

SUPPLY AGREEMENT TERMS AND CONDITIONS

1. **DEFINITIONS:** For purposes of these Terms and Conditions: the term "Seller" means JW Aluminum, or any company that is a direct or indirect subsidiary, parent or affiliate of JW Aluminum; the term "Customer" means the individual, corporation or entity that is purchasing Products under these Terms and Conditions, the Supply Agreement, and any other written or electronic communication of Seller that directed Customer to or incorporates these Terms and Conditions (collectively constituting and referred to as the "Contract Documents"); the term "Products" means any items to be sold to Customer by Seller pursuant to the Contract Documents.
2. **BLUE PRINTS AND SPECIFICATIONS:** All orders of Products are accepted with the understanding that the Products furnished will be in accordance with blueprints and specifications on hand in Seller's files or furnished to Seller with the Customer's order, but only if such blue prints and specifications have been specifically agreed to and accepted by Seller in writing as applicable to such order. Seller assumes no responsibility for any changes in specifications and/or blue prints, unless such changes are confirmed in writing by Customer and accepted in writing by Seller. Any price variation resulting from such changes shall become effective immediately upon acceptance of such changes. NOTE: AA3105 is not guaranteed for screen-frame or other severe roll forming applications unless specified by Customer and acknowledged in writing by Seller. Bending requirements are not guaranteed unless specified by Customer and acknowledged in writing by Seller.
3. **EQUIPMENT:** Any equipment (including racks, cores, stringers, jigs, dies and tools) which Seller constructs or acquires for Customer, notwithstanding any charges therefore, shall be and remain Seller's property and in Seller's possession and control, and any amounts paid in connection therewith by the Customer shall be considered a service charge. All such equipment will be used exclusively for the manufacture of Products for Customer. At the sole discretion of the seller if no orders are received from Customer for Products that require the use of such equipment, Seller, after giving thirty (30) days written notice to Customer, may make such use or disposition of such equipment as it desires without liability or expense to Customer. New or additional dies or changes necessary in existing equipment to conform with changes in design ordered by the Customer are to be paid for by the Customer. Dies or equipment service charges applicable cover only the useful life of such dies or equipment. Any materials or equipment owned or furnished by Customer will be carefully handled and stored by Seller while in Seller's possession, but Seller shall have no responsibility for loss or damage thereto.
4. **ACCEPTANCE:** Customer is responsible for verifying the description and condition of the Products unless otherwise agreed between the parties in writing. Customer shall inspect the Products as soon as possible upon its receipt. Any claim of non-conformity with respect to the Products (other than for hidden or latent defects) or their shipment or delivery is waived, unless made in writing by Customer to Seller, specifically stating the details of such non-conformity, within a reasonable time not exceeding ten (10) days after Customer receives the Products. Seller shall be given the opportunity to confirm, by its or its representative's inspection, the complaint of the Customer. If, in Seller's opinion, after such inspection, the complaint of Customer is valid, or if Seller elects not to inspect, Seller shall there upon have the right either to (i) replace such Products within a reasonable time with other Products meeting the agreed specifications or (ii) reimburse Customer for the cost of such non-conforming Products. In either event, Seller shall thereupon have the right to require return of the non-conforming Products at Seller's cost. Notwithstanding any contrary provision herein, in addition, Customer shall be prohibited from claiming any Product is non-conforming due to water stain more than sixty (60) days after delivery to Customer. The foregoing shall constitute Customer's sole remedy for any claim of non-conformity of Products sold by Seller. Seller's determination of the weight of Products received and of all Products shipped shall be binding upon all parties for all purposes related to the Contract Documents.
5. **SHIPMENT:** All shipment or delivery dates are approximate. The date of the bill of lading shall constitute conclusive evidence of the date of shipment. Seller reserves the right to ship Products in advance of any established delivery schedule. Partial shipment and/or transshipment shall be permitted. Each delivery here under shall be deemed a separate transaction. No non-conforming tender or delay or failure in the shipment or delivery of any one lot shall excuse Customer from accepting tender of any remaining installments hereunder. A default in any payment by Customer after shipment or offer of shipment of any installment may, at the sole and absolute discretion of Seller, be deemed a material default of the Contract Documents, together and in their entirety.
