

JUPITER ALUMINUM CORPORATION
TERMS AND CONDITIONS OF SCRAP PURCHASE
DATE OF REVISION: OCTOBER 1, 2020

1. **Acceptance of this Purchase Order.** This Purchase Order is subject to prompt acceptance by Seller and may be withdrawn by Buyer at any time prior to receipt at Buyer's office of notice of Seller's acceptance of same. Acceptance of this order by any means of written acknowledgment or any shipment of goods ordered or performance of services called for hereunder shall constitute acceptance by Seller of the terms and conditions contained in this order. Any terms or conditions proposed by Seller inconsistent with or in addition to the terms and conditions contained herein shall be void and of no effect unless specifically agreed to by Buyer in writing. These terms and conditions, together with such written modifications, constitute the entire agreement between the parties.
2. **Time of Performance; Delivery.** Time is of the essence. Goods shall be packed and shipped per instructions and good commercial practice; Jupiter assumes no obligation for materials in excess of specifications or shipping schedule. If Seller has reason to believe that deliveries will not be made as scheduled, Seller shall immediately give written notice to Jupiter stating the cause of the anticipated delay. Seller shall be charged for loss sustained by reason of delay or failure except that beyond its reasonable control. The specific quantity ordered must be delivered in full at the time specified for delivery unless the Buyer otherwise agrees in writing. Buyer may cancel, reduce the quantity or re-schedule orders which have not been shipped. Buyer may reject any unauthorized delivery and send such unauthorized delivery back to Seller at Seller's cost and risk. [a] If the Buyer's order is for "about" or "approximately" in quantity, the delivered materials must be within 5% of the stated quantity to be authorized. [b] A ton is 2,000 pounds.
3. **Quality.** Seller warrants that the goods will conform to the stated descriptions, be of merchantable quality, be fit for the use intended by Jupiter, and be free from defects. If any goods are defective, at Jupiter's option and without prejudice to any other rights Jupiter may have, Seller shall (a) remedy the defect or replace the defective goods at its expense within fourteen (14) days after notice from Jupiter or (b) reimburse Jupiter for Jupiter's cost to remedy or replace within that same time period.
4. **Inspection.** All goods delivered are subject to final inspection and approval at Jupiter's premises. Payment by Jupiter will not constitute approval. Jupiter shall be the sole judge of the suitability of the goods for its use and Seller shall pay all transportation charges rejected material. Acceptance of goods shall not relieve the Seller from liability, damage, or other legal remedy for breach of any warranty.
5. **Changes.** The quality, quantity, or nature of goods to be delivered may not change nor will charges for extras be allowed with Change Order signed by an authorized representative of Jupiter
6. **Price Warranty.** Seller warrants that the prices charged hereunder are in compliance with all applicable government laws, rules, and regulations.
7. **Set-off.** Jupiter, at its election, may set off any indebtedness of Seller to Jupiter against amounts owing by Jupiter to Seller hereunder.
8. **Taxes: Packaging.** No charges for taxes, transportation, packaging, or returnable containers will be allowed or paid by Jupiter unless separately agreed by Jupiter in writing. All sales, use, excise, or similar taxes to be paid by Jupiter must be itemized separately on invoices. Jupiter will furnish appropriate exemption certificates.
9. **Invoices.** Invoices shall show point and means of shipment and cash discount, if any, for early payment. Any such cash discount period begins on the date of receipt of invoice or material, whichever is later.
10. **Risk of Loss; Insurance.** Seller shall bear the risk of loss of goods until delivery to Jupiter's premises. Seller shall procure and maintain such insurance as Jupiter may reasonably request.

11. **Indemnity.** Seller shall indemnify, defend, and hold harmless Jupiter, its agents, employees, and representatives from and against any and all loss, damage, liability, claims, liens, demands, or causes of action of every nature whatsoever in any manner arising out of or incident to or in connection with the performance under this Agreement resulting from (a) breach of the terms of this Agreement or Seller's warranties; (b) any negligent act or omission or willful misconduct of Seller or its Subcontractors or their employees or representatives causing injury to or death to any person or loss or damage to the facilities, material, and equipment of any person; and (c) any claim or suit for infringement of any patent or copyright, or the misappropriation of trade secrets or other proprietary right.
12. **Trademarks.** Jupiter warrants that it owns all trademarks that it may request be affixed to goods. Seller shall not acquire or claim any rights in or use any of such trademarks on goods produced for itself or parties other than Jupiter.
13. **Patents.** Seller shall pay all royalties and license fees, if any, related to patented materials furnished under this Agreement.
14. **Non-discrimination.** Seller represents and warrants that it complies with
 - (a) Executive order 11246, as amended, relating to equal employment opportunities, the implementing regulations and rules, and all applicable contract clauses and requirements;
 - (b) the Rehabilitation Act of 1973 and the Vietnam Era Veterans Readjustment Assistance Act of 1974, the implementing regulations and rules, and all applicable contract clauses and requirements;
 - (c) Public Law 95-507 and Executive Orders 11625 and 12138 relating to the utilization of small and minority business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals and women-owned business concerns;
 - (d) the implementing regulations and rules of the General Services Administration and all contract clauses and requirements that are applicable and set forth therein are incorporated herein by reference.

