TERMS & CONDITIONS OF TRADE

The following Terms and Conditions of Trade apply to all transactions between Trumark and its Customers

1. **Payments to be** by cash, cheque, bank cheque or EFTPOS and without deduction unless otherwise agreed**.**

2. **Interest will be charged** on overdue accounts at the rate prescribed under the *Penalty Interest Rates Act 1983* (Vic) plus 2%.

3. **Property:** Even if Trumark grants any credit facility and/or time to pay:
   a) title to and property in all Products sold by Trumark to the Customer shall not pass to the Customer until payment has been made to Trumark in full of all monies owed to Trumark under this or any other agreement;
   b) notwithstanding clause 3, the risk of loss or damage to the Products shall pass to the Customer from the time of delivery to the Customer or its agent and the Customer shall keep the Products properly insured for their insurable value until all monies whatsoever owing by the Customer to Trumark have been paid in full. All policies of insurance shall be effected in the joint names of the Customer and Trumark for their respective rights in respect of loss or damage to the Products and the policies of insurance shall apply equally to Trumark and to the Customer as if each were separately insured under any such policy of insurance;
   c) the Customer shall hold all Products supplied to the Customer delivered to it or to its agents as fiduciary agent or bailee for Trumark;
   d) the Customer shall ensure that all Products supplied to the Customer by Trumark are stored separately from all other goods which may be in the Customer's possession, and that all Products supplied to the Customer by Trumark under this or any other agreement are clearly labelled as belonging to Trumark;
   e) the Customer will not cause the Products to lose their identifiable character or be intermingled with other goods, in any way, either by any process of its own or by a third party, except with Trumark's prior written consent;
   f) the Customer will not create any absolute indefeasible interest in the Products in relation to any third party, except with Trumark's prior written consent;
   g) pending payment in full for all amounts owed by the Customer to Trumark on all accounts, the Customer:
      i. must not allow any person to have or acquire any Security Interest in the Products; and
      ii. must not remove, deface or obliterate any identifying mark or number on any of the Products,
   h) until all monies owing to Trumark by the Customer have been paid in full for all Products supplied to the Customer under this or any other agreement and until the Customer has satisfied any other debts owing to Trumark, Trumark authorises the Customer to sell the Products to a third party as a fiduciary agent of the Trumark. The Customer shall, however, not represent to any third party that it is in any way acting for the Company and the Company will not be bound by any contract with third parties made by the Customer.
   i) The Customer agrees that a Certificate signed by an officer or employee of Trumark identifying Products as those of Trumark shall be conclusive evidence of Trumark's title to such Products;
   j) upon sale or disposition of any Products prior to payment in full being made the Customer agrees to: (i) deposit all proceeds of such sale in a separate bank account;
      i. not mix such proceeds with any other monies; and
      ii. account to Trumark for the same as fiduciary and bailee;
   k) without derogating from Trumark's rights as a creditor of the Customer or arising under these Terms, if Products are used in any construction, building, fabrication and/or manufacturing process ["the Process"] which results in an entitlement of the Customer to receive money from any other person the Customer agrees to hold such part of any monies received by the Customer (or the corresponding book debt owed to the Customer in respect of these monies) as is equivalent to the value of any Products used in the Process as invoiced to the Customer by Trumark upon trust for Trumark until payment is made to Trumark in full all monies owed by the Customer to Trumark.

4. **Default:**
   a) If the Customer does not pay for any Products delivered to it by the due date for payment, Trumark may to take possession and dispose of the Products as it sees fit at any time until full payment has been received for all monies owed to Trumark.
   b) The Customer grant Trumark permission to enter any property to recover Products and with such force as is necessary and agrees to pay or reimburse Trumark for its costs of and incidental to taking such action.
   c) The Customer indemnifies Trumark from any claims, suits, actions, demands, damages, liability, loss, costs or expenses arising out of or in connection with Trumark's repossession and disposal of the Products in accordance with this clause.

