

Thomsons Timber Supplies Papakura Limited - Terms of Trade

1. TERMS OF SALE

1.1 **Thomsons Timber Supplies Papakura** Limited ("Seller") will supply goods and any associated services ("goods") to the customer purchasing such goods ("Customer") on these standard Terms of Trade ("Terms") only. By ordering goods from the Seller, the Customer will be deemed to accept these Terms and anything to the contrary in the Customer's terms, conditions, order forms, enquiries, confirmations or any other document will not apply.

2. ORDERS IRREVOCABLE

2.1 The Customer may not cancel or vary an order once it has been placed without the Seller's written consent.

3. SUITABILITY

3.1 The Customer must ensure that:

- all goods are handled and used in line with the manufacturer's guidelines;
- any safety features of the goods are not interfered with, modified or disabled;
- all goods are used under appropriate supervision and with appropriate training;
- any staff or agents of the Customer using or handling the goods are instructed to comply with subclauses a, b, and c above; and
- it informs the Seller if there is any suspected design or manufacturing fault that may affect the safety of the goods in a work place.

3.2 The Customer acknowledges that:

- failure to comply with clause 3.1 may invalidate any express warranty given by the Seller;
- the Seller does not warrant or represent the suitability of any goods, services, designs, person or organisation for the Customer's use;
- the Customer shall be responsible for ensuring that all and any instructions, recommended uses, applications and installation methods are followed, all relevant laws are complied with and any cautions and/or warnings observed; and
- where any recommendation or advice has been given by or on behalf of the Seller, this is a recommendation only and the Seller will not have any liability in respect of the implementation of the recommendation.

4. CUSTOMER ACKNOWLEDGEMENT IN RELATION TO TIMBER GOODS

4.1 The Customer acknowledges the following in relation to timber goods supplied by the Seller to the Customer:

- that timber goods may exhibit variations in shade, texture and finish due to being a natural material;
- that timber is a hygroscopic material which is subject to natural expansion and contraction; and
- that exposure of timber goods to weather conditions may cause the timber goods to distort in shape and/or size as a result.

5. PRECUT FRAMES AND TRUSSES

5.1 Where precut frames, trusses and/or similar prefabricated products are ordered by the Customer under these Terms, the Seller will supply such goods in accordance with the design, plans, specifications, dimensions or sizes as provided by the Customer to the Seller. The Customer acknowledges and agrees that all beams for precut frames and trusses must be propped and supported at all times when exposed to weather conditions. The Seller accepts no liability for any costs, loss or damage suffered or liability incurred by the Customer or any other person in respect of precut frames and trusses that comply with the Customer's specifications and/or are not used in strict accordance with any directions given by the Seller to the Customer (including, without limitation, the directions in this clause).

6. DELIVERY

6.1 The Customer will pay all costs for the delivery of the goods. Delivery of the goods is deemed to be made when:

- the Customer or the Customer's agent is given possession of the goods at the Seller's warehouse or elsewhere (loading is then at the Customer's risk); or
- the goods arrive at the Customer's premises or other specified site (unloading is then at the Customer's risk), whichever is the earlier.

6.2 On delivery, the goods are at the Customer's sole risk, and with effect from the time of delivery, the Customer will have in place adequate insurance with a reputable insurer to cover both the Customer's interest as bailee of the goods and the Seller's interest as owner of the goods under clause 14.1.

6.3 All claims for errors or short delivery must be made in writing by the Customer within 7 days of delivery of the relevant goods to the Customer.

6.4 The Seller may choose the carrier and the method of transport, unless otherwise agreed by the Seller in writing. The Seller may choose to deliver by instalments and may treat each delivery as a separate contract. Should the Seller fail to deliver or make defective delivery of one or more instalments, this will not entitle the Customer to cancel its order for goods.

6.5 Subject to clause 9.4 below, any delivery date or time agreed by the Seller is an estimate only and no delay in delivery will entitle the Customer to cancel its order for goods and the Seller accepts no liability for any loss or damage to the Customer resulting from such delay.

6.6 It is the responsibility of the Customer to ensure premises or site access for all deliveries. If required by the Customer or a representative to drive onto a property to make delivery, neither the Seller nor any of its carriers accept liability for any damage that may result to either the property of any person or the goods, unless the damage arises as a result of the actions or negligence of the Seller or its carriers. The Seller may charge the Customer storage and handling expenses on failure or refusal by the Customer to take or accept delivery of goods.

7. CLAIMS AND RETURNS

7.1 To the extent permitted by law, no claim by the Customer for defective goods, substituted products, shortages in quantity, lengths or weight, will be

considered or allowed, unless the Seller is notified of such a claim in writing within 7 days of delivery of the relevant goods to the Customer. Any claim must include sufficient detail and supporting documentation in respect of such claim.

