

New Zealand Panels Group Limited: Conditions of Sale

1. GENERAL

1.1 These conditions of sale apply to New Zealand Panels Group Limited and to any of its companies or divisions ("the Group") with whom the Customer does business from time to time.

1.2 In these conditions of sale:

- (a) "Group" is defined above by reference to the member of the Group from whom the Customer has ordered Goods.
- (b) "Customer" means the customer named in the attached Application for a Trade Credit Account or the person who is requesting the supply of Goods from the Group.
- (c) "Goods" means all the particle board, medium density fibreboard, hardboard, softboard, melamine and other panels and laminates, mouldings, doors, jambs and associated fittings, adhesives, abrasives, fittings, fastenings, hardware, machinery, plumbing, coatings, steel, lighting, timber and joinery, wood finishes, flooring, appliances, and other goods supplied by the Group and, in respect of each order of Goods from the Customer accepted by the Group, means the Goods described in the invoice issued by the supplying member of the Group in respect of the relevant order.

1.3 Any Goods supplied by the Group to the Customer will be supplied on these conditions only. If the Customer orders Goods, the Customer will be deemed to have accepted these conditions. The only circumstance where any variation to these conditions will apply is where a manager of the relevant supplier within the Group has expressly agreed in writing to that variation.

1.4 If at any time the Group fails to enforce any of these conditions or exercise its rights under them it is not to be deemed to have waived those terms or rights.

2. ORDER CANCELLATION

2.1 Cancellation of an order for Goods manufactured or supplied by the Group may only be accepted by the Group if:

- (a) the Group has received written notice of cancellation prior to the commencement of manufacture of the Goods; or
- (b) the Goods form part of the Group's stock in trade and are not custom made.

2.2 Cancellation of an order for Goods not manufactured by the Group may only be accepted by the Group if:

- (a) The price of the Goods has increased by more than 5% between the date of the order and the date of delivery of the Goods; and
- (b) The Group has received written notice of cancellation before delivery of the Goods and within 7 days of the increase in price.

3. PRICE

3.1 The price of the Goods will be the price contained in the Group's price list current on the date the Goods are delivered to the Customer, unless otherwise expressly agreed in writing by the Group.

3.2 The price of the Goods excludes any amount payable in respect of goods and services tax ("GST") (if any), and all transport, delivery, insurance and packaging costs which will be paid by the Customer in addition to the price (as applicable under clause 5.3).

4. PAYMENT

4.1 Unless otherwise agreed, the price of the Goods, plus GST (if any) and any other amounts payable by the Customer in respect of the Goods, will be paid in full no later than the 20th of the month following the date of the invoice for the Goods. However, the Group reserves the right to require payment for any Goods in cash before such Goods are delivered.

4.2 Subject to clause 4.1 and 4.3, payment must be by cheque, electronic funds transfer, cash or such other means as may be agreed by the Group before the payment is made.

4.3 The Group may, at any time, require the Customer to pay for Goods by letter of credit, bank cheque or post-dated cheque or secure payment for Goods by way of a general security deed, an assignment of debt, an instrument by way of security, a mortgage or agreement to a mortgage, or in any other manner whatsoever and for these purposes this clause is the agreement by the Customer to give such a mortgage and is also an irrevocable

power of attorney giving the Group the right to register a mortgage or file a caveat for those purposes.

4.4 The Customer may not marshal, deduct or withhold any amount (whether by way of set-off, counterclaim or otherwise) from any money owing to the Group.

4.5 Any payment received by the Group (or any amount deducted or withheld by the Group under clause 4.6) may be applied in reduction of any amount owing to the Group, as determined by the Group.

4.6 The Group may deduct or withhold any amount (whether by way of set-off, counterclaim or otherwise) from any money owing by the Group to the Customer on any account whatsoever.

4.7 If full payment for the Goods is not made by the due date for payment, the Customer will pay, at the Group's discretion (and without prejudice to any other rights or remedies the Group may have), on demand, default interest on any amount outstanding, at a rate equal to 3% above the current base lending rate from time to time set by the bankers to the member of the Group that is supplying the Goods (plus GST, if any).

4.8 Default interest will accrue on a daily basis from the date when payment is due until the date when payment is actually made. The Customer will also be liable to pay all expenses and costs (including legal costs as between solicitor and client in connection with the Group recovering or attempting to recover any overdue amount from the Customer.

4.9 The Group may also at its option suspend the sale of the unpaid or undelivered Goods in its possession and retain them until the overdue amounts are paid in full.

5. DELIVERY

5.1 Unless otherwise agreed, the Group will arrange delivery of the Goods. Delivery may be by instalments.

5.2 Unless otherwise agreed by the Group prior to delivery, the price of the Goods excludes the costs of delivery of the Goods, which will be paid by the Customer in addition to the price.

5.3 If the price of Goods includes the costs of delivery, the following conditions apply, unless otherwise agreed by the Group prior to delivery:

(a) in respect of Goods delivered to a delivery point in New Zealand, the price of the Goods includes the costs of delivery of the Goods by the usual methods of transportation used by the Group, between the hours of 7.30am and 5pm Monday to Friday (excluding statutory holidays). The Group may, if the Customer requests, arrange Goods to be delivered by other means or at other times but will be entitled to charge the Customer for any additional cost the Group may incur;

(b) in respect of Goods delivered to a delivery point outside New Zealand, the price of the Goods includes the costs of delivery of the Goods by the usual route and methods of transportation used by the Group. The Group may, if the Customer requests, arrange Goods to be delivered by other means but will be entitled to charge the Customer for any additional costs the Group may incur.

5.4 The Group will endeavour to have Goods delivered on the agreed delivery dates but will not be held liable for late or non-delivery. Late delivery does not entitle the Customer to cancel any order or part order.

5.5 Delivery will be deemed to have been made when Goods arrive at the delivery point agreed with the Customer or if the Customer is to arrange delivery of the Goods, when the Goods are available for collection by the Customer. The Customer or its authorised representative must sign the Group's copy of the delivery docket or packing slip before the Goods are unloaded or collected.

5.6 All claims for errors in delivery or for Goods damaged in transit must be made to the Group within 2 days of delivery in respect of Goods delivered by courier and within 7 days of delivery in respect of Goods delivered by any other means or Goods collected by the Customer, and in accordance with the procedures advised by the Group from time to time.

5.7 Where the Group arranges delivery of the Goods, the Customer will ensure, at its own cost, that all agreed delivery points have the

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mechanical means and labour to unload the Goods promptly and have suitable access and area for unloading.

- 5.8 If the Customer fails or refuses to take delivery of any Goods at an agreed delivery time, the Group may (without limiting any other rights or remedies the Group may have) charge the Customer for any expenses or additional costs incurred by the Group as a result of delay.

6. OWNERSHIP AND RISK

- 6.1 Legal and beneficial ownership of any Goods supplied by the Group will not pass to the Customer until all amounts owing by the Customer to the Group have been received by the Group.
- 6.2 Until ownership passes to the Customer, the Goods supplied are held by the Customer for the Group as bailee and, if required, the Customer will store the Goods so that it is clear they belong to the Group.
- 6.3 If the Customer wishes to resell any Goods before ownership passes, the Customer may do so only by way of bona fide sale in the ordinary course of business and as the agent of the supplying member of the Group, but the Customer shall not represent to any other person that the Customer is acting for, or has any authority to bind, any member of the Group. The Customer shall account to the supplying member of the Group for the proceeds of any sale of the Goods.
- 6.4 Risk in the Goods will pass to the Customer immediately on delivery of the Goods. The Customer will insure the Goods at full replacement value until legal and beneficial ownership of the Goods has passed to the Customer.

7. RETURNS

- 7.1 Subject to clauses 5.6, 10.4 and 10.5, Goods may only be returned to the Group within 7 days of the date of delivery of those Goods if:
- (a) the Goods form part of the supplying member of the Group's stock in trade and are not custom made; and
 - (b) the condition of the Goods has not deteriorated, in the Group's reasonable opinion, and subject to the following:
 - (i) the Customer pays for the cost of returning the Goods; and
 - (ii) the Customer provides reasonable evidence of purchase from the supplying member of the Group.
- 7.2 Where Goods are returned in accordance with clause 7.1, the Group will give a credit to the Customer of at least 90% of the price of the Goods (at the date the Goods were delivered to the Customer).

8. PERSONAL PROPERTY SECURITIES ACT

- 8.1 The supplying member of the Group and the Customer acknowledge that these conditions constitute a security agreement as defined by the Personal Property Securities Act 1999 ("PPSA"). For the purposes of the PPSA, "Collateral" includes Goods and their proceeds including insurance. The Customer agrees to give the supplying member of the Group a security interest in all of the Customer's present and after-acquired property that the member of the Group has supplied as the Goods and not to allow any person to file a financing statement over any of the Collateral secured by this security agreement without the prior written consent of the Group.
- 8.2 The Customer agrees to advise its creditors of the terms upon which it buys Goods from the Group and that the supplying member of the Group may create and register a purchase money security interest under the PPSA for all Goods which the Group has supplied
- 8.3 Upon signing these conditions the Customer acknowledges that:
- (a) these conditions are a security agreement for the purposes of ss 36 of the PPSA;
 - (b) a security interest is taken by the supplying member of the Group in all Goods previously supplied to the Customer and all Goods that will be supplied in the future by the Group to the Customer during the continuance of the parties' relationship.
- 8.4 The Customer undertakes to:
- (a) sign any further documents and/or provide any further information which the Group may reasonably require to register the financing statements or financing change statements on the Personal Property Securities Register; and

- (b) immediately advise the Group of any material change in its business practices of selling the Goods that would result in a change of the nature of proceeds derived from such sales.

- 8.5 Until ownership of the Goods passes, the Customer waives its right under the PPSA:

- (a) to receive a copy of any verification statement;
- (b) to receive a copy of any financing change statement;
- (c) to receive any notice that the Group intends to sell the Goods or to retain the Goods on enforcement of the security interest (as defined in PPSA) granted to the Group under these conditions;
- (d) to object to a Group proposal to retain the Goods in satisfaction of any obligation owed by the Customer to the Group;
- (e) to receive a statement of account on sale of the Goods;
- (f) to redeem the Goods; and
- (g) where any Goods become an accession, as defined in the PPSA, to not have any Goods damaged when the Group removes the accession, to receive notice of removal of the accession and to apply to the court for an order concerning the removal of an accession.

- 8.6 Until ownership of the Goods passes, the Customer must not give to the supplying member of the Group a written demand or allow any other person to give the supplying member of the Group a written demand requiring the supplying member of the Group to register a financing charge statement under the PPSA or enter into or allow any other person to enter into the register of personal property securities a financing charge statement under the PPSA.

- 8.7 The Customer acknowledges that it has received value as at the date of first delivery of the Goods and has not agreed to postpone the time for attachment of the security interest (as defined in PPSA) granted to the supplying member of the Group under these conditions.

- 8.7 The security agreement is a continuing security and will operate irrespective of any intervening payment or settlement of account until a release has been signed by the Group. The security interest granted in the Collateral has the same priority in relation to any Goods supplied to the Customer by the Group at any time.

9. CHANGE OF TRADING ENTITY AND CUSTOMER DETAILS

The Customer must provide the supplying member of the Group with at least 14 days prior written notice of any change of name, address, contact details or legal status. Unless the supplying member of the Group has received and accepted an application for a trade credit account in the name of a company, the Customer named overleaf (in the case of a Customer who is not a company) will be liable for the Goods not withstanding that the order for the Goods was made by a company.

10. WARRANTIES

- 10.1 The supplying member of the Group (but no other member of the Group) warrants that Goods manufactured by the supplying member of the Group will be free from defects in materials or workmanship and will substantially conform with the supplying member of the Group's specifications. BUT this warranty will not apply:

- (a) unless a written claim (other than a claim covered by clause 5.6, which will be dealt with under clause 5.6) is received by the Group within 6 months of delivery of the Goods to which the claim relates;
- (b) unless the Group is given the opportunity to inspect the Goods immediately after the defect is discovered;
- (c) if the Goods have been repaired by any person not authorised by the supplying member of the Group to do such repairs;
- (d) if the Goods are used for any purpose other than the purpose for which they are intended;
- (e) if the Goods have been modified or incorrectly stored, handled, installed or maintained;
- (f) if the instructions as to use, installation or maintenance of the Goods as contained in current product data produced by the supplying member of the Group have not been adhered to (it being the responsibility of the Customer to obtain that information);

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- (g) to any Goods which have been sold by the supplying member of the Group as seconds, downgrades or otherwise outside the standard specifications for those Goods.
- 10.2 If the Customer is a consumer under the Consumer Guarantees Act 1993 (the "CGA"):
- (a) and is acquiring or holding itself out as acquiring the Goods for a business purpose, the CGA will not apply; and
 - (b) the supplying member of the Group does not undertake that facilities for repair and parts for the Goods will be available.
- 10.3 If the Customer is acquiring the Goods for the purpose of re-supplying them (in the form in which they were delivered or otherwise) in trade and that re-supply is governed by New Zealand law, the Customer will:
- (a) include in its conditions of sale a clause to the effect that the CGA will not apply where a customer of the Customer acquires or holds itself out as acquiring the Goods for a business purpose;
 - (b) notify its customers of the effect of clause 10.3(a);
 - (c) take reasonable action to notify its customers at or before the time the Goods are supplied to such customers that the Group does not undertake that repair facilities and parts will be available for the Goods; and
 - (d) indemnify the supplying member of the Group against all losses, costs, damages or liabilities which it may incur or be liable to pay arising out of the Customer's failure to take the action required under this clause 10.3.
- 10.4 Subject to clause 10.5 and to any express warranties given by the supplying member of the Group to the Customer in writing:
- (a) all warranties (other than the warranty contained in clause 10.1), descriptions, representations, terms and conditions (other than these conditions of sale) whether implied by law, trade, custom or otherwise are, and all other liability of the supplying member of the Group, and any of its directors, managers or employees, whether in tort (including negligence), contract or otherwise is, expressly excluded to the fullest extent permitted by law including ss9, 12A and 14 of the Fair Trading Act 1986;
 - (b) insofar as the Group may be liable notwithstanding clause 10.4(a), the total liability of the Group for any loss, damage or injury arising directly or indirectly from any defect in or non-compliance of any Goods or any other breach of the Group's obligations to the Customer (including, without limitation, any breach of the warranty in clause 10.1) is, to the extent permitted by law, limited to:
 - (i) the price of the Goods complained of; or
 - (ii) the cost of repairing or replacing the defective Goods; or
 - (iii) the actual loss or damage suffered by the Customer, whichever is the lesser;
 - (c) except where statute expressly requires otherwise, the Group will not be liable in any event for any loss of profits or any consequential, indirect or special damage, loss or injury of any kind suffered by the Customer or any other person;
 - (d) while the Group will make every effort to ensure the accuracy of any advice, recommendation, information, assistance or service provided by the Group in relation to the Goods or their use or application, to the extent permitted by law, the Group does not accept any liability or responsibility in respect of such advice.
- 10.5 Subject to clause 10.2, nothing in these conditions will affect any rights a consumer (as defined in the CGA) may have under the CGA.

11. CONTAINERS AND PACKAGING

- 11.1 When a returnable container, case or crate is used for the delivery of Goods, the Customer will pay for the cost of the container, case or crate. The cost will be noted on the relevant invoice, and will be credited when the container, case or crate is returned (as the Customer's cost) to the supplying member of the Group (at the premises from which the Goods were despatched or collected). All containers, cases or crates used for the delivery of the Goods will remain the property of the supplying member of the Group.

- 11.2 When a non-returnable container, case or crate is used for the delivery of Goods, the Customer will be responsible for disposing, at its own cost, of all materials used in the packaging or delivery of Goods.

12. TRADE MARKS

- 12.1 The Customer will use the Group's trade marks in accordance with the terms and conditions advised by the Group from time to time.

13. OTHER RIGHTS OF THE GROUP

- 13.1 If:
- (a) any amount payable by the Customer to the Group is overdue, or the Customer fails to meet any other obligation to the Group (whether in relation to the sale of Goods or otherwise), or in the Group's opinion the Customer is likely to be unable to meet its payment or other obligations to the Group; or
 - (b) the Customer becomes bankrupt, insolvent, has a receiver appointed in respect of all or some of its assets, makes or is likely to make an arrangement with its creditors, has a liquidator (provisional or otherwise) appointed, is placed under statutory or official management or any equivalent or analogous event occurs under the law of any jurisdiction in which the Customer is incorporated, domiciled, resident or carries on business; or
 - (c) the ownership or effective control of the Customer is transferred or the nature of the Customer's business is materially altered; then:
- (i) the supplying member of the Group may cancel all or any orders with the Customer which remain, or any part of any order with the Customer which remains, unperformed, in addition to and without prejudice to its other rights or remedies; and
 - (ii) all amounts owing to the supplying member of the Group whether due to payment or not, will immediately become due and payable; and
 - (iii) the Group may remove any Goods in the Customer's possession or control (including any Goods that have become an accession under the PPSA) and dispose of them or retain them for its own benefit and for that purpose the supplying member of the Group may, subject to the Credit (Repossession) Act 1997, without notice, enter directly or by its agents on any premises where it believes Goods may be stored, without in any way being liable to any person.

14. GOVERNING LAW

- 14.1 These conditions will be governed by New Zealand law and the Customer agrees to submit to the exclusive jurisdiction of the New Zealand courts.
- 14.2 The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded.

15. MISCELLANEOUS

- 15.1 Where any provision of these conditions is rendered void, unenforceable or otherwise ineffective by operation of the law, that will not affect the enforceability or effectiveness of any other provision of these conditions.