

TPC Group: The Pallet Company Ltd, The Pallet Company (Hawkes Bay) Ltd, Engineered Pine Products Ltd, The Pallet Company (BOP) Ltd

TERMS AND CONDITIONS OF SALE

By ordering Goods from the Company or submitting a credit account application, the Customer agrees that the following terms and conditions apply to the supply of those Goods and to any estimate or quotation given, by or on behalf of the Company.

CREDIT ACCOUNT TERMS

1. The Customer is liable for all purchases made in its account name. It is not the Company's responsibility to confirm authority for the purposes of supplying or delivering Goods to the Customer or its agents. It is the sole responsibility of the Customer to ensure there is no unauthorised use of its account.
2. The Company may at any time suspend at its sole discretion, withdraw or alter the Customer's credit facilities. Any such change to the Customer's credit facilities will not release either the Customer or the Guarantor(s) from any liability.
3. It is the Customer's responsibility to obtain every necessary or prudent authorisation (including permits, licences and consents) to resell, buy, possess, use, export or import any Goods.

ESTIMATES, QUOTES AND ORDERING

4. All quotes, estimates and pricing, unless expressly stated otherwise, are deemed to be estimates only and are based on rates and charges in effect at the date of issue. At its discretion, the Company may remove any discount provided in an estimate or order where there is a reduction in quantities actually purchased.
5. A quotation or estimate will not constitute an offer to sell Goods to the Customer. Until a Customer's order for Goods has been accepted by the Company, no contract for the supply of Goods shall exist between the Company and the Customer. Any such acceptance of Customer's orders may be made and communicated by the Company in writing, orally or by an overt act of acceptance. Subject to clause 18 each accepted order shall constitute a separate contract.
6. An order accepted by the Company may be cancelled by the Customer if the Customer provides 10 working days written notice of such cancellation prior to Delivery. If notice is not provided within that timeframe then the Company is entitled to charge the Customer for that order if it has manufactured the Goods according to the order.
7. If the Customer wishes to vary an order, the Customer acknowledges such variation may result in a delay in delivery of the Goods and/or an increase in the price specified in the order.
8. The Customer is solely responsible for the accuracy of information supplied by (or on behalf of) the Customer upon which a quotation, estimate or order (or estimate of materials) is based.

PRICING AND PAYMENT

9. Delivery fees may be charged in addition to the price of the Goods, and this will be shown in the Company's quote or estimate.
10. Unless the Customer has a valid credit account with the Company, payment for the Goods (together with any other amounts owing to the Company) must be made by cash, cheque or electronic funds transfer in cleared funds prior to Delivery.
11. Where purchases of Goods are charged to a valid credit account, then payment is due in full in cleared funds by the 20th day of the month following Delivery (including where Goods are delivered by instalments).
12. Unless stated otherwise in writing, all prices are exclusive of any GST (and other taxes and duties (if any)) payable on the Goods and such taxes are payable by the Customer in addition to the price.
13. Any deposit required by the Company will be paid immediately by the Customer upon the making of an order and, unless otherwise specified on the deposit terms, is non-refundable.
14. The Company may allocate any payment made by or on behalf of the Customer to the account and/or payment of any Goods as it sees fit and the Customer waives any right to receive notification of that allocation.
15. Payment of all monies owing to the Company must be made free of any counterclaim, set-off, deduction or other claim whatsoever. The Company may deduct or withhold any amount (whether by way of set off, counterclaim or other equitable or lawful claim or otherwise) from any money owing by the Company or any Related Company to the Customer on any account whatsoever.
16. If full payment for the Goods is not made by the due date for payment, the Customer will pay, at the Company's discretion (and without prejudice to any other rights or remedies it may have), on demand, default interest on the amount outstanding at the rate of 2% per month and all expenses, and collection costs (including legal costs on a solicitor and client basis) incurred by or on behalf of the Company recovering or attempting to recover the overdue amount.

