

Schupan Aluminum & Plastic Sales

TERMS AND CONDITIONS OF SALES

APPLICABILITY – The terms and conditions of sales set forth herein and any accompanying quotation (a “Quotation”) or any confirmation of sale (a “Sales Confirmation, delivery receipt and/or invoice”) (collectively, these “Terms”) are the only terms and conditions which govern the sale of any goods (the “Goods”) by Schupan Aluminum & Plastic Sales (“Seller”) to Buyer. Notwithstanding anything herein to the contrary, if a written contract signed by Seller and Buyer is in existence covering the sale of the Goods, the terms and conditions of such contract shall prevail to the extent they are inconsistent with these Terms.

These Terms comprise the entire agreement between Seller and Buyer regarding the terms and conditions applicable to the sale of the Goods, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral, regarding the terms and conditions applicable to the sale of the Goods. These Terms prevail over any of Buyer’s general terms and conditions of purchase regardless of whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer’s order does not constitute acceptance of any of Buyer’s terms and conditions and does not serve to modify or amend these Terms.

QUOTATIONS AND ORDERS - All quotations are subject to change without notice, are subject to continued availability of the Goods identified in a Quotation and, unless otherwise agreed by Buyer and Seller, are binding upon Seller only if Buyer immediately submits a purchase order for the Goods identified in such Quotation. Prices for Goods which the seller must order to support the Buyer’s purchase order are subject to change based on the purchase cost at time of delivery, i.e. “price in effect at time of shipment”. A purchase order for the Goods will be deemed to have been submitted to Seller only if and when all specifications identifying the Goods have been submitted in writing to Seller.

Buyer may not, except with the written consent of Seller, cancel a purchase order for the Goods which incorporates any materials for which Seller has submitted a special order to any of Seller’s suppliers.

If Buyer submits a purchase order for the Goods to Seller for the purpose of confirming another purchase order for the Goods, Buyer shall mark “Confirmation” in a conspicuous manner on the face of such purchase order. In the event that Buyer submits a purchase order for the Goods to Seller for the purpose of confirming another purchase order for the Goods but fails to include “Confirmation” in a conspicuous manner on the face of such purchase order, Seller may treat such purchase order as an additional purchase order for the Goods and will not be responsible for any expense or inconvenience resulting from such failure.

Seller may accept an order for the Goods placed by Buyer via telephone or means other than by submitting a purchase order for the Goods, provided that such order is placed at the risk of Buyer and any shipment of the Goods relating to such order made before Buyer submits a purchase order for the Goods is for the special convenience of Buyer and Buyer shall pay for the Goods in accordance with these Terms.

DELIVERY – Subject to the availability thereof, the Goods will be delivered within a reasonable time after the receipt of Buyer’s purchase order. Seller shall not be liable for any delays, loss or damage in transit.

Unless otherwise agreed in writing by Seller and Buyer, Seller shall deliver the Goods to the address identified in a purchase order submitted to Seller (the “Delivery Point”) using Seller’s standard methods for packaging and shipping the Goods. Buyer shall take delivery of the Goods within 5 business days of Seller’s written notice that the Goods have been delivered to the Delivery Point. Buyer shall be responsible for all loading costs and provide equipment and labor reasonably suited for receipt of the Goods at the Delivery Point.

Seller may, in its sole discretion, without liability or penalty, make partial shipments of the Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units of the Goods shipped whether such shipment is in whole or partial fulfillment of Buyer’s purchase order.

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If for any reason Buyer fails to accept delivery of any of the Goods on the date fixed pursuant to Seller's notice that the Goods have been delivered at the Delivery Point, or if Seller is unable to deliver the Goods at the Delivery Point on such date because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (i) risk of loss to the Goods shall pass to Buyer; (ii) the Goods shall be deemed to have been delivered; and (iii) Seller, at its option, may store the Goods until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

NONDELIVERY - The quantity of any installment of the Goods as recorded by Seller on dispatch from Seller's place of business is conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence proving the contrary.

Seller shall not be liable for any non-delivery of the Goods (even if caused by Seller's negligence) unless Buyer gives written notice to Seller of the non-delivery within 5 business days of the date when the Goods would in the ordinary course of events have been received.

Any liability of Seller for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or adjusting the invoice respecting the Goods to reflect the actual quantity delivered.