7.2 On receipt of a claim from the Customer in accordance with clause 7.1, the Seller must be given a reasonable opportunity to investigate such claim.

7.3 Where defective goods are returned by the Customer in accordance with clause 7.1, the Seller may, to the extent permitted by law, elect to repair or replace the goods or refund the price of the goods to the Customer, in the Seller's sole discretion.

7.4 The Seller may, in its discretion, accept the return of non-defective goods by the Customer in return for a credit and will not be bound to provide a cash refund. The Customer must return the goods in 'as new' condition to the Seller within 14 days of having accepted delivery of the goods. The Seller will be entitled to charge a handling fee for goods returned and such a charge may be deducted from the amount of credit to which the customer may be entitled.

8. WARRANTIES

8.1 Except as expressly provided for in these Terms and any express warranties given by the Seller (or by the manufacturer of the goods) to the Customer in writing which apply to the goods, the Seller excludes, to the fullest extent permitted by law, all guarantees, warranties, representations, conditions or obligations imposed or implied by statute or under common law, equity or otherwise.

8.2 Where the Customer is acquiring the goods for the purposes of a business, the parties acknowledge and agree that: the parties are in trade; the goods are both supplied and acquired in trade; the parties agree to contract out of sections 9 (misleading and deceptive conduct generally), 12A (unsubstantiated representations), 13 (false or misleading representations) and 14(1) (false representations and other misleading conduct in relation to land) of the Fair Trading Act 1986 ("FTA"); and all warranties, conditions and other terms implied by the Consumer Guarantees Act 1993 ("CGA") or the sections of the FTA referenced above are excluded from these Terms to the fullest extent permitted by law.

9. LIMITATION OF LIABILITY

9.1 To the extent permitted by law, except as otherwise expressly provided by clause 8, the Seller shall not be liable to the Customer or any of its agents or employees for any loss, damage or liability of any kind whatsoever (including consequential loss or lost profit or business) whether suffered or incurred by the Customer or any other person and whether in contract, tort or otherwise and whether such loss or damage arises directly or indirectly from goods or services provided by the Seller to the Customer. Without limiting the foregoing, that Seller shall not be liable for any dangerous good(s) or any contaminant or hazardous substance in or emitted by any goods.

9.2 To the extent permitted by law, the Seller will not be liable under any circumstances in respect of goods that have been tampered with or modified without the Seller's written approval or which have been stored or used in an improper manner.

9.3 To the extent the Seller is liable for any reason for any costs, loss or damage suffered or liability incurred by the Customer arising from any breach of these Terms or for any other reason, such liability is limited to the amount of the price of the goods concerned.

9.4 Nothing in these Terms (including, without limitation, in this clause 9) is intended to have the effect of contracting out of the provisions of the CGA or the FTA except to the extent permitted by those Acts. Accordingly, where the Customer is:

- a "consumer" (as defined in the CGA and FTA) ("Consumer") nothing in these Terms shall limit, or attempt to limit, the Customer's rights under the CGA or FTA including, without limitation, the remedies under the CGA if the goods are delivered in a time frame substantially later than the estimated time or, if there is no estimated time, if the goods are not delivered within a reasonable period of time; and
- a Consumer or is in trade and these Terms constitute a "small trade contract" (as defined in the FTA) ("Small Trader") any provision of these Terms declared to be an unfair contract term shall not apply to the Consumer or Small Trader.

10. INDEMNITY

10.1 The Customer agrees to indemnify the Seller, upon demand, for any costs (including legal costs, as between solicitor and client), loss or damage suffered or liability incurred by the Seller as a result (whether directly or indirectly) of:

- the occurrence of an Event of Default (including upon actual or attempted enforcement of any security interest by the Seller);
- any breach by the Customer of its obligations under these Terms; or
- any improper use of the goods by the Customer.

11. QUOTATIONS

11.1 Subject to 11.2 below, prices quoted are based upon rates and charges in effect or as specified on the date of the quotation and, subject to clause 9.4, are subject to adjustment by any increase in the costs to the Seller of manufacturing or supplying the goods that may occur between the date of quotation and the date of delivery of the goods. Quotations are also subject to the availability of materials.

11.2 Where the Customer is a Consumer or a Small Trader and there is an increase in price prior to the date of delivery, the Seller must notify the Customer prior to delivery of the goods and the Customer may cancel the order if it does not agree to the revised price.

