

# TILHILL FORESTRY LIMITED

## Conditions of Sale



### A TIMBER SALES

- 1 All tenders for products, materials or equipment to be supplied by or through Tilhill Forestry Ltd (hereinafter referred to as "the Company") are offered subject to the following express terms and conditions and these conditions shall apply notwithstanding any conditions to the contrary in the Buyers conditions (which so far as they are inconsistent with these conditions are deemed to be waived).
- 2 All timber is sold under the Timber Trade Warranty Clause viz: Goods are not tested or sold as fit for any particular purpose. Any term Warranty or Condition express, implied or statutory to the contrary is excluded. In no circumstances whatsoever shall the Company's liability (in Contract, Tort or otherwise) to the Buyer arising under, or in connection with the Contract or the goods supplied exceed the invoice price of the particular (piece(s) in regard to which complaint is made.
- 3 (a) Quotations are subject to confirmation on receipt of order.  
(b) The commencement of all contracts is dependent upon prior agreement of delivery dates.  
(c) Quotations are based on the current cost of production and are subject to amendment without notice on or after acceptance.
- 4 (a) payment is due 30 days after the end of the month of delivery.  
(b) In the case of orders involving more than one delivery, if default is made in payment on due date for any one delivery, the Company at its option shall be entitled to treat the Contract as repudiated by the Buyer and to claim damages accordingly.  
(c) An order once placed cannot be cancelled except by mutual agreement and then only on terms which would fully indemnify the Company.
- 5 (a) Where contracts provide for a single delivery, goods shall be delivered and accepted as soon as ready unless specifically agreed otherwise by the Company in writing.  
(b) Where contracts provide for deferred deliveries, such deliveries shall be accepted as specified in the contract (or as soon thereafter as ready) provided that all deliveries shall be accepted within six months from the date specified for the first delivery. In the event of failure to accept any delivery the balance remaining undelivered shall be invoiced (payment for such balance immediately thereupon becoming due) and storage costs charged to Buyer's account the goods being held at Buyer's risk.  
(c) Each delivery shall constitute a separate contract and any failure or defect in any one delivery shall not vitiate the contract as to the remaining deliveries.  
(d) While every effort will be made by the Company to effect delivery in accordance with any pre-arranged dates, no guarantee as to dates of delivery by the Company is to be implied and the Company will not accept liability for any loss or damage occasioned by delay in delivery however caused.  
(e) Should delivery or work be required sooner than the normal time needed for its proper production, every effort will be made to secure freedom from defects, but reasonable allowance must be made by the Buyer in such cases. Should delivery necessitate overtime being worked, or other additional costs being incurred a charge will be made to cover the increased cost.
- (f) When the Company has agreed to deliver, deliveries will only be made to a position on a good hard surface nearest the site accessible by a good hard road. The Buyer will be responsible for unloading the goods with his own labour and without undue delay.
- 6 A shortage or surplus charged pro rata not exceeding 10 per cent will be considered due execution of any order.
- 7 (a) Complaints or claims will only be entertained if lodged by the Buyer in writing within seven days of receipt of goods by him, or if related to the transport of the goods within such time as will enable the Company to comply with the time limit and procedure of British Rail or other Carriers by whom the goods were transported. The return of goods will not be accepted unless the Company or his representatives shall first have an opportunity of examining same.  
(b) The absence of any complaint or claim within the above period shall be conclusive evidence in any proceedings that the Company has fully discharged all its obligations under the Contract and in particular that the goods are in conformity with the Contract in all respects.
- 8 (a) Risk of loss or damage to all the goods shall pass to the Buyer upon Delivery.  
(b) Notwithstanding that the Buyer or his Agents obtain possession, the goods will remain the property of the Company until the Company has received in cash or cleared funds payment in full for such goods and any other goods supplied to the Buyer by the Company under the contract or any other Contract and the Company shall be entitled to all the right of access to the Buyer's premises to enforce its rights hereunder.  
