



## THE CUSTOMER'S ATTENTION IS DRAWN IN PARTICULAR TO THE PROVISIONS OF CLAUSE 9.

### 1. INTERPRETATION

**Definitions.** In these Conditions, the following definitions apply:

**Business Day:** a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

**Conditions:** the terms and conditions set out in this document as amended from time to time in accordance with clause 13.6.

**Contract:** the contract between NTGS and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

**Customer:** the person or firm who purchases the Goods from NTGS.

**Force Majeure Event:** has the meaning given in clause 11.

**Goods:** the goods (or any part of them) set out in the Order.

**Order:** the Customer's order for the Goods, as set out in the Customer's purchase order form, the Customer's written acceptance of NTGS's quotation, or as otherwise provided to NTGS.

**Specification:** any specification for the Goods that is agreed in writing by the Customer and NTGS.

**NTGS: National Timber Group Scotland Limited** (registered in Scotland with company number SC080045 and having its registered office at Thornbridge Yard, Laurieston Road, Grangemouth, Stirlingshire, FK3 8XX).

1.1 In these Conditions, the following rules apply:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its personal representatives, successors or permitted assigns.
- (c) A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (d) Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- (e) A reference to writing or written includes faxes and e-mails.

### 2. BASIS OF CONTRACT

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer
- 2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.
- 2.3 If the Customer requires the Goods to be manufactured or supplied to the Customer's design and/or specification, the Customer must provide to NTGS a detailed written design and/or specification of the Customer's requirements when the Customer places its order for the Goods.
- 2.4 The Order shall only be deemed to be accepted when NTGS issues a written acceptance of the Order, at which point the Contract shall come into existence.
- 2.5 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of NTGS which is not set out in the Contract.
- 2.6 Once an Order has been accepted by NTGS, the Order may not be cancelled by the Customer without the prior agreement of NTGS. NTGS will not agree to cancellations for Orders for goods specifically ordered in by NTGS for the Customer or Goods manufactured or supplied to the Customer's design and/or specification or if any of the Goods are ready for dispatch or in the process of manufacture.
- 2.7 Any samples, drawings, descriptive matter, or advertising produced by NTGS and any descriptions or illustrations contained in NTGS's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.
- 2.8 A quotation for the Goods given by NTGS shall not constitute an offer. A quotation shall only be valid for a period of 7 Business Days from its date of issue.

### 3. GOODS

- 3.1 The Goods are described in the Specification.
- 3.2 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify NTGS against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by NTGS in connection with any claim made against NTGS for actual or alleged infringement of a third party's

intellectual property rights arising out of or in connection with NTGS's use of the Specification. This clause 3.2 shall survive termination of the Contract.

- 3.3 NTGS reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements.

### 4. DELIVERY

- 4.1 NTGS shall ensure that each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant NTGS reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered.
- 4.2 NTGS shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after NTGS notifies the Customer that the Goods are ready.
- 4.3 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.
- 4.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. NTGS shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide NTGS with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.5 If NTGS fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. NTGS shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide NTGS with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.6 If the Customer fails to take delivery of the Goods within 3 Business Days of NTGS notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or NTGS's failure to comply with its obligations under the Contract:
  - (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the 3 Business Day after the day on which NTGS notified the Customer that the Goods were ready; and
  - (b) NTGS shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.7 If 10 Business Days after the day on which NTGS notified the Customer that the Goods were ready for delivery the Customer has not taken delivery of them, NTGS may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 4.8 The Customer shall not be entitled to reject the Goods if TSL delivers up to and including 5% more or less than the quantity of Goods ordered, but a pro rata adjustment shall be made to the Order invoice on receipt of notice from the Customer that the wrong quantity of Goods was delivered.
- 4.9 NTGS may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 4.10 Any claim by the Customer for damage to the Goods or loss in transit or (subject to clause 4.8) shortfall in the Goods will not be considered by NTGS unless: (a) in the case of damage or shortfall in the Goods, the Customer has notified both NTGS and the carrier within twenty four (24) hours of the delivery date and the actual damage is recorded on the carrier's delivery note; and (b) in the case of non-deliver of Goods, the Customer has notified in writing both NTGS and the carrier within fourteen (14) days after the date of advice note or invoice. No claim for damage or any shortfall in the Goods can be claimed where a clear signature acknowledging receipt has been given to the carrier.