QUANTITY - If Seller delivers to Buyer a quantity of the Goods of up to 15% more or less than the quantity set forth in a Sales Confirmation, delivery receipt and/or invoice, Buyer shall not be entitled to object to or reject the Goods or any portion of the Goods by reason of the surplus or shortfall and shall pay for the Goods the price set forth in such Sales Confirmation, delivery receipt and/or invoice adjusted pro rata.

PAYMENT TERMS - Unless otherwise agreed to by Seller prior to sale, Buyer shall pay all invoiced amounts due to Seller within 30 calendar days of Seller's invoice date. Buyer shall make all payments hereunder by wire transfer, ACH transfer or check and in currency of the United States.

Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under these Terms or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any of the Goods if Buyer fails to pay any amounts when due.

Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy or otherwise.

TOOLING - Unless specifically agreed to in writing prior to any sale of the Goods, any engineering and/or tooling charges are a one-time expense for the exclusive rights to have the Goods produced from such tooling. Any tooling used in the production of the Goods is the property of Seller and/or Seller's supplier(s). Any charges for tooling cover replacement of such tooling, under "normal" wear and tear and maintenance, by Seller and/or Seller's supplier(s). Buyer will not incur additional tooling charges unless Buyer requests modifications to any tooling. If any tooling in the possession of Seller or any of Seller's suppliers remains unused for 3 years or more, Seller or Seller's supplier(s), as applicable, may, without notice to Buyer, scrap such tooling.

TITLE AND RISK OF LOSS - Title and risk of loss passes to Buyer upon delivery of the Goods at the Delivery Point or, if the Goods are shipped to Buyer by common carrier, upon delivery of the Goods by Seller to such common carrier. As collateral security for the payment of the price of the Goods, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title and interest of Buyer in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance

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proceeds) of the foregoing. The security interest granted under this TITLE AND RISK OF LOSS Section constitutes a purchase money security interest under the Michigan Uniform Commercial Code.

If the Goods are shipped to Buyer via a carrier other than a common carrier, Buyer shall, immediately upon arrival of the Goods at the Delivery Point, identify any shortage in or damage to the Goods on both Buyer's copy and such carrier's copy of such carrier's receipts, freight bill or delivery memo and cause both copies to be signed by such carrier's driver or representative. If Buyer fails to do so, Seller will be responsible for any shortage in or damage to the Goods only (i) in the case of a carrier that is owned or operated by or affiliated with Seller, if Seller establishes to Seller's reasonable satisfaction that there was in fact a shortage in the Goods or that there was damage to the Goods which occurred prior to the arrival of the Goods at the Delivery Point, as applicable, or (ii) in the case of any carrier that is not owned or operated by or affiliated with Seller, if Seller is able to recover for a shortage in the Goods or damage to the Goods from such carrier.

TECHNICAL ADVICE - None of Seller's agents, employees or representatives has any authority to bind Seller to any affirmation, representation or warranty other than those contained in these Terms or in any Sales Confirmation, delivery receipt and/or invoice. In particular, any technical advice Seller furnishes to Buyer with respect to the use of the Goods is given without charge, and Seller assumes no obligation or liability for such advice or the results obtained based upon such advice as all such advice is furnished to Buyer and accepted by Buyer at Buyer's risk.

WARRANTY - Seller warrants to Buyer that the Goods, at the time of shipment by Seller, shall conform to any specifications applicable thereto set forth in a Sales Confirmation, delivery receipt and/or invoice for the Goods and to the description contained in any Certificate of Tests or Compliance with respect to the Goods furnished by Seller in connection with a sale of the Goods.

