

Alcoa Fastening Systems Simi Valley Terms and Conditions of Sale

Terms and Conditions: The following terms and conditions (the "Terms") shall be the sole terms and conditions governing the sale of goods by Alcoa Fastening Systems-Simi Valley ("Seller"), to the purchaser of such goods ("Buyer"). The identity of Buyer, the identity of the goods being purchased (the "goods"), the quantity of goods being purchased, the destination for delivery of the goods, and other material information concerning Buyer's order shall be set forth in Buyer's purchase order (the "Order") and provided to Seller. These Terms are hereby incorporated into and made a part of each such Order. Upon the earlier of Seller's written acceptance of the Order or acceptance by Buyer of goods furnished by Seller in response to such Order, the Order, the written acceptance, if any, and these Terms shall be the complete and final agreement (the "Agreement") between Seller and Buyer with respect to the sale of goods identified in the Order, provided, however, that no pre-printed or form language appearing in Buyer's Order shall become a part of the Agreement. SELLER'S ACCEPTANCE OF ANY BUYER ORDER IS EXPRESSLY MADE CONDITIONAL UPON BUYER'S ACCEPTANCE OF THESE TERMS, AND SELLER OBJECTS TO ANY ADDITIONAL OR DIFFERENT TERMS AND CONDITIONS, WHETHER CONTAINED IN BUYER'S ORDER OR OTHERWISE. SELLER WILL NOT BE DEEMED TO HAVE WAIVED THESE TERMS AND CONDITIONS OF SALE IF IT FAILS TO OBJECT TO PROVISIONS CONTAINED IN BUYER'S FORMS OR OTHERWISE.

Delivery: Unless otherwise specifically agreed in writing by Seller, all goods are sold ex works Seller's plant, the cost of transportation for and risk of loss to the goods to be borne by Buyer. All delivery and shipping dates are estimates only.

Delays: Seller will use reasonable efforts to fill the Order in accordance with the estimated delivery or shipping date, but Seller will not be responsible for any delays in filling the Order nor liable for any losses or damages resulting from such delays.

Force Majeure: Seller will not be liable for delays in filling the Order or failure in the performance of any of its obligations hereunder caused by accidents, labor disputes or disruptions, strikes, shortages of labor, materials, fuel or power, fires, floods or other acts of God, acts of terrorism or war, acts or omissions of Buyer, delays in transportation or lack of transportation facilities, priorities required, requested or granted for the benefit of the government, restrictions imposed by law or any rules or regulations thereunder, or any cause, whether similar to or dissimilar from those enumerated, beyond Seller's reasonable control.

Prices: Buyer's obligation to make full and timely payment for each shipment will be without rights of set-off. The prices stated do not include state or federal excise, sales or use taxes, if any. All such taxes in effect or hereafter levied, which are applicable to the sale of the goods, are in addition to such prices and will be paid by Buyer. Unless otherwise agreed to in writing by Seller, payment terms are net 30 days from the date of invoice. Seller reserves the right to charge interest on late payments. Whenever reasonable grounds for insecurity exist with respect to due payment by Buyer, Seller may demand different terms of payment and may demand assurance of due payment. Seller may, upon the making of such demand, stop production and suspend shipment hereunder. If, within the period stated in such demand, Buyer fails or refuses to agree to such different terms of payment or fails or refuses to give adequate assurance of due payment, Seller may, at its option treat such failure or refusal as a repudiation of the portion of the Order which has not been fully performed, or may resume production and may make shipment under reservation of possession or of a security interest and may demand payment against tender of documents of title.

Orders: All Orders for goods may be subject to minimum quantities and extended shipment policy as determined by Seller from time to time. Order policy and pricing are subject to change by Seller without notice.

Quantity: All quantities shown on packaging are based on weight counts, and Seller will use reasonable efforts to ensure that its weight counts are accurate. The parties agree that if the quantity of goods as determined by actual weight is within two percent (2%) of the quantity shown on the packaging, Buyer shall be deemed to have received the quantity shown on the packaging, and Buyer shall pay for such amount. Unless Seller agrees in writing otherwise, any Order filled by Seller that is less than the quantity ordered by Buyer, but not less than ninety percent (90%) of the quantity ordered, will be deemed to be fully filled. In such event, Seller shall notify Buyer that the Order has been filled, and Buyer shall be entitled only to the quantity of goods provided by Seller, and shall be required to pay only for the amount actually delivered by Seller (but not for more than the amount ordered).

Inspection, Acceptance or Rejection: Buyer will make adequate inspection of the goods promptly after their receipt, and in any event within thirty (30) days of receipt, and will give Seller prompt notice of any non-conformity or defect. Buyer's failure in either respect will constitute a waiver of such non-conformity or defect. Buyer shall keep lot traceability records for the goods to ensure that lots manufactured by Seller can be traced through Buyer's manufacturing and/or sales processes.

