

# BEAMS & TIMBER DIRECT LIMITED

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## TERMS AND CONDITIONS OF SALE/SERVICE

We supply all Goods and Services to you subject to these terms and conditions:

### 1 Acceptance

- 1.1 By placing an order with us you accept these terms and conditions, despite anything stated to the contrary on your order, terms and conditions of purchase or similar document.

### 2 Price

- 2.1 All orders will be filled at prices current at the date of delivery of the Goods and/or provision of the Services or otherwise agreed by us in writing. Prices are subject to change without notice.
- 2.2 All prices are exclusive of GST or other taxes payable on Goods and/or Services supplied or on any amount payable under clause 8; freight costs; insurance charges and all other costs and charges, all of which you must pay unless we agree otherwise with you in writing.

### 3 Terms of Payment

- 3.1 Account holders; payment is due by the 20<sup>th</sup> of the month following the date of our invoice. Non-Account holders; payment is due prior to dispatch.
- 3.2 You must make payment of all amounts owing without set-off or deduction of any kind.

### 4 Delivery of Goods/Performance of Services

- 4.1 Dates given for delivery of Goods/performance of Services are stated in good faith but are not to be treated as a condition of our contract with you. If delivery of the Goods/performance of the Services is delayed for any reason at all, we will not be responsible or liable in any way to you or any other party for loss suffered due to that delay.
- 4.2 We may make delivery of Goods by instalments and may cancel delivery of the Goods or any instalments of the Goods without limiting our rights to recover all money you owe us for deliveries already made.
- 4.3 Where you do not take delivery of or uplift any Goods (being either Goods which we are supplying to your or Goods owned by you which we have performed Services on) by the delivery date specified or any later date we agree on, you must pay reasonable storage costs until you take delivery of the Goods. We will determine the costs of storage and may invoice you.
- 4.4 We will not accept any claim for discrepancy in orders of Goods supplied by us unless you make written claim to us within 48 hours of delivery.
- 4.5 Delivery by us to a carrier will be deemed to be delivery to you.

### 5 Warranties and Conditions

- 5.1 Where this Agreement would otherwise be subject to the Consumer Guarantees Act 1993 (Act), you agree that you are acquiring the Goods and/or Services for business purposes and that the Act does not apply to the supply of the Goods and/or Services to you.
- 5.2 Where you supply Goods to a customer and the supply of Goods would otherwise be subject to the Act, and the customer acquires or holds him or herself out as acquiring the Goods for business purposes as defined in the Act, then you warrant that you will obtain the written Agreement of the customer that the Act will not apply to the supply to him, her or it.
- 5.3 Where you supply Goods to a customer and the supply of the Goods is subject to the Act you will ensure the customer is notified at or before the time at which the Goods are supplied that we do not undertake that repair facilities and parts in respect of the Goods will be available beyond the duration of any written warranty supplied with the Goods.
- 5.4 With the exception of any express written warranty we give, no warranty or condition will be implied against us by any statute, at common law or otherwise and no representation, condition or warranty will bind us unless it is in writing and signed for us or on our behalf.

### 6 Ownership and Risk (Applicable where we are selling you Goods)

- 6.1 Risk in the Goods will pass to you on delivery into your custody or the custody of anyone acting on your behalf even though ownership in the Goods may not have passed to you. You must insure the Goods in our name and your name for our respective interests from the time of delivery until payment in full.
- 6.2 Ownership of the Goods shall not pass to you until all amounts due to us (whether in relation to the Goods, other Goods or Services or otherwise) have been paid in full in cleared funds. We hold a Security Interest in all Goods supplied to you for payment of those moneys.
- 6.3 Until all moneys due to us are paid you:
- a) shall not sell, charge or part with possession of the Goods otherwise than for its full value in the ordinary course of business;

- b) shall not alter, obliterate or deface the Goods (other than for the purpose of becoming an Accession or an Ingredient) and shall not alter, obliterate, deface, cover up or remove any identity mark indicating that the Goods are the property of Beams & Timber Direct Limited;
- c) must store the Goods in such a manner that they are clearly identifiable as the property of Beams & Timber Direct Limited and will keep separate records in respect of the Goods;
- d) will hold the proceeds of the Goods on trust for us, in a separate and identifiable account.

6.4 At our request, you will promptly make, do, execute and deliver (or cause to be made, done, executed and delivered) any documents, contracts, Agreements or deeds that we may require from time to time to give effect to this Agreement, including without limitation, doing all such things as we may require in order to ensure that the Security Interest created under this Agreement constitutes a perfected security interest over the Goods, including providing any information we request to enable it to complete a financing statement or financing change statement.

6.5 You shall permit any person authorised by us to enter upon the premises where the Goods are located to inspect their condition. If the Goods are located on premises that are leased, you will use all reasonable commercial efforts to obtain a written Agreement from each landlord of the premises on which the Goods are located, in which each landlord agrees that it will not distrain against the Goods for any arrears in rent or other moneys owing by you to the landlord, and consents that Beams & Timber Direct Limited, or its duly authorised agents and employees, may enter onto the premises for the purposes of inspecting, repairing, maintaining or repossessing the Goods at any time.

6.6 You waive any right to receive a verification statement under the PPSA. Nothing in sections 114(1)(a), 117(1), 133 and 134 of the PPSA shall apply to this Agreement. Your rights as a debtor in sections 116, 119, 120(2), 121, 125-127 and 129 of the PPSA shall not apply to this Agreement.

