

Terms of Sale and Security Agreement

Carter Holt Harvey Woodproducts Australia Pty Ltd A.C.N 002 993 106

The following Terms govern all Orders placed by the Buyer and will be incorporated into each contract entered into between the Buyer and the Seller for the supply of Goods, together with any invoices issued by the Seller for those Goods.

1. COMMENCEMENT

Where the Buyer has entered into other terms of sale with the Seller prior to the Registration Commencement Time, those terms of sale shall govern all supplies by the Seller to the Buyer prior to the Registration Commencement Time but these Terms shall govern all supplies made by the Seller to the Buyer after the Registration Commencement Time.

2. PRICE AND ORDERS

- 2.1 The Buyer will place Orders with the Seller in accordance with the Seller's processes as advised to the Buyer from time to time. The Seller may, at its discretion, reject any Order.
- 2.2 The Buyer will pay to the Seller the Price for the Goods in accordance with clause 2. The Buyer's obligation to pay the Price will not be affected by any defect in, or damage to, the Goods.
- 2.3 The Price will be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent that such taxes or duties are expressly included in the Price.
- 2.4 The Seller may change the Price for the Goods at any time on giving prior notice to the Buyer. Any change to the Price will apply to all Goods delivered on or after the date specified by the Seller in the notice to the Buyer. If no date is specified in the notice, the change will be effective immediately for all Goods delivered after the date of notification, and whether or not an Order for the Goods had already been received and accepted prior to the change.
- 2.5 There is no obligation on the Seller to enquire as to the authority of any person placing an Order on behalf of the Buyer.

3. PAYMENT

- 3.1 Payment of the Price is to be made by such method as the Seller nominates from time to time and is due by the 30th of the month following the date of Delivery.
- 3.2 The Buyer may not withhold payment or make any set-off or deduction from any Amount Owing without the Seller's prior written consent.
- 3.3 The Seller may apply any payments received in reduction of the Amount Owing as the Seller thinks fit.
- 3.4 If the Buyer does not pay any Amount Owing by the due date for payment, the Seller may charge default interest on the due but unpaid amount at the rate specified from time to time under section 2 of the *Penalty Interest Rates Act 1983 (Vic)*, calculated on a daily basis from the due date until payment is received in full (after as well as before judgment).

4. DELIVERY

- 4.1 Where the Goods are to be supplied "Free into the Buyer's Store", the Seller will deliver, or arrange delivery of, the Goods to the agreed destination on the delivery date advised to the Buyer and pay any storage, transportation and insurance costs incurred as a result up to the time of delivery.
- 4.2 Where the Goods are to be supplied "Ex-Works the Seller", the Buyer will take delivery of the Goods as soon as the Goods are made available for collection at the Seller's premises, as advised to the Buyer.
- 4.3 Where Goods are to be supplied "Free on Wharf":
 - the Seller is responsible for all expenses arising from the importation of the Goods, to the time that the Goods are available for collection by the Buyer, and the Seller agrees to provide all of the documentation necessary to enable the Buyer to take delivery of the Goods and remove them from the agreed location; and
 - the Buyer will take delivery of the Goods as soon as the Goods are made available for collection, as advised to the Buyer.
- 4.4 In the absence of any specific agreement, Goods are supplied "Ex-Works the Seller" and clause 4.2 will apply.
- 4.5 Any time advised for delivery is an estimate only. The Seller has the right to nominate a suitable time for loading the Goods onto a delivery vehicle, taking into account weather conditions and safety matters, and the Seller is not liable for any delay in delivery.
- 4.6 In all circumstances whatever the agreed method of delivery, the Buyer will be responsible at its own cost for unloading the Goods, or for arranging for a suitable means of unloading the Goods, from the relevant delivery vehicle. The Buyer will indemnify the Seller against any loss, liability, costs or expenses incurred by the Seller in unloading the Goods.
- 4.7 The Seller may deliver the Goods by instalments. Each instalment will be treated as a separate contract under these Terms.
- 4.8 The Buyer will indemnify the Seller against any loss, liability, costs or expenses incurred by the Seller if, after the time for Delivery of the Goods, the Seller subsequently arranges storage or transportation of, or insurance for, the Goods (whether due to any failure or refusal of the Buyer to take delivery or following agreement with the Buyer).