Seller shall comply with all other federal and state laws and regulations prohibiting discrimination in employment, including but not limited to, the Civil Rights Act of 1964, the Age of Discrimination in Employment Act of 1967, and the Americans with Disabilities Act of 1990. Seller certifies that it does not maintain segregated facilities and adopts hereby each and all of the provisions of the approved form of certification contained in 41 CFR 60- 1.8(b) This includes that Seller shall abide by the *requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a)*. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin including to take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability.

15. **Compliance with Laws.** Seller represents and warrants that it is compliance with all applicable laws, rules, and regulations that affect this Agreement or Seller's ability to perform hereunder and that (a) all chemicals contained in products supplied pursuant to this Agreement are listed in the Environmental Protection Agency's Toxic Substance Control Act (Public Law 94-469) Master Inventory File of Chemical Substances; (b) if requested, it will complete and send the "Federal Clean Water Act 311 Seller Questionnaire": and any necessary revised form to the specified address; and (c) it will mail a copy of the latest issued Material Safety Data Sheet for each product both to the shipping destination and to Jupiter's principal office. Seller will comply with any laws which add to or modify the laws listed.

- 16. Confidentiality.** Seller agrees to keep confidential and not to disclose to others or use in any way to the detriment of Jupiter confidential business or technical information (including the existence of this Agreement) that Jupiter may disclose or deliver Seller in conjunction with this Agreement or that Seller learns from being on Jupiter's property to deliver the goods or to perform work. Seller shall not advertise its relationship with Jupiter hereunder.
- 17. Remedies.** Any cause of action for any alleged breach by the Buyer of the contract between the parties shall be barred unless commenced by Seller within one (1) year of the accrual of such cause of action. Seller irrevocably submits and agrees to the jurisdiction of the State and Federal courts in Lake County, Indiana and Cook County, Illinois in any action, suit or proceeding related to, or in connection with, this Purchase Order and, to the extent permitted by applicable law, Seller waives and agrees not to assert as a defense in any such action, suit or proceeding any claim (i) that Seller is not personally subject to the jurisdiction of the State and Federal courts of Indiana and Illinois; (ii) that the venue of the action, suit, or proceeding is improper; (iii) that the action, suit, or proceeding is brought in in an inconvenient form; or (iv) that the subject matter of this Purchase Order may not be enforced in or by the State or Federal courts of the States of Indiana. Without prejudice to any other mode of service, Buyer consents to service of process relating to any such proceedings by personal or prepaid mailing (air mail if international) in registered or certified form at the address set forth on the first page of this instrument. This instrument shall be construed in accordance with the substantive laws of the State of Indiana, without regard to its laws concerning conflicts of laws. The prevailing party shall receive reasonable legal fees and costs. The parties agree that the provisions of this Purchase Order may not be construed in favor of or against either party by reason of the extent to which a party or its professional advisors participated in the preparation of the instrument. The Convention for the International Sale of Goods does not apply to this Purchase Order
- 18. Insurance Requirements.** If Seller performs or is to perform any portion of this Purchase Order at or upon Buyer's place of business, the following terms shall apply:
- (a) Seller shall purchase and maintain during the performance of all or any portion of the Purchase Order the following type of insurance coverages, limits of liability, and other applicable terms:
- (i) Workers' Compensation and Occupational Disease Insurance: in accordance with applicable state and federal laws, and Employer's Liability Insurance with a bodily injury per accident limit of liability of at least \$ 1,000,000, bodily injury by disease limit each employee of \$1,000,000 and bodily injury by disease policy limit of \$1,000,000 or such greater sum as may be reasonably required by Buyer.
 - (ii) Commercial General Liability Insurance: provided by ISO form CG 0001 with a combined Bodily Injury and Property Damage limit of at least \$1,000,000 per occurrence, \$2,000,000 products and completed operations aggregate and \$2,000,000 general aggregate, or such greater sum as may be reasonably required by Buyer.
 - (A) Completed Operations and Products liability insurance shall be maintained for a period of 2-years after completion and acceptance of all goods ordered and services performed hereunder.
 - (B) The above policy shall include an endorsement identifying Buyer and any other parties as may be reasonably required by Buyer, as Additional Insured and granting the Buyer a Waiver of Subrogation.
 - (iii) Comprehensive Automobile Liability Insurance: covering use of all owned, non-owned and hired vehicles with Bodily Injury and Property Damage limit of at least \$1,000,000 Combined Single Limit, or such greater sum as may be reasonably required by the Buyer
 - (iv) Excess or Umbrella Liability Insurance: in the amount of \$2,000,000 per occurrence and in the aggregate, or such greater sum as may be reasonably required by the Buyer. Such Excess/Umbrella policy shall be excess over the Employers Liability, Commercial General Liability and Comprehensive Auto Liability policies and coverage required of Seller hereunder, shall be provided as Follow Form, and shall name Buyer, and any other parties as may be reasonably required by Buyer, as Additional Insured.