## **7 Lien**

7.1 We will have a first lien on all Goods which you have supplied to us for us to perform Services on, for all amounts you owe us under these terms and conditions.

## **8 Default**

8.1 Where we consider you may be unable to meet your payment obligations to us, we may, without limiting or affecting our other rights and remedies, do all or any of the following:

- a) require you to stop selling or otherwise disposing of the Goods or mixed Goods;
- b) demand payment of all or part of any sums due;
- c) require security for your obligations before we make any further supplies to you;
- d) without notice, withhold deliveries of Goods ordered by you.

8.2 Where:

- a) you are in breach of any of these terms and conditions (including failure to make payment on due date); or
- b) you become insolvent or are adjudicated bankrupt or an application is made for your liquidation or a liquidator or a receiver is appointed in respect of your assets; or
- c) you no longer carry on business or threaten to stop carrying on business; or
- d) an arrangement is made or likely to be made with your creditors; or
- e) you are unable to pay your debts as they fall due,

then, without limiting or affecting our other rights and remedies, we may do all or any of the following:

- f) where you have failed to make payment on due date, require you to compensate us by making payment to us on demand of interest as liquidated damages on the amount due from the due date until the date of payment at a rate equal to two (2) percent above the current overdraft rate which we have with our principal trading bank (in addition to you remaining liable for the full amount outstanding);
- g) cancel this and any other contract of supply with you;
- h) recover and/or resell any of the Goods and/or mixed Goods and enter any premises where we believe the Goods and/or the mixed Goods are stored and you grant us an irrevocable right and authority to do so. We may take possession of or sell the Goods even if we do not have priority over other persons having a Security Interest in the Goods and sections 108, 109 and 120 of the PPSA do not apply to the extent that they are inconsistent with this clause;
- i) sell any of your Goods over which we have a lien under clause 7.1.

8.3 We may only recover and resell for our own account sufficient Goods and/or mixed Goods under clause 8.2(g) and/or sell for our own account sufficient Goods under clause 8.2(h), to satisfy all unpaid liabilities, the cost of recovery and resale and the costs referred to in clause 8.4. If we recover any excess, we will not be liable to you in damages but must account to you for the excess.

8.4 You will pay all costs and expenses (including costs on a solicitor/client basis and debt collectors costs) we incur in enforcing or attempting to enforce our rights under this clause or these terms and conditions. We may deduct any costs and expenses incurred from the proceeds of sale of any Goods or mixed Goods recovered from you.

## **9 Claims for Damaged/Defective Goods/Defective Services**

9.1 We may, at our discretion, replace any damaged or defective Goods or make a reasonable allowance on the purchase of Goods and/or Services to replace the damaged or defective Goods or defective Services provided:

- a) you return the Goods within seven days of delivery at your cost, together with a copy of the invoice and a claim specifically identifying the damage or defect(s); and
- b) we have a reasonable opportunity to investigate the claim.

9.2 If you do not comply with the above requirements, you will be deemed to have accepted the Goods and we will not incur any liability whatsoever to you in relation to the Goods.

## **10 Credits for Returned Goods**

10.1 We may, at our discretion, give credit for returned Goods which are delivered to us within seven (7) days at your cost in the same condition and packaging in which they were dispatched, with a copy of our invoice.

## **11 Limitation of Liability**

11.1 Without restricting the limitations of liability contained elsewhere in these terms and conditions, our liability in relation to the supply of the Goods and/or Services and the Goods and/or Services themselves is limited to the purchase price of the Goods and/or amount paid or payable for the Services in respect of which such liability arises. We have no further liability or responsibility for any direct, indirect or consequential injury, loss or damage whatsoever and howsoever arising.

11.2 We are not responsible for any damage whatsoever caused either to any Goods supplied or as a result of the malfunction or failure in performance of any Goods or any Goods which we have performed Services on if:

- a) the Goods are adapted to a use for which they are not specifically intended; or
- b) the Goods are improperly stored and transported; or
- c) the Goods have been installed, removed, altered, repaired or otherwise worked on by unqualified trade persons or other persons or in an unprofessional manner.

## **12 Force Majeure**

12.1 We will not be in breach of these terms and conditions because of any failure on our part directly or indirectly due to wars, strikes, lockouts, delays or defaults of manufacturers or suppliers, acts of God or any other cause (whether similar or dissimilar) beyond our reasonable control.

## **13 General**

13.1 You indemnify us against any liability for any direct, indirect or consequential injury, loss or damage arising out of any act, default or omission of, or any representation made by, you or your servants or agents.

13.2 If any of these terms or conditions is held by a Court to be ineffective because of non-registration, illegality or any other reason, then that term or condition or part of it will be severed from all other terms and conditions without affecting the validity or enforceability of all other terms and conditions or part of them.

13.3 No waiver by us of any term or condition will constitute a waiver of any other of these terms and conditions.

13.4 We may vary these terms and conditions at any time by notice in writing to you. You may not vary these terms and conditions unless we agree in writing.

## **14 Interpretation**

14.1 Where used in this Agreement the following terms have the following meanings:

**%Goods+** means timber products, roundwood products, bollard accessories, gate hardware and fencing.

**%Services+** means all work, labour or Services performed by Beams & Timber Direct Limited for the Applicant or on the Applicants behalf.

**%PPSA+** means the Personal Property Securities Act 1999 as amended from time to time; and terms defined in the PPSA shall have the same meaning if used in this Agreement.