



## STANDARD TERMS AND CONDITIONS OF SALE – SIERRA ALUMINUM

1. **GENERAL:** Any written or oral order received from a customer (“**Customer**”) by **Sierra Aluminum, A Division of Samuel, Son & Co. (USA) Inc. (“Sierra Aluminum”)** for the supply of products (the “**Products**”) is governed by the standard terms and conditions of sale outlined below (the “**Terms**”), as such may be amended by Sierra Aluminum from time to time. Sierra Aluminum rejects any terms and conditions inconsistent with these Terms and to any other terms proposed by Customer in accepting Sierra Aluminum’s proposal or quotation. No agreement, oral or written, in any way claiming to modify these Terms will be binding on Sierra Aluminum unless agreed to in writing by an authorized representative of Sierra Aluminum.
2. **QUOTATION:** Any quotation given by Sierra Aluminum to Customer shall not constitute an offer.
3. **ACCEPTANCE OF ORDERS:** Any order from Customer to Sierra Aluminum for the supply of Products shall not be binding on Sierra Aluminum until either accepted by Sierra Aluminum in an order confirmation or fulfilled by delivery of the Product(s) identified in the order (an “**Accepted Order**”). Any sample provided by Sierra Aluminum is not part of an Accepted Order.
4. **DELIVERY:** Any quoted delivery dates are estimate only. Sierra Aluminum is not obliged to meet such dates and will not be liable to Customer by reason of delays caused by any reason whatsoever. Sierra Aluminum shall be under no liability for direct or consequential loss or damage to Customer arising from delay or postponement of delivery.
5. **INCOMPLETE ACCEPTED ORDER.** Any portion of an Accepted Order which is not filled and shipped as a result of a lack of inventory or due to force majeure as described below, will nevertheless be retained as an Accepted Order and delivered as soon as possible; however, if Sierra Aluminum notifies Customer that such portion cannot be delivered at a later date, the Accepted Order for that portion will be cancelled and Sierra Aluminum will not incur any liability whatsoever to Customer as a result thereof.
6. **SHIPPING.** Customer’s Accepted Order must contain complete shipping instructions. All fees, costs, duties and other charges connected with shipment, transportation, insurance and importation of the Products are the responsibility of Customer and if paid by Sierra Aluminum, shall be reimbursed by Customer to Sierra Aluminum.
7. **NO CANCELLATION:** Accepted Orders cannot be cancelled or modified, in whole or in part, without Sierra Aluminum’s prior written consent. If Sierra Aluminum agrees to alter or cancel an Accepted Order, Customer shall indemnify Sierra Aluminum against any loss, damage and expense incurred by Sierra Aluminum in relation to the cancellation or alteration of such order, including the cost of return freight, return shipping, items purchased from third parties for inclusion in the Products and all labor costs incurred by Sierra Aluminum in the execution or part execution of the Products.
8. **PRICE INCREASES:** All prices are subject to change without prior notice at any time between our acceptance of an Accepted Order and the date delivery is completed by Sierra Aluminum for any Product Sierra Aluminum allocates to fulfill an Accepted Order.
9. **TAXES:** All prices are subject to all applicable sales and use taxes, excise taxes, customs, duties and tariffs and any other taxes, customs, duties and tariffs now or hereafter imposed and/or levied by any governmental authority with respect to the sale of the Product(s) (“**Applicable Taxes**”). Applicable Taxes will be added to the price Customer pays for the Products. Sierra Aluminum’s failure to charge or collect Applicable Taxes when due shall not relieve Customer of its obligation for payment.
10. **PAYMENT TERMS & CREDIT POLICY:** Payment terms are set forth in the invoices issued by Sierra

Aluminum to Customer. If payment in full on any invoice is not received when due, or if Customer's credit worthiness is deemed unsatisfactory by Sierra Aluminum at any time, Sierra Aluminum may take, without incurring any liability, one or more of the following actions: (a) impose a service charge at the rate that is the lesser of (i) 1.5% per month or (ii) the maximum rate allowed by applicable law, on any amount past due commencing from the date of such invoice, (b) modify or accelerate payment terms, and/or (c), withhold delivery of Product(s) under any Accepted Order not yet shipped and/or delay, recall or reclaim shipments of Product(s) on route to you or delivered until arrangements satisfactory to Sierra Aluminum are made to secure payment for any outstanding invoice and for all open Accepted Orders. Sierra Aluminum will set and review Customer's credit limit and terms and its discretion from time to time.

**11. ACCEPTANCE OF PRODUCT(S):** Customer is responsible for promptly inspecting Product(s) delivered and notifying Sierra Aluminum within five (5) calendar days following receipt of the Product(s) for which a claim is filed, of any non-conformance of the Product(s). If Customer fails to notify Sierra Aluminum within five (5) calendar days following receipt of the Product(s), Customer shall be deemed to have accepted the Products.

**12. TITLE AND RISK.** Unless expressly agreed to in writing by Sierra Aluminum, all sales are made on an F.O.B. shipping point basis and the risk of loss of, or damage to, the Product is assumed by Customer upon shipment. Notwithstanding the foregoing, any Product described in an invoice or in an Accepted Order is and will remain the property of Sierra Aluminum they are paid for in full. The reference to F.O.B. shall have the same meaning as that ascribed to it by the International Chamber of Commerce in its current edition of Incoterms.

**13. RETURNS:** Product(s) may not be returned for credit without Sierra Aluminum's prior written approval. Sierra Aluminum's approval can be withheld in its sole discretion or Sierra Aluminum can impose terms and conditions for such approval, including but not limited to the imposition of restocking charges.

**14. LIMITED WARRANTY:** Sierra Aluminum warrants that the Product(s) sold are in conformance with the specifications set out in the order confirmation of the Accepted Order ("**Limited Warranty**"). **THIS LIMITED WARRANTY IS IN LIEU OF ALL WARRANTIES, EXPRESSED OR IMPLIED. WE MAKE NO OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR USE, OR OF CONFORMANCE OF ANY PRODUCT(S) WITH ANY SAMPLE. PRODUCT(S) SOLD BUT NOT MANUFACTURED BY SIERRA ALUMINUM ARE NOT WARRANTED BY SIERRA ALUMINUM, BUT ARE SOLD ONLY WITH THOSE WARRANTIES PROVIDED BY THE MANUFACTURER. THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION ON THE FACE HEREOF.**

**15. FORCE MAJEURE:** If Sierra Aluminum's performance of any obligation is delayed due to unavailability of Product(s) or any other cause beyond Sierra Aluminum's reasonable control by reason of fire, strike, lock-out, labour trouble, war, epidemic, embargo, flood, delay in transportation, lack of critical materials, lack or unavailability of trailers and/or railway cars, failure of carriers or sub-trades, shortage of manpower, restrictive governmental laws or regulations (including any trade actions, export controls, tariffs, customs or duties) or to any other cause or reason beyond Sierra Aluminum's commercially reasonable control (a "**Force Majeure**"), notwithstanding that such Force Majeure may have existed at the time of submission or acceptance of an Accepted Order, Sierra Aluminum shall not be liable and any portion of an Accepted Order not filled or shipped will be retained as an Accepted Order and delivered as soon as possible. However, Sierra Aluminum may elect to cancel the Accepted Order, without liability, if we believe that the Product(s) will not become available within a reasonable period of time as Sierra Aluminum so determines. Sierra Aluminum also reserves the right to apportion Product(s) among its customers in such manner as Sierra Aluminum considers equitable, and such determination shall be conclusive and binding on Customer without liability to Sierra Aluminum.

