

1. Definitions and interpretation

1.1 In these terms and conditions, unless the context otherwise requires, the following definitions shall apply:

"Buyer" means the buyer whose details are set out in the Sales Contract..

"Default" means any act, statement, omission breach of obligation (whether expressed or implied, condition or warranty) contained in, precedent or collateral to an Agreement, breach of duty under statute or at common law or negligence by or on the part of Tradelink in connection with or arising out of the subject matter of an Agreement in respect of which Tradelink is legally liable to the Buyer. Several defaults which together result in or contribute to substantially the same loss or damage shall be treated as one Default occurring on the date of the occurrence of the last such default.

"Delivery" means any of:

- (a) delivery by Tradelink of Products to the Buyer or to any customers of the Buyer.
- (b) collection by the Buyer of Products from Tradelink.
- (c) as the case may be.

"Products" means the products which Tradelink is to supply to the Buyer in accordance with these terms and conditions and the relevant Sales Contract.

"Sales Contract" means the individual contract between Tradelink and the Buyer.

1.2 In each agreement, unless the context otherwise requires:

- (a) words in the singular include the plural and vice versa and words in one gender include any other gender;
- (b) a reference to:
 - (i) any party includes its successors in title and permitted assigns;
 - (ii) a "person" includes any individual, firm, body corporate, association or partnership, government or state (whether or not having a separate legal personality);
 - (iii) clauses and schedules are to clauses and schedules of this Agreement and references to sub-clauses and paragraphs are references to sub-clauses and paragraphs of the clause or schedule in which they appear;
- (c) the table of contents and headings are for convenience only and shall not affect the interpretation of the Agreement;

2. Sale of the Products

2.1 Tradelink shall sell and the Buyer shall purchase the Products specified in the Sales Contract on the terms set out in the Sales Contract and these terms and conditions.

2.2 The quantity, quality and description of the Products is as set out in the Sales Contract.

2.3 The Buyer may not cancel the order except with the prior agreement in writing of Tradelink and on terms that the Buyer shall indemnify Tradelink in full against all loss (including loss of profit) costs (including the costs of all labour and raw materials) damages, charges and expenses incurred by Tradelink because of cancellation unless otherwise agreed in writing.

3. Price of the Products

3.1 The price of the Products shall be the price set out in the Sales Contract. The price of the Products shall: (a) include any packaging, and (b) exclude pallets which will be charged to the Buyer's account and, subsequently credited upon return to Tradelink.

3.2 Tradelink reserves the right by giving notice to the Buyer at any time before delivery, to increase the price of the Products to reflect any increase in the costs to Tradelink which is due to any factor beyond the control of Tradelink, any change in delivery dates, quantities or specifications for Products which is requested by the Buyer, or any delay caused by instructions of the Buyer or failure of the Buyer to give Tradelink accurate information or instructions.

4. Payment terms

4.1 The payment terms in respect of the Products shall be the payment terms set out in the Sales Contract. The time of payment shall be of the essence. All payments shall be made in full without deduction in respect of any set off or counter claim.

4.2 Unless otherwise specified in the Sales Contract shipment will be made after Buyer has opened an irrevocable and confirmed Letter of Credit in favour of Tradelink, guaranteeing that funds are available at sight to the bank specified by Tradelink. The Letter of Credit shall make adequate provision for quantities more than the amount ordered to the extent permitted by the preceding paragraph and shall remain valid in the event of partial shipments or reduced quantities.

4.3 If the Buyer fails to make any payment on the due date then without prejudice to any other right or remedy available to Tradelink, Tradelink shall be entitled to charge interest (both before and after any judgment) on the amount unpaid, at the rate of 8% per annum over the base rate for the time being of National Westminster Bank PLC until full payment.

4.4 All charges are for Buyer's account and remittances shall be made free of all exchange and/or other bank charges in funds specified and in location specified in Tradelink's invoice(s).

