

THE BUYER'S ATTENTION IS DRAWN IN PARTICULAR TO THE PROVISIONS OF CONDITIONS 10 & 11

## 1. INTERPRETATION

The definitions and rules of interpretation in this condition apply in these conditions.

**Buyer:** the person, firm or company who purchases the Goods from the Company.

**Company:** Ellpro Timber Limited (company number 07045259).

**Contract:** the contract between the Company and the Buyer for the sale and purchase of the Goods on these terms.

**Delivery Point:** the place where delivery of the Goods is to take place under condition 4.

**Goods:** any goods agreed to be supplied to the Buyer by the Company (including any part or parts of them).

**RHA Conditions:** the Road Haulage Association conditions of carriage in force at the time of delivery.

A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

A reference to a party includes its personal representatives, successors or permitted assigns.

Any phrase introduced by the terms including or in particular or similar expression shall not limit the sense of the words preceding those terms.

## 2. APPLICATION OF TERMS

2.1. Subject to any variation under condition 2.2, the Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document) or which are implied by trade, custom, practice or course of dealing.

2.2. These conditions apply to all of the Company's sales and any variation to these conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by a Director of the Company.

2.3. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation.

2.4. The Contract constitutes the entire agreement between the Buyer and the Company.

2.5. Each order or acceptance of a quotation for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to buy Goods subject to these conditions. Any quotation or order is given on the basis that no Contract shall come into existence until the Company despatches an acknowledgement of order to the Buyer.

2.6. No order placed by the Buyer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company delivers the Goods to the Buyer. The Company is entitled in its absolute discretion to refuse at any time to do business with anyone.

2.7. The Buyer shall ensure that the details of its order and any applicable specification are complete and accurate. Any advice or recommendation given by the Company to the Buyer as to the application or use of the Goods is followed or acted upon entirely at the Buyer's own risk unless such advice or recommendation is confirmed by a director of the Company in writing.

2.8. Any quotation is valid for a period of 30 days only from its date of issue, provided that the Company has not previously withdrawn it.

2.9. A Contract may only be cancelled by the Buyer with the Company's prior written consent and upon cancellation the Company shall be entitled to invoice the Buyer for all costs incurred by the Company incidental to the Contract, including but not limited to, transport and delivery costs and import duties.

## 3. DESCRIPTION

3.1. The quantity and description of the Goods shall be as set out in the Company's quotation or acknowledgement of order. Pack sizes may vary and this will be specified on the delivery note.

3.2. The Company reserves the right to amend the specification of the Goods if required by any statutory or regulatory requirements.

3.3. All samples, descriptive matter, specifications and advertising issued by the Company are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract.

3.4. Any typographical, clerical or other error in any sales literature, price list, invoice, acknowledgement of order or other document issued by the Company shall be subject to correction by the Company without any liability on the part of the Company.

## 4. DELIVERY

4.1. The Company shall deliver the Goods to the Buyer's place of business or such other location as the parties may agree (Delivery Point) at any time after the Company notifies the Buyer that the Goods are ready. Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Point.

4.2. Any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.

4.3. Subject to the other provisions of these conditions the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence). No delay shall entitle the Buyer to terminate or rescind the Contract or reject the Goods unless such delay exceeds 12 weeks after the estimated delivery date.

4.4. The Buyer shall take delivery of the Goods within 7 working days of the Company giving it notice that the Goods are ready for delivery, unless agreed otherwise by the Company. If for any reason the Buyer fails to accept delivery of any of the Goods within this period, or the Company is unable to deliver the Goods because the Buyer has not provided appropriate access, instructions, documents, licences or authorisations:

4.4.1. The Goods shall be deemed to have been delivered at 9.00 am on the seventh working day after the day on which the Company notified the Buyer that the goods were ready;

4.4.2. Risk in the Goods shall pass to the Buyer at the time of deemed delivery (including for loss or damage caused by the Company's negligence); and

4.4.3. The Company may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, transportation, storage and insurance).

4.5. The Company may after 14 working days of non-acceptance of delivery by the Buyer cancel that delivery and take such steps as the Company determines may be necessary to dispose of the Goods, in which case all costs of disposal or losses made by the Company as a result of the disposal shall be reimbursed by the Buyer on demand.

4.6. The Buyer shall indemnify the Company on demand for any additional costs or expenses, including but not limited to additional transport costs, incurred by the Company if the Buyer fails to accept delivery of the Goods when notified by the Company or if the Buyer fails to give adequate instructions or access for delivery.

4.7. The Buyer shall provide the Company (and its agents) safe and proper means of access at the Delivery Point and, if requested to do so by the Company, at the Buyer's expense provide appropriate equipment and manual labour for unloading the Goods at the Delivery Point.

4.8. If the Company delivers to the Buyer a quantity of Goods of up to 15% more or less than the quantity ordered by the Buyer, the Buyer shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and shall pay for such goods on a pro rata basis.

4.9. The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract. Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.

## 5. NON-DELIVERY

5.1. The quantity of any consignment of Goods as recorded by the Company on despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.

