

**Booker Timber**  
**Terms & Conditions.**

Definitions:

In these Conditions, unless the context requires otherwise:

- 'Buyer' means the person who buys or agrees to buy the Goods from the Seller;
- 'Seller' means Booker Timber Ltd;
- 'Conditions' means the terms & conditions of sale set out in this document and any special terms and conditions agreed in writing by the Seller;
- 'Goods' means the articles which the Buyer agrees to buy from the Seller.

1. Acceptance & Amendment.

- i. These Conditions shall (unless or except to an extent the Seller otherwise agrees in writing) apply to all tenders, offers, quotations, acceptances, deliveries and agreements relating to sale of Goods and Seller and Buyer shall be deemed to assent thereto.
- ii. No other Conditions or modifications of these Conditions shall be binding on Seller unless Seller agrees thereto in writing and Seller shall not be deemed to accept such other Conditions nor waive any of these Conditions by failing to object to provisions contained in any purchase order or other communication from Buyer.
- iii. No representative, agent or salesman who is not a direct Seller has any authority to amend or waive any of these Conditions or other provisions of contract.
- iv. Neither these Conditions nor any provisions of contract shall be suspended, amended or waived except with written agreement of Seller.
- v. Dispatch or delivery of the Goods by the Seller to the Buyer shall be deemed conclusive evidence of the Buyers acceptance of these Conditions.

2. Sellers Specifications.

- i. All descriptions, specifications, drawings, weights, dimensions, capacities, prices, performance rates and other data quoted or submitted by Seller or included in any catalogue prospectus, circular, advertisement, illustrated matter or price list are to be deemed approximate only (except where stated in writing to be exact or expressly made of the essence) and subject thereto none such items or any part thereof shall form part of contract.
- ii. Except to any extent agreed otherwise by the Seller, in writing, the Seller has the right to modify the design and specifications of Goods without notice to Buyer.
- iii. Dimensions (where relevant) are external and thickness specifications are to a tolerance of plus or minus 2mm.

3. Orders.

- i. No order which has been accepted by the Seller may be cancelled by the Buyer except with agreement in writing of a director of the Seller and on terms that the Buyer shall indemnify the Seller against all loss (including loss of profit), costs (including cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of the cancellation.
- ii. The Seller reserves the right to cancel any order at any time before the Goods are delivered by giving written notice. On giving such notice the Seller shall promptly repay to the Buyer any sums paid under the contract. The Seller shall not be liable for any loss or damage arising whatever from such cancellation.

4. Prices.

- i. Unless a quotation or tender has been submitted by the Seller the price payable by the Buyer shall be the Sellers ex-works list price ruling at the date of dispatch notwithstanding any price specified in any order or order acceptance.
- ii. If a quotation or tender has been submitted by the Seller and an order has been received by the Seller within the time limit specified therein then the price payable by the Buyer shall be that price stated in such quotation or tender.
- iii. In the absence of any agreement in writing or endorsement upon any tender or quotation, any such price referred to therein shall be valid for a maximum of five working days
- iv. After an order has become binding on the Seller all prices will have V.A.T. added at the appropriate rate and are subject to increases to reflect increases from time to time in list prices and any increases in cost to the Seller (including without limitation, costs of materials, labour, transport and services, and fluctuations in currency exchange rates and any tax, duty free or charge imposed by any government or any other authority) prior to delivery.
- v. Unless otherwise agreed packing, transport and delivery charges are included in the price.

5. Payment.

- i. Unless otherwise agreed by the Seller or stated in any acknowledgement or order, the net invoice amount shall become due for payment by the Buyer thirty days from the date of issue of the invoice to the Buyer. Time for payment under the contract shall be of the essence.

- ii. Seller reserves the right at any time before proceeding or proceeding further with an order to demand full or partial payment under the contract or of any monies due and payable under any other contract / or any other amount between the Seller and Buyer.
- iii. If the Buyer defaults in any payment the Seller may, in addition to exercising right contained in condition 5. ii., suspend work under any contract, delay or withhold delivery or cancel the contract with the Buyer and retain any progress payments or payments on account already received under this or any other contract with Buyer.
- iv. Seller reserves the right to charge interest at an annual rate of two per cent above base rate from time to time of Barclays Bank Plc on all overdue monies.
- v. Seller shall have a lien on all undelivered Goods which the Buyer agrees to buy from the Seller for all monies due from Buyer to Seller under this or any other contract between them and Buyer shall have no right of set-off in respect of such monies.
- vi. Any sums payable by the Seller to the Buyer on any account may at any time be set off by the Seller against any sums payable by Buyer to Seller.
- vii. All rights and remedies afforded to Seller in these Conditions for non-payment shall be in addition and without prejudice to all other rights and remedies available to the Seller under contract law.
- viii. Should the company need to employ a solicitor to collect any monies due under the contract, the whole costs of such collection including the professional fees shall be borne by the Buyer on an indemnity basis.

