

TERMS AND CONDITIONS OF TRADE

These term and conditions of trade (**Terms and Conditions**) apply to each supply of timber and or building products and related accessories (**Goods**) and services by ITI Timspec Ltd (NZCN 326102) (**ITI**) to customers, including cash sales and supplies under an ITI Credit Application and Guarantee Form. If a related company of ITI (as defined in the Companies Act 1993) supplies Goods to the customer, these terms will also apply to that supply unless other terms are expressly agreed.

1. Trading Terms

- 1.1. These Terms and Conditions operate to the exclusion of all other terms and conditions (including any purchasing terms issued or offered by the customer). No other terms will apply unless they are agreed in writing and signed by both parties.
- 1.2. ITI may at any time change these Terms and Conditions by publishing new terms and conditions (as amended) on its website. The customer and any guarantor (as applicable) must regularly check ITI's website to stay abreast of such amendments. The new terms and conditions will apply to all orders submitted after the date of publication on ITI's website but will not affect orders submitted before that date. If the customer does not agree with any of the amendments to these Terms and Conditions, the customer must promptly notify ITI and cease ordering any Goods.
- 1.3. In the case of orders for non-standard Goods, additional conditions may also apply if notified to the customer at the time of placing the order.
- 1.4. Where any credit conditions, non-standard order conditions or other conditions agreed to in writing by ITI and the customer are inconsistent with these terms, then those specific conditions will prevail to the extent of any inconsistency.

2. Orders

- 2.1. Orders can be submitted by email, facsimile or verbally or by such other means made available by ITI from time to time.
- 2.2. Goods will be sold in standard sizes, weights and selling units as published by ITI from time to time. Where the customer requires a non-standard order: (a) the customer must make a specific arrangement with an ITI sales representative; and (b) the customer must comply with any additional conditions advised (including payment of any deposit).
- 2.3. ITI will notify the customer if it cannot fulfil an order. If ITI does not contact the customer within 10 days of the date of the customer's order, ITI is deemed to have accepted the order.
- 2.4. ITI may accept or refuse any order for Goods in its absolute discretion and may make its acceptance of an order conditional upon payment on delivery or a satisfactory credit assessment of the customer.
- 2.5. If ITI accepts an order, ITI will deliver the Goods to the customer within a reasonable time of the Goods being available for delivery (and provided that the customer has complied with its obligations under these Terms and Conditions).
- 2.6. If the customer requests, Goods will be packaged and crated, and the costs incurred in packaging and crating will be payable by the customer. No credit will be given or other

allowance will be made for return of crates or materials from which crates are manufactured.

3. Price and Payment

- 3.1. Unless otherwise agreed in writing, all prices and charges are subject to alteration without notice. Orders are accepted by ITI subject to the condition that the customer agrees to pay the prices set out in ITI's published price list current at the time the order is placed.
- 3.2. Unless otherwise stated, all prices are exclusive of GST and GST will be charged at the rate applicable on the price of the Goods as at the date of ITI's invoice.
- 3.3. Where prices in ITI's price list include delivery this shall mean delivery to a destination within the boundaries nominated by ITI and does not include any charges incurred at rail-head or wharf.
- 3.4. The customer must pay ITI for Goods by 20th day of the month following the date of invoice (or such other time agreed to in writing by ITI), without set off or deduction. Where the customer does not have a credit account, payment must be made in cash (or cleared funds) prior to despatch of the Goods.
- 3.5. The customer hereby agrees that at the absolute discretion of ITI, interest at the rate of 11% per month, calculated on a daily basis, on and from the due date for payment, may be applied to amounts not paid when due. Interest may be applied even if the customer is not notified that it is accruing. Interest is payable on demand.

