

# CONTRACT CONDITIONS GOVERNING SALES AND WORK BY OAK TIMBER STRUCTURES LTD

## **1 Definitions**

In these Conditions the Company referred to on the face of this document is referred to as "the Company" and the other party to the Contract is referred to as the Customer. The expression "the Customer's Goods" includes any free issue or other goods or materials of the Customer upon or in conjunction with which work is carried out by the Company.

## **2 Applicable Conditions**

The transaction referred to on the face of this document is made and will be carried out subject to these Conditions to the exclusion of any other terms and conditions (except those implied in favour of a Company which are not inconsistent with these Conditions. No variation of or addition thereto (whether contained in any document emanating from the Customer or made orally by any person acting or purporting to act on behalf of the Company) shall have effect unless confirmed in writing and signed by the Company. The giving by the Customer of any delivery instructions, the acceptance by him of any deliveries or any conduct by him in confirmation of the transaction set out on the face hereof after his receipt of this document shall constitute acceptance by him of these Conditions. The Uniform Laws on International Sales Act 1967 shall not apply to the contract.

## **3 Quotations**

3.1 Any quotation is given on the basis that no contract will come into existence until the Company despatches an acknowledgement of order to the Customer.

3.2 Any quotation is valid for a period of 90 days only from its date provided that the Company has not previously withdrawn it.

## **4 Limits of contract**

Unless the Company expressly undertakes to do so in writing it shall be under no obligation to carry out any work of erection, framing, glazing, priming, painting, polishing or any other work or treatment whatsoever in relation to goods which it supplies.

## **5 Samples**

Illustrations and samples cannot convey the variations in grain, colour and tone which are inevitable in all timbers and veneers. Notwithstanding that any

sample may be supplied no sale shall be deemed to be a sale by sample unless it is specifically described as such.

## **6 Delivery and performance**

6.1 Delivery dates are subject to availability of stock and materials for manufacturing.

6.2 The Company shall use its best endeavours to despatch goods in order to meet delivery dates, but in no circumstances will the Company be liable for loss or damage of any kind whatsoever caused directly or indirectly by any delay in the delivery of the goods and/or the performance of the works, nor unless such delay exceeds 90 days will any delay entitle the Customer to terminate or rescind the contract.

6.3 Should the Company be prevented or hindered (directly or indirectly) from effecting despatch or delivery of any of the goods or performing or completing any work at or within the time agreed by reason of war, strikes, lock-outs, trade disputes, fires, breakdowns, accidents, defective material, interruption of transport or any cause whatsoever (whether occurring at the works of the Company or elsewhere, and whether or not of the like nature to those specified above) then the Company shall be entitled at its option, which shall be notified to the Customer in writing not later than 14 days after the occurrence of such cause, either to cancel this contract so far as it relates to goods or work not then supplied or to extend the time of its performance by a period equivalent to that during which despatch delivery performance or completion has been prevented or delayed by the relevant circumstances and such cancellation or extension shall not give rise to any claims by the Customer.

6.4 The Company may make delivery of the goods by instalments and/or perform the works in stages.

6.5 Unless expressly stated otherwise overleaf, delivery of the goods and performance of the works will be made at the Company's works and the contract price is calculated on that basis.

6.6 Where goods are to be exported, the Company will be under no obligation to give the Customer notice as specified in Section 323) of the Sale of Goods Act 1979.

## **7 Customer's Instructions**

Should the Company be hindered or delayed in effecting any delivery of the goods or carrying out of works by the failure of the Customer or its contractors or agents to give promptly any instructions reasonably required by the Company, the time for such delivery/performance shall (without prejudice to

any right of the Company to treat the contract as repudiated by reason of such failure) be extended by such period as the Company reasonably considers is fair and reasonable having regard to the Company's other commitments as well as the period which elapsed between the Company requiring and receiving such instructions.

## **8 Delivery by instalments**

8.1 Where delivery is to be made by instalments. Failure by the Company to make delivery of any instalment in accordance with this contract shall not entitle the Customer to treat the contract as repudiated.

