

## Terms and Conditions of Sale

In these conditions "the Company" means Pro Formance Metals Limited

1. ALL CONTRACTS OF SALE - incorporate these Terms and Conditions.

Any variation of these Terms and Conditions either prior to an agreement being reached or subsequently by way of novation can only be concluded in writing signed by a Director of the Company. The Buyer hereby agrees that any of the Terms and Conditions contained in their order which are at variance with these Terms and Conditions shall have no effect so far as they are inconsistent with these Terms and Conditions. The Buyer hereby agrees that the incorporation of these Terms and Conditions into one transaction shall thereafter continue to apply to all subsequent or series of transactions.

2. PRICES - all prices quoted are subject to market fluctuations, new government levies, taxes, National and EEC price increases. The Company therefore reserves the right to vary the quoted price of the goods sold at any time before despatch without prior notice to the Buyer in accordance with the aforesaid variations in price. Prices at the time of despatch shall be the binding prices between the Company and the Buyer.

3. PAYMENT - the Buyer shall pay for the goods within 30 days after the end of the month of the invoice being rendered unless any other terms have been agreed in writing.

3.(i) If the Customer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:

3.(ii) Cancel the contract or suspend any further deliveries to the Customer;

3.(iii) Appropriate any payment made by the Customer to such of the Goods (or the Goods supplied under any other contract between the Customer and the Company) as the Company may think fit (notwithstanding and purported appropriation by the Customer); and

3.(iii) Charge the Customer interest (both before and after any judgement) on the amount unpaid, at the rate of 8.5% (eight point five per cent) per annum above Bank of England base rate in whole months (to the end of the month), until payment in full is made; and

3.(iiii) Refer the payment to the Company appointed Debt Recovery Agent and will be subject to a surcharge of 18% plus VAT to cover the collection costs incurred. This surcharge together with all other charges and legal fees incurred will be the responsibility of the Customer and will be legally enforceable.

4. DELIVERY - the Company shall incur no liability whatsoever in consequence of delayed deliveries. Dates or periods for deliveries are approximate and for guidance only and are not essential terms of the transaction. Each delivery shall constitute a separate contract and the failure of the Company to make any delivery shall not entitle the Buyer to cancel or suspend any subsequent delivery or Contract. The Buyer hereby agrees that the Company may withhold deliveries by instalments or any subsequent deliveries of orders at any time in which the Buyer is in breach of payment terms.

5. REPRESENTATIONS -the Company's employees or agents are not authorised to make any representations concerning the goods unless confirmed by the Company in writing. In entering the contract the Buyer acknowledges that it does not rely on and waives any claim for breach of any such representations which are not so confirmed.

i) any advice or recommendation given by the Company or its employees or agents as to the fitness for specific purpose or merchantable quality of the goods for a specified use by the Buyer which is not confirmed in writing and is followed thereafter or acted upon is entirely at the Buyer's risk and accordingly the Company shall not be liable for any such advice or recommendation as it is a stockholder and distributor and not an expert in the use of non-ferrous or ferrous metals which will also include Plastics within any specified process.

ii) the quality, quantity and description of any specification of the goods shall be those set out in the Company's confirmation of order or in the Buyer's order if accepted by the Company.

iii) the Company reserves the right to make any changes in the specification of the goods which are required to comply with any applicable safety or statutory requirements or provide goods of a similar quality which do not materially affect the quality or performance of the goods.

6. FINANCIAL STATUS - information concerning the financial status of the Buyer indicating that they are unable to pay their debts will entitle the Company to demand proper security for payment of the price prior to delivery, either by cash payment or an acceptable guarantee. If the Buyer refuses security then the Company shall be entitled, without prejudice to the Company's other remedies, to cancel the contract or suspend deliveries. The Company shall not be liable for any damages in these circumstances.

7. DELIVERY - any numerical shortages from the order must be endorsed on the delivery note. A signature on the delivery note by the Buyer or its representative shall be confirmation that the quantities specified on the delivery note were received. In the absence of a person being available to sign the delivery note the Company reserves the right to charge for the removal of the goods back to their premises and the subsequent costs of redelivery. If the goods are packaged in such a way that they cannot be readily quantified prior to unloading and signature of the delivery note then any shortages must be notified to the Company within twenty four hours of delivery.

