

TERMS AND CONDITIONS OF SALE for TENON LIMITED and for its GROUP COMPANIES

1. GENERAL

- 1.1 In these terms and conditions of sale: "Tenon" means Tenon Limited and includes Tenon's nominees or assigns; "Goods" means logs and/or lumber and other products supplied by Tenon or a Group Company and, in respect of each order of Goods from the Customer accepted by Tenon or a Group Company, means the Goods described in the invoice issued by Tenon or the relevant Group Company in respect of the relevant order; "Group Company" means a Related Company of Tenon; "GST" means the tax charged under the Goods and Services Tax Act 1985; "PPSA" means the Personal Property Securities Act 1999; "Related Company" means a related company as defined in section 2 of the Companies Act 1993; "Supplier" means in respect of the Goods and all other goods supplied by Tenon or the relevant Group Company on these Terms and Conditions, Tenon or the relevant Group Company supplying those Goods or goods; and "Terms and Conditions" means these terms and conditions of sale and, in respect of each order of Goods from the Customer accepted by Tenon or a Group Company, includes the invoice issued by Tenon or the relevant Group Company in respect of the relevant order. Any references to legislation or legislative provision include that legislation or provision as amended from time to time, and any replacement or successor legislation or provision respectively.
- 1.2 Any Goods supplied by Tenon or any Group Company to the Customer will be supplied on the Terms and Conditions. If the Customer orders Goods from Tenon or any Group Company, the Customer will be deemed to have accepted the Terms and Conditions. Unless expressly agreed by Tenon or the Group Company, no other conditions, including any contained in a purchase order, will apply to such supply. Goods are offered subject to availability. Where Goods are not available Tenon and/or the relevant Group Company has no obligation to supply.
- 1.3 Any notice required to be served hereunder by either party shall be deemed to have been properly served if personally delivered or posted in a prepaid letter addressed to the party at the place of business or residence of such party and any such service by post shall be deemed effected on the second day after the day on which the notice was posted. Where receipt occurs outside normal business hours of the recipient, receipt will be deemed deferred until the next business day.
- 1.4 It is hereby agreed for the purpose of determining the Court at which any action in relation hereto shall be heard pursuant to the District Court Rules 1948 or the High Court Rules as the case may be (or any provisions substituted therefore) that any cause of action which may arise out of this agreement shall be deemed to have arisen at the registered office of Tenon with the intent that all legal proceedings upon or concerning the agreement shall be commenced and heard at the District Court or High Court (as the case may be) at Auckland.
- 1.5 For the purposes of the Contracts (Privity) Act 1982 the rights, warranties, covenants, acknowledgments and undertakings set out in the Terms and Conditions are given for the benefit of Tenon and for any and all Group Companies and accordingly are enforceable by Tenon or any Group Company.

2. PRICE AND PAYMENT

- 2.1 Goods will be invoiced at the price plus GST and other taxes and duties asserted or levied in connection with the supply of the Goods to the Customer contained in Tenon's or a Group Company's price list current on the date the Goods are despatched by Tenon or the relevant Group Company, unless otherwise expressly agreed in writing by Tenon or the relevant Group Company.
- 2.2 The price of the Goods plus GST and other taxes and duties is to be paid in full on the 20th of the month following delivery of the Goods. However, Tenon and the Group Companies reserve the right to require payment for any Goods in cash before the Goods are delivered. Tenon or a Group Company may at any time require the Customer to pay for Goods by bank cheque or post dated cheque or secure payment for Goods by way of an assignment of debt, an instrument by way of security, a mortgage or agreement to a mortgage or in any other manner whatsoever. The Customer may not withhold payment or make any deductions from any amount owing to Tenon or a Group Company (whether by way of set-off, counterclaim or otherwise) without Tenon's or the relevant Group Company's prior written consent.
- 2.3 If full payment for any Goods is not made by the due date, the Customer will be in default and will pay, on demand (without affecting any other rights Tenon or a Group Company may have), default interest equal to 4% above the retail lending base rate of the Bank of New Zealand as varied from time to time and calculated on a daily basis from when the payment is due until the date when payment is actually made and all expenses and costs (including legal costs as between solicitor and client) in connection with Tenon or a Group Company recovering or attempting to recover any overdue amount. The charging of default interest will in no way imply the granting or an extension of credit by Tenon or a Group Company.
- 2.4 The Customer agrees that a Group Company may arrange for Tenon or another Group Company to issue an invoice on behalf of a Group Company in respect of Goods purchased by the Customer from a Group Company. In such cases payment of the invoice to Tenon or the other Group Company, as the case may be, will discharge the debt of the Customer to the Group Company.

