



PHOENIX ALUMINIUM 2011 LTD

APPLICATION FOR CREDIT

Purchaser is following type (circle one): Individual/Sole Trader General Partnership Trust Company Limited Partnership
If Purchaser is a company or a limited partnership, full legally registered name of that entity.....

Date Registered/incorporated..... Registered Entity Number.....

Trading Name (if different to registered name).....

Registered Office.....

PO Box City.....

Trading Address (if different to Registered Office).....

Telephone BusinessFacsimile.....Email.....

If Purchaser is an individual/sole trader, general partnership or trustee of a trust, please complete with the name of the individual signing as/on behalf of the Purchaser:

Full Legal Name (s)

Home Address (s)Telephone No (s)

Date of Birth.....PositionEmail.....

Trading Address

All applicants please complete:

Details of charges and security arrangements over assets (state present value of assets and amount borrowed against it):

Period of trading under present owners

Capital: \$.....

Type of business

Bank, Branch.....

Solicitor(s)

Accountant

Directors' Addresses.....

Directors' Birth Dates.....

Trade References NOT TO INCLUDE BANKS, SOLICITORS, UTILITY ACCOUNTS (SUCH AS – TELEPHONE, GAS, ELECTRICITY OR PETROL) HOLDING OR SUBSIDIARY COMPANIES

Provide name, address & telephone no

1. Phone.....

2. Phone.....

3. Phone.....

FAILURE TO PROVIDE DETAILS REQUESTED MAY RESULT IN YOUR APPLICATION BEING DELAYED OR TURNED DOWN.

Terms and Conditions of Sale & Service

THESE TERMS AND CONDITIONS APPLY TO THE SUPPLY OF ALUMINIUM JOINERY (“Goods”) AND/OR OTHER ADDITIONAL PRODUCTS, SEALERS, SCRIBERS, ARCHITRAVES OR SIMILAR GOODS USED IN INSTALLING THE GOODS (“Additional Goods”) AND (IF APPLICABLE) INSTALLATION OR OTHER SERVICES PROVIDED IN RESPECT OF THE GOODS (“Services”) BY PHOENIX ALUMINIUM 2011 LIMITED (“Seller”) TO THE CUSTOMER (“Purchaser”). BY SIGNING ANY APPLICATION FOR CREDIT, PLACING ANY ORDER OR AGREEING ANY QUOTATION THE PURCHASER AGREES TO AND ACCEPTS THESE TERMS AND CONDITIONS OF SALE & SERVICE (“Terms”), AND (IF APPLICABLE) THE GUARANTOR AGREES TO THE TERMS OF GUARANTEE ATTACHED TO THE TERMS (“Guarantee”).

