

**TOMAGO ALUMINIUM COMPANY PTY LIMITED
GENERAL PURCHASE ORDER TERMS AND CONDITIONS****1. Definitions**

"Merchandise" means all goods, chattels, plant, equipment, machinery, stores and the like subject to the Purchase Order. "The Company" means Tomago Aluminium Company Pty Limited (acting as agent for and on behalf of the participants in the Tomago Aluminium Project; an unincorporated joint venture of Alcan Primary Metal Australia Pty Ltd (APMA) 36.05%, Gove Aluminium Finance Ltd, 36.05%, Cathjoh Holdings Pty Limited 15.5%, Hydro Aluminium Australia Pty. Limited 6.2%, Hydro Aluminum Tomago Inc. 6.2%, acting severally as holders of undivided interests of thirty six point zero five per cent, thirty six point zero five per cent, fifteen point five per cent, six point two per cent and six point two per cent respectively).

"Vendor" means the person, firm or corporation from whom the Merchandise has been ordered.

"Purchase Order" means the Purchase Order to which these terms and conditions are annexed.

"Work" means the work to be performed by the Supplier in manufacturing, constructing, assembling or installing the Merchandise.

"CONTRACT – the Purchase order when signed by the employee of the Company authorised by the Company to sign Purchase Orders, and bearing an order number, supersedes all previous communications and negotiations and together with all documents attached hereto or incorporated herein by reference (collectively referred to as the "Purchase Order") constitute the entire terms of the Purchase Order and may not be modified except in writing signed by the duly authorised representative of both the Company and the Supplier ("Purchase Order Alteration"). No terms stated by the Supplier in accepting or acknowledging this Purchase Order shall be binding except with the Company's prior written consent. The Supplier may not subcontract or assign all or any part of the Purchase Order without the Company's prior written consent. No waiver of a breach of any provision of this Purchase Order shall constitute a waiver of any other breach of such provision or of any other provision."

2. Pricing

- (i) "Pricing – unless otherwise stated herein, prices for Merchandise shown on this Purchase Order are not subject to escalation and no variation in price is to be made unless it is authorised by the Company in writing by a Purchase Order CHANGE.
- (ii) "Performance of Purchase Order – unless otherwise agreed in writing, the Supplier accepts this Purchase Order on the basis that the Supplier shall at its cost supply all materials, equipment, tools and facilities required to perform this Purchase Order and that the Company shall not be liable for any extra Work undertaken in relation to this Purchase Order unless the extra Work is approved by the Company before such Work is commenced."

3. Freight and Packing

"Freight and Packing" –

- (i) "Immediately the Supplier dispatches the Merchandise to the Company the Supplier shall notify the Company of the time of dispatch; the number of the order, the kind and amount of Merchandise dispatched and the route and method by which the Merchandise is being transported. All Merchandise shall be suitably packed, marked and transported in such form as the total freight charges, whether based on cubic measurement or by weight, will be minimum and in all cases in accordance with the proper requirements of the carriers. The Supplier shall be liable for any damage to goods not packed in accordance with the requirements of this clause. The Supplier shall be liable for any difference in freight charges arising from its failure to:
 - (a) follow the transport instructions in the Purchase Order or
 - (b) properly describe the Merchandise transported. The Company and the Supplier shall assist each other in obtaining documents and other information desirable for the prosecution of any claim against any carrier.
- (ii) Unless otherwise stated in writing herein the Company shall not be liable for any charge in relation to the packing of Merchandise.
- (iii) If the Merchandise is of an explosive, inflammable, toxic or otherwise dangerous nature, the Supplier shall forever hold the Company harmless from and against any and all claims asserted against the Company on account of any personal injuries and/or property damage, personal injury or other losses or damages arising from the Supplier's breach of its obligations under this Agreement and otherwise in respect of such merchandise.

"Passing of Risk – title to, and risk of loss, of the Merchandise shall remain with the Supplier until the Merchandise is delivered to the point specified in this Purchase Order, or if no such point is specified then when the Merchandise is delivered to the Company ("Delivery Point)."

4. Delivery

"Quantity – the quantity of Merchandise delivered shall not be greater than the amount specified herein unless an additional amount is first ordered by the Company in writing by a Purchase Order Alteration. The Company may return excess quantities to the Supplier at the Supplier's expense."

