

## **TERMS OF SALE – Eximcorp India Pvt Ltd (Domestic Indian Home market sales)**

The following Terms applies to all Orders placed by the Buyers and will also ipso facto apply to any written or oral contract entered into between the Buyer and Seller for the supply of Goods, together with any invoices or delivery notes issued by the Seller for those Goods.

### **1. PRICE AND ORDERS**

- 1.1 The Buyer will place Orders with the Seller in accordance with the Seller's processes as advised to the Buyer from time to time. The Seller may, at its discretion, reject any Order by refusing its delivery before the same is effected in cases where the deliveries have been offered Ex-Stocks, subject to prior other sales.
- 1.2 The Buyer will pay to the Seller the Price for the Goods in accordance with clause 2. The Buyer's obligation to pay the Price will not be affected by any defect in, or damage to, the Goods.
- 1.3 The Price will be increased by the amount of any VAT or GST and other taxes and duties which may be applicable, except to the extent that such taxes or duties are expressly included in the Price.
- 1.4 The Seller may change the Price for the Goods at any time on giving prior notice including oral notice to the Buyer. Any change to the Price will apply to all Goods delivered on or after the date specified by the Seller in such notice to the Buyer. If no date is specified in the notice, the change will be effective immediately for all Goods delivered after the date of notification, and whether or not an Order for the Goods had already been received and accepted prior to the change. In other words, prices ruling on the date of delivery only holds good and applies.
- 1.5 Where the Buyer receives notice of a Price increase which affects an existing Order, the Buyer may, within 5 business days cancel Orders or balances of Orders outstanding (but only to the extent they are affected by the Price increase) by giving the Seller notice of his intent.
- 1.6 Notwithstanding clause 1.5 where the Goods are:
  - outside the Seller's standard range of Goods, or sourced specifically to the Buyer's specifications and/or other requirements,
  - the Buyer must pay the Price for the Goods (including any change to the Price) and no Order in respect of such Goods may be cancelled without the prior written approval of the Seller and on such terms as the Seller agrees.
- 1.7 There is no obligation on the Seller to enquire as to the authority of any person placing an Order on behalf of the Buyer.
- 1.8 The Buyer is required to make its own arrangement to take delivery of the goods failing which, the Seller will be entitled to treat the order as cancelled without any notice and terminate or short close the contract without any contractual or financial repercussions on either side.
- 1.9 An Invoice issued by the Seller pursuant to a request for delivery of the goods by the Buyer, in the absence of a formal contract, will also be deemed to be a contract in itself pursuant to these Terms and conditions, regardless of whether the Buyer was aware of the same or not.

## 2. PAYMENT

- 2.1 Payment of the Price is to be made by Cheques / Demand Drafts or electronic transfer from time to time and is due upon delivery of the goods. The Seller categorically prohibits any payment in Cash or otherwise than the normal banking channel.
- 2.2 The Buyer will not withhold any payment or make any set-off or deduction from any Amount owing without the Seller's prior written consent.
- 2.3 The Seller may apply any payments received in reduction of the Amount Owing as the Seller thinks fit.
- 2.4 If the Buyer does not pay the Price by the due date, the Seller may charge a default interest calculated at a rate per month or part thereof equal to 2% from the date of delivery and calculated on a monthly basis on the unpaid portion of the Price and any other monies owing by the Buyer from due date until payment in full.
- 2.5 The Seller is entitled to payments of installment or part delivery of the goods made to the Buyer by the Seller and is also entitled to refuse delivery of the remnant of the order or contract so long as the payment for the deliveries already made is not received. In the event there is a delay, in receipt of payment for the part deliveries, the Seller, at its option is entitled to short close or terminate the Order or Contract for the rest of the portion remaining undelivered or unperformed at its sole discretion without any consequences against the Seller by the Buyer.

## 3. DELIVERY

- 3.1 All goods are sold, unless a different term has been agreed in writing, on "Ex-Warehouse of the Seller". The Buyer will take delivery of the Goods as soon as the Goods are made available for collection at the Seller's premises, and as advised to the Buyer.
- 3.2 Where Goods are to be dispatched on FOR destination basis as an exception to 3.1 above:
- the Seller will bear the transport charges up to the destination agreed and the same will be reimbursed where so incurred by the buyer as consignee, excluding any detention or demurrage or other incidental like destination or transit entry taxes, octaroi or any other similar charges applicable, whether in the ordinary course of business or not,; and
  - the Buyer will take delivery of the Goods as soon as the Goods are made available for collection, as advised to the Buyer.

The Seller is entitled to select the carrier for the purpose of carriage of the goods from warehouse to the destination and may refuse to deliver the goods to any carrier nominated by the buyer at its option.

The transit risks such as total and partial non-delivery, Strike Riot and Civil commotion, damages owing to mis-handling or accident of the vehicle and/or any natural cause such as rains or disasters etc will always vest in the buyer.

- 3.3 In the absence of any specific agreement, Goods are supplied "Ex-Works the Seller" and clause 3.1 will apply.
- 3.4 Any time advised for delivery is an estimate only. The Seller has the right to nominate a suitable time for loading the Goods onto a delivery vehicle, taking into account weather conditions and safety matters, and the Seller is not liable for any delay in delivery.

- 3.5 In all circumstances whatever the agreed method of delivery, the Buyer will be responsible at its own cost for unloading the Goods, or for arranging for a suitable means of unloading the Goods, from the relevant delivery vehicle. The Buyer will indemnify the Seller against any loss, liability, costs or expenses incurred by the Seller in unloading the Goods or otherwise.
- 3.6 The Seller may deliver the Goods by installments. Each installment will be treated as a separate contract under these Terms even a single order has been placed by the buyer.
- 3.7 The Buyer will indemnify the Seller against any loss, liability, costs or expenses incurred by the Seller if, after the time for Delivery of the Goods, the Seller subsequently arranges storage or transportation of, or insurance or cost of transport upon return of goods to the seller for, the Goods (whether due to any failure or refusal of the Buyer to take delivery or following agreement with the Buyer).

#### 4. **RISK AND SECURITY**

- 4.1 Risk of any loss, damage or deterioration of or to the Goods passes to the Buyer on Delivery to the carrier for transportation to destination or buyers premises.
- 4.2 Ownership of the Goods remains with the Seller and does not pass to the Buyer until the Buyer pays in full the Amount Owing in respect of the Goods,
- 4.3 While Ownership of the Goods remains with the Seller, the Seller authorises the Buyer in the ordinary course of its business to use the Goods and to sell the Goods for full consideration. Except as otherwise expressly permitted by these Terms, the Buyer must not otherwise sell, lease, dispose of, create a security interest in, mortgage or part with possession of the Goods or any interest in the Goods (or purport to attempt to do such a thing) or permit any lien over the Goods.
- 4.4 The authority referred to in clause 4.3
- may be revoked by the Seller at any time, by the Seller notifying the Buyer, in such manner and at such time as the Seller shall determine in its sole discretion, that the authority is revoked; and
  - is, in any event, revoked automatically from the time an Event of Default occurs including without limitation if an administrator is appointed to the Buyer.
- 4.5 Where the authority conferred by clause 4.3 is revoked under clause 4.4:
- the Buyer authorises the Seller to use reasonable force to enter the premises where the Goods are stored and remove them;
  - the Seller shall exercise reasonable care in entering such premises and removing such Goods, but shall not be liable for trespass or any damage caused by the use of reasonable force;
  - the Buyer is released from the obligation to pay the Price for all Goods repossessed by the Seller but only to the extent any proceeds obtained by the Seller reselling the Goods (less all costs incurred) exceeds the Price owing by the Buyer to the Seller for those same Goods;
  - the Seller may resell any repossessed Goods and apply the proceeds of sale in reduction of the Amount Owing as the Seller thinks fit; and

- the Buyer is liable for all costs associated with the exercise by the Seller of its rights under this clause and costs are payable to the Seller on demand.