1. If the Purchaser has agreed to any quotation provided by the Seller, these Terms operate in addition to the terms of the quotation. To the extent of any inconsistency between the quotation and the provisions of these Terms, the terms in the quotation will prevail. Any terms contained in any Purchaser’s order or any other documents submitted by the Purchaser will not apply.
2. Subject to clause 6 below, all quotations will stand firm for thirty days from the date of the quotation, but then will automatically lapse. Orders placed by the Purchaser and accepted by the Seller may not be cancelled.
3. All quantities and specifications relating to the Goods, any Additional Goods and/or Services included in any quotation or order confirmation given by the Seller to the Purchaser supersede all plans and specifications supplied by the Purchaser. The Seller is expressly absolved from responsibility for any error made by its employees or agents in any quotation or order confirmation and not brought to its attention by the Purchaser prior to the order being placed.
4. Unless otherwise stated in writing, the Purchaser must allow for all supply and application of sealers, scribes and architraves to the perimeter of the Goods. Any sealers, scribes and architraves must be of the type and brand generally accepted as used with the Goods and (if applicable) must be of the type or brand advised by the Seller, must be fit for use on the Goods and if required by the Seller, must be pre-approved by the Seller prior to their use on the Goods.
5. Should the Goods be supplied in a shade or colour, the Seller shall be allowed a reasonable light and dark tolerance from any standard or sample colour which may have been advertised to or inspected by the Purchaser.
6. Unless otherwise stated, any quotation is for the supply of Goods only. The quotation will include the Services, and/or any Additional Goods, only if expressly stated. Accordingly, any order of Goods, Additional Goods and/or Services is to be solely based on the quotation, and any additional drawings, details and other associated documentation provided by the Seller to the Purchaser shall be treated as suggestions only. Unless otherwise agreed, the price for the Goods and any Additional Goods (if applicable) is for delivery to the location as specified in the quotation and is also based on continuous and uninterrupted delivery. Should expedited delivery be agreed upon, necessitating overtime or other additional costs to the Seller, the Seller may invoice, and the Purchaser will pay, those additional charges. The Seller will use all reasonable endeavours to make delivery at the time and to the location specified in the quotation or otherwise agreed by the Seller and the Purchaser in writing.
7. Prices for the Goods and (if applicable) any Additional Goods and/or Services are based on current costs of materials, labour and other charges, and the prices may be increased by the amount of any increase in material costs, or other costs beyond the Seller’s control.
8. Unless confirmed to the contrary by the Seller in the quotation, or otherwise by the in writing, the payment of all invoices will be on the 20th of the month following delivery of the Goods, Additional Goods and/or Service.
9. Until the Goods, and any Additional Goods are paid for in full (including the resolution and payment of any disputed amounts and/or default interest in accordance with these Terms):
 - (a) Ownership shall remain with the Seller, but upon delivery of the Goods and Additional Goods to the agreed location, the risk in the Goods and Additional Goods shall immediately pass to the Purchaser.
 - (b) The relationship between the Purchaser and Seller shall be fiduciary and the Purchaser shall hold the Goods and Additional Goods as bailee for the Seller.
 - (c) The Purchaser shall store the Goods and Additional Goods in a safe and secure location and separately from the Purchaser’s own or those of any third party, or mark the Goods and Additional Goods appropriately so as to clearly identify them as the property of the Seller. In addition, the Purchaser shall keep separate records in respect of the Goods and Additional Goods and insure the Goods and Additional Goods from the time of delivery in the name of the Seller and the Purchaser for their respective interests.
 - (d) To the extent permitted by law, the Seller shall be entitled to retake possession of the unpaid Goods or Additional Goods in the event that the Purchaser breaches any of these Terms or becomes insolvent, commits an act of bankruptcy, has a receiver appointed, or goes into liquidation. Without prejudice to any other rights of the Seller, upon the happening of any of the above events the Seller shall be entitled to retake the Goods or Additional Goods at any time without notice and for that purpose enter upon any premises upon which the Good(s) or Additional Goods may be stored, affixed or incorporated into any other structure, whether on the Purchaser’s property or elsewhere.