5. RISK AND SECURITY

- 5.1 Risk of any loss, damage or deterioration of or to the Goods passes to the Buyer on Delivery.
- 5.2 Ownership of the Goods remains with the Seller and does not pass to the Buyer until the Buyer pays in full the Amount Owing in respect of the Goods.
- 5.3 The Buyer acknowledges that upon delivery of the Goods to the Buyer, the Goods become subject to a Security Interest in favour of the Seller, which shall remain in effect until such time as the Goods are returned to the Seller
- 5.4 (In accordance with this Agreement), or the Buyer has paid the Seller in full for the Goods.
- 5.5 While Ownership of the Goods remains with the Seller, the Seller authorises the Buyer in the ordinary course of its business to use the Goods and to sell the Goods for full consideration. Except as otherwise expressly permitted by these Terms, the Buyer must not sell, lease, dispose of, create a security interest in, mortgage or part with possession of the Goods or any interest in the Goods (or purport to attempt to do such a thing) or permit any lien over the Goods.
- 5.6 The authority referred to in clause 5.4:
 - may be revoked at any time by the Seller notifying the Buyer, in such manner and at such time as the Seller determines in its sole discretion, that the authority is revoked;
 - is, in any event, revoked automatically from the time an Event of Default occurs.
- 5.7 Where the authority conferred by clause 5.4 is revoked under clause 5.5:
 - the Buyer authorises the Seller to use reasonable force to enter the premises where the Goods are stored and remove them;
 - the Seller shall exercise reasonable care in entering such premises and removing such Goods, but shall not be liable for trespass or any damage caused by the use of reasonable force;
 - the Buyer is released from the obligation to pay the Price for all Goods repossessed by the Seller but only to the extent any proceeds obtained by the Seller reselling the Goods (less all costs incurred) exceeds the Price owing by the Buyer to the Seller for those same Goods;
 - the Seller may resell any repossessed Goods and apply the proceeds of sale in reduction of the Amount Owing as the Seller thinks fit; and
 - the Buyer is liable for all costs associated with the exercise by the Seller of its rights under this clause and costs are payable to the Seller on demand.
- 5.8 The Seller may bring an action for the Amount Owing in respect of the Goods even where Ownership of the Goods has not passed to the Buyer.
- 5.9 The Buyer must insure and keep insured with a reputable insurance company all Goods in its possession or control from the time for Delivery of such Goods against risk of loss or damage by hazards normally insured against.
- 5.10 Until Ownership of the Goods passes to the Buyer under these Terms, the Buyer must:
 - keep the Goods in a manner that they are separately identifiable; and
 - keep proper stock records and records of account with respect to the purchase, receipt, sale of, and other dealings with, the Goods; and
 - make those records and/or the Goods themselves available to the Seller for inspection (and, in the case of the records, copying them) at its reasonable request and upon any failure to do so (and without limiting the Seller's other rights and remedies), the Seller may enter, and use reasonable force to enter, the premises where the records and/or the Goods are kept for any such purpose; and
 - not do or allow anything to happen that might contribute to deterioration in the value of the Goods or otherwise adversely affect the rights or interest of the Seller in the Goods under these Terms.

- 5.11 The Buyer agrees that the Seller shall have the right at any time to complete and register a mortgage (on terms determined by the Seller, in its absolute discretion) over any interest in property owned by the Buyer to secure the Amount Owing and the Seller shall have the right at its discretion to place a caveat on any such property for the purposes of this clause and the Buyer irrevocably appoints the Seller as the attorney of the Buyer for the purpose of the Seller exercising its rights under this clause whilst any Amount Owing remains outstanding.
- 5.12 The Buyer must immediately notify the Seller if the Buyer is considering whether to appoint an Administrator or Liquidator to the Buyer and will not without the consent of the Seller appoint an Administrator or Liquidator.
- 5.13 The Security Interest created by these Terms is not discharged nor the Buyer's obligations affected by the administration of the Buyer.
- 5.14 The Buyer agrees to promptly do anything the Seller requests (such as obtaining consents, providing information and signing and producing documents) in order to perfect, preserve, maintain, protect, or otherwise give full effect, under the *Personal Property Securities Act 2009 (Cth)* ("PPS Act") and related regulations, to this document and the Security Interest created by this document, including registering one or more financing statements in relation to the Security Interest created by this document on any register established pursuant to the PPS Act. The Buyer agrees to indemnify the Seller for all costs, fees, charges and expenses incurred by the Seller in connection with the filing, registration, administration and enforcement of the Security Interest created by this document.

6. ASSIGNMENT OF RECEIVABLES

- 6.1 The Buyer represents and warrants that it has not entered, and will not enter, into any terms of sale with a Customer that requires the Buyer to obtain the Customer's consent prior to an assignment of the right to collect any debt of the Customer by the Buyer.
- 6.2 On request from the Seller, the Buyer agrees to give notice to any Customer that has a relevant debt due to the Buyer that the right to collect the part of the Buyer's debt in respect of the Seller's product has been assigned to the Seller. A relevant debt is one that, in part or in full, is in respect of the purchase of goods that the Seller has supplied to the Buyer under these Terms.
- 6.3 The Buyer hereby appoints the Seller to act as its attorney for the purpose of giving any such notice to the Buyer's Customer in the event that the Buyer does not give notice as requested by the Seller within 5 Business Days of the Seller making such request.

7. ENFORCEMENT UNDER THE PPS ACT

Pursuant to section 115 of the PPS Act, the Buyer and the Seller both agree to contract out of the following enforcement provisions in the PPS Act:

- section 95 (notice of removal of accession), to the extent that it requires the secured party to give notice to the grantor;
- section 96 (when a grantor may retain an accession);
- section 121(4) (enforcement of liquid assets – notice to grantor);
- section 125 (obligation to dispose of or retain collateral);
- section 130 (notice of disposal), to the extent that it requires the secured party to give a notice to the grantor;
- sections 132(3)(d) (contents of statement of account after disposal);
- section 132(4) (statement of account if no disposal);
- section 135 (notice of retention);
- section 142 (redemption of collateral); and
- section 143 (reinstatement of security interest).

8. CONFIDENTIALITY

The Buyer agrees not to:

- disclose the agreement of which these Terms form part of or any information relating to price, products or quantities being provided under these Terms other than to a related body corporate of the Buyer (as that term is used in the *Corporations Act 2001*), a professional advisor, or as required by law or the regulations of a registered securities exchange; or
 - requires the Seller to disclose the agreement of which these Terms form part for the purpose of section 275(7) of the PPS Act.
9. **WARRANTIES AND LIABILITY**
- 9.1 In the event of any Claim under these Terms at the Seller's discretion Goods may be repaired or replaced or the Price refunded. These are the sole remedies available to the Buyer for default by the Seller under these Terms. No claim may be made against the Seller for loss of profits, consequential or indirect damages or special loss.
- 9.2 Claims with respect to non-conforming or defective Goods will only be accepted if made to the Seller in writing within 14 days after Delivery, or such further period as the Seller may agree in writing, and the Seller has first been given the opportunity to inspect the Goods and agrees to their return.
- 9.3 To the extent permitted by law, the Seller expressly excludes liability for any Claim by the Buyer or any other person relating to or arising from the supply of the Goods which is not expressly accepted by the Seller in writing and the Buyer agrees to indemnify the Seller against any such claim.
- 9.4 In any event, the Seller's liability arising out of any Claim or otherwise under these Terms will not exceed the Price of the Goods.
- 9.5 The only guarantees agreed to by the Seller are those confirmed by the Seller in writing.
- 9.6 Nothing in these Terms excludes, restricts, or modifies any condition warranty or liability which is implied by the *Competition and Consumer Act 2010* (Cth) ("CCA"), or other applicable laws where to do so is illegal or would render any provision of these Terms void.
- 9.7 The Seller's liability for breach of the CCA (other than a guarantee under sections 51, 52 or 53 of Schedule 2 of the CCA) in relation to the supply of goods or services which are not of a kind ordinarily acquired for personal, domestic or household use or consumption, is limited, at the Seller's option to:
- in the case of goods, the replacement, repair, or payment of the cost of the replacement or repair of the goods; and
 - in the case of services, supply of the services again, or payment of the cost of having the services supplied again.
10. **DEFAULT**
- 10.1 If any Event of Default occurs,
- the Seller may suspend or terminate these Terms;
 - any Amount Owing will immediately become due and payable notwithstanding that the due date has not arisen; and/or
 - to the extent permitted by law, each security interest created by these Terms will become immediately enforceable and the Buyer must return the Goods to the Seller promptly on request or the Seller may take possession of and sell the Goods and the Seller has all the rights of a natural person in relation to the Goods and all other rights conferred by law in relation to the Goods
- 10.2 The Seller is entitled to recover from the Buyer all costs that the Seller incurs in connection with the exercise, protection or enforcement of the Seller's rights under these Terms or conferred by law, in each case on demand and on a full indemnity basis (including solicitor client costs).
- 10.3 Subject to any mandatory law, the Seller will not be liable:
- in respect of any loss or damage that results from the exercise, attempted exercise or non-exercise by the Seller of its rights under these Terms or conferred by law; or
 - to account as a mortgagee in possession in respect of the Goods if it or any person on its behalf takes possession of the Goods.
11. **FORCE MAJEURE**
- 11.1 Without limiting the foregoing, neither the Seller nor the Buyer will be liable for any delay or failure in the performance of any obligation or the exercise of any right under these Terms or for any loss or damage (including indirect or consequential loss or damage) if such performance or exercise is prevented or hindered in whole or in part by reason of a Force Majeure Event. Nothing contained in this clause will excuse payment of any money due or which becomes due under these Terms.
- 11.2 The rights and obligations of either party which are affected by a Force Majeure Event will be suspended during the continuance of the Force Majeure Event, and either party claiming to be affected by the Force Majeure Event will give immediate notice to the other party containing full particulars of the Force Majeure Event. The party giving notice under this clause will take all reasonable steps to mitigate the effects of the Force Majeure Event and remove such Force Majeure Event provided that neither party will be required to remove any such Force Majeure Event if to do so would require it contrary to its judgement to settle a strike or labour dispute or otherwise submit to the demands of opposing parties.
- 11.3 If the Force Majeure Event prevents or hinders performance of these Terms for a continuous period of 180 days either party may, on not less than 14 days prior written notice to the other party, terminate these Terms.
12. **USE OF INFORMATION**
- 12.1 The Buyer agrees that the Seller may obtain information about the Buyer from the Buyer or any other person (including any Person related to the Seller and including any company within the wider group of companies of which the Seller forms part (the "Wider Seller Group") and any credit or debt collection agencies) in the course of the Seller's business, including credit assessment, debt collecting and direct marketing activities, and the Buyer consents to any person providing the Seller with such information.
- 12.2 The Buyer agrees that the Seller may use any information it has about the Buyer relating to the Buyer's creditworthiness and, subject to any confidentiality agreement between the Buyer and the Seller, give that information to any other person, including any credit or debt collection agency and other members of the Wider Seller Group for credit assessment and or, debt collection purposes. The Buyer agrees that any other information collected by the Seller about the Buyer is accessed or collected for the use of any member of the Wider Seller Group in the course of its business, including direct marketing activities. Under the Privacy Act 1988 (Cth), the Buyer has rights of access to, and correction of, their personal information.
- 12.3 Notwithstanding any of these Terms, where the Buyer is a natural person, the Buyer specifically agrees for the purposes of privacy legislation including the Privacy Act 1988 (Cth) to the Seller:
- being given a credit report on him or her for the purpose of assessing an application for credit or for the purpose of the collection of payments that are overdue under these Terms;
 - disclosing to or obtaining from another credit provider a credit report or personal information derived from a credit report on him or her for the purpose of assessing or exchanging information relating to his or her creditworthiness, credit history or credit capacity; and
 - collecting and using personal information as may be required for the purposes of the PPS Act, including but not limited to, use in financing statements registered by the Seller, and the Seller advises the Buyer and the Buyer acknowledges that the Seller may disclose the information it acquires about the Buyer to a credit agency, other members of the Wider Seller Group or as may be required by the PPS Act.
13. **MEDIATION**
- 13.1 Either party may require any dispute arising which has not been resolved within 14 days to be referred to mediation. The mediator will be appointed by both parties and, where the parties cannot agree within 14 days, appointed by the Australian Commercial Disputes Centre. The mediator will conduct the mediation in accordance with the guidelines agreed between the parties or if the parties cannot agree within 14 days following appointment of the mediator, the guidelines set by the mediator. The costs and expenses of the mediator will be shared by the parties equally.
14. **OTHER AGREEMENTS**
- 14.1 If there is any inconsistency between these Terms and any Order submitted by the Buyer (whether in writing, verbally or otherwise) or any other arrangements between the parties, these Terms prevail unless otherwise agreed in writing by the parties.
15. **WAIVER**
- 15.1 If the Seller exercises or fails to exercise or delays exercising any right or remedy available to it, this will not prejudice the Seller's rights in exercising that or any other right or remedy unless expressly specified in writing and signed by the Seller.
16. **NO ASSIGNMENT**
- 16.1 The Buyer must not transfer or assign its rights under these Terms to anyone else without the Seller's prior consent in writing. The Seller may assign or transfer any of its rights or obligations under these Terms without the Buyer's consent. Each assignee or transferee is to have the same rights against the Buyer under these Terms as if named as the Seller
- 16.2 In the event of the sale of the Seller's business or a substantial portion thereof the Seller shall be entitled to novate these Terms to the purchaser upon giving notice to the Buyer, and the Buyer agrees to such novation.
17. **GOVERNING LAW**
- 17.1 These Terms will be governed by the laws of Victoria and the parties submit to the non-exclusive jurisdiction of the Courts of Victoria.
18. **WORDS USED IN THESE TERMS**
- 18.1 "Amount Owing" means, at any time, all amounts owing by the Buyer to the Seller under these Terms, or if the context expressly provides in respect of specific Goods.
- 18.2 "Buyer" means the person purchasing the Goods from the Seller pursuant to these Terms, including that person's successors and assigns.
- 18.3 "Claim" includes any claim:
- for loss of profits; or
 - for any loss, damage or injury of any kind, including consequential, indirect or special loss or damage, suffered by any person arising directly or indirectly from:
 - any breach of the Seller's obligations under these Terms; or
 - any cancellation of these Terms; or
 - any negligence, misrepresentation or other act or omission by the Seller or its employees, agents or contractors; or
 - for compensation, demand, remedy, liability or action.
- 18.4 "Customer" means a person who is a customer of Buyer who purchases Goods under a sale permitted by clause 5.4;
- 18.5 "Delivery" means delivery of the Goods as determined in accordance with clause 4 of these Terms.
- 18.6 "Event of Default" means an event where:
- the Buyer fails to comply with these Terms; or
 - the Buyer commits an act of bankruptcy; or
 - the Buyer enters into any composition or arrangement with its creditors; or
 - if the Buyer is a company:
 - the Buyer does anything which would make it liable to be put into liquidation; or
 - a resolution is passed or an application is made for the liquidation of the Buyer; or
 - a receiver or statutory or official manager is appointed over all or any of the Buyer's assets or the Buyer, its board or shareholders is considering appointing an administrator or liquidator; or
 - the Buyer, its board, or shareholders is considering appointing an administrator or liquidator; or
 - an administrator is appointed to the Buyer;
 - anything analogous to or having similar effect to any of the other events above arises.
- 18.7 "Force Majeure Event" means any event or circumstance which is beyond the reasonable control of the affected party and which results in or causes the failure of that party to perform any of its obligations under these Terms.
- 18.8 "Goods" means all goods and associated services supplied to the Buyer by the Seller under these Terms now and at any time in the future including (but not limited to) Timber, Roundwood, Plywood, Laminated Veneer Lumber, Panels, MDF, Particle Board, Mouldings and other building and building related products together with all accessories and replacements that are at any time supplied or attached to the Goods and all of the Buyer's present and future rights, title and interest (legal and equitable) in, all documents of title relating to, and all proceeds arising from the Goods.
- 18.9 "Order" means an order placed by the Buyer with the Seller for the purchase of Goods.

- 18.10 "Ownership" means the property in and legal and beneficial ownership of the Goods.
- 18.11 "Person" includes a corporation, association, firm, company, partnership or individual.
- 18.12 "PPS Act" means the Personal Property Securities Act 2009 (Cth), any regulations made pursuant to that Act and any variation or replacement of that Act or those regulations from time to time.
- 18.13 "Price" means the purchase price of the Goods as most recently specified by the Seller to the Buyer in writing or otherwise (or, if no such price has been specified, the Seller's then-current market price for the Goods) and any taxes or duties payable under clause 2.3 and any other costs payable by the Buyer under these terms (including, without limitation, costs relating to transportation, storage and insurance).
- 18.14 "Proceeds" has the meaning given to that term in the PPS Act.
- 18.15 "Registration Commencement Time" has the meaning given to it in the PPS Act.
- 18.16 "Security Interest" has the meaning given to that term in the PPS Act.
- 18.17 "Seller" means the member of the Carter Holt Harvey Woodproducts Australia Group of Companies, as identified on this Application for Commercial Credit, from which the Goods are purchased.
- 18.18 "Terms" means these terms of sale and, as the context requires, each contract entered into between the Buyer and the Seller for the supply of Goods and each invoice issued by the Seller to the Buyer for Goods into which these terms of sale are incorporated.
- 18.19 References to legislation include as amended, re-enacted or substituted and any statutory instruments, regulations and orders issued under such legislation.
- 18.20 Wherever "include" or any form of that word is used, it must be construed as if it were followed by "(without being limited to)".

For and behalf of:.....
 Signature/s:...../.....
(Business/Company Name)

Authorised

Date :.....

Print Name/s: