

Totton Timber Co Ltd

Terms and Conditions

Terms of Trading

1. Interpretation

1.1 In these Conditions the following terms shall have the following meanings

“Buyer”

means the person who accepts a quotation of the Seller for the sale of Goods or whose order for Goods is accepted by the Seller

“Goods”

means the goods (including any instalment of the goods or any parts for them) which the Seller is to supply in accordance with these Conditions

“Seller”

means TOTTON TIMBER CO. LTD of Maynard Road, Totton, SO40 3DB.

Company Number: 00592873

“Conditions”

means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller

“Contract”

means the contract for the purchase and sale of the Goods

“Writing”

Includes letter, e-mail, facsimile transmission or comparable means of communication

1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

2. Basis of the Sale

2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with any written quotation of the Seller which is accepted by the Buyer, or any written order of the Buyer which is accepted by the Seller, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer.

2.2 No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.

2.3 The Seller’s employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed provided that nothing in these Conditions shall operate to limit or exclude any liability for fraud.

2.4 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by the Seller is followed or acted upon entirely at the Buyer’s own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.

2.5 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other documents or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

3. Orders and Specification

3.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in Writing by the Seller's authorised representative.

3.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.

3.3 The quantity, quality and description of and any specification for the Goods shall be those set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller). Any such figures, sizes, descriptions or specifications are approximations only and should not be relied upon by the Buyer as being totally accurate.

3.4 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification.

3.5 The Seller reserves the right to make any changes to the specification of the Goods which are required to conform with any applicable safety or other statutory requirements or, where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance.

3.6 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against

all loss (including loss of profit), costs (including the costs of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.

4. Price of the Goods

4.1 The price of the Goods shall be the Seller's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Seller's published price list current at the date of acceptance of the order. All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer.

4.2 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or

instructions

4.4 The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller.

4.5 The cost of pallets and returnable containers will be charged to the Buyer in addition to the price of the Goods, but full credit will be given to the Buyer provided they are returned undamaged to the Seller before the due payment date.

5. Terms of Payment

5.1 Subject to any special terms agreed in Writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.

5.2 Unless otherwise agreed between us in writing, payment for Goods purchased on account are "Strictly 30 Days Nett". Cash Sale orders should be paid for before delivery, or collection, in full. The time of payment of the price shall be of the essence of the Contract.

5.3 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:

5.3.1 cancel the contract or suspend any further deliveries to the Buyer;

5.3.2 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and

5.3.3 charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of 2 per cent per annum above Lloyds Bank base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

5.3.4 charge the Buyer a fee in respect of the administrative cost to the Seller of recovering such overdue payments (whether incurred directly or through the use of a third party).

5.4 Notwithstanding the above, the company understands and will exercise its statutory right to claim interest and compensation of debt recovery costs under the late payment legislation if not paid according to agreed credit terms.

6. Delivery

6.2 Any dates, times or periods quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the Seller in Writing. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.

6.3 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

6.4 If the Seller fails to deliver the Goods for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.

6.5 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may;

6.5.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or

6.5.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) accounts to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

6.6. when goods are offered for delivery to site Sellers obligation is to deliver as near to site as a safe hard road permits. If a vehicle delivers or collects goods to or from a place off the public road the Buyer shall be solely responsible for any accident or damage resulting.

6.7. if the Seller's driver considers it unreasonable to unload particular goods without help, because of health and safety, or time, constraints then the Buyer shall provide free of charge any extra labour necessary to unload goods.

6.8. if the Seller's vehicle is kept on site for an unreasonable time or has to return to the depot without completing the delivery through lack of assistance or if additional Seller's staff have to accompany the Seller's driver then an appropriate additional charge will be made.

7. Risk and Property

7.1 Risk in the Goods shall pass to the Buyer:

7.1.1 At the time of the Goods being collected at the Seller's premises,

7.1.2 At the time of delivery to the address stipulated by the Buyer.

7.1.3. If the Buyer wrongfully fails to take delivery of the goods, then at the time when the seller has tendered delivery of the Goods.

7.2 Notwithstanding delivery and the passing of risk, property in and title to the goods shall remain with the seller until the seller has received payment of the full price of (a) all Goods and/or Services the subject of the Contract and (b) all other goods and/or services supplied by the seller to the buyer under any contract whatsoever. Payment of the full price shall include, without limitation, the amount of any interest or other sum payable under the terms of this and all other contracts between the seller and the buyer.

7.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property. Until that time 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 the proceeds of sale or otherwise of the Goods, whether tangible or intangible including insurance proceeds, and shall keep all such proceeds separate from any moneys or property of the Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.

7.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

7.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

8. Warranties and Liability

8.1 Subject to the conditions set out below the Seller warrants that the Goods will correspond with their specification (as agreed between the parties in accordance with clause 3.3 of the Conditions) at the time of delivery.