6. **TRANSPORTATION:** Except to the extent set forth otherwise in the Contract Documents, all shipments of Products made from aluminum, to any destination in the Continental United States, except Alaska and Hawaii shall be F.O.B. destination, or other place where Customer or his agent takes custody of the Products. Seller will deliver and bear the cost of transportation of any such Products except under the following conditions: (a) Customer designates route, agency and/or method of transportation. Under this condition, Customer will be invoiced for any excess transportation cost, determined by the difference between the transportation charges incurred by Seller and an amount determined by multiplying the weight of such shipped Products by the lowest available rail carload, truck load, or water borne rate, or any combination thereof, whichever is the lowest.(b) Any excess charges assessed by carrier covering shipments requiring special equipment in handling and/or transporting will be charged to Customer.(c) Air freight or air express shipments of any such Products or shipments of Products the transportation costs to be borne by the Customer. A deduction from the invoice applicable to such shipments will be made by Seller for an amount determined by multiplying the weight of such shipped Products by the lowest available rail carload, truck load or water borne rate, or any combination thereof whichever is the lowest. Upon delivery of Products to Customer, all risk of loss, damage or other incidents of ownership shall immediately pass to Customer, but title to such Products will be retained by Seller as security for Customer's performance until payment in full is received.
7. **SPECIAL CONTAINERS:** Unless otherwise specified, prices do not include the cost of special containers in which Products are packed and shipped. These containers are the property of Seller and shall be returned promptly upon Seller's request.
8. **PAYMENTS:** Unless otherwise specified in the Contract Documents, the price and all charges and payments required by the Contract Documents shall be received no later than thirty (30) days after the date of invoice or the date of shipment, whichever is sooner, and shall be payable only in U.S. dollars. Notwithstanding the foregoing, any equipment service charge shall be due and payable upon approval of the sample. Seller may instruct that all remittances be sent to a bank or other receiving agency or depository. No receiving agency or depository has authority to settle claims for Seller or to accept payment tendered as payment in full. Therefore, Customer agrees that notwithstanding any endorsements or other legend appearing on Customer's checks, drafts or other orders for payment of money, they do not, because of such endorsement or legend, or otherwise, constitute payment in full or settlement of account.
9. **TAXES:** Customer shall, in addition to the payments required hereunder, pay all sales, use, transfer, excise, privilege or other taxes, whether federal, state or local, howsoever designated, which are levied or imposed by reason of the transaction contemplated hereby; excluding, however, income taxes on profits which may be levied on Seller. Customer shall reimburse Seller for the amount of any such taxes paid or accrued by Seller as a result of this transaction. Where applicable such taxes or assessments shall be added to the invoices as a separate charge to be paid by Customer.
10. **PAYMENT:** Seller may, at any time, in its sole discretion, limit or cancel any credit terms given to Customer as to time and amount; and as a condition to Seller's obligations under the Supply Agreement (including manufacturing or delivering all or any part of the Products), Seller may, in its sole discretion, require Customer to (i) pay in cash an amount sufficient to cover the unpaid price (including all related transportation, storage and other costs to be charged to Customer) or (ii) open and confirm an irrevocable commercial letter of credit in favor of Seller for such unpaid price. Such letter of credit shall be payable on sight and be in a form and issued and confirmed by a bank or banks satisfactory to Seller, in its sole discretion. The terms of any such letter of credit shall comply with any specifications or requirements furnished by Seller to Customer, including provisions for transferability, partial delivery, transshipment, and acceptance of stale documents. Customer shall bear and pay the full cost, including all banking charges, incurred in connection with the issuance, confirmation and amendment of each such letter of credit. The opening or confirmation of such letter of credit shall not discharge Customer's direct payment obligation to Seller.