DELIVERY

17. Unless otherwise agreed in writing, delivery of the Goods will be deemed to be effected upon the transfer of possession of Goods to the Customer (or its representative or carrier) at the Company premises, or where the Company has agreed to deliver the Goods, upon the unloading of Goods by the Company at the Customer's delivery address.
18. Delivery of Goods may be made by instalments. Each instalment shall be treated as a separate contract subject to these Terms.
19. Any times quoted for delivery are estimates only and the Company will not be liable for any delay in Delivery, whether or not beyond its control. Late Delivery does not entitle the Customer to cancel any order or part order or to refuse to accept Delivery.
20. If the Customer fails or refuses to take delivery of the Goods at an agreed delivery time, any liability or cost incurred by the Company as a result of the refusal or delay in delivery shall form part of the Secured Indebtedness and shall be paid immediately by the Customer upon demand.
21. The Goods will be deemed accepted upon Delivery unless the Customer notifies the Company in writing of any defects, errors or discrepancies within 7 days of Delivery, provided the Company is able to inspect the Goods to confirm the defect, error or discrepancy.
22. Where the Company has agreed to deliver the Goods, the Customer must provide adequate access for Delivery and adequate facilities for unloading and storage of Goods. If required by the Customer or a representative to drive on to a property, neither the Company nor any of its carriers accept responsibility for any damage that may result to either the property or the Goods.

WARRANTIES AND LIABILITY

23. Where the Customer is a "Consumer" under the CGA and acquires any Goods, or holds itself out as acquiring Goods, for the purposes of a "Business" (as those terms are defined in the CGA) then to the fullest extent permissible by law the Company and the Customer agree the CGA and any other applicable consumer law is hereby excluded. Otherwise, where the Customer is a "Consumer" these Terms are to be read subject to the terms of the CGA.
24. Subject to clause 23, and to any express warranties given by the Company to the Customer in writing, all conditions, warranties, descriptions, representations and statements as to fitness or suitability for any purpose, tolerance to any conditions, merchantability or otherwise, express or implied, are expressly excluded to the fullest extent permitted by law.
25. The sale of any Goods shall not, unless expressly agreed in writing, give the Customer the right to use, sell, disseminate or duplicate the Company trademark, copyright, design or any other intellectual property right.

26. For Goods that the Customer is entitled to reject (pursuant to clause 21) or the Company liability for breach of a non-excludable condition, warranty or any other liability, is limited at the Company's option to:

- (a) replacing the Goods; or
- (b) refunding the price of the Goods.

27. To the fullest extent permitted by law, the Company has no liability, whether statutory, in contract or tort (including negligence), or howsoever, to the Customer or any of its agents or employees for any physical, direct or indirect damage, economic loss of any kind, any other loss or costs (including legal and solicitor/client costs) caused or contributed to by the Company or any of its agents or employees in respect of any Goods supplied or any quotation or estimate given. For the avoidance of doubt, the Company will not be liable in respect of the failure of any Goods (for example, pallets) that have been incorrectly used, over-loaded, tampered with or modified without the Company's approval or which have been stored in an improper manner.

SAFETY

28. The Customer must ensure that all Goods are handled and used by staff or agents in accordance with any safety directions or guidance notes which are supplied with the Goods.
29. The Customer acknowledges that:
 - (a) failure to comply with clause 28 may invalidate any express warranty given by the Company;
 - (b) the Company does not warrant or represent the suitability of any Good for the Customer's use;
 - (c) the Customer shall be responsible for ensuring that all and any instructions and recommended uses are followed and any cautions and/or warnings observed.

ADVICE

30. Where any recommendation or advice has been given by or on behalf of the Company, the Company will not be responsible for the actual implementation of the recommendation or the advice or the actions or performance of any other party.

RETURNS

31. The Company at its absolute discretion may allow the Customer to return new Goods that remain in re-saleable condition. A return fee may apply.

OWNERSHIP AND RISK

32. Ownership of the Goods (whether or not any of the Goods have been paid for by the Customer) shall not pass to the Customer until the Customer has paid all of the Secured Indebtedness and all the Customer's obligations to the Company or any Related Company in respect of the Goods or otherwise have been met.
33. Until ownership of the Goods passes to the Customer, the Customer must:
 - (a) hold the Goods on trust for the Company as bailee;
 - (b) only use the Goods in the ordinary course of business. This authority is revoked immediately if an Event of Default occurs;
 - (c) inform the Company immediately of any attempt by any third party to exercise remedies against the Goods or of any circumstances that may jeopardize the Company's interest in the Goods.
34. The risk of any loss or damage to, or deterioration of, the Goods due to any cause whatsoever will pass to the Customer on Delivery. If any Goods are damaged or destroyed prior to risk passing to the Customer, the Company may cancel the order in respect of those Goods without penalty or compensation to the Customer.
35. If the Customer fails to pay for the Goods in full by the due date for payment, or if the Company considers the Goods are "at risk" (in accordance with the PPSA) the Company may (in addition to any other rights or remedies it may have) enter the Customer's premises (or any other premises which the Customer has access to and where the Goods are stored) at any time, without notice, to view the Goods and to remove the Goods and may resell the Goods or retain the Goods for the benefit of the Company or any Related Company, without incurring any liability to any person. The Customer may not revoke the permission granted in this clause.

