



CONTRACT TERMS OF TRADE

For: Tumu Dannevirke Limited, Tumu Frame & Truss Limited, Tumu Gisborne Limited, Tumu Hastings Limited, Tumu Havelock North Limited, Tumu Masterton Limited & Tumu Napier Limited

1. Parties

1.1 "The Seller" means the company named on the Application for Trading Account to which the application is made, and also includes (a) any current or future holding company, subsidiary, related company or successor of the Seller; (b) any current or future joint venture entered into by any of the foregoing companies; (c) any other company in which any of the foregoing may now, or in the future invest or holds shares ("associated company"); (d) any subsidiary or related company of an associated company; (e) any holding company, subsidiary, related company or associated company of any of the foregoing; (f) any legal entity which purchases the Seller's business, takes an assignment of this agreement from the Seller, and makes supplies to the Customer; (g) any other legal entity to which a debt owed to the Seller is assigned. A reference to a "Seller entity" is a reference to any one or more of the foregoing. In respect of any transaction, the Seller will only contract to sell or supply goods or services on these contract terms of trade. By placing or confirming an order with the Seller, the Customer is accepting these contract terms of trade, and anything to the contrary in the Customer's enquiries, orders or confirmations will not apply.

2. Orders Irrevocable

2.1 The Customer may not cancel or vary an order once it has been placed.

3. Payment

3.1 The Customer must pay the price indicated on the invoice, or other document or statement issued by the Seller. All freight, packaging and other relevant costs are charged to the Customer's account as shown on the invoice.

3.2 All prices are subject to adjustment by increase in the costs to the Seller of manufacturing or providing the goods or services that may occur between the date of quotation and the dates of delivery or deliveries of the goods.

3.3 Unless otherwise agreed in writing, payment must be made by the Customer before delivery of the goods.

3.4 If the Seller grants credit to the Customer, payment is due on or before the 20th day of the month following the date on the invoice, or other document or statement issued by the Seller.

3.5 If the Seller at any time deems the credit of the Customer to be unsatisfactory, it may suspend or cancel the credit terms and require immediate payment of all outstanding amounts owed by the Customer.

3.6 All costs and expenses of or incurred by the Seller as a result of termination and recommencement of any credit arrangement are payable by the Customer upon demand.

3.7 The Seller may charge liquidated damages calculated on the basis of interest on any moneys that are overdue commencing the due date until the date of actual payment. The interest rate will be 2% per month.

3.8 The Seller will keep a record of the transactions with the Customer by way of monthly statements. If the Customer disputes any such record of transaction then the written notice of that dispute must be given to the Seller during the month succeeding that in which the transaction took place. Except for any proper correction made by the Seller, each monthly statement shall be taken as a complete and correct record. If the Seller takes any action to recover the amount or amounts due by the Customer that action shall be for the whole of the transactions and therefore the total recorded in the current monthly statement from time to time. The Seller shall not be obliged to take action for each individual transaction for which payment of the price and an liquidated damages has not been made.

3.9 The Seller does not agree to provide credit beyond the due date for payment. If for any reason the Customer fails or refuses to pay and the Seller allows the Customer to continue to trade or delays (whether at the Customer's request or not) in acting upon its rights in respect of the Customer's breach, the Seller shall not be taken to have granted credit or further credit, nor to have waived any of its rights.

3.10 The Customer agrees to pay, on demand, all costs (which, without limitation, may include collection agents' commission and legal fees as between solicitor and own client and any other costs) incurred by the Seller or the Seller's agents relating to the recovery of any amounts payable by the Customer to the Seller.

3.11 All payments by the Customer must be made in full and without any deduction or right of set off or counterclaim. The Customer agrees, however that all moneys that any Seller entity may owe the Customer or any account whatsoever may, at the Seller's option, be set off against payments due by the Customer to the Seller.

3.12 The Seller has the right to allocate any funds paid by the Customer towards the payment of any amount owed by the Customer to any Seller entity. The Seller also has the right to amend any such allocation (including allocating the funds towards the payment of any amount incurred before or after the funds were paid), and the Customer hereby consents to any such amended allocation.

3.13 Unless otherwise stated all prices exclude GST, which, if payable, is payable by the Customer.

4. Delivery

4.1 Delivery of the goods is deemed to be made at the earlier of (a) when the Customer or the Customer's agent is given possession of the goods at the Seller's warehouse or elsewhere (loading is then at the Customer's risk); or (b) when the goods arrive at the Customer's premises (unloading is then at the Customer's risk).

4.2 On delivery, the goods are at the Customer's sole risk, and with effect from the time of delivery, the Customer will have in place all risks insurance to cover both its interest as bailee of the goods and the Seller's interest as owner of the goods under clause 5.1.

4.3 The Seller may choose the carrier and the method of transport, unless otherwise agreed by the Seller in writing. The Seller may choose to deliver by instalments and may treat each delivery as a separate contract. Should the Seller fail to deliver or make defective delivery of one or more instalments that will not entitle the Customer to repudiate the main contract.

4.4 If the Seller believes that the Customer may not make any payment when due then the Seller may suspend or cancel any delivery.

4.5 Any delivery date agreed by the Seller is approximate only, and no delay in delivery will entitle the Customer to cancel its order for the goods, or to claim compensation or damages of any type.

5.0 Retention of title

5.1 Ownership (both legal and equitable) in all goods sold by the Seller to the Customer does not pass (and the Customer is a bailee only in respect of those goods) until payment in full is made for all such goods and other goods supplied by the Seller (or any other Seller entity) to the Customer. Until ownership has passed, the Customer will store all delivered goods in such a way that they are clearly identifiable as the property of the Seller.

5.2 Until the Customer has paid the Seller in full for all goods supplied, the Customer may not sell (unless such sale is in the ordinary course of the Customer's business), dispose of or charge the goods and must hold or deal with the goods for and on behalf of the Seller. However if the goods are sold, in the ordinary course of the Customer's business, prior to ownership passing to the Customer, the proceeds of that sale are held by the Customer on trust for and on behalf of the Seller.

5.3 Prior to the Customer acquiring full ownership in the goods, the Seller or the Seller's agents may at any time enter upon any land, premises or property where it believes such goods may be to view and inspect them, and if the Customer has not paid for them (or any other goods supplied by the Seller or any other Seller entity) in full, retake possession of the goods. The Customer will indemnify the Seller on demand in respect of any costs or liabilities incurred by the Seller in exercising its rights under this clause.

6. Security and Charge

6.1 In order to secure the Customer's obligations to the Seller, the Customer hereby grants the following security interests ("security interest") (as that term is defined in the Personal Property Securities Act 1999 ("PPSA")) to the Seller: (a) a purchase money security interest in the goods supplied to the Customer and any proceeds thereof; and (b) a security interest in all of the Customer's present and after acquired personal property. The Customer will, if requested by the Seller, sign any

