

TERMS & CONDITIONS

1. DEFINITIONS

In these conditions:

"Agreement" means any agreement or contract entered into for the provision of goods by KSAA to the Customer;

"KSAA" means KINGSENG ALUMINIUM AUSTRALIA PTY LTD (A.C.N. 618 930 144);

"Customer" means a person, firm or corporation, jointly and severally If there is more than one, acquiring goods from KSAA;

"Goods" means goods supplied by KSAA to the Customer;

"GST" means the Goods and Services tax as defined in A New Tax System (Goods and Services Tax) Act 1999 as amended;

"Price List" means the price list issued by KSAA from time to time; and

"Terms" means these Terms and Conditions of Sale.

2. BASIS OF AGREEMENT

- 2.1 Unless otherwise agreed by KSAA in writing, the Terms apply exclusively to every contract for the sale of goods by KSAA to the Customer and cannot be varied or supplanted by any other conditions, including the Customer's terms and conditions of purchase (if any).
- 2.2 Any written quotation provided by KSAA to the Customer concerning the proposed supply of goods is:
 - (a) valid for 30 days;
 - (b) an invitation to treat only; and
 - (c) subject to the Customer offering to enter into an Agreement and accepting these Terms.
- 2.3 Any terms in KSAA'S quotations form part of the Terms, and if inconsistent with the Terms, the terms of the quotation will prevail.
- 2.4 The Agreement is accepted by KSAA when KSAA confirms its acceptance of an offer from the Customer in writing, fax or by electronic means or provides the Customer with the goods.
- 2.5 KSAA in its absolute discretion may refuse to accept any offer.
- 2.6 It is the Customer's responsibility to provide KSAA with its specific requirements in relation to the goods.
- 2.7 KSAA may vary these Terms by notice in writing to the Customer at any time. Any variations will apply to orders made by the Customer after the date of notice.

3. PRICING

- 3.1 Prices quoted for the supply of goods, whether in a Price List, by written quotation or verbally, exclude GST and any other taxes or duties imposed on or in relation to the goods. In addition to payment of the price of goods, the Customer must pay any GST and any other taxes or duties imposed on the goods.
- 3.2 If the Customer requests any variation to the Agreement, including but not limited to changes in the method of packaging, KSAA may increase the price to account for the variation.
- 3.3 Where there is any change in the costs incurred by KSAA in relation to the goods, KSAA may vary its price for the goods in order to take account of any such change, by notifying the Customer.

4. PAYMENT

- 4.1 Unless otherwise agreed in writing:
 - (a) payment for the goods must be made within 30 days of the date of KSAA's invoices and
 - (b) notwithstanding clause 4.1(a), KSAA reserves the right to require payment in full on delivery of the goods.
- 4.2 Payment by cheque is not deemed made until the proceeds of the cheque have cleared.
- 4.3 Payment terms may be revoked or amended at the sole discretion of KSAA immediately upon giving written notice to the Customer.

5. PAYMENT DEFAULT

- 5.1 If the Customer defaults in payment by the due date of any amount payable to KSAA, then all money which would become payable by the Customer to KSAA at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Customer, and KSAA may, without prejudice to any other remedy available to it:
 - (a) charge the Customer interest on any sum due at the rate of 1.5% per month on the outstanding balance for the period from the due date until the date of payment in full;
 - (b) charge the Customer for, and the Customer must indemnify KSAA from, all costs and expenses (including without limitation all legal costs, collection agency costs and expenses) incurred by it resulting from the default or in taking action to enforce compliance with the Terms or to recover any goods;
 - (c) cease or suspend for such period as KSAA thinks fit, supply of any further goods to the Customer; and
 - (d) by notice in writing to the Customer, terminate any agreement with the Customer so far as unperformed by KSAA;
 - (e) without effect on the accrued rights of KSAA under any agreement.
- 5.2 Clauses 5.1 (c) and (d) and clause 6.1 (e) may also be relied upon, at the option of KSAA:
 - (a) where the Customer is an individual and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally; or
 - (b) where the Customer is a corporation and, it enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, provisional liquidator, administrator, receiver or receiver and manager appointed, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Customer.

