

# TIMBER FRAME SERVICES LTD.

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## TERMS AND CONDITIONS OF SALE

### 1. DEFINITIONS

- 1.1 "Seller" shall mean TIMBER FRAME SERVICES LTD. of or whose registered office is situated at UNIT D9, WEM IND. EST.
- 1.2 "Purchaser" shall mean person, organisation or entity ordering goods and/or services either verbally or written.
- 1.3 "Goods" shall mean the goods set out in the contract documents (quotation and quotation variations) to these terms and conditions.
- 1.4 "Services" shall mean the services set out in the contract documents to these terms and conditions.
- 1.5 "Premises" shall mean either the Seller's premises or the Purchaser's premises or where the context or agreement so requires a site designated by the Purchaser.
- 1.6 "Contract Price" shall mean the price of the Goods and Services set out in the contract documents to these terms and conditions.

### SCOPE

- 2.1 The Seller shall sell and the Purchaser shall purchase the Goods and/or Services set out in the contract in accordance with any written quotation of the Seller which is accepted by the Purchaser, or by any written order of the Purchaser which is accepted by the Seller, subject in either case to these conditions which shall govern the contract between the parties.
- 2.2 No variation to these conditions shall be binding unless agreed in writing between the authorised representatives of the Seller and Purchaser.
- 2.3 The Seller's employees or agents are not authorised to make any representations concerning the Goods and/or Services unless confirmed by the Seller in writing. In entering into the Contract the Purchaser acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.
- 2.4 Any advice or recommendation given by the Seller or its employees or agents to the Purchaser or its employees or agents as to the storage, application or use of the Goods and/or Services which is not confirmed in writing by the Seller is followed or acted upon entirely at the Purchaser's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.

## ORDERS

- 3.1 Any description of the Goods and/or Services has been given by way of identification only and the use of such description shall not constitute a sale by description.
- 3.2 No order submitted by the Purchaser shall be deemed to be acceptable by the Seller unless and until confirmed in writing by the Seller.
- 3.3 The Purchaser shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification and all necessary measurements and dimensions) submitted by the Purchaser, and for giving the Seller any necessary information relating to the Goods and/or Services in such time that will enable the Seller to perform the Contract in accordance with the terms and conditions.
- 3.4 The quantity and quality and any specification for the Goods and/or Services shall be those set out in the Seller's quotation (if accepted by the Purchaser) or the Purchaser's order (if accepted by the Seller).
- 3.5 The Seller reserves the right to make any changes in the specification of the Goods or, where applicable, the design of the Goods which are required to conform with any applicable safety or other statutory requirement or, where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance.

### 4. PAYMENT

- 4.1 The Seller shall be entitled to invoice the Purchaser for the price of the Goods and /or Services on or at any time after the date for delivery of the Goods or the date for collection of the Goods and/or the performance of the Services.
- 4.2 The Purchaser shall pay the price of the Goods and/or Services within 30 days of the date of the Seller's invoice notwithstanding that delivery or collection of the Goods may not have taken place or the Services provided or that property in any Goods has not passed to the Purchaser. This applies to credit account customers only. Non-Account customers will be invoiced pro-forma.
- 4.3 Payment shall become due immediately whether or not an invoice has been issued upon the commencement of any act or proceeding in which the Purchaser's solvency is involved.
- 4.4 If the Purchaser fails to make any payment on the due date then without prejudice to any other rights or remedies available to the Seller the Seller shall be entitled to:
- cancel the contract or suspend any further deliveries to the Purchaser or collections by the Purchaser or the provision of Services under the Contract; and/or
  - charge the Purchaser interest (both before and after any judgement) on the amount unpaid at the rate of 4% above the prevailing bank base rate until payment in full is made.
- 4.5 The Contract sum is exclusive of V.A.T. and, where appropriate, the Purchaser shall pay to the Seller Value Added Tax at the rate applicable.
- 4.6 The seller may at his discretion withhold the issue of structural proof calculations until payment is made in full.