- documents (including any new agreements), provide all necessary information and do anything else required by the Seller to ensure that the security interest is a perfected security interest (as that term is defined in the PPSA). The Customer acknowledges and agrees that any Seller entity may hold the security interests as trustee on behalf of the Seller, and may register the security interests under the PPSA as the secured party (as those terms are defined in the PPSA). The goods supplied to the Customer over which the Seller has the security interest in (a) above include building products and materials; homewares; timber and timber products, bins and pallets, plywood, decking, roundwood, poles, and piles; fasteners and fastening systems; clay, concrete, masonry and cement products; and all other items supplied by the Seller to the Customer.
- 6.2 The Customer will not enter into any agreement, which permits any other person to register any security interest under the PPSA in respect of the goods without the Seller's prior written consent.
- 6.3 The Customer agrees that sections 108, 109, 111(1), 112, 114(1)(a), 120(1), 122, 133, 134, 116, 120(2), 121, 125, 126, 127, 129, 131, and 128 of the PPSA shall not apply in relation to the security interests granted by the Customer to the Seller. The Customer waives its right under the PPSA to receive a copy of any verification statement or financing change statement (as those terms are defined in the PPSA).
- 6.4 Where the Customer and/or Guarantor (if any) is the owner, or at any time hereafter becomes the owner, of an asset (or interest of any kind therein) such as land, realty or any other assets capable of being charged, the Customer and/or the Guarantor agree to mortgage and/or charge and/or grant a security interest pursuant to the PPSA over all of their joint and/or several interest in the said assets to the Seller or the Seller's nominee. This mortgage and/or charge and/or security is to secure all amounts and other obligations owed under this contract. The Customer and/or Guarantor acknowledge and agree that the Seller or the Seller's nominee shall be entitled to lodge, where appropriate, a caveat over any property in which the Customer and/or Guarantor has or at any time hereafter obtains an interest, which shall be released once all amounts owing under this contract (or any other contract with any Seller entity) have been paid. The terms of any mortgage over land shall be the terms of Memorandum 2018/4346 registered pursuant to s.209 of the Land Transfer Act 2017.
- 6.5 Should the Seller elect to proceed in any manner in accordance with clause 6.4, the Customer and/or Guarantor shall indemnify the Seller from and against all the Seller's legal costs and disbursements calculated on a solicitor-client basis plus all reasonable costs of the Seller's appointed solicitor (if any).
- 6.6 To give effect to the provisions of clause 6.1 to 6.5 inclusive, the Customer and/or Guarantor (if any) irrevocably nominate, constitute and appoint the Seller or the Seller's nominee as the Customer's and/or Guarantor's true and lawful attorney. As attorney they may register and execute Mortgages and Charges (whether registerable or not) or any security against any asset of the Customer and/or Guarantor to secure the said Customer's and/or Guarantor's obligations and indebtedness to the Seller. As attorney they can also perform all necessary and other acts including instituting any necessary legal proceedings and execute all or any documents that in the Seller's absolute discretion may be necessary or advantageous to give effect to the provisions of this clause.
- 6.7 The foregoing provisions shall continue to apply even if the Customer may have given the Seller any other form of security.
7. No Warranty
- 7.1 Under no circumstances is the Seller liable for any claim, action, demand, suit, loss, legal fee or other cost or expense of any kind whether directly or indirectly arising from the use or inability to use, or defect in, any goods or services supplied by the Seller, or the failure by the Seller to deliver any goods or services.
- 7.2 Pursuant to section 43 of the Consumer Guarantees Act 1993, that Act will not apply where the Customer acquires or holds itself out as acquiring the goods or services for the purpose of business. Except to the extent that the Consumer Guarantees Act does apply, no representations are made, and no warranties are given by the Seller in respect of goods or services supplied whether in respect of quality, fitness for intended purpose, or otherwise and all warranties implied by law are expressly excluded.
- 7.3 If the Seller is ever liable to the Customer, or any other person, and the Seller cannot rely on the exclusions of representations, warranties or liabilities set out above, then the liability of the Seller is in all cases limited to the amount of the price of the goods or services.
8. Returns
- 8.1 The Seller may in its discretion accept goods returned in return for a credit and will not be bound to provide a cash refund.
- 8.2 No credit note will be issued without the original purchase information in the form of a sales invoice or a delivery note number.
- 8.3 At the Seller's discretion goods may only be returned if they have not been custom made and form part of the Seller's usual stock in trade and the condition of the goods has not deteriorated.
- 8.4 The Customer shall pay for the cost of return delivery where applicable.
- 8.5 Where goods are so returned the Seller will give a credit to the Customer after deducting an administration/handling fee and the cost of delivery.
- 8.6 No credit for goods returned will be made without a proof of return in the form of a signed goods Returned for Credit note. Any discrepancies between goods returned and those recorded on the signed goods returned for Credit note will be recognised by the Seller.
- 8.7 For defective goods which the Customer is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) repairing or replacing the goods or refunding the Contract Price provided that the Customer has notified the Seller within 14 days of delivery that the goods are defective and the Seller is given a reasonable opportunity to investigate the Customer's claim. The Seller will not be liable for goods which have been tampered with or modified without the Seller's approval or which have not been stored or used in a proper manner. The Seller will not be liable to pay the Customer any amount more than the amount (if any) the Seller's received from the supplier for the defective goods.
9. General
- 9.1 These contract terms of trade and the provisions in the application for trading account (together the "contract") are the full agreement between the Seller and the Customer.
- 9.2 These contract terms of trade shall apply to all goods or services supplied by the Seller to the Customer until the Seller cancels this contract or unless for any particular purchase a separate agreement in writing is made. If a separate agreement is made it shall be read together with this contract and where in conflict this contract shall prevail. The foregoing shall not apply to any mortgage or other form of charge or security interest given by the Customer. The Seller may cancel this contract at any time after (7) seven days have elapsed from the date of this contract. Any such cancellation is without prejudice to the Customer's and/or Guarantor's liability for any debt, liquidated damages, costs, expenses and commissions owing or to become owing by the Customer and/or Guarantor, or any security given for such liability. The Seller reserves the right to vary this contract at any time. The Seller will advise the Customer of those variations or any new contract terms of trade by notice in writing to the Customer's last known address in the Seller's records. Any further orders placed by the Customer for goods or services after delivery of the notice from the Seller will constitute acceptance of the new contract terms of trade.
- 9.3 To be effective, any waiver of any or all of these contract terms of trade by the Seller must be in writing.
- 9.4 The Customer may not assign all or any of its rights or obligations under the contract without the prior written consent of the Seller. The Customer and Guarantors agree that the Seller may assign and transfer this agreement and any security to any entity that purchases the Seller's business, and the purchaser shall thereafter constitute the Seller.
- 9.5 The Seller is not bound by any error or omission on any invoice, order form or other document or statement issued by the Seller.
- 9.6 The contract between the Seller and the Customer and the Guarantor (if any) is governed by the laws of New Zealand, and the parties submit to the jurisdiction of the Courts of New Zealand.
- 9.7 The Customer shall be deemed to agree to be bound by the contract if the Customer has executed and delivered to the Seller an original, a facsimile or an electronic emailed copy of the application for trading account.