

# TERMS AND CONDITIONS OF TRADE BUILDLINK MEMBER AND BUILDING SUPPLIERS

## 1. DEFINITIONS

- 1.1 "we", "us" and "our" shall mean and refer to BUILDLINK Member and Building Suppliers Limited, or any agents or employees thereof.
- 1.2 "you" and "your" shall mean the customer, any person acting on behalf of and with the authority of the customer, or any person purchasing Goods from us.
- 1.3 "Goods" shall mean all timber and building products or services, provided by us to you.
- 1.4 "Price" shall mean the cost of the Goods or such as agreed between us and you subject to clause 4 of this contract.

## 2. ACCEPTANCE

- 2.1 Any instructions received by us from you for the supply of Goods shall constitute acceptance if the terms and conditions contained herein. These terms and conditions shall apply to future orders you make with us and any terms or conditions to the contrary of these terms and conditions shall not apply.
- 2.2 None of our agents or representatives are authorized to make any representations, statements, conditions or agreements not expressed by us in writing nor are we in any way bound by any such unauthorized statements.

## 3. COLLECTION AND USE OF INFORMATION

- 3.1 You authorize us to collect, retain and use any information about you, or for the purpose of assessing your credit worthiness, enforcing any rights under this contract, or marketing any Goods and services provided by us to any other party.
- 3.2 You authorize us to disclose any information obtained to any person for the purposes set out in clause 3.1.
- 3.3 Where you are a natural person the authorities under clauses 3.1 and 3.2 are authorities or consents for the purposes of the Privacy Act 1993.

## 4. PRICE

- 4.1 All prices are exclusive of GST, freight costs, installation and any other applicable taxes and duties unless otherwise stated in writing and may be subject to increase due to exchange rate fluctuations and such items and increases are payable in addition to the price.
- 4.2 Where no price is stated in writing or agreed to orally the Goods shall be deemed to be sold at the current amount as such Goods are sold by us at the time of the contract.
- 4.3 The price may be increased by the amount of any reasonable increase in the cost of supply of the Goods that is beyond the control of us between the date of the contract and the delivery of the Goods.
- 4.4 Where there are any variations to the specification or quantities of any order placed by the customer made by either us or you, you agree to pay and increase in the price as a result of such variation (s).

## 5. PAYMENT

- 5.1 You agree to pay us in full without deduction or set-off prior to delivery being made time for payment being of the essence. All accounts are payable by the 20th of the month following delivery. When any payments due from you is not made or where you fail to observe or perform any other term of this agreement, we will be entitled to seek liquidated damages from you and in addition and without prejudice to any of our other rights, we may:
  - (a) Cancel the contract and any other agreements that exist with you whether or not they have been partly met or not as the case may be;
  - (b) Cancel or close any account that you may have with us;
  - (c) Charge interest on any amount owing after the due date to the date of payment at the rate of 2% per month or part thereof above the overdraft rate charged by our bankers any such interest to continue to accrue notwithstanding any judgment or arbitrator's award;
  - (d) Recover any expenses, disbursements and costs not limited to but including costs on entry and repossession of Goods incurred by us in the enforcement of any rights contained in this contract including legal costs on a solicitor and client basis and debt collection agency fees;
  - (e) Recover any Goods where title has not passed to you;
  - (f) Withdraw any discount against trade list prices or otherwise agreed to be provided.
- 5.2 Receipt of a cheque, bill of exchange or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full

## 6. QUOTATION

- 6.1 Where a quotation is given by us it:
  - 6.1.1 is valid for 30 days from the date of issue; and
  - 6.1.2 shall be exclusive of Goods and Services Tax unless specifically stated to the contrary;
  - 6.1.3 is based on the rates and costs as at the date of quotation of materials, transport, labour, customs duty, insurance and other rates and charges and shall be increased or decreased by the amount of any increase or decrease in any such items or any other factors affecting the cost of production and/or delivery and/or installation due to circumstances beyond our control after the date of quotation;
  - 6.1.4 unless measured by us sizes, weights, dimensions or capacities are based upon the specification supplied by you and additional costs arising from any inaccuracy of such specification shall be payable by you
  - 6.1.5 may be revised or withdrawn at any time prior to written acceptance based on it;
  - 6.1.6 shall be subject to correction or clerical errors or omissions whether in computation or otherwise.
- 6.2 Where Goods are required in addition to the quotation the customer agrees to pay for the additional cost of such Goods

