

ALM PRODUCTS LIMITED

Terms and Conditions Relating to the Sale of Goods

1. Interpretation

1.1 In these Conditions:-

"Acknowledgement of Order" means our confirmation to you that your order has been accepted, on our standard form;

"ALM Products"/"we" means ALM Products Limited (CRN: 02914636);

"Business Day" means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business;

"Buyer"/"you" means the person who has ordered Goods from ALM Products;

"Conditions" means the terms and conditions set out below as amended from time to time in accordance with clause 10.4;

"Contract" means the contract between the Buyer and ALM Products for the purchase and sale of the Goods, subject to these Conditions;

"Goods" means the goods (or any part of them) to be sold under the Contract, as set out in the Acknowledgement of Order;

"Incoterms" means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made;

"Intellectual Property Rights" means any patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

"Maintenance Instructions" means the maintenance instructions provided by ALM Products to the Buyer in relation to its non-aluminium Goods;

"Price" means the price payable under the Contract for the Goods.

1.2 A reference to statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

1.3 Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.4 A reference to **writing** or **written** includes emails.

2. Basis of the Sale

2.1 We shall sell the Goods to you subject to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions that the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2 A quotation for the Goods given by ALM Products shall not constitute an offer. A quotation shall only be valid for a period of 30 Business Days from its date of issue.

2.3 Your order or acceptance of a quotation for Goods shall be deemed to be an offer by you to buy the Goods subject to these Conditions.

2.4 No order placed by you shall be deemed to be accepted by us until a written Acknowledgement of Order is issued by us or (if earlier) we deliver the Goods to you, at which point the Contract shall come into existence.

2.5 The Buyer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Buyer that is inconsistent with these Conditions.

2.6 ALM Products' employees or agents are not authorised to make any representations concerning the Goods unless confirmed by ALM Products in writing. By entering into the Contract you acknowledge that you do not rely on any such representations which are not so confirmed. Nothing in these Conditions shall exclude either party's liability for fraudulent misrepresentation or fraud.

2.7 Any samples, drawings or advertising produced by ALM Products and any illustrations contained in ALM Products' catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.

3. Orders and Specifications

3.1 You are responsible for ensuring the accuracy of the terms of any order placed with ALM Products.

3.2 No order which has been accepted by us may be cancelled by you except with our agreement in writing and on terms that you will indemnify us in full against all loss (including loss of profit), costs, damages, charges and expenses incurred by us as a result of cancellation.

3.3 ALM Products reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements.

4. Price and Payment

4.1 The Price shall be set out in the Acknowledgement of Order.

4.2 Prices quoted are (except where expressly provided otherwise) exclusive of VAT and all other applicable taxes and levies which shall be payable in addition by the Buyer at the prevailing rate.

4.3 Separate delivery and insurance charges are payable and shall be as set out in the Acknowledgement of Order.

4.4 ALM Products reserves the right, by giving notice to the Buyer at any time before delivery, to increase the Price to reflect:

4.4.1 any increase in the cost to us which is due to any factor beyond our control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials (including raw materials) and other manufacturing costs);

4.4.2 any request by the Buyer to change the delivery date(s), quantities or types of Goods ordered, or any specification; or

4.4.3 any delay caused by any instructions of the Buyer or failure of the Buyer to give ALM Products adequate or accurate information or instructions.

4.5 Subject to any special terms agreed in writing between the Buyer and ALM Products, ALM Products shall be entitled to invoice the Buyer for the Price 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 ALM Products shall be entitled to invoice the Buyer for the Price at any time after ALM Products has notified the Buyer that the Goods are ready for collection or (as the case may be) ALM Products has tendered delivery of the Goods.

4.6 The Buyer shall pay the Price (less any discount to which the Buyer is entitled, but without any other deduction) within 30 days of the date of ALM Products' invoice, and ALM Products shall be entitled to recover the Price, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. Time for payment shall be of the essence and no payment shall be deemed to have been received until ALM Products has received cleared funds.

4.7 You shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, deduction, withholding or abatement or otherwise unless you have a valid court order requiring an amount equal to such deduction to be paid by us to you (except for any deduction or withholding required by law). ALM Products may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Buyer against any amount payable by ALM Products to the Buyer.

4.8 If the Buyer fails to make any payment due to ALM Products under the Contract by the due date for payment, then the Buyer shall pay interest on the overdue amount at the rate of 4% per annum above Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Buyer shall pay the interest together with the overdue amount.

4.9 If you fail to pay us any sum due pursuant to the Contract, then all other sums which have been invoiced by us to you (whether under the Contract or otherwise) shall immediately become due and payable.

4.10 Where it is necessary for us to take legal action to recover any sums due to us under the Contract, then you will pay to us on an indemnity basis in full all costs, charges, fees (including but not limited to legal costs and court fees) and other expenses incurred by us as a result of us taking such action.

5. Delivery

5.1 Delivery of the Goods shall be made, in ALM Products' absolute discretion, by either post or carrier, to the address for delivery you give us at the time of order. You are responsible for ensuring that there is an authorised person available to accept delivery on your behalf at the delivery address and we are entitled to assume that any person signing to accept delivery for the Goods at the delivery address is so authorised. ALM Products shall have no liability for loss of damage to Goods resulting from their delivery to persons not authorised by you whom ALM Products believed were so authorised.

5.2 Any dates quoted by ALM Products in the Acknowledgement of Order or elsewhere for delivery are approximate and we shall not be liable for any delay however caused. Time of delivery shall not be of the essence of the Contract.

5.3 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and delay in delivering, failure to deliver or any alleged defect or claim by you in respect of any one or more instalments shall not entitle you to treat the Contract as a whole as repudiated.

5.4 If we fail to deliver the Goods our liability shall be limited to reimbursement of the Price paid by you for such Goods. ALM Products shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by an event outside of ALM Products' control, the Buyer's fault or the Buyer's failure to provide ALM Products with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

5.5 Delivery is completed on the completion of unloading of the Goods at the delivery address.

5.6 If for any reason you fail to accept delivery of any of the Goods when they are ready for delivery, or we are unable to deliver the Goods on time because you have not provided appropriate instructions, documents, licences or authorisations:

5.6.1 risk in the Goods shall pass to you;

5.6.2 the Goods shall be deemed to have been delivered; and

5.6.3 we may store the Goods until delivery takes place, whereupon you shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

5.7 If 10 Business Days after the day on which we notified you that the Goods were ready for delivery you have not taken or accepted delivery of the Goods, we may resell or otherwise dispose of part or all of the Goods and, after deducting reasonably storage and selling costs, account to you for any excess over the Price or charge you for any shortfall below the Price.

5.8 You shall inspect the Goods on delivery and notify us of any shortages within 10 Business Days of delivery. We shall not be liable to replace any Goods to make up any delivery shortages not notified to us within this timescale.