6. PASSING OF PROPERTY

- 6.1 Until full payment in cleared funds is received by KSAA for all goods supplied by it to the Customer, as well as all other amounts owing to KSAA by the Customer:
 - (a) title and property in all goods remain vested in KSAA and does not pass to the Customer;
 - (b) the Customer must hold the goods as fiduciary Bailee and agent for KSAA;
 - (c) the Customer must keep the goods separate from its goods and maintain the labelling of KSAA;
 - (d) the Customer is required to hold the proceeds of any sale of the goods on trust for KSAA in a separate account however failure to do so will not affect the Customer's obligation to deal with the proceeds as trustee;
 - (e) KSAA may without notice, enter any premises where it suspects the goods may be and remove them, notwithstanding that they may have been attached to other goods not the property of KSAA, and for this purpose the Customer irrevocably licences KSAA to enter such premises and also indemnifies KSAA from and against all costs, claims, demands or actions by any party arising from such action.

7. RISK AND INSURANCE

- 7.1 The risk in the goods and all insurance responsibility for theft, damage or otherwise in respect of the goods will pass to the Customer immediately on the goods being delivered to the Customer.
- 7.2 The goods are sold to the Customer on the basis that the Customer has obtained all necessary licences or permits under all relevant laws and regulations in relation to the goods.
- 7.3 The Customer assumes all risk and liability for loss, damage or injury to persons or to property of the Customer or third parties arising out of the use or possession of any of the goods sold by KSAA, whether such goods are used singularly, or in combination with other substances or any process.

8. ACKNOWLEDGMENTS

- 8.1 The Customer acknowledges that:
 - (a) it has not relied on any service involving skill and judgement, or on any advice, recommendation, information or assistance provided by KSAA in relation to the goods or their use or application;
 - (b) it has the sole responsibility of satisfying itself that the goods are suitable for the use of the Customer or any contemplated use by the Customer, whether or not such use is known by KSAA;

- (c) any description of the goods provided on KSAIS website, in any brochure or catalogue or other marketing brochure, or in a quotation or Invoice is given by way of identification only and the use of such description does not constitute a contract of sale by description; and
- (d) if it intends to anodise and the anodised oxide film exceeds 28 microns, then anodising problems may occur which are not attributable to the aluminium substrate.

9. PERFORMANCE OF AGREEMENT

- 9.1 Any period or date for delivery of goods stated by KSAA is intended as an estimate only and is not a contractual commitment. KSAA will use its reasonable endeavours to meet any estimated dates for delivery of the goods but will, in no circumstances whatsoever, be liable for any loss or damage suffered by the Customer or any third party for failure to meet any estimated date.
- 9.2 A completed drivers manifest or delivery docket whether signed by the driver or by the Customer or its employee or agent will be proof of delivery of goods invoiced.

10. DELIVERY

- 10.1 If goods are to be delivered to the Customer, KSAA will arrange the carrier.
- 10.2 The Customer must inform KSAA of all necessary details so that KSAA can affect the delivery of the goods.
- 10.3 The Customer will be responsible for all costs associated with delivery or pick up of the Goods, including all packaging or required crating, freight, insurance and other charges arising from the point of despatch, being either the nominated port of entry of the Goods or KSAA'S warehouse, to the Customer to the point of delivery.
- 10.4 The Customer must provide reasonable and proper access to the location specified for delivery.
- 10.5 Any extra carrier charges due to difficult access, wrong instructions provided by the Customer, frustrated delivery, or the requirement for extra personnel, will be charged to Customer at cost plus a 10% service fee plus GST charged by KSAA.
- 10.6 If KSAA does not receive forwarding instructions sufficient to enable it to dispatch the goods within 14 days of notification that the goods are ready, the Customer shall be deemed to have taken delivery of the goods from such date. The Customer shall be liable for storage charges calculated daily and payable monthly on demand.
- 10.7 Where it is necessary for KSAA to deliver the goods in other than a fully assembled condition (which facts will be stated in the quotation), the cost and responsibility of assembly and installation will fall to the Customer, unless otherwise specified in KSAA'S quotation.
- 10.8 The Customer must advise KSAA in writing within 7 days of receipt:
 - (a) of the non-arrival of any or all of the goods;
 - (b) if there is damage to the goods;
 - (c) that the wrong goods have been received;
 - (d) that the quantity of the goods is incorrect; or
 - (e) the goods do not meet specifications.