3. DELIVERY

- 3.1 Tenon and the Group Companies will endeavour to meet agreed delivery dates, but will not be liable, nor may the Customer cancel any order, for any delay in delivery. Delivery of Goods may be made by instalments.
- 3.2 All claims for errors in delivery or short delivery must be made to the Supplier within 7 days of delivery and in accordance with the procedures advised by Tenon or the Group Company from time to time.
- 3.3 Unless otherwise agreed in writing by the parties, the Supplier will be responsible for arranging the carriage of Goods and delivery of any particular Goods will be deemed to have been made when those Goods are delivered to the Customer's premises or such other delivery point as the parties agree.
- 3.4 Where a Supplier arranges for the carriage of Goods:
- unless otherwise agreed in writing by the parties, prices include the cost of delivery. Where the price does not include the cost of delivery, Tenon or the relevant Group Company will invoice the Customer for any charges incurred by the Supplier in arranging delivery of the Goods;
 - if the price of the Goods includes the cost of delivery, unless otherwise agreed in writing by the Supplier the price of the Goods will only include the cost of delivery by the usual methods of transportation used by the Supplier at the usual times. The Supplier may at the Customer's request, arrange delivery by other methods or at other times but will be entitled to charge the Customer for any additional cost the Supplier may incur;
 - the Customer is responsible for ensuring, at its own cost, that all agreed delivery sites have unloading facilities together with labour and/or mechanical means to unload the Goods promptly and suitable access and area for unloading;
 - if the Customer or its authorised agent is not present at the delivery point when Goods are delivered, or if the such party fails or refuses to accept delivery, delivery will be deemed to have been effected when the Supplier is willing and able to deliver such Goods; and
 - all claims for Goods damaged or lost in transit must be made to the Supplier within 24 hours of delivery.
- 3.5 If the Customer fails or refuses to take delivery of any Goods, the Supplier may (without affecting any other rights Tenon or any Group Company may have) charge the Customer for any expenses or additional costs incurred by Tenon or any Group Company as a result of such failure or refusal to take delivery.