SECURITY AND PPSA

36. The Customer:
 - (a) agrees that the retention of title in clause 32 of these Terms creates a Purchase Money Security Interest (having the meaning given to that term in the PPSA) in all present and after acquired Goods (and their Proceeds) as security for payment of the purchase price for the Goods until such amount is paid in full; and
 - (b) grants to the Company (unless otherwise agreed in writing by the Company) a security interest in all of the Customer's present and after acquired personal property (as defined in the PPSA) wherever situated as security for the due payment of all other Secured Indebtedness, and to secure performance of all obligations owing by the Customer to the Company or any Related Company. Such personal property is referred to as the "Secured Property".
37. The Customer undertakes:
 - (a) to promptly do all things, execute all documents and/or provide any information which the Company or any Related Company may reasonably require to enable the Company or any Related Company to perfect and maintain the perfection of its security interests (including by registration of a financing statement); and
 - (b) not to consent to or enter into any agreement which permits any supplier or other person to register a security interest in respect of any collateral subject to the Company's security interest, including (without limitation) the Goods (whether an accession or otherwise), which ranks in priority to the Company's rights as first ranking security holder.
38. Each security interest created under these Terms is a continuing security, notwithstanding any intermediate payments or settlements of accounts or anything else and is in addition to, and is not to be merged with any other security or guarantee expressed or intended to be security for any Secured Indebtedness or any other obligations owing by the Customer to the Company or any Related Company.
39. The Customer waives its rights under the PPSA to receive a copy of any verification statement, financing statement or financing change statement (as those terms are defined in the PPSA) and agrees that:
 - (a) as between the Company and the Customer, the Customer will have no rights under (or by reference to) sections 114(1)(a), 116, 120(2), 121, 125, 129, 131, 133 and 134 of the PPSA;
 - (b) to the extent permitted by law these Terms exclude any other provisions of the PPSA which may be excluded in the Company's discretion and which would otherwise confer rights on the Customer; and
 - (c) where the Company has rights in addition to Part 9 of the PPSA, those rights will continue to apply.
40. The Customer acknowledges that it has received value as at the date of first delivery of the Goods and that the Company has not agreed to postpone the time for attachment of the security interest granted to the Company under these Terms.
41. The Customer must not:
 - (a) give to the Company a written demand, or allow any other person to give the Company a written demand requiring a financing change statement to be registered; or

- (b) change its name, address or contact details without providing the Company 30 days prior written notice; or
- (c) lodge a change demand or allow any other person to lodge a change demand, in each case in relation to a financing statement registered by the Company under the PPSA.
42. The Customer will, upon demand, pay all the Company's expenses and legal costs (on a solicitor-client basis) in relation to or in connection with the registration, maintenance and enforcement of the Company's security interest.