4. Credit facilities

- 4.1. ITI may withdraw credit facilities to a customer at any time by giving notice to the customer.
- 4.2. ITI may from time to time require security (or additional security) to be provided by the customer or the guarantor as a condition of the continuation of credit facilities.
- 4.3. The customer, guarantor and each director or representative of the customer who has signed a Credit Application and Guarantee form (**Representative**) irrevocably authorise ITI and its agents to make such enquiries as it deems necessary to investigate the credit worthiness of the customer, guarantor and each Representative from time to time, including (but without limiting the generality of the foregoing) conducting a credit check and for this purpose requesting, collecting, retaining and using information from persons nominated as trade references, the bankers of the customer/Representative and any other credit provider, (hereinafter called the **information sources**) concerning the credit worthiness and business practices of the customer, guarantor and each Representative. The customer, guarantor and each Representative authorise

- the information sources to disclose to ITI such information concerning the customer/ Representative which is within their possession and which is requested by ITI. The customer and each Representative authorise ITI to use the credit services of credit providers and/or any similar credit reference agencies at its discretion on a continuing basis for the purposes of assessing and updating the customer/guarantor/Representative's credit worthiness and credit status. The customer, guarantor and each Representative authorise ITI to disclose any credit-related information held by it about the customer/guarantor/ Representative to credit providers and/or any similar credit reference agencies. The customer, guarantor and each Representative acknowledge that it has a right of access to personal information held by ITI and may request correction of this information.
- 4.4. The customer, guarantor and each Representative will upon written request from ITI:
- (a) provide to ITI financial information relating to them; and
 - (b) authorise its external accountants to disclose to ITI financial information relating to them, reasonably required by ITI to permit ITI to carry out an assessment of the credit worthiness of the customer, guarantor and/or each Representative. ITI shall, and shall ensure that its employees agents and advisers to whom the information is disclosed, only use the information provided by the customer, guarantor and each Representative or its accountant pursuant to this clause for the purposes of assessing the ongoing credit worthiness of the customer, guarantor and each Representative and must keep the existence and the terms of that information confidential except where:
 - (1) the information is public knowledge (but not because of a breach of this agreement); or
 - (2) disclosure is required by law or a regulatory body.
- 4.5. Should there be any variation to any of the information supplied by the customer in the Credit Application and Guarantee Form or in the structure of the Customer's business (such as a sale of the business to a new party, or change in the legal or beneficial ownership of its shares where there is a change in the effective management or control of the customer) ITI shall be notified in writing and until a new Credit Application and Guarantee Form is signed and approved in writing by ITI the original customer and those person/s who signed as guarantor/s shall remain liable to ITI as though all Goods and services were supplied to the original customer.
- 4.6. Where the customer is a trust:
- (a) the customer agrees to produce a certified true copy of the relevant trust deed (with all amendments) if and when requested by ITI and;
 - (b) the Representative(s) warrant that they have full power and authority for the benefit purposes and objects of the trust to make this application on behalf of the trust and will be bound by the terms of this application both personally and as trustee of the trust.
- 5. Delivery, Risk and Title**
- 5.1. Goods in transit are not insured by ITI unless a specific agreement to do so is made in writing. Charges for agreed insurance will be payable by the customer.
 - 5.2. Where the customer's carrier is to collect Goods from ITI's premises, if the Goods are not collected within 14 days after ITI notifies the customer of their availability, ITI may cancel the order and may charge the customer a handling charge equal to 10% of the total order price.
 - 5.3. Where Goods are consigned by rail or ship or taken by transport organised by the customer from ITI's premises, risk of damage to, or loss or deterioration of, any such Goods passes to the customer on delivery to the rail, ship or customer's carrier and obligations are complete at that stage. Any claim for loss or damage in transit should be made direct to the railway or shipping authority or the carrier concerned.
 - 5.4. Where Goods are delivered by a carrier organised by ITI, delivery is deemed to occur when the Goods are delivered to a destination agreed to by ITI and the customer, and risk of damage to, or loss or deterioration of, any such products passes to the customer at that time.
 - 5.5. All claims for credit for damaged or missing Goods, incorrect goods and overcharges must be made in writing within seven days of date of delivery and must quote the date and invoice number on which the relevant Goods were purchased.
 - 5.6. The customer must insure the Goods from when risk passes to the customer. The customer must insure the Goods for their full value and ensure that ITI's interest is noted on the policy. ITI may require the customer to demonstrate compliance with this clause including by producing a copy of the insurance policy or certificate of currency in relation to the same.
 - 5.7. Title to the Goods (i.e. legal and beneficial ownership) remains with ITI until all amounts due in respect of those Goods have been paid to ITI in cleared funds. This applies even if the customer installs the Goods or co-mingles the Goods with other goods.
 - 5.8. Except to the extent agreed to in writing by ITI, the customer must hold the Goods as ITI's fiduciary bailee and must keep the Goods physically separate from its own goods and from all other goods purchased by the customer from other suppliers, until such time as all amounts owing in respect of the Goods have been paid to ITI in cleared funds.
 - 5.9. The customer must notify ITI of all premises at which it holds any Goods supplied under these Terms and Conditions. The customer must permit ITI to enter upon its premises to inspect the Goods in its possession upon reasonable notice from time to time.