No claims for any numerical shortages of any description will be considered by the Company if the goods or part of the consignment of goods have been utilised or consumed in any way whatsoever.

If the Company fails to deliver any goods for any reason other than any cause beyond the Company's reasonable control or the Buyer's fault the Company is accordingly liable to the Buyer and the Company's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the goods agreed to be sold.

#### 8. RISK PASSING OF PROPERTY-

-(a) Property in the goods sold shall remain in the Company until such time as ALL monies due from the Buyer to the Company (upon whatever grounds and howsoever such liability shall have been incurred) have been paid or until the Buyer resells the goods to a third party in the usual course of the Buyer's business.

-(b) The goods shall be at risk of the Buyer from the time they are delivered out of the Company's premises to the carrier (who shall for this purpose be the agent of the Buyer authorised to take delivery of the goods) or to the Buyer or any other authorised agent of theirs.

-(c) Until property therein shall have passed from the Company under the terms hereof:-

i) The Buyer shall be liable to the Company for any loss or damage thereto howsoever caused and shall insure the goods and all other goods of the Company as shall from time to time be in their possession in the Company's sole name to their full market value.

ii) The Buyer shall ensure that at all times after they have been delivered to him or his agent (until such time as they shall be incorporated in other products or resold in the ordinary course of the Buyer's business) the goods

shall be stored or otherwise identified in such a way as to show that they remain the property of the Company.

iii) The Buyer may not mortgage charge or otherwise encumber the goods or dispose of them (otherwise than by attaching them to or incorporating them in other products or reselling them in the ordinary course of their business) without the Company's written consent.

9. COMPANY'S RIGHT TO REPOSSESS GOODS - if at any time before property in the goods has passed from the Company pursuant to the provisions of Clause 8 above the Buyer defaults for more than 28 days in making any payment to the Company in respect of any liability whatsoever owed by the Buyer to the

Company after the due date for such payment or if the Buyer deals with the goods in any manner (other than as permitted in Clause 8 above) adverse to the Company's title or has a receiving order made against him or is made bankrupt or (where the Buyer is a limited company) enters into liquidation or if a Receiver is appointed over the whole or any part of the Buyer's assets or undertaking or if the goods are seized under any execution or distress or other form of legal process this contract shall automatically determine (but without prejudice to any pre-existing claim which the Company may have under these conditions against the Buyer) and the Buyer shall cease to be in possession with the Company's consent of the goods sold and of all other goods, being the property of the Company, which are at that time in the Buyer's possession, custody or control, and the Company shall be entitled to recover possession of all such goods, so long as they are still identifiable, forthwith and shall be entitled to enter upon the premises of the Buyer and remove all those goods and shall not be liable for any damage or injury reasonably done to any other property owned by or in possession of the Buyer to which the Company's goods have been attached or in which they have been incorporated during the course of removing the Company's goods and retaking possession thereof.

10. WARRANTY - the Company warrants that the goods will correspond to their specification at the time of order or confirmation of order.

i) The Company shall be under no liability in respect of any defect in the goods arising from any drawings, design or specification supplied by the Buyer.

ii) The Company shall be under no liability under the above warranty if the total prices of the goods have not been paid by the due date for payment.

iii) Where a valid Claim in respect of the goods is based on a defect in quality or condition of the goods and failure to meet specification is notified to the Company in accordance with these conditions, the Company shall be entitled to replace the goods in question (free of charge) or at the Company's sole discretion refund to the Buyer the price of the goods (or a proportionate part of the price). The Company shall have no further liability to the Buyer and without prejudice to the generality of the foregoing there shall be no liability for loss of sales or manufacturing process or any other consequential loss sustained by the Buyer or claims made by third parties to whom the Buyer has sub-sold or re-sold the goods in question and without prejudice to the generality of the foregoing there shall be no liability for consequential loss or damage (claims made against the Company whether for loss of profit, costs, expenses or other claims for consequential compensation) arising out of the condition or use of the goods or re-sale by the Buyer.