8.2 The above warranty is given by the Seller subject to the following conditions:

8.2.1 the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;

8.2.2 the Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse, or alteration or repair of the Goods without the Seller's approval;

8.2.3 the Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment;

8.2.4 the above warranty does not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller.

8.3 Subject as expressly provided in these Conditions, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by the law.

8.4 Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Buyer are not affected by these Conditions.

8.5 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

8.6 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Seller in accordance with these Conditions, the Seller shall be entitled to replace the Goods (or the part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), but the Seller shall have no further liability to the Buyer.

8.7 Except in respect of death or personal injury caused by the Seller's 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 common law, or under the express terms of the Contract, for any consequential compensation whatsoever (and whether caused by the negligence of the Seller, its employees or agents

or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, except as expressly provided in these Conditions.

8.8 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:

8.8.1 Act of God, explosion, flood, tempest, fire or accident;

8.8.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;

8.8.3 acts, restrictions, regulations, bye-law, prohibitions or measures of any kind on the part

of any governmental, parliamentary or local authority;

8.8.4 import or export regulations or embargoes;

8.8.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party)

8.8.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;

8.8.7 power failure or breakdown in machinery.

9. Insolvency of Buyer

9.1 This clause applies if:

9.1.1 the Buyer makes any voluntary arrangements with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or

9.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or

9.1.3 the Buyer ceases, or threatens to cease, to carry on business; or

9.1.4 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

9.2 If this clause applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

11. General

11.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

11.2 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

11.3 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected hereby. The parties further agree that they will attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid or unenforceable provision.

11.4 Any dispute arising under or in connection with these Conditions or the sale of the Goods may be referred by agreement of the Buyer and Seller to arbitration by a single arbitrator appointed by agreement or (in default) nominated on the application of either party by the President for the time being of The Timber Research and Development Association.

11.5 The Contract shall be governed by the laws of England and shall be subject to the exclusive jurisdiction of the English Courts.

11.6 For the avoidance of doubt, nothing in this Contract is intended to confer on any third party any benefit or the right to enforce any term of the Contract.

Cancellation of Orders

Orders for collection of stock items can be cancelled at any time with no prior notice required and with no financial penalty.

Orders for delivery of stock items can be cancelled prior to delivery with no penalty. If the order has been loaded for delivery and /or in the process of being delivered then TT reserve the right to charge for any extra time that is required to move the material during transit or return the material to stock.

Orders for collection or delivery of non-stock items can only be cancelled at the discretion of Totton Timber.

A non-stock item can be defined as any item that has been bought in from another supplier specifically for a particular customer and that Totton Timber do not normally stock.

Or

Any stock item that has been altered to comply with a customers particular specifications and in so doing turning into an item that Totton Timber do not stock.

In these instances Totton Timber is under no legal obligation to cancel the order and the customer has a legal obligation to fulfil the agreed contract.

Return of Goods

Whether with collection or delivery it is the duty of the Buyer to inspect the goods at point of collection or at point of delivery, or, with delivered goods, at the earliest opportunity following.

If a Buyer collects goods then it is deemed that the Buyer has accepted the goods under the terms of the sales contract and all its associated terms and conditions. If the Buyer wishes to return any of the goods then.....

- a. Within 72 hours the goods can be returned or collected and credited or exchanged with no financial penalty to the Buyer if the goods have been found to be faulty or, through no fault of the Buyer, have been found not to be of the specification that was ordered.

b. If the Buyer wishes to return goods that are not damaged then it must be within a 28 day period from the date of invoice. The goods must be of a quality that allows them to be put directly back into stock. Totton Timber will credit /refund the invoiced amount less 20% as a re-stocking charge. If the goods are to be collected then there will be an appropriate collection charge and no credit will be given until the goods have been returned to Totton Timber and inspected as to their suitability to go back into stock.

In all instances it will be necessary to provide proof of purchase.

If a Buyer has goods delivered, then the goods should be inspected and signed for at the time of delivery. As stipulated in Terms & Conditions 7.1.2., the risk of the goods shall pass to the Buyer when the goods are delivered. If there is any dispute concerning the delivered goods it is incumbent on the Buyer to contact Totton Timber at the earliest opportunity so that a resolution can be achieved.

If the Buyer wishes any of the delivered goods to be returned, exchanged, credited or inspected then.....

a. If the Buyer has a complaint about the quality of the goods then the Buyer must arrange with Totton Timber to collect the goods and have them returned to Totton Timber, so that an inspection can take place to ascertain the validity of any claim, or arrange for a site visit from a representative from Totton Timber to inspect the goods.

b. If the Buyer just wishes to return unwanted goods that are not damaged, then the goods must be returned within a 28 day period from the date of invoice. The goods must be of a quality that allows them to be put directly back in stock. If the goods are collected then there will be an appropriate collection charge and no credit will be given until the goods have been returned, inspected and if they are suitable to be returned to stock. If all criteria are met then Totton Timber will credit the invoiced amount less 20%.