### 5. QUALITY

- 5.1 NTGS warrants that on delivery, and for a period of 14 days from the date of delivery (**warranty period**), the Goods shall:
  - (a) conform with their description and any applicable Specification;
  - (b) be free from material defects in design, material and workmanship; and
  - (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
  - (d) be fit for any purpose held out by NTGS.
- 5.2 Subject to clause 5.3, if:
  - (a) the Customer gives notice in writing to NTGS during the warranty period that some or all of the Goods do not comply with the warranty set out in clause 5.1;
  - (b) NTGS is given a reasonable opportunity of examining such Goods; and
  - (c) the Customer (if asked to do so by NTGS) returns such Goods to NTGS's place of business at the Customer's cost, NTGS shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

- 5.3 NTGS shall not be liable for Goods' failure to comply with the warranty set out in clause 5.1 in any of the following events:
- (a) the Customer makes any further use of such Goods after giving notice in accordance with clause 5.2;
  - (b) the defect arises because the Customer failed to follow NTGS's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
  - (c) the defect arises as a result of NTGS following any drawing, design or Specification supplied by the Customer;
  - (d) the Customer alters or repairs such Goods without the written consent of NTGS;
  - (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
  - (f) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 5.4 Except as provided in this clause 5, NTGS shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.
- 5.5 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 5.6 These Conditions shall apply to any repaired or replacement Goods supplied by TSL.
- 6. RETURN OF GOODS**
- 6.1 Orders for Goods specifically ordered in by NTGS for the Customer or Goods manufactured or supplied to the Customer's design and/or specification cannot be returned and no refunds will be given in respect of the cancellation of Orders for such Goods
- 6.2 For all Goods other than those described in section 6.1, Rembrand reserves to the right to make a re-stocking charge at its current rate for Goods returned by the Buyer as surplus to requirements. The return of such Goods will not be accepted without the prior agreement of the Buyer and the Rembrand manager of the department concerned and is subject to the Buyer providing Rembrand with the original version of the invoice for the Order. Thereafter the return of such Goods will be accepted as the Buyer's agreement to pay the re-stocking charge.
- 7. TITLE AND RISK**
- 7.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 7.2 Title to the Goods shall not pass to the Customer until NTGS has received payment in full (in cash or cleared funds) for the Goods and any other goods that NTGS has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums.
- 7.3 Until title to the Goods has passed to the Customer, the Customer shall:
- (a) hold the Goods on a fiduciary basis as NTGS's bailee;
  - (b) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as NTGS's property;
  - (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - (d) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
  - (e) notify NTGS immediately if it becomes subject to any of the events listed in clause 9.2; and
  - (f) give NTGS such information relating to the Goods as NTGS may require from time to time, but the Customer may resell or use the Goods in the ordinary course of its business.
- 7.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 9.2, or NTGS reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy NTGS may have, NTGS may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.
- 8. PRICE AND PAYMENT**
- 8.1 The price of the Goods shall be the price set out in the Order.
- 8.2 NTGS may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- (a) any factor beyond NTGS's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
  - (c) any delay caused by any instructions of the Customer or failure of the Customer to give NTGS adequate or accurate information or instructions.
- 8.3 The price of the Goods is exclusive of amounts in respect of value added tax (**VAT**). The Customer shall, on receipt of a valid VAT invoice from NTGS, pay to NTGS such additional amounts in respect of VAT as are chargeable on the supply of the Goods.
- 8.4 NTGS may invoice the Customer for the Goods on or at any time after the completion of delivery.
- 8.5 The Customer shall pay the invoice in full and in cleared funds by the end of the month following the month the invoice was dated. Method of such payment shall be made in accordance with arrangements agreed between the parties. Time of payment is of the essence.
- 8.6 The Late Payment of Commercial Debts (Interest) Act 1998, the Late Payment of Commercial Debts (Rate of Interest) (Scotland) Order 2002, the Late Payment of Commercial Debts (Scotland) Regulations 2002 and the Late Payment of Commercial Debts (Scotland) Regulations 2013 shall apply in any instance of late, partial or non-payment of invoices. If the Customer fails to make any payment due to NTGS under the Contract by the due date for payment (**due date**), then the Customer shall pay interest on the overdue amount at the rate of 8% per annum above the Bank of England's base lending rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 8.7 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against NTGS in order to justify withholding payment of any such amount in whole or in part. NTGS may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by NTGS to the Customer.
- 9. CUSTOMER'S INSOLVENCY OR INCAPACITY**
- 9.1 If the Customer becomes subject to any of the events listed in clause 9.2, or NTGS reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to NTGS, NTGS may cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and NTGS without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due.
- 9.2 For the purposes of clause 9.1, the relevant events are:
- (a) the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply; or
  - (b) the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors; or
  - (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company); or
  - (d) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Customer (being a company); or
  - (e) the holder of a qualifying floating charge over the assets of that Customer's (being a company) assets has become entitled to appoint or has appointed an administrative receiver; or
  - (f) a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets; or
  - (g) the Customer is the subject of a sequestration petition or order; or
  - (h) a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Customer's assets and such attachment or process is not discharged within 14 days; or
  - (i) or any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in this Condition 9.2; or
  - (j) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or

