



**G.JAMES**

**Aluminium Products**

G.James Extrusion Co P/L  
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## Terms

### G.James Aluminium Products - Terms and Conditions - Effective: 18/11/2021

#### 1. Price

The prices quoted are subject to variation to accord with the Company's prices and charges in effect at the time of shipment. Unless otherwise stated the Company shall deliver its products on a F.I.S. basis. Unloading is at the cost and risk of the customer.

#### 2. GST

Where applicable GST will be borne by the purchaser.

#### 3. Terms - To Approved Accounts

The terms of payment are Net Cash Thirty (30) Days from the end of the month in which delivery is made where the account has been approved in writing by the Company. All other sales must be paid for prior to the delivery or as required by the Company.

#### 4. Retention of Title

Property in the goods shall remain with the Company until payment in full for the goods has been received by the Company.

Until payment in full is received by the Company the customer shall hold the goods and any goods manufactured from the goods as bailee or trustee for the Company. The customer may sell any of the goods or any goods manufactured from the goods for which he has not paid the Company in the ordinary course of its business on the condition that on request by the Company the customer will assign to the Company all its rights in respect of the sale price thereof and will hold the proceeds of the sales on trust for the Company.

#### 5. Weights and Tolerances

a. Each Company's invoice shall be a prima facie evidence of the classification, numbers and measurements of goods delivered.

b. Unless otherwise stated on the quotation or product drawings, the goods shall be accepted if they comply with

i. the tolerances contained in the specifications of the Australian Standard A.S. 1866-1987;

ii. the tolerances contained in the Company's Price and Data Book; or

iii. the tolerances which are commercially acceptable in the aluminium supply industries

all as at the date of acceptance of the quotation by the customer and in the event of any ambiguity or discrepancy among the above tolerances the broader tolerance shall be applicable.

Where the total mass or length of any item includes a fraction of a kilogram or metre the customer shall be invoiced for and shall pay for that fraction.

c. All sales are subject to such limits as to minimum quantity or minimum cash value of order as the Company may fix from time to time.

#### 6. Claims

Any claim whether for breach of contract, tort negligence, a breach of statutory or other duty, associated with the contract of sale or Company's goods must be made immediately, upon receipt of the goods. No claim will be valid unless received by the Company or their representatives within 48 hours of delivery and confirmed in writing with detailed particulars to the Company within seven (7) days of the delivery of goods. Where a purchaser does not strictly comply with this clause and the preconditions therein contained in relation to claims, he shall be deemed to have waived and released any claim.

#### 7. Storage

It is the customer's responsibility after delivery to provide satisfactory storage as required by the Aluminium Development Councils publication: The Protection and Storage of Aluminium.

#### 8. Delivery Dates/Partial Shipment

The date for delivery is the estimated date only and the Company shall be under no liability for any penalty or loss or damage how so ever arising, if the goods are not delivered by that date. Where the Company is unable to deliver the goods because of accidents to machinery, industrial disputes, breakdown, labour shortage, fires, floods, priorities required or requested by any Public Authority, delays in transportation, lack of transportation facilities or restrictions imposed by any laws or any cause whatsoever beyond the direct control of the Company then the estimated date for delivery shall be extended as the Company requires and at least until the cessation of the effect of such matter or matters.

Where the goods are to be delivered by partial shipment each partial shipment shall be deemed sold and paid for under separate contract. Any failure on the part of the Company to deliver any part within the time stated shall not entitle the Purchaser to repudiate the contract with regard to that part of the balance remaining undelivered.

Should default be made by the Purchaser in paying any sum due under this or any other contract as and when it becomes due the Company may suspend all further deliveries until the default has been made good or cancel the contract including any future deliveries on written notice to the Purchaser.

#### 9. Company Liability

a. The Purchaser warrants and represents to the Company that it has not relied on any inducement, representation or statement made by or on behalf of the Company in purchasing the goods where the same is not noted on the quotation;

b. Except for those conditions and warranties implied in the Trade Practices Act 1974 as amended from time to time (the Act) or other sale of goods or consumer protection legislation which may not be excluded, the Purchaser warrants and represents to the Company that there are no implied conditions or warranties herein and no collateral contracts in connection herewith [except such as may be provided in the quotation and signed by a duly authorised representative of the Company].

#### c. Non Consumer Sales

i. Where goods are supplied by the Company hereunder to a Purchaser who is not a "Consumer" (when used in these Conditions this expression bears the meaning given to it in the Act), if the Purchaser alleges and the Company agrees that any of those goods that do not correspond with the description of them on the face hereof, or are defective, as the case may be, then, provided that those goods are preserved intact and available for inspection by a representative of the Company and are returned to the Company in the same order and condition as that in which they were delivered the Company shall at its option replace those goods or reimburse the Purchaser for the amount of the purchase price paid for them but any claim in this respect must be made with seven (7) days of the delivery of goods. Under no circumstance will the Company be liable for any liability in this respect of or in connection with any consequential, direct or indirect loss, damage, harm or injury suffered or incurred by the Purchaser and the purchaser indemnifies the Company in these respects.

ii. If the Purchaser duly calls upon the Company to indemnify its pursuant to a right accruing to the Purchaser under the Act in respect of any liability of the Purchaser to a consumer as a result of a breach of a condition or warranty implied by the Act in a contract for the supply of goods by the Purchaser to that consumer, subparagraph (i) will not apply and in respect of goods that are of a kind ordinarily acquired for personal, domestic or household use or consumption (consumer goods) the Company's liability is limited to indemnifying the Purchaser in accordance with the Act, while in respect of goods that are not consumer goods the Company's liability is, subject to the Act, limited to a liability to pay to the Purchaser the amount equal to the cost of replacing the goods or the cost of having the goods repaired whichever is the lowest amount.

#### d. Consumer Sales

In the case of goods supplied by the Company hereunder to a Purchaser who is a consumer, the liability of the Company to such Purchaser for breach of any warranty condition (other than a warranty or condition implied by section 69 of the Act) or for breach of any duty of care shall in all cases be limited, at the option of the Company to any one order more of the replacement of the goods or supply of equivalent goods, the payment of the cost of replacing the goods or of acquiring equivalent goods or the payment of the cost of having goods repaired, and shall not include any liability in respect of or in connection with any consequential, direct or indirect, loss damage, harm or injury suffered or incurred by the Purchaser.

#### 10. Patents and registered Designs

The customer shall accept full responsibility for all claims made against the customer or Company that the extrusion products or their method of manufacture or their design infringe any patent or registered design or other intellectual property right whatsoever and shall indemnify the Company in that regard.

#### 11. Tooling

The customer shall pay the Company the cost of tooling design, manufacture or development in accordance with the Company's prices and charges in effect at the time of manufacture or by arrangement. Tooling manufactured by the Company will remain the property of the Company and shall not be released from its possession. Copyright in the tooling, the goods and the associated design shall be and remain the property of the Company absolutely. Interpretation of drawings shall be from the original full size drawings held by G.James. G.James will not be responsible for any error due to facsimile or photocopy production.

#### 12. Use and Disposal of Tooling

Where G.James has agreed with or indicated to the Customer that any particular tooling is to be restricted or used by G.James only for the manufacture of goods for the Customer, G.James will not use that tooling to manufacture goods for any third person, nor sell to any third person products manufactured from the tooling, unless:

- the Customer has duly authorised such use or sale; or
- the Customer has not, for a period of 36 consecutive months, purchased any goods from G.James manufactured from the tooling; or
- the Customer has committed an event of payment default.

Where either (b) or (c) applies G.James may, without reference to the Customer, dispose of such tooling or release such tooling for general use. Alternately, where (b) applies G.James may, at its discretion, instead of disposing of such tooling, and of requested by the customer to do so, elect to store the tooling, in which case a charge of \$250.00 per annum (or such other amount as G.James may from time to time notify to the Customer) shall be payable by the Customer, such charge to be payable annually in advance.

Nothing in this Condition shall prevent G.James from supplying any third party at its request and without reference to the Customer with shapes that are identical or similar to those produced from the tooling maintained for the Customer.

#### 13. Alteration to Conditions

These conditions will not be varied unless the Company agrees in writing.

#### 14. Applicable Law

Contract of sale shall be construed according to the laws of the State of Queensland and the parties submit to the jurisdiction of the Courts of Queensland.

#### 15. Precedence of Conditions

These conditions shall take precedence over and exclude the operation of any other terms and conditions including any terms or conditions of the Purchaser. Acceptance of delivery of the goods or any payment in respect of the goods shall constitute an unqualified acceptance of the purchase of the goods on these conditions.