Time"

- (i) "Time is of the essence hereof. If by reason of any cause the Supplier shall have been delayed or impeded in supply of Merchandise and/or Work to the Delivery Point and the delay or impediment occurs before the delivery date (or that date extended under this condition) the Supplier (subject to the "Force Majeure" provisions herein) may give notice in writing of a claim for an extension of time. Such notice shall be given to the Company by the Supplier as soon as practicable after the occurrence of the delay or impediment mentioned above.
- (ii) The Company may, within a reasonable time after the receipt of notice from the Supplier under sub-clause (i) above, grant the Supplier in writing such extension of time as the Company considers appropriate.
- (iii) If the Supplier fails to supply the Merchandise or complete the Work by the quoted delivery date or any extension thereto granted in accordance with sub-clause (ii) above, the Company may either:

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- (a) require the Supplier to pay to the Company by way of pre-estimated liquidated damages the amount shown on the Purchase Order for every week or pro rata for part of a week that shall elapse after such fixed or extended date until the supply of Merchandise or completion of Work, provided always that the maximum liability of the Supplier from liquidated damages shall not exceed 5% of the full price as set forth in the Purchase order or,
- (b) reject the whole or any portion of the Merchandise and/or Work not supplied and thereupon contract with any other person, firm or corporation to supply the Merchandise and/or Work so rejected, and the Supplier shall not have any right to compensation or allowance by reason of such rejection and any loss or damage sustained or any costs, charges or expenses incurred by the Company in connection therewith may be recovered from the Supplier as a debt due to the Company and any sums held by the Company and remaining unpaid to the Supplier under any contract may be applied in or towards satisfaction of that debt.

"Documentation" – the Supplier shall mark the Purchase Order number and Merchandise destination on all packaging, shipping notices, Bills of Lading, correspondence and all documents pertaining to the particular Purchase Order, Copies of Bills of Lading and Shipping invoices are to be sent to: Tomago Aluminium Company Pty Limited, Attention: Purchasing.

5. Inspection

- (i) "The Supplier agrees that the Company or its designated Agent shall have the right of inspection of all Merchandise and Work referred to in the Purchase Order while in any stage of engineering, manufacture or installation and whether on the Company's premises or elsewhere. The Supplier shall make this a condition of any subcontracted work. The Company or its designated agent shall have the right to reject any Work or Merchandise which does not conform to the requirements of the Purchase Order; whereupon the Work rejected shall be redone or the Merchandise rejected shall be replaced, whichever the case shall be, at no additional cost to the Company. Any such inspection shall not be construed to be an acceptance of unsatisfactory or defective Merchandise or Work.
- (ii) All Merchandise is subject to the Company's inspection within a reasonable time after arrival at the Delivery Point. If upon inspection the Company in its sole discretion determines any Merchandise is unsatisfactory, defective or of inferior quality or workmanship or fails to meet the specifications or any other requirements of the Purchase Order the Company may, at the Supplier's expense, either repair such Merchandise or return it to the Supplier. Payment for Merchandise prior to inspection shall not be construed to be an acceptance of unsatisfactory or defective Merchandise.

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- (iii) Where the Company returns Merchandise to the Supplier under sub-clause (ii) above the Company may at its discretion either reject the Merchandise or require the Supplier at the Supplier's own expense to render the Merchandise satisfactory and re-deliver the same within the time specified by the Company. Upon rejection of any unsatisfactory or defective Merchandise, the Supplier shall reimburse the Company for:
- (a) any amounts paid by the Company on account of the purchase price of returned Merchandise, and
 - (b) any cost incurred by the Company in connection with the delivery or return of such Merchandise, and
 - (c) any additional cost incurred by the Company in purchasing substitute Merchandise.

6. Warranty

"Warranty"

- (i) The Supplier warrants that all materials in the Merchandise shall be new and both workmanship and material shall be of good quality. The Supplier warrants for the period noted in the Purchase Order or, if no such period is noted, for twelve months following completion of the Work or the arrival of the Merchandise at the Delivery Point that the Merchandise will conform to its description and any applicable specifications or standards shall be of good merchantable quality, and fit for the known purpose for which it is sold.
- (ii) The Supplier will, after notice from the Company at its own expense, make good and replace in a proper condition Merchandise or Work found to be in breach of this Warranty.
- (iii) If the Supplier fails to rectify any default within the reasonable time specified in the notice referred to in sub-section (ii) of this Clause, the Company may at the Supplier's expense remedy the default by whatever means the Company at its discretion deems appropriate.

"Title" – the Supplier warrants that the Merchandise is, and at the time the property therein will pass will be, free and clear of all liens, charges and encumbrances and that the Supplier has, and at the time the property therein will pass will have a good and marketable title to the same.

"Patents, Trademarks and Copyright" – the Supplier shall forever indemnify the Company against any action, claim or demand, costs or expenses arising from or incurred by reason of any infringement of letters, patent, design, trademark or name, copyright, trade secret or other protected rights in respect of any machine, equipment, work, material or thing, system or method of using, fixing, working or arrangement used or fixed or supplied by the Supplier under this Purchase Order."

7. Remedies

"Remedies – in the event of a breach by the Supplier of any of the terms of the Purchase Order, including without limiting the foregoing, the Supplier's warranties, or in the event the Supplier becomes bankrupt or is wound up or is placed in the hands of a receiver or manager or executes a deed of arrangement or assignment for its creditors the Company may at its option and without prejudice to any of its other rights, cancel forthwith any undelivered Merchandise and shall have the right to terminate forthwith the Purchase Order in whole or in part, and the Company may procure elsewhere Merchandise similar to the Merchandise as to which the Purchase Order is so terminated, and the Supplier shall be liable for any costs for such similar Merchandise in excess of the price specified herein, provided however, that the Supplier shall continue the performance of the Purchase Order to the extent not terminated by the Company. In addition to the rights provided above, the Company may exercise any other rights or remedies provided by law or under the Purchase Order for any such default or breach by the Supplier including the refund of any monies paid to the Supplier on instalment by or on behalf of the Company. The Company shall have the right to terminate for default at any time during this agreement regardless of the time when default is discovered.

8. Force Majeure

"Force Majeure" –

- (i) "For the purposes of this Purchase Order, an event of Force Majeure shall mean any cause or occurrence which is beyond the control of the party claiming the occurrence of a Force Majeure event and which delays, interrupts or prevents such party from performing its obligations under this contract and shall include, without limiting the foregoing; strikes, work stoppages or other labour difficulties, fires, floods, or other acts of God, acts of government or any subdivision or agency therefore.
- (ii) Notwithstanding any provision hereof to the contrary, the reduction, completion, shortage, curtailment or cessation of the supply of goods or services or any other supplies or materials to the Supplier shall not be regarded as an event of Force Majeure.
- (iii) The party affected for a Force Majeure event shall give notice thereof to the other party within 10 days following the occurrence of the event and shall apprise the other party to the probable extent to which the affected party will be unable to perform or will be delayed in performing its obligations hereunder. The affected party shall exercise due diligence to eliminate or remedy the Force Majeure issue and shall give the other party prompt notice when that has been accomplished.
- (iv) Except as provided herein, if performance of this contract by either party is delayed, interrupted or prevented by reason of any event of Force Majeure, both parties shall be excused from performing hereunder while and to the extent that the Force Majeure condition exists, after which the parties' performance shall be resumed.

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- (v) Notwithstanding the foregoing, but within 10 days following the Supplier's declaration of a Force Majeure event which prevents its making full and/or timely delivery of the Merchandise and/or Work hereunder, the Company may, at its option and without liability:
- (a) require the Supplier to apportion among its customers the Merchandise and/or Work available for delivery during the Force Majeure period
 - (b) cancel any or all delays or reduce deliveries, or
 - (c) cancel any outstanding deliveries hereunder and terminate this contract.
- (vi) If the Company accepts reduced deliveries or cancels the same in accordance with the above, the Company may procure substitute Merchandise and/or Work from other sources in which event this Purchase Order shall be deemed modified to eliminate the Supplier's obligation to sell and the Company's obligation to purchase such substituted Merchandise and/or Work.
- (vii) After cessation of a Force Majeure event declared by a supplier, the Supplier shall at the Company's option but not otherwise be obligated to deliver Merchandise and/or Work not delivered during the Force Majeure period.
- (viii) After cessation of a Force Majeure event declared by the Company, neither party shall be obligated to deliver or purchase Merchandise and/or Work not so delivered and purchased during the Force Majeure period."

9. Legal

"Applicable Law"

- (i) "The Supplier shall observe all applicable laws and regulations and shall indemnify and save the Company harmless from any and all liability, expenses, costs, damages and/or losses of any kind resulting from the Supplier's failure to do so.
- (ii) The Purchase order and the rights and obligations of the parties hereto shall be construed in accordance with and be governed by laws of the State of New South Wales. Each of the parties hereto hereby agrees that any legal action or proceeding with respect to its obligations hereunder shall be brought only in the State of New South Wales and each of the parties hereto hereby irrevocably submits to such jurisdiction."

10. Government Regulations

"Government Regulations – the Supplier warrants that all Merchandise and Work supplied in satisfaction of this Purchase Order fully complies with all government regulations and provisions."

11. Tooling Generally

Tooling (which term includes designs, drawings, special tools, gauges, patterns, jigs and fixtures and other accessories) supplied by the Company shall be and remain the property of the Company and shall not without prior approval in writing of the Company be modified or altered in any way by the Supplier. Company-owned tooling shall not be removed from the Supplier's premises and shall not, without the previous written consent of the Company be used for any purpose other than the fulfilment of the Company's Purchase Orders.

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"Payment"

- (i) The Company shall pay the Supplier's claims for payment, unless otherwise stated herein 60 days from date of invoice.
- (ii) The Supplier's invoices should be dated as at the date of the dispatch of the Merchandise and/or Work to the Company and the Company shall not be responsible for delay in receipt of the Supplier's invoices and required supporting documents. Should delays occur, time allowed by the Supplier for the payment of the invoice or for accepting a cash discount offered, shall commence on the date the invoice, complete with any required supporting documents, is received by the Company.
- (iii) Supplier's invoices for goods or services in excess of or at variance to the Purchase Order may, at the Company's option, be rejected by the Company."
- (iv) The Company will return to the Supplier invoices for goods that are rejected by the Company.

13. Miscellaneous

"Enforcement – this Purchase Order may be performed and all rights hereunder against the Supplier may be enforced wholly or in part by the Company or by any one or more of the corporations now or hereafter subsidiary to or affiliated with the Company."

"Changes"

- (i) The Company reserves the right to correct any errors or omissions in, and to make any changes in, deductions from or additions to the plans, specifications or Work to be performed. The Supplier shall not depart from the requirements of the plans, specifications or work to be performed until first directed in writing by the Company; and the Supplier agrees to immediately comply with such directions and proceed with the Work. Thereafter if any such change causes a change in cost or time required for performance, an appropriate adjustment shall be made to the terms of the Purchase Order. The Supplier agrees to provide any substantiation of any alleged change in cost or time required for performance as may be initiated by the Company."
- (ii) Stenographic and clerical error, whether in mathematical computations or otherwise, made by the Company on this Purchase Order or any other forms delivered to the Supplier shall be subject to correction by Company."

"Precedents of Document – If the Supplier discovers any inconsistency between the documents comprising the Purchase Order, the Supplier shall forthwith notify the Company. In the case of any such inconsistencies, it is agreed that the order of precedence of documents shall be determined by the Company.

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“Confidentiality – all data furnished by the Company to the Supplier shall be confidential and shall not be disclosed to anyone not a party to the Purchase Order without the prior written consent of the Company. Unless otherwise provided in the Purchase Order, all plans, drawings and specifications prepared by or on behalf of the Company for the performance of the Purchase Order, or prepared or supplied by the Company, and all patterns made from the Company’s plans, drawings and specifications are and shall remain the property of the Company and shall not be used by the Supplier otherwise than for performing the Work and complying with the terms of the Purchase Order and (together with all copies thereof) shall be delivered to the Company in good order and condition on completion of the Work under the Purchase Order unless otherwise directed by the Company in writing. The Supplier’s obligation of confidentiality hereunder in respect of the Company’s property shall extend to trade secrets and all other confidential information the property of the Company and shall continue until the subject information is in the public domain.”

“Property in Merchandise – where any part payment for the Merchandise is made by the Company the title to and property in the partly completed Merchandise and any materials and parts to be used in its manufacture and then on hand shall pass to the Company and the same shall be appropriately marked. The risk therein shall remain with the Supplier.”

“Injuries or Damages – the Supplier shall forever indemnify and save the Company harmless from any and all liability, expenses, costs, damages and/or losses of any kind arising out of injuries to (including death of) any person or persons or damage to any property of any kind in connection with the Supplier’s or that of any servant, agent or subcontractor of the Supplier, performance of the Purchase Order.”

“Import Duty – the Supplier agrees to file tariff concessions applications covering items imported into Australia (provided such imports are dutiable) for incorporation in the Merchandise covered by the Purchase Order, to authorise the Company to process such applications in the name of the Supplier and to cooperate with the Company in obtaining tariff concessions. Any reduction of import duty by reason of lower assessment of import charges or lesser quantities or value of goods imported below the amounts or rates specified in the Supplier’s quotation will be credited against the Purchase Order Price to the benefit of the Company.”

“Notices – any notices required under or given pursuant to this agreement shall be sent by prepaid post or by fax shall be addressed in the case of the Company to the address on the Purchase Order and in the case of the Supplier to the address on his invoice form and shall if by post be deemed to be delivered three days after posting in the case of domestic mail and ten days after posting in the case of overseas mail or if by fax upon receipt by the sender of the answerback code.”

“Insurance – The Supplier shall if requested, at the Supplier’s own expense, effect proper insurance for the Work and Merchandise against all risks, including product liability (including injury to or death of any person) and damage to property, and damage to or destruction of the Work or Merchandise.