



TERMS AND CONDITIONS OF AGREEMENT OF SALE, AND DEED OF SURETYSHIP, AND CESSION OF ALL MONIES DUE TO THE PURCHASER FROM WHATSOEVER SOURCE RELATING THERETO, ENTERED INTO BY AND BETWEEN:-

("The Seller") AND

("The Purchaser")

IT IS AGREED THAT:-

1. The Seller shall mean Origin Aluminium Group Holdings (Pty) Ltd, or Origin Aluminium (Johannesburg) (Pty) Ltd, or Origin Aluminium (Durban) (Pty) Ltd, or Origin Aluminium (Cape Town) (Pty) Ltd, or Origin Aluminium (Port Elizabeth) (Pty) Ltd, or Origin Aluminium (Bloemfontein) (Pty) Ltd, Origin Aluminium (Pretoria) (Pty) Ltd, depending upon which Company within the Origin Group of Companies the Purchaser places its order on.
2. As security for all and any indebtedness which the Purchaser might owe to the Seller howsoever arising, the Purchaser hereby cedes, assigns and makes over unto and in favour of the Seller all its rights, title and interest in and to its debtors (Accounts receivable and all monies due to the Purchaser from whatsoever source). Should it transpire that the Purchaser entered into prior deeds of cession or otherwise disposed of any the right, title and interest in and to any of the debts which will from time to time be subject to this cession, then this cession shall operate as a cession of all the Purchaser's reversionary rights.
3. It is agreed that set-off shall operate automatically between the parties whenever there are reciprocal liquidated amounts due by the parties to each other and it shall not be necessary for either party to specifically raise set off.
4. The invoice price reflected on the Seller's invoice shall be paid by the Purchaser without any deduction and in accordance with the terms of payment to which parties hereto might from time to time agree,
5. A signed Delivery Note shall constitute proof of that the goods have been delivered to and received by the Purchaser in good condition unless the contrary is proven. The Seller's nominated transporter shall be deemed to be the purchaser's authorised agent and delivery shall be deemed effective upon collection by the transporter.
6. The risk in and to the goods purchased shall pass to the Purchaser on delivery thereof. Notwithstanding delivery of the goods ownership shall remain vested in the Seller and shall not pass to the Purchaser until payment of the purchase price has been made in full.
7. The party(ies) who have appended their signature/s hereto on behalf of the Purchaser hereby binds himself/themselves jointly and severally as surety/ies and co-principal debtor/s in solidum unto and in favour of the Seller in respect of all the obligations of the Purchaser, past, present and future and furthermore hereby agrees and undertakes to be bound by the terms and conditions of this agreement mutates mutandis. In the event of the Seller suing the surety/sureties, the surety/ sureties will not be entitled to demand that all other co-debtors be joined in any action each for its proportionate share of the debt or to demand cessions of the Seller's rights against the Purchaser and or any co-surety before making payment to the Seller.
8. In the event of the liquidation of the Purchaser; the signatories hereunder hereby cede any claim or loan account against the Purchaser's estate to the seller until all amounts (including interest and costs) due by the Purchaser to the Seller have been paid in full.
9. Subject to the provisions of Section 56 of the Consumer protection Act, the Seller shall not accept liability for any defects, shortages in delivery or failure of goods to conform to the Purchaser's specification unless a claim is received in writing within 10 days of date of delivery and accompanied by the original tax invoice and delivery note. The Seller shall further no accept liability for any goods rendered defective due to misuse or abuse, wear & tear or failure to follow usage / installation instructions. Where applicable any warranties whether expressed or implied shall be vitiated in the event that the goods are not installed by a suitable qualified installer.
10. In the event of the Purchaser committing any breach of any of the terms of this agreement, the Seller shall retain the right, but not be limited to demanding return of the unpaid goods, failing which to make the appropriate application for authority to uplift such goods, the costs of which application will be for the Purchaser's account. In addition, the Seller shall retain the right to demand immediate payment of all amounts outstanding to the Seller by the Purchaser regardless of whether those amounts are due, owing and payable at the date of demand.
11. In the event of the Purchaser failing to make payment of any amount on due date the full amount in respect of all goods sold and delivered by the Seller to the Purchaser, shall immediately become due, owing and payable.
12. Either party shall be entitled but not obliged to institute action against the other in any Magistrate's Court having jurisdiction over the other party, notwithstanding that the amount of the claim would otherwise be beyond the jurisdiction of such Magistrate's Court. In any litigation between the parties, the unsuccessful party shall be liable for the legal costs of the successful party on the scale between attorney and own client.
13. The Purchaser and surety/ies hereto nominate the Purchaser's physical address as recorded on the reverse side hereof as their elected address / registered address for service upon them of all notices and processes, whether in connection with any claim or sum due to the Seller or otherwise.
