

Total Commodities Ltd

Standard Terms and Conditions

1. DEFINITIONS AND INTERPRETATION

- 1.1 In these Terms and Conditions the following expressions have the following meanings:
Seller: Total Commodities Ltd, Devonshire House, 562 Honeyput lane, Stanmore, HA7 1US
Buyer: the person who buys or agrees to buy the goods from the Seller.
Terms and Conditions: the terms and conditions of sale set out in this document and any special terms and conditions agreed in writing by the Seller;
Delivery Date: the date specified by the Seller when the Goods are to be delivered;
Goods: the articles which the Buyer agrees to buy from the Seller;
Price: the price for the Goods excluding carriage, packing, insurance and VAT;
Contract: any contract for the manufacture, modification and sale of Goods from the Seller to the Buyer;
Sales Order: specification of the Goods ordered by the Buyer.
- 1.2 In these Terms and Conditions:
1.2.1 any reference to persons include references to firms, corporations or unincorporated associations;
1.2.2 if the Buyer consists of two or more persons all agreements, warranties, representations, indemnities, covenants or undertakings are deemed to be given by the Buyer jointly and severally;
1.2.3 references to clauses and sub-clauses are to the clauses and sub-clauses of the Terms and Conditions;
1.2.4 any reference to any statute shall be construed as a reference to that statute as amended, re-enacted or extended at the relevant time.

2. APPLICATION AND ALTERATION

- 2.1 These Terms and Conditions shall apply to all Contracts for the sale of Goods by the Seller to the Buyer to the exclusion of all other terms and conditions including any terms or conditions which the Buyer may purport to apply under any purchase order, confirmation of order or similar document.
2.2 All orders for Goods shall be deemed to be an offer by the Buyer to purchase Goods pursuant to these Terms and Conditions and acceptance of the same shall take place on the issue of the Sales Order. Any acceptance by the Seller is conditional on the approval of the relevant authorities in the country of manufacture and/or sale.
2.3 Acceptance of delivery of the Goods shall be deemed conclusive evidence of the Buyer's acceptance of these Terms and Conditions.
2.4 Any variation to these Terms and Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Seller.

3. THE GOODS

- 3.1 The Seller warrants that the Goods shall conform to the specifications stated in the Sale Order or invoice, subject to variations in solid wood products, paper, pulp, paperboard and colour within industry standards and shall be substantially equivalent in quality to comparable goods supplied by the Seller from the producing mill.
3.2 The Buyer agrees to accept delivery and pay for the Goods described in the Sales Order unless the Buyer gives the Seller written notice of any correction which it wishes to make to such Acknowledgement within 10 days of the Buyer's receipt of such Acknowledgement or prior to the date of manufacture, if earlier.
3.3 Save as provided in Clause 3.2, the Buyer shall not cancel the Contract or change the Sales Order without the Seller's prior consent.
3.4 An overrun or under-run of up to 10 per cent will constitute fulfilment of an order, unless agreed otherwise by the parties in writing.
3.5 The Buyer shall satisfy itself that the Goods are suitable for any special purpose and it is not a term of the Contract that the Goods are fit for that purpose.

4. PRICE AND PAYMENT

- 4.1 The Seller agrees to sell and the Buyer agrees to buy the Goods upon the Terms and Conditions.
4.2 The Buyer agrees to pay the Seller (if appropriate) value added or other sale tax incurred by the Seller.
4.3 If the Seller incurs extra cost or suffers any loss in supplying the Goods because of a lack of or defects in the instructions given by the Buyer or any other conduct by the Buyer, the Seller may increase the price of the Goods by the amount of the extra costs or loss without affecting any other remedy the Seller may have.
4.4 If the Buyer fails to pay on the due date then the Price of all Goods invoiced or dispatched by the Seller shall immediately become due and payable (together with any value added or sales tax due thereon) and without affecting any other remedy of the Seller (and in addition to any lien to which the Seller may be entitled) the Seller may:
4.5.1 treat all Contracts made between the parties as cancelled;
4.5.2 suspend any further deliveries to the Buyer;
4.5.3 appropriate any payment made by the Buyer as it thinks fit (notwithstanding any purported appropriation by the Buyer);
4.5.4 charge the Buyer interest (both before and after judgment) on all sums due and outstanding at the rate of 3% above the base rate from time to time in force of the Seller's principal bankers;
4.5.5 be entitled to a general lien on the Goods and all the Buyer's Goods in the Seller's possession (although payment may have been made for such goods and some of them) for the unpaid price of the Goods or any other goods sold and delivered to the Buyer.
4.6 The Buyer is not entitled by reason of any dispute relating to the Goods to withhold payment of any amount due to the Seller or to set-off against any such amount or payment any counter-claim (whether liquidated or unliquidated) for any sum or sums for which the Seller does not admit liability.
4.6 The Buyer warrants to the Seller that it is able to pay its debts, as and when they become due, as at the date of its order for the Goods. The Seller reserves the right to refuse to execute or perform or proceed further with the execution or performance of any order or Contract if the Buyer's arrangements for payment or credit appear to be or become unsatisfactory and the Buyer shall fail to provide the Seller with any security or cash payment for the Goods demanded by the Seller at its sole discretion.

