

MDM Timber Limited

Terms of Trading

1 Definitions

1.1 The following definitions shall apply:

Rebate: any rebate, discount, credit onus or similar payment or allowance accruing or payable by us to you under this agreement.

Event of Default: means any of the following:

- (a) if 2 consecutive invoices are not paid when due or within any originally applicable grace period;
- (b) you stop or suspend payment of your debts or are unable to, or admit your inability to, pay your debts when they fall due;
- (c) the value of your assets, in our reasonable opinion is less than your liabilities (taking into account contingent and prospective liabilities);
- (d) a moratorium is declared in respect of any indebtedness;
- (e) any action, proceeding, procedure or step is taken for:
 - i. the suspension of payments, a moratorium in respect of any indebtedness, winding up, dissolution administration or reorganisation (using a voluntary arrangement, scheme or arrangement or otherwise) of you;
 - ii. the composition, compromise, assignment or arrangement with any creditor; and
 - iii. the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of you or any of its assets;
- (f) you commence negotiations, or enter into any composition, compromise, assignment or arrangement, with one or more of your creditors with a view to rescheduling any of your indebtedness (because of actual or anticipated financial difficulties);
- (g) any provision of this agreement is or becomes, for any reason, invalid, unlawful, unenforceable, terminated, disputed or ceases to be effective or to have full force and effect;
- (h) any event occurs (or circumstances exist) which in our reasonable opinion, has or is likely to materially and adversely affect your ability to perform all or any of your obligations under or otherwise comply with the terms of this agreement.

2 Price

2.1 The price quoted excludes VAT (unless otherwise stated). VAT will be charged at the rate applying at the time of delivery.

2.2 The price quoted excludes delivery (unless otherwise stated).

2.3 Unless otherwise stated, the price quoted is an illustrative estimate only and the price charged may be subject to shippers final confirmation.

2.4 Rates of tax and duties on the goods will be those applying at the time of delivery.

2.5 At any time before delivery we may adjust the price to reflect any increase in our costs of supplying the goods.

2.6 The price quoted may be withdrawn at anytime and if not shall lapse 7 days from their date.

3 Delivery

3.1 All delivery times quoted are estimates only.

3.2 If we fail to deliver within a reasonable time, you may (by informing us in writing) cancel the contract, however:

3.2.1 you may not cancel if we receive your notice after the goods have been dispatched; and

3.2.2 if you cancel the contract, you can have no further claim against us under that contract.

3.3 If you accept delivery of the goods after the estimated delivery time, it will be on the basis that you have no claim against us for delay (including indirect or consequential loss, or increase in the price of the goods).

3.4 We may deliver the goods in instalments. Each instalment is treated as a separate contract.

3.5 For all orders sold "goods to arrive" are subject to shipment and safe arrival.

3.6 We may decline to deliver if:

3.7 we believe that it would be unsafe, unlawful or unreasonably difficult to do so; or

3.8 the premises (or the access to them) are unsuitable for our vehicle.

3.9 You shall ensure that the goods are offloaded, located and used properly and responsibly in accordance with the Health and Safety at Work Act 1974 and any other relevant statutory provisions.

4 Risk

4.1 The goods are at your risk from the time of delivery.

4.2 Delivery takes place either:

4.2.1 at our designated premises (if you are collecting them or arranging carriage); or

4.2.2 at your premises or address specified by you (if we are arranging carriage).

4.3 You must inspect the goods on delivery. If any goods are damaged or not delivered, you must write to tell us within three days of delivery or the expected delivery time. You must give us (and any carrier) a fair chance to inspect the damaged goods.

5 Payment terms

5.1 You are to pay us in cash or in cleared funds prior to delivery, unless you have an approved credit account.

5.2 If you have an approved credit account, payment is due no later than 30 days after the month of our invoice unless otherwise agreed in writing.

5.3 If you fail to pay us in full on the due date we may:

5.3.1 suspend or cancel future deliveries;

5.3.2 cancel any discount offered to you;

5.3.3 charge you interest at the rate set under s.6 of the Late Payment of Commercial Debts (Interest) Act 1998;

(a) calculated (on a daily basis) from the date of our invoice until payment;

(b) compounded on the first day of each month; and

(c) before and after any judgment (unless a court orders otherwise);

5.3.4 claim fixed sum compensation from you under s.5A of that Act to cover our credit control overhead costs; and

5.3.5 recover (under clause 5.8) the cost of taking legal action to make you pay.

5.4 If you have an approved credit account, we may withdraw it or reduce your credit limit or bring forward your due date for payment. We may do any of those at any time without notice.

5.5 In the event of non-payment of any account as and when it falls due, whether such payment relates to the same or

5.6 any other contract entered into by you with us the entire balances outstanding upon your various accounts with the us (including accounts due for goods to be supplied or supplied but not yet invoiced) will become immediately due and payable.

5.7 You do not have the right to set off any money you may claim from us against anything you may owe us.

5.8 While you owe money to us, we have a lien on any of your property in our possession.

5.9 You are to indemnify us in full and hold us harmless from all expenses and liabilities we may incur (directly or indirectly including financing costs and including legal costs on a full indemnity basis) following any breach by you of any of your obligations under these terms.

6 Title

6.1 Until you pay all debts you may owe us:

6.1.1 all goods supplied by us remain our property;

6.1.2 you must store them so that they are clearly identifiable as our property;

6.1.3 you must insure them (against the risks for which a prudent owner would insure them) and hold the policy on trust for us;

6.1.4 you may use those goods and sell them in the ordinary course of your business, but not if:

(a) we revoke that right (by informing you in writing); or

(b) you become insolvent.

6.2 You must inform us (in writing) immediately if you become insolvent.

6.3 If your right to use and sell the goods ends you must allow us to remove the goods.

6.4 We have your permission to enter any premises where the goods may be stored:

6.4.1 at any time, to inspect them; and

6.4.2 after your right to use and sell them has ended, to remove them, using reasonable force if necessary.

6.5 Despite our retention of title to the goods, we have the right to take legal proceedings to recover the price of goods supplied should you not pay us by the due date.

6.6 You are not our agent. You have no authority to make any contract on our behalf or in our name.

7 Warranties and Liability

7.1 We warrant that the goods:

7.1.1 comply with their description on our sales note; and

7.1.2 are free from material defect at the time of delivery (as long as you comply with clause 7.3).

7.2 We give no other warranty (and exclude any warranty, term or condition that would otherwise be implied) as to the quality of the goods or their fitness for any purpose.

7.3 If you believe that we have delivered goods that are defective in materials or workmanship, you must:

7.3.1 Not "Break Bulk"; and

7.3.2 If you do "Break Bulk" then you must not alter the goods any further without our express agreement; and

7.3.3 inform us (in writing), with full details, within 3 days of delivery; and

7.3.4 allow us and the carrier to investigate (we may need access to your premises and product samples); and

7.3.5 keep the goods in clean and dry conditions (you may incur costs if damage is caused by negligent storage)

7.3.6 keep the products clearly identifiable as ours

7.4 If the goods are found to be defective in material or workmanship (following our investigations), and you have complied with those conditions (in clause 7.3) in full, we will (at our option) repair the goods replace the goods or refund the price.

7.5 We are not liable for the goods failure to comply with the warranty in under this contract if:

7.5.1 you make any use of such goods after giving notice in accordance with this agreement.

7.5.2 you alter or repair the goods without our written consent;

7.5.3 the defect arises as a result of fair wear and tear, wilful damage, negligence or abnormal conditions;

7.5.4 the goods differ from the goods specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards;

7.5.5 the defect arises as a result of us preparing goods according to your specification under clause 8.

7.6 We are not liable for any other loss or damage (including indirect or consequential loss, financial loss, loss of profits or loss of use) arising from the contract or the supply of goods or their use, even if we are negligent.

7.7 Our total liability to you (from one single cause) for damage to property caused by our negligence is limited to £500,000.

7.8 For all other liabilities not referred to elsewhere in these terms our liability is limited in damages to 125% the price of the goods.

7.9 Nothing in these terms restricts or limits our liability for death or personal injury resulting from negligence.

7.10 Nothing in these terms affects or limits our liability for fraudulent misrepresentation.

8 Specification

8.1 If we prepare the goods in accordance with your specifications or instructions you must ensure that:

8.1.1 the specifications or instructions are accurate;

8.1.2 goods prepared in accordance with those specifications or instructions will be fit for the purpose for which you intend to use them; and

8.1.3 your specifications or instructions will not result in the infringement of any intellectual property rights of a third party, or in the breach of any applicable law or regulation.

8.2 We reserve the right;

8.2.1 to make any changes in the specifications of our goods that are necessary to ensure they conform to any applicable safety or statutory requirements; and

8.2.2 to make without notice any minor modifications in our specifications we think necessary or desirable.

9 Return of goods

9.1 We may accept the return of goods from you only:

9.1.1 by prior arrangement (confirmed in writing);

9.1.2 on payment of an agreed handling charge (unless the goods were defective when delivered); and

9.1.3 where the goods are as fit for sale on their return as they were on delivery.

10 Export terms

10.1 Where the goods are supplied by us to you by way of export from the United Kingdom clause 10 of these terms applies (except to the extent that it is inconsistent with any written agreement between us).

10.2 The 'Incoterms' of the International Chamber of Commerce which are in force at the time when the contract is made apply to exports, but these terms prevail to the extent that there is any inconsistency.

10.3 Unless otherwise agreed, the goods are supplied ex works our place of manufacture.

10.4 Where the goods are to be sent by us to you by a route including sea transport we are under no obligation to give a notice under section 32(3) of the Sale of Goods Act 1979.

10.5 You are responsible for arranging testing and inspection of the goods at our premises before shipment (unless otherwise agreed). We are not liable for any defect in the goods which would be apparent on inspection unless a claim is made before shipment. We are not liable for any damage during transit.

10.6 We are not liable for death or personal injury arising from the use of the goods delivered in the territory of another State (within the meaning of s.26 (3) (b) Unfair Contract Terms Act 1977).

11 Rebate terms

11.1 You agree that Rebate shall, upon accrual and pending valid application in accordance with this clause 11, be and remain our sole property. You acknowledge that you do not hold a beneficial interest in any Rebate except to the limited extent expressly permitted by this clause 11.

11.2 Any Rebate payable by us to you under this agreement or any trading agreement shall be conditional on:

11.2.1 all invoices due from you being paid in full; and

11.2.2 no Event of Default having occurred at the time the Rebate would otherwise become payable.

11.3 A Rebate will only be credited as a sum owed to you if, at the time the Rebate is due the conditions at clause 11.2 are satisfied. If the conditions at clause 11.2 are not met, and there is an Event of Default and/or an outstanding invoice payable, the Rebate shall be released to us as a debt owed to us by you and you agree that you have no further right or claim relating thereto against us. For the avoidance of doubt, the Rebate does not create a debt payable by us.

11.4 Without prejudice to our rights and remedies, where the Rebate is in excess of the sums you owe us, we may apply the full Rebate in partial settlement of your debt. Where the debt is less than the Rebate, an appropriate portion of the Rebate shall be used in full settlement of the debt. For the avoidance of doubt, the Rebate is an asset held by us and we elect to apply it to your debts at our discretion.

11.5 We may at any time apply any amount of Rebate to reduce or settle any amounts you owe us, including amounts that are present, future or otherwise disputed without notice to you. Where there is an outstanding debt and settlement of the same is done using the Rebate, we may provide you with a statement showing the basis of the calculation within 30 business days upon written request.

11.6 Where an Event of Default occurs, any accrued but unused Rebate immediately expires, we may use it to offset your outstanding debts.

12 Cancellation

12.1 You may not cancel the order unless we agree in writing (and clauses 3.2.2 and 12.2 then apply).

12.2 If the order is cancelled (for any reason) you are then to pay us for all stock (finished or unfinished) that we may then hold (or to which we are committed) for the order.

12.3 We may suspend or cancel the order, by written notice if:

12.3.1 you fail to pay us any money when due (under the order or otherwise);

12.3.2 you become insolvent;

12.3.3 you fail to honour your obligations under these terms.

13 Waiver and variations

13.1 Any waiver or variation of these terms is binding in honour only unless:

13.1.1 made (or recorded) in writing or email;

13.1.2 signed on behalf of each party; and

13.1.3 expressly stating an intention to vary these terms.

13.2 All orders that you place with us will be on these terms (or any that we may issue to replace them) to the exclusion of all other terms and conditions including any terms of conditions including any terms and conditions which you may seek to apply under any purchase order, confirmation or similar document.

14 Force majeure

14.1 If we are unable to perform our obligations to you (or able to perform them only at unreasonable cost) because of circumstances beyond our control, we may cancel or suspend any of our obligations to you, without liability.

14.2 Examples of those circumstances include act of God, accident, explosion, war, terrorism, fire, flood, transport delays, strikes and other industrial disputes and difficulty in obtaining supplies.

15 General

15.1 English law is applicable to any contract made under these terms. The English and Welsh courts have non-exclusive jurisdiction.

15.2 If you are more than one person, each of you has joint and several obligations under these terms.

15.3 If any of these terms are unenforceable as drafted:

15.3.1 it will not affect the enforceability of any other of these terms; and

15.3.2 if it would be enforceable if amended, it will be treated as so amended.

15.4 We may treat you as insolvent if:

15.4.1 you are unable to pay your debts as they fall due; or

15.4.2 you (or any item of your property) become the subject of:

15.4.3 any formal insolvency procedure (examples of which include receivership, liquidation, administration, voluntary arrangements (including a moratorium) or bankruptcy);

(a) any application or proposal for any formal insolvency procedure; or

(b) any application, procedure or proposal overseas with similar effect or purpose.

15.5 All brochures, catalogues and other promotional materials (in print or on the internet) are to be treated as illustrative only. Their contents form no part of any contract between us and you should not rely on them in entering into any contract with us.

15.6 Any notice by either of us which is to be served under these terms may be served by leaving it at or by delivering it to (by first class post or by fax) the other's registered office or principal place of business. All such notices must be signed.

15.7 No contract will create any right enforceable (by virtue of the Contracts (Rights of Third Parties) Act 1999) by any person not identified as the buyer or seller.

15.8 The only statements upon which you may rely in making the contract with us, are those made in writing by someone who is our authorised representative and either:

15.8.1 contained in our estimate (or any covering letter) and not withdrawn before the contract is made; or

15.8.2 which expressly state that you may rely on them when entering into the contract.

15.9 Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976, as amended) the statutory rights of the Buyer are not affected by these Conditions.