6 Risk and Property

- 6.1 The Goods are at your risk from the time that they are despatched by us for delivery and it is your responsibility to insure the Goods from the time that they are despatched by us for delivery by post or despatched by us to a carrier.
- 6.2 Ownership of the Goods shall not pass to you until we have received in full (in cash or cleared funds) all sums due to us in respect of:
- 6.2.1 the Goods; and
- 6.2.2 all other sums which are or which become due to us from you on any account.
- 6.3 Until ownership of the Goods has passed to you, you shall:
- 6.3.1 hold the Goods on a fiduciary basis as our bailee;
- 6.3.2 store the Goods (at no cost to us) separately from all of your other goods or those of any third party in such a way that they remain readily identifiable as our property;
- 6.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 6.3.4 maintain the Goods in satisfactory condition and keep them insured on our behalf for their full price against all risks for their full price to our reasonable satisfaction. On request you shall produce the policy of insurance to us; and
- 6.3.5 give us such information relating to the Goods as we may require from time to time.
- 6.4 You may resell the Goods before ownership has passed to you solely on the following conditions:
- 6.4.1 any sales shall be effected in the ordinary course of your business at full market value;
- 6.4.2 any such sale shall be a sale of our property on your own behalf and you shall deal as principal (and not as our agent) when making such a sale; and
- 6.4.3 title to the Goods shall pass from ALM Products to you immediately before the time at which you resell the Goods.
- 6.5 Before ownership of the Goods has passed to you, your right to possession of the Goods shall terminate immediately if:
- 6.5.1 you commit a material breach of any term of the Contract and (if such a breach is remediable) fail to remedy that breach within ten Business Days of being notified to do so by ALM Products;
- 6.5.2 you have a bankruptcy order made against you or make an arrangement or composition with your creditors, or otherwise take the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convene a meeting of creditors (whether formal or informal), or enter into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or have a receiver and/or manager, administrator or administrative receiver appointed of your undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of you or notice of intention to appoint an administrator is given by you or your directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for your winding up or for the granting of an administration order in respect of you, or any proceedings are commenced relating to your insolvency or possible insolvency; or
- 6.5.3 you suffer or allow any execution, whether legal or equitable, to be levied on your property or obtained against you, or fail to observe or perform any of your obligations under the Contract or any other contract between us and you, or you are unable to pay your debts within the meaning of section 123 of the Insolvency Act 1986 or you cease to trade; or
- 6.5.4 you encumber or in any way charge any of the Goods.
- 6.6 If, before ownership of the Goods passes to the Buyer, the Buyer becomes subject to any of the events listed in clause 6.5 then the Buyer's right to resell the Goods or use them in the ordinary course of its business ceases immediately and the Buyer shall deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product.
- 6.7 Without limiting ALM Products' other rights or remedies, ALM Products may suspend the provision of Goods under the Contract or any other contract between the Buyer and ALM Products if the Buyer becomes subject to any of the events listed in clause 6.5 or ALM Products believes that the Buyer is about to become subject to any of them, or if the Buyer fails to pay any amount due under the Contract on the due date for payment.
- 6.8 Without limiting its other rights or remedies, ALM Products may terminate the Contract with immediate effect by giving written notice to the Buyer if the Buyer fails to pay any amount due under the Contract on the due date for payment.
- 6.9 On termination of the Contract for any reason the Buyer shall immediately pay ALM Products all of ALM Products' outstanding unpaid invoices and interest. ALM Products shall be entitled to recover payment from the Buyer for the Goods notwithstanding that ownership of any of the Goods has not passed from ALM Products to the Buyer.
- 6.10 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.
- 6.11 You grant us, our agents and employees an irrevocable licence at all times to enter any premises where the Goods are or may be stored in order to inspect them, or where your right to possession has terminated, to recover them.

6.12 Where we are unable to determine whether any goods are the Goods in respect of which your right to possession has terminated, you shall be deemed to have sold all Goods in the order in which they were invoiced to you.

6.13 Any provision of the Contract that expressly or by implication is intended to continue in force on or after termination shall remain in full force and effect.

7 Intellectual Property Rights

- 7.1 All Intellectual Property Rights in or arising out of or in connection with the performance by ALM Products of its obligations under the Contract shall be owned by ALM Products.
- 7.2 Where we supply Goods manufactured in accordance with a specification provided by you, you warrant that such specification or the performance by us of our obligations under the Contract shall not infringe the Intellectual Property Rights of any third party and you shall indemnify and keep us fully indemnified against all actions, claims, proceedings, costs, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest and penalties) and all legal costs or other expenses. This clause 7.2 shall survive termination of the Contract.

8 Warranties and Liability

8.1 ALM Products warrants that all Aluminium Goods will be free from defects in materials and workmanship for a period of 24 months from delivery. Any Non-Aluminium Goods are warranted to be free from defects in materials and workmanship for the period of time stated in the Maintenance Instructions.