11. **LATE PAYMENTS:** If any amount owing under the Contract Documents is not paid in full when due, Customer shall pay a late charge on the amount unpaid for each day from the due date until paid in full at a rate per annum at all times equal to _____ percent (____%) per annum. Late charges shall be payable on demand. It is the intent of Seller and Customer in the execution and performance hereof to remain in strict compliance with applicable law from time to time in effect. In furtherance thereof, Seller and Customer stipulate and agree that none of the terms and provisions contained herein shall ever be construed to create a contract to pay for the use, forbearance or detention of money with interest at a rate or in an amount in excess of the highest lawful rate or amount of interest permitted to be charged under applicable law. If under any contingency the effective rate or amount of interest which would otherwise be payable hereunder would exceed the highest lawful rate or amount of interest Seller is allowed by applicable law to charge, contract for, take, reserve or receive, or in the event Seller shall charge, contract for, take, reserve or receive monies that are deemed to constitute interest which would, in the absence of this provision, increase the effective rate or amount of interest payable hereunder to a rate or amount in excess of that permitted to be charged, contracted for, taken, reserved or received under applicable law then in effect, then the principal amount owed hereunder or the amount of interest which would otherwise be payable hereunder or both shall be reduced to the amount allowed under applicable law as now or hereinafter construed by the courts having jurisdiction, and all such moneys so charged, contracted for, taken, reserved or received that are deemed to constitute interest in excess of the highest lawful rate or amount of interest permitted by applicable law shall immediately be returned to or credited to the account of Customer upon such determination. All calculations of the rate or amount of interest contracted for, charged, taken, reserved or received hereunder which are made for the purpose of determining whether such rate or amount exceeds the highest lawful rate or amount, shall be made to the extent not prohibited by applicable law, by amortizing, prorating, allocating and spreading during the period of the full term of the indebtedness outstanding hereunder, all interest at any time contracted for, charged, taken, reserved or received from Customer or otherwise by Seller.
12. **RETENTION OF TITLE:** Unless specified otherwise elsewhere in the Supply Agreement, all Products delivered to Customer shall remain the property of Seller, or if such retained title is not valid or enforceable under applicable law, Seller shall have and retain a security interest and lien in and against the Products until Seller shall have received payment in full there for from the Customer. Customer agrees that it shall cause all Products which Seller has delivered but for which Seller has not been paid in full (wherein Seller has accordingly retained its interest) to remain in a separate and distinct location, marked by conspicuous signage disclosing Seller's retained interest in such Products and shall not transfer to any third party any interest in such Products. Notwithstanding Seller's retained interest in the Products, Customer shall bear all risk of loss or damage with respect to the Products, and shall be responsible for maintaining full replacement cost insurance for the Products, at Customer's sole expense, with Seller named as a loss payee and additional insured, until Seller shall have been paid in full there for. Notwithstanding Seller's retained interest in any of the Products, Customer shall be solely responsible and liable for any and all taxes,

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warehousing or storage costs, transportation costs or other costs or liabilities associated with the Products following delivery thereof by Seller in accordance with the Supply Agreement. Customer agrees to execute any document deemed necessary or appropriate by Seller, in its sole discretion, to perfect or enforce the retained interest of Seller in the Products, or in the alternative, Seller may file or record the Supply Agreement or any memorandum or statement thereof without Customer's signature.

