

## **STANDARD TERMS AND CONDITIONS OF SALE**

### 1. DEFINITIONS

1.1. In these terms and conditions, unless otherwise stated, the following terms shall have the following meanings:

"Business Day" means a day (other than a Saturday, Sunday or public holiday) when banks in Edinburgh are open for business;

"Conditions" means the terms and conditions set out in this document as amended from time to time in accordance with clause 2.5;

"Contract" means the contract for the sale and purchase of the Goods made between the Seller and the Purchaser in all cases on these Conditions but which may be constituted in any form;

"Force Majeure Event" means an event or circumstance beyond a party's reasonable control;

"Goods" shall mean any products, articles, services or corporeal moveables offered for sale by Seller (including goods or materials which have been fixed to or form part of any building or other structure) and purchased or to be purchased by the Purchaser and as specified in the Order;

"Order" means the Purchaser's order for the Goods in whatever form, whether written or oral;

"Seller" means Caledonian Plywood Company Limited (registered in Scotland with company number SC195444);

"Purchaser" means the person, firm or company seeking to purchase any Goods from the Seller; and

1.2. Every Order issued by the Purchaser and accepted by the Seller shall constitute a separate contract.

### 2. BASIS OF CONTRACT

2.1. These Conditions shall apply to and govern any Contract or transaction between Seller and Purchaser and shall supersede and take precedence over any other terms and conditions whether written or oral (including without prejudice to the foregoing generality, any other terms that the Purchaser seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing), and not withstanding anything to the contrary in such other terms and conditions.

2.2. The Order constitutes an offer by the Purchaser to purchase the Goods in accordance with these Conditions. The Order shall only be deemed to be accepted when the Supplier confirms the Order, at which point the Contract shall come into existence.

2.3. Any samples, drawings or advertising produced by the Seller and any descriptions or illustrations contained in the Seller's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods referred to therein. They shall not form part of the Contract nor have any contractual force.

2.4. Any quotation for the Goods given by the Seller shall not constitute an offer.

2.5. No amendment, variation of, or addition to any part of these Conditions may be made except in writing signed by a duly authorised representative of the Seller and the Purchaser and any other amendments, variations etc. or purported amendments, variations etc., to these Conditions shall be invalid and unenforceable.

### 3. SALE AND PURCHASE OF THE GOODS

3.1. The Seller shall sell the Goods to the Purchaser and the Purchaser shall purchase them in accordance with these Conditions.

3.2. The Goods are offered for sale subject to availability at the time of receipt of any purchase order or instruction and Seller shall have no liability whatsoever to Purchaser if the Goods, or any of them are unavailable for sale for any reason. Unless credit terms have been agreed in writing, the Goods shall be invoiced and paid for in full on delivery.

3.3. The price of the Goods shall be the price quoted by the Seller upon the Order, or if no price is quoted, the price set out in the Seller's price list in force as at the date of delivery. The Seller's price list is for guidance only and may be varied at any time by the Seller without notice.

3.4. Any price quoted by Seller shall, unless otherwise indicated, be inclusive of the costs of delivery and carriage within Seller's normal delivery area as published at Seller's despatching depot. Goods agreed to be delivered out with this area may be subject to such additional charge for delivery and carriage as Seller deems appropriate in the circumstances.

3.5. The prices shown on the Seller's price list are exclusive of Value Added Tax which will be added to the price for the Goods at the rate applicable on the invoice date. The Seller reserves the right to increase or otherwise vary the price for the Goods where, after an order has been placed by the Purchaser but prior to delivery, new additional, or increased taxes, levies, tariffs, or duties are levied in respect of the Goods by H M Government (including the Inland Revenue and H M Customs and Excise) or any other taxing authorities.

3.6. The Seller may invoice the Purchaser for the Goods on or any time after the completion of delivery, as set out in clause 4 of these Conditions.