 - (e) If the Goods have been affixed to or incorporated into any structure, then to the extent permitted by law the Seller shall have the right to remove the Goods from the structure and shall not be responsible for any damage caused in removing the Goods or any consequential damage. The Seller upon retaking the Goods shall be entitled to resell them and to keep the proceeds of such re-sale.
 - (f) The Purchaser is not permitted to dispose of or use the Goods or any Additional Goods or incorporate them into any other works, structure or property unless the specific consent in writing of the Seller provides otherwise.
10. The Purchaser acknowledges that:
 - (a) It grants a security interest (as defined in the Personal Property Securities Act 1999 (“PPSA”)) to the Seller in the Goods or any Additional Goods as security for the Purchaser’s obligations under these terms. On the Seller’s request, the Purchaser (at the Purchaser’s sole expense) must properly execute any documents and do anything else required to ensure that the security interest in the Goods and/or Additional Goods constitutes a perfected security interest (as defined by the PPSA) and a purchase money security interest over all of the Goods and/or Additional Goods purchased under these terms, including executing any new, replacement or additional security document(s) and providing any information to the Seller to enable it to complete a financing statement or a financing change statement as required. The Purchaser must not agree to any other person or entity filing a financing statement over the Goods and/or Additional Goods without the prior written consent of the Seller. The Purchaser must notify the Seller as soon as the Seller becomes aware of any security interest registered over the Goods or Additional Goods other than the Seller’s security interest. The Purchaser waives its right to receive a copy of the verification statement under the PPSA and agrees that it will have none of the rights under sections 114(1)(a), 116, 117(1)(c), 119, 120(2), 121, 125, 126, 127, 129, 131, 132, 133 and 134 of the PPSA.
 - (b) If the Purchaser fails to pay for any part of the Goods and/or Additional Goods when payment is due then without prejudice to any other remedy that the Seller may have pursuant to these terms or at law the Seller may, by written notice to the Purchaser (at the address to which the Goods or Additional Goods are delivered) call upon the Purchaser to give and grant a registerable mortgage over the site to which the Goods or Additional Goods have been delivered or to which they are to be incorporated in to secure the Seller the balance of any and all unpaid moneys together with interest as provided by this document such mortgage to be payable on demand and otherwise to be on the current Auckland District Law Society All Obligations mortgage form and the Purchaser agrees to give and execute such mortgage in such event and to pay all reasonable costs and disbursements for taking such security and the Purchaser further agrees to pay the costs and disbursements consequent upon the Seller lodging a caveat over the site to protect the Seller’s rights under this Clause including all reasonable costs and disbursements consequent upon the removal or withdrawal of any such caveat so lodged.
11. If the Purchaser is a new customer of the Seller, and is purchasing Goods, Additional Goods and/or Services under the Purchaser’s first application for credit (as attached to these Terms), the Purchaser is not entitled to incorporate the Goods or Additional Goods into, or fix them to, any other structure, works or property until the quotation has been accepted and the payment terms agreed between the parties, and any payment installments or deposits that must be made before installation have been paid in full, unless the Seller expressly agrees otherwise in writing.
12. Should the Purchaser’s credit become impaired or be deemed unsatisfactory by the Seller, the Seller may require payment (in part or in full) or satisfactory security before commencing manufacture or delivery for any new order. The failure to demand such payment or security will not constitute a waiver by the Seller in the future and no such demand for payment or security shall effect the obligation of the Purchaser under these Terms.
13. The Seller reserves the right to charge interest at 5% above the Seller’s current bank’s standard overdraft rate on any account or portion of an account remaining unpaid. Should an account (or any portion of it) remain unpaid after the date for payment the Seller shall be entitled to recover from the Purchaser or Guarantor(s) any discount given on the unpaid Goods and/or Additional Goods or Services and all other associated costs and expenses (including legal costs) howsoever incurred by the Seller arising from the enforcement and/or collection of the amount due and owing.