13. **DEFAULT:** Upon any default or breach of the Contract Documents by Customer or any default or breach by Customer of any other agreements that may exist between Customer and Seller, Seller may, in addition to any other rights and remedies under applicable law, including those available to a secured party under the UCC, exercise any one or more of the following rights and remedies, which are intended to be cumulative and not mutually exclusive: (i) cancel any part of the Supply Agreement (including any warranty) or any other contract with Customer (with Customer liable for damages); (ii) defer any shipment under this or any other contract; (iii) declare immediately due and payable all outstanding invoices under this or any other contract; (iv) immediately repossess all or any part of the Products in transit or in the custody or control of Customer pursuant to this or any other contract, at the sole risk and expense of Customer; (v) finish all or any portion of its performance of the Supply Agreement and charge Customer up to the full price and (vi) re-sell all or any part of the Products covered by this or any other contract, or any materials supplied for the Supply Agreement, at public or private sale, with Customer responsible for all losses and expenses incurred in such sale.
14. **NOTICES:** Unless specified otherwise elsewhere in the Supply Agreement, all notices and similar communications provided hereunder shall be in the English language or the language of the Jurisdiction, in writing, and delivered by first-class, prepaid, registered mail of the postal service of the Jurisdiction or reputable express courier service.
15. **BANKRUPTCY:** Customer's adjudication of bankruptcy or insolvency, or its inability to pay its debts as they mature, or its making an assignment for the benefit of creditors; or its application for or consent to the appointment of a receiver, trustee, or similar officer for it or for all or any substantial part of its property; or the appointment of such receiver, trustee, or similar officer without the application or consent of Customer, or its institution (by petition, application or otherwise), of any bankruptcy, insolvency, reorganization, arrangement, readjustment or similar proceeding, or any dissolution, liquidation, or similar proceeding relating to it under the laws of any jurisdiction, or the institution of any such proceeding (by petition, application, or otherwise) against Customer, shall constitute a default under the Supply Agreement Documents and shall afford Seller all the remedies of a secured party under the UCC.
16. **WARRANTY:** NEITHER SELLER, NOR ANY AGENT OR REPRESENTATIVE ON ITS BEHALF, HAS MADE ANY WARRANTIES, GUARANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING THAT OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR BUSINESS, PURPOSE OR USE, EVEN IF THAT BUSINESS, PURPOSE OR USE IS KNOWN TO SELLER, EXCEPT THAT SELLER WARRANTS THAT THE PRODUCTS DELIVERED TO CUSTOMER UNDER THE SUPPLY AGREEMENT DOCUMENTS SHALL CONFORM TO THE SPECIFICATIONS STIPULATED IN THE CONTRACT DOCUMENTS.
17. **LIMITATION OF LIABILITY:** SELLER'S LIABILITY IN CONNECTION HERewith SHALL BE LIMITED TO THE VALUE OF THE PRODUCTS TENDERED TO CUSTOMER. THE PARTIES AGREE THAT IN NO EVENT SHALL SELLER BE LIABLE FOR DEFECTS IN OR DAMAGES TO THE PRODUCTS IN WHICH THE PRODUCTS ARE USED OR FOR ANY INCIDENTAL, PUNITIVE, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES OR FOR ANY LOSS OF PROFIT, LOSS OF USE, LOSS OF GOODWILL, LATE DELIVERY, NONDELIVERY, DEFECTIVE CONDITION, OR USE OF THE PRODUCTS OF ANY KIND OR OF ANY OTHER NATURE BY REASON OF ANY ALLEGED BREACH OR DEFAULT UNDER THE CONTRACT DOCUMENTS NOR SHALL SELLER BE LIABLE FOR CUSTOMER'S COURT COSTS OR ATTORNEYS FEES.
18. **PATENT INFRINGEMENT:** Seller's delivery of Products does not expressly, or by implication, grant Customer any license or other right under any patent or copyright or grant authorization to infringe any patent or copyright. Customer shall indemnify, defend and hold Seller harmless against all damages and expenses arising from claims of infringement of patent rights on Products specifically produced or modified at Customer's request and against all damages or expenses arising from any infringement or from any misuse of any trade name, trademark, symbol, identification of material content, or other labeling used by Seller under Customer's instructions.