11.3 The Customer is solely responsible for the accuracy of plans, specifications and information supplied by (or on behalf of) the Customer upon which a quotation/estimate/order or estimate of materials is based. All customary building industry tolerances shall apply to the dimensions and measurements of goods unless the Seller and the Customer agree otherwise in writing. In

- accordance with clause 11.4, the Seller may substitute a similar good to the good ordered.
- 11.4 In the event that an ordered good is out of stock or otherwise unavailable, the Seller reserves the right to supply to the Customer a substitute product which is substantially similar to the ordered good instead. It is the responsibility of the Customer to satisfy itself that the substituted good is acceptable to the Customer. If the substituted good is not acceptable to the Customer, the Customer may make a claim under clause 7.1.
12. **PRICE AND PAYMENT**
- 12.1 The Customer must pay the price indicated on the invoice, order form or other document or statement issued by the Seller. All freight, packaging and other relevant costs are charged to the Customer's account as shown on the invoice. Unless otherwise stated, all prices exclude GST which is payable by the Customer.
- 12.2 Unless otherwise agreed in writing, payment must be made by the Customer before delivery of the goods. If credit is granted by the Seller to the Customer, payment is due on or before the 20th day of the month following the date on the invoice, order form or other document or statement issued by the Seller.
- 12.3 Payments by the Customer must be made in full and without any deduction or right of set off or counterclaim. The Customer agrees, however, that all moneys which the Seller may owe the Customer on any account whatsoever may, at the Seller's option, be set off against payments due by the Customer to the Seller.
- 12.4 If the Seller at any time deems the credit of the Customer to be unsatisfactory, it may immediately terminate this contract or any credit arrangement and require the Customer to pay the price before delivery of the goods. All costs incurred by the Seller as a result of termination and recommencement of any credit arrangement are payable by the Customer on demand by the Seller.
- 12.5 The Seller is not bound by any error or omission on any invoice, order form or other document or statement issued by the Seller.
13. **DEFAULT AND TERMINATION**
- 13.1 For the purposes of these Terms, "**Event of Default**" means:
- where the Customer fails to pay any amount due under these Terms by the due date for payment; or
 - where the Customer breaches any of its other obligations under these Terms or the terms of any other contract between the Customer and the Seller or any related company of the Seller; or
 - where the Customer becomes insolvent, is wound up, has a receiver appointed, enters into any composition or arrangement with its creditors, does any act which would render it liable to be placed in liquidation or have a receiver appointed over its property, commits an act of bankruptcy, ceases to be of full legal capacity, or dies; or
 - goods that the Seller has retained title to are at risk; or
 - an event or a series of events (whether related or not) occurs which, in the Seller's opinion, may cause a material adverse change in the Customer's ability to meet its obligations under these Terms.
- 13.2 If an Event of Default occurs at any time, then the Seller may do any one or more of the following:
- suspend or terminate the Customer's account, any order created under these Terms or any other contract between the Customer and the Seller or any related company of the Seller by written notice to the Customer;
 - delay delivery of any goods to the Customer until the matter is resolved to the Seller's satisfaction;
 - require all amounts owing by the Customer to the Seller to be immediately due and payable;
 - enforce any security interest created by these Terms;
 - require the Customer to remedy the default in the manner and within the period that the Seller requires;
 - charge default interest at Seller's overdraft rate from time to time plus 5% (per annum) on any monies which are due and payable calculated on a daily basis from the due date until the date the payment is received in full (both before and after judgement); and
 - exercise any rights that the Seller has under the Terms or that are available to the Seller at law.
- 13.3 In the absence of manifest error, a certificate signed by Seller as to an amount due by the Customer shall be conclusive evidence of such for all purposes, including for any proceedings.
- 13.4 The Customer must pay all of the Seller's costs (including legal costs, as between solicitor and client) of and incidental to the enforcement or attempted enforcement of the Seller's rights, remedies and powers under these Terms.
14. **RETENTION OF TITLE**
- 14.1 The Seller shall retain title to and ownership of the goods (and the Customer is bailee only in respect of the goods) until payment for those goods has been made in full by the Customer and the Customer has performed all of its other obligations for the time being under these Terms. Until property in the goods has passed to the Customer, the Customer will store and maintain the goods in good condition, and ensure that the goods are identified in such a way that they are clearly the property of the Seller.
- 14.2 Until the Customer has paid the Seller in full for all goods supplied, the Customer may not sell (unless such sale is in the ordinary course of the Customer's business), dispose of or charge the goods and must hold or deal with the goods for and on behalf of the Seller. However, if the goods are sold, in the ordinary course of the Customer's business, prior to property passing to the Customer, the proceeds of that sale are held by the Customer on trust for and on behalf of the Seller.
- 14.3 Prior to the Customer acquiring full property in the goods, the Seller or the Seller's agents may at any time enter upon any land, premises or property where it believes such goods may be to view and inspect the goods, and if the Customer has not paid for the goods in full by the payment due date or is unlikely to make payment in full before the payment due date, uplift and retake possession of the goods. The Customer will indemnify the Seller on demand in respect of any costs or liabilities incurred by the Seller in exercising its rights under this clause.
15. **PERSONAL PROPERTY SECURITIES ACT 1999**
- 15.1 The Customer agrees that the retention of title in clause 14.1 creates a purchase money security interest in all present and after acquired goods (and their proceeds) and the Customer hereby grants a security interest in all goods to the Seller as security for payment of the purchase price for the goods until such amount is paid in full.
- 15.2 The Customer shall not grant any other security interest or any lien over goods that the Seller has a security interest in.
- 15.3 At the Seller's request, the Customer shall promptly sign any documents and do anything else required by the Seller to ensure its security interest constitutes a first ranking perfected security interest in the goods.
- 15.4 If the goods that the Seller has a security interest in are processed, included or dealt with in any way causing them to become accessions, processed or commingled goods, the Seller's security interest will continue in the whole in which they are included. The Customer shall not grant any other security interest or any lien in either the goods or in the whole.
- 15.5 To the extent permitted by law, the Customer waives its rights under Part 9 of the PPSA, including, without limitation, any rights it may have under sections 114(1)(a), 116, 120(2), 121, 125, 126, 127, 129, 131, 133, and 134 of the PPSA. The Customer further agrees that where the Seller has rights in addition to those under Part 9 of the PPSA, those rights shall continue to apply.
- 15.6 The Customer waives its right to receive a copy of any verification statement, financing statement or financing change statement.
- 15.7 The Customer shall give the Seller prior written notice of any proposed change of its name or address.
- 15.8 For the purposes of this clause 15, the expressions "security interest", "purchase money security interest", "perfected security interest", "proceeds", "verification statement" and any other terms defined by the PPSA have the meanings given to them under or in the context of the PPSA.
16. **CONSTRUCTION CONTRACTS ACT 2002**
- 16.1 In the event that any sale by the Seller is of a good that means the supply is a "construction contract" within the meaning of the Construction Contracts Act 2002 ("**CCA**") so that the CCA applies to these Terms or any sale under them, the parties expressly agree that payment for the goods under such construction contract shall be by way of a single payment in accordance with these Terms.
17. **INTELLECTUAL PROPERTY**
- 17.1 Nothing in these Terms shall be construed as granting the Customer any intellectual property rights in the goods.
- 17.2 The sale of any goods shall not, unless expressly agreed in writing, give the Customer the right to use, sell, disseminate or duplicate any trademark, copyright, design or any other intellectual property right of the Seller.
18. **PRIVACY OF INFORMATION**
- 18.1 The Customer authorises the Seller to:
- collect, retain and use information about the Customer from any person for any purpose connected with its business and these Terms including, but not limited to, assessing the financial standing and creditworthiness of the Customer and undertaking direct marketing activities to the Customer;
 - disclose any information about the Customer to any person who guarantees or provides any insurance or other credit support in relation to the Customer's obligations to the Seller under these Terms and to such persons as may be necessary or desirable to enable the Seller to exercise any power or enforce or attempt to enforce any of the Seller's rights, remedies and powers under these Terms (including, without limitation, Independent Timber Merchants Co-Operatives Limited); and
 - collect, retain, use and disclose any information provided by the Customer in respect of its agents or employees on the basis set out in clauses 18.1(a) and (b) above and warrants that it has authority to provide such authorisations to the Seller in respect of its employees and agents.
- 18.2 Where the Customer is a natural person, the authorities given at clause 18.1 are authorities or consents for the purposes of the Privacy Act 2020 and the Customer has the right to access and request the correction of any personal information that the Seller holds about the Customer.
19. **GENERAL**
- 19.1 These Terms replace any previous representations, agreements, arrangements or understandings (whether written or oral) and together with the Application for Credit Account form, constitute the entire agreement between the Seller and the Customer relating to their subject matter.
- 19.2 The Seller may change these Terms at any time by notice to the Customer. Any change applies from the date on which the Seller notifies the Customer of such change. If the Customer does not accept the change, the Customer may terminate any uncompleted order for goods made under the Terms. Any subsequent orders for goods by the Customer will signify acceptance by the Customer of such changes.
- 19.3 If any provision of these Terms is held by a court to be unlawful, invalid or unenforceable, the validity and enforceability of the remaining provisions are not affected.
- 19.4 To be effective, any waiver of any of all of these Terms by the Seller must be in writing and signed by the Seller