5. **Security:**
   a) By ordering the Products from Trumark, the Customer grants a Security Interest or charge to Trumark and enters into a Security Agreement or charge with Trumark in respect of all Products ordered by the Customer and all of the Customer's present and after acquired property whether owned outright or beneficially to secure the payment of money by the Customer and performance of obligations by the Customer under these Terms and Conditions of Trade.
   b) The Customer acknowledges and agrees that the Products are inventory.
   c) The Customer must, within the timeframe notified by Trumark, sign all documents and do all things necessary, as notified by Trumark to, or as otherwise required to:
      i. enable Registration with respect to the Security Interest and for that Registration to continue until such time as all of the Customer's obligations under the Security Agreement have been satisfied, including providing the Customer's details and any serial numbers required for Registration;
      ii. if the PPSA applies, enable the Security Interest to be perfected and continue to be perfected until such time as all of the Customer's obligations under the Security Agreement have been satisfied;
      iii. ensure that the Security Interest has priority over all other security interests in the Personal Property, whether registered, perfected or otherwise and whether created or arising before or after the creation of the Security Interest, except those security interests which Trumark agrees will have priority over the Security Interest or which by law have priority over the Security Interest;
      iv. ensure that Trumark is able to enforce the Security Interest until such time as all of the Customer's obligations under the Security Agreement have been satisfied and the Customer must not do anything which affects the enforceability of the Security Interest;
      v. make any changes to the Registration relating to the Security Interest as Trumark may require from time to time, including to enable correction of any defects in the Registration;
      vi. if the PPSA applies, ensure that a third person cannot acquire an interest in any Collateral free of Trumark's Security Interest other than, where applicable, as a result of the Customer dealing with inventory in the ordinary course of business;
   d) Trumark may exercise its rights in relation to the Security Interest any time after the Grantor fails to comply with its obligations under the Security Agreement;
   e) to the extent permitted by the PPSA, the Customer waives its rights to receive any notices, statements or forms required to be issued or which would ordinarily be issued, whether by Trumark or any other person, to the Customer under the PPSA;
   f) the Customer must pay to Trumark on request, all Trumark's expenses, including legal costs, stamp duty and registration fees, in connection with the Security Agreement and the grant of the Security Interest, Registration with respect to the Security

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Interest and release of the Security Interest and, if the PPSA applies, perfection of the Security Interest;

g) where permitted under the PPSA or any other relevant law, the provisions contained in the Security Agreement will prevail over the PPSA or any other relevant law, to the extent of any inconsistency;

h) in this clause 5, unless the context otherwise requires:

i. "Collateral" means the Personal Property to which the Security Interest is attached and, in relation to Registration with respect to the Security Interest, includes the Personal Property described by the Registration (whether or not the Security Interest is attached to the Personal Property) and all other present and after-acquired rights and interests in land and any other property, rights and interests that is not Personal Property;

ii. "Enforce" means exercise all of Trumark's rights, under the Security Agreement or otherwise, in relation to the Security Interest;

iii. "Enforceability" means Trumark's ability to exercise all of its rights, under the Security Agreement or otherwise, in relation to the Security Interest;

iv. "**Personal Property**":

A. if the PPSA applies, means all the Customer's present and after-acquired personal property (as defined in the PPSA and to which the PPSA applies) and/or all present and after-acquired personal property (as defined in the PPSA and to which the PPSA applies) in which the Customer has rights and includes all of the Collateral and any other assets, property and rights over which the Security Interest is permitted by law; and

B. in all other circumstances, means all assets, property and rights, real or personal of any nature whatsoever owned by the Customer and/or in which the Customer has rights, at present or in the future, and, where applicable, includes:

C. the proceeds from the sale of any of the Personal Property; and

D. if the PPSA applies, the Grantor's security interest in any Collateral;

v. "PPSA" means the Personal Property Securities Act 2009 (Cth) and the Personal Property Security Regulations 2010 (Cth) (as amended);

vi. "Registration":

A. if the PPSA applies, registration of the Security Interest on the Register; and

B. in all other circumstances, means registration of the Security Interest on the relevant register, to enable the Security Interest to have priority in accordance with the Security Agreement;

vii. "Secured Party" means the Company and if the PPSA applies, includes the meaning given to those words in the PPSA;

viii. "**Security Agreement**" means:

A. any agreement, arrangement or transaction between the Customer and Trumark that creates or evidences the Security Interest, in the form prepared by Trumark at the cost of the Customer and, where applicable, in accordance with the PPSA; and'

B. in relation to a Security Interest granted by the Customer to Trumark includes any agreement between Trumark and the Customer which creates or evidences the Security Interest, which may include these Conditions;

ix. "**Security Interest**":

A. if the PPSA applies, means a security interest (as defined in the PPSA); and

B. in all other circumstances, means any mortgage, charge, pledge, lien, hypothecation, trust, power, agreement where Trumark retains title in the Personal Property (eg. retention or conditional sales agreement), hire or hire purchase agreement, option, subordination or other security interest, granted by the Customer in the Customer's Personal Property to Trumark under the Security Agreement to secure payment of all money by the Grantor and performance of all the Customer's obligations under the Security Agreement and, if the PPSA applies, includes a purchase money security interest; and

x. if the PPSA applies, words and phrases not defined in these Conditions will have the meaning given to them in the PPSA.