19. **FORCE MAJEURE:** Seller shall not be liable for any failure or delay of performance under the Contract Documents arising in any way from any circumstance not within the reasonable control of Seller, including but not limited to, acts of God, fire, flood, storm or other natural phenomena, restraint of governments, rulers or other authorities (including allocations, priorities, requisitions, quotas and price controls), perils of the sea, war or warlike hostilities, terrorist acts, civil insurrection, blockades or prohibitions of export or import, strikes, lockouts or other labor disputes preventing or hindering the sale or delivery of the Products, breakdown or preventions of working of machinery, delay or non-availability of any items necessary for the sale or delivery of the Products, loss, delay, detention or non-availability of a carrying vessel or other means of transportation, delays in loading or discharging the Products, failure of Seller's supplier to make delivery to Customer and any other cause whatsoever, where or ever, and howsoever preventing or hindering the delivery of the Products. Should a failure or delay in Seller's performance occur because of any of the foregoing, Seller shall have the option of either canceling the Contract Documents or delaying performance hereunder for as long as the circumstances prevail, during which time the Contract Documents shall remain in full force and effect. Seller shall promptly notify Customer as to the reason for its failure or delay in performance and as to whether it has cancelled the Contract Documents or delayed its performance hereunder. If performance is delayed, Seller shall notify Customer as to the period of time during which the delay is likely to continue. Seller shall have the further right to then allocate its available Products between its own end uses and its customers in such manner as Seller may consider appropriate.
20. **INDEMNIFICATION:** Customer agrees to indemnify, defend and hold harmless Seller, its affiliates, assignees, officers, directors, employees, agents and representatives from and against any liability, claim, loss, demand, damage, cost and expense (including attorneys' fees and litigation costs) relating to any claim of injury or damage of any kind to any person or property asserted to be caused by, resulting from or attributable to the nature or quality of the Products delivered hereunder. If Customer's employees or other representatives enter upon the premises occupied by or under the control of Seller, Customer shall take all necessary precautions to prevent the occurrence of injury or death to any person or damage to any property arising out of any acts or omissions of such employees or other representatives, and Customer agrees to indemnify, defend and hold harmless Seller, its affiliates, assignees, officers, directors, employees, agents and representatives from and against any liability, claim, loss, demand, damage, cost and expense (including attorneys' fees and litigation costs) relating to any claim of injury or damage of any kind to any person or property asserted to be caused by, resulting from or attributable to any act or omission of Customer, its employees or other representatives.
21. **ASSIGNMENT AND DELEGATION:** Neither party shall transfer or assign the Supply Agreement, whether by operation of law or otherwise, without the prior express written consent of the other party. Any attempted transfer or assignment hereof without such consent shall be void and without force or effect. Except as otherwise expressly provided herein, the Supply Agreement is not intended to be for the benefit of, and shall not be enforceable by, any person not a party to it or the permitted assignee of such party.
22. **SEVERABILITY:** If any provision of the Contract Documents shall for any reason and to any extent be deemed invalid or unenforceable, the remaining terms and provisions of the Contract Documents shall not be affected thereby, but rather the invalid or unenforceable provision shall be modified to the extent necessary so as to render such provision(s) and/or term(s) valid and enforceable to the greatest extent possible accomplishing the intended purpose of said provision(s) and/or term(s). All provisions of the Contract Documents relating to indemnity shall survive the termination of the Contract Documents.