3.7. The Purchaser shall pay the invoice in full and cleared funds by the end of the month following the month the invoice is dated. Payment shall be made to the bank account nominated in writing by the Seller. Time of payment is of the essence.

3.8. If any invoice remains unpaid beyond the due date for payment, interest will run on the amount outstanding at the rate of two per cent per annum above the base lending rate of the Royal Bank of Scotland plc from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Purchaser shall pay the interest together with the overdue amount.

3.9. The Purchaser shall have no right to set off any sums due or to become due by it to the Seller against any sums due or to become due by the Seller to Purchaser, and the Purchaser shall make payment of any sums invoiced by the Seller in respect of the Contract and/or the Goods and any interest due without any set off, compensation or deduction of any kind. The Seller may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Purchaser against any amount payable by the Seller to the Purchaser.

### 4. DELIVERY

4.1. Unless otherwise agreed, the Seller shall deliver the Goods to such place or address as the Purchaser may specify in the Order within the Seller's normal published delivery area or such other location as the parties may agree (the "Delivery Location"). The Purchaser shall ensure the suitability for access to the Delivery Location by the Seller's vehicles but the Seller's driver shall have the final decision on such suitability. The Purchaser shall provide manpower and facilities to promptly unload the Goods.

4.2. Delivery is completed on the completion of unloading of the Goods at the Delivery Location.

4.3. The Seller shall ensure that each delivery of the Goods is accompanied by a delivery note that shows the type and quantity of the Goods (including the code number of the Goods, where applicable) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered.

4.4. If the Purchaser and Seller agree, the Goods may be collected by the Purchaser from the Seller's depot without charge for delivery or carriage. If not collected within 14 days of the agreed date for collection, storage charges may apply and the Goods will not be released until such are paid. The Purchaser shall have sole responsibility for loading of the Goods and shall indemnify the Seller for any claims arising from collection of the Goods from the Seller's depot.

4.5. The Seller shall use reasonable endeavours to deliver the Goods within a reasonable period but, unless otherwise expressly agreed in writing, delivery dates specified by the Seller are approximate and given for the guidance of the Purchaser only. Time shall not be of the essence of the Contract with regard to delivery. Seller shall not be under any liability to Purchaser for any delay in delivery or for non-delivery of the Goods nor may the Purchaser cancel the Contract or treat it as repudiated. If delivery is made by instalments, separate invoices for each instalment may be issued by the Seller.

4.6. If the Seller fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Purchaser in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Seller shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Purchaser's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.7. The Seller may deliver the Goods by instalments, which shall be invoiced and paid for separately. Any delay in delivery of defect in an instalment shall not entitle the Purchaser to cancel any other instalment.

4.8. The Purchaser must notify the Seller in writing within seven days of the date of delivery or collection of the Goods of any damage to or defects in all or part of the Goods, or if the quantity delivered is not as stated in the Contract or as agreed between the Seller and the Purchaser. The Seller shall use all reasonable endeavours to procure the Goods are suitably packaged prior to despatch but without liability to Purchaser for damage for want of suitable packing. Subject to clause 9.4, the Seller shall have no liability whatsoever to the Purchaser in respect of damage, defects or short delivery and Purchaser shall be deemed to have irrevocably waived all its rights and remedies which it might otherwise have had in relation to such damage, defects or short delivery unless proper notification has been made in accordance with this clause 4.6 and clause 9.3 of these Conditions.