## 7. TITLE

- 7.1 Except as expressly provided in this clause, all Goods supplied by us to you shall remain our property and you will not acquire title to the Goods until you have
  - a) Paid all sums due to us from you in respect of all orders placed by you.
  - b) Met all other obligations that are due from you to us
- 7.2 You shall not deal with the Goods in a manner inconsistent with this clause and this agreement and without limiting the generality of the foregoing, you shall;
  - a) Not pledge, charge, sell, or purport to pledge, charge or sell any and all Goods which remain in our property;
  - b) if required by us, forthwith disclose the names and addresses of all persons, corporations, organizations, or other bodies holding charges or purporting to hold charges over your property and you further agree that we may advise any such persons, corporations, organizations, or other bodies of this agreement and you agree that you shall have no claim or action against us whatsoever for any loss including financial or economic loss that may result, whether direct or indirect as a result of the action that we may take under this clause;
  - c) If required by us, display and clearly label Goods in respect of which we still retain title over and take all and any necessary steps to ensure that other parties are aware that any such Goods do not belong to you;
- 7.3 We shall be entitled to use those Goods in respect of which we have retained title for the purposes of your business including processing and amalgamation of Goods not supplied by us (hereinafter "the processed Goods"). In such an event;
  - a) Our ownership rights over our Goods in respect of which we have retained title shall automatically transfer into part ownership of the processed Goods; and
  - b) our part ownership of the processed Goods shall be a share equal to the proportion that the invoiced value of our Goods used in such processing bears to the total invoiced value of all Goods employed plus your direct costs of processing. If any dispute arises as to the amount of our share as specified above, the matter shall be determined by a chartered accountant who shall act as sole arbitrator in terms of the arbitration act 1996 and where the parties cannot agree on which accountant shall be appointed
  - c) our part ownership in such cases will be absolute and will not be by way of a charge.
- 7.4 Unless clause 7.5 and 7.6 apply, you shall have the right to sell Goods in respect of which we have retained title to subject to the following;
  - a) Your rights of sale will only apply to bona fide sales in your ordinary course of business;
  - b) You are empowered to pass title for and on behalf of us when you have complied with the obligation in clause 7.1 above or where we give you written consent to do so or where you have complied with the requirement in subclause (e) below;
  - c) Any such sale by you shall be on behalf of both you and us to the extent of our respective interests in the Goods so sold with those respective interests determined in accordance with this agreement;
  - d) In the event of sale of processed Goods, our share of the proceeds will be in the same proportion as our ownership of the Goods.
  - e) The total proceeds of all Goods in respect of which we have retained title but which are sold by the customer in accordance with the terms herein shall be our property and;
    - 1) you shall be liable to account to us for the entire proceeds of any such sales; and
    - 2) you shall hold all the proceeds of such sales in a separate account in trust for us whether we have granted you time to make payment for any Goods sold by us to you; and
    - 3) you shall pay to us the total proceeds of sale without deduction or set off.
  - f) Until you comply with clause 7.1 (or where we give you written consent pursuant to clause 6.4(e), all and any rights you may have against the purchaser of the Goods



sold by you in respect of which we have retained title shall automatically be assigned to us to the extent necessary to realize all and any claims that we may have against you. You also agree to do all things necessary to join any such purchaser in any legal proceedings with or on behalf of us to give effect to such assignment.

7.5 Any and all rights you may have arising from the effect of clauses 7.3 and 7.4 above shall cease forthwith without further notice to you should any of the following occur whether we have received notice or not;

- a) Any event that would entitle any debenture holder to put you (if you are a company) into receivership;
- b) The appointment of a receiver by you or any creditor or shareholder;
- c) Service of a statutory demand pursuant to the Companies Act 1993 by any creditor;
- d) Any Event that would entitle a creditor to petition for your bankruptcy or if you are a company, to commence proceedings and obtain an order for your winding up;
- e) A resolution by your shareholders or directors for your winding up (except where the purpose of the resolution is to enable legitimate restructuring and the continuance of business);
- f) Entering into or negotiating and compromise, scheme or factoring agreement between you and any of your creditors (including requests for forbearance or extensions of time for any reason).

7.6 Should any of the events in clauses 7.5 occur, we will be entitled forthwith to cancel any rights you may have under clauses 7.3 and 7.4 should you fail to comply with any of the terms and conditions of this agreement whether it relates to a particular order or not where we to receive information that indicates to us that there is uncertainty as to your financial commitments.

7.7 Should any of the events in clauses 7.5 above occur, we will without prejudice to any other rights herein further be entitled to

- a) Enter on to your premises at any time and if necessary use reasonable force and recover possession of or impound all and any Goods in respect of which we have retained title, including and not limited to any processed Goods either by removing the Goods from your control or from your premises or by impounding the Goods in any premises occupied by you or under your control;
- b) Be indemnified by you against all loss, injury or damage that may result whether it be direct or indirect including financial loss as a result of and action taken pursuant to subclause a) above;
- c) Employ and keep employed any persons to enter and remain on the premises occupied or controlled by you for the purpose of exercising any of the rights herein;
- d) Give notice to any third party of our rights and remedies herein and exercise thereof and further be entitled to be indemnified by you against all loss, injury or damage that may result whether it be direct or indirect including financial loss as a result of and action taken pursuant to this subclause as a consequence of any such notice;

7.8 Upon termination of your rights under clauses 7.5 and 7.6 herein, or pursuant to any other right we may have, and without prejudice to any other rights we may have, you agree that we have the power to sell all and any Goods full or partly owned by us in which case the following will apply;

- a) In the case of the sale of unprocessed Goods by us in respect of which we have retained title, we shall be entitled to retain the entire proceeds of sale to those Goods and you agree that we shall be under no obligation whatsoever to set off, account for or disclose any details of or the proceeds of any such sale except where the proceeds of any such sale exceed the total debt and all outstanding obligations due to us from you.
- b) In the case of the sale of processed Goods, we are entitled to sell any such processed Goods and we will account for your share of the proceeds where the proceeds exceed all the sums due for all and any Goods to us and all and any outstanding obligation due to us from you.