5.2. The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless the Buyer gives written notice to the Company of the non-delivery within 5 working days of the date when the Goods would in the ordinary course of events have been received.

5.3. Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note for the pro rata price of the missing Goods against any invoice raised for such Goods.

## 6. RISK/TITLE

6.1. The Goods are at the risk of the Buyer from completion of delivery and the Company's insurance policy in respect of the Goods shall cease to have effect from actual or deemed time of delivery. Prior to delivery, Goods shall be carried by the Company or the Company's nominee under the terms of the RHA Conditions.

6.2. Title to the Goods shall not pass to the Buyer until the earlier of:

6.2.1. the Company receiving payment in full (in cash or cleared funds) of all sums due to it in respect of the Goods, in which case title to the Goods shall pass at the time of payment of all such sums; and

6.2.2. the Buyer reselling the Goods, in which case title to the Goods shall pass to the Buyer at the time specified in condition 6.4.

6.3. Until ownership of the Goods has passed to the Buyer, the Buyer shall:

6.3.1. hold the Goods on a fiduciary basis as the Company's bailee;

6.3.2. store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property; including (without limitation) physically marking or tagging the Goods as being the property of the Company;

6.3.3. not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;

6.3.4. maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all usual commercial risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company;

6.3.5. notify the Company immediately if it becomes subject to any of the events listed in condition 7.2; and

6.3.6. give the Company such information relating to the Goods as the Company may require from time to time.

6.4. Subject to condition 6.5, the Buyer may resell the Goods before the Company receives payment for the Goods on the following conditions:

6.4.1. any sale shall be effected in the ordinary course of the Buyer's business at full market value;

6.4.2. the Buyer shall deal as principal and not as the Company's agent when making such a sale; and

6.4.3. title to the Goods shall pass from the Company to the Buyer immediately before the time at which resale by the Buyer occurs.

6.5. If before title to the Goods passes to the Buyer the Buyer becomes subject to any of the events listed in condition 7.2 then without limiting any other right or remedy the Company may have:

6.5.1. the Buyer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and

6.5.2. the Company may at any time:

6.5.2.1. require the Buyer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and

6.5.2.2. if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Goods are stored in order to recover them.

6.6. The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.

6.7. The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them or, where the Buyer's right to possession has terminated, to recover them.

6.8. Where the Company is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold all goods of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buyer.

6.9. On termination of the Contract, howsoever caused, the Company's (but not the Buyer's) rights contained in this condition 6 shall remain in effect.

## 7. INSOLVENCY OF BUYER

7.1. If the Buyer becomes subject to any of the events listed in condition 7.2 or the Company reasonably believes that the Buyer is about to become subject to any of them:

7.1.1. the Company shall be entitled to cancel or suspend the Contract without any liability to the Buyer; and

7.1.2. if the Goods have been delivered but not paid for, (unless the Goods are returned forthwith to the Company in the condition in which the Goods were delivered to the Buyer), the full price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary

7.2. The Buyer:

7.2.1. has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or

7.2.2. suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it; or

7.2.3. fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Buyer; or

7.2.4. is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or

7.2.5. ceases to trade; or

7.2.6. has its financial position deteriorate to such an extent that in the Company's opinion the Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or

7.2.7. being an individual, dies or becomes incapacitated (whether physical or mental); or

7.2.8. fails to pay any amount due under this Contract or any other contract between the Buyer and the Company on the due date for payment.

7.3. On termination of the Contract for any reason the Buyer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest.

7.4. Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination. Conditions which expressly or by implication survive termination of the Contract shall continue in full force and effect.

## 8. PRICE

8.1. Unless otherwise agreed by the Company in writing, the price for the Goods shall be the price set out in the Company's price list as set out in acknowledgement of order.

8.2. The price for the Goods shall be exclusive of any value added tax and all costs or charges in relation to packaging, loading, unloading, carriage and insurance, all of which amounts the Buyer shall pay in addition when it is due to pay for the Goods.

8.3. The Company reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Company which is due to:

8.3.1. any factor beyond the control of the Company (including fluctuation in exchange rate, currency regulation, alteration of duty/import charges and/or increases in the costs of labour, materials, supply or fuel);

8.3.2. any change in delivery dates, quantities or specification for the Goods which is requested by the Buyer; and/or

8.3.3. any delay caused by any failure of the Buyer to give the Company adequate or accurate information or instructions.

## 9. PAYMENT

9.1. Subject to condition 9.4, payment of the price for the Goods is due in pounds sterling on the last working day of the month following the month in which the Goods are delivered or deemed to be delivered.

9.2. Time for payment shall be of the essence.

9.3. No payment shall be deemed to have been received until the Company has received the payment in cleared funds.

9.4. All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.

9.5. The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.

9.6. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

## 10. QUALITY/WARRANTY/GUARANTEE

10.1. Save as set out in this condition, all warranties or conditions whether express or implied as to the quality of the Goods and whether under statute or otherwise are excluded to the fullest extent permitted by law.

