

# Jupiter Aluminum Corporation

## TERMS AND CONDITIONS OF SALE

1. Acceptance of the Buyer's purchaser order is expressly limited to acceptance of the terms and conditions herein contained, and Buyer's acceptance of the goods shall be conclusive evidence of the acceptance of all said terms and conditions. Seller hereby gives notice that it objects to and rejects any terms or conditions contained in any form or document heretofore or hereafter supplied by Buyer to Seller which are in addition to or different from terms and conditions herein set forth.
2. Any terms or conditions proposed by the Buyer inconsistent with or in addition to the terms and conditions contained herein shall be null and void and of no effect unless specifically agreed to in a writing signed by the Seller. Seller hereby gives the Buyer notice that it objects to and rejects any terms or conditions contained in any form or document heretofore or hereafter supplied by Buyer to Seller which are in addition to or different from terms and conditions herein contained. Without limiting the generality of the foregoing, the Buyer agrees that if any of the terms and conditions of its purchase order are inconsistent with the terms and conditions stated herein, then the terms and conditions stated herein shall prevail. Further, acceptance hereof by the Buyer is expressly limited to acceptance of the terms and conditions herein contained, and Buyer's acceptance of the goods shall be conclusive evidence of the acceptance of the all said terms and conditions.
3. Prices for the goods covered hereby are the prices set forth herein or in a written sales contract signed by the Buyer and the Seller which is referenced herein. Unless otherwise indicated herein, the Seller's price for the goods does not include the cost for containers, packing, shipping, freight, transportation, or insurance, or any present or future taxes, tariffs, duties, export charges, license fees, royalties, or any other fees or charges imposed by any governmental authority or any other person or entity on the production, sale, or use of the goods, all of which shall be paid by the Buyer, and any such amounts paid by the Seller shall be for the account of the Buyer.
4. Delivery terms are as stated herein. The numbers "1" and "2", if referenced hereon, correspond to the applicable clauses below. Terms are subject to change without prior written notice to those terms in effect at the time of shipment.
  1. F.O.B. Buyer's plant, or such other place served by common carrier designated by the Buyer as the place at which the Buyer or its representative will take delivery of the goods, when delivery is taken at a point within the United States. The Seller will comply with the Buyer's routing instructions, if possible; provided, however, that the method of delivery and routing shall be at the Seller's discretion. If the Seller permits the Buyer to designate the route, method, or agency (common carrier only) of transportation, the Buyer will be invoiced for the difference between the transportation charges actually incurred by the Seller and an amount determined by multiplying the quantity shipped by the lowest available rate, whether carload or truckload. No transportation allowance will be made for Buyer pickup at any point.
  2. F.O.B. shipping point. The Buyer pays for freight and for all other transportation charges.
5. The shipping date(s) indicated herein is the Seller's best estimate, and will not operate to bind the Seller to ship or make deliveries on the date(s) stated herein. For orders of 15,000 - 40,000 pounds, shipment of +/-20% than the entire quantity ordered shall constitute fulfillment of the order and shall be accepted and paid for by the Buyer. For orders of more than 40,000 pounds, shipment of +/-10% than the entire quantity ordered shall constitute fulfillment of the order and shall be accepted and paid for by the Buyer. The Seller reserves the right to ship usable portions of this order in installments. All such installments shall be separately invoiced and shall be paid for in accordance with the terms herein contained. Delay in the shipment of any installment shall not relieve the Buyer of its obligation to accept Subsequent shipments. Notwithstanding Section 2-510(1) of the Uniform Commercial Code, after tender of the goods to the Buyer, all risk of loss shall remain with Buyer regardless of any defect or non-conformity of the goods.
6. The terms for payment for the goods are as set forth herein. No discount will be allowed for any shipping, freight, transportation, or insurance, or any taxes, tariffs, duties, export charges, license fees, royalties, or any other fees or charges imposed by any governmental authority or any other person or entity. The Buyer agrees to remit payment to the Seller at the location shown on the Seller's invoice. The Seller reserves the right at any time to suspend or revoke any credit extended to the Buyer if the Buyer fails to pay any invoice at maturity or for any other reason deemed good and sufficient in the Seller's sole discretion. In such case, in addition to any other remedies contained herein or provided by law, the Seller has the right to demand cash payment or satisfactory security from the Buyer prior to shipment. The Buyer's failure to pay any invoice at maturity makes all subsequent invoices immediately due and payable irrespective of any terms contained herein or therein, and the Seller may withhold all subsequent shipments until the Buyer's account is settled in full. The receipt by the Seller of part payment of the full amount then due and payable (whether under the original terms of payment or terms of payment changed by the Seller as provided herein) shall not be a waiver of any of the Seller's rights set forth herein or provided by law. The Buyer agrees that the Seller may at its option charge interest on delinquent accounts at the greater of the prime rate of interest plus (3%) or twelve percent (12%) per annum, or, if such rate exceeds the highest rate allowed by applicable law, then at the highest rate allowed by applicable law. The Buyer hereby grants the Seller a lien or security interest in all goods to secure all amounts owing to the Seller by the Buyer hereunder.
7. The Seller warrants that, upon tender of delivery of the goods to the Buyer, the goods will be free from defects in material and workmanship. WITH RESPECT TO GOODS PRODUCED PURSUANT TO THE "BUYER'S SPECIFICATIONS" (AS DEFINED BELOW), THE SELLER WARRANTS ONLY THAT THE GOODS HAVE BEEN PRODUCED IN ACCORDANCE WITH SUCH SPECIFICATIONS. THESE WARRANTIES ARE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND OF ANY OTHER OBLIGATIONS OR LIABILITIES ON THE PART OF THE SELLER, AND THE SELLER NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR IT ANY OTHER OBLIGATION OR LIABILITY IN CONNECTION WITH THE GOODS. THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION OF THE GOODS CONTAINED HEREIN.
8. The Buyer agrees to inspect the goods immediately upon its receipt thereof, and shall give written notice to the Seller of any claim that the goods are defective or do not otherwise conform with the terms hereof within five (5) days following receipt of the goods, or, in the case of any defect not reasonably discoverable through inspection, within three (3) months of receipt of the goods. Any damage, loss or shortage occurring in transit shall be settled by the Buyer with the carrier without any offset to the purchase price of the goods. The Buyer shall set aside, protect and hold those goods which are the subject of its claim, without further processing, until the Seller has an opportunity to inspect them. The Seller, upon being satisfied as to the existence of a defect or non-conformity with respect to the goods, will, at its sole option (i) correct the same by replacing the defective or non-conforming goods, (ii) correct the same by making suitable repairs to the defective or non-conforming goods, or (iii) return the full purchase price for the defective or non-conforming goods to the Buyer, in which case, if so requested by the Seller, such goods shall be returned by the Buyer to the Seller, F.O.B. the Seller's plant. THE BUYER AGREES THAT THE FOREGOING ARE THE BUYER'S SOLE AND EXCLUSIVE REMEDIES FOR ANY DEFECTIVE OR NON-CONFORMING GOODS.
9. THE BUYER'S EXCLUSIVE REMEDIES AGAINST THE SELLER SHALL BE AS SET FORTH IN THE PRECEDING PARAGRAPH, AND IN NO EVENT SHALL THE SELLER BE LIABLE TO THE BUYER, EITHER DIRECTLY OR BY WAY OF CONTRIBUTION OR INDEMNITY, FOR DIRECT, SPECIAL, INCIDENTAL, TORT OR CONSEQUENTIAL DAMAGES, OR ANY OTHER DAMAGES OF ANY KIND WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, PROPERTY DAMAGE, LOSS OF PROFIT, DAMAGES BASED ON LOSS OF USE OF THE GOODS, OR DAMAGES FOR COVER, REGARDLESS OF WHETHER THE CLAIM FOR ANY SUCH DAMAGES IS BASED ON BREACH OF WARRANTY, EXPRESSED OR IMPLIED, BREACH OF CONTRACT, TORT, OR OTHERWISE.
10. No waiver by Seller of any breach of any provisions hereof shall constitute a waiver of any other breach or of such provision.
11. The Buyer agrees to approve or reject any designs, specifications, and/or samples of the goods (collectively, the "Seller's Specifications") within seven (7) days after the Seller's delivery of the Seller's Specifications to the Buyer. If the Seller's Specifications are rejected by the Buyer, the Buyer shall give written notice to the Seller explicitly setting forth the reasons for such rejection. In such event, the Seller, at its sole option, may either modify the Seller's Specifications pursuant to the Buyer's written notice or terminate this order and charge the Buyer for the cost of any labor and materials paid or incurred by the Seller in connection with such Seller's Specifications. If the Buyer fails to approve or reject the Seller's Specifications within seven (7) days after delivery thereof to the Buyer, then the Seller's Specifications shall be deemed to have been approved by the Buyer. The Buyer acknowledges and agrees that the Seller's Specifications constitute confidential and proprietary information of the Seller, and the Buyer shall not, directly or indirectly, (a) disclose the Seller's Specifications to any person or entity other than employees of the Buyer who have a need to know; (b) use the Seller's Specifications in any manner whatsoever, whether for commercial or non-commercial purposes, other than for the purpose of evaluating whether to purchase the Goods; or (c) fail to maintain the Seller's Specifications in confidence or take suitable precautions to ensure that the Seller's Specifications are not disclosed except as otherwise authorized hereunder.
12. The Buyer shall approve or reject any designs, specifications, and/or samples produced by the Seller pursuant to any designs, specifications, or other written or oral instructions provided by the Buyer for the purpose of directing the manner in which Seller produces the goods (collectively, the "Buyer's Specifications") within seven (7) days after the Seller's delivery thereof to the Buyer. Shipment of any goods produced by the Seller pursuant to any Buyer's specifications constitutes approval and acceptance by the Buyer of any designs, specifications, and/or samples with respect to such goods, and acknowledgment by the Buyer that the Seller is not the designer of such goods. The Buyer agrees to indemnify and defend the Seller against any loss, cost, liability or expense resulting from any infringement or claimed infringement of any patent, trademark, or other intellectual property right arising from or relating to the Seller's compliance with any of the Buyer's specifications.

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13. For all goods produced pursuant to the Buyer's specifications, the Seller reserves the right to fabricate the entire quantity of such goods ordered by the Buyer in one production run, even though the Buyer has requested that shipments be made over time. In the event of the cancellation or termination hereof, the Buyer shall reimburse the Seller for the cost of all raw materials, work-in-process, and finished goods for the entire quantity of such goods ordered plus normal overruns which are in the Seller's inventory on the date of cancellation or termination.
14. THE SELLER ASSUMES NO RESPONSIBILITY FOR ANY DAMAGE, LIABILITY, OR LOSS, WHETHER TO PERSONS OR PROPERTY, WHICH ARISES FROM OR RELATES TO, DIRECTLY OR INDIRECTLY, THE BUYER'S SPECIFICATIONS FOR THE DESIGN OF THE GOODS OR THE BUYER'S RECOMMENDATIONS FOR THE USE OF CERTAIN RAW MATERIALS FOR THEIR PRODUCTION. THE BUYER AGREES THAT THE GOODS SHALL BE DEEMED TO HAVE BEEN PRODUCED PURSUANT TO THE BUYER'S SPECIFICATIONS IF THE BUYER ADOPTS ANY OF THE SELLER'S RECOMMENDATIONS WITH RESPECT TO THE GOODS.
15. These terms and conditions may not be altered, amended, or waived except by a writing signed by an officer, of the Buyer, and an officer of the Seller. No failure by the Seller to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder by the Seller preclude any other or future exercise of that right or any other right hereunder by the Seller. All of the remedies of the Seller herein shall be cumulative and in addition to any remedies provided by law.
16. The Buyer shall indemnify, defend, and hold the Seller harmless from and against, and reimburse the Seller for, any and all claims (both accrued and unaccrued), judgments, damages, liabilities, and expenses, including, without limitation, reasonable attorneys' fees and costs, which are in any way related to or connected with the goods described herein or the manufacture, sale, distribution, or use of the same, including, without limitation, claims made by any person or entity for (i) personal injury, (ii) death, (iii) property damage, (iv) loss of profit, (v) damages based upon loss of use of any goods, plant or equipment, or (vi) infringement of any patent, trademark, trade name, or other intellectual property, whether or not such claim, judgment, damages, liability, or expense is based in whole or in part upon Seller's breach of contract, breach of warranty, whether expressed or implied, negligence, or other tort.
17. Seller reserves, at any time, the right to change the payment terms set forth herein, if in its sole opinion because a change in the financial condition of the Buyer warrants such change. In such case, in addition to any other remedies provided by law, Seller may require cash payments or security satisfactory to it before delivery. Failure to pay invoices when due shall operate to make all subsequent invoices immediately due and payable. The receipt by Seller of part payment of the full amount then due and payable (whether under the original terms of payment or terms of payment changed by Seller as provided herein) shall not be a waiver of any of Seller's rights set forth herein or provided by law. Past due invoices will be subject to a service charge at the higher of either the prime rate of interest plus (3%) or twelve percent (12%) per annum.
18. When returnable spools, reels or non-standard packing are required in connection with shipment of the goods, the Seller shall charge the Buyer an appropriate deposit, which shall be paid net thirty (30) days without discount. If the same are returned to the point of origin, and in the sole opinion of the Seller are in good condition, reasonable wear and tear excepted, within a period of four (4) months from date of shipment of the goods, the Seller will give to the Buyer a credit equal to the amount of such deposit. Such credit, however, is subject to a deduction charge for repairs, if in the Seller's opinion repairs are necessary. Lagging is not charged for, and therefore no credit will be allowed when returned.
19. The Seller shall not be liable for any failure to or delay in delivery due to acts of God, floods, tornadoes, hurricanes, earthquakes, or other weather conditions, terrorism or other act by the public enemy, accidents (whether or not caused or contributed to by the Seller's negligence) strikes, stoppages, or other labor disputes (whether against the Seller, its suppliers or carriers, and whether or not due to the fault of the Seller), delay of carriers, shortages of materials, fuel, energy, or power, breakdown of the Seller's equipment, requirements or requests of any government agency, or any officer or official thereof, or any similar causes, whether or not beyond the Seller's control. In the event that there is a delay in delivery due to such cause or causes, the Seller shall have the option to cancel without any liability to the Buyer or to make delivery within a reasonable time after the termination of the cause or causes of the delay.
20. This contract is not subject to cancellation by the Buyer unless cancellation is accepted in writing by the Seller and the Buyer pays all cancellation charges for the cost of raw materials on hand purchased by the Seller for the goods described herein, and materials, supplies, and labor costs for work-in-process plus overhead and reasonable profit. In addition, the Buyer shall pay to Seller the contract price for all units or quantities of finished goods not previously paid for whether delivered or still in the Seller's possession. Upon payment of such cancellation charges, all such raw materials, work-in-process, and finished goods shall become the property of the Buyer and on the Buyer's request shall be delivered to it F.O.B. Seller's plant.
21. Any dispute in connection with this Agreement shall be, at the option of the Seller, resolved through binding arbitration. At the option of the Seller, such arbitration proceeding shall be conducted either in Hammond, Indiana, or Chicago, Illinois, pursuant to the commercial Arbitration Rules of the American Arbitration Association. The arbitration proceedings must be conducted in the English language and all submissions must be made in English or with an English translation. Witnesses may provide testimony in a language other than English, if simultaneous English translation is provided. Any results of such arbitration shall be final and non-appealable and, at the election of either party, may be entered as a judgment in the city where the arbitration is held.
22. The following terms and conditions apply to export shipment only:
  - a. The Buyer agrees to comply with all U.S. export regulations applicable to the goods, including, without limitation, export administration regulations administered by the U.S. Department of Commerce and the international traffic in arms regulations administered by the U.S. Department of State.
  - b. Prior to shipment, the Buyer shall inspect the goods at the Seller's plant and, unless found to be defective, the Buyer will signify, in writing, its acceptance of the goods, and notwithstanding anything to the contrary contained in Section 6 and 7 above, upon such acceptance the Seller shall have no liability to the Buyer with respect to any defect which such inspection could have revealed.
  - c. Current export regulations of the U.S. Government Department of Commerce, Bureau of Foreign Commerce, Washington, D.C. may require that an export license be obtained to export material of the type covered hereby. The Buyer shall obtain any such license at its own expense prior to the time the Seller commences any manufacture of the applicable goods. In addition, the Buyer shall obtain, at its expense, any import license which may be required.
  - d. The Seller reserves the right to place in storage, at the Buyer's expense, and for the Buyer's account, any goods for which the Buyer does not take immediate delivery.
  - e. The Seller reserves all rights to any drawback of U.S. customs duties, if obtainable.
  - f. All payments are to be made in U.S. dollars against funds in the United States.
23. These terms and conditions shall be construed in accordance with the substantive laws of the State of Indiana, without regard to its laws concerning conflict of laws. The parties agree that the provisions hereof 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 hereof. The Convention for the International Sale of Goods does not apply to this agreement.
24. The Buyer agrees to reimburse the Seller for all costs and expenses, including reasonable attorneys' fees and costs, that the Seller may incur in any proceeding, arbitration, litigation or otherwise, to enforce the Buyer's obligations hereunder, which amount shall be included in the award or judgment obtained by the Seller.
25. These terms and conditions constitute the sole and exclusive agreement between the Buyer and the Seller, and the same may not be altered, amended, modified or restricted except by a writing signed by officers of the Buyer and the Seller.
26. Buyer agrees to execute all documents requested by Seller, from time to time, to provide the Seller with a purchase money security Interest in the goods shipped to Buyer.
27. Seller reserves the right in its sole discretion to change the payment terms set forth herein if in its sole opinion the Buyer may not be able to pay upon the due date the amount which is owed by the Buyer to the Seller.