14. No extension of time or any other relaxation or indulgence granted by the Seller to the Purchaser shall operate as, or be deemed to be a waiver by the Seller of any of its rights under this agreement, or a novation of any of the terms and conditions of this agreement.
15. The credit facilities may be withdrawn by the Seller at any time without prior notice.
16. A certificate signed by a Director or Credit Manager of the Seller shall constitute proof of the indebtedness and the amount thereof owing by the Purchaser to the Seller for the purpose of debt collection procedures unless the contrary is proven.
17. The Seller shall be entitled to charge interest, from time to time, at the maximum permissible rate permitted by the National Credit Act as amended from time to time.
18. The information on the reverse is true and correct, and undertakes to notify the Seller in writing, any change of details given including change of ownership, name and address. Such change shall in no way derogate from my/our liability to the Seller.
19. The Purchaser agrees to notify the Seller immediately the financial situation of the Purchaser changes to the extent that the Sellers interests are impaired.
20. In the event of a purchase order being given to the Seller on the Purchaser's official order form, the Purchaser shall be stopped from denying the validity of such order, notwithstanding the fact that such order may have been given or signed by a person not authorised by the Purchaser.
21. Quotation shall only be valid where they have been issued in writing and shall remain valid for a period of 21 days from the date of quotation. The Seller shall, however, be permitted to increase the quotation at any time before delivery if there is any increase in the cost of material to the Seller provided the Seller shall first advise the Purchaser of the increased amount and the Purchaser shall be entitled to cancel the order.
22. Whilst Origin Aluminium make every effort to supply complete and accurate quotes, and in the event of us being the successful tenderer, we would need confirmation that the design of the products specified in this quote meet the specifications in terms of SANS 10400 - XA & SANS 204. Note that should the specs be different at time of award it will affect the pricing and lead times. If no confirmation is given & this quote is accepted as it is, Origin Aluminium assumes that the design meets the required specs in terms of SANS 10400 - XA & SANS 204. Origin Aluminium will not be held liable for any damages as a result of incorrect, incomplete or inaccurate specifications furnished.
23. This agreement shall be governed and interpreted according to the laws of the republic of South Africa
24. No agreement, varying, adding to, deleting from or cancelling any of these conditions shall be effective unless reduced to writing and signed by a Director of the Seller.
25. If any term or condition is found by any court to be void or unenforceable it shall be severed from the other standard terms & conditions and the contract shall be subject to the remaining terms & conditions
26. The Seller shall make all reasonable efforts to supply any ordered goods by the delivery dates recorded in any document issued by the Seller, provided it is understood that all delivery dates are approximate only and do not constitute a material term of the contract. The Purchaser shall not be entitled to cancel a contract or to refuse to accept delivery where delivery is tendered later than any previously intimated delivery date where the delay is due to unforeseen circumstances or where the delay is not due to the negligence or recklessness of the Seller.
27. The signator confirms his/her authority to accept delivery of the goods on behalf of the Purchaser and acknowledges receipt of the goods in good order and is satisfied with the manner, date, location & time of delivery and has had an opportunity to inspect the goods & confirm that they are of the type and quality ordered.
28. We warrant our goods to conform to our standard specification. Unless otherwise stipulated in writing, where goods are ordered for a specific job or operation and where no representation has been made by us as to the suitability of such goods for such operation, goods will be deemed reasonably suitable for their intended purpose unless specifically proven otherwise. We have no control over the use or installation of the goods and will not be held liable for any damage caused, harm suffered, injury caused or consequential damages caused due to the misuse or abuse of the goods or incorrect usage or failure to follow usage and safety instructions. We believe that the statements, technical information and recommendations contained herein are reliable. Subject to the provisions of Section 61 of the Consumer Protection Act we will not be held liable for consequential damages or for any dilictual liability of any nature whatsoever arising out of a defect in goods where such defect, failure or hazard did not exist at the time they were supplied, or it is deemed unreasonable to have expected us to have been aware of the existence of the defect, hazard or failure at time of supply. We will further not be held liable for the consequential damages or for any dilictual liability of any nature whatsoever arising from the customer's failure to provide correct or accurate information and / or instructions regarding the goods or caused due to the customer's failure to follow usage / care instructions and / or damage caused due to misuse, abuse or neglect by the consumer. The quality and suitability of the product for any purpose or use should be confirmed with the user's own tests.