#### 6. Delivery.

- i. Time of delivery is not of the essence of the contract and any time or date specified by the Seller as time at which or date on which the Goods will be dispatched or delivered or as case may be made available for collection is given is intended as an estimate only and the Seller shall not be liable for any loss, damage or expense howsoever arising from delay in delivery.
- ii. Buyer shall provide the Seller with details necessary to allow the Seller to make delivery and shall accept delivery whenever the Seller proffers delivery. The Buyer shall ensure that the Seller has proper access to the Buyers premises to enable the Seller to effect delivery. If the Buyer does not comply with the foregoing it shall not be entitled to withhold any payment and shall indemnify the Seller against consequential loss, damage or expenses and the Seller may enforce its remedies for payment and may (if it so wishes) cancel the intended delivery and sell the Goods to which such intended delivery related without prejudice to its rights to claim damages in respect of such breach of contract or may store the Goods at the Buyers risk in a place of its choosing at the cost of the Buyer and delivery by the Seller of a deposit receipt, or other evidence of storage, to the Buyer shall be deemed to be delivery of Goods.
- iii. Seller reserves the right to make delivery by instalments unless otherwise expressly provided in the contract. The period during which delivery by instalments may be made and the quantity of Goods delivered in each instalment shall be at the Seller's discretion. Condition 6.iv. below shall apply (mutatis mutandis) to each instalment delivery.
- iv. Delivery of more or less than the quantity or weight of Goods agreed to be sold or inclusion therewith of Goods of a different description not included in contract shall not entitle Buyer to reject the whole of the Goods delivered, and where the Seller delivers ten per cent more or less than the quantity or weight ordered then the Seller may charge pro rata according to the quantity or weight supplied and the Buyer shall treat such delivery as full performance by the Seller of its duty to deliver and the Sellers certificate shall be accepted as conclusive proof of quantity or weight of Goods delivered.
- v. Notwithstanding any express agreement as to the date of delivery the Seller shall be entitled to postpone or cancel delivery in whole or in part when it is delayed in or prevented from making or obtaining any Goods or materials or parts or components or services by strikes, lockouts, trade disputes or labour troubles or any cause beyond the Sellers control including, but without limitation, act of god, act of Buyer or its agents, embargo, or other government act, regulation or request, fire, accident, war, delay in transportation, inability to request, obtain adequate labour, materials or manufacturing facilities. During any foregoing events the Sellers obligations shall be suspended until such events cease or until the Seller cancels delivery (as the case may be) and the Seller shall not be required to obtain elsewhere in the market Goods with which to replace or permit it to produce Goods, delivery of which has been postponed or cancelled, Seller shall be paid pro rata for Goods delivered or work done by the date of suspension of the contract.
- vi. Buyer shall solely be responsible for proper unloading of the Goods. If the Buyer requires assistance to remove the Goods from the point of delivery then the Seller or any sub-contractor of the Buyer shall indemnify the Seller in respect thereof.

#### 7. Testing / Erection and Installation.

- i. Results of tests, which have not been agreed and carried out in accordance with procedures agreed with the Seller, shall not be regarded for purpose of any claim against or in establishing any liability of the Seller. The Buyer shall pay the Sellers reasonable charges for carrying out such tests.
- ii. If the Buyer wishes to make any claim against the Seller on the basis of tests so agreed and carried out, the Buyer shall send the Seller not later than two months after the date of delivery results of any such testing of Goods together with details of claim. Failure to comply with this condition shall constitute waiver by the Buyer of all claims based on or relating to facts revealed by such or any other testing.
- iii. Buyer shall not be entitled to delay or withhold payment to the Seller of the price of the Goods pending any tests so agreed and carried out.