5. TITLE
- 5.1. Property and title to the Goods will not pass until such time as payment is made in full to the Seller of all sums and debts due in respect of the Goods supplied not only under the Contract but also under any other contract for the supply of goods by the Seller to the Purchaser and all other sums for the time being however due or to become due by the Purchaser to the Seller.
- 5.2. Until property in and title to the Goods passes to Purchaser, the Purchaser shall:
- 5.2.1. keep the Goods in good repair and condition and store them separately from any other property in its possession so that the Goods are readily identifiable and separable from any other goods stored on the Purchaser's premises or otherwise in its possession;
- 5.2.2. not incorporate the Goods into any end product or mix the goods with those of a third party;
- 5.2.3. maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from date of delivery;
- 5.2.4. notify the Seller immediately if it becomes subject to any of the events listed in clause 11.1; and
- 5.2.5. give the Seller such information relating to the Goods as the Seller may require from time to time.
- 5.3. Until such time as property and title to the Goods has passed to the Purchaser, the Seller shall be entitled to enter upon the Purchaser's premises at any time (without giving prior notice) and repossess the Goods. Alternatively, the Seller may require the Purchaser anytime forthwith, and at the Purchaser's expense, to deliver the Goods to the Seller.
- 5.4. If the Seller delivers the Goods to the Purchaser prior to payment of the price for the Goods and/or if any other sum is due by the Purchaser to the Seller and the Purchaser sells the Goods to a third party, the Purchaser shall make such sale only as trustee for the Seller and the proceeds of that sale shall be identified and kept separate from the Purchaser's general bank accounts as monies to be held upon trust and payable on demand to the Seller.
6. RETURN OF GOODS  
The Seller may at its sole discretion permit the Purchaser to return the Goods (or any of them) after sale and will credit the Purchaser accordingly, provided that the Goods are returned in a condition equivalent to that in which they were delivered and are acceptable for resale.
7. RISK  
The risk in the Goods shall pass from the Seller to the Purchaser on delivery (or collection of the Goods by Purchaser) and notwithstanding that property and title to the Goods has not passed to Purchaser.
8. LIEN  
The Seller shall have and be entitled to exercise a first and general right of lien over all or any goods or other items of the Purchaser from time to time lawfully in its possession (or that of its employees or agents) and that in respect of all monies outstanding at any time by the Purchaser to the Seller.
9. WARRANTY
- 9.1. Unless otherwise stated, the Goods are not tested or sold as fit for any particular purpose.
- 9.2. The Seller warrants that on delivery the Goods shall:
- 9.2.1. conform in all material respects with their description; and
- 9.2.2. be free from material defects in design, material and workmanship.
- 9.3. Unless otherwise stated, and except as provided in this Clause 9 or in respect of any warranty implied by law and which by law cannot be excluded to the fullest extent permitted by law, Seller gives no warranty, representation or undertaking whether express or implied, regarding the condition or quality of the Goods and all such warranties, representations and/or undertakings implied by law are to the maximum extent permitted are hereby excluded including, without prejudice to the foregoing generality, the warranties implied by Sections 13, 14 and 15 of the Sale of Goods Act 1979.
- 9.4. If the Goods or any of them supplied to the Purchaser are damaged or defective, the Seller may, at its sole option and discretion, at no further expense to the Purchaser either repair or replace the defective Goods. The Purchaser shall have no other remedy in respect of defective Goods and in particular but without prejudice to the foregoing generality, shall have no remedy in damages. The Purchaser shall notify any defects in the Goods to Seller in accordance with clause 4.6 and, in the event that the Purchaser fails to notify any defect in the Goods accordingly, it will be deemed to have irrevocably waived all its right and remedies which it might otherwise have had with regard to such defects in respect of the Goods. The remedy set out in this clause 9.4 is the Purchaser's sole and exclusive remedy for any damaged or defective Goods supplied by the Seller under the Contract.
- 9.5. These Conditions shall apply to any repaired or replacement Goods supplied by the Seller.
- 9.6. The Seller shall not be liable for the Goods' failure to comply with the warranty set out in clause 9.2 in any of the following events:
- 9.6.1. the Purchaser makes any further use of the Goods after giving notice in accordance with clauses 9.4 and 4.6;
- 9.6.2. the defect arises because the Purchaser failed to follow the Seller's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
- 9.6.3. the Purchaser alters or repairs such Goods without the written consent of the Seller;
- 9.6.4. the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- 9.6.5. the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
10. LIMITATION OF LIABILITY
- 10.1. Nothing in these Conditions shall limit or exclude the Seller's liability for:
- 10.1.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- 10.1.2. fraud or fraudulent misrepresentation; or
- 10.1.3. breach of the terms implied by section 12 of the Sale of Goods Act 1979.
- 10.2. Subject to clause 10.1:
- 10.2.1. the Seller shall under no circumstances whatsoever be liable to the Purchaser, whether in contract, delict (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- 10.2.2. the Seller's total liability to the Purchaser in respect of all other losses arising under or in connection with the Contract, whether in contract, delict (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 100% of the price of the Goods.
11. TERMINATION
- 11.1. Without limiting its other rights or remedies, the Seller may terminate this Contract with immediate effect by giving written notice to the Purchaser if:
- 11.1.1. the Purchaser commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of the Purchaser being notified in writing to do so;
- 11.1.2. the Purchaser takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or has a Trustee in Sequestration appointed to his or its estate, or if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