5. DELIVERY AND ACCEPTANCE OF THE GOODS

- 5.1 Delivery of the Goods shall be made to the Buyer's address (as referred to in the Sales Order. Any date specified by the Seller for the delivery of the Goods is intended to be an estimate and time for delivery shall not be made of the essence by notice. The Goods may be delivered in advance of the Delivery Date upon the giving of reasonable notice to the Buyer. The Buyer shall make all arrangements to take delivery of the Goods whenever they are tendered for delivery.
5.2 If the Seller is prevented, hindered or delayed from manufacturing or delivering the Goods by reason of any Act of God, fire, flood, war, hostilities, civil disturbance, governmental restriction or regulation of any kind, strikes or industrial disputes, sub-contractor's default, equipment failure or shortage, inability to obtain materials, fuel, equipment, labour or transportation or 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:
5.2.1 cancelling the Seller's outstanding obligations to deliver Goods under the Contract; or
5.2.2 extending the time for delivery by such period as the Seller may reasonably require.
5.3 The Seller will not be liable to the Buyer for any damage or loss of whatsoever nature, whether direct or indirect, as a result of giving a notice under clause 5.2.1.
5.4 The Seller will not be liable to the Buyer for any late delivery as a result of giving notice under clause 5.2.2.
5.5 Clauses 5.2 to 5.4 are without prejudice to the Buyer's right to recover the price of any Goods that have already been invoiced to the Buyer or in respect of which the risk has passed to the Buyer.
5.6 If the Seller fails to make due delivery or makes late or short delivery of the Goods or any part thereof for any cause not set out in clause 5.2 above, the Seller's liability 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 a sum which equals the price of that part of the Goods in respect of which default has been made.
5.7 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (or any date for delivery as extended under sub-clause 5.2.2):
5.7.1 the Price of the Goods becomes due and payable and risk in the Goods shall pass to the Buyer;
5.7.2 the Seller shall be entitled to treat such failure as a repudiation of every contract made between the parties;
5.7.3 the Buyer shall be liable to the Seller for all loss and damage caused by such failure and without affecting such rights the Seller may choose to store the Goods until actual delivery and charge to the Buyer the reasonable costs (including insurance) of storage.

6. RISK AND TITLE

- 6.1 Title to the Goods will pass to the Buyer on the Seller receiving unconditional payment in full and in cash or cleared funds for the Goods and all other sums which are or which become due to the Seller from the Buyer on any account.
6.2 Risk will pass to the Buyer on the Delivery Date, or, if the Buyer wrongfully fails to take delivery, when the Seller tenders delivery of the Goods.
6.3 Until such time as ownership and title to the Goods pass to the Buyer, in accordance with clause 6.1, the Buyer shall:
6.3.1 hold the Goods on a fiduciary basis as bailee for the Seller;
6.3.2 without prejudice to the foregoing, keep and store the Goods (at no cost to the Seller) as separate from those of the Buyer and third parties and properly packaged, stored, protected and insured and identified as the Seller's property.
6.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
6.3.4 maintain the Goods in satisfactory condition and keep them insured at all times for their full price against all risks to the reasonable satisfaction of the Seller. (On request, the Buyer shall produce a copy of the policy of insurance to the Seller).
6.4 The Buyer may resell the Goods before ownership passes to it solely on the following conditions:
6.4.1 any sale must be effected in the ordinary course of the Buyer's business at full market value;
6.4.2 any such sale shall be a sale of the Seller's property on the Buyer's own behalf and the Buyer shall deal as a principal when making such a sale.
6.5 The Buyer's right to possession of the Goods shall terminate immediately if:
6.5.1 the Buyer 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
6.5.2 the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Seller and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or
6.5.3 The Buyer encumbers or in any way charges any of the Goods.
6.6 The Seller shall be entitled to recover the price of any Goods or Services notwithstanding that property in the Goods has not passed from the Seller.
6.7 The Buyer grants the Seller, 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 The Buyer shall not pledge the Goods and will keep the Goods free from and will indemnify the Seller against any charge, lien, or other encumbrance thereon.

7. WARRANTIES AND LIABILITY

- 7.1 Without prejudice to the effect or operation of any other of these Terms and Conditions the Seller's aggregate liability to the Buyer for any loss or damage of whatsoever nature arising out of any breach of this Contract or the Seller's negligence, breach of statutory duty or otherwise shall be limited to and shall not exceed a sum equal to the total Price of the Goods.
7.2 Save as expressly provided in the Terms and Conditions, all warranties, conditions or terms relating to fitness for purpose, quality or condition of the Goods, whether express or implied by statute or common law or otherwise, are excluded to the fullest extent permitted by law.

7.3 The Seller shall not be liable to the Buyer in contract, tort or otherwise, for the cost of any labour or machine time or for any loss of profit, loss of business or depletion of goodwill, and in each case, whether direct, indirect or consequential, whatsoever and howsoever caused which arise out of or in connection with the Contract.

7.4 The Seller shall not be responsible for any actions taken or fines or penalties assessed by any governmental agency against shipment of the Goods because of the failure of the Buyer to comply with any relevant laws or regulations or with a notification issued to the Buyer by any such governmental agency.