8.2 Acceptance by the Customer of each delivery and his payment for each such delivery in accordance with the terms of payment herein contained are conditions precedent to the Company's obligations to make further deliveries, and the Company shall be entitled, if the Customer fails to accept or pay for any delivery in accordance with this contract, to cancel any undelivered part of the contract, without prejudice to any claim against the Customer for loss or damage.

## **9 Damage in transit and non delivery**

Where the Company has undertaken to deliver goods or the Customer's Goods it will repair or at its option replace free of charge to the Customer such goods damaged in transit provided that both the carriers and the Company itself receive written notification of such damage within five days of the delivery to the Customer of the goods. Any claim for nondelivery must be made to the Company and the carrier within 21 days of the date of the Company's invoice. Save as aforesaid no claim for damage in transit or non-delivery will be accepted by the Company. The goods and the Customer's Goods shall be in all respects at the risk of the Customer as soon as they are delivered to the Customer or his agent or carrier or bailee for the purpose of transmission to the Customer (unless otherwise agreed in writing). The Customer shall be responsible for offloading and shall bear any loss or damage occasioned in such offloading.

## **10 Quantities delivered**

If the Company delivers to the Customer a wrong quantity of goods, either more or less, the Customer shall be entitled to reject any excess, but save as aforesaid he shall accept the goods delivered and pay therefor at the contract rate. The Company shall be under no liability whatsoever in respect of claims for short delivery unless the same are notified to the Company in writing within five days of receipt by the Customer of the goods.

## **11 Storage and insurance**

If for any reason whatsoever goods or the Customer's Goods remain in the possession or custody of the Company after the agreed date for delivery or (if there is no such date) after the same are ready for despatch the Company shall have the right to charge storage and insurance on such goods in addition to invoicing them in full and any such storage and insurance charges will be added to and form part of the price. The Company shall however be under no obligation whatsoever, in the absence of express written agreement, to effect any insurance whatsoever on any goods.

## **12 Terms of payment**

12.1 In the case of accounts designated by the Company in writing as approved accounts payment for goods and work shall be made within 30 days of the date of the invoice. For approved accounts the Company shall be entitled to invoice goods as soon as they are ready and awaiting forwarding instructions. In all other cases payment shall be made against the Company's pro forma invoice and the Company need not supply the goods or work until payment has been received.

12.2 Payment shall in no way be dependent upon receipt by the Customer of payment by any third party nor upon approval by any third party of goods or work supplied by the Company.

12.3 Interest at an annual rate of 3% above HSBC Bank PLC Base Rate from time to time will accrue daily and be calculated on a daily basis on overdue accounts from the date of invoice until payment.

12.4 Notwithstanding any Condition allowing the Customer credit, payment shall become due and payable to the Company immediately upon the termination of the contract.

12.5 Where the Customer makes default under the contract or any other contract with the Company in payment on the due date of any sum due to the Company, the Company without liability may postpone any delivery or may cancel the contract or any other contract between the Company and the Customer but without prejudice to any right or remedy which the Company may have against the Customer in respect of such default.

12.6 The Company will be entitled to payment for all instalments of goods delivered and/or works part supplied to the Customer whether under a blanket order or otherwise.

12.7 The Company shall at any time be entitled to appropriate any payment made by the Customer in respect of any goods or work in settlement of such invoices or accounts in respect of such goods or work as the Company may in

its absolute discretion think fit notwithstanding any purported appropriation to the contrary by the Customer.

### **13 Basis of prices**

13.1 All prices quoted whether for goods or work to be done are based on those prevailing at the date of the quotation, they are therefore subject to amendment any time before delivery of the goods/performance of the works in the event of any increase.

13.2 Unless expressly stated otherwise all prices are exclusive of VAT which shall be charged at the rate and in the manner prescribed by law from time to time.

13.3 Additional charges will be made for any variations requested by the Customer in respect of additional drawing office, detailing or shop work variations in batch quantities and/or extra materials.

### **14 Guarantee and exclusions clauses**

14.1 Where the Company is not the manufacturer of the goods the Company will endeavour to transfer to the Customer the benefit of any warranty or guarantee given to the Company.

14.2 Subject to the other provisions of these conditions, the Company guarantees its goods and work as follows. In respect of goods manufactured by the Company, the Company will free of charge within the applicable warranty period, repair or at its option replace any goods which are proved to the reasonable satisfaction of the Company to be defective in material or workmanship or which do not meet any specifications stated overleaf or contained in the Company's Technical Sheet current at the date of the order. In respect of work carried out by the Company, the Company will free of charge reperform or at its option remedy any works which are proved to the reasonable satisfaction of the Company to be defective in workmanship or which do not meet any specifications stated overleaf. These obligations will not apply however where:

14.2.1 the goods or the Customer's Goods (as applicable) have been altered in any way whatsoever or have been improperly stored or subjected to misuse or unauthorised repair; or

14.2.2 the goods or the Customers Goods (as applicable) have been improperly installed or fixed (unless the Company carried out such installation or fixing; or

14.2.3 the Customer has failed to observe any maintenance requirements relating to the goods or the Customer's Goods (as applicable; or

14.2.4 the Customer has failed to notify the Company of any defect or suspected defect within 14 days of the same coming to the knowledge of the Customer; or

14.2.5 the Customer is in breach of this or any other contract made with the Company. The Company shall be afforded all reasonable facilities for investigating the defect. Any goods replaced will belong to the Company. Any repaired or replacement goods or work reformed or remedied will be guaranteed on these terms for the unexpired portion of the applicable guarantee period.

14.3 Special Conditions: The guarantee set out in clause 14.2 shall not apply if the following conditions (if applicable) are not complied with

14.3.1. Temperature / Humidity:- Temperature and humidity are critical factors. All materials which are dried to specific moisture content in accordance with BS1186 1971 and BS4471 must be stored in conditions relative to the BS Code, details of which are available on request;

14.3.2 Joinery:- joinery products must be stored in conditions comparable to the conditions where the joinery will be finally placed

14.3.3 Doors, board materials:- must be stored flat and clear of the ground unless specific instructions are given to the contrary.

14.4 Swelling:- no responsibility is accepted by the Company for defects attributable to swelling;

14.5 Timber- before cutting timber, the Customer must inspect and check the timber to satisfy itself that the dimensions, description and other specifications of the timber apparent on an inspection areas ordered since no responsibility is accepted by the Company and timber cannot be accepted for return once cut;

14.6 Variations- the Customer acknowledges and accepts that variations in grain, colour and tone are inevitable in all timbers

14.7 Warranty periods:- the warranty period is, in the case of) Sawn planking or moulded components - 7 days from the date of delivery. b) All other products - 6 months from the date of delivery.

14.8 Where the Company carries out work on site, the Company accepts its legal liability for any direct loss or damage to tangible physical property which is proved to have arisen as a direct result of the negligence of the Company whilst on site provided always that its liability for such claim or series of connected claims shall not be liable for for any loss of profit or any consequential loss or damage howsoever arising.

14.9 SAVE AS PROVIDED IN CLAUSES 14.1, 14.2 AND 14.8 THE COMPANY WILL BE UNDER NO LIABILITY UNDER THE CONTRACT FOR ANY PERSONAL INJURY, DEATH, LOSS OR DAMAGE OF ANY KIND WHATSOEVER (OTHER THAN DEATH OR PERSONAL INJURY RESULTING FROM THE COMPANYS NEGLIGENCE) WHETHER CONSEQUENTIAL OR OTHERWISE INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS AND THE COMPANY HEREBY EXCLUDES ALL CONDITIONS, WARRANTIES AND STIPULATIONS EXPRESS OR IMPLIED STATUTORY, CUSTOMARY OR OTHERWISE WHICH BUT FOR SUCH EXCLUSION WOULD OR MIGHT SUBSIST IN FAVOUR OF THE CUSTOMER EXCEPT THAT SUCH EXCLUSION WILL NOT APPLY TO:-

14.9.1 ANY IMPLIED CONDITION THAT THE COMPANY HAS OR WILL HAVE THE RIGHT TO SELL THE GOODS WHEN THE PROPERTY IS TO PASS; OR

14.9.2 WHEN THE CUSTOMER DEALS AS A CONSUMER (AS DEFINED IN SECTION 12 OF THE UNFAIR CONTRACT TERMS ACT 1977), ANY IMPLIED TERM RELATING TO THE CONFORMITY OF THE GOODS WITH THEIR DESCRIPTION OR SAMPLE OR AS TO THEIR QUALITY OR FITNESS FOR A PARTICULAR PURPOSE.

14.10 SAVE AS PROVIDED IN CLAUSES 14.1, 14.2 AND 14.8 IN NO CIRCUMSTANCES WILL THE COMPANY OR ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS BE LIABLE FOR ANY LOSS OR DAMAGE OF ANY KIND WHATSOEVER (OTHER THAN DEATH OR PERSONAL INJURY RESULTING FROM THE COMPANYS NEGLIGENCE WHETHER CONSEQUENTIAL OR OTHERWISE CAUSED DIRECTLY OR INDIRECTLY BY ANY NEGLIGENCE OR OTHER TORTIOUS ACT OR BREACH OF STATUTORY DUTY ON THE PART OF THE COMPANY OR ON THE PART OF ANY OF ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS IN CONNECTION WITH OR ARISING OUT OF THE MANUFACTURE OR SUPPLY OF THE GOODS AND/OR SUPPLY OF THE WORKS OR IN CONNECTION WITH ANY STATEMENT GIVEN OR MADE (OR ADVICE NOT GIVEN OR MADE) BY OR ON BEHALF OF THE COMPANY.

14.11 Nothing in this clause 14 shall affect the statutory rights of a consumer.

## **15 Customer Goods**

15.1 It is the Customer's responsibility to ensure that its materials and goods shall at all times be adequately insured whilst in the possession of the Company,

15.2. It is the Customers responsibility to ensure that the Customers Goods are tested or inspected and are suitable for use by the Company in the performance of the works.

## **16 Risk**

Notwithstanding any other Contract Term, risk in the goods shall pass to the Customer when the goods are delivered to the Customer or its agent.

## **17 Property in the Goods**

17.1 The property (both legal and equitable) in the goods shall not pass to the Customer until the Company has been paid in full for the purchase price of the goods and of any other sum which is at the date of the contract or may thereafter become due or owing from the Customer to the Company.

17.2 Until property in the goods has passed to the Customer or until delivery of the goods to a third party pursuant to the permission given below, the Customer will hold the goods in a fiduciary capacity, will not obliterate any identifying mark on the goods or their packaging and will keep the goods separate from any other items.

17.3 Prior to the property in the goods passing to the Customer the Company permits the Customer to deliver the goods to a third party pursuant to a bonafide and arms-length agreement to resell the goods and allows the Customer to convert or incorporate the goods into or mix the goods with other goods but such liberty will cease upon the termination of the contract.

17.4 Where the Company is unable to determine whether any items are the goods the Customer shall be deemed to have sold all goods of the kind sold by the Company to the Customer in the order in which they were invoiced to the Customer.

17.5 The Company may at any time after payment for the goods has become due take possession of the goods (which for the avoidance of doubt will include the right to stop the goods in transit) and remove them and the Customer shall be deemed to have granted irrevocable authority to the Company to enter upon the Customers premises or other premises where the goods may be by its employees or agents to take possession of the goods and (if necessary) to dismantle the goods from anything to which they are attached.

17.5.1. If prior to the expiry of 7 days from the date when the Company has taken possession of the goods the Customer pays all sums then due or owing to the Company together with the costs of retaking possession of the goods, the Company will redeliver the goods to the Customer at the Customer's expense. If within the 7 day period the Customer fails to pay all sums then due



or owing to the Company, the Company may resell the goods and shall pay to the Customer the balance of any sums received from the sale of the goods after deducting all sums due or owing from the Customer to the Company and the cost of taking possession of and reselling the goods save that if the sums so received by the Company do not exceed all sums due or owing from the Customer to the Company and the costs of taking possession of and reselling the goods the Customer will pay to the Company any shortfall.

17.6 The Company will have the right to maintain an action against the Customer for the price of the goods notwithstanding that the property in the goods has not passed.

17.7 Nothing in the contract will constitute the Customer the agent of the Company in respect of any resale of the goods by the Customer so as to confer upon a third party rights against the Company.

## **18 Lien**

The Company will (without prejudice to any other remedy available to it) have in respect of all unpaid debts due from the Customer a general lien on the Customers Goods and all other property of the Customer in the possession of the Company for whatever purpose and whether worked upon or not and be entitled on the expiration of not less than 14 days notice in writing to the Customer to dispose of such property and to apply the proceeds towards the satisfaction of such debts.

## **19 Specification or Design**

19.1 Where the goods are manufactured and/or the works are performed in accordance with information or drawings supplied by the Customer or to his design or specification or where standard goods and/or services of the Company are altered in accordance with the Customers instructions:-

19.1.1 no guarantee or warranty is given by the Company as to the practicability, efficiency, safety or otherwise of the goods and/or the works (this being without prejudice to any other of the Contract Terms)

19.1.2 the Customer will indemnify and keep the Company indemnified against all liability incurred by the Company as a result of:-

19.1.2.1 such goods and/or works infringing any intellectual property right including without prejudice to the generality of the foregoing patents registered designs and copyright or the provision of any statute, statutory instrument or regulation

19.1.2.2 any impracticability, inefficiency or lack of safety or other defect in the goods and/or works where such defect is due (whether in whole or in part) to

faults or omissions in such information, drawings, design, specification or instructions

19.1.3 unless the Company agrees otherwise in writing, all works (including design drawings) any idea, invention or improvement made by or on behalf of the Company pursuant to the Customers commission and all intellectual property rights therein (including any design right in a design created by the Company in pursuance of the commission) shall belong to the Company.

19.2 No variation in the specification or design of any goods and/or works which in the reasonable opinion of the Company does not affect the suitability of the goods and/or works for the purpose for which they are supplied by the Company will constitute a breach of contract or impose upon the Company any liability whatsoever.

19.3 The Company will be under no liability whatsoever to the Customer in respect of any loss damage or claim incurred by or made against the Customer should any goods and/or works infringe any intellectual property right including without prejudice to the generality of the foregoing patents, registered designs, design right and copyright or the provision of any statute, statutory instrument or regulation.

19.4. Unless otherwise agreed in writing all patents, drawings, tools or other similar items produced or other property (whether intellectual property or not) owned or created by the Company will remain the property of the Company and must not be used or copied by the Customer.

19.5 Where it is agreed that ownership in any data, patterns, drawings, tools or other similar items is to pass to the Customer property shall only pass when such items have been paid for by the Customer in full.

## **20 Termination**

20.1 The contract will terminate immediately upon the happening of any one or more of the following, namely, that the Customer has had a bankruptcy order made against him or has made an arrangement or composition with his creditors or otherwise taken the benefit of any Act for the time being in force for the relief of insolvent debtors or (being a body corporate) has had convened a meeting of creditors (whether formal or informal) or has entered into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation or has a receiver manager administrator or administrative receiver appointed of its undertaking or any part thereof or a resolution has been passed or a petition presented to any Court for the windingup of the Customer or any proceedings

have been commenced relating to the insolvency or possible insolvency of the Customer.

20.2 The contract will terminate immediately upon service of written notice of termination by the Company on the Customer on the happening of any one or more of the following, namely, that the Customer has suffered or allowed any execution whether legal or equitable to be levied on property or judgement obtained against or has failed to observe or perform any of its obligations or duties under the contract or any other contract between the Company and the Customer or is unable to pay its debts within meaning of Section 123 of the Insolvency Act 1986 or the Customer has ceased to trade.

20.3 The Company's rights contained in the clause headed "Property in the Goods" (but not the Customer's rights) shall continue beyond the discharge of the parties primary obligations under the contract consequent upon its termination.

20.4 The termination of the contract howsoever arising will be without prejudice to the rights and duties of either party accrued prior to termination.

## **21 General**

21.1 The Company will be entitled to assign subcontract or sublet the contractor any part thereof.

21.2 Failure by the Company to enforce any of the Conditions will not be construed as a waiver of any of its rights hereunder.

21.3 In relation to all obligations of the Customer under the contract, the time of performance is of the essence.

21.4 The legal construction of these clauses shall not be affected by their headings which are for convenience of reference only.

## **22 English law**

The formation, interpretation and operation of the contract will be subject to English Law and the Customer submits himself to the non-exclusive jurisdiction of the English Courts.