(c) If the Buyer does not pay on the due date for payment or if any of the events specified in Clause 12 occurs the Company may (without prejudice to any of its other rights) sell or otherwise deal with or dispose of the said goods in such manner as it may deem fit.  
(d) Until payment in full is made the Buyer is required to store separately the goods and to mark them as to indicate that they are the property of the Company.  
(e) If the Buyer shall before the property in the goods has passed to him use the goods in the manufacture or production of items or materials whether or not in association with any other goods or if the goods are mixed with other goods the property in the items, materials or mixed goods so produced shall remain with the Company until the Buyer has paid in full for all goods supplied by the Company under this contract or any other contract. Title in the goods mixed with the goods supplied by the Company hereunder shall pass to the Company at the moment of manufacture or mixing and all the Company's rights hereunder shall extend to such items materials or mixed goods. Until property in the items materials or mixed goods passes to the Buyer the Buyer shall store separately and mark the items, materials or mixed goods to indicate that they are the property of the Company.  
(f) The buyer may in the ordinary course of his business sell the goods, items materials or mixed goods notwithstanding that the property in the goods, items, materials or mixed goods has not passed and in the event that the Buyer sells the goods, items, materials or mixed goods the Buyer shall receive the sale proceeds in a fiduciary capacity on behalf of the Company and shall pay the sale proceeds into a separate interest bearing account and shall not be entitled to use such monies until the Buyer has paid in full for all goods supplied by the Company under this contract or any other contract. The Buyer shall if requested by the Company assign free of charge the buyer's rights to the unpaid proceeds of the goods, items, materials or mixed goods.
- (g) Each paragraph of this clause shall be severable and in the event that any such paragraph(s) shall be held to be invalid the remaining paragraphs of this clause shall have full force and effect.
- 9 Whilst every endeavour will be made to supply material in accordance with the quality of samples submitted or quoted for this cannot be guaranteed.
- 10 The Company shall be under no liability in respect of any damage or loss to third parties caused directly or indirectly by the goods in any way whatsoever and the Buyer shall at all times indemnify the Company against such loss or damage.
- 11 The Buyer shall not assign the Contract as a whole or in part without the written consent of the Company.
- 12 If the Buyer shall make default in or commit a breach of the Contract or of any other of his obligations to the Company or if any distress or execution shall be levied upon the Buyer's property or assets or if the Buyer shall make or offer to make any arrangement or composition with Creditors or commit any act of bankruptcy or any petition or receiving order in bankruptcy shall be presented or made against him or if the Buyer is a Limited Company and any resolution or petition to wind up such Company business (other than for the purpose of amalgamation or reconstruction) shall be passed or presented or if a receiver of such Company undertaking, property or assets or any part thereof shall be appointed or if the Directors or the Company or the Company's creditors present a petition for any Administration Order the Company shall have the right forthwith to determine any Contract then subsisting and upon written notice of such determination being posted to the Buyer's last known address any subsisting Contract shall be deemed to have been determined without prejudice to any claim or right the Company may otherwise make or exercise.
- 13 The performance of all contracts is subject to variation or cancellation by the Company owing to any act of God, fire, flood, drought, tempest, insect or fungicidal attack or any other cause beyond the control of the Company or owing to any inability by the Company to procure materials or articles required for the performance of the Contract and the Company shall not be held responsible for any inability to deliver caused by any such contingency.
- 14 Any dispute under the Contract shall be referred to an arbitrator or arbitrators to be appointed by the parties or in default of agreement by the President of the Law Society for the time being and his or their decision shall be binding on both parties and this shall be a submission to arbitration within the Arbitration Acts 1950, 1975 and 1979 or any statutory modification thereof for the time being in force.
- 15 All prices quoted are exclusive of Value Added Tax and any Value Added Tax payable in respect of goods supplied will be borne by the Buyers.