

Alumetal Group's Terms of Business for the Sale of Goods

§ 1

General – Scope of Application

1. Any legal business in accordance of which our goods are sold is exclusively based upon these Terms of Business; these Terms of Business shall also apply to any future business with Purchaser, with no additional express agreement being required.
2. We do not recognize any customer's terms of business which are opposed to, divergent from or complementary to our Terms of Business, unless we have given our express written consent to the application of such terms of business.
3. By concluding the sales contract or by accepting the goods at the latest, Purchaser fully agrees to our Terms of Business, including in cases where divergent terms and conditions are added to this declaration of intent aimed at concluding the contract.
4. If Purchaser for the first time obtains knowledge of the existence or wording of our Terms of Business within the framework of our letter of confirmation – which may also be an invoice – such Terms of Business shall be deemed to be fully accepted by the acceptance without opposition of the confirmation and/or by acknowledgement of the Invoice.

§ 2

Offer. Prices

1. Our offers for the sale of goods are without engagement and subject to confirmation unless we have expressly confirmed the binding character of such offers. Contracts will be brought about only by our express confirmation – which may also be an invoice – or by our delivery or partial delivery without any reservation.
2. Our offer prices are net, ex works, and in Euro or PLN, unless otherwise expressly agreed. Valid prices shall be those prices applied on the day of shipment or on the day of the forwarding of the notification of shipment ready for dispatch. Other prices shall apply only in those cases where the order confirmation mentions a fixed price and/or fixing price.
3. Any clerical errors or cost estimating errors shall entitle us to withdraw from the contract concluded with Purchaser if such Purchaser refuses to adjust the contract. In such case, any claims for damages of Purchaser are excluded.

§ 3

Terms of Payment

1. Payment shall be effected net irrespective of the receipt of goods, within 30 days as from the date of invoice, unless otherwise expressly agreed.
2. Despite any differently worded terms and conditions of Purchaser, we shall be entitled to offset any payment against

any Purchaser's previous liabilities in the first instance. Any costs and interest already incurred shall entitle us to offset any payment received.

3. If Purchaser gets into arrears, we shall be entitled to charge interest as from the relevant point of time, in the amount of 5 percentage points above the applicable base interest rate. We retain for ourselves the right to assert a higher damage caused by delayed performance. Purchaser shall be allowed to prove that such higher damage caused by delayed performance has not been incurred.

4. In case of doubt in respect of Purchaser's creditworthiness, delay of payment, cancellation or reduction of the trade credit insurance limit with our insurer, payments in arrears from previous deliveries, or filing a petition for the opening of insolvency proceedings – all our claims from the contractual relationship shall become due and payable with immediate effect. In such case, we shall be obliged to furnish further services only against cash in advance or delivery against performance, at our option. In addition, we shall be entitled to withdraw fully or partially from any currently existing contract and/or ask for damages instead of performance.

§ 4

Delivery Periods

1. The agreed delivery period shall be considered as complied with if the goods have left our works or if the notification of shipment ready for dispatch has been forwarded up to the expiration of such delivery period. Compliance with the delivery period presupposes the adequate and timely performance of all contractual obligations to be fulfilled by Purchaser. As long as such obligations are not fulfilled, the delivery period shall be considered as interrupted. This stipulation particularly applies to any failure to effect down payments as agreed.

2. Even in case of exceeding the delivery period, Purchaser shall be obliged to accept the goods.

3. War, force majeure, and any plant interruptions at our end or at our sub-contractors' end we are not responsible for shall give rise – even within a delay – to a reasonable extension of delivery period or any extension of time granted, provided that the execution of the contract by us is prejudiced by such obstacles. We will inform Purchaser as early as possible about the occurrence of such circumstances, unless such circumstances are already obvious.

4. We will assume liability according to legal provisions, in so far as the delay of delivery we are responsible for is due to a culpable violation of an essential contractual obligation by us; in such case, however, liability shall be limited to the foreseeable damage arising in a typical-case;

§ 5

Retention of Ownership

1. We retain property in the goods delivered by us until all claims against Purchaser from this business transaction or

from any earlier business transaction have been fully settled ("Reserved Goods"). In case of any Purchaser's conduct contrary to the terms of the contract, especially in case of delay of payment, we shall be entitled to take back the Reserved Goods. This stipulation shall also apply in case of filing a petition for insolvency proceedings in respect of Purchaser's property.