### 5. DELIVERY, COLLECTION OR PERFORMANCE & SHORTAGES

- 5.1 The Seller shall deliver the Goods to the Purchaser's premises or the Purchaser shall collect the Goods from the Seller's premises and/or perform the Services, whichever is applicable, on or by the date or dates mutually agreed by both parties. By agreement between the parties the Seller may deliver the Goods and/or perform the Services or the Purchaser may collect the Goods at a time earlier than that set out in the contract documents or as agreed.
- 5.2 The date of delivery and/or performance and/or collection shall be subject to extension as provided for in Clause 8 below.

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5.3 Where the Seller is to deliver Goods delivery will be to as near to the place where the Purchaser requires delivery to be made as, in the absolute discretion of the Seller, a safe, hard road permits.

5.4 The Purchaser shall be solely responsible for the unloading of the Goods if the Seller has delivered the Goods or for the loading of the Goods if the Purchaser is collecting the Goods and the Seller shall not be liable for any damage that occurs in the course of such loading or unloading.

5.5 In the event that such loading or unloading exceeds a period of 2 hours then demurrage will be charged at the Seller's current rates in force at the time of such loading or unloading.

5.6 If the Purchaser fails to collect 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 Purchaser'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 make provision for the storage of the Goods until actual recovery and the Purchaser shall be responsible and shall indemnify the Seller for the reasonable costs, including insurance, of such storage.

5.7 Shortages should be notified to the company as soon as possible but within five working days of delivery. No liability will be accepted by the Seller for shortages reported after this time.

## 6. DESIGN RESPONSIBILITY

6.1 The Seller shall not be responsible for the design of the Goods unless and to the extent that design responsibility is expressly set out in the contract.

6.2 The Purchaser shall disclose in writing to the Seller all details and information regarding abnormal or usual site conditions or requirements.

6.3 Where the Seller manufactures to a design specified by or selected by the Purchaser the Seller shall not be responsible for the design of any Goods but shall be responsible solely for the manufacture of any Goods and the carrying out of any Services specified in the contract.

## 7. RISK AND PROPERTY

7.1 Risk of damage to or loss of the Goods shall pass to the Purchaser as follows:-

- i. In the case of Goods to be delivered to the Purchaser's premises at the time when the Goods are actually delivered to the Purchaser's premises but excluding the unloading of the Goods;
- ii. In the case of Goods to be collected from the Seller's premises at the time the Purchaser arrives at the Seller's premises to collect the Goods or the date of delivery whichever is earlier.

7.2 Notwithstanding any delivery of the Goods and the passing of risk in the Goods and/or the performance of the Services or any other provision of these Conditions the property in the Goods and/or Services shall not pass to the Purchaser until the Seller has received payment in full for the Goods and/or Services in accordance with the terms of this Contract. Such payment shall be in cash or cleared funds.

7.3 If such payment is over-due in whole or in part the Seller may, without prejudice to any other rights and remedies, recover and/or sell the Goods and/or Services or any part thereof and enter upon the Purchaser's premises or site for that purpose.

7.4 Until such time as the property in the Goods and/or Services passes to the Purchaser the Purchaser shall hold the Goods and/or Services as the Seller's fiduciary agent and shall keep the Goods and/or Services separate from those of the Purchaser and third parties and properly stored, protected and insured.

## 8. DELAYS

8.1 The Seller shall not be liable to the Purchaser 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 and/or Services 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:

- i. Act of God, explosion, flood, tempest, fire or accident.
- ii. War or threat of war, sabotage, insurrection, civil disturbance or requisition.
- iii. Acts, restrictions, regulations, by-laws, prohibitions or measures of any kind on the part of the government or local authority.
- iv. Import or export regulations or embargo.
- v. Strikes, lock-outs or other industrial actions of trade disputes whether involving employees of the Seller or a third party.
- vi. Difficulties in obtaining materials, labour, fuel, parts of machinery.
- vii. Power, failure or breakdown of machinery.
- viii. Failure by the Purchaser to provide necessary information, specification, measurements or dimensions or approval of dimensions to the Seller.
- ix. Failure on the part of the Purchaser to permit delivery of the Goods and/or to allow uninterrupted progress of the Services.
- xi. Delay caused by inspections and/or instructions to open up work.
- xii. Delays caused by mis-handling, mis-use or poor storage of Goods or other materials by the Purchaser or third parties.
- xiii. Variations agreed between the Parties under Clause 2.2 hereof.
- xiv. Inclement weather.
- xv. Failure on the part of the Purchaser to collect the Goods.