11. BREACH OF WARRANTY - the Company shall only be liable for any breach of the warranty condition in condition 10 if such breach is notified to the Company in writing within 7 days of delivery of the goods to the Buyer or his agent. Such notice shall set out the alleged discrepancies or alleged defects in

quality and the Buyer shall afford the Company reasonable opportunity to examine the goods before the goods are used, processed or re-sold.

In the event of any proven breach of warranty, the company shall, at the Company's option, either replace such goods or credit the Buyer with the price of such goods if the Buyer has paid for the goods.

12. FORCE MAJEURE - the Company shall not be liable for any breach of the contract of sale that arises either wholly or partly from Force Majeure, such term to include but not be limited to Act of God, Legislation, War, Fire, Breakdown of Machinery, Failure of Power Supply, Lock Out, Strike or other industrial dispute, or any other event or circumstance beyond the control of the Company which was not reasonably foreseeable or was unavoidable.

13. SPECIFICATION - the Company warrants that the goods at the time of dispatch are in accordance with the specification or standard agreed with the Buyer subject to usual tolerances as to quality, size, finish and weight. All other express or implied conditions, statements, representations or warranties (whether arising by statute or otherwise) are hereby expressly excluded.

14. SET-OFF - the Buyer shall not be entitled to withhold payment or set-off any amount payable under this or any other Contract with the Company by reason of any claim disputed by the Company.

15. GENERAL LIABILITY - the Company shall not be liable for any loss or damage of any description howsoever arising whether caused by the negligence of the Company, its servants or agents or otherwise arising directly or indirectly out of or in connection with the goods or their use.

16. TERMINATION - (a) the Company shall be entitled, without prejudice to its other rights and remedies, either to terminate wholly or in part the agreement or any or every other contract with the Buyer or to suspend any further deliveries under the agreement or any or every other such contract in any of the following events:-

i) if any debt due and payable by the Buyer to the Company is unpaid;

ii) if the Buyer has failed to take delivery of any goods under the Agreement or any other contract as aforesaid otherwise than in accordance with the Buyers contractual rights;

iii) if the Buyer becomes insolvent or being a body corporate has a receiver or liquidator appointed or passes a resolution for winding up or a Court makes an Order to that effect or being an individual or partnership makes any composition or arrangement with his or their creditors or has a Receiving Order made against him or them or enters into a Creditors Voluntary Arrangement.

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Court makes an Order to that effect or being an individual or partnership makes any composition or arrangement with his or their creditors or has a Receiving Order made against him or them or enters into a Creditors Voluntary Arrangement.

iiii) in addition to any right of lien which the Company may have the Company shall in any event described in paragraph (a)(iii) above have a general lien over all the goods of the Buyer then in the possession of the Company for the unpaid price of any goods sold and delivered by the Company to the Buyer under the Agreement or any other contract.

17. WAIVER - the Company's rights and remedies shall not be prejudiced by any indulgence or forbearance to the Buyer and no waiver by the Company of any breach by the Buyer shall operate as a waiver of any subsequent breach.

18. JURISDICTION - the exclusive jurisdiction of this Agreement shall be England and specifically the High Court of Justice or County Court.

19. GENERAL - should any term or clause of this contract be held to be invalid or unenforceable in whole or in part, the validity of the other terms or clauses of this contract and the remainder of the term or clause in question shall not be affected.

#### 20. GENERAL

20.1.1 Any notice required or permitted to be given by either party to the other under these conditions shall be in writing addressed to that other party at its registered office or principle place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

2. 20.1.2 No waiver by the Company of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.

2. 20.1.3 If any provision of these conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of any other provisions of the conditions and the remainder of the provisions in question shall not be affected thereby.

2. 20.1.4 The parties to the Contract do not intend that any term of the contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

20.1.5 Failure of delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

6. 20.1.6 The contract shall be governed by the laws of England, and the Company and the Customer agree to submit to the jurisdiction of the English courts.