ALM Products shall not be liable for the Goods' failure to comply with this warranty in any of the following circumstances:-

- 8.1.1 if any defect arises from fair wear and tear, wilful damage, negligence, abnormal storage or working conditions, failure to follow ALM Products' oral or written instructions or the Maintenance Instructions, incorrect installation, misuse or alteration or repair of the Goods without ALM Products' consent;
- 8.1.2 the defect arises from parts, materials, equipment or goods not manufactured by us, in respect of which you will only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to us;
- 8.1.3 the defect arises from use of the Goods for purposes for which the Goods are not intended, or from use of the Goods in conditions or environments which ALM has indicated in its instructions, Maintenance Instructions or otherwise (which shall include any references in brochures or promotional materials for the Goods) are unsuitable for the Goods;
- 8.1.4 the defect arises as a result of ALM Products following any drawing, design or specification supplied by the Buyer; and/or
- 8.1.5 the Buyer makes any further use of the Goods after giving notice in accordance with clause 8.3.
- 8.2 Except as expressly provided in this clause 8, ALM Products shall have no liability to the Buyer in respect of the Goods' failure to comply with the warranty set out in clause 8.1.
- 8.3 Any claim by you which is based on any defect in the quality or condition of the Goods shall (whether or not delivery is refused) be notified to us within seven days of delivery or the date when delivery was rendered or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery that some or all of the Goods do not comply with the warranty set out in clause 8.1.
- 8.4 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods is notified in accordance with clause 8.3, we shall be entitled to correct any defect by, at our option, repairing or replacing any of the Goods which are defective or accepting their return for appropriate credit but ALM Products shall have no further liability to the Buyer. ALM Products' obligation under this clause is, without limitation, conditional upon the Buyer furnishing satisfactory evidence that the Goods alleged to be defective have been properly installed and maintained according to the manufacturer's instructions, any ALM Products instructions or Maintenance Instructions. We reserve the right to examine the Goods and request proof of the installation date prior to accepting claims under this clause.
- 8.5 These Conditions shall apply to any repaired or replacement Goods supplied by ALM Products.
- 8.6 ALM Products shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of its obligations in relation to the Goods, if the delay or failure was due to any circumstance(s) beyond ALM Products' reasonable control.
- 8.7 Nothing in these Conditions excludes or limits our liability for:
- 8.7.1 death or personal injury caused by our negligence, or the negligence of our employees, agents or subcontractors (as applicable);
- 8.7.2 fraud or fraudulent misrepresentation;
- 8.7.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- 8.7.4 defective products under the Consumer Protection Act 1987; or
- 8.7.5 any matter in respect of which it would be unlawful for us to exclude or restrict our liability.
- 8.8 Subject to clause 8.7:
- 8.8.1 ALM Products shall under no circumstances whatsoever be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- 8.8.2 ALM Products' total aggregate liability to the Buyer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed £10,000.
- 8.9 ALM Products shall not be liable to the Buyer under the warranty included in clause 8.1 or otherwise under the Contract where a defect in the Goods or any other liability arises directly or indirectly out of any design or specification supplied by the Buyer.

9 **Export Terms**

- 9.1 Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by provisions of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.
- 9.2 Where the Goods are supplied for export from the United Kingdom, the provisions of this Condition shall (subject to any special terms agreed in writing) apply notwithstanding any other provision of these Conditions.
- 9.3 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties on them.
- 9.4 ALM Products shall be under no obligation to give notice under Section 32(3) of the Sale of Goods Act 1979.

10 **General**

- 10.1 The failure to exercise or delay in exercising a right or remedy provided by the Contract or by law does not constitute a waiver of other rights or remedies. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 10.2 If any provision of the Contract or these Conditions is held by any court or other competent authority to be invalid, illegal, void or unenforceable in whole or part, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 10.3 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, or email. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address specified by the relevant party; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one Business Day after transmission. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 10.4 No variation to the terms of the Contract and/or these Conditions shall be binding unless agreed in writing between authorised representatives of the Buyer and ALM Products.
- 10.5 No term of the Contract shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a third party.
- 10.6 You shall not assign, transfer, charge or deal in any other manner with the Contract or any of your rights under it, or purport to do any of the same. ALM Products may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 10.7 The Contract and these Conditions shall be governed by and construed in all respects in accordance with the laws of England, and the Buyer agrees to submit to the exclusive jurisdiction of the English Courts.