1. General

1.1 Any work undertaken by GSM ALUMINIMUM LTD (“the Company”) including any orders, engagements or contracts entered into between the Company and the Customer and any work undertaken in connection therewith are on the following conditions to the exclusion of all other terms and conditions including any terms or conditions which the Customer may purport to apply under any purchase order, confirmation of order or other stationery.

1.2 No variation of these terms and conditions shall have effect unless confirmed in writing by a director of the Company.

1.3 For the purposes of these Terms and Conditions “Goods” refers to goods supplied or to be supplied by the Company to the Customer.

2. Guarantee

2.1 If within 1 month of delivery Goods are shown to the reasonable satisfaction of the Company to be defective in materials or workmanship the Company will replace or repair the Goods free of charge or, at its election, credit the Customer with the price thereof.

2.2 Where the Company supplies the Goods which it has not manufactured, it will use reasonable endeavours to ensure that the Customer has the benefit of any guarantee given by the Manufacturer.

3. Exclusions of Liability

3.1 Save as provided in clause 2 above, Goods and/or services supplied by the Company are not subject to any warranties or conditions of any kind whatsoever and all such warranties and conditions are hereby expressly excluded to the fullest extent permissible by law.

3.2 The Company shall have no liability whatsoever for any consequential injury, loss or damage, direct or indirect, however caused or arising.

3.3 The Company’s liability shall be limited to the fees charged in respect of the Goods supplied or services provided as the case may be.

3.4 The Company will have no liability for defective Goods where the defect is attributable to misuse, neglect, fair wear and tear, wilful damage, negligence or abnormal working conditions on the part of the Customer or on the part of the Customer’s employees or independent contractors.

3.5 The Company will have no liability in respect of any Goods which have been altered, modified or repaired other than by the Company, its servants or agents.

3.6 The Company will have no liability where any Goods supplied are in accordance with information, drawings, designs and documentation provided by the Customer.

3.7 The Company’s employees, servants and /or agents are not authorised to express any opinion or to make any representation or warranty as to the quality of fitness for purpose of any Goods or service(s) and no such opinions or representations will bind the Company unless expressed or made in writing by a Director on behalf of the Company.

3.8 Nothing in this clause or in these terms and conditions shall operate to exclude or limit the Company’s liability for:

3.8.1 death or personal injury caused by the Company’s negligence

3.8.2 fraud or fraudulent misrepresentation.

4. Delivery

4.1 The Company’s estimate of a delivery or completion date is approximate only and does not bind the Company and the time of delivery will not be of the essence of any contract between the Company and the Customer. The Company shall not be liable for any delay in delivery of the Goods howsoever caused.

4.2 The Company may elect to deliver Goods by instalments; in such a case each consignment delivered is deemed to have been supplied under a separate Contract incorporating these Terms and Conditions. Non-delivery, default or delay in delivery of any one consignment or delivery of a defective or partially defective consignment shall not entitle the Customer to terminate the Contract or to refuse to accept or pay for consignments remaining to be delivered.

4.3 The Company shall only deliver Goods to pre-agreed locations which are suitable for access. The Customer shall make all arrangements to take delivery of the Goods whenever they are tendered for delivery.

5. Complaints

5.1. Written notice of damage or short delivery or any other complaint concerning the Goods must be received in writing by the Company with 72 hours of delivery.

5.2 Any notice pursuant to clause 5.1 or otherwise which concerns any complaint against the Company shall include full details including photographic evidence. The Customer shall not dispose of any Goods which are the subject of a complaint until the Company has inspected them or without the consent of the Company.

6. Payment

6.1. Standard Payment Terms shall be:

(a) 30 days from date on invoice.

(b) Pro Forma for New Tooling.

6.2 Notwithstanding clause 6.1, the amount shown as due in any invoice delivered to the Customer by the Company shall be paid to the Company within the stated terms on the invoice, unless otherwise agreed in writing.

6.3 Notwithstanding clause 6.1 and any course of dealing with credit terms between the Company and the Customer, the Company may at any time require payment for goods sold or services rendered under this or any other Contract between the parties forthwith, on confirmation of order, prior to delivery, upon delivery or completion.

6.4 If the customer fails to pay an amount due to the Company, the Company will be entitled to charge interest at 5% per month above the base rate from time to time of Barclays Bank plc on the amount outstanding (such interest to accrue on a day to day basis from the due date for payment until receipt, whether before or after judgement)

6.5 Time for payment of any sum due from the Customer to the Company is of the essence.

6.6 All sums due to the Company must be paid to it:-

6.6.1 in full, without any deduction by way of set-off or counterclaim and

6.6.2 in the UK £ Sterling at 3b Sapper Jordan Rossi Park, Otley Road, Baildon, BD17 7AX

6.7 Where the Customer makes a payment to the Company, which is less than the total of all sums than properly due from the Customer to the Company, the Company may appropriate such payment to the reduction of such outstanding sums in whatever way it chooses.