5.10. If any Goods belonging to ITI are sold or otherwise disposed of by the customer or if any insurance claim is made in respect of them prior to all amounts owing in respect of the Goods having been paid to ITI in cleared funds, the proceeds of sale or insurance will be held by the customer in a separate bank account on trust for ITI. The customer must notify ITI of all insurance claims made by it in respect of any Goods which have not yet been paid for in cleared funds.

6. Returns

- 6.1. ITI will accept any item of Goods for return and credit if and only if:
- (a) it is in its original condition of sale, and has not been changed in any way. The customer acknowledges that ITI will seek to resell any product returned, and therefore any Goods which is changed or damaged may not be capable of being resold;
 - (b) the item is a standard stocked product line. Non-standard lines (e.g., custom profiles, non-stock, non-standard products, and band sawn product) are not returnable;
 - (c) the returned items should fairly represent the grade and/or lengths and/or widths of the Goods supplied. The customer agrees that it is not able to cherry pick through an order of goods and seek to return, for example, short items or items which are only at the bottom end of the grade of goods supplied;
 - (d) where the Goods order consists of items of random length, the items returned must be at least as long as the average lengths supplied;
 - (e) if the stated reason for return of the item of Goods is that it is damaged, the customer must, before ITI is obliged to accept the item returned, provide a copy of the consignment note endorsed as being received "received damaged" or similar. In this regard the customer is recommended to provide additional photographic evidence of the damage at the time of delivery;
 - (f) the Goods are returned, or the customer notifies ITI that the Goods will be returned, no more than 14 days after the date of collection or receipt by or delivery to the customer.
- 6.2. Before any product is returned, the customer must contact ITI to confirm that the items are to be returned and with a view to confirming that the return of the items complies with clause 6.1. Goods returned shall be returned at such times as are mutually agreed and should be despatched to the correct ITI branch as directed by ITI. Under no circumstances should the customer take Goods to ITI for return without ITI having agreed that the return is acceptable and the time and place of return of the Goods.
- 6.3. All charges for Goods returned, including handling, freight and insurance costs, shall be for the account of the customer in every way, but if the reason for the return is that the Goods are defective or does not meet the agreed specifications then ITI shall pay all third party

costs involved in returning the Goods to ITI provided that those costs have been agreed in advance. The customer is responsible for protecting all Goods which are to be returned from damage from water or other elements, and customers are well advised to take photographs of all Goods prior to its return to establish proof of its condition prior to it being freighted or delivered back to ITI.

- 6.4. Where ITI accepts the return of Goods from the customer under this clause 6, the Goods must be returned in the same condition as which they were delivered to the customer by ITI. Where Goods are returned to ITI in a condition other than the Goods were when delivered by ITI, as assessed by ITI in its sole discretion, the customer will reimburse and indemnifies ITI for all loss suffered by ITI in respect of the damaged Goods, provided that the liability of the customer in respect of the damaged Goods will not exceed the original purchase price of the Goods.
- 6.5. The customer acknowledges that many of ITI's product lines (especially Accoya and Western Red Cedar) are fragile products which are easily damaged by poor handling or exposure to water or other elements. ITI makes every effort to ensure that such Goods leaves its premises in good condition and is transported safely. It is important also that the customer takes similar care for such product at all times while it is held by it or otherwise under its control.

7. Customer Acknowledgement, Warranties and Indemnity

- 7.1. The customer acknowledges and agrees that in ordering or otherwise acquiring Goods from ITI it has not relied upon any pre-contractual representations, discussions, communications or acts or omissions of ITI that are not expressly set out in these Terms and Conditions.
- 7.2. The customer warrants that the customer purchases all goods from ITI for the purposes of: resupplying them; or using them up or transforming them, in trade, in the course of:
- (a) a process of production or manufacture; or
 - (b) repairing or treating other goods or fixtures on land.
- 7.3. The customer agrees to indemnify ITI for any legal costs or other expenses incurred by ITI (including but not limited to charges and commission charged by credit check agents) in respect of the completion, processing or breach of the Credit Application and Guarantee Form, these Terms and Conditions, personal guarantees, securities given or other documentation required if credit is being offered and the customer further agrees to indemnify ITI for any dishonoured cheque fees incurred and all costs incurred by ITI in exercising its rights under these Terms and Conditions or as a result of the Customer's default under these Terms and Conditions.