#### 8. Buyers Obligations & Claim on Delivery.

- i. The Buyer will:
  - a) Examine Goods carefully within five days of taking delivery.
  - b) Notify the Seller (and any carrier for Seller) in writing within seven days of taking delivery of any error in quantity or weight or description of Goods delivered or if found to be mixed with other goods not included in contract or of any damage to Goods revealed by such examination and not caused since delivery was taken.
  - c) Notify the Seller (and any carrier for Seller) in writing within ten days of the date of the Sellers invoice if Goods the subject of invoices have not been received

- ii. Failure to make any notification in accordance with paragraph (b) or (c) above which examination under (a) above should have enabled the Buyer to make constitute waiver by the Buyer of all claims based on or relating to facts which such examination should have revealed.
- iii. Notwithstanding the Sale of Goods Act 1979 Section 35 A (1), and in addition to clause 8 i. (b) above, acceptance of some of the Goods by the Buyer, whether conforming to the contract or not, shall deprive the Buyer of the right to reject the rest of the Goods, whether they conform to the contract or not.

#### 9. Risk.

Risk in the Goods shall pass to the Buyer when the Goods are delivered to the Buyer. Delivery to a carrier or to any person, firm or company on the Buyers behalf shall constitute delivery to Buyer.

#### 10. Retention of Title to Goods.

- i. Notwithstanding delivery and passing of risk in Goods, or any other provision of these Conditions, the property in Goods shall not pass to the Buyer until the Seller has received in cash (or cleared funds payment), in full, the price of the Goods and all other Goods agreed to be sold by the Seller to the Buyer for which payment is then due together with any interest or other sums payable under the relevant contract in respect of the Goods and such other Goods.
- ii. Until such time as the property in Goods passes to the Buyer, the Buyer shall hold the Goods as the Sellers fiduciary agent and bailee. The Buyer shall store the Goods (at no cost to the Seller) separately from all other Goods in its possession and marked in such a way that they are clearly identified as the Sellers property.
- iii. Notwithstanding that the Goods remain the property of the Seller the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business, but shall account to the Seller for proceeds of sale or otherwise of Goods, whether tangible or intangible. Such proceeds of sale shall be kept separate from any monies or property of the Buyer and third parties, being identified at all material times as the Sellers money, and, in the case of tangible proceeds, properly stored, protected and insured.
- iv. Until such time as property in Goods passes from the Seller the Buyer shall upon request deliver up such of the Goods as have not ceased to be in existence or resold by the Buyer. If the Buyer fails to do so the Seller may enter upon any premises owned, occupied or controlled by the Buyer where the Goods are situated and repossess the Goods. On the making of such request the rights of the Buyer under above clause 10 iii. shall immediately cease.
- v. Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any Goods which remain the property of the Seller, but if the Buyer does so all monies owing by the Buyer to the Seller shall (without prejudice to any other right of remedy of Seller) forthwith become due and payable.
- vi. Foregoing rights of the Seller are in addition to and not in lieu of any other rights it may have at common law or statute including the right to payment for Goods and right to recover Goods.

#### 11. Warranty of Seller.

- i. Each of the Seller and Buyer shall be regarded as having received no representation made by or on behalf of any other of them before the contract was entered into which in any way induced it to enter into contract, but this shall not apply to any representation made to one party for or on behalf of the other which was produced in writing and signed by or on behalf of representor and was in the possession of representee prior to the making of contract, and in particular, without prejudice to generality of foregoing, those recorded in any quotation or order or acknowledgement of it.
- ii. Seller warrants that it has the right to sell Goods and that Goods are free from any charge or encumbrance unknown to the Buyer.

