

# CONDITIONS OF SALE

PLEASE NOTE that C. BLUMSOM LIMITED (hereinafter referred to as "the Seller") price their goods and quote for contracts on the basis that each of the conditions below form part of such contract and over-ride any other standard forms or conditions.

1. **Formation of the Contract**
  - (i) The Contract incorporates the following conditions which provide for certain limitations of liability and the passing of certain risks to the Buyer. Please note them and take out appropriate insurance.
  - (ii) The Seller does not accept any oral variation departure from these conditions or the other written terms of contract. If the Buyer wishes to depart from any of these conditions or the other written terms of contract or to rely on any verbal statement made on behalf of the Seller whether as a term of or as a representation inducing the contract or as creating a collateral contract or otherwise, the Buyer must draw the Seller's attention to such statement in writing and obtain the Seller's express written agreement thereto which may involve reconsideration of the price or other terms of the contract.
2. **Sample Description**
  - (i) Except where the Seller and the Buyer have otherwise expressly agreed, the sale shall not be a sale by sample or by samples submitted and descriptions or in trade literature or catalogues shall be treated as showing type class and general character only and not as importing terms or warranties as to substance, performance, colour, quality or dimension, and any failure of goods to conform with such samples, descriptions or illustrations shall not constitute any breach of contract on the part of the Seller.
  - (ii) The goods are sold on the terms that they comply with the written terms and description contained in the contract.
  - (iii) Except where the Seller and the Buyer have otherwise expressly agreed in writing (signed by an authorised person on behalf of the Seller) the Buyer is deemed to have satisfied himself as to the suitability of the goods for the purpose for which the Buyer requires them and it is not a term of the contract that the goods are fit for that purpose.
3. **Variations in Quantity**

Sellers at their option may deliver a margin of 15% more or less on any item of a timber specification or 2 1/2% more or less for my other products.
4. **Delivery**
  - (i) The Seller may deliver by instalments.
  - (ii) Where delivery is to be made by instalments, each instalment shall be treated as a separate contract and delay, default or non-delivery in respect of any instalment on the part of the Seller shall not entitle the Buyer to cancel the remainder of the contract.
  - (iii) Failure by the Buyer to pay for any instalment or delivery when payment is due shall entitle the Seller to withhold further deliveries until payment is made.
  - (iv) If the Buyer fails to accept delivery of any goods when tendered or in the event of any shipment of delivery of goods being delayed at the Buyer's request or in the event of the Buyer failing to make payment for goods when it is due the Buyer shall be liable to the Seller for all additional or excess handling, storage or other charges whatsoever thereby incurred by the Seller in relation to any such goods or to any other goods delivery of which the Seller is entitled to withhold.
  - (v) Unless expressly agreed in writing no times quoted specified or agreed for delivery of the goods by the Seller shall be of the essence of the contract.
5. **V.A.T. and Variations in Prices**

Prices are given on the basis of current costs exclusive of V.A.T. The Seller shall be entitled to adjust the price as at the date of invoice by such amount as may be necessary to cover any increases in any cost to the Seller relating to the supply of the goods.
6. **Payment**
  - (i) Goods will be invoiced when they are ready for collection or despatch.
  - (ii) Unless otherwise agreed in writing, invoices and amounts are due for payment 30 days from the date of Invoice.
  - (iii) The Buyer shall fail to pay any amount when it is due or if the Buyer shall fail or refuse to accept delivery of any goods or give delivery instructions in relation thereto when they are ready for collection or despatch or in the event of the death, incapacity, bankruptcy or any act of insolvency of the Buyer, or (if the Buyer is a Limited Company) in the event of liquidation or the appointment of a Receiver, then the purchase price of all goods invoiced or despatched by the Seller shall become forthwith due and payable by the Buyer and the Seller shall further be entitled to treat as cancelled every contract made between the Seller and the Buyer or at the Seller's option to suspend or continue the delivery of goods thereunder without prejudice to any other right of the Seller.
  - (iv) The Buyer shall not be entitled by reason of any dispute relating to the goods or any claim made by the Buyer under this or any other contract to withhold payment of any amount which is due to the Seller hereunder or to set off against any such amount or payment any cross-claim whether liquidated or unliquidated for my sum or sums which the Seller does not admit liability.
  - (v) The Seller reserves the right to refuse to execute any order or contract if the arrangements for payment or credit of the Buyer appear to be or to become unsatisfactory.
7. **Late Payment**

The Buyer agrees that interest shall accrue on all sum due and outstanding from the Buyer under this Contract at the rate of 2% above the current Bank Rate.
8. **Risk and Reservation of Title**
  - (i) The property in any parcel of goods shall not pass to the Buyer (wherever those goods may be) until full payment for such parcel has been received by the Seller. "Payment" means the receipt by the Seller of cash or honouring in accordance with their terms of cheques or other instruments of payment.
  - (ii) Until full payment has been made under sub clause (i) herein, the Buyer shall hold the parcel of goods (if delivered) as Bailee for the Seller and the Buyer shall, if required store mark or designate such bailed goods (whether before or after their use in manufacture) so as to show clearly that they are the property of the Seller.
  - (iii) Notwithstanding that the property in such parcel of goods shall not pass to the Buyer until full payment the risk in such goods shall pass to the Buyer:
    - (a) In the case of delivered goods, on delivery.
    - (b) in the case of goods to be collected by or on behalf of the Buyer, 14 days after notice is given to the Buyer that the goods may be collected.
  - (iv) Unless and until otherwise notified by the Seller, the Buyer may use the goods in manufacture before payment is made, but the Seller retains the right at any time before payment is made (and property of the goods therefore passes to the Buyer) to the immediate return on demand of such goods whether in the form delivered, or as used in manufacture or otherwise.
  - (v) If the Buyer shall default in the punctual payment of any sum due to the Seller, whether under this Contract or otherwise, the Seller shall be entitled forthwith to repossess any goods which remain the property of the Seller and the Buyer shall for such purpose afford the Seller access to, and the Seller shall be entitled to enter, any premises of which the Buyer is in occupation or to which he has access and where any such goods then are or are reasonably believed to be by the Seller.
  - (vi) The Buyer shall not until property in the goods have passed to him pledge or allow any lien or charge to arise on any parcel of goods or any documents of title thereto and shall not deal with them otherwise than in the ordinary course of the Buyer's business.
  - (vii) In the event of any sale or disposition of any of the goods by line Buyer before property therein has passed to the Buyer the Buyer shall hold on trust for the Seller
    - (a) so much of the proceeds of sale or disposition as is equal to the Contract price of the goods under this Agreement
    - (b) the right to receive such proceedsand the Seller shall have the right to trace or follow such proceeds if mixed with other monies in order to recover the same.
9. **Force Majeure**
  - (i) If the Seller is prevented, hindered or delayed from making delivery of the goods by reason of Act of God, war, hostilities, civil disturbance, governmental restriction or regulations of any kind, strikes, industrial disputes or other industrial action, force majeure or any other cause of whatsoever nature beyond the Seller's control, the Seller may give notice in writing to the Buyer either:
    - (a) cancelling the Seller's outstanding obligation to deliver goods under the Contract or
    - (b) extending the time for delivery of the goods outstanding under the Contract by a period not exceeding 3 months.
  - (ii) The Seller shall give notice under sub-clause (i) (a) hereof, no liability shall arise on either side in respect of undelivered goods or for consequential loss of whatsoever nature arising by reason of the said cancellation, but such cancellation shall not affect the rights or liabilities of either party in respect of goods already delivered or collected.
  - (iii) If the Seller shall give a notice under sub-clause (i) (b) hereof, the time for delivery shall be extended accordingly and the Seller shall be deemed not to be in breach of Contract, provided that the Buyer may within 7 days of receipt of such notice serve on the Seller counter-notice selecting to treat any future performance of the Contract as cancelled, with the like effect on the parties' liability as arises on cancellation by the Seller.
10. **Defective Goods**
  - (i) The Seller will in the Seller's absolute discretion replace or refund the purchase price of any goods that the Seller shall be satisfied were defective in material at the time of delivery provided that written notice has been given to the seller of such defect within 3 days of the date when by reason of an opportunity to inspect the goods or otherwise the Buyer could have first reasonably gave ascertained that such defect existed and provided that the Buyer has not in any way dealt with the goods so as to result in their being in any worse condition than when delivered.
  - (ii) Insofar as the Seller may have the benefit of any guarantee or warranty given by any manufacturer of the goods or of the third party, the Seller will at the request of the Buyer use all reasonable efforts to ensure that insofar as may be practicable the benefit of such guarantee or warranty ensues to the Buyer and will, at the Buyer's request, execute an assignment of the benefit thereof to the Buyer.
  - (iii) Where any goods are delivered that do not comply with the Contract the Buyer shall prior to making any claim for damages or compensation on the Seller afford the Seller a reasonable time and opportunity to act in accordance with subclause (i) hereof and the seller shall in any event not be liable to the Buyer for any loss or waste of storage, warehousing, shipping, processing, manufacturing or other space of facilities or labour time or effort expended of any like nature or any other indirect loss.
  - (iv) Without prejudice to the operation of any other condition herein contained,
    - (a) Where any goods are delivered that do not comply with the Contract, any liability of the Seller to the Buyer for any loss or expense of whatsoever nature thereby occasioned shall be limited to and shall not exceed a sum equal to the value of that part of the goods in respect of which the default has been made.
    - (b) If the Seller shall fail to make due delivery or shall make late or short delivery of the goods or any part thereof for a reason not covered by clause 9 herein (Force Majeure) the liability of the Seller to the Buyer for damages in respect of any loss or expense of whatsoever nature thereby occasioned shall be limited to and shall not exceed the value of the goods in respect of which default has been made.
11. **Notification of Non-Delivery**
  - (i) In the case of non-delivery of any parcel of goods, or short or late delivery thereof beyond the variation allowed in Clause 3 herein, the Buyer must notify to the Seller thereof in writing within 10 days of the time that the goods should have been delivered to the Buyer. Since non-notification may prejudice the Seller's rights against third parties, the Seller may, if prejudiced, require or retain payment for all the goods despatched where no such notice of delivery is received.
12. **Limitation of Liability**
  - (i) Without prejudice to the effect or operation of any other claims herein contained, the aggregate liability of the Seller to the Buyer for any loss or damage of whatsoever nature arising out of any breaches of this Contract is limited to and shall not exceed a sum equal to the total price of the goods.
  - (ii) Insofar as it may appear to any Court arbitrator or tribunal that any term of these conditions which seeks to impose any restrictions or limitation of liability on the part of the Seller to which the Unfair Contract Terms Act 1977 applies does not satisfy the Requirement of reasonableness therein contained, such offending restriction or limitation shall be construed as if there was substituted therefore the closest equivalent term in favour of the Seller as would in the opinion of the court, arbitrator or tribunal be reasonable and the term shall be given effect accordingly.
  - (iii) All disputes, differences or questions arising at any time between the parties as to the construction of the Contract or any way connected therewith shall be referred to the arbitration of a single arbitrator who shall be agreed between the parties or failing such an agreement shall be appointed at the request of either party by the President for the time being of the Timber Trade Federation or the Fibre Building Board Federation. The arbitration shall be in accordance with the arbitration legislation for the time being enforced.