**16. LIMITATION OF LIABILITY:** Customer acknowledges and agrees that Sierra Aluminum has no liability in contract, tort (including negligence or breach of statutory duty) by statute or otherwise for loss or damage (whether direct or indirect) of profits, opportunity, revenue, goodwill or for any liquidated, indirect, special or consequential loss or damage whatsoever. **TO THE MAXIMUM EXTENT PERMITTED BY LAW, SIERRA ALUMINUM'S LIABILITY UNDER ANY CIRCUMSTANCE AND FOR ANY REASON (SHALL, AT SIERRA ALUMINUM'S OPTION, BE TO REPLACE NON-CONFORMING PRODUCT(S) OR REFUND THE PURCHASE PRICE PAID BY CUSTOER FOR SUCH NON-CONFORMING PRODUCTS AND UNDER NO**

**CIRCUMSTANCE SHALL SIERRA ALUMINUM'S LIABILITY UNDER ANY CONTRACT AND THESE TERMS EXCEED THE TOTAL DOLLAR AMOUNT OF THE PRODUCTS PURCHASED BY CUSTOMER UNDER THE CONTRACT.**

17. **COLLECTION CHARGES:** Customer shall pay all costs and expenses, including without limitation reasonable attorney's fees and administrative charges, Sierra Aluminum incurs protect its rights arising out of Customer's failure to perform its obligations to Sierra Aluminum, including without limitation any attempt to collect any amount Customer owes Sierra Aluminum.

18. **EAR COMPLIANCE:** If Product(s) are exported by Sierra Aluminum, Sierra Aluminum will provide the following statement: "These commodities, technology or software were exported from the United States in accordance with the Export Administration Regulations. Diversion contrary to U.S. law is prohibited."

19. **GOVERNING LAW:** The transactions between Customer and Sierra Aluminum are made in California, shall be governed by the laws of California, and Customer agrees to submit exclusively to the jurisdiction and venue of the courts of California, with respect to any dispute arising out of any transaction between Customer and Sierra Aluminum; provided, that Sierra Aluminum may, at its option, commence proceedings in any jurisdiction where Customer carries on business or owns any assets. **CUSTOMER AND SIERRA ALUMINUM KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING ARISING OUT OF ANY SUCH DISPUTE.**

20. **NO RIGHT OF SET-OFF:** Each Accepted Order constitutes a separate and distinct contract when accepted by Sierra Aluminum and Customer may not withhold payment of an invoice or offset same, in whole or in part, against sums Customer claims are due it by Sierra Aluminum with respect to another Accepted Order, invoice or for any other cause or reason whatsoever.

21. **RIGHTS ARE NOT EXCLUSIVE:** Sierra Aluminum's rights hereunder are in addition to and not in lieu of any other rights and remedies available to Sierra Aluminum at law or in equity.

22. **NOTICES:** All notices of claims or disputes given by either Customer or Sierra Aluminum with respect to any communications, Accepted Order or these Terms shall be in writing and sent by (a) first class mail with a copy by certified mail, return receipt requested, postage pre-paid, or (b) overnight delivery service, charges prepaid, and addressed as follows: (i) if intended for Sierra Aluminum, to its address at the location to which a an Accepted Order was placed, and (ii) if to Customer, the address last known to Sierra Aluminum. Notice will be effective the first business day after notice is sent.

23. **MISCELLANEOUS:** No waiver of any rights or remedies shall be binding on Sierra Aluminum unless set forth in a written waiver signed by Sierra Aluminum. Sierra Aluminum does not give up any of its rights or remedies if it fails or delays in seeking a remedy or if Sierra Aluminum accepts a payment while there is breach by Customer. Any such waiver, delay or failure by Sierra Aluminum on one occasion shall not be deemed a waiver by Sierra Aluminum of any future default by Customer or of any future right or remedy available to Customer. The Section, Paragraph and other headings in these Terms are for convenience of reference only, and shall not limit or otherwise affect the meaning of any provision contained in these Terms. The invalidity or enforceability of any provision in these Terms shall in no way effect the validity or enforceability of any other provision.