- (v) Each of Seller's General Liability and Excess/Umbrella Liability policies must be endorsed as Primary and Non-Contributory as to any insurance maintained by the Additional Insured(s) and shown on the certificate of insurance.
 - (vi) Excess or Umbrella Liability Insurance limits cannot be used to satisfy the limit requirements applicable to Seller hereunder for Employer's Liability, Commercial General Liability and Comprehensive Automobile Liability.
 - (vii) An endorsement in favor of the Additional Insured(s) waiving the Seller's and its insurer's rights of subrogation shall be issued with respect to the Seller's Commercial General Liability, and Workers' Compensation and Employers Liability policies. Evidence of this endorsement must be noted on the certificate of insurance.
 - (viii) Seller shall provide written notice via email or fax to Buyer of any cancellation notice received by Seller from any insurer providing insurance as required in these Terms and Conditions within two (2) business days of Seller's receipt of such notice
 - (ix) Property and Equipment: Seller shall purchase and maintain at its own discretion and expense, Builder's Risk/Installation Floater Insurance in an amount equal to the insurable value of the Seller's property, whether off site or in transit, to cover any equipment, tools or tangible personal property. Notwithstanding any terms to the contrary contained in any agreements or forms executed by or delivered to or among the parties, Seller assumes all liability and risks, and agrees to waive all claims against the Buyer, for damage to or loss of equipment, machinery, tools, supplies and other tangible personal property owned or supplied by Buyer or Seller and utilized or intended to be utilized during the course of Seller's Work. Any insurance carried by Seller covering such damage or loss shall be endorsed with a waiver of subrogation in favor of Buyer and shall name Buyer as Additional Insured. Any and all subcontractors agree to assume the same liabilities and risks as Seller hereunder and agree to name Buyer as Additional Insured on any such similar policies of insurance maintained by each of them.
- (b) Seller hereby agrees to furnish evidence of insurance to Buyer within the earlier of (3) business days after issuance of this Purchase Order and the day immediately prior to Seller's presence at Buyer's place of business for the performance of services or delivery of goods to which this Purchase Order applies.
- (c) To the fullest extent permitted by law, and notwithstanding any other terms contained in any agreements or forms executed by or delivered to or among the parties or set forth in any other terms of these Terms and Conditions, the Seller shall defend, indemnify and hold harmless Buyer and its respective officers, agents and employees, from and against all claims, damages, losses, costs, expenses, judgments and liabilities, including but not limited to reasonable attorney's fees, costs and expenses, arising out of or in connection with Seller's performance of or failure to perform its obligations under this Purchase Order, provided that any such claim, damage, loss, costs, expenses, judgments or liabilities are attributable to bodily injury, sickness, disease or death, or to injury or destruction of tangible personal property, including the loss of use resulting therefrom, that is caused in whole or in part by any act or omission of the Seller, anyone directly or indirectly employed by Seller or anyone for whose acts any of them may be liable. In the event such indemnity as described above is prohibited by law, then said indemnity shall only be to the extent caused by the negligent acts or omissions of the Seller, anyone directly or indirectly employed by Seller, or anyone for whose acts any of them may be liable, or to the extent allowed by applicable law. The indemnification obligation under this subparagraph (c) shall not be limited in any way by any limitations on the amount or type of damages, compensation or benefits payable by or for the benefit of Seller or any indemnities under any Worker's Compensation Act, Occupational Disease Act, Disability Benefits Act, or any other employee benefits act. The Seller further agrees to waive any and all liability limitations based upon the Worker's Compensation Act court interpretations or otherwise.

19. Sole Terms. This Agreement constitutes the entire agreement between Jupiter and Seller for this Purchase Order. It supersedes any prior or contemporaneous oral or written understanding. Only writing signed by both parties may modify this Agreement. Seller may not assign or subcontract this Agreement or any part thereof without Jupiter's prior written consent. The laws of Indiana shall govern this Agreement. Any delay, failure, or omission of Jupiter to enforce any provision of this Agreement shall not constitute a waiver of such provision or a waiver of any default or remedy. The remedies herein reserved are cumulative and in addition to any other remedies at law or in equity. Any additional terms that are noted on the face of this Agreement are incorporated by reference and apply as if fully set forth herein. Jupiter's failure to object to statements in any communication from Seller shall not be deemed an acceptance of such statements or a waiver of the provisions of this Agreement