

Rio Tinto Aluminium Group

Surplus Sales Terms and Conditions

Anglesey Aluminium Surplus Sales Terms And Conditions

CONTENTS

1	Interpretation.....	2
2	Application of Terms.....	2
3	Purchase Arrangements.....	2
4	Delivery of Goods	2
5	Quality.....	3
6	Price.....	3
7	Payment	3
8	Force Majeure	4
9	Termination	4
10	Limitation of Liability.....	4
11	Exclusions.....	4
12	Dispute Resolution	4
13	Notices.....	4
14	Third Parties.....	4
15	Governing Law	5
16	Confidentiality	5
17	Data Protection.....	5

1 INTERPRETATION

- 1.1 In these Conditions, the following references shall have the following meanings:
- AAM** Anglesey Aluminium Metal Limited and its personnel;
- AAM Representative** the person appointed by AAM as responsible for the Contract;
- AAM Site** AAM's place of business- Penrhos Works, Holyhead, Anglesey, LL65 2UJ;
- Business Days** any day falling between Monday and Friday excluding national and bank holidays;
- Buyer** the person, firm or company which purchases the Goods from AAM;
- Conditions** AAM's Surplus Sales Terms and Conditions;
- Contract** the contract comprising the sale and purchase of Goods from AAM, incorporating these Conditions;
- Goods** any goods (including Recovered Materials) agreed in the Contract to be purchased from AAM (including any part of them);
- Recovered Materials** all waste material that have been recycled, recovered or reprocessed by the Recovery Undertaker and are ready for sale;
- Recovery Undertaker** the entity who is responsible for the recycling, recovery or processing of waste material produced by AAM Site.
- 1.2 In these Conditions, references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.
- 1.3 Headings are inserted for convenience only and do not affect the construction of these Conditions.

2 APPLICATION OF TERMS

- 2.1 The Contract constitutes the entire agreement of the parties; any previous agreements, understandings, representations and negotiations cease to have effect.
- 2.2 These Conditions are the only conditions upon which AAM is prepared to deal with the Buyer and they shall govern the Contract to the entire exclusion of all other terms and conditions. No terms or conditions endorsed upon, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document will form part of the Contract simply as a result of such document being referred to in the Contract, and the Buyer waives any right which it otherwise might have to rely on such terms and conditions.
- 2.3 Each order for Goods by the Buyer from AAM shall be deemed to be an offer by the Buyer to purchase Goods subject to these Conditions and no order placed shall be deemed to be accepted by AAM until a written acknowledgement of order is issued by AAM or (if earlier) the Buyer collects the Goods in accordance with these Conditions.
- 2.4 No variation to these Conditions shall have any effect unless expressly agreed in writing and signed by the AAM Representative.
- 2.5 Each right or remedy of AAM under the Contract is without prejudice to any other right or remedy of AAM whether under the Contract or otherwise.
- 2.6 If any provision of the Contract is found by any court, tribunal, or administrative body of competent jurisdiction to be wholly or partially illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 2.7 A provision of or a right created under the Contract or these Conditions may not be waived except in writing signed by the party granting the waiver.
- 2.8 Any waiver by AAM of any breach of, or any default under, any provision of the Contract by the Buyer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.

3 PURCHASE ARRANGEMENTS

- 3.1 If at any time during the course of the Contract the Buyer enters the AAM Site, the Buyer must ensure that the Buyer and the Buyer's personnel:
- 3.1.1 comply in all respects with the Site conditions and all directions given by the AAM Representative;
- 3.1.2 complete AAM's safety induction if required;
- 3.1.3 do not interfere with any of the activities conducted on Site;
- 3.1.4 ensure that any tools, equipment, material or other products brought onto Site meet all safety requirements and are kept secure;
- 3.1.5 ensure that the Site is left safe, secure, reasonably clean, orderly and fit for use; and
- 3.1.6 act in a responsible and safe manner at all times.
- 3.2 AAM reserves the right to refuse entry to, or require the immediate removal of, any person from the AAM Site at any time and for any reason. No compensation will be payable for the exercise of this right.
- 3.3 The Buyer and its sub-contractors shall transport, handle and use the Goods in accordance with all applicable legal requirements imposed by any government authority having jurisdiction and for the avoidance of doubt (and where applicable) any law, regulation and/or requirement (national or otherwise) relating to waste. This obligation together with such parts of the Conditions as are necessary to give full effect to it shall survive in perpetuity any termination of the Contract howsoever arising.