6.8 The Company reserves the right, by giving written notice to the Customer at any time before delivery or provision, to increase the price of the Goods and/or Services to reflect any increase in the cost to the Supplier which is due to any factor beyond the control of the Supplier (including but without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties or VAT rates.

7. Risk

7.1 Goods shall be at the sole risk of the Customer from the time of their collection by or delivery to the Customer, its servant or agent.

7.2 Title in the Goods shall not pass to the Customer until the Company has received in cash or cleared funds, payment in full of the price of the Goods and all other goods agreed to be sold by the Company to the Customer for which payment is then due

8. Quotations

8.1 Prices and charges quoted by the Company are subject to the addition of VAT at the appropriate rate or rates.

8.2 Quotations of prices or charges by the Company remain valid for 14 days or lapse thereafter. The price of the Goods shall be that confirmed in the Company’s order acknowledgement.

8.3 The Company reserves the right to withdraw or amend a quotation at any time before acceptance because of increases in the cost of labour, materials or overheads.

8.4 Unless otherwise stated in writing prices are quoted by the Company on an ex-works basis. Where the Company agrees to deliver otherwise than the Company’s premises, the Customer will be responsible for the Company’s charges for transport, packaging and insurance.

8.5 Any typographical or clerical omission in any sales literature, quotation, price list, order acknowledgment, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.

9. Stockholding

9.1 Any stock holding agreement established between the Customer and the Company will be confirmed in writing, and acknowledged with any order confirmation sent.

9.2 The maximum time limit for stock holding will be 60 days, after which time the Company reserves the right to invoice any outstanding quantity in full.

9.3 In any event, all stock which has been held for the agreed stockholding period, and subsequently invoiced prior to GSM Aluminium Ltd’s Financial Year End, must be delivered ahead of GSM’s Financial Year End (July 31st).

10. Shipping Tolerances against your orders.

10.1 Unless otherwise stated the Company’s standard shipping tolerances for extruded aluminium profile orders in mill finish, painted and/or thermally broken, chemically brightened or any other finish are as follows:

+/- 30% from 250 to 500 kilos

+/- 20% from 501 to 1000 kilos

+/- 15% from 1001 to 3000 kilos

+/- 8% from 3001 to 5000 kilos

+/- 5% from 5001 and more

10.2 Unless otherwise stated the Company’s standard shipping tolerances for machined and finished aluminium parts are +/- 10% against the Customer’s order quantities.

11. Customer Design or Specification

11.1 Where Goods are made or treated by the Company to and/or in accordance with the Customer’s design specification or requirement(s):-

 (a) Reasonable facilities will be made available, where the Customer so requests, for inspection of a representative sample therefore prior to the delivery and where the Customer, his or its servant or agent does so inspect, any complaint or intimation of rejections must be made in writing within 72 hours of such inspection if carried out on a Friday or within 24 hours if carried out on any other weekday.

 (b) Without limiting the generality of clause 3.6, the Company bears no responsibility for the suitability of, of the use of such Goods and the Customer shall indemnify the Company against all liabilities, costs, expenses, damages and losses including any indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties, and legal and other professional costs and expenses suffered or incurred by the Company in respect of the use of such Goods by the Customer or any third party.

 (c) Samples must be approved within 5 working days by the Customer or the Company reserves the right to invoice these goods and tooling associated with these goods in full for immediate payment.

11.2 Extrusion Tolerances

The Company’s extrusion tolerances for alloys EN AW-6060, EN AW-6063, EN AW-6005, EN AW-6463 and EN AW-6082 will comply to the European Norm EN 12020-2

12. Tooling

12.1 Any die or other tool used shall remain the physical property of the Company notwithstanding that intellectual property rights therein (to the extent that they do) belong to the Customer. The Company will not provide the physical die or tool to the Customer. The Company will not reimburse the Customer for any die or tooling if orders are not placed by the Customer or are no longer accepted by the Company.

12.2 GSM reserve the right to destroy any tooling commissioned and manufactured if the Customer notifies GSM that the section is obsolete, or if the Tooling is inactive for a period of 24 months or more. GSM will seek clarification from the Customer, where practical, in such circumstances.