DEFAULT

43. If, at any time and for any reason, an Event of Default occurs, then (without prejudice to any other remedies the Company may have):
- (a) the Company may suspend or cancel (in whole or in part) any order created under these Terms or any other contract with the Customer by written notice to the Customer;
- (b) the Company may at any time appoint in writing one or more Receivers (jointly and/or severally) in respect of any Secured Property who shall be entitled to exercise all rights conferred on the Company under these Terms as well as at law generally and pursuant to the Receiverships Act 1993 and otherwise on such terms considered necessary or expedient by the Company;
- (c) the Secured Indebtedness will become immediately due and payable;
- (d) each security interest created under these Terms will become immediately enforceable;
- (e) the Company may delay delivery of any Goods until the matter is resolved to the Company's satisfaction;
- (f) the Company may suspend all payment credit arrangements offered to the Customer immediately, without notice, until the Event of Default is remedied to the Company's satisfaction and require future orders to be paid in cash in full prior to Delivery; and
- (g) the Company or a Receiver may take possession of the Goods and any other Secured Property (including Goods that have become an accession under the PPSA) and may dispose of them or retain them for the benefit of the Company or any Related Company and for that purpose may, without notice enter directly (or through its agents) on any premises where the Company reasonably believes the Goods are stored, without being liable to any person. In respect of other Secured Property the Company may, in the name of the Customer or otherwise, at any time do anything and exercise any right which the Customer could do or exercise in relation to the Secured Property, including the right to take possession of, demand, collect and get in any Secured Property and deal with it in any way whatsoever including but not limited to disposing of Secured Property, cancelling any contracts, borrowing any money, taking any proceedings in the Customer's name and settling any disputes or proceedings
44. The Company does not (and will not be deemed to) undertake any of the Customer's obligations in respect of the Secured Property by virtue of these Terms.
45. The Company is not required to marshal, enforce or apply under any security interest, guarantee or other entitlement held by the Company at any time or any money or property that the Company at any time holds or is entitled to hold.
46. The remuneration of the Receiver may be fixed by the Company but is payable by the Customer and forms part of the Secured Indebtedness. To the fullest extent permitted by law, a Receiver will be the agent of the Customer and the Customer will be solely responsible for that Receiver's acts and defaults. The Company may remove any Receiver appointed by providing that Receiver with written notice that the Receiver's appointment has thereby ceased, whereupon the Receiver shall immediately cease to act.
47. The Customer irrevocably appoints, and ratifies the actions or omissions of, the Company, each Receiver, each nominee of the Company in whose name any Secured Property is registered and each duly authorised officer or attorney of the Company severally, to be its attorney (**Attorney**) on behalf of the Customer and in the Customer's name or otherwise and at its expense to complete, execute and otherwise perfect all assignments, security interests and other agreements and documents, and generally to do all other things which the Attorney may consider necessary or expedient to secure the Company the full benefit of its rights and intended rights under these Terms and any other contract with the Company to secure payment of the Secured Indebtedness and performance of the Customer's obligations to the Company and any Related Company. A certificate signed by the Company as to an amount due by the Customer shall be conclusive evidence of such for all purposes, including for any proceedings.

SECURITY AGENCY

48. From the date these Terms take effect, the Company will hold the benefit of all security created hereunder for the benefit of the Company and its Related Companies (and, in such capacity, the Company is the Security Agent).
49. Provided that the Customer is presented with a certificate from a party purporting to be the security agent which confirms such appointment under clause 47 (which will be conclusive proof to the Customer of such appointment), the Customer will not be concerned to enquire whether any instructions have been given to any such security agent by the Company and, as between the Customer and any such security agent, all actions taken by such security agent under these Terms and any related or ancillary document will be deemed to be authorised.

INDEMNITY AND SUPPORTING GUARANTEE

50. The Customer hereby indemnifies the Company, its employees, officers, agents, any Receivers and any Attorney appointed pursuant to clause 47 ("**Indemnified Parties**") against all losses, liabilities, damages, claims, actions costs or expenses (including legal and lawyer/client costs and expenses) which the Indemnified Parties (or any one of them) may incur, of which have been made against any of the Indemnified Party as a result of or in relation to:
- (a) any act, omission, default by the Customer or any subsequent purchaser of the Goods;
- (b) any breach of the Customer's obligations under these Terms;
- (c) anything done or omitted to be done, or purported to be done or omitted by the Company and/or a Receiver and/or an Attorney in the exercise or purported exercise of its rights under these Terms or conferred by law;
- (d) any liability, loss or expense arising out of the Company's security interest in any of the Secured Property, or any act or omission of the Customer in respect of any circumstance which breaches or might breach any environmental law.
51. If the Customer is a company, then unless otherwise agreed by the Company, it must procure that a guarantee in the form attached to these Terms is executed and returned to the Company as soon as possible.
52. The Customer acknowledges and agrees that, to the extent that any guarantee of any monies or any other obligations owing by the Customer to the Company or any Related Company is in existence prior to the date that these Terms are signed, the Customer will procure that such guarantee will remain in full force and effect.

PRIVACY

53. The Company may at any time collect, hold and use information relating to this credit application for any purpose connected with its business including (but not limited to) debt recovery, credit reporting or assessment, and to register any security interest, including collecting information from, and disclosing information to, Related Companies, external credit reporting agencies, debt collection agencies, trade referees and other third parties. Information disclosed by the Company to credit reporting agencies will be disclosed on the basis that it will be held and used by such agencies to provide credit reporting services. Under the Privacy Act 1993, individuals have rights to access to, and request correction of, their personal information by contacting the Company.
54. The Customer, any director signing on behalf of the Customer and any Guarantor authorises the Company to collect, hold and use information from any person or entity for any of the above purposes, and for such person or entity to disclose information to the Company, and the Customer further authorises the Company to disclose information to any person or entity for any of the above purposes and such person or entity to collect, hold and use information from the Company.

REVIEW AND NOTIFICATION OF TERMS

55. These terms and conditions replace any previous arrangements or understandings relating to supply by the Company (or any other entity authorized to trade under the name the Company) to the Customer. Unless otherwise specifically agreed in writing by the Company, where any terms and conditions of the Customer's order or any request for supply are inconsistent with these terms and conditions, then these terms and conditions will prevail. Any variations or additions to these terms and conditions not expressly agreed in writing by the Company are expressly rejected by the Company. The Company may vary these Terms at any time by publishing the varied terms on the Company's website (www.thepalletcompany.co.nz) provided it first notifies the Customer in writing that these Terms have been amended and are on the website. Subsequent purchases by the Customer on the account will signify acceptance of such changes.

GENERAL

56. The Customer may not directly or indirectly assign to any person any of its benefits or burdens in respect of the contract created by these Terms. The Company may at any time assign or transfer to any other person all or any part of its rights, remedies and obligations under these Terms and any related or ancillary document without the Customer's consent. These Terms and each and any security interest created under it will not be discharged, nor will the obligations of the Customer be affected or restricted in any way whatsoever, by any time, indulgence, waiver or consent given to the Customer or another person.
58. No delay or failure to act is a waiver. No waiver is effective unless it is in writing. Any waiver of a breach so given, is not a waiver of any other breach.
59. Each provision of these Terms survives to the extent unfulfilled, and remains enforceable and does not merge, on performance of another provision.
60. Any notice or other communication to the Customer may be served by delivery at the Customer's account address, any other address specified by the Customer from time to time for such purposes or the Customer's usual residential address (if an individual) or otherwise the Customer's principal place of business or registered office.
61. These Terms will be governed by the laws of New Zealand. The Customer irrevocably agrees to submit to the non-exclusive jurisdiction of the New Zealand courts.
62. The illegality, invalidity or unenforceability of a provision of these Terms will not affect the legality, validity or enforceability of another provision.

DEFINITIONS AND INTERPRETATION

63. **DEFINITIONS:** In these Terms, unless the context requires otherwise:
- (a) **CGA** means the Consumer Guarantees Act 1993 (as amended from time to time);
- (b) **Customer** means the party(s) stated in the credit application form as the customer (together with its successors), or any other person whose order for the purchase of Goods is accepted by the Company. If the Customer comprises more than one person, each of those person's liability and agreement is joint and several. Where the Customer is a trust, the trustee's liability shall not be limited to the assets of the trust;
- (c) **Delivery** means delivery of the Goods in accordance with clause 17;
- (d) **Event of Default** means:
- where the Customer fails to pay, or in the Company's opinion is likely to fail to pay, any moneys owing when due; or
 - where the Customer breaches, or in the Company's opinion is likely to breach, any non-monetary obligations owing to the Company or any Related Company whether under these Terms or otherwise; or
 - the Customer commits an act of bankruptcy; or
 - the Customer's ownership or effective control is transferred without the Company's consent; or
- (v) if the Customer:
- becomes insolvent or is unable to pay its debts as they fall due or is deemed or presumed to be so under any law;
 - makes, or proposes to make, an assignment, arrangement, composition or compromise with, for the benefit of, or affecting its creditors in relation to any of its indebtedness; or
 - a receiver, liquidator, trustee, manager, administrator or statutory or official manager or similar officer is or has been appointed in respect of the Customer or over all or any of the Customer's assets;
- (e) **Goods** means all pallets, timber, crates and bins and other products or services (including design services) supplied by the Company to the Customer and in respect of each order of Goods placed by the Customer, the Goods or services described in the invoice issued by the Company in respect of such order;
- (f) **GST** means any amounts levied or charged pursuant to the Goods and Services Tax Act 1985;
- (g) **PPSA** means the Personal Property Securities Act 1999 (as amended from time to time);
- (h) **Proceeds** has the meaning given to it in the PPSA;
- (i) **Related Company** has the meaning given to it in the Companies Act 1993;
- (j) **Receiver** means any person appointed as a receiver or receiver and manager under these Terms or any collateral security;
- (k) **Secured Indebtedness** means all indebtedness, of whatever nature, which the Customer is now or at any subsequent time actually, prospectively or contingently liable to pay to the Company or any Related Company (including, for the purposes of the PPSA, future advances under or in connection with these Terms or any related or ancillary document);
- (l) **Secured Property** has the meaning given in clause 36;
- (m) **Terms** means these terms and conditions of sale, as amended from time to time by the Company in accordance with clause 55.