5. Shipment and Delivery

5.1 Tradelink shall endeavour to deliver the Products by the date quoted for Delivery but such date is not guaranteed, nor shall the time for Delivery be of the essence unless previously agreed by Tradelink in writing.

5.2 The date quoted for Delivery shall be extended by a reasonable period if there is any delay caused by industrial dispute or by any cause beyond the reasonable control of Tradelink.

5.3 The Products may be delivered by Tradelink in advance of the quoted date for Delivery upon giving reasonable notice to the Buyer.

5.4 Where the Products are to be delivered in instalments, each Delivery shall constitute a separate contract and failure by Tradelink to deliver any one or more instalment(s) in accordance with the Sales Contract shall not entitle the Buyer to treat the Sales Contract as a whole as repudiated.

5.5 If the Buyer fails to take Delivery of the Products or fails to give Tradelink adequate delivery instructions at the time stated for Delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of Tradelink's fault) then without prejudice to any other right or remedy available to Tradelink, Tradelink may:

- (a) store the Products until actual Delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
- (b) sell the Products at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Sales Contract or charge the Buyer for any shortfall below the Price.

6. General Guarantee and Limitations

6.1 When Tradelink furnishes inspection agency and/or producer certificates of grade and quantity at point of origin, subject to applicable re-inspection rules, the certificates shall be conclusive as to matters covered therein.

6.2 Tradelink's Products are at the time and place of assembly for shipment of merchantable quality and conform to specification and tolerances set out in the Sales Contract.

6.3 There are no warranties save as set out herein and Tradelink's sole responsibility is as stated. Products are not sold to be fit or suitable for any particular purpose and or use.

6.4 In the case of manufactured products like flooring and decking product claims must be made before onward sale, installation and/or pre-finishing, and cannot under any circumstances be entertained afterwards. It is the Buyer's responsibility to determine that the Products are acceptable before onward sale, installation and/or pre-finishing. While industry standards allow for up to 5% of the total order to contain manufacturing or grade defects, all flooring and decking must be inspected for quality of manufacture, grade, and moisture content by the Buyer prior to onward sale, installation and/or pre-finishing.

6.5 Claims on all products must be made by inspection of the products delivered in original condition before further manufacturing in original packing without having broken bulk of more than 10%.

7. Change in Export/Import Duty, Charges or Taxes

7.1 In the event of any change in export/import duty, charges, or taxes, Tradelink shall have the right to renegotiate such variations and in the absence of agreement, to cancel any unshipped balance of the contract.

8. Quantity Tolerances

8.1 Unless contrary to the import regulations of the receiving country, or unless loading exact volume is specified in the Sales Contract, the described quantity may be increased or decreased by not more than ten% (per cent).

9. Risk and property

9.1 Risk of damage to or loss of the Products shall pass to the Buyer:

- (a) in the case of Products to be delivered at Tradelink's premises, at the time when Tradelink notifies the Buyer that the Products are available for collection; or
- (b) in the case of Products to be delivered otherwise than at Tradelink's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Products, the time when Tradelink has tendered delivery of the Products.

9.2 Notwithstanding delivery and the passing of risk in the Products, or any other provision in the Sales Contract, property in the Products shall not pass to the Buyer until Tradelink has received in cash or cleared funds payment in full of the price of the Products and all other goods agreed to be sold by Tradelink to the Buyer for which payment is then due.

9.3 Until such time as the property in the Products passes to the Buyer, the Buyer shall:

- (a) hold the Products as Tradelink's fiduciary agent and bailee;
- (b) keep the Products separate from those of the Buyer and third parties and properly stored, protected, insured, and identified as Tradelink's property; and

9.4 Until such time as the property in the Products passes to the Buyer (and provided that the Products are still in existence and have not been resold) Tradelink shall be entitled:

- (a) at any time to enter upon any premises where the Products are stored to inspect them; and
- (b) at any time to require the Buyer to deliver up the Products to Tradelink and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Products are stored and repossess the Products.

9.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Products which remain the property of Tradelink, but if the Buyer does so all monies owing by the Buyer to Tradelink shall (without prejudice to any other right or remedy of Tradelink) forthwith become due and payable.

9.6 The provisions set out in this clause shall be without prejudice to the obligation of the Buyer to purchase the Products.

10. Notification of Claims

10.1 Any claim for non-delivery of any Products shall be notified by the Buyer to Tradelink within seven days of the date of Tradelink's invoice.

10.2 Any claim which is based on any defect in the quality or condition of the Products or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to Tradelink within three working days from the date of delivery at the Buyers first place of storage.

10.3 If delivery is not refused, and the Buyer does not notify Tradelink of any claim in accordance with the provisions of clause 10.2, the Buyer shall not be entitled to reject the Products, Tradelink shall have no liability for such defects or failure, and the Buyer shall be bound to pay the price as if the Products had been delivered in accordance with the Sales Contract.

11. Liability and remedies

11.1 Tradelink has not knowingly infringed any intellectual property rights of any third party but does not warrant or give any assurance to the Buyer that any design of or relating to the Products does not infringe any intellectual property rights of any third party.

11.2 Without prejudice to clause 11.4 the only remedy available in respect of any misrepresentation or untrue statement made by Tradelink (other than those made fraudulently) shall be a claim for damages for breach of contract under the Sales Contract, and, to the extent that any such representation or statement is not contained or expressly referred to in the Sales Contract, then it shall be deemed to be contained or expressly referred to for the purpose of applying this provision.

11.3 The Buyer shall inform Tradelink of any Default and afford it reasonable opportunity to correct the Default.

11.4 In relation to any Default Tradelink will accept liability only where determined by order of court for:

- (a) death or personal injury caused by the negligence of Tradelink; and
- (b) anything else for which Tradelink cannot at law limit or exclude its liability.

11.5 Except as provided in sub-clause 11.4, Tradelink will not be liable for the following loss or damage however caused/arising directly or indirectly out of any Default and even if foreseeable by Tradelink:

- (a) economic loss including administrative and overhead costs, loss of profits, business, contracts, revenues, goodwill, production and anticipated savings of every description;
- (b) loss arising from any claim made against the Buyer by any other person; or
- (c) loss or damage arising from the Buyer's failure to fulfil its responsibilities or any matter under the control of the Buyer.
- 11.6 Except for the liabilities accepted by Tradelink under sub-clause 11.4 Tradelink's liability for any one Default shall be limited to an amount equal to the value of the Sales Contract. Tradelink's entire liability in respect of all Defaults shall be limited to an amount equal to the value of Sales Contracts in the preceding twelve calendar months where defaults have occurred.
- 11.7 If any part of this clause is found to be unenforceable by any court or competent authority or would be found to be unenforceable if it were interpreted or construed in a particular way, then, it is the parties' express intention that the relevant wording should be interpreted or construed so as to avoid such a finding and that, in the event of such a finding, the remainder of the provision in question shall be interpreted or construed to give it full effect
12. **Indemnity**
- The Buyer shall indemnify and keep Tradelink indemnified against all costs, expenses, damages and demands incurred by Tradelink in respect of:
- (a) any alleged infringement of any intellectual property rights used by Tradelink at the request of the Buyer; and
- (b) any claims arising and made under the Consumer Protection Act 1987 and which arise by reason of or in connection with a defect in the Products or in the end product manufactured and/or supplied by the Buyer in which the Products are compromised, which defect is attributable either to the compliance by Tradelink with the instructions given by the Buyer or to the Buyer's design of the end product.
13. **Termination**
- 13.1 Without prejudice to any right or remedy Tradelink may have against the Buyer for breach or non-performance of a Sales Contract, Tradelink shall have the right with immediate effect by notice in writing to the Buyer to terminate each Sales Contract on or at any time after the happening of any of the following events:
- (a) if the Buyer commits a material breach of any of the terms and conditions set out in the Sales Contract and there terms, provided that where such breach is capable of remedy the Buyer has been advised in writing of the breach and has not rectified it within thirty (30) days of receipt of such advice. For the purposes of this sub-clause 13.1(a) a breach shall be considered capable of remedy if time is not of the essence in performance of the obligation and if the Buyer can comply with the obligation within the 30 day period;
- (b) the passing by the Buyer of a resolution for its winding-up or the making by a court of competent jurisdiction of an order for the winding-up of the Buyer or the dissolution of the Buyer (or similar or equivalent process in the Buyer's jurisdiction);
- (c) the making of an administration order in relation to the Buyer or the appointment of a receiver or an administrative receiver over, or the taking possession or sale by an encumbrancer of, any of the Buyer's assets (or similar or equivalent process in the Buyer's jurisdiction);
- (d) the Buyer making an arrangement or composition with its creditors generally or making an application to a court of competent jurisdiction for protection from its creditors generally (or similar or equivalent process in the Buyer's jurisdiction) ;
- (e) on the Buyer ceasing to do business at any time for 30 consecutive days;
- (f) upon the Buyer for any reason whatsoever being substantially prevented from performing or becoming unable to perform its obligations under a Sales Contract.
14. **Consequences of termination**
- 14.1 All rights and obligations of the parties shall cease to have effect immediately upon termination, except that termination shall not affect the accrued rights and obligations of the parties at the date of termination.
- 14.2 Upon termination for any reason all documentation, catalogues, samples and price lists issued by Tradelink and in the possession of the Buyer are to be promptly returned to Tradelink.
15. **Force Majeure**
- Tradelink shall not be liable to the Buyer or be deemed to be in breach of a Sales Contract by reason of any delay in performing, or any failure to perform, any of Tradelink's obligations in relation to the Products, if the delay or failure was due to any cause beyond Tradelink's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond Tradelink's reasonable control:
- (a) Events beyond the reasonable control of Tradelink, including natural disasters or similar, explosion, flood, tempest, disease, fire or accident;
- (b) strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of Tradelink or third parties);
- (c) war or threat of war, sabotage, insurrection, civil disturbance or requisition;
- (d) import or export regulations or embargos;
- (e) difficulties in obtaining raw materials, shipping space, labour, fuel, parts or machinery;
- (f) power failure or breakdown in machinery.
16. **General**
- 16.1 **Entire Agreement**
- The Sales Contract and these terms and conditions set out the entire agreement and understanding between the parties in respect of the subject matter of the Sales Contract.
- 16.2 The Buyer acknowledges that it has entered into the Sales Contract in reliance only upon the representations, warranties and promises specifically contained or incorporated in writing in the Sales Contract and, save as expressly set out herein, Tradelink shall have no liability in respect of any other representation, warranty or promise made prior to the Sales Contract unless it was made fraudulently.
- 16.3 **Assignment**
- The Sales Contract and these terms and conditions shall be binding on and enure for the benefit of the successors in title of the parties but shall not be assignable by any party without the prior written consent of the other.
- 16.4 **Variation**
- No purported variation of the Sales Contract and these terms and conditions shall be effective unless it is in writing and signed by or on behalf of each of the parties.

16.5 **Invalidity**

To the extent that any provision of the Sales Contract and these terms and conditions is found by any court or competent authority to be invalid, unlawful or unenforceable in any jurisdiction, that provision shall be deemed not to be a part of the agreement, it shall not affect the enforceability of the remainder of the provisions, nor shall it affect the validity, lawfulness or enforceability of that provision in any other jurisdiction.

16.6 **Releases and waivers**

(a) The rights, powers and remedies conferred on any party herein are cumulative and are additional to any right, power, or remedy which it may have under general law or otherwise.