#### 8. PERSONAL PROPERTY SECURITIES ACT 1999

8.1 You must do all such things and execute or arrange for execution of all such documents as we may require to ensure that we have under the Personal Properties Securities Act 1999 ("PPSA") a perfected first ranking security interest(s) in the Goods.

8.2 You will indemnify us for any costs we incur in registering a financing statement or financing change statement, responding to a change demand, or enforcing a security interest under the PPSA.

8.3 You waive your right to receive a copy of any verification statements under the PPSA and agree that as between us and you, you will have no rights under (or by reference to)

8.4 Immediately upon request by us, you must (at your cost) procure from any person considered by us to be relevant to our security position such agreements and waivers as we may at any time require.

8.5 You will immediately notify us of any change in your name.

#### 9. RETURN OF GOODS

9.1 Goods procured to special order are not returnable under any circumstances and in respect of all Goods you shall be deemed to have accepted the Goods unless you notify us of any discrepancy in your order within 24 hours of delivery of the Goods to you. In the event of such notification you shall pay for the delivery of the returned Goods to us and you shall be entitled to a credit for the price of any such Goods less a deduction for our restocking fees.

#### 10. CLAIMS

10.1 Claims must be advised in writing within 7 days of the receipt of the Goods by you and an opportunity given to us to investigate any such claims.

10.2 Provided you are not in breach of your obligations to us we will remedy within a reasonable time any defects arising from faulty workmanship or materials at our sole option by either repairing or replacing the product or resupplying the service or if it cannot be remedied we will refund you the price paid.

10.3 Except as otherwise provided by this contract or by statute we shall not be liable for

10.3.1 Any loss or damage of any kind whatsoever whether suffered or incurred by you or another person whether such loss or damage arises directly or indirectly from Goods or services or advice provided by us to you and without limiting the generality of the foregoing of this clause we shall not be liable for any consequential loss or damage of any kind including without limitation of any financial loss; and

10.3.2 for any loss, damage, or injury beyond the value of the Goods provided by us to you in contract, or in tort, or otherwise; and

10.4 You shall indemnify us for any claims by consumers against us under the Consumers Guarantees Act 1993 or otherwise.

#### 11. CONSUMERS GUARANTEES ACT

11.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where you acquire Goods or services from us for the purposes of a business in terms of section 2 and 43 of that Act.

#### 12. WARRANTY

No representation, condition, warranty or premise expressed or implied by law or otherwise applies to goods except where Goods are supplied pursuant to the Consumers Guarantees Act 1993 or except where expressly stated in this contract.

We do not provide any warranty that the Goods are fit and suitable for the purpose for which they are required by the customer and shall not be liable if they are not.

#### 13. RISK

13.1 The Goods remain at our risk until the delivery to you, but when the title passes to you pursuant to clause 7 of this contract the Goods are at your risk whether delivery has been made or not.

13.2 Deliver shall be made at the place indicated by you and if no place shall be indicated then delivery shall be made at your premises. If you fail or refuse to take or accept delivery then the goods shall be deemed to be delivered when we were willing to deliver them or when 14 days have elapsed after the date of notification that the Goods are ready for dispatch in accordance with this contract.

13.3 The time agreed for delivery shall not be essential term of this contract unless you give written notice to us making time of the essence.

13.4 Where we deliver Goods to you by installments and we fail to deliver one or more installments you shall not have the right to repudiate the contract but shall have the right to claim compensation as a severable breach.

#### 14. MISCELLANEOUS

14.1 You shall not assign all or any of its rights or obligations under this contract without the written consent of us.

14.2 We shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.

14.3 Failure by us to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations we have under this contract.

14.4 The law of New Zealand shall apply to this contract except to the extent expressly negated or varied by this contract.

14.5 Where the terms of this contract are at variance with the order or instruction from you, this contract shall prevail.

14.6 If you are a company or trust, the director(s) or trustee(s) signing this contract jointly and severally guarantee to us the payment of the balance of your credit facility from time to time, and the payment of any and all other monies now and hereafter owed by you to us. Any personal guarantee made by any party shall not exclude you in any way whatsoever from the liabilities and obligations contained in this contract. The Guarantors and customers shall be jointly and severally liable under the terms and conditions of this contract.

14.7 If any provision of this contract shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

14.8 Any dispute or difference between us and you arising under or connected with the Goods of this contract shall be settled by Arbitration as provided in the Arbitration Act 1996 or any amendments thereto.

14.9 We shall not be liable to you for any delay or failure to perform our obligations due to a matter beyond our control.