

## **TERMS AND CONDITIONS OF SALE RUSSELLS (KIRBYMOORSIDE) LTD**



### **DEFINITIONS**

1. In these terms and conditions (“these conditions”):

“Buyer” means persons, firms or companies purchasing the Goods

“the Goods” means any goods or materials supplied by the Seller to the Buyer.

“Seller” means RUSSELLS (KIRBYMOORSIDE) LTD

“Supplier” means any persons, firms or companies by whom the Seller has been supplied with the Goods

### **FORMATION OF CONTRACT**

2. (1) The Seller contracts on these conditions only and acceptance by the Seller of any order from the Buyer shall be upon these conditions subject only to any variation expressly agreed in writing by an authorised representative of the Seller. The signing by the Seller of any of the Buyer’s documentation shall not imply any modification of these conditions.

(2) The Buyer acknowledges that outside these conditions and any variation made in accordance with them, it does not rely on and the Seller shall not be bound by any statements, promises, opinions, or representations made by or on behalf of the Seller.

### **DELIVERY**

3. (1) Sales “to arrive” shall be subject to shipment and safe arrival. Any time or date specified by the Seller is given and intended as an estimate only and the Seller shall not be liable for any direct or indirect loss, damage or expense howsoever arising from delay in delivery save as may otherwise be required by statute or at common law.

(2) The Seller may deliver by instalments and each delivery shall be treated as a separate contract. The Buyer shall accept deliveries of the Goods when offered and shall provide such instructions as necessary to carry out such delivery. In the case of the Buyer’s default the Seller may cancel the delivery and take such steps as it considers necessary to clear the Goods. Any costs incurred as a result of such action or delay shall be for the Buyer’s account.

### **PAYMENT**

4. (1) Terms of payment shall be those stated in writing by the Seller to the Buyer. If the payment terms quote a discount for prompt settlement the discount will only apply when the specific terms for such settlement are adhered to, in default of which terms the Goods are sold strictly net.

(2) If any monies are not paid on the due date the Seller reserves the right to demand full or partial payment before proceeding further with the contract.

(3) If the Buyer defaults in payment, the Seller may in addition to any other rights hereunder delay delivery or terminate the contract and may also cancel any other contracts with the Buyer without incurring any liability to the Buyer in respect of such delay, termination or cancellation.

(4) The Buyer shall not be entitled by reason of any dispute with the Seller under any contract to withhold payment of any amount due to the Seller or to set-off against any such amount or payment any cross-claim of any kind.

(5) If the Buyer defaults in payment under these conditions or in respect of any other debt or obligation due to the Seller or if the Buyer makes or offers to make any voluntary arrangement or composition with its creditors or becomes subject to an administration order or (being a company) enters into liquidation (otherwise than for the purposes of amalgamation or reconstruction) or a Receiver is appointed to any of the undertakings, property or assets of the Buyer 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 the Buyer ceases or threatens to cease carrying on business or (being an individual or firm) becomes bankrupt or (being a natural person) dies, or if anything similar or analogous to any of the foregoing shall occur under the laws of any jurisdiction in which the Buyer is incorporated, resident, or carries on business, or if for any other reason in the Seller's opinion the creditworthiness of the Buyer appears to become unsatisfactory then the purchase price of all the Goods invoiced or despatched by the Seller shall become due and payable forthwith and the Seller shall be entitled to suspend or cancel further deliveries on any contracts or cancel any contracts with the Buyer without any liability to the Buyer and without prejudice to any other rights of the Seller.

(6) Any additional costs or loss of profit incurred by the Seller as a result of delay, suspension or cancellation pursuant to this clause 4 shall be for the account of the Buyer.

#### **VAT AND INTEREST**

5. (1) All prices quoted are exclusive of Value Added Tax.

(2) If payment is not made by the due date the Seller shall be entitled to recover from the Buyer interest on any outstanding balance at the rate of 2.5% per 30 day period or at the rate currently in force as shown on the Sale Note, whichever is the greater.

(3) In the case of any other default by the Buyer damages shall include but shall not be restricted to interest at the aforesaid rate on all costs incurred by the Seller in connection with the contract including the value of the Goods as the contract price until such default is remedied by the Buyer or the Goods are disposed of by the Seller

#### **RETENTION OF TITLE**

6. (1) Ownership of the Goods shall not pass to the Buyer until the Seller has received in full (in cash or cleared funds) all sums due to it in respect of:

(a) the Goods; and

(b) all other sums which are or which become due to the seller from the Buyer on any account.

(2) Until ownership of the Goods has passed to the Buyer, the Buyer shall:

(a) hold the Goods on a fiduciary basis as the Seller's bailee;

(b) store the Goods (at no cost to the Seller) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Seller's property;

(c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and

(d) maintain the Goods in satisfactory condition and keep them insured on the Seller's behalf for their full price against all risks to the reasonable satisfaction of the Seller. On request the Buyer shall produce the policy of insurance to the Seller.

(3) The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:

(a) any sale shall be effected in the ordinary course of the Buyer's business at full market value; and

(b) any such sale shall be a sale of the Seller's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.

(4) The Buyer's right to possession of the Goods shall terminate immediately if:

(a) any of the circumstances in clause 4(5) above arises; or

(b) the Buyer encumbers or in any way charges any of the Goods.

(5) The Seller shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Seller.

(6) 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.

(7) On termination of the contract, howsoever caused, the Seller's (but not the Buyer's) rights contained in this clause 6 shall remain in effect.

## **INSURANCE**

7. Where the Goods are sold F.A.S., F.O.B., or F.O.M. the Seller shall be under no obligation to give the Buyer the notice specified in Section 32(3) of the Sale of Goods Act 1893 in respect of insurance of the Goods in transit.

## **CLAIMS**

8. (1) Any claim by the Buyer in respect of error in the quantity of the Goods delivered or collected, or in relation to damage to the Goods or otherwise, must be made in writing to the Seller within seven days of receipt of the Goods. Failure to make such a claim within the time limit specified shall constitute unqualified acceptance of all the Goods delivered or collected and a waiver by the Buyer of all claims of any kind whatsoever relating to the goods.

(2) Any claim by the Buyer will only be investigated, in accordance with trade practice, once the entire price of the Goods has been paid to the Seller. The Seller shall be under no liability whatsoever if bulk is broken beyond the extent necessary to make a reasonable examination of the Goods or, where the Goods include plywood or particle board, if the marked battens or packages are not produced with the Goods for inspection by the Seller. In all cases it shall be the responsibility of the Buyer to establish identification of goods claimed to have been supplied by the Seller.

(3) In the event of any claim, the liability of the Seller shall in no circumstances exceed the invoice price of the defective pieces.

## **VARIATIONS IN QUANTITY**

9. The Seller may at its sole discretion deliver a margin of up to 15% more or less than the amount ordered by the Buyer. Delivery of more or less than the quantity of Goods contracted for, within that margin, shall not entitle the Buyer to reject the whole consignment.

## **SUPPLIER'S CONDITIONS**

10. If and to the extent that the Supplier validly excludes, restricts or limits its liability to the Seller in respect of the Goods or of any loss or damage arising in connection therewith, the liability of the Seller to the Buyer in respect of the Goods or of any loss or damage arising in connection therewith shall be correspondingly excluded, restricted or limited. The Seller will, on request, supply the Buyer with details of any such exclusion, restriction or limitation.

## **WARRANTIES**

11 (1) The Seller warrants that it has the right to sell the Goods and that so far as the Seller is aware the Goods are free from any charge or encumbrance unknown to the Buyer and that the Goods comply with the written terms and descriptions contained in the contract.

(2) The Goods are not tested and no warranty is given or shall be implied that the Goods are suitable for any specific purpose.

(3) Apart from the warranties set out in this clause, and any which may be implied by law or statute and which by law or statute cannot be excluded, no warranties, conditions or undertakings of any kind, whether expressed or implied, statutory or at common law or otherwise, are to be implied into the contract for the sale of the Goods and any contractual terms relating to the quality of the Goods, whether expressed or implied, are warranties only the breach of which gives no right to the Buyer in any circumstances whatsoever to reject the Goods or to terminate the contract.

## **INDEMNITY**

12. The Buyer agrees to indemnify the Seller against all claims relating to the Goods sold to the Buyer by the Seller in respect of any loss, damage or expense sustained by any third party other than by the negligence of the Seller.

## **FORCE MAJEURE**

13. The Seller shall bear no liability for loss, damage or delay, howsoever arising, the result of any cause whatsoever beyond the Seller's control, and if such cause occurs may suspend or cancel further deliveries or at its discretion reallocate its available supply as it thinks fit between its customers without otherwise affecting this contract.

## **PRICE VARIATIONS**

14. If for any reason there is a variation in the cost of the Goods, carriage, freight or any other charges directly or indirectly affecting the contract, whether arising from fuel oil, bunker or other surcharges, Customs import charges, changes in the exchange rates on which the contract was based, an increase in any other costs, variations of contracts which the Seller has entered into to procure the Goods or other unforeseen costs arising from circumstances beyond the Seller's control, then the Seller may adjust the price of the Goods to the extent required to recover such variation.

## **HAULAGE**

15. All Goods are carried within the United Kingdom under the Road Haulage Association Conditions of Carriage, a copy of which can be supplied on request.

## **PROCESSING**

16. Any processing of, to or with the Goods carried out at the request of the Buyer by a third party shall be carried out at the expense and at the risk of the Buyer on the standard terms and conditions of the third party.

## **CURRENCY**

17. (1) If contracts are made in a currency other than Sterling, or a fluctuating price subject to variations in exchange rates, then, unless previously notified by the Buyer as below, the Seller shall purchase currency on the Buyer's behalf and shall invoice the Buyer in Sterling at the rate ruling at the date of the Seller's invoice.

(2) The Buyer may in writing either notify the Seller that the Buyer will pay for the Goods in foreign currency or request the Seller to enter into a forward contract to purchase currency on the Buyer's behalf to the approximate value of the contract for the Goods, and the Seller will invoice the Buyer in respect of such currency at the rate obtained. Any loss resulting for whatever reason from the subsequent liquidation of currency contracts, swaps, roll-overs or additional purchases required to cover the exact quantity of the Goods shipped shall be for the Buyer's account.

### **CONSUMER SALES**

18. Any provision herein set out, to the extent to which it would be of no effect as against a person dealing as a consumer, shall not apply in respect of a sale to a person so dealing.

### **GOVERNING LAW**

19. (1) These conditions are governed by English Law in every particular including formation and interpretation and shall be deemed to have been made in England.

(2) The courts of England & Wales have exclusive jurisdiction to hear and decide any suit, action or proceedings ("proceedings"), and to settle any disputes ("disputes"), which may arise out of or in connection with these conditions and, for these purposes, each party irrevocably submits to the jurisdiction of the courts of England & Wales.

(3) Each party irrevocably waives any objection which it might have at any time to the courts of England & Wales being nominated as the forum to hear and decide any proceedings and to settle any disputes and agrees not to claim that the courts of England & Wales are not a convenient or appropriate forum.

### **HEADINGS**

20. The headings in these conditions are for reference only and shall not be incorporated into these conditions nor affect their interpretation