7.5 Nothing in this clause shall operate to restrict or exclude the Seller's liability for any matter which it would be illegal to restrict or exclude or attempt to restrict or exclude.

8. DEFECTIVE GOODS

- 8.1 The Seller is deemed to have waived its claim for shortages or defects in quality and the Seller shall have no liability in respect of the same unless the Seller has been given written notice of such shortage or defect within 15 days of the date of receipt of the Goods by the Buyer.
8.2 The Seller shall, at its option, repair, replace or refund the Price of any Goods which the Seller is satisfied were defective in material or workmanship at the time of delivery provided that:
8.2.1 written notice has been given to the Seller within 15 days of the date of receipt of the Goods by the Buyer;
8.2.2 the Goods have not been used, processed, sold, transferred or otherwise disposed of by the Buyer;
8.2.3 any defect has not arisen because of the Buyer's failure to follow the Seller's instructions as to storage of the Goods;
8.2.4 the defective Goods are held by the Buyer, at its expense, for the Seller's inspection.
8.3 The Buyer shall not be entitled to cancel the Contract as a result of delivery of defective Goods.
8.4 If the Contract is for paper products supplied by the Seller in rolls the Buyer accepts that no claim may be made for any damage to the 10 outer plies of each roll which the Buyer accepts constitute the packaging of the Goods.
8.5 It shall be the Buyer's responsibility to pursue claims against the carrier when the Goods have been lost or damaged in transit.
8.6 No agent or employee of the Seller shall have authority to alter or waive any of the provisions of this clause 8 or of clause 7 above.

9. THIRD PARTY SERVICES

9.1 The Seller is authorised to engage carriers, truckmen, lightermen, forwarders, customhouse brokers, agents, warehousemen and others, as required, to transport, store, deal with and deliver the Goods. The Goods may be entrusted to such third parties subject to all conditions as to limitations of liability for loss, damage, expenses or delay and to all rules, regulations, requirements and conditions whether printed, written or stamped, appearing in bills of lading, receipts or tariffs issued by such third parties. The Seller shall under no circumstances be liable for any loss, damage, expense or delay to the Goods for any reason whatsoever when said Goods are in the custody, possession or control of such third parties. Any third party so engaged by the Seller shall be considered to be the agent of the Buyer. The Buyer shall be liable for any injury, loss or damage to any person or property caused by any such third party.

10. INDEMNITY

- 10.1 The Buyer shall indemnify the Seller against any claim of whatsoever nature by a third party against the Seller in respect of any death, injury, loss or damage to any property or person caused in any way by the negligence of or the use or possession of the Goods by the Buyer.
10.2 The indemnity contained in clause 10.1 includes costs and expenses incurred by the Seller and shall continue after the end of the Contract.

11. EXPORT TERMS

- 11.1 When Goods are supplied for export from the United Kingdom the provisions of this clause 11 shall (subject to any special terms agreed in writing between the parties) apply, notwithstanding any other provision of these Terms and Conditions.
11.2 The Buyer is responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties on them.
11.3 Unless otherwise agreed in writing between the parties the Goods shall be delivered in accordance with the provisions of Clause 5.1.

12. TAXES

Any existing or future taxes imposed in respect of the Contract or the manufacture, sale, delivery, transportation or storage of the Goods (other than income or corporation taxes imposed upon the profits of the Seller) shall be paid by the Buyer or shall be reimbursed by the Buyer to the Seller, if paid or required to be paid by the Seller. The Seller shall be entitled to cancel any order for Goods, either wholly or in part, in the event of the Buyer's failure to pay any such taxes or reimburse the Seller in respect of the same.

13. GENERAL PROVISIONS

- 13.1 Each right or remedy of the Seller under the Contract is without prejudice to any other right or remedy of the Seller whether under the Contract or not.
13.2 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.
13.3 Failure or delay by the Seller 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 unless made by the Seller in writing.
13.4 Any waiver by the Seller 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 unless made by the Seller in writing.
13.5 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.
13.6 The Seller may assign or sub-contract the Contract of any part thereof to any person or company. The Buyer may assign the Contract only if it first obtains the written consent of the Seller.
13.7 Any notice required or permitted to be given by either party under these Terms and Conditions shall be in writing and shall be delivered or sent by pre-paid post sent first class addressed to the party to be served at the address of that party [shown in the Seller's Order Acknowledgement] or such other address as may be notified by that party for this purpose. Any notice which is delivered shall be deemed to be served when handed to the addressee and any notice sent by pre-paid post first class shall be deemed to be served forty-eight hours after posting.
13.8 These Terms and Conditions and the Seller's Order Acknowledgement constitute the entire agreement between the parties and the Buyer acknowledges that in agreeing to enter into the Contract it has not relied on any representations relating to the Goods or the Contract made by any of its directors, employees or agents.
13.9 Save as expressly referred to in the Terms and Conditions, there is no right to cancel or vary any order once it has been accepted by the Seller.
13.10 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English Law and the parties submit to the exclusive jurisdiction of the English courts.