13. Retention

13.1Until title of the Goods passes to the Customer pursuant to clause 6.2 he/it will:-

13.1.1 retain possession of the Goods as bailee or fiduciary agent for the Company and keep them separate from other goods and property of the Customer and third parties and clearly identified as the property of the Company and

13.1.2 keep the Goods free from any lien, charge or encumbrance and the Company may at any time require the Goods to be returned to it by the Company. If such requirement is not met within 7 days of the Company’s request, the Company may retake possession of Goods and may enter any premises of the Customer for that purpose.

13.2 If the Customer sells, otherwise disposes of or processes the Goods (or any part of them) before payment of all amounts due to the Company from the Customer, it shall receive and hold as trustee for the Company the proceeds of such sale, disposal or process, or other moneys derived from or representing the Goods

13.3 The Company shall be entitled to sue for amounts outstanding notwithstanding that property in {Goods} has not passed to the {Buyer}.

13.4 The Customer will indemnify the Company fully in respect of any costs, charges, fees or expenses incurred by the Company in connection with any steps taken by the Company to recover possession of any Goods or moneys pursuant to it right hereunder.

13.5 For the avoidance of any doubt it is hereby agreed and declared that it is not the intention of the parties that the foregoing provisions should operate to create a charge of any kind in favour of the Company over any asset(s) to the Customer.

14. Assignment

14.1 The Company reserves the right to assign or sub-contract any of its rights and obligations in relation to the provision of Goods and services and under these terms and conditions generally.

15 Lien

15.1 Where the Customer has delivered into the possession of the Company any property for any purpose and the Customer fails to pay an amount properly due to the Company in time, the Customer hereby authorises the Company to retain or (at it’s election) sell the said property at the best price reasonably obtainable and to apply the proceeds of sale to the discharge of the amount owed by the Customer to the Company to account to the Customer for any balance remaining.

16 Termination

16.1 In addition to any other right of termination that the Company may have, the Company may regard the contract as having been terminated by the Customer should the Customer become bankrupt or be dissolved or go into liquidation, administration or receivership or make an arrangement or composition with his or its creditors or should the Customer fail to pay any amount due to the Company or should the Customer be in breach any of these terms and conditions.

16.2 On termination of this agreement for any reason, the Company will not be obliged to perform the remainder of the contract or of any other contract between the Company and the Customer and may suspend any further deliveries to the Customer. The Company shall be entitled to submit invoices for any Goods or services that it has supplied, but for which no invoice has been submitted, and the Customer shall pay these invoices immediately on receipt.

17 Indemnity

17.1 The Customer will indemnify the Company against all liabilities, costs, expenses, damages and losses (including any direct indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses suffered or incurred by the Company in respect of;-

(a) any breach by the Customer of any of these terms and conditions

(b) any claims or proceedings brought by any other person as a result of the performance in whole or in part by the Customer of its obligations under this contract; and

(c) any proceedings or dispute between the Customer and the Company arising out of or in connection with this contract or the recovery by the Company of any property or money from the Customer.

18 Supplier Exclusivity

18.1 The Customer will not, directly or indirectly; whether on its own behalf or on behalf of, or in conjunction with, any firm, company or person, approach or contact any manufacturer or supplier that the Company uses or intends to use to manufacture the Goods or provide services on behalf of the Company to the Customer with a view to receiving Goods or services that the Company has agreed to provide to the Customer.

19 Force Majeure

19.1 The Company shall not be liable to the Customer or be deemed to be in breach of contract by reason of delay in performing, or any failure to perform any of its obligations if the delay or failure was due to any cause beyond the Company’s reasonable control. Without prejudice to the generality of the foregoing, The following but without limitation shall be regarded as causes beyond the Company’s reasonable control: Act of God, explosion, flood, tempest, fire or accident, war or threat of war, sabotage, insurrection, civil disturbance, acts, restrictions, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority, import or export regulations or embargos, strikes,

lock-outs or other industrial action or trade disputes (whether employees of the Company or a third party) difficulties in obtaining raw materials, labour, fuel, parts or machinery, power failure or breakdown of machinery or materials.

20 Severance

20.1 If any court or competent authority finds that any of these terms and conditions (or part thereof) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this terms and conditions shall not be affected.

21 Confidentiality

21.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as may be required by law, court order or other governmental authority.

22 Waiver

22.1 No failure or delay by the Company to exercise any right or remedy provided under these terms and conditions or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy.

23 Applicable Law

23.1 The contract between the Company and the Customer will be governed by English Law and in the event of any dispute, the Courts of England and Wales will have exclusive jurisdiction to settle any dispute or claim.

24 Entire agreement

24.1 These terms and conditions constitute the entire agreement between the parties and supersedes and extinguishes all previous drafts, agreements, arrangements and understandings between them, whether written or oral, relating to its subject matter.