considers unreasonable in its sole discretion, it may, without liability on its part, terminate the contract without penalty.

XVI. RELATIONSHIP OF PARTIES

1. Nothing contained in these Terms shall be construed as establishing or implying any partnership or joint venture between the parties and nothing in these Terms shall be deemed to construe either of the parties as the agent, employee, or employer of the other.

XVII. ASSIGNMENT

1. The contract between the Buyer and Apex for the sale of Goods shall not be assigned or transferred, nor the performance of any obligation sub-contracted, in either case by the Buyer, without the prior written consent of Apex.

XVIII. WAIVER

1. The failure by Apex to enforce at any time or for any period any one or more of the Terms herein shall not be a waiver of them or of the right at any time subsequently to enforce all Terms of this Agreement and no waiver of any right by Apex shall be effective except where expressly stated in writing and only to the extent stated therein.

XIX. SEVERABILITY

1. If any term or provision of these Terms and Conditions is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if these Terms had been agreed with the invalid, illegal or unenforceable provision eliminated.

XX. DISPUTES AND APPLICABLE LAWS

1. This Agreement shall be governed by and construed in accordance with the laws of British Columbia and the laws of Canada applicable therein.

2. Any dispute or controversy occurring between the Parties hereto relating to the interpretation or implementation of any of the provisions of these Terms shall be resolved by arbitration. Such arbitration shall be conducted by a single arbitrator appointed by agreement between the parties, or, in default of agreement, such arbitrator shall be appointed in accordance with the provisions of the *Arbitration Act* or any re-enactment or amendment thereof. Any arbitration shall be held in the City of Vancouver. The procedure to be followed shall be agreed by the parties or, in default of agreement, determined by the arbitrator. The decision arrived at by the arbitrator shall be final and binding and no appeal shall lie therefrom.

I HAVE READ AND AGREE TO ABOVE TERMS AND CONDITIONS

Name	Signature	Date
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