A. that the limit of Trumark's liability in connection with the supply of the Products shall be limited to the cost of replacement of the Products or of supplying equivalent products;

B. that Trumark shall not be liable for any loss or expense arising after seven days from delivery (or at all once Products have been unpacked, fixed and/or otherwise used or applied) after which there shall be deemed to have been unqualified acceptance of the Products by the Customer;

C. that Trumark shall not be liable for any contingent, consequential, direct, indirect, special or punitive damages whether due to negligence or otherwise and that the Customer acknowledges this limit of liability and agrees to limit any claim accordingly; and

D. that no other term, condition, agreement, warranty, representation and/or understanding whether express or implied, in any way extending to or otherwise relating to or binding upon Trumark other than these Terms is made or given by or on behalf of Trumark.

E. no dealing between Trumark and the Customer shall be or be deemed to be a sale by sample;

F. the Customer shall rely on its own knowledge and expertise in selecting Products for any purpose and any advice or assistance given for or on behalf of Trumark shall be accepted at the Customer's risk and shall not be deemed to have been given as expert or advisor nor to have been relied upon; and

6. **Limitation of Liability:** The Customer agrees:

a) that the limit of Trumark's liability in connection with the supply of the Products shall be limited to the cost of replacement of the Products or of supplying equivalent products;

b) that Trumark shall not be liable for any loss or expense arising after seven days from delivery (or at all once Products have been unpacked, fixed and/or otherwise used or applied) after which there shall be deemed to have been unqualified acceptance of the Products by the Customer;

c) that Trumark shall not be liable for any contingent, consequential, direct, indirect, special or punitive damages whether due to negligence or otherwise and that the Customer acknowledges this limit of liability and agrees to limit any claim accordingly; and

d) that no other term, condition, agreement, warranty, representation and/or understanding whether express or implied, in any way extending to or otherwise relating to or binding upon Trumark other than these Terms is made or given by or on behalf of Trumark.

7. **Exclusions:** The Customer agrees that:

a) no dealing between Trumark and the Customer shall be or be deemed to be a sale by sample;

b) the Customer shall rely on its own knowledge and expertise in selecting Products for any purpose and any advice or assistance

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given for or on behalf of Trumark shall be accepted at the Customer's risk and shall not be deemed to have been given as expert or advisor nor to have been relied upon; and

c) Products are sold subject to each and every manufacturer's trading terms and conditions and are protected by each and every manufacturer's warranty

8. **Quotes & Orders:** The Customer agrees that:
   a) All quotes provided by Trumark are valid for 30 days. Any orders placed after the quotation expiry date will be subject to review.
   b) All prices are strictly net of GST and unless otherwise stated.
   c) All quotes are for the supply of product only and do not include the cost of installation of the products unless otherwise stated in writing.
   d) Trumark reserves the right to amend any Quote before the Sales Order has been confirmed and will notify the Customer of any amendment to the Quote as soon as possible.
   e) Any lead times indicated on the quote are an estimate only and is not a fixed time frame and will be confirmed when sales Order has been provided.
   f) each order it places shall be deemed to include a representation that it is solvent and able to pay all of its debts as and when they fall due; and
   g) when any order is placed the Customer shall inform Trumark of any facts which may reasonably affect any decision to accept the order and/or grant credit and that any failure to do so shall be deemed to create and constitute an inequality of bargaining position, the taking of an unfair advantage of Trumark and to be unconscionable, misleading and deceptive
   h) The Customer shall at no time cancel the whole or part of any order placed without Trumark's prior written approval;

9. **Return of Goods:** The Customer agrees that:
   a) they shall not return Products without Trumark's prior written approval and only if the Products are in brand new and unused condition with undamaged packaging and if three weeks or more have not passed since the delivery date of the Products;
   b) Trumark may otherwise elect to take back Stocked Products in saleable condition on such terms as it considers to be reasonable;
   c) they shall, in any case, pay to Trumark a restocking fee of 15% of the gross invoice value of all returns;
   d) notwithstanding other provisions of these Terms the Customer shall not return Products without first providing an original invoice as proof of purchase; and
   e) notwithstanding any other provisions of these Terms, the Customer shall not return under any circumstances any Products which have been made to order (including Alteria Aluminium Systems), custom made, custom cut, custom processed or custom acquired.