2. If the goods delivered by us are combined with other things in a way that such goods become an integral part of a newly created item, our property in the new item will continue to exist in the proportion of the invoiced value of goods to the value of the new item.
3. Purchaser shall be obliged to store and mark the Reserved Goods separately. Additionally, Purchaser shall protect such Reserved Goods against damage by improper storage, theft, and other damage, with the care of a prudent businessman, and Purchaser shall insure such Reserved Goods sufficiently, in the sum of the replacement value. Purchaser herewith assigns to us any claims under such insurance; we herewith accept such assignment.
4. In case of attachment of or any other intervention of any third parties in the Reserved Goods and/or the claims arising from the sale of such Reserved Goods, Purchaser shall inform any such party of our property in such Reserved Goods. Additionally, Purchaser shall inform us immediately about any prejudice to our property by any third party in order to enable us to take the counter-measures required. If such third party is unable to pay back the court and out-of-court costs of such counter-measures. Purchaser shall be liable for the expenses incurred by us.

§ 6

Liability for Material Defects

1. Upon delivery, the goods shall be immediately inspected by an authorized person as to correctness, completeness, and faultlessness. Any obvious defects shall be notified immediately, and any hidden defects shall be notified within one week as from the discovery of such defects. Any infringement of this obligations shall result in the immediate loss of all Purchaser's claims on account of warranty of quality. Defects of a part of the delivered products shall not give rise to any objection against the entire delivery.
2. The criteria mentioned in our order confirmation and/or invoice shall be considered as the agreed quality.
3. To ascertain our liability, the defective goods may either be inspected by us at Purchaser's end or returned to us, at our option. Any return shipment shall be performed with an indication of the item and/or batch number as well as with a description of the defect. Otherwise, the claim cannot be processed. Purchaser must neither use nor sell the delivery to which objection was made until the liability issue is clarified.
4. We will assume liability according to legal provisions, provided that we have culpably violated any essential contractual obligation. As for the rest, we will assume liability for Purchaser's claims for damages only if such claims for damages are based on intent or gross negligence by ourselves or by our associates, agents, and servants.

§ 9 Other

5. In case of violation of any essential contractual obligation, and in case of any negligent – including grossly negligent – violation of any other contractual obligations, as well as in case of damages instead of performance, our liability shall be limited to the foreseeable damage arising in a typical case.

6. We will not assume any liability for any damage that has not occurred at the goods themselves. In particular, we will not assume any liability for lost profits or other financial losses incurred by Customer. In each case, the amount of our liability shall be limited to the amount of the payment we have calculated for the delivery effected.

7. Our liability ends when the Goods are transformed into a product or are combined with other objects in such a way that they become an integral part of the newly created product (remelting, combination, moulding, machining).

§ 7

General Limitation on Liability

1. Claims for damages, irrespective of the legal foundation they are based on shall be excluded – unless otherwise stipulated in these Terms of Business. This stipulation shall not apply if and to the extent that the cause of the damage is due to intent or gross negligence.

2. We will assume liability according to legal provisions for any claims on account of any harm to life, limb and health, for any claims based upon the product liability Act, and for any claims on account of violation of essential contractual obligations, provided that we are responsible for such violation of obligations. We will assume liability for other damage only if such damage was caused by an intentional or grossly negligent violation of obligations by ourselves or by our associates, agents, and servants. In so far as our liability is limited or excluded, this stipulation shall also apply to the personal liability of our associates, agents, and servants.

3. In each case, any possible liability for damages shall be limited to the foreseeable damage arising in a typical case. In case we are obliged to pay damages on account of simple negligence, our liability for damages on account of damage to property or persons shall be limited to the amount covered by our liability insurance.

§ 8

Place of Performance. Place of Jurisdiction. Applicable Law.

1. The place of performance for all liabilities under this contract shall be our place of business in Poland, i.e. Nowa Sól, Kęty or Gorzyce.

2. The place of jurisdiction for any legal dispute arising from this contract or in connection with this contract – including legal proceedings related to bills of exchange and cheques – shall be in Kęty. However, we shall also be entitled to bring action against Purchaser at Purchaser's seat.

3. All business relationship between the Contracting Parties shall exclusively be subject to the Polish law, with exclusion of the UN sales Convention.

Provisions

1. Purchaser's claims of any kind under this contract must neither fully nor partially be assigned or transferred to any third party without our express written consent.
2. Any deviation from these Terms of Business or any collateral agreements between the Contracting Parties shall require a written form in order to be valid. Any change of such written form agreement shall also be made in writing only.
3. If one provision of these Terms of Business is or becomes fully or partially invalid, the validity of the remaining Terms of Business shall not be prejudiced hereby. In such case, the Contracting Parties undertake to make an agreement which comes as close as possible to the invalid provision, in economic terms.
4. Purchaser agrees to our storing of data obtained under the business relationship, in accordance with the Federal Data Protection Act, and to our using such data for our own business purposes.
5. The Contracting Parties undertake to handle as business secrets all commercial and technical details they obtain under the business relationship.