4. RISK AND OWNERSHIP

- 4.1 The risk of any loss, damage or deterioration of or to Goods passes to the Customer on delivery of those Goods to the Customer.
- 4.2 Ownership of the Goods does not pass to the Customer until: (a) all amounts owing by the Customer to Tenon or the relevant Group Company in respect of the Goods and all other goods supplied by Tenon or a Group Company to the Customer, have been paid; and (b) all other obligations of the Customer to the Supplier in respect of the Goods and all other goods supplied by Tenon or a Group Company, have been met.
- 4.3 The sales transaction secures payment of the Customer's obligation to pay all amounts owing to the Supplier in respect of the Goods and the performance of all other obligations of the Customer under these terms, and accordingly is a security interest (within the meaning of section 17 of the PPSA) in all the Goods supplied by the Supplier to the Customer under these terms.
- 4.4 Until payment is received in full the Supplier, without prejudice to any of its other rights and remedies, will be entitled to reclaim any Goods in the Customer's possession or control (including any Goods that have become an accession under the PPSA) and to dispose of them or retain them for its own benefit and, for that purpose, the Supplier may, to the extent permitted by law, without notice, enter directly or by its agents any premises where it believes Goods may be stored, without in any way being liable to any person. The Customer will cease to deal with the Goods and deliver them up to the Supplier immediately should the Supplier withdraw the Customer's authority to sell and deal with the Goods. The Customer agrees to indemnify and keep indemnified the Supplier, its servants and agents, for any alleged liability resulting from the repossession. The Customer will be liable for all costs (including legal costs on a solicitor client basis) incurred by the Supplier in respect of the repossession of the Goods. Any payment received by the Supplier from the Customer may be applied in reduction of any amount owing to the Supplier as determined by Supplier.
- 4.5 Until ownership of the Goods passes, the Customer:
- must keep full and complete records of the Goods and allow the Supplier to inspect any records, inventories and accounts of sale of Goods;
 - store the Goods in such a way to ensure it is clear the Goods are the property of the Supplier and to ensure that the Goods suffer no diminution in value;
 - must return the Goods if requested to do so by the Supplier following non-payment of any amount owing by the Customer to the Supplier or non-fulfilment of any other obligation of the Customer to the Supplier, without limiting any other right the Supplier may have;
 - will hold all proceeds of sale of the Goods on trust as bare trustee for Tenon in a separate account in the name of the Supplier and account to Tenon for any payments received or property accepted by it. The Customer will supply Tenon with bank statements in relation to the account on request;
 - gives the Supplier the right to inspect the Goods or any part of them at all reasonable times;
 - must not change its name, address or contact details without providing the Supplier with at least 20 days' prior written notice;
 - waives its right under the PPSA: (i) to receive a copy of any verification statement; (ii) to receive a copy of any financing change statement; (iii) to receive any notice that the Supplier intends to sell the Goods or to retain the Goods on enforcement of the security interest (as defined in PPSA) granted to the Supplier under these terms; (iv) to object to a Supplier proposal to retain the Goods in satisfaction of any obligation owed by the Customer to the Supplier; (v) to receive a statement of account on sale of the Goods; and (vi) where any Good becomes an accession, as defined in the PPSA, to not have any goods damaged when the Supplier removes the accession, to receive notice of removal of the accession and to apply to the court for an order concerning the removal of the accession;
 - must not give to the Supplier a written demand, or allow any other person to give the Supplier a written demand, requiring the Supplier to register a financing change statement under the PPSA or enter into, or allow any other person to enter into, the register of personal property securities a financing change statement under the PPSA.
- 4.6 The Customer acknowledges: (a) the Terms and Conditions constitute a security agreement for the purposes of section 36 of the PPSA; and (b) that it has received value as at the date of first delivery of the Goods and has not agreed to postpone the time for attachment of the security interest (as defined in PPSA) granted to the Supplier under these terms.
- 4.7 The Customer will insure the Goods at full replacement value until ownership of them has passed to the Customer. If any Goods are damaged or destroyed before ownership of them has passed to the Customer, the Customer will hold the proceeds of such insurance in a separate fund and on trust for the Supplier.
- 4.8 The Customer is to execute all documents, provide all information and do all such further acts as may be required by the Supplier to register and perfect the security interest granted to the Supplier under these terms under the PPSA or for any other purpose whatsoever.

5. CONSUMER GUARANTEES ACT AND LIABILITY

- 5.1 Subject to clause 5.3, nothing in these Terms and Conditions affects any rights a Customer may have under the Consumer Guarantees Act 1993 (the CGA).
- 5.2 The Customer will:
- include in its conditions of sale with its customers a clause to the effect that the CGA will not apply where a customer of the Customer acquires or holds itself out as acquiring any Goods for the purposes of a business;
 - notify its customers of the effect of clause 5.2(a);
 - take reasonable action to notify its customers at or before the time Goods are supplied to such customers that neither Tenon nor any Group Company undertakes that repair facilities and parts will be available for the Goods;
 - not make any representations or give any guarantees or warranties to its customers relating to the Goods unless expressly authorised in writing to do so by the Supplier; and
 - indemnify Tenon and the Group Companies against all losses, costs, damages or liabilities which Tenon or the Group Companies may incur or be liable to pay arising out of the Customer's failure to take the action required under this clause 5.2.
- 5.3 The CGA will not apply where the Customer is not a "Consumer" (as that term is defined in the CGA) or where the Customer holds himself, herself or itself out as acquiring the Goods for the purposes of a business.
- 5.4 To the extent permitted by law, all warranties, descriptions, representations or conditions whether implied by law, trade, custom or otherwise are, and all other liability of Tenon and the Group Companies, whether in tort (including negligence), contract or otherwise, is expressly excluded.
- 5.5 If Tenon or a Group Company is liable, whether in tort (including negligence), contract or otherwise for any loss, damage or injury arising directly or indirectly from any defect in or non-compliance of any Goods or any breach of Tenon's or the relevant Group Company's obligations (it being the intention of clause 5.4 that it will not be so liable), except where statute expressly requires otherwise, the total liability of Tenon or the relevant Group Company will, in any case, be limited at Tenon's or the relevant Group Company's option to: (a) the price of the Goods in respect of which the complaint is made; (b) the cost of repairing or replacing the defective Goods; or (c) actual loss or damage suffered by the Customer.
- 5.6 Tenon and the Group Companies will not be liable in any event, except where statute expressly requires otherwise, for any loss of income or profits, loss of opportunity, production, business or goodwill or consequential, indirect or special damage, loss or injury of any kind suffered by the Customer or any other person.
- 5.7 While Tenon and the Group Companies will make every effort to ensure the accuracy of any advice, recommendation, information, assistance or service provided by Tenon or the Group Companies in relation to the Goods supplied by Tenon or the Group Companies or their use or application, to the extent permitted by law, Tenon and the Group Companies do not accept any liability or responsibility in respect thereof.
- 5.8 For the avoidance of doubt these Terms and Conditions shall be read subject to the Credit (Repossession) Act 1997 where the Customer is using the Goods or acquiring the Goods for use primarily for personal, domestic or household purposes.

6. TERMINATION: If:

- any amount payable by the Customer to Tenon or a Group Company is overdue, or the Customer fails to meet any other obligation to Tenon or a Group Company (whether in relation to the sale of Goods or otherwise), or in Tenon's or the relevant Group Company's opinion the Customer is likely to be unable to meet its payment or other obligations to Tenon or the relevant Group Company; or
 - the Customer becomes insolvent, has a receiver appointed in respect of all or some of its assets, makes or is likely to make an arrangement with its creditors, has a liquidator (provisional or otherwise) or administrator appointed or is placed under statutory or official management; or
 - the ownership or effective control of the Customer is transferred or the nature of the Customer's business is materially altered,
- then:
- Tenon or the relevant Group Company may cancel any outstanding order with the Customer (without prejudice to Tenon's or the relevant Group Company's other remedies); and
 - all amounts owing to Tenon or the relevant Group Company, whether due for payment or not, will immediately become due and payable; and
 - Tenon and the relevant Group Company may repossess any Goods belonging to Tenon or the relevant Group Company in the Customer's possession or control and for that purpose Tenon and the relevant Group Company will be entitled to enter, without notice, directly or by their agents, on any premises where they believe Goods which they have supplied may be stored, without, in any way, being liable to any person. If Tenon or the relevant Group Company exercise their right to repossess Goods they will be entitled to dispose of them for their own benefit.

7. **PRIVACY:** Tenon and/or the Group Company is collecting, and may hold, information about the Customer, the Applicants and the Guarantors to determine whether to open a credit account in the name of the Customer and thereafter from time to time to supply Goods to the Customer, for ongoing credit assessment and control and debt recovery purposes, to register any security interest granted to Tenon or any Group Company, for marketing and promotional purposes and generally for Tenon and Group Companies to do business with the Customer. Tenon may not be able to open a credit account or provide the Goods to the Customer if all the requested information is not provided. Information may be disclosed to Tenon and Group Companies. Information (including default information) may from time to time be disclosed to, and collected from, trade references, credit reporting agencies (such as Veda Advantage (NZ) Limited), debt collection agencies, for credit assessment and control and debt recovery. Information disclosed to credit reporting agencies (including default information) will be held by each agency on its system, accessed by the customers of the credit reporting database and used to provide its credit reporting services (including the maintenance of credit information files and supplying the information to other customers of the relevant credit reporting agency). Under the Privacy Act 1993, individuals have rights of access to, and correction of, their personal information.

8. MISCELLANEOUS

- 8.1 The Customer will be responsible for disposing, at its own cost, of all materials used in the packaging or delivery of Goods supplied by Tenon and the Group Companies.
- 8.2 If at any time Tenon or the Group Companies do not enforce any of these Terms and Conditions or grant the Customer time or other indulgence, Tenon and the Group Companies will not be construed as having waived that term or condition or its rights to later enforce that or any other term or condition.
- 8.3 Where any provision of the Terms and Conditions (including, without limitation, any provision in clause 4) is rendered void, unenforceable or otherwise ineffective by operation of law, such provision will not affect the enforceability or effectiveness of any other provision of the Terms and Conditions.
- 8.4 Tenon and the Group Companies may assign their rights, title and interest in and under these Terms and Conditions at any time without the Customer's consent. The Customer may not assign all or any of his rights or obligations under these Terms and Conditions without the prior written consent of Tenon.
- 8.5 The Terms and Conditions: (a) constitute the entire agreement between the parties with respect to the subject matter hereof and supersede all previous negotiations, commitments and/or writings; may be modified by Tenon at any time by notifying the Customer; and (c) will be governed by the laws of New Zealand and parties submit to the jurisdiction of the Courts of New Zealand.