

# TILHILL FORESTRY LIMITED

## Conditions of Sale



# Tilhill

BSWGROUP member of binderholz

### 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.

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### B FORESTRY SERVICES

- 1 The Client Estimate or Fixed Term Estimate ("the Estimate") contains the best estimate which Tilhill Forestry Limited can give at the present time of the total current cost, exclusive of VAT, to the person(s), firm or company named as owner ("the Owner") for managing, organising and carrying out in relation to the property mentioned in this Estimate ("the Property") the work itemised in this Estimate ("the Specified Work") during the twelve month period or periods there set out ("the Periods"). This Estimate and the performance of the Specified Work are subject to the following terms and conditions.
- 2 Acceptance of this Estimate in writing by the Owner signing one copy of this form shall have the consequence of appointing Tilhill Forestry Ltd ("the Company") as Managers of the Property for the first Period and to committing the Owner to pay to the Company the costs specified in this Estimate. A letter of acceptance or a signature on behalf of the Owner by a duly authorised agent will have the same consequence.
- 3.1 The Company's appointment as Managers of the Property shall continue unless and until this Agreement is terminated by either party giving written notice to such effect. Such notice shall be not less than twelve months unless a different period is mutually agreed in writing.
- 3.2 The Company shall be entitled to terminate this Agreement without notice on the occurrence of any of the following events:-
  - (a) the death of the Owner
  - (b) if any sums due to the Company from the Owner remain unpaid for a period in excess of 30 days or if the Owner commits any other breach of these conditions and fails to remedy the same within one month after the service on him by the Company of a notice requiring such breach to be made good.
  - (c) if the Owner commits an act of bankruptcy or has a receiving order made against him or makes a composition with or signs a trust deed for behoof of his creditors or being a company enters into liquidation or suffers the appointment of a receiver or administrator.
  - (d) if there is any change in the ownership or occupation of the Property or any part thereof or if the Owner grants or creates in favour of any third party any licence or right which may prevent or hinder the Company from performing its obligations under these conditions.
- 3.3 Any such termination as aforesaid shall be without prejudice to any rights of either the Owner or the Company which may have accrued up to the date of such termination.
- 4 Acceptance of this Estimate as aforesaid shall, subject as hereinafter mentioned, be authority for the Company to organise and carry out the Specified Work in relation to the Property in accordance with these Conditions and the Company shall have full right and licence to enter on the Property for all purposes connected with management and the organisation and carrying out of Specified Work and is authorised to give permission to shoot on the Property for purposes of wildlife management, crop protection and pest control, where these operations are included as Specified Work.
- 5 The Company shall be entitled to continue to carry out work on the Property in accordance with this Estimate and its conditions until either the Owner, or a duly authorised agent on his behalf, accepts a revised estimate which shall then replace and supersede this Estimate, or either party terminates the Company's appointment as Managers as provided for above.
- 6 As soon as convenient after the end of the first Period of this Estimate the Company shall submit to the Owner a revised estimate, setting out any changes in the specified Work for the other Period or Periods mentioned in this Estimate which the Company or the Owner considers necessary or desirable, and an estimate of the work to be carried out in the twelve month Period immediately following the last Period mentioned in this Estimate.
- 7 The Company shall, except when prevented or substantially hindered from doing so by factors directly or indirectly outside its control, in particular strikes, default by suppliers, lock outs, fire and extraordinary weather, use all reasonable endeavours to organise and carry out the Specified Work within the Period set out against that work in this Estimate.
- 8 The cost to the Owner of organising and carrying out the Specified Work is estimated to be the aggregate sum set out in this Estimate which is the best estimate which the Company can make at the present time of the cost of organising and carrying out the Specified Work at current costs. However, if it appears to the Company, having regard to the actual total cost of organising and carrying out the Specified Work for the current Period, that the cost will vary from that shown in this Estimate then the Company at its sole discretion shall be entitled to decrease the cost by any amount or to increase it by up to 10%, without reference to the Owner.
- 9 Any references in this Estimate to income from the property whether by way of timber sales, rents, Forestry Commission and other grants or otherwise are approximations only and not binding on the Company.
- 10 The Company is authorised by H.M. Customs and Excise to issue self-billing invoices in respect of all income received on behalf of clients.
- 11 The Owner shall pay for the cost of the Specified Work and charges set out in this Estimate on the following basis:-
  - (a) the Company will issue invoices, credit notes and self-billing invoices as appropriate.
  - (b) payment of invoices will be made by the Owner or his authorised agent within 30 days of the end of the month of invoice.
  - (c) a statement of account will be prepared each month showing that month's transactions, including payments received from the Owner and on behalf of the Owner. The statement will show the net balance due to or from the Owner.
  - (d) payment of net balances due to the Owner will be made by the Company within ten working days of the month end subject to bank details being provided by the Owner.
  - (e) without prejudice to the rights of the Company under Clause 2 hereof, if any sums due to the Company by the Owner remain unpaid at the due date the Company thereafter shall be entitled to charge annualised interest on such sums at 2.5% above the base lending rate of the HSBC Bank plc for the time being in force until payment is received and shall be entitled to cease carrying out any work until payment is made.
  - (f) the Company may at any time set off any liability of the Owner to the Company against any liability of the Company to the Owner, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under any Estimate, in relation to any Property or the Specified Work. Any exercise by the Company of its rights under this clause shall not limit or affect any other rights or remedies available to it under Estimate, in relation to any Property, the Specified Work or otherwise.
- 12 The agreement between the Company and the Owner shall be subject to and its construction of validity and performance shall be governed in all respects by the Laws of Scotland, England or Wales depending upon the country in which the works are undertaken.
- 13 All estimated costs are exclusive of Value Added Tax payable in respect of goods and services supplied will be borne by the Owner.