8.2 Should completion of the Contract be delayed through no fault of the Seller and the Seller incurs any loss or damage as a result of such delay then the Purchaser shall pay the Seller within 30 days of receipt of an invoice such loss or damage as is incurred by the Seller.

## 9. WARRANTY

9.1 The warranties set out in this Clause on the part of the Seller are in lieu of any other responsibilities, representations, warranties, conditions or terms expressed or implied made at any time whether by previous agreement, statute, common law or otherwise.

9.2 The Seller warrants that the Goods specified in the contract will at the time of delivery or collection be free from defects outside the limits of current standards in material and workmanship and that any services specified in the contract will have been carried out with reasonable skill and care save that this warranty shall not extend to parts, materials or equipment not manufactured by the Seller in respect of which the Purchaser shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller.

9.3 In the event of any defect in the Goods and/or Services for which the Seller is expressly made liable in these conditions the Seller:

I shall upon receipt of written notice from the Purchaser within 6 months of delivery or collection of the Goods make good the defect or defects in the Goods at the Seller's expense by repair, modification, or replacement at the Seller's discretion.

ii shall upon receipt of written notice from the Purchaser within 1 month of completion of the Services re-perform the Services in satisfaction of the Seller's liability for the said defect(s).

9.4 Notwithstanding the above the Seller will not be responsible to make good damage caused by mis-use or poor storage and handling and the Seller will not be responsible for corrosion, erosion and normal wear and tear.

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9.5 Except as may be expressly provided in this Contract neither the Seller nor the Purchaser shall be liable to other by way of indemnity or by reason of any breach of the Contract or a statutory duty or by reason of tort for any loss of profit, loss of use, loss of production, loss of contracts or for any financial or economic loss or for any indirect or consequential damage whatsoever that may be suffered by the other.

9.6 In no circumstances whatsoever shall the liability of the Seller to the Purchaser under this contract for any one act or default exceed the contract price.

9.7 The Seller and Purchaser intend that their respective rights, obligations and liabilities as provided for in these conditions shall be exhaustive of the rights, obligations and liabilities of each of them to the other whether such rights, obligations and liabilities arise in respect or in consequence of a breach of contract or of statutory duties or a tortious or negligent act or omission which gives rise to a remedy at common law. Accordingly, except as expressly provided for in these conditions, neither party shall be obligated or liable to the other in respect of any damages or losses suffered by the other which arise out of, under or in connection with the Contract whether by reason or in consequence of any breach of Contract or of statutory duty or tortious or negligent act or omission.

## 10. RETURN OF GOODS

10.1 The Seller will not accept the return of any Goods supplied in accordance with the Contract except by written agreement and the Seller accepts no liability whatsoever for Goods returned in any other circumstances.

Goods shall be deemed to be delivered as satisfactorily and undamaged unless at the time of delivery such damage is not obvious on reasonable examination or the Purchaser either:-

- i) Return the Goods to the company by the vehicle making the delivery.
- ii) Give notice in writing to the company within five days of delivery and if required by the Purchaser return the Goods to the company.

## 11. PERMITS, LICENCES AND CONSENTS

11.1 The Purchaser is fully and solely responsible for attaining and complying with all required local government and other permits, licenses and/or consents of any nature howsoever arising or required.

## 12 ASSIGNMENT

12.1 Neither party to the Contract shall assign this Contract or any of the rights or duties or obligations without the written consent of the other Party.

## 13. ARBITRATION

13.1 If any dispute or difference as to the construction of this Contract or any matter or thing of whatsoever nature arising there under or in connection therewith shall arise between the Purchaser and the Seller which is incapable of agreement then such dispute or difference is hereby referred to the Arbitration and final decision of a person to be agreed between the parties to act as Arbitrator, or failing agreement within 14 days after either has given to the other a written request to concur in the appoint of an Arbitrator, a person to be appointed on the request of either Party by the President or Vice-President for the time being of the Chartered Institute of Arbitrators.

## 14 APPLICABLE LAW

14.1 This Contract shall be governed by the laws of England and Wales.