11. RETURNS

- 11.1 Goods may only be returned to KSAA:
 - (a) if the request to return is made in writing to KSAA, stating reason for the requested return;
 - (b) with the prior written consent of KSAA;
 - (c) if the goods are not customised in any way or produced to a Customer specification;
 - (d) if the Customer pays for all transport and handling costs to KSAA'S warehouse;
 - (e) if the goods are accompanied by a copy of the original delivery docket or copy of invoice;
 - (f) following the acceptance of the return by KSAA, the payment by the Customer of a restocking and handling charge of 15% of the invoice value, except where the wrong goods were delivered by KSAA, in which case there will be no restocking or handling charge; and if the goods are in an undamaged or unsoiled condition and in the original packaging, unless with the prior written consent of KSAA.

12. LIABILITY

- 12.1 Except as specifically set out herein, or contained in any warranty statement provided with the goods, any term, condition or warranty in respect of the quality, merchantability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the goods, whether implied by statute, common law, trade usage, custom or otherwise, is hereby expressly excluded.
- 12.2 Replacement or repair of the goods at KSAA'S sole discretion, is the absolute limit of KSAA'S liability howsoever arising under or in connection with the sale, use of, storage or any other dealings with the goods by the Customer or any third party.
- 12.3 KSAA is not liable for any indirect or consequential losses or expenses suffered by the Customer or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party.
- 12.4 KSAA will not be liable for any loss or damage suffered by the Customer where KSAA has failed to deliver goods or fails to meet any delivery date or cancels or suspends the supply of goods.
- 12.5 Nothing in the Terms is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of goods or supply of services which cannot be excluded, restricted or modified.
- 12.6 If any goods are defective, damaged or faulty, the Customer must within 14 days of delivery:
 - (a) notify KSAA in writing; and
 - (b) must provide a sample of the defective, damaged or faulty goods to KSAA for testing.
- 12.7 Acceptance of any liability is subject to KSAA being satisfied with the testing results of the goods providing the defect, damage or fault. KSAA accepts no liability where the defect, damage or fault is caused by the actions or omissions of the Customer.
- 12.8 Notwithstanding clause 12.6(b), KSAA may, upon reasonable notice, enter any premises where the goods are located, for the purposes of inspecting, testing and/or taking samples of the goods for testing.

13. CANCELLATION

- 13.1 If, through circumstances beyond the control of KSAA, KSAA is unable to effect delivery or provision of goods, then KSAA may cancel the Customer's order (even if it has already been accepted) by notice in writing to the Customer.
- 13.2 No purported cancellation or suspension of any order or any part thereof by the Customer is binding on KSAA after that order has been accepted.
- 13.3 KSAA, in its absolute discretion may review, alter or terminate the Customer's credit limit or payment terms without notice.

14. PRIVACY

- 14.1 KSAA is bound by the Privacy Amendment (Private Sector) Act 2000. All personal information obtained in connection with the Customer will be appropriately collected, stored, used, disclosed, transferred and destroyed in accordance with the National Privacy Principles ("NPP").
- 14.2 KSAA requires that the Customer comply with the NPPs in connection with any personal information supplied to it by KSAA in connection with this Agreement.

15. MISCELLANEOUS

- 15.1 The law of Victoria from time to time governs the Terms and the parties agree to the non-exclusive jurisdiction of the courts of Victoria, the Federal Court of Australia, and of courts entitled to hear appeals from those Courts.
- 15.2 Failure by KSAA to enforce any of these Terms shall not be construed as a waiver of any of KSAA'S rights.
- 15.3 If any of the Terms are unenforceable it shall be read down so as to be enforceable or, if it cannot be so read down, the condition shall be severed from these Terms without affecting the enforceability of the remaining conditions.
- 15.4 A notice must be in writing and handed personally or sent by facsimile or prepaid mail to the last known address of the addressee. Notices sent by pre-paid post are deemed to be received upon posting. Notices sent by facsimile are deemed received on the facsimile machine confirming transmission.