14. The Seller has the right to withhold the supply to the Purchaser of any Goods, Additional Goods or Services or withhold the performance of any other requirements that are ancillary or related to the supply of the Goods, any Additional Goods and/or Services (and their use or incorporation into any works, structure or other property) under these Terms where any amount that is payable has not been paid until all such amounts have been received in full by the Seller, including any disputed funds and/or default interest required.
15. To the extent permitted by law the Seller gives no warranty expressed or implied in respect of the Goods, the Additional Goods or the Services, nor is there any condition expressed or implied with respect to the suitability or fitness of the Goods or the Additional Goods for the purpose or purposes for which the same are to be used by the Purchaser.
16. Subject to clause 17 below, in cases where Goods and/or Additional Goods have been manufactured to the Purchaser's requirements or specifications, and the Seller has met these specifications, the Seller reserves the right (in its absolute discretion) to refuse to accept the Goods and/or the Additional Goods back for credit, in which case the Purchaser will be obliged to purchase the Goods and/or the Additional Goods on the terms originally agreed between the parties.
17. If the Purchaser considers that any Goods and/or Additional Goods (or any portion of them) delivered by the Seller are Defective Goods, or are in excess of the amount of Goods and/or Additional Goods to be supplied under the relevant order or quotation, the Purchaser must notify the Seller in writing within 14 days after delivery of such Defective Goods or Goods and/or Additional Goods supplied in excess of the order (the "**Defective Notice**"), otherwise the Purchaser shall be deemed to have accepted all of the Goods and/or Additional Goods supplied. The Seller shall have the right at any time within 14 days after receipt of the Defective Notice to inspect the Defective Goods complained of for the purposes of determining whether or not the Goods and/or Additional Goods are Defective Goods. For the purposes of this clause, "**Defective Goods**" means any Goods and/or Additional Goods (or any portion of them) which do not conform to the specifications (including any specific requirements or specifications as detailed in the relevant order or quotation), breach any warranties provided by the Seller (if any) or are damaged prior to delivery. In any event, for a claim relating to Defective Goods to be valid it must be made by the Purchaser before the Goods are affixed to, or incorporated in any other structure, works or property (whether the Purchaser's or any other party's property). Upon the Seller's acceptance that the Goods in question are Defective Goods, the Purchaser shall be entitled to withhold as retention an amount that is equivalent to no more than 10% of the value of the Defective Goods ("**Holdback Amount**") until such claims have been resolved in accordance with clause 21, and will be required to pay the value of the Defective Goods, less the Holdback Amount immediately. If the Purchaser retains a Holdback Amount that is more than 10% of the value of the Defective Goods in breach of this clause, the Seller will have the right to withhold all or any Goods and/or Additional Goods or Services that are to be provided to the Purchaser as the Seller sees fit (including for any future orders unrelated to the Defective Goods), until either the Purchaser pays the Seller in full for the Goods, or pays any outstanding amount that has been withheld by the Purchaser above the 10% maximum allowance for the Holdback Amount. Following resolution of the claim, if the parties agree that the Purchaser is entitled to either: reduce the price of the Defective Goods by more than 10% of their value, less than 10% of their value, or not at all, the Seller or Purchaser will pay or refund the appropriate amount so as to result in the Purchaser having paid the correct amount for the Goods, Additional Goods and Services (as applicable).
18. To the extent permitted by law, the liability of the Seller under these Terms, whether in contract, tort (including negligence) under statute or otherwise, will exclude any indirect, consequential, special or incidental loss or damages, and will not exceed in aggregate (for all occurrences under these Terms) the value of the Goods, Additional Goods, and/or Services to be provided by the Seller under these Terms.
19. Where any sealers, scribes and architraves are used on the Goods in breach of clause 4, the Seller will not be liable in any way for any loss or damage caused directly or indirectly by such misuse. The Seller shall not be held responsible for errors or omissions by the Purchaser or the Purchaser's employees' or agents' ("**Purchaser's Representatives**") or for any misinterpretation by the Purchaser or the Purchaser's Representatives of any instructions of the Seller or the Seller's employees or agents. Such instructions of the Seller shall only be accepted by the Purchaser at the Purchaser's risk. Where the Seller has provided to the Purchaser (or notified the Purchaser or the Purchaser's Representatives of) any instructions, specifications, industry standards or similar in respect of the Goods, Additional Goods or Services the Seller will not be liable in any way or to any party for any failure of any Goods or Additional Goods where such instructions, specifications, industry standards or other matters were not followed or the required products were not used.
20. If, by reason of any inevitable accident or force majeure event (including an Act of God, fire, strikes, lockouts or other labour interferences, riots, war or anything similar, or any cause beyond the reasonable power or control of the Seller) the Seller shall, prior to the delivery of an order, be prevented from producing sufficient quantity of the Goods or Additional Goods to meet its contractual obligations for that order, the Seller shall not be obliged to supply to the Purchaser any portion of the order. Where able, the Seller will use reasonable endeavors to supply all or any portion of the order that it can, but will not be obliged to do so.
21. If any dispute or difference between the parties concerning the Goods, Additional Goods and/or Services or their respective rights and obligations under these Terms arises (the "**Dispute**"), the party claiming the Dispute must (as soon as is reasonably practicable) give the other party notice in writing accurately identifying the matters the subject of that Dispute ("**Dispute Notice**"). Within 7 days of receiving the Dispute Notice, representatives of each party must meet and will use their best endeavors to resolve the Dispute as soon as is reasonably possible. If the Dispute has not been resolved within 7 days (or such other period as the parties agree in writing) after receiving the Dispute Notice, either party will by written notice to the other party refer the dispute to adjudication in accordance with the Construction Contracts Act 2002. Only in the event that adjudication fails to resolve the dispute to the satisfaction of both parties, will either party be permitted (by written notice to the other party) to refer the dispute to arbitration under clause 21 of these Terms ("**Arbitration Notice**").
22. If any Disputes are referred to arbitration in accordance with clause 20, then such arbitration shall be settled in New Zealand under the Arbitration Act 1996 or any statutory amendments or re-enactments thereof. The arbitrator shall be appointed by the parties or if the parties cannot agree on an arbitrator within 7 days of service of the Arbitration Notice, an arbitrator shall be appointed at the request of either party by the president or vice-president for the time being of the New Zealand Law Society within a further five business days. The arbitrator shall not be a person who has participated in any informal dispute resolution procedure in respect of the Dispute.
23. The Purchaser and any Guarantor(s) agree that any information about them (including "personal information" as defined in the Privacy Act 1993, credit information or trade references) provided at any time to, or obtained at any time by, the Seller may be used or verified by the Seller for any purpose connected with its business including (but not limited to) debt collection and credit reporting or assessment. The Purchaser and the Guarantor authorise the Seller to provide such information to any external agency or party for credit information and assessment purposes and that agency or party is hereby authorised to use and continue to use such information as part of providing their business service to the Seller and its other customers. The Seller and the external agency or party may retain and/or use such information for as long as it is necessary to do so in relation to the sale of the Goods, Additional Goods and/or supply of Services under these Terms, or indefinitely, if such information is collected or retained for the purposes of assessment of the Purchaser's past, current or future credit history or credit worthiness. If either the Purchaser or any Guarantor is a natural individual, they will have a right to access any information held about themselves by the Seller, and may request from the Seller (at the address or contact provided in the quotation or otherwise by the Seller) any necessary corrections to that information, and require that the request be stored with that information. The Seller may charge reasonable costs of providing access to that information.