EXCEPT AS SET FORTH IN THE IMMEDIATELY PRECEDING PARAGRAPH OF THIS WARRANTY SECTION, SELLER DISCLAIMS ALL WARRANTIES WITH RESPECT TO THE GOODS OR ANY SERVICES PERFORMED IN CONNECTION WITH THE SALE OF THE GOODS, WHETHER EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS OF THE GOODS OR ANY SERVICES PERFORMED IN CONNECTION WITH THE SALE OF THE GOODS FOR ANY PARTICULAR PURPOSE. FOR THE AVOIDANCE OF DOUBT, BY PLACING AN ORDER WITH SELLER, BUYER AFFIRMS THAT BUYER HAS NOT RELIED UPON THE SKILL OR JUDGMENT OF SELLER OR ANY OF SELLER'S AGENTS, EMPLOYEES OR REPRESENTATIVES TO SELECT OR FURNISH THE GOODS FOR ANY PARTICULAR PURPOSE, AND THE SALE OF THE GOODS IS MADE WITHOUT ANY WARRANTY BY SELLER THAT THE GOODS ARE SUITABLE FOR ANY PARTICULAR PURPOSE. FURTHER FOR THE AVOIDANCE OF DOUBT, BUYER SHALL BE RESPONSIBLE FOR ANY OF THE GOODS THAT DO NOT CONFORM TO THE SPECIFICATIONS APPLICABLE THERETO TO THE EXTENT THAT ANY SUCH NON-CONFORMITY IS ATTRIBUTABLE TO DAMAGE, MISUSE, ABRASION, CORROSION, NEGLIGENCE, ACCIDENT, TAMPERING, FAULTY INSTALLATION, IMPROPER STORAGE, INADEQUATE MAINTENANCE OR ANY OTHER CAUSE AFFECTING THE GOODS AFTER THE TIME OF SHIPMENT OF THE GOODS BY SELLER.

Except for the specifications applicable to the Goods set forth in a Sales Confirmation, delivery receipt and/or invoice for the Goods and any Certificate of Tests or Compliance with respect to the Goods furnished by Seller to Buyer in connection with a sale of the Goods, any description of the Goods or the services performed in connection with the sale of the Goods contained in such Sales Confirmation, delivery receipt and/or invoice or any other correspondence is for the sole purpose of identifying the Goods, is not a part of the basis of the bargain for the purchase and sale of the Goods and does not constitute a warranty that the Goods or the services performed in connection with the sale of the Goods shall conform to such description. The use of any sample in connection with a sale of the Goods is for illustrative purposes only, is not a part of the basis of the bargain for the purchase and sale of the Goods and is not to be construed as a warranty that the Goods will conform to such sample. Any affirmation of fact or promise made by Seller is not a part of the basis of the

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bargain for the purchase and sale of the Goods and shall not constitute a warranty that the Goods will conform to the affirmation or promise.

THIRD PARTY PRODUCT - Products manufactured by a third party ("Third Party Product") may constitute, contain, be contained in, incorporated into, attached to or packaged together with, the Goods. Third Party Products are not covered by the WARRANTY in the above section. For the avoidance of doubt, **SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD PARTY PRODUCT, INCLUDING ANY (i) WARRANTY OF MERCHANTABILITY; (ii) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (iii) WARRANTY OF TITLE; OR (iv) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.**

Seller shall not be liable for a breach of the warranty set forth in the WARRANTY Section unless: (i) Buyer gives written notice of the defect, reasonably described, to Seller within 45 days of the time when Buyer discovers or ought to have discovered the defect; (ii) Seller is given a reasonable opportunity after receiving the notice to examine the Goods and Buyer (if requested to do so by Seller) returns the Goods to Seller's place of business at Seller's cost for the examination to take place there; and (iii) Seller reasonably verifies Buyer's claim that the Goods are defective.

Seller shall not be liable for a breach of the warranty set forth in the WARRANTY section above if: (i) Buyer makes any further use of the Goods after giving such notice; (ii) the defect arises because Buyer failed to follow reasonable storage practices of the Goods; or (iii) Buyer alters or repairs the Goods without the prior written consent of Seller.

EXCLUSIVE REMEDY - If Buyer timely notifies Seller in writing that any of the Goods fails to conform to any specifications applicable thereto set forth in a Sales Confirmation, delivery receipt and/or invoice for the Goods and to the description contained in any Certificate of Tests or Compliance with respect to the Goods furnished by Seller in connection with a sale of the Goods (the "Nonconforming Goods"), Seller will, in its discretion, (i) replace the Nonconforming Goods with Goods which conform to any specifications applicable thereto set forth in such Sales Confirmation, delivery receipt and/or invoice for the Goods and to the description contained in any Certificate of Tests or Compliance with respect to the Goods furnished by Seller in connection with a sale of the Goods or (ii) credit or refund the price of the Nonconforming Goods, together with any reasonable shipping and handling expenses, to Buyer.

LIMITATION OF LIABILITY - **IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.**

IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THESE TERMS, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE GOODS SOLD HEREUNDER.

The limitation of liability set forth herein shall not apply to (i) liability resulting from Seller's gross negligence or willful misconduct and (ii) death or bodily injury resulting from Seller's acts or omissions.