#### 12. Limitation of Sellers Liability.

- i. Except as provided in these Conditions or otherwise agreed by the Seller in writing and except where death or personal injury has been caused by the Sellers negligence, no warranty, condition, representation, undertaking or obligation express or implied imposed by statute, common law, custom, course of dealing or otherwise on the part of the Seller shall apply in respect of the Goods.
- ii. Where Goods or any part thereof are supplied designed manufactured processed treated or installed other than by the Seller, the Sellers obligations to the Buyer shall not exceed those owed to the Seller by any relevant third party.
- iii. Buyer shall in no circumstances, save for death or personal injury caused by the Sellers negligence, be entitled to recover from the Seller damages for breach of contract, of which these Conditions form part, for negligence or otherwise arising that exceeds the price of Goods paid by the Buyer under the contract.
- iv. Except in respect of death or personal injury caused by the Sellers negligence the Seller shall not be liable to the Buyer by reason of any representation, or any implied warranty, condition or other term, or any duty at law, or under the express terms of contract, for any consequential loss or damage (whether for loss or profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever, (and whether caused by negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of Goods or in their use or resale by Buyer, except as expressly provided for in these Conditions.
- v. Buyer is deemed to be fully conversant with the nature and performance of the Goods including any harmful or hazardous effects resulting from their usage and shall not be reliant in any way upon the advice, skill or judgement of the Seller. The Sellers employees or agents are not authorised to make any representation concerning the Goods whatsoever, other than those set out herein or confirmed by a director of the Seller in writing.
- vi. If Seller arranges any processing of Goods on behalf of the Buyer by a third party such processing will be carried out under the standard terms and Conditions of the third party (copies available from Seller on written request) and entirely at the Buyers own risk and cost.

- vii. Seller reserves the right to subcontract any order or part of any order to a third party.

#### 13 Indemnities by Buyer.

Buyer undertakes to indemnify the Seller against all claims relating to or arising from Goods sold by the Seller in respect of any loss, damage or expenses sustained by any third party howsoever caused save for death or personal injury caused by Sellers negligence.

#### 14 Trade Marks, Patents & Other Industrial Rights.

- i. Buyer shall have no rights to apply to Goods any trademarks owned or used by Seller.
- ii. If any claim is made against the Buyer alleging that Goods infringe any patent rights, registered designs, copyright or other industrial property rights of another then:
  - a) Buyer shall notify the Seller with full particulars, and
  - b) Seller or its suppliers or licensors (as case may be) shall be at liberty, at their expense, to conduct all negotiations and/or litigation in respect thereof and (if necessary in name of the Buyer) and if as a result of such negotiation or litigations the Buyer shall be unable to use the Goods substantially for purpose for which they were bought then the Seller shall (except where condition 14.iii applies) take them back and refund the price thereof to the Buyer and such refund shall be in full satisfaction of all claims by the Buyer against the Seller.
- iii. Buyer shall indemnify the Seller against all actions, costs (including the cost of defending legal proceedings), expenses, claims, proceedings and demands of any infringement or alleged infringement by the Seller of patent rights, registered design, copyright or other industrial rights attributable to the Seller complying with any special instructions from or requirements of the Buyer relating to the Goods.

#### 15 Insolvency or other default of the Buyer.

If the Buyer fails to make payment for the Goods in accordance with this contract of sale or commits any other breach of this contract of sale or if any distress or execution shall be levied upon any of the Buyers Goods or if the Buyer offers to make any arrangement with its creditors or if any bankruptcy petition is presented against the Buyer or the Buyer is unable to pay its debts as they fall due or if being a limited company any resolution or petition is presented to wind up the Buyer (other than for the purpose of amalgamation or reconstruction without insolvency) shall be passed or presented or if a receiver, administrator, administrative receiver or manager shall be appointed over the whole or any part of the Buyers business or assets or if the Buyer shall suffer any analogous proceedings under foreign law all sums outstanding in respect of the Goods shall become payable immediately. The Seller may in its absolute discretion and without prejudice to any other rights which it may have:

- i. Suspend all future deliveries of Goods to the Buyer and/or terminate the contract without liability upon its part; and/or
- ii. Exercise any of its rights pursuant to clause 10 above

#### 16 Deals as Consumer.

Nothing in these Conditions shall affect statutory rights of the Buyer who in relation to the Seller "deals as consumer" as defined in section 12 of the Unfair Contract Terms Act 1977 or any amendment or modification thereof.

#### 17 Notices.

Any notice given hereunder must be in writing and may be effected by personal delivery, fax or by registered postage and if effected by fax shall be deemed to be received on the day of sending and if effected by post shall be deemed to be received 48 hours after the date of posting.

#### 18 No Assignment.

Every contract of which these Conditions form part shall be personal to the Buyer and shall not nor shall any rights under it be assigned by the Buyer without written consent of the Seller.

#### 19 Governing Law

These Conditions and contract of which they form part shall be consulted in accordance with the law of England and Wales and the Buyer hereby submits to jurisdiction of English courts.