Terminations; Changes: Buyer may not terminate an Order without the prior written consent of Seller. If Seller consents to such termination, reasonable termination charges computed by Seller may be assessed in connection with such termination. Any changes requested by Buyer to an Order will be subject to the consent of Seller and to an equitable price adjustment as determined by Seller.

Assignment: This Agreement and any right or interest hereunder may not be assigned by Buyer without Seller's prior written consent.

Warranty: Seller warrants that the goods sold to Buyer, at the time of shipment, will meet Seller's specifications and be free from defects in material and workmanship. Such warranty is limited to twelve months from the date of shipment of the goods to Buyer. Seller's sole obligation and liability in the event of breach of warranty and Buyer's sole remedy, as determined by Seller, shall be Seller's repayment of the amount paid for nonconforming goods, or repair or replacement of nonconforming goods free of charge at Buyer's delivery point. Such repair, replacement or repayment will be made only upon return of the nonconforming goods, which may be returned at Seller's cost only after inspection by Seller (which may be by Buyer returning a sample to Seller at Seller's request) and Buyer's receipt from Seller of definite shipping instructions and an RMA number.

SELLER MAKES NO WARRANTY THAT THE GOODS WILL BE MERCHANTABILITY OR FIT FOR ANY PARTICULAR PURPOSE. SELLER MAKES NO WARRANTY, EXPRESS OR IMPLIED, EXCEPT SUCH AS IS EXPRESSLY SET FORTH HEREIN.

Excluded Damages: In no event will Seller be liable for any incidental, consequential, indirect, special, contingent, or punitive damages arising out of or relating to: (i) any breach of contract or warranty, tort (including negligence or strict liability), or other theories of law with respect to products sold or services rendered, or undertakings, acts or omissions relating thereto; (ii) the tender of defective or non-conforming goods; (iii) breach of any other provision of this Agreement; or (iv) any claim of any kind arising out of or relating to any Order or Seller's performance in connection therewith. In any event, Seller's liability will not exceed the purchase price of the goods on which such liability is based. Buyer assumes all liability for any loss, damage or injury to persons or property arising out of, connected with or resulting from the use of Seller's products, either alone or in combination with other products.

Infringements: Seller agrees to indemnify Buyer against court-assessed damages (excluding consequential damages) and costs resulting from infringement of any patents issued in the country of the goods' origin, as well as any other intellectual property right extant in that country at the time of Seller's acceptance of the Order to the extent such intellectual property covers the goods. However, Seller's liability for infringements will be limited to the purchase price of the goods raising the infringement. Buyer agrees, for the goods delivered under this Agreement, to indemnify Seller against court assessed damages (excluding consequential damages) and costs resulting from infringement of any patents issued in any country or any other intellectual property right by goods meeting specifications, designs or instructions furnished or expressly or implicitly required by Buyer. Neither party will be entitled to indemnification as to any claim for which it does not give prompt notice to the other party and full opportunity at the expense of the indemnifying party to defend and dispose of such claim. The sale of goods covered by this Agreement will not grant to Buyer any right or license of any kind under any patent owned or controlled by Seller or its suppliers, or under which Seller or its suppliers is licensed, but the foregoing will not limit in any way the right of Buyer to use and sell such goods in the event that such goods as sold hereunder are covered by a patent.

Confidentiality: Unless otherwise agreed to in writing by Seller, Seller will not be bound by any obligations of confidentiality or non-disclosure. No right, title, or interest in and to any development, invention, or work of authorship, conceived or developed by Seller during the course of performance hereunder, is conveyed to Buyer. Seller does not grant to Buyer, and nothing contained herein will obligate or be construed to obligate Seller to grant to Buyer, any license under any patents or other intellectual property owned by Seller.

Export Licensing: For shipments outside of the U.S., Buyer will be responsible for obtaining the appropriate export license(s) necessary to permit shipment of the goods. Seller will have no liability in the event that an export license is not approved or is later withdrawn.

Miscellaneous: This Agreement may be performed, and all rights hereunder may be enforced against Buyer, by Seller or any subsidiary, parent or affiliate of Seller. No provision hereof and no breach of any provision will be deemed waived by reason of any previous waiver of such provision or of any breach thereof. These Terms may be modified only by a writing signed by the parties. The invalidity, in whole or in part, of any provision of this Agreement will not affect the remainder of such provision or any other provision. This Agreement will be governed by, and interpreted in accordance with, the laws of the State of New York, excluding those relating to choice or conflicts of law and excluding the United Nations Convention on Contracts for the International Sale of Goods.