(b) Any party may, in whole or in part, release, compound, compromise, waive or postpone, in its absolute discretion, any liability owed to it or right granted to it herein by any other party or parties without in any way prejudicing or affecting its rights in respect of that or any other liability or right not so released, compounded, compromised, waived, or postponed.

No single or partial exercise, or failure or delay in exercising any right, power or remedy by any party shall constitute a waiver by that party of, or impair or preclude any further exercise of, that or any right, power or remedy arising herein or otherwise.

16.7 **Confidentiality**

Any information disclosed by Tradelink to the Buyer shall be confidential and the Buyer shall not disclose it to any person without the written authority of Tradelink.

16.8 **Value Added Tax**

Where any party agrees to pay to any other party any sum which is consideration for a taxable supply such sum shall be exclusive of any Value Added Tax payable thereon and the recipient of the said supply shall pay Value Added Tax in addition to any sum on receipt of valid Value Added Tax invoice from the relevant party.

16.9 **Exclusion of third party rights**

Unless expressly provided herein, no term of the Sales Contract of these terms and conditions is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party.

16.10 **Anti-Bribery and Regulatory Compliance**

The Buyer shall comply with the UK Bribery Act 2010 and with all applicable anti-bribery and corruption laws and other regulatory requirements in all relevant jurisdictions, and shall indemnify Tradelink in respect of any expense, loss and damage suffered by or caused to Tradelink by any breach by the Buyer of this provision. .

17. **Notices**

17.1 Any notice to a party herein shall be in writing signed by or on behalf of the party giving it and shall, unless delivered to a party by hand, be left at, or sent by prepaid first class post, prepaid recorded delivery, email to the address of the party as set out in the Sales Contract or as otherwise notified in writing from time to time.

17.2 A notice shall be deemed to have been served:

(a) at the time of delivery if delivered by hand;

(b) 48 hours after posting in the case of an address in the United Kingdom and 96 hours after posting for any other address; or

(c) 2 hours after transmission if served by email on a business day prior to 3pm or in any other case at 10 am on the business day after the date of despatch.

If the deemed time of service is not during normal business hours in the country of receipt, the notice shall be deemed served at or, in the case of email, 2 hours after the opening of business on the next business day of that country.

17.3 The deemed service provisions set out in sub-clause 17.2 do not apply to:

(a) a notice served by post, if there is a national or local suspension, curtailment or disruption of postal services which affects the collection of the notice or is such that the notice cannot reasonably be expected to be delivered within 48 hours or 96 hours (as appropriate) after posting; and

(b) a notice served by email, if, before the time at which the notice would otherwise be deemed to have been served, the receiving party informs the sending party that the notice has been received in a form which is unclear in any material respect, and, if it informs the sending party by telephone, it also despatches a confirmatory email within 2 hours.

17.4 A party shall not attempt to prevent or delay the service on it of a notice.

18. **Governing Law and Jurisdiction**

18.1 The Sales Contract and these terms and conditions and any dispute, claim or obligation (whether contractual or non-contractual) arising out of or in connection with them, their subject matter, performance or formation shall be governed by and construed in accordance with English law.

18.2 Each of the parties irrevocably submits to the exclusive jurisdiction of the courts of England for all purposes in relation to any dispute or claim (whether contractual or non-contractual) arising out of or in connection with the Sales Contract and these terms and conditions, their subject matter, performance or formation

18.3 The Buyer shall when required by Tradelink irrevocably appoint a Service Agent to receive service of all legal proceedings and processes on its behalf.

Valid on Contracts dated from 15th January 2022 onwards. Contracts and Invoices relating to Contracts prior are covered by our previous Terms and Conditions.

"Tradelink" is Tradelink Wood Products Limited. Unit 31 NW Works, 135 Salisbury Road, London. NW46 6RJ. United Kingdom. or any subsidiary or Branch issuing a Sales Contract and/or Invoice.