8. ITI Warranties and Remedies

- 8.1. ITI warrants that:
- (a) it is authorised to supply all Goods to be supplied to the customer; and
 - (b) Goods to be delivered by ITI will be delivered free from encumbrances (other

- than ITI's rights by virtue of these Terms and Conditions).
- 8.2. To the extent permissible by law, all representations and warranties other than those given expressly in these Terms and Conditions are excluded.
 - 8.3. Where ITI is supplying Goods to a customer "in trade" within the meaning of the Consumer Guarantees Act 1993 (**CGA**), then pursuant to section 43 of the CGA, the provisions of the CGA will not apply to the supply of Goods and services by ITI. The customer acknowledges that the effectiveness of contracting out of the CGA is subject to compliance with the statutory tests including that it is fair and reasonable that the customer be bound by those terms.
 - 8.4. Where ITI is supplying Goods and services to the customer other than a customer that is "in trade", clause 8.3 above will have no effect and the provisions of the CGA will apply. Nothing in these Terms and Conditions shall be interpreted as an attempt to modify, limit or exclude terms or warranties which are imposed by statute and which cannot be modified, limited or excluded.
 - 8.5. Where the customer supplies the Goods on to a person acquiring them "in trade", the customer must ensure that it is a term of the customer's contract with the acquirer of the Goods that the CGA will not apply in respect of the Goods supplied.
 - 8.6. Subject to clause 8.4:
 - (a) If ITI is in breach of the warranty given under clause 8.1 (or any other warranty which cannot be excluded by law) in respect of any Goods and ITI is notified in writing by the customer of such breach within seven days from the date of delivery of the relevant Goods (time being of the essence), then ITI will, at its option:
 - (1) replace any of the relevant Goods that are in breach of the warranty; or
 - (2) pay the cost of replacing those Goods.
 - (b) The remedies specified in this clause will be the sole and exclusive remedies of the customer in respect of a breach of a warranty given under clause 8.1 (or any other warranty which cannot be excluded by law). ITI will have no liability for any breach of warranty which is not notified to ITI in writing within seven days from the date of delivery of the relevant Goods.
 - (c) The customer agrees that ITI does not promise that repair facilities for the Goods or spare supplies matching the Goods supplied will be available.
- 9. Limitation of Liability**
- 9.1. Subject to clause 8.4 and any express provisions of these Terms and Conditions, to the extent permissible by law the liability of ITI to the customer for breach of these Terms and Conditions, for negligence or other tort and for breach of statutory duty or warranty (including those contained in the CGA where not excluded under clause 8.3) shall be limited to ITI complying with clause 8.6, and in no event will ITI's liability to the customer exceed the price invoiced for the particular Goods.

- 9.2. ITI shall have no liability to the Customer for special, consequential or indirect loss including but not limited to:
 - (a) loss of business, profit or anticipated profit;
 - (b) loss of revenue;
 - (c) loss of savings on overheads;
 - (d) loss arising from any breach of contract committed by the customer, including but not limited to any contract for the re-supply of the Goods by the customer to a third party;
 - (e) loss of goodwill;
 - (f) loss arising from business interruption; and
 - (g) loss arising from or in connection with any contamination or pollution.
 - 9.3. For the avoidance of doubt, the limitations and exclusions in respect of ITI's liability in these Terms and Conditions apply to loss incurred in respect of personal injury and loss arising from negligent and wilful acts and omissions.
- 10. PPSA**
- 10.1. In this clause, capitalised expressions have the meaning prescribed to them in the Personal Property Securities Act 1999 (**PPSA**).
 - 10.2. The customer grants ITI a Security Interest (including, where applicable, a Purchase Money Security Interest) in all Goods supplied to the customer (now or in the future) but not yet paid for, and the proceeds of any such Goods (**Collateral**).
 - 10.3. ITI reserves the right at its discretion to register a Financing Statement in respect of the Collateral. On request by ITI the customer shall promptly execute any documents and do anything else required by ITI to ensure that ITI's Security Interest in the Collateral constitutes a Perfected Security Interest over the Collateral.
 - 10.4. The customer shall not allow any person to file a Financing Statement over the Collateral without the prior consent of ITI and shall notify ITI immediately if it becomes aware of any person taking steps to file a Financing Statement against any of the Collateral.
 - 10.5. The customer and any guarantor (under a Credit Application and Guarantee Form):
 - (a) Agree(s) that nothing in s114(1)(a), 133, and 134 of the PPSA will apply to these Terms and Conditions; and
 - (b) Waive(s) the customer's right to do any of the following:
 - (1) receive a statement of account under section 116; of the PPSA
 - (2) receive notice of ITI's proposal to retain Collateral under section 120(2) of the PPSA;
 - (3) object to ITI's proposal to retain any Personal Property under s121 of the PPSA;
 - (4) not have goods damaged when ITI removes an Accession under s125 of the PPSA;
 - (5) be reimbursed for damage caused when ITI removes an Accession under section 126 of the PPSA;
 - (6) refuse permission to remove an accession under section 127 of the PPSA;

- (7) receive notice of the removal of an Accession under s129 of the PPSA;
- (8) apply to the Court for an order concerning the removal of an Accession under s131 of the PPSA;
- (9) to receive a copy of the Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to the Security Interest created by these Terms and Conditions.

11. Event of Default

11.1. If:

- (a) the customer defaults in due observance of any of its obligations under these Terms and Conditions or otherwise in relation to the supply of any Goods by ITI to the customer, or
- (b) the customer being a person, dies, commits an act of bankruptcy or enters into any scheme of arrangements official or unofficial, or
- (c) the customer takes or shall have taken against it any action for its winding up or placement under administration, receivership or liquidation, or enters into a scheme of arrangement, deed of company arrangement or composition with (or assignment for the benefit of) all or any creditors, or otherwise becomes unable to pay its debts when they fall due or is insolvent, or
- (d) ITI's debtor insurer refuses to insure any amounts owing by the customer to ITI (for any reason),
then ITI may without prejudice to any rights or remedies open to it:
- (e) treat all sums due or to become due from the customer as immediately due and payable;
- (f) terminate these Terms and Conditions with immediate effect;
- (g) suspend supply of all Goods to the customer until the event of default has been remedied by the customer to the satisfaction of ITI;
- (h) retain any security given or secured moneys paid by the customer or available through the enforcement of any guarantee, security or bond and apply this in reduction of any sum which may be lawfully due by the customer;
- (i) enter onto the customer's premises to retake possession of the Goods without being in any way liable to the customer or anyone claiming under the customer;
- (j) take such steps as it may deem necessary to mitigate the damages suffered including the putting to use, hiring out, sale or disposal of any Goods supplied or to be supplied under the contract and in its possession.

12. Force Majeure

- 12.1. Without limiting any other provision of these terms and conditions or the operation of any law, ITI will not be liable or responsible to the customer for any delay or failure to perform or

fulfil its obligations for the supply of Goods if that delay or failure is due to any event or occurrence that is outside that ITI's reasonable control, including, but not limited to, fire, storm, flood, earthquake, war, epidemic, pandemic, transportation embargo, industrial dispute, failure or delay in transportation, act or omission (including laws, regulations, disapprovals or failures to approve) of any third party (including suppliers, governments or government agencies).

13. General

- 13.1. In these Terms and Conditions words in the singular shall be construed so as to include the plural and vice versa and words in the masculine gender shall be construed so as to include every other gender.
- 13.2. The customer may not assign any of the customer's rights and obligations under these Terms and Conditions to any person without the prior written consent of ITI. ITI may assign any of its rights and obligations to any person upon written notice to the customer.
- 13.3. These Terms and Conditions (including where applicable the Credit Application and Guarantee Form and any non-standard terms notified by ITI to the customer) express the complete agreement between ITI, the customer and any guarantor.
- 13.4. All ITI's rights will remain in full force despite any delay in enforcement. ITI will not be deemed to have waived any condition unless that waiver is in writing and signed by a duly authorised officer of ITI. Any waiver will apply only to the particular matter in respect of which it is given.
- 13.5. These Terms and Conditions are governed by New Zealand law.