- 3.4 The Buyer shall provide to AAM upon request documentary evidence showing to the satisfaction of AMM that the Buyer has met its obligations under clause 3.3.
- 3.5 The Buyer shall keep AAM indemnified in full against all direct, indirect or consequential liability, loss, damage, injury, costs and expenses (including all legal and other professional fees and expenses) awarded against or incurred, suffered or paid by AAM or any AAM group company as a result of or in connection with any breach by the Buyer (and/or its sub-contractors) of its obligations and warranties under clauses 3 and 4. This obligation together with such parts of the Conditions as are necessary to give full effect to it shall survive in perpetuity any termination of the Contract howsoever arising.

4 DELIVERY OF GOODS

- 4.1 Unless otherwise agreed in writing by AAM, delivery of Recovered Materials shall take place at the Recovery Undertaker's site. The Buyer shall load Recovery Material as directed by the Recovery Undertaker.
- 4.2 The Buyer expressly warrants and agrees that it and its sub-contractors hold all necessary licences, permits and/or authorisations to transport, handle and use the Goods.
- 4.3 Time of delivery is not of the essence.
- 4.4 The Goods are at the risk of the Buyer from the time of delivery or deemed delivery. All liabilities associated with the Goods shall pass to the Buyer from the time of delivery or deemed delivery in accordance with Clause 4.1.
- 4.5 Title to the Goods shall not pass to the Buyer until AAM has received in full (in cash or cleared funds) all sums due to it in respect of the Goods.
- 4.6 Until title to the Goods has passed, the Buyer must:
- 4.6.1 hold the Goods on a fiduciary basis as AAM's bailee and in compliance with all relevant laws, regulations and/or requirements (national or otherwise);
 - 4.6.2 store the Goods (at no cost to AAM) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as AAM's property;
 - 4.6.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - 4.6.4 maintain the Goods in satisfactory condition insured on AAM's behalf for their full price against all risks to the reasonable satisfaction of AAM. On request the Buyer shall produce the policy of insurance to AAM; and
 - 4.6.5 hold the proceeds of the insurance referred to above on trust for AAM and not to mix them with any other money, nor pay the proceeds into an overdrawn bank account.
- 4.7 The Buyer grants AAM, its agents and employees an irrevocable licence to enter the Buyer's premises where the Goods are or may be stored in order to inspect them (when AAM retains an interest in them) or, where the Buyer's right to possession has terminated, to recover them.
- 4.8 AAM shall be entitled to recover payment for the Goods notwithstanding that title to any of the Goods has not passed.
- 4.9 The Buyer shall collect the Recovered Materials from the Recovery Undertaker's place of business on or before the date falling 10 days after AAM's acceptance of the Buyer's order (depending on availability and/or unless otherwise notified by AAM) and shall give AAM and the Recovery Undertaker not less than 3 business days notice of its collection arrangements.
- 4.10 If for any reason the Buyer will not accept delivery of and collect any of the Goods in the time provided:
- 4.10.1 risk in the Goods will pass to the Buyer (including loss for damage caused by AAM's and/or the Recovery Undertaker's negligence); and
 - 4.10.2 AAM and/or the Recovery Undertaker may store the Goods until collection by the Buyer whereupon the Buyer will be liable for all related costs and expenses (including, without limitation, storage and insurance).
- 4.11 The Buyer will provide at its expense adequate and appropriate equipment and manual labour for loading the Goods and removing them from the AAM Site and/or the Recovery Undertaker's site.
- 4.12 Bulk scrap shall, on collection by the Buyer, be weighed by AAM at the weighbridge situated at the main entrance to the AAM Site, in the presence of representatives of both AAM and the Buyer. AAM shall record the agreed weight and shall give a copy of this record to the Buyer
- 4.13 Unless otherwise agreed, deliveries shall only be accepted in normal business hours.
- 4.14 If AAM and/or the Recovery Undertaker delivers to the Buyer a quantity of Goods of up to 10% more or less than the quantity accepted by AAM, the Buyer shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and shall pay for such Goods at the pro rata Contract rate.

5 QUALITY

- 5.1 All Goods sold are surplus or scrap and may be defective. All Goods are sold "as is". The Buyer is expected to inspect and shall be deemed to have inspected the Goods prior to making an offer for the Goods and to have satisfied itself as to the condition of the Goods and their suitability and fitness for any particular purpose.

6 PRICE

- 6.1 The price of the Goods shall be exclusive of any Value Added Tax and does not include any costs or charges in relation to loading, unloading, carriage and insurance, all of which amounts are the responsibility of the Buyer.

7 PAYMENT

- 7.1 Payment for the Goods, in cash or cleared funds, is due on the day the Goods are collected by the Buyer or, if sooner, on the date falling 5 business days after AAM's acceptance of the Buyer's order.
- 7.2 Time for payment shall be of the essence.

- 7.3 All payments payable to AAM under the Contract shall fall due immediately upon termination of the Contract in accordance with Clause 9 below notwithstanding any other provision to the contrary.
- 7.4 The Buyer shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by AAM to the Buyer.
- 7.5 If the Buyer fails to pay AAM any such sum due under the Contract, the Buyer will be liable to pay interest to AAM on such sum from the due date for payment at the statutory rate, accruing on a daily basis until payment is made, whether before or after any judgement.

8 FORCE MAJEURE

- 8.1 Should either party be delayed from complying with its contractual obligations due to causes beyond its reasonable control (force majeure), such party shall be entitled to an extension of time for complying with its contractual obligations equal to such delay. Such extensions are only permissible if prompt written notice thereof is given to the causes of such delay to the other party. Force majeure includes, but is not limited to, acts of God, governmental actions, war, national emergency, terrorism, riot, civil commotion, fire, explosion, flood, epidemic, strikes or other labour dispute.
- 8.2 If either party is affected by a force majeure event they will use reasonable endeavours to mitigate the effects of it.

9 TERMINATION

- 9.1 The Contract may be terminated and AAM may recover all Goods if, prior to the receipt in full (in cash or cleared funds) by AAM of all sums due to it in respect of the Goods:
- 9.1.1 the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statute for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or a resolution is passed or a petition is presented to any court for the winding up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or
- 9.1.2 the Buyer suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, or fails to observe/perform any of its obligations under the Contract, or is unable to pay its debts within the meaning of s.123 of the Insolvency Act 1986 or the Buyer ceases to trade; or
- 9.1.3 the Buyer encumbers or in any way charges any of the Goods.

10 LIMITATION OF LIABILITY

- 10.1 AAM's liability (if any) whether in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price and AAM shall not in any circumstances be liable to the Buyer for any indirect or consequential loss or damage (whether loss or profit, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

11 EXCLUSIONS

- 11.1 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by s.12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

12 DISPUTE RESOLUTION

- 12.1 Each party must do, at its own expense, everything reasonably necessary to give full effect to the Contract and any transaction contemplated by it.
- 12.2 The parties acknowledge that while disputes may arise from time to time, their common intent is to ensure that any dispute is resolved in a timely and cost effective manner.
- 12.3 Notwithstanding the existence of a dispute, each party must continue to perform its obligations under the Contract, subject always to its rights of termination.
- 12.4 The parties must, before resorting to court proceedings, refer any dispute under or relating to the Contract initially to a representative nominated by AAM, and a representative nominated by the Buyer, who will in good faith endeavour to resolve the dispute within 10 business days of the giving of notice of a dispute by a party.
- 12.5 If the dispute is not resolved by the within the time specified, then either party may, in its sole discretion, initiate court proceedings.
- 12.6 A party may commence court proceedings relating to any dispute arising under the Contract at any time where that party seeks urgent or interim declaratory or injunctive relief.

13 NOTICES

- 13.1 A notice, approval, consent or other communication in connection with the Contract must be in writing, marked to the attention of the AAM Representative or Buyer representative and delivered personally or sent by facsimile, post or e-mail to the address specified in the Contract or to the last advised address of the addressee.

14 THIRD PARTIES

- 14.1 No person (whether natural or legal) who is not a party to the Contract shall have any rights by virtue of the Contracts (Rights of Third Parties Act) 1999.

15 GOVERNING LAW

- 15.1 These terms shall be governed by and interpreted in accordance with the laws of England and Wales, and the Buyer shall fully comply with all legal requirements governing its activity and products. The parties submit to the exclusive jurisdiction of the English courts.

16 CONFIDENTIALITY

- 16.1 The Buyer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Buyer by AAM or its agents/contractors and any other confidential information concerning the business or its products which the Buyer may obtain, and the Buyer shall restrict disclosure of such confidential material to such of its employees, agents, or sub-contractors as need to know the same for the purpose of discharging the Buyer's obligations to AAM and shall ensure that such employees, agents, or sub-contractors are subject to like obligations of confidentiality as bind the Buyer.

17 DATA PROTECTION

- 17.1 Buyer shall comply with the provisions of the Data Protection Act 1988 in relation to its processing of any personal data coming into its possession or control for the purposes of the Contract. In particular and without prejudice to the generality of the foregoing, shall process the data solely for the purpose of performing the Contract.