DATED SIGNED (Purchaser).....
 PRINT NAME.....
 POSITION

Guarantee

IN CONSIDERATION of the Seller agreeing to supply the Goods and/or Additional Goods or Services (as applicable) to the Purchaser on the Terms above and any other terms referred to in those terms, the Guarantor(s) named below hereby jointly and severally guarantee to the Seller the due and punctual observance and performance by the Purchaser of the Terms above and the Guarantor(s) hereby acknowledge that although as between the Guarantor(s) and the Purchaser, the Guarantor(s) may be sureties only, that as between the Guarantor(s) and the Seller, the Guarantor(s) shall be jointly and severally liable as a principal debtor and no indulgence given by the Seller to the Purchaser or the Guarantor(s) (including, but not limited to, any extension of time or extension of amounts covered by this Guarantee, compromise, renewal or amendment to this Guarantee, release or discharge granted by the Seller to the Purchaser or the Guarantor(s)), shall, in any way release the Guarantor(s) from any of its/their obligations under this Guarantee or the Terms above, and shall in no way be construed as a waiver by the Seller of the Seller's rights under this Guarantee or the Terms above. This Guarantee will constitute a continuing guarantee and the Seller will not, in any way, be required to exercise its other available remedies and recourses under these Terms or this Guarantee or otherwise, before the Seller is entitled to enforce this Guarantee.

DATED SIGNED (Guarantor).....
PRINT NAME
POSITION IN PURCHASER

In the presence of Signed by Witness:
Witness Name:
Witness Occupation:
Witness Address:

DATED SIGNED (Guarantor).....
PRINT NAME
POSITION IN PURCHASER

In the presence of Signed by Witness:
Witness Name:
Witness Occupation:
Witness Address:

N.B. Guarantor to sign at time of application being made. Guarantors to include the principal shareholders and directors of a company.