23. **CONTRACT FORMATION:** Customer shall be deemed to have accepted the provisions of the Contract Documents, including these Terms and Conditions, by manifesting such acceptance by any of the following: (a) signing and returning to Seller a copy of the Contract Documents; (b) sending to Seller a written acknowledgement of the Contract Documents; (c) placing a purchase order or giving instructions to Seller respecting manufacture, assortment, or delivery of the Products (including instructions to bill and hold) following receipt of the Contract Documents; (d) failing to cancel a pending purchase order within ten (10) days after receiving the Contract Documents; (e) accepting delivery of all or any part of the Products; (f) paying for all or any part of the Products; or (g) indicating in some other manner Customer's acceptance of the Contract Documents. Seller may revoke its offer to sell the Products at any time prior to Customer's acceptance. Upon acceptance, Customer irrevocably agrees and commits to purchase the Products in accordance with the Contract Documents. SELLER HEREBY OBJECTS TO AND REJECTS THE PROVISIONS OF ANY PURCHASE ORDER OR OTHER DOCUMENT WHICH IS INCONSISTENT WITH OR IN ADDITION TO THE PROVISIONS OF SELLER'S CONTRACT DOCUMENTS (WHICH INCONSISTENT OR ADDITIONAL PROVISIONS ARE HEREBY EXCLUDED FROM THE SUPPLY AGREEMENT), AND SELLER'S OFFER AND OBLIGATIONS ARE EXPRESSLY CONDITIONED UPON CUSTOMER'S ACCEPTANCE OF THESE TERMS AND CONDITIONS. THE CONTRACT DOCUMENTS SHALL BE THE COMPLETE AND EXCLUSIVE CONTRACT BETWEEN CUSTOMER AND SELLER WITH RESPECT TO THE PRODUCTS AND MAY BE MODIFIED ONLY IN A WRITING SIGNED BY SELLER'S AUTHORIZED REPRESENTATIVE OR AS OTHERWISE SET FORTH IN THE CONTRACT DOCUMENTS. NO PRIOR OR OTHER CONTEMPORANEOUS PROPOSALS, QUOTATIONS, STATEMENTS, FORECASTS, SAMPLES, MODELS, SPECIFICATIONS, COURSE OF DEALING OR USAGE OF TRADE SHALL BE PART OF THE CONTRACT BETWEEN CUSTOMER AND SELLER. In the Supply Agreement, "including" shall be deemed to mean "including without limitation."
24. **GOVERNING LAW:** For domestic sales, the law of the State of South Carolina, without regard to its conflict of laws principles, shall govern the Supply Agreement and the rights and obligations of the parties hereunder. For international sales, the United Nations Convention on Contracts for the International Sale of Products (the "Sales Convention") shall, to the extent applicable and as limited herein, govern the Supply Agreement and the rights and obligations of the parties hereunder. Notwithstanding the foregoing, in the event of any inconsistency or conflict between provisions of the Supply Agreement, including these Terms and Conditions, on the one hand, and the Sales Convention, on the other hand, the provisions of the Supply Agreement shall govern and prevail. To the extent of any such inconsistency or conflict, the provisions of the Supply Agreement shall be deemed to derogate from the provisions of the Sales Convention within the meaning of Article 6 thereof. Further, without limiting the generality of the foregoing, the following provisions of the Sales Convention are hereby excluded from the Supply Agreement: Articles 8(3), 9, 11, 16(2), 39(2), 44, 46, 50, and 84(1). Questions that are not expressly settled in the Supply Agreement or by application of the Sales Convention are to be settled in conformity with the internal laws of the Jurisdiction, without regard to its conflict of laws principles. For international sales not governed by the Sales Convention, the internal laws of the Jurisdiction, without regard to its conflict of laws principles, shall govern the Supply Agreement and the rights and obligations of the parties hereunder. The Convention on the Limitation Period in the International Sale of Products is hereby excluded and shall not govern any claim arising from or relating to the Supply Agreement or the sale or purchase of the Products.

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25. **VAT, DUTIES, TARIFFS and TAXES:** *If, on the goods to be delivered to the Customer under a supply agreement or otherwise, there are increases to a tax, VAT application, import or export duties or tariffs of any kind that are not reflected in the full selling price outlined in the supply agreement (or, if no supply agreement is in place, the purchase order, sales order, or sales order acknowledgement), any and all such increases are the sole responsibility of the Customer. Increases will be calculated from the date the increase takes effect and shall be applied directly to the price on the Customer's purchase order or JW Aluminum's Sales Order Acknowledgment, e.g., a 20% increase in import duty will result in a 20% increase in the full selling price.*