

## TERMS AND CONDITIONS OF SALE

The following provisions apply to all sales of finished aluminum goods and other products (individually, a "Product" and collectively, "Products") to a buyer ("Buyer") by Skana Aluminum Company ("Seller").

**1. AGREEMENT & PRIOR OFFER OR QUOTE:** These Terms and Conditions of Sale ("Terms") shall be the sole terms and conditions governing the sale of Products by Seller and shall supersede all prior oral or written agreements that conflict with these Terms. These Terms shall apply to all transactions relating to Buyer's purchase of Products from Seller. Any additional or different terms proposed by Buyer are rejected and shall be deemed a material alteration hereof, unless such terms are in writing and are signed by a duly authorized representative of Seller. Each sale of Products by Seller to Buyer is expressly conditioned on Buyer's acceptance of these Terms, and contract formation is expressly made conditional on Buyer's assent to all of these Terms.

**2. PRICE & MARKET PRICE FLUCTUATIONS:** The price for Products shall be invoiced at the prices and charges fixed by Seller at the time of and for each shipment under the order. Seller's prices are subject to change without notice. Seller reserves the right to pass through certain tariffs, duties, surcharges and similar fees, charges and costs on a direct cost basis to Buyer, including but not limited to significant increases in the cost of natural gas used in the manufacture of Products and trucking and freight surcharges. Buyer shall be liable to Seller to take all aluminum at the price fixed for the aluminum metal contained in the Products covered by Buyer's order. If Buyer for any reason whatsoever subsequently elects not to take Products from Seller and the market price of aluminum is lower than the price fixed at time of Buyer's order or at any time metal was fixed thereafter, then Buyer must pay compensation to Seller for the difference in the price of aluminum between the higher price fixed at the time of order and the lower price in effect at time of order cancellation, times the number of lbs. covered by the cancelled order. Sales prices are not fixed for any given period or contractual duration unless specifically stated formally in writing by Seller, in the form of an official sales confirmation on Seller's company letterhead, irrespective of representations of the Seller's sales force and/or customer service employees.

**3. SHIPMENT:** Shipping date is Seller's best estimate and will not operate to bind Seller to ship or make deliveries on the date set forth in an order. All Products are shipped (as a default) F.O.B. Sellers manufacturing facility. Title, risk of loss or damage, and other incidents of ownership, subject to Seller's security interest as described below, shall pass to Buyer upon due tender of goods for delivery at Seller's manufacturing facility.

**4. DELIVERY:** When Buyer fails to give timely delivery instructions to enable Seller to make deliveries in accordance with a shipping date provided by the terms of an order, Seller shall have the option of: (a) shipping the materials specified to one of Buyer's historically recognized designations; (b) billing Buyer for quantities due and holding same at Seller's facility for Buyer's disposition; or (c) canceling the quantities involved and billing Buyer for appropriate cancellation charges as established by Seller. If Seller is unable to meet any shipping dates requested by Buyer, Buyer shall have no claim for damages, whether incidental, consequential, punitive or otherwise (even if Seller has been advised of the possibility of such damages), resulting from any such delay in delivery.

**5. PAYMENT TERMS:** Unless otherwise agreed in writing by Seller, terms of payment shall be net thirty (30) days from date of invoice once credit approval for the buyer is confirmed. Payments not made when due shall be subject to a late charge accruing from the date due until paid in full at the fixed rate of 1.5% per month (but not exceeding the maximum charge permitted by applicable law). Should Seller be forced to hire an attorney to assist it in collecting its account from Buyer, whether or not the collection efforts include litigation, Buyer agrees to pay to Seller all costs of collection, including, but not limited to reasonable attorneys' fees and court costs. Buyer hereby grants Seller a purchase money security interest in Products furnished and proceeds thereof until payment is made for the Products and Buyer authorizes Seller to file financing statements indicating such security interest. Notwithstanding any language to the contrary on Buyer's check, draft or other order which is negotiated by Seller, Buyer's account shall not be deemed paid in full until finally paid.

**6. CREDIT:** Seller reserves the right to alter or suspend credit and/or change credit terms at any

time if Seller believes, in its sole discretion, that Buyer's financial condition warrants the suspension and/or change. If, at any time, Buyer fails to pay any amount in full when due to Seller, or otherwise fails to perform any other obligation owed to Seller or Buyer, in Seller's sole opinion, is financially impaired, then Seller shall have, in its sole discretion and in addition to any other remedies available to Seller, the right to declare all payments and outstanding balances immediately due and owing and to cancel any order previously accepted from Buyer, and to refuse to make any shipments of Products except upon the receipt of cash payment prior to shipment.

7. **FORCE MAJEURE:** Seller shall not be liable for failure to ship, or delays in shipment, occasioned by or due to Acts of God, fire, earthquake, hurricane, flood, inability to obtain materials or shipping space, breakdowns, delays or unavailability of transportation or suppliers, including energy suppliers, labor troubles, whether or not labor demands could be met by Seller, acts of war or terrorism, acts, regulations or requests of any government or government agency, or any other cause beyond Seller's control. In the event of Seller's inability to fill Buyer's order due to the foregoing, Seller may make partial shipment to Buyer on such basis as Seller in its sole discretion may decide, without liability to Buyer for any failure to fully perform its contractual obligations. Seller shall have no obligation to purchase substitute Products or make other substitute arrangements in order to complete delivery to Buyer.

8. **QUANTITY TOLERANCE:** Quantity tolerance shall be based on the standards set forth in an order accepted by Seller or other standards currently published by Seller. In the absence of any specific agreement, Seller's quantity tolerance policy shall apply as follows: For orders of 7,500 lbs or less, the quantity tolerance shall be plus or minus 20%; for orders between 7,501 and 19,999 lbs, the quantity tolerance shall be plus or minus 15%; and for orders of 20,000 lbs or more, the quantity tolerance shall be plus or minus 10%.

9. **WARRANTY:** Seller warrants to Buyer that Seller has good title to the Products sold to Buyer and that the Products shall be free from commercially unacceptable defects in material and workmanship. **SELLER MAKES NO OTHER WARRANTY OR REPRESENTATION WHATSOEVER, EXPRESS OR IMPLIED,**

**INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ALL SUCH OTHER WARRANTIES ARE HEREBY EXPRESSLY EXCLUDED. IN NO EVENT SHALL SELLER'S LIABILITY EXTEND BEYOND REPLACEMENT OR REPAIR OF PRODUCTS OR GIVING BUYER CREDIT FOR THE PURCHASE PRICE. SELLER SHALL NOT BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES INCLUDING LOSS, DAMAGES OR EXPENSES DIRECTLY OR INDIRECTLY ARISING FROM THE USE OF THE PRODUCTS. BUYER ACKNOWLEDGES AND AGREES THAT BUYER TAKES SOLE RESPONSIBILITY FOR THE SELECTION OF AND SPECIFICATIONS FOR THE PRODUCTS, THEIR FITNESS FOR ANY PURPOSES INTENDED FOR THE USE OF THE PRODUCTS BY BUYER OR ANY PERSON OR ENTITY WITH WHOM BUYER DIRECTLY OR INDIRECTLY DEALS AND FOR COMPLIANCE WITH ALL HEALTH, SAFETY AND/OR ENVIRONMENTAL LAWS, RULES, REGULATIONS AND STANDARDS OF PRACTICE THAT MAY BE APPLICABLE TO THE PRODUCTS OR THEIR USE, INCLUDING, WITHOUT LIMITATION, THE USE OF THE PRODUCTS AS CONTAINERS OR PACKAGING FOR FOOD OR BEVERAGES. All claims for replacement of alleged defective Products shall be deemed waived unless the claim is made in writing and received by Seller within 10 calendar days after Buyer's receipt of Products or any other period specified by Seller from time to time. Buyer shall afford Seller prompt and reasonable opportunity to inspect all Products as to which any claim is made. Buyer will have no right to return any Product without Seller's prior written authorization. Any return authorized by Seller must be made in accordance with Seller's return policies then in effect and must be accompanied by a Returned Materials Authorization (RMA) from Seller. Buyer will be responsible for all costs and expenses associated with any returns of Products and will bear the risk of loss or damage of such Products, unless Seller agrees otherwise in writing or determines that the Products do not conform to the applicable terms of sale. Seller, in its sole discretion, may reject any return of Product not approved by Seller in accordance with this paragraph or otherwise not returned in accordance with Seller's then current-return policies. If, at Buyer's request, Products are shipped to a third party, Seller has no further responsibility for any shortages, conditions of the**

material or compliance with specifications once such Products have been received by said third party.

**10. INTELLECTUAL PROPERTY:** Seller warrants that Products sold hereunder shall not violate any third party intellectual property rights and further agrees to hold Buyer harmless from any and all damages, including reasonable attorneys' fees, arising from claims of actual or alleged infringement of any third party intellectual property rights. If, however, any Products shall be manufactured by Seller to meet Buyer's specifications or requirements and are not a part of Seller's standard line offered by it to the trade generally in the usual course of Seller's business, Buyer agrees to hold Seller harmless from any and all damages, including reasonable attorneys' fees, arising from claims and demands for actual or alleged infringement of any intellectual property rights, and to defend at Buyer's expense any suits or actions at law or in equity which may be brought against Seller for any actual or alleged infringement because of the manufacture or sale of any such Products. The sale of Products shall not grant Buyer any right or license of any kind under any intellectual property right owned or controlled by Seller or under which Seller is licensed.

**11. INDEMNITY:** To the fullest extent permitted by law, Buyer shall, at Buyer's sole expense, indemnify and hold Seller, its officers, directors, agents and employees harmless from any and all loss, liability, claims, suits and costs, including reasonable attorneys' fees, based in whole or in part on the fitness of the Products for a particular purpose or noncompliance with any law, rule or regulation and/or product liability pertaining to the Products and/or any use to which the Products are put after shipment of the Products by Seller to Buyer.

**12. TAXES:** Except for income taxes normally paid by Seller, Buyer shall pay or reimburse Seller for any tax which now or hereafter may be imposed by any taxing authority in respect to the sale, manufacture, delivery, use and/or other handling of Products sold by Seller to Buyer.

**13. INSPECTION CHARGES:** If Buyer desires Seller to perform tests or inspections not regularly provided by Seller, Buyer shall notify Seller of such request in writing. If Seller agrees to perform any such tests or inspections, Seller and Buyer will mutually agree on Seller's charges for such tests or inspections.

**14. CANCELLATION:** Buyer may cancel an order only upon Seller's acceptance of such cancellation in writing. Seller will assess liquidated damages in an amount equal to 50% of the purchase price of the Products for a permitted cancellation made less than 90 days prior to Seller's scheduled shipment date. Seller shall have the right to continue the processing of Products in manufacture, and special orders and/or non-cancelable orders may not be canceled.

**15. TERMINATION:** Seller may terminate all or any part of any order immediately upon notice to Buyer if (a) Buyer becomes insolvent, fails to pay its debts as they come due or makes an assignment for the benefit of creditors, or (b) Buyer breaches any of the terms of the Agreement if such breach is not cured to Seller's satisfaction within ten (10) following written notice of such breach. In the event of such termination, Seller reserves all rights and remedies available to it under these Terms, any other agreement between Buyer and Seller, at law or in equity.

**16. ASSIGNMENT:** Buyer may neither assign any of its rights nor delegate any of its duties under an order or these Terms without the prior written consent of Seller, which may be given or withheld in the sole discretion of Seller. An order or the obligations under these Terms may be performed, and all rights under an order or these Terms against Buyer may be enforced, by Seller or by any subsidiary or affiliate of Seller.

**17. WAIVERS:** No waiver by Seller of any term, condition or remedy shall be deemed a waiver of any other term, condition or remedy. Seller's failure to object to any provision contained in any communication from Buyer shall not be deemed an acceptance thereof or a waiver of any of these Terms or any remedy otherwise available to Seller.

**18. SEVERABILITY:** If any provision herein shall be held to be unlawful or unenforceable, the remaining provisions herein shall remain in full force and effect.

**19. CHOICE OF LAW:** These Terms and all transactions between Seller and Buyer shall be governed by and construed in accordance with the internal laws of the State of Wisconsin, without regard to any conflicts of law principles. Any action or proceeding involving any dispute, claim or controversy relating to or arising from these Terms or such transactions, which cannot be resolved amicably, shall be commenced

exclusively in the state courts located within Manitowoc County, Wisconsin or in the federal courts for the Eastern District of Wisconsin. Buyer consents to the exclusive jurisdiction of such courts and waives any objection to such jurisdiction.

**20. CONFIDENTIAL INFORMATION:** All information furnished or made available by Seller to Buyer in the connection with the subject matter of these Terms and any transaction between Buyer and Seller shall be held in confidence by Buyer. Buyer agrees not to use such information

or disclose such information to others without Seller's prior written consent. The obligations in this paragraph will not apply to any information which (a) at the time of disclosure was or thereafter becomes, generally available to the public by publication or otherwise through no breach by Buyer of any obligation herein, (b) Buyer can show by written records was in Buyer's possession prior to disclosure by Seller, or (c) is legally made available to Buyer by or through a third party having no direct or indirect confidentially obligation to Seller with respect to such information.