

Brabant Alucast Products

Standard Conditions of Sale and Delivery

Article 1 – User and Contract Partner

1. These standard conditions are used by the private limited liability companies Brabant Alucast International B.V., Brabant Alucast Products B.V. and Brabant Components B.V., established and carrying on business at Rijnstraat 20, 5347 KN Oss, The Netherlands, and by the private limited liability company Alu Premetaal B.V., established and carrying on business at De Grens 45, 6598 DK Heijen, the Netherlands. Said companies are each individually and also collectively referred to herein as the "Seller".
2. These standard conditions are also contracted in favour of the directors of the Seller and all persons working on its behalf. The standard conditions continue in full force and effect should said directors and/or employees cease to work for the Seller.
3. The Seller's contract partner is that party to which the Seller has made any offer or proposal or with which it has entered into any agreement. That contract partner is hereinafter referred to as the "Customer".

Article 2 – Application

1. These standard conditions apply to all proposals or offers issued by the Seller and acceptances thereof and/or agreements entered into by the Seller relating to the development, production and sale of high-pressure cast magnesium and aluminium components, hereinafter referred to as "Products". Any purchase or other terms to which the Customer refers upon accepting any offer or entering into any agreement shall not apply unless they are unconditionally agreed to by the Seller in writing.
2. A agreement is deemed to have come into being at the time at which the Seller accepts an order in writing or following receipt of the offer, duly signed by the Customer as agreed to, provided performance thereof has begun.
3. Amendments or supplements to the agreement shall only be valid if agreed in writing and expressly accepted by the Seller without reservation.
4. Exceptions and/or supplements to these standard conditions shall only be valid if agreed in writing and expressly accepted by the Seller without reservation.
5. Should any provision of these standard conditions transpire to be void, only the relevant provision shall be of no effect and all other provisions shall continue in full force and effect, without exception.
6. These standard conditions are drawn up in Dutch and in English. The Dutch-language version is binding.

Article 3 – Patterns, Moulds and Auxiliary Materials, etc.

1. Patterns, moulds and auxiliary materials required for performance of the agreement and produced by the Seller remain the property of the Seller unless otherwise expressly agreed by the parties in writing.
2. If for a period of three years as from the date on which it placed its last order the Customer has not placed any new order, the Seller is entitled to destroy patterns, moulds and/or auxiliary materials produced and/or used by it in the context of performance of the agreement.
3. Patterns, moulds and/or auxiliary materials used for performance of the agreement, which, pursuant to the agreement between the parties, belong to the Customer, are returned to the Customer by the Seller at the Customer's request or at its own initiative. The items are returned only provided the Customer has fully complied with its payment obligations vis-à-vis the Seller and shall be effected at the cost of the Customer. The Customer accepts the patterns, moulds and/or auxiliary materials in the state in which they are at that time.
4. The Seller shall keep the patterns, moulds and/or auxiliary materials, which are required for performance of the agreement and are the property of the Customer, in its custody free of charge for a period of three years as from the date on which the last order was placed. If within that period the Customer does not request that they be returned, the Seller can notify the Customer of its intention to destroy the relevant patterns, moulds and/or auxiliary materials. Should the Customer fail to request their return in writing within three months of receipt of said notice, the Seller may proceed with destroying the patterns, moulds and/or auxiliary materials.
5. Patterns, moulds and/or auxiliary materials are shipped at the Customer's risk and for its account.

Article 4 – Delivery

1. Deadlines submitted by the Seller within which the Products are to be delivered to the Customer will be heeded by the Seller in so far as possible but nevertheless are not binding, unless otherwise agreed by the parties in writing. Should these deadlines be exceeded, the parties shall consult with each other in so far as necessary. In no event shall failure to abide by such deadlines, even after service of a relevant notice of default on the Seller, entitle the Customer to cancel the agreement or claim damages or suspend its payment obligations vis-à-vis the Seller.

2. The Products are delivered "ex-works". Upon placing the order, the Customer designates the carrier that will be instructed to transport the Products from the Seller to the location indicated by the Customer. The Products are deemed to be delivered to the Customer by direct transfer to the carrier designated by the Customer or, where the Customer omits to designate a carrier, to a carrier selected by the Seller.
3. If the Seller has inadequate instructions from the Customer to be able to deliver the Products in the manner referred to in sub-article (2), delivery is deemed effected by the Seller notifying the Customer in writing that the Products are ready and at the Customer's disposal. Until such time as the Customer collects the Products or indicates when and to what location the Products require to be transported, they are stored by the Seller for the account and at the risk of the Customer. The foregoing does nothing to affect the Customer's obligation to ensure payment of the purchase prices due to the Seller.

Article 5 – Transport

1. Transport of the Products, which is deemed to include loading and unloading, shall at all times be for the account and at the risk of the Customer, unless otherwise agreed in writing by the parties.
2. The Customer is itself liable for providing for adequate insurance of the Products during transport, unless otherwise agreed in writing by the parties.
3. In the event that the Customer gets the Seller to represent it in relation to the transport, the transport shall nonetheless be effected for the account and at the risk of the Customer. The Customer shall refund the Seller the transport costs together with the insurance relating to the transport within the deadline laid down by the Seller.
4. The manner in which the Products are packaged for transport is stipulated by the Seller. The packaging materials will be paid for by the Customer.

Article 6 – Prices and Rates

1. Prices and rates quoted by the Seller are in euros and exclusive of VAT.
2. Proposals submitted by the Seller and prices or rates quoted shall not be binding unless otherwise agreed in writing by the parties.
3. Proposals submitted by the Seller and prices or rates quoted have come about on the basis of the (technical) specifications stated in the Customer's enquiry. If, during or after acceptance of the offer made by the Seller, changes are made to these (technical) specifications, the Seller is entitled to adjust its prices and rates in line with such changes.
4. (Interim) changes to taxes and/or levies imposed by the authorities are charged on to the Customer.
5. The Seller is entitled to make interim increases to agreed prices or rates if, between the time at which the agreement is entered into and delivery of the Products, increases occur in the cost of materials or services that are necessary for performance of the agreement and/or in other costs that affect the Seller's cost price.
6. Prices and rates offered to the Customer by the Seller are recalculated prior to invoicing on the basis of the quantity of materials actually used for manufacturing the Products supplied to the Customer. The amount ultimately charged to the Customer may therefore deviate either upwards or downwards from the prices and rates originally stated in the offer.
7. In connection with the technical aspects of any necessary grouped production, the Seller may apply a deviation of 10% with regard to the quantity of Products to be delivered to the Customer. The Customer is charged for any additional Product delivered. In the event of a delivery shortfall in this regard, such shall in no event qualify as a breach of contract on the Seller's part.

Article 7 – Payment

1. Invoices sent to the Customer require to be settled within thirty calendar days of the invoice date, in such manner as is indicated by the Seller.
2. Should the Customer fail to settle the Seller's invoices within the agreed deadline, the Customer shall be liable for interest on the outstanding amount at the legal commercial rate, without any prior notice of default or judicial order being necessary. If, after it has been served with notice of default, the Customer still fails to settle the Seller's invoices, the Customer shall be liable to pay the extra-judicial collection costs, the amount of which is fixed at fifteen per cent of the unpaid invoice amount.
3. Set-off by the Customer of amounts invoiced by the Seller against a counterclaim made by the Customer, or suspension of payments by the Customer in connection with a counterclaim made by it, is only permissible provided the counterclaim has been expressly and unreservedly acknowledged by the Seller or irrevocably confirmed in law.
4. Payments made by the Customer shall be applied first in settlement of all interest and expenses for which it is liable and subsequently against the overdue invoices that have been outstanding for the longest time, even if the Customer should stipulate that settlement applies to a later invoice.
5. Where the Customer's credit rating gives cause to do so in the opinion of the Seller, the Seller may suspend delivery of the products ordered by the Customer until such time as the Customer has produced sufficient collateral to cover its payment obligations.
6. If the Customer requests that it be granted a (provisional) payment moratorium, if the Customer's bankruptcy has been petitioned for by itself or a third party, if a bankruptcy order has been issued over the Customer, if the Customer closes its business or transfers it to a third party or if, as a result of

distrain, administration or otherwise, the Customer is deprived of power of disposal over its assets or parts thereof, the Seller is entitled, in so far as the agreement has not been (fully) performed and without any prior notice of default or judicial order being necessary, to cancel it with immediate effect by way of an extra-judicial declaration or to suspend performance of the agreement unless the trustee or administrator gives notice that he will comply with the obligations resulting from the agreement and, within seven calendar days following a request to do so, puts up such security as shall be satisfactory in the Seller's eyes for all that for which the Customer is or might become liable to the Seller. Cancellation shall result in all claims by the Seller against the Customer becoming immediately due and payable. The Customer is liable for losses suffered by the Seller as a consequence of cancellation of the agreement.

Article 8 – Retention of Title

1. Goods are supplied to the Customer under the condition precedent that the Customer fully complies with all and any obligations it has vis-à-vis the Seller at any time. The retention of title clause hereby contracted also extends to:
 - a. claims in relation to counter-performance of items that, under the purchase agreement or any other agreement whatsoever, have been delivered or are yet to be delivered by the Seller to the Customer, or of work carried out or to be carried out in behalf of the Customer by virtue of such an agreement, and
 - b. claims founded on shortcomings in compliance with the agreements referred to in sub-article (a) resulting in damages and reimbursement of extra-judicial and judicial costs and contractual and legal interest, including fines and coercive payments.
2. Until such time as the condition precedent referred to in sub-article (1) has been fulfilled, the Customer shall only be permitted within the normal conduct of its business to rework or process the Products delivered by the Seller or to sell same on, which shall not include granting pledges or liens over the Products in security in favour of a third party.
3. In the event that the Customer reworks or processes the Products supplied by the Seller under retention of title, the retention of title shall also extend to the relevant reworked or processed Products and/or new items made using the purchased Products.

Article 9 – Reliability of Design and Final Product

1. The Customer describes the design, technical aspects and other characteristics of the Products to be manufactured by the Seller on its instructions and bears responsibility for the reliability and suitability of such aspects and characteristics for the intended final use of the relevant Products. Furthermore, the Customer is liable for (proper) final use of the relevant Products by itself and third parties.
2. The Customer is required to check the state in which the Products are delivered and/or to test them for relevant (technical) aspects and specifications before the Products are supplied further or reworked or processed. The costs of checks and tests will be paid by the Customer. Should the Customer act in conflict with this obligation, the Seller shall in no event bear any liability for any apparent unreliability and/or unsuitability of the Products.
3. If the Customer consents to a proposal by the Seller to make any change or adjustment, in any form or of any nature whatsoever, to the design, technical aspects or other characteristics of the Products to be manufactured on the Customer's instructions, such change or adjustment shall be for the account and at the risk of the Customer. The Seller shall in no event bear any liability for the unreliability and unsuitability of the final product as a result of such adjustment or change.

Article 10 – Liability

1. In the case of non-delivery or untimely, incomplete or incorrect delivery, howsoever arising, responsibility for which is attributable to the Seller, then the Seller's duty to make good the loss is entirely fulfilled by that which has been purchased by the Customer, or for which instructions have been given, still being delivered or repaired or improved, at the Seller's discretion. In the event that such is no longer possible, the Products delivered will be taken back by the Seller in return for a refund of the purchase price. The Seller shall therefore at no time be liable for any (consequential) loss and subject thereto is not liable to compensate business losses, consequential damages, loss of profit, loss as a result of personal accidents, loss resulting from third-party claims against the Customer, loss for delay or any other loss whatsoever.
2. If, in a given case, by way of exception to that which is laid down in sub-article (1), the Seller should be liable to the Customer, the Seller's liability is at all times limited to that which is paid out under the Seller's professional liability insurance cover, including the Seller's own risk. Further information regarding the Seller's professional liability insurance will be provided to the Customer on request.
3. In the event that, in the situation referred to in sub-article (2), the Seller's liability does not fall under the cover of its professional liability insurance, the Seller's liability is limited to no more than the amount of the invoice value agreed by the parties (excluding turnover taxes) for the supplies and/or works for which the Customer has issued the Seller with instructions, whereby this amount shall not exceed the sum that has been invoiced over the previous six months prior to the Seller being held liable.

4. The Seller shall in no event be liable for loss sustained by the Customer or third parties as the result of information, specifications, materials, etc. provided by the Customer in an incorrect, incomplete or untimely manner.
5. The provisions of this article shall not affect the Seller's liability for loss resulting from wilful acts or conscious negligence on the part of its managers and any liability on the ground of statutory provisions in relation to product liability, in so far as such statutory provisions have not been derogated from in these conditions or by written agreement.
6. The Customer shall have no right to cancel any agreement with the Seller unless and until the Seller has culpably failed to fulfil its obligations vis-à-vis the Customer, even after the Seller has been duly served with notice of default by the Customer. Payment obligations on the part of the Customer that arose before the time of cancellation and/or bearing a relation to Products or services already supplied must be fulfilled notwithstanding.

Article 11 – Indemnity

The Seller shall at no time be liable to third parties for loss arising as a consequence of execution of the agreement contracted by the Seller and the Customer and/or the Products supplied by the Seller to the Customer. The Customer shall indemnify the Seller against any liability vis-à-vis third parties and, where possible, shall incorporate a corresponding exemption in favour of the Seller in its contracts with third parties.

Article 12 – Intellectual Property

1. Unless otherwise expressly agreed by the parties in writing, all intellectual property rights in relation to products developed and manufactured by the Seller on the instructions of the Customer vest in the Seller.
2. The Customer shall indemnify the Seller against claims by third parties in connection with claims by third parties against the Seller for alleged infringement by the Seller of an intellectual property right held by that third party in relation to the products manufactured on the Customer's instructions.

Article 13 – Force majeure

1. The Seller is not obliged to fulfil any obligations where such is not reasonably possible as a result of changes in the circumstances obtaining at the time the agreement was contracted where said changes are outside the Seller's control.
2. A shortcoming in compliance with an obligation incumbent on the Seller does not in any event qualify as culpable and risk therefor does not rest on it in the event of omission and/or breach by or on the part of its suppliers, subcontractors, carriers and/or other engaged third parties, in the case of fire, industrial strike or lock-out, riots or insurrection, war, government measures, including export, import or transit prohibitions, frost and all other circumstances of such a nature that the Seller can no longer be expected to perform according to contract.

Article 14 – Complaints and Prescription of Rights

1. Complaints relating to the Products supplied by the Seller must, on pain of prescription, be notified in writing to the Seller within thirty days of the Products being delivered to the Customer in the case of visible defects or damage. If the complaint relates to other, non-visible defects or inadequacies, the complaint must be notified to the Seller in writing within thirty days after the defect or inadequacy in question ought to have been noticed.
2. All claims and other prerogatives of the Customer, howsoever arising, against the Seller in connection with the Products supplied by the Seller in any event prescribe one year after the time at which the Products were delivered.
3. The Products to which the Customer's complaints relate are inspected by the Seller. Products acknowledged by the Seller as being inadequate or defective are replaced or repaired at the Seller's cost and at the Seller's discretion. A right to a replacement arises only after the Products acknowledged by the Seller as being inadequate or defective have been received by the Seller.
4. The costs of repair by a third party of the Products supplied to the Customer by the Seller, without such repair having been previously consented to by the Seller, shall be borne by the Customer.

Article 15 – Ranking of Provisions

In the event that the terms of arrangements agreed in writing between the Seller and the Customer should deviate from those laid down in these standard conditions, the written agreements shall prevail.

Article 16 – Amendment to Conditions

1. The terms of these standard conditions may be amended by the Seller. Amendments are in all cases made known to customers. If the Customer fails to give written notice within fourteen days of becoming aware that the standard conditions have been amended that it rejects application of the amended conditions, the Customer is deemed tacitly to have accepted the application thereof.
2. If a difference of opinion should arise between the parties regarding the wording of the standard conditions as applying at a given time, the wording that shall apply shall be that as laid down by the Seller at the time to which the difference of opinion relates.

Article 17 – Applicable Law and Disputes

1. Offers and proposals issued by the Seller and agreements entered into by it shall be governed exclusively by Dutch law. The application of international conventions is ruled out unless requiring to apply by virtue of mandatory law.
2. The court in 's Hertogenbosch has exclusive jurisdiction to hear disputes between the Seller and the Customer resulting from offers, proposals and agreements to which these conditions apply. Where an action is raised by the Seller, the Seller is entitled to sue the Customer before the competent court for the place where the Customer has its registered office.