10. **Acceptance of Product & Damage or Loss in Transit.** The Customer agrees that:
   a) they must notify Trumark in writing of any fault or failure in the Products within five (5) Business Days of delivery or collection. After this time, the customer is deemed to have accepted the Products and that they are deemed not faulty and accord with the Order.
   b) they need to notify Trumark and provide evidence that there is no or visible damage to outer packaging.
   c) for Products that are picked up from the Customer at the Sellers premises, there is no liability for the seller for any damage or loss in transit that occurs after they have left the Sellers premises.

11. **Minimum Invoice Policy and Purchase Price:** The Customer agrees that:
   a) the Customer shall at all times and in all respects comply with any minimum invoice policy as may at any time and from time to time apply on such terms as Trumark considers to be reasonable; and
   b) all sales are otherwise made by Trumark at its ruling price at the time of delivery and on such other terms as it considers reasonable.

12. **Delivery:**
   a) Trumark accepts no responsibility or duty to deliver but may elect to arrange delivery at its discretion and without liability and at the Customer's costs and risk in all things;
   b) Trumark shall not be liable for delay, failure or inability to deliver;
   c) Products shall be deemed to be delivered as soon as they are ready for delivery at which time risk will be deemed to pass to the Customer; and
   d) Trumark may charge for frustrated delivery to cover its reasonable expenses

13. **Other Terms and Conditions**
   No terms and conditions sought to be imposed by the Customer upon Trumark shall apply.

14. **Recovery Costs**
   The Customer shall pay all costs and expenses including mercantile agent commissions incurred by Trumark and/or its agents in respect of its dealings with the Customer whether relating to any debt, possession of Products and/or otherwise.

15. **Forward Orders:**
   The Customer agrees:
   a) to pay for so much of any forward order as is from time to time incurred or invoiced by Trumark;
   b) that no delay or failure to fulfil any part of such order shall entitle any cancellation or variation of any order or delay or reduce any payment; and
   c) to pay any demurrage and/or other costs and expenses of Trumark in handling and/or holding Products once ready for delivery.

16. **Attornment:**
   For the purpose of giving effect to the Customer's obligations under these Terms (in particular clause 4 of these Terms) the Customer hereby irrevocably appoints the Credit Manager (or like equivalent) for the time being of Trumark as the Customer's attorney to sign all documents and do all things necessary to give effect to these Terms and Conditions of Trade.

17. **Disputes:**
   The Customer agrees to pay into an interest-bearing trust account in the joint names of Trumark and the Customer any amount claimed by Trumark as a condition precedent to any dispute by the Customer of any such claim on the basis that upon resolution of the dispute

   Any part of these Terms being a whole or part of a clause shall be capable of severance without affecting any other part of these Terms.

19. **Goods and Services Tax (GST):**
   The Customer agrees to pay prices adjusted in accordance with ACCC Guidelines to take into account GST.

20. **Interpretation:**

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In these Terms and Conditions of Trade, unless the context requires otherwise:
"**Customer**" means the customer named in the Application for Credit to which these Terms and Conditions of Trade are annexed;
"**Products"** means all products supplied by Trumark and purchased or ordered by to the Customer;
"**GST**" has the meaning given in A New Tax System (Goods and Services Tax) Act 1999.
Quote means a written description of the Goods or Services to be provided, an estimate of the cost of the Goods or Services and the cost of delivery, an estimate of the time frame for the delivery of the Goods or Services and such other information included by from time to time.
"**Order**" means any order placed by the Customer requesting the supply of Products.
"**Seller**" means Trumark, ABN 57 650 403 286, 17 Austral Place, Hallam, VIC, 3803

21. **Credit Limits**
Any credit limit is solely for the benefit of Trumark.
The obligations of the Customer remain unchanged if the credit limit is exceeded or not specified at all.

22. **Proper Law**
The Customer agrees that this Agreement and any claim and/or dispute between the Supplier and the Customer shall be governed by the laws of the State of Victoria and we agree to submit to the jurisdiction of the appropriate Court nominated by you in that State.

23. **Miscellaneous**
These Terms are subject to change by Trumark, and may be varied or amended at any time, at Trumarks absolute discretion.

Trumark
ABN 57 650 403 286
17 Austral Place
Hallam, Vic, 3803

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