10.2. The Company warrants that on delivery the Company has good title in the Goods.

10.3. The Company guarantees (subject to the other provisions of these conditions) the Goods (unless expressly stated otherwise on the acknowledgement of order) against manufacturing defect subject to the relevant installation and maintenance guidelines being strictly adhered to for a period of two years from the date of delivery. The

Company may, at its discretion, offer a longer warranty period on certain Goods. Details of, and additional terms and conditions relating to, any extended warranty being offered can be found on the Company's website or a copy will be provided upon request.

10.4. Where the Company is not the manufacturer of the Goods, the Company shall endeavour to pass on to the Buyer the benefit of any longer warranty or guarantee actually received by the Company but can give no assurances that this is possible.

10.5. **Unless specifically stated otherwise in writing the Company cannot warrant that the Goods are tested for any particular purpose or that the Goods are fit for any particular purpose.** Without limiting the foregoing, the Goods are not intended to be used for structural purposes and if a Buyer wishes to use any of the Goods for any structural or weight bearing purpose the Buyer must rely on its own survey or advice as to the suitability of the materials for this purpose.

10.6. The Company shall not be liable for any alleged damage to the Goods unless:

10.6.1. the Buyer gives written notice of the defect to the Company within 5 days of the date of delivery or (where the defect was not apparent on reasonable inspection of the Goods) within 5 days after the defect was or should reasonably have been discovered. Such notification must be accompanied by proof of purchase; and

10.6.2. the Company and its agents are given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Company's cost for the examination to take place there.

10.7. If the Buyer does not notify the Company accordingly the Buyer shall not be entitled to reject the Goods and the Company 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.

10.8. The Company shall not be liable for any alleged damage to the Goods if:

10.8.1. the Buyer makes any further use of such Goods after giving such notice; or

10.8.2. the defect arises because the Buyer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or

10.8.3. the Buyer alters or repairs such Goods without the written consent of the Company; or

10.8.4. the defect arises as a result of fair wear and tear, wilful damage, negligence, environmental conditions, livestock damage or abnormal storage or working conditions, including but not limited to damage as a result of adverse weather conditions.

10.9. Subject to the Buyer's compliance with the terms of this condition, if any of the Goods do not conform with the warranties set out in this condition the Company shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods or a proportionate part of the price provided that, if the Company so requests, the Buyer shall, at the Company's expense, return the Goods or the part of such Goods which is defective to the Company. For the avoidance of doubt the Company shall not be responsible for any re-installation costs.

10.10. If the Company complies with condition 10.9 it shall have no further liability for a breach of warranty in respect of such Goods.

10.11. These conditions shall apply to any repaired or replacement Goods.

10.12. Since many of the Goods are made from wood or other natural products, no warranty is given that the Goods will be the same in all material respects as they will be subject to variations in shade, density, grain, colour and texture.

## 11. LIMITATION OF LIABILITY – THE BUYER'S ATTENTION IS DRAWN TO THIS CLAUSE

11.1. Subject to condition 4, condition 5 and condition 10, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:

11.1.1. any breach of these conditions, including any deliberate personal repudiatory breach;

11.1.2. any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and

11.1.3. any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

11.2. Unless specifically stated, all warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

11.3. Nothing in these conditions excludes or limits the liability of the Company:

11.3.1. for death or personal injury caused by the Company's negligence; or

11.3.2. defective products under the Consumer Protection Act 1987; or

11.3.3. for fraud or fraudulent misrepresentation; or

11.3.4. any matter in respect of which it would be unlawful for the Company to exclude or restrict liability.

11.4. Subject to condition 11.2 and condition 11.3 the Company shall not be liable to the Buyer for:

11.4.1. loss of profit;

11.4.2. loss of anticipated profit;

11.4.3. loss of business;

11.4.4. damage to goodwill; and/or

11.4.5. any other indirect or consequential loss;

in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

11.5. Subject to condition 11.3 and without prejudice to condition 11.4, the Company's total liability in contract (including without limitation any breach of these conditions by the Company), tort (including negligence or breach of statutory duty), misrepresentation, damage to property, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the following amounts:

11.5.1. in respect of damage to the tangible property of the Buyer resulting from the negligence of the Company or its employees, the sum of £25,000;

11.5.2. in respect of misrepresentation by any director or employee of the Company, the sum of £5,000; and

11.5.3. in respect of any liability not falling within the scope of sub-conditions 11.5.1 or 11.5.2, the sum of £5,000 or price of the Goods (whichever is the higher).

## 12. ASSIGNMENT

12.1. The Company may assign the Contract or any part of it to any person, firm or company.

12.2. The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

## 13. FORCE MAJEURE

The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, adverse weather, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials provided that if the event in question continues for more than 12 weeks the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.

## 14. GENERAL

14.1. Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

14.2. If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

14.3. Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

14.4. Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

14.5. The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

14.6. Notice

14.6.1. 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 or other next working day delivery service, commercial courier, fax or e-mail.

14.6.2. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to above; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.

14.6.3. The provisions of this condition shall not apply to the service of any proceedings or other documents in any legal action.

14.7. This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law, and the parties submit to the exclusive jurisdiction of the English courts.