- (k) the Customer's financial position deteriorates to such an extent that in NTGS's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
- (l) (being an individual) the Customer dies, or by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
- 9.3 Without limiting its other rights or remedies, NTGS may suspend provision of the Goods under the Contract or any other contract between the Customer and NTGS if the Customer becomes subject to any of the events listed in clause [9.2(a) to clause 9.2(l)], or NTGS reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 9.4 On termination of the Contract for any reason the Customer shall immediately pay to NTGS all of NTGS's outstanding unpaid invoices and interest.
- 9.5 Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.
- 9.6 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.
- 10. LIMITATION OF LIABILITY**
- 10.1 Nothing in these Conditions shall limit or exclude NTGS's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- (d) defective products under the Consumer Protection Act 1987; or
- (e) any matter in respect of which it would be unlawful for NTGS to exclude or restrict liability.
- 10.2 Subject to clause 10.1:
- (a) NTGS shall not be liable to the Customer, whether in contract, delict (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- (b) NTGS's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall not exceed the value of the Contract.
- 10.3 Subject to clause 10.1, where manufacturers of goods or materials have limited their liability in respect thereof or in respect of any consequential liability, and such limitation has been advertised or announced in trade literature or has otherwise been deemed to have come to the notice of the Customer whether generally or specifically, to the maximum extent permitted by applicable law the same limitations shall apply to NTGS's liability on the sale of those Goods by NTGS in place of all other conditions or warranties which are hereby expressly excluded
- 10.4 Subject to clause 10.1, NTGS shall not be liable for any defect or fault in the Goods resulting from the Goods being manufactured or supplied in accordance with the Customer's design and/or specification of the Goods. The Customer shall on demand indemnify in full and so free and relieve NTGS from and against any claim, cost, liability, charge or expense in respect of the infringement of any third party right arising out of or in connection with the manufacture and/or supply of the Goods by NTGS in accordance with the Customer's design and/or specification.
- 11. FORCE MAJEURE**
- 11.1 Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A **Force Majeure Event** means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, (including but not limited to), acts of God, terrorism, riot, malicious damage, breakdown of plant or machinery, explosions, collapse of building structures, fires, floods, storms, earthquakes, epidemics or similar events or extreme adverse weather conditions or default of NTGS's subcontractors
- 12. CREDIT AND TRADE REFERENCES**
- 12.1 A credit account in favour of the Customer may be opened at the discretion of NTGS, subject to satisfactory credit and trade references being obtained.
- 12.2 NTGS will make a search with a credit reference agency which will keep a record of that search and will share that information with other businesses. NTGS may also make enquiries about the Buyer's principal(s), director(s), partner(s) and trustee(s) with a credit reference agency.
- 12.3 NTGS will also take up trade references provided by the Customer when applying for a credit account
- 13. GENERAL**
- 13.1 Assignment and subcontracting**
- (a) NTGS may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of NTGS.
- 13.2 Notices**
- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post, recorded delivery, commercial courier, fax or e-mail.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 13.2(a); if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 13.3 Severance.**
- (a) If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 13.4 Waiver** A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 13.5 Third party rights.** A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 13.6 Variation** . Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by NTGS.
- 13.7 Governing law and jurisdiction.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, Scots law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of Scotland.