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INDEMNIFICATION - Seller and Buyer will each indemnify the other and its agents, employees, officers, directors, successors and assigns and hold them harmless from and against any and all damages, liabilities, losses, expenses, costs or claims (including without limitation reasonable attorney fees) to the extent that such claims and losses are directly caused by (i) the negligence or willful misconduct of the indemnifying party or (ii) the indemnifying party's breach of any of its covenants, representations or warranties set forth in these Terms.

FORCE MAJEURE - All sales of the Goods are made subject to strikes, accidents or other causes of any kind beyond the reasonable control of Seller.

INSURANCE - During the period that these Terms are applicable to the sale of the Goods, Buyer shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial general liability (including product liability) in a sum no less than \$1,000,000 with financially sound and reputable insurers. Upon Seller's request, Buyer shall provide Seller with a certificate of insurance from Buyer's insurer evidencing the insurance coverage specified in these Terms. Except where prohibited by law, Buyer shall require its insurer to waive all rights of subrogation against Seller's insurers and Seller.

COMPLIANCE WITH LAW - Buyer shall comply with all applicable laws, regulations and ordinances. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under these Terms.

TERMINATION - In addition to any remedies that may be provided under these Terms, Seller may terminate these Terms with immediate effect upon written notice to Buyer if Buyer: (i) fails to pay any amount when due under these Terms; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

WAIVER - No waiver by Seller of any of the provisions of these Terms is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising under these Terms operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

CONFIDENTIAL INFORMATION - All non-public, confidential or proprietary information of Seller, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with these Terms is confidential, solely for the use of performing the obligations under these Terms and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this CONFIDENTIAL INFORMATION Section. This CONFIDENTIAL INFORMATION Section does not apply to information that is: (i) in the public domain; (ii) known to Buyer at the time of disclosure; or (iii) rightfully obtained by Buyer on a non-confidential basis from a third party.

ASSIGNMENT - Buyer shall not assign any of its rights or delegate any of its obligations under these Terms without the prior written consent of Seller. Any purported assignment or delegation in violation of this ASSIGNMENT Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under these Terms.

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RELATIONSHIP OF SELLER AND BUYER - The relationship between Seller and Buyer is that of independent contractors. Nothing contained in these Terms shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between Seller and Buyer, and neither Seller nor Buyer shall have authority to contract for or bind the other in any manner whatsoever.

NO THIRD-PARTY BENEFICIARIES - These Terms are for the sole benefit of Seller and Buyer and their respective successors and permitted assigns, and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

GOVERNING LAW - All matters arising out of or relating to these Terms is governed by and construed in accordance with the internal laws of the State of Michigan without giving effect to any choice or conflict of law provision or rule whether of the State of Michigan or any other jurisdiction that would cause the application of the laws of any jurisdiction other than those of the State of Michigan.

SUBMISSION TO JURISDICTION - Any legal suit, action or proceeding arising out of or relating to these Terms shall be instituted in the federal courts of the United States of America or the courts of the State of Michigan, in each case located in the City of Kalamazoo and County of Kalamazoo, and each of Seller and Buyer irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

NOTICES - All notices, requests, consents, claims, demands, waivers and other communications hereunder (each, a "Notice") shall be in writing and addressed to Seller and Buyer at the addresses set forth on the face of a Sales Confirmation, delivery receipt and/or invoice or to such other address that may be designated by Seller or Buyer, as applicable, in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in these Terms, a Notice is effective only (i) upon receipt by Seller or Buyer, as applicable, and (ii) if Seller or Buyer, as applicable, has complied with the requirements of this NOTICES Section in giving such Notice.

SEVERABILITY - If any provision of these Terms is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision of these Terms or invalidate or render unenforceable such provision in any other jurisdiction.

SURVIVAL - Provisions of these Terms which by their nature should apply beyond the term during which these Terms are applicable to the sale of the Goods will remain in force after any termination or expiration of this Order, including, but not limited to, the provisions in the following Sections: INSURANCE, COMPLIANCE WITH LAWS, CONFIDENTIAL INFORMATION, GOVERNING LAW, SUBMISSION TO JURISDICTION and SURVIVAL.

AMENDMENT AND MODIFICATION - These Terms may be amended from time to time with no notice to Buyer. The latest version of these Terms will be available on our web site at www.schupan.com.