11.1.3. the Purchaser suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or

11.1.4. the Purchaser's financial position deteriorates to such an extent that in the Seller's opinion the Purchaser's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

11.2. Without limiting its other rights or remedies, the Seller may suspend provision of the Goods under the Contract or any other contract between the Purchaser and the Seller if the Purchaser becomes subject to any of the events listed in clause 11.1.1 to clause 11.1.4, or the Seller reasonably believes that the Purchaser is about to become subject to any of them, or if the Purchaser fails to pay any amount due under this Contract on the due date for payment.

11.3. Without limiting its other rights or remedies, the Seller may terminate the Contract with immediate effect by giving written notice to the Purchaser if the Purchaser fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment.

11.4. On termination of the Contract for any reason the Purchaser shall immediately pay to the Seller all of the Seller's outstanding unpaid invoices and interest, without prejudice to the Seller's whole other rights and remedies. In the event that any sum owing to the Seller is not immediately paid, the Seller shall be entitled to repossess the Goods or any other goods supplied under the Contract.

11.5. Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.

11.6. Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

## 12. SEVERABILITY

To the extent that any clause or part of these Conditions is or becomes invalid or unenforceable for any reason, the remainder of these Conditions shall remain in full force and effect to the extent that any invalid or unenforceable clause or provision shall be entirely separate and separable.

## 13. FORCE MAJEURE

The Seller shall be entitled to cancel or suspend the Contract and/or the sale and supply of the Goods without liability for loss or damage if performance of its obligations is prevented or in any way adversely effected by reason of a Force Majeure Event.

## 14. ASSIGNATION

14.1. The Seller may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

14.2. The Purchaser may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Seller.

## 15. ENTIRE AGREEMENT

15.1. This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations, and understandings between them, whether written or oral, relating to this subject matter.

15.2. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this agreement.

## 16. WAIVER

16.1. A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:

16.1.1. Waive that or any other right or remedy; nor

16.1.2. prevent or restrict the further exercise of that or any other right or remedy.

## 17. NOTICES

17.1. Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first-class post, recorded delivery, commercial courier or e-mail.

17.2. A notice or other communication shall be deemed to have been received:

17.2.1. if delivered personally, when left at the address referred to in clause 17.1;

17.2.2. if sent by pre-paid first class post other next working day delivery service, at 9.00am on the second Business Day after posting;

17.2.3. if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or

17.2.4. if sent by e-mail, one Business Day after transmission.

17.3. The provisions of this clause 17 shall not apply to the service of any proceedings or other documents in any legal action.

## 18. THIRD PARTY RIGHTS

18.1. No one other than a party to this Contract and their permitted assignees shall have any right to enforce any of its terms.

## 19. GOVERNING LAW

The Contract and these Conditions shall be governed by the law of Scotland and the Seller and the Purchaser hereby prorogate the non-exclusive jurisdiction of the Scottish Courts to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation.