

Terms and conditions of sale

In these terms and conditions:

- the "Seller" means Altus NZ Limited;
- the "Buyer" means the company or other entity named on the invoice, sale and purchase agreement and/or warranty documents as the "Customer";
- "Goods" means "aluminium products, uPVC products, hardware and components" supplied by the Seller to the Buyer and in respect of each order of Goods from the Buyer accepted by the Company means the Goods described in the invoice issued by the Company in respect of the relevant order; and
- "GST" means Goods and Services Tax.
- All Goods supplied by the Seller are supplied subject to these terms and conditions of sale unless otherwise specifically agreed in writing by the Seller.
- Any document emanating from the Buyer which is contrary to or inconsistent with any of these conditions shall be inapplicable and of no effect.



1. Price

- The price of the Goods will be the price current on the date of despatch of the Goods.
- The price of the Goods excludes any amount payable in respect of GST, which the Buyer shall pay all in addition to the price.

2. Payment

- The price of the Goods, plus GST, is to be paid in full by the 20th day of the month following the date delivery is made or the services are completed (the due date), unless otherwise agreed in writing by the Seller.
- The Seller reserves the right to require payment in cash before proceeding or proceeding further with an Order.
- The Buyer may not deduct or withhold any amount (whether by way of set-off, counterclaim or otherwise) from any money owing to the Seller.
- If full payment for any Goods is not made to the Seller by the due date, the Buyer must pay, at the Seller's discretion (and without affecting any other right the Seller may have):
 - default interest at a rate equal to 5% above the current base lending rate from time to time set by the Seller's banker, from the date when the payment is due until the date when payment is actually made; and
 - all expenses and costs (including legal costs as between solicitor and client) incurred by the Seller in obtaining or attempting to obtain a remedy for failure to pay (both before and after judgement).
- The Seller may at any time require the Buyer to pay for Goods by bank cheque or post dated cheque or (in addition to the Seller's security interest in the Goods) may require the Buyer to procure such guarantees and securities as the Seller considers necessary to secure to the Seller payment for the Goods.
- In the event that any sale by the Seller is of a good that means the supply is a "construction contract" within the meaning of the Construction Contracts Act 2002 ("CCA") so that the CCA applies to these terms and conditions or any sale under them, the parties expressly agree that payment for the goods under the construction contract shall be made in accordance with this clause 2.

3. Risk

Unless otherwise stated, the Buyer bears the risk of any loss or damage to the Goods due to any cause whatsoever after the Seller hands possession and control of the goods to the Buyer or to a third party for transportation.

4. Delivery

- All costs of delivery shall be paid by the Buyer in addition to the price for the Goods.
- Where the Seller agrees to arrange delivery of the Goods to the Buyer's store or a site designated by the Buyer:
 - delivery will be considered to have been made when the Goods arrive at the Buyer's store or designated site;
 - if the Buyer fails or refuses to accept delivery at an agreed delivery time, delivery will be considered to have been effected in any event;
 - the Buyer or its authorised representative must sign the delivery docket before any Goods are unloaded;
 - all claims for Goods damaged in transit must be made in writing and delivered to the Seller within seven days of delivery of the Goods;
 - the Buyer is responsible for ensuring, at its own cost, that all agreed delivery sites have unloading facilities together with labour and/or mechanical means to unload the Goods promptly, suitable access and area for unloading and suitable storage for the Goods.
- Where the Buyer is to arrange for the Goods to be picked up from the Seller's premises:
 - delivery will be deemed to have been made when the Goods are available for collection by the Buyer;
 - the Buyer or its authorised representative must sign the delivery docket before any Goods are collected by the Buyer.
- The Seller will endeavour to meet any deemed or agreed delivery dates but will not be liable, nor may the Buyer cancel any order for late delivery. Such delivery dates are intended only as an estimate.
- Delivery may be made by instalments, if agreed by both the Buyer and Seller.
- All claims for short or defective delivery must be made in writing and delivered to the Seller within fourteen days of delivery of the Goods. The Buyer may not cancel any order for short or defective delivery.
- If the Buyer fails, or refuses to take delivery of any Goods at an agreed delivery time, or if an agreed delivery site does not have the unloading facilities, access or storage referred to in clause 4(b)(v), the Seller may charge the Buyer (without limiting any other rights the Seller may have) for any expenses or additional costs incurred by the Seller as a result.

5. Ownership

- Ownership of the Goods does not pass to the Buyer until:
 - all amounts owing by the Buyer to the Seller in respect of the Goods have been paid;
 - all other obligations of the Buyer to the Seller in respect of the Goods have been met.
- The customer agrees that the clause (5a) creates a security interest in the Goods and the Customer hereby grants a security interest to the Company in each and every part of the Goods as security for payment for those Goods and any other amounts of obligations owing by the Customer to the Company at any time.
- Until ownership of the Goods passes, the Buyer:
 - must keep full and complete records of the Goods;
 - must not grant any other security interest or any lien over the Goods that the Company has a security interest in;
 - must return the Goods if requested to do so by the Seller following non-payment of any amount owing by the Buyer to the Seller or non-fulfilment of any other obligation of the Buyer to the Seller, without limiting any other right the Seller may have;
 - give the Seller the right to inspect the Goods or any part of them at all reasonable times;
 - must not change its name, address or contact details without providing the Seller with at least 30 days prior written notice;
 - waives its rights to:
 - receive a copy of any verification statement;
 - receive a copy of any financing change statement;
 - if the Goods are for the Buyer's business use, the Buyer agrees, to the extent Part 9 of the Personal Property Securities Act 1999 ("PPSA") applies, that it will have no rights under Part 9 of the PPSA. For example, but without limitation, to:
 - receive any notice that the Seller intends to sell the Goods or take over the Goods on enforcement of the Seller's security interest;
 - give a notice of objection of the Company taking over the Goods in satisfaction of any obligation owed by the Buyer to the Seller;

- receive a statement of account on sale of the Goods;
 - recover any surplus on the sale of the Goods.
- must not give to the Seller a written demand or allow any other person to give the Company a written demand or register or allow any other person to register a financing change statement under the PPSA.
- The Buyer acknowledges that it has received value as at the date of first delivery of the Goods and has not agreed to postpone the time for attachment of the security interest granted under these terms and conditions.
 - The Buyer agrees that the Seller or its agents may enter the Buyer's premises and properties to uplift Goods that the Seller has a security interest in.

6. Force Majeure

The Seller shall not be liable for any failure or delay in delivery caused by any event beyond the Seller's control and shall not be liable to make good any damage or loss arising directly or indirectly therefrom. In the event of suspension of or delay in delivery the forecast despatch date shall be extended by a period equal to the period of suspension or delay, and every date of despatch shall stand postponed accordingly.

7. Alterations and Additions to Orders for Unmade Goods

- Alterations and additions to orders for Goods which the Seller has not begun to prepare at the time notice of the desired alteration or addition is received may be accepted or rejected at the sole discretion of the Seller. The Seller has the right, where it chooses to accept and perform the alteration or amendments desired, to amend the previously agreed terms of production to allow for any increased costs to be incurred and longer production times required as a result of the amendment or alteration.
- Where a Buyer wishes to alter or amend an existing order where the Goods are already in production, the Seller may at its sole discretion choose whether to accept or reject the proposed alteration or amendments. If the Seller chooses to reject the amendments or alterations the Buyer may cancel the order in accordance with clause 8. The Seller has the right, where it chooses to accept and perform the alteration or amendments desired, to amend the previously agreed terms of production to allow for any increased costs to be incurred and longer production times required as a result of the amendment or alteration.

8. Cancellations and Deferments of Orders

- Cancellation of any order may be made at any time prior to delivery subject to the following terms:
 - where the Goods are in the manufacturing process or the manufacturing process is complete, the Buyer shall pay such amount up to the full sale value of the Goods, less the scrap value of the metal, as the Seller shall stipulate;
 - where manufacturing of the Goods has not begun, but the Seller has incurred costs in importing or producing materials for use in the manufacturing process, the Buyer shall reimburse all such costs to the Seller less the scrap value or resale value of the materials as the Seller shall stipulate.
- There is no penalty for cancellation of an order wholly supplied from inventory when such cancellation is given on 14 days notice. If less than 14 days notice is given, the Seller may charge the Buyer (without limiting any other right the Seller may have) for any expenses or additional costs incurred by the Seller as a result.
- A deferment of an order may be accepted or declined by the Seller in its absolute discretion. If accepted, the price of the Goods so deferred shall be the price as at the date of acceptance of the deferment by the Seller or at the date of the actual delivery of the goods, whichever is the greater. In addition the Buyer shall, if required by the Seller, pay interest to the Seller on the outstanding price that is determined as aforesaid at the rate referred to in clause 2(i) (f) for the period from the end of the original estimated despatch week until the date of actual despatch.

9. Warranty

- All warranties, descriptions, representations or conditions whether implied by law, trade, custom or otherwise, and all other liability of the Seller, whether in tort (including negligence), contract or otherwise is, expressly excluded to the fullest extent permitted by law.
- Specifically, where the Buyer is acquiring the Goods for the purposes of a business, the parties acknowledge and agree that: (i) the parties are in trade; (ii) the Goods are both supplied and acquired in trade; (iii) the parties agree to contract out of sections 9 (misleading and deceptive conduct generally), 12A (unsubstantiated representations), 13 (false or misleading representations) and 14(1) (false representations and other misleading conduct in relation to land) of the Fair Trading Act 1986 (FTA); and (iv) all warranties, conditions and other terms implied by the Consumer Guarantees Act (CGA) or sections 9 (misleading and deceptive conduct generally), 12A (unsubstantiated representations), 13 (false or misleading representations) and 14(1) (false representations and other misleading conduct in relation to land) of the FTA are excluded from these terms and conditions to the fullest extent permitted by law. The Company hereby expressly contracts out of section 12 (guarantee as to repairs and spare parts) of the CGA and does not undertake in accordance with that section that repair facilities and spare parts will be available for the Goods.
- Insofar as the Seller may be liable notwithstanding clause 9(a), to the extent permitted by law and (subject to clause 9(d)), the total liability of the Seller whether in tort (including negligence), contract or otherwise for any loss, damage or injury arising directly or indirectly from any defect in or non-compliance of any Goods or any other breach of the Seller's obligations is limited to the lesser of:
 - the price of the Goods complained of;
 - the cost of repairing or replacing the defective Goods; or
 - the actual loss or damage suffered by the Buyer.
- If Goods are returned by the Buyer, or if the Buyer makes a claim in writing to the Seller in relation to Goods or associated services provided, the Seller may, at its discretion, repair or replace the Goods or re-perform the services, or refund the price of those Goods to the Buyer, provided that:
 - the Goods must be returned or the claim must be made in writing to the Seller within fourteen (14) days of Delivery; and
 - the Seller must be given a reasonable opportunity to inspect the Goods.
- Except where statute expressly requires otherwise the Seller is not liable in any event for any loss of profits, consequential, indirect or special damage, loss or injury of any kind suffered by the Buyer or any other person.
- While the Seller will make every effort to ensure the accuracy of any advice, recommendation, information, assistance or service provided by the Seller in relation to the goods or their use or application, the Seller does not accept any liability or responsibility in respect of that advice, recommendation, information, assistance or service.
- Where the Buyer is acquiring the Goods for the purpose of re-supplying them in trade, the Buyer will:
 - include a provision in its terms of sale to the effect that the Act will not apply where a purchaser acquires or holds itself out as acquiring the Goods for the purposes of a business;
 - notify its purchasers of the effect of clause 9(i)(i); and
 - indemnify the Seller for and against any liabilities, losses, damages, claims, costs or expenses of whatever kind and nature incurred by the Seller as a result of the Buyer failing to take the action required under this clause 9(i)(i).

10. Weights and Tolerances

- The Seller's invoices shall be conclusive evidence of the classification numbers, measurements, weights or volumes of the goods shipped or transported.
- All goods are sold subject to:
 - the Seller's normal tolerances, variations and limitations in respect of dimension, weight, straightness, mechanical properties, surface and internal conditions, chemical composition and quality; and
 - diversions from such tolerances, variations and limitations consistent with practical testing and inspection methods.

11. Dies

- All dies (including exclusive dies), tools and other equipment manufactured, obtained or used by the Seller are invoiced at "part cost" only, are, and remain the property of the Seller and in its possession. The Seller will assume all costs for repair and maintenance unless and until the Seller notifies the Buyer in writing to the contrary and in such cases such costs shall thereafter be borne by the Buyer.
- If a die is manufactured or obtained exclusively for the Buyer it will be used to supply only the Buyer for whom they were manufactured or any third party only with that Buyer's written authority PROVIDED HOWEVER that nothing contained in these terms and conditions shall prevent the Seller from supplying any third party at its request and without reference to the Buyer with shapes which are identical or similar to those produced by the Buyer's exclusive dies. If no orders have been received from the Buyer for 24 consecutive months requiring use of an exclusive die, the die may be scrapped or otherwise disposed of without reference to the Buyer. If the Buyer becomes bankrupt or (being a company) goes into receivership or liquidation, dies manufactured for that Buyer may be used, scrapped or otherwise disposed of as the Seller sees fit and without reference to the Buyer or the receiver, liquidator or official assignee of the Buyer as the case may be.

12. Indemnity and Warranty by the Buyer

- The Buyer shall indemnify and keep the Seller indemnified from and against any loss, liability, claim, suit and costs relating to the manufacture and/or design of the goods and packages or containers relating to the goods if the goods, packages or containers are required by the Buyer to be made in accordance with the Buyer's design or specification.
- The Buyer warrants, having made reasonable enquiries that:
 - the drawing of any shape or goods which have been supplied or are proposed to be supplied to the Buyer and which has been endorsed by the Buyer;
 - any toolage made in accordance with such drawing;
 - the manufacture of any shape or goods from such toolage; and
 - any shape or goods made from such toolage, shall not infringe upon the rights of any third party (whether copyright, registered design, patent, trade mark, confidential information or otherwise) or breach any applicable law.
- In the event of any claim, action, suit, demand, order for costs (including legal expenses on a solicitor and client basis) or damages or an account of profits referable to the rights and/or laws referred to in paragraph (b) being made or brought against the Seller, the Buyer shall indemnify and keep the Seller indemnified from and against the same.
- Should the Seller:
 - have reason to believe the Buyer is in breach of its warranty in paragraph (b); or
 - become aware of circumstances whereby the Seller can claim under the indemnities in paragraphs (a) or (c) of this clause 12, the Seller may (without having to give notice thereof to the Buyer) cancel or suspend all further manufacture and deliveries of the goods or toolage.

13. Disputes

Any claim or dispute arising under these terms shall be determined by arbitration under the Arbitration Act 1996 if the parties are unable or unwilling to resolve such dispute themselves within one (1) month of the dispute arising. However, nothing in this clause prevents either party from taking immediate steps to seek equitable relief before the New Zealand Courts.

14. Other rights of the Seller

- If any amount payable by the Buyer to the Seller is overdue or the Buyer fails to meet any other obligation to the Seller (whether in relation to the sale of Goods or otherwise) or if any distress or execution shall be levied on any of the Buyer's property or if the Buyer shall become insolvent, have a receiver appointed in respect of all or some of its assets, make or offer to make any arrangement or composition with creditors or commit any act of bankruptcy or become bankrupt or (if the Buyer is a limited company) if any resolution or appointment of a liquidator to wind up its business is presented or passed or a receiver is appointed of such company's undertaking, property or assets or any part thereof or the ownership or effective control of the Buyer is transferred or, in the Seller's opinion, the nature of the Buyer's business is materially altered then:
 - the Seller may cancel any outstanding order with the Buyer or all or any part of any contract with the Buyer which remains unperformed in addition to and without prejudice to its other remedies and;
 - any amounts outstanding with the Seller shall, whether or not due for payment, immediately become due and payable.
 - the Seller may reclaim any Goods in the Buyer's possession or control and dispose of them for its own benefit and for that purpose the Seller may, without notice, enter directly or by its agents on any premises where it believes Goods may be stored, without in any way being liable to any person. The rights of the Seller under this paragraph shall be exercisable without prejudice to all other rights and remedies of the Seller in consequence of the default or defaults.

15. Errors and Omissions

Clerical errors or omissions by the Seller whether in conjunction or otherwise in any quotation, order acknowledgement or invoice shall be subject to correction.

16. Miscellaneous

- If at any time the Seller does not enforce any of these terms and conditions or grants the Buyer time or other indulgence, the Seller shall not be construed as having waived that term or condition or its rights to later enforce that or any other term or condition.
- Testing and inspection, other than that normally undertaken by the Seller, when specified by the Buyer or its agents shall take place at the Seller's works and the results of such testing and inspection shall be final and binding on the parties. The Buyer shall pay a standard charge for such testing and inspection.
- These terms and conditions shall be governed in accordance with the laws of New Zealand and the parties agree to submit to the exclusive jurisdiction of the Courts of New Zealand.
- The Buyer is responsible for disposing, at its own cost, of all materials used in the packaging or delivery of Goods supplied by the Seller.
- The Buyer is to execute documents and do such further acts as may be required by the Seller to register the Seller's security interest under the PPSA or for any other purpose whatsoever.