The buyer will, however be refunded the excess value of the goods so recovered against the dues within 7 working days, unless prevented by a legal restraint or Court orders.

- 4.6 The Seller may bring an action for the Amount Owing in respect of the Goods even where Ownership of the Goods has not passed to the Buyer.
- 4.7 The Buyer must insure and keep insured with a reputable insurance company all Goods in its possession or control from the time of Delivery of such Goods against risk of loss or damage by hazards normally insured against.
- 4.8 Until Ownership of the Goods passes to the Buyer under these Terms, the Buyer must:
- keep the Goods in a manner that they are separately identifiable; and
  - keep proper stock records and records of account with respect to the purchase, receipt, sale of, and other dealings with, the Goods; and
  - make those records and/or the Goods themselves available to the Seller for inspection (and, in the case of the records, copy them) at its reasonable request and upon any failure to do so (and without limiting the Seller's other rights and remedies), the Seller may enter, and use reasonable force to enter, the premises where the records and/or the Goods are kept for any such purpose; and
  - not do or allow anything to happen that might contribute to a deterioration in the value of the Goods or otherwise adversely affect the rights or interest of the Seller in the Goods under these Terms.
- 4.9 The Buyer agrees that the Seller shall have the right at any time to complete and register a mortgage over any interest in property owned by the Buyer to secure the Amount Owing and the Seller shall have the right at its discretion to place a caveat on any such property for the purposes of this clause and the Buyer irrevocably appoints the Seller as the attorney of the Buyer for the purpose of the Seller exercising its rights under this clause whilst any Amount Owing remains outstanding.
- 4.10 Where the Laws on Security and Charges thereon applies to the Goods:
- the Buyer acknowledges that the Seller has a security interest in all the Goods and supplied by the Seller or debts owed by the Buyer under these Terms as security for payment of the Amount Owing (including, for the purposes of further advances) in respect of the Goods;
  - the Buyer acknowledges that it has received value from the Seller as at the date of first delivery of the Goods and has not agreed to postpone the time for attachment of the security interest granted to the Seller under these Terms nor to subordinate such security interest in favour of any person;
  - these Terms and each security interest created under these Terms is a continuing security, notwithstanding intermediate payments or anything else and is in addition to, and not to be merged in, any other security agreement, guarantee or other agreement (present or future) expressed or intended to be security for any amounts owing to the Seller in respect of Goods;

- no security interest created under these Terms is discharged, nor are the Buyer's obligations affected by any amendment to, or the validity or enforceability of, or failure to enforce, these Terms, or anything else whatever that, but for this clause, may have discharged these Terms or affected the Buyer's obligations under these Terms, and the Seller is not liable to the Buyer in relation to any of these matters, even though the Buyer's rights in subrogation or otherwise may be prejudiced as a result;
- the Buyer will, at its own cost, promptly provide all information and do all things that the Seller may require to ensure that the Seller has perfected security interests in respect of the Goods under the law or otherwise to secure to the Seller the full benefit of its intended rights under these Terms;
- the Buyer waives its rights under any other law for the time being in force:
  - receive a copy of any verification statement;
  - receive a copy of any financing change statement; and

4.11 To the extent permitted by law, the Buyer waives its rights under any other law for the time being in force and, where the Seller has rights in addition to those herein above, those rights continue to apply.

4.12 The Buyer must immediately notify the Seller if the Buyer is considering whether to appoint an Administrator or Liquidator to the Buyer and will not without the consent of the Seller appoint an Administrator or Liquidator, so long as the debts for the goods delivered are not settled.

4.13 The security Interest created by these Terms is not discharged nor the Buyer's obligations affected by the administration of the Buyer.

## 5. **WARRANTIES AND LIABILITY**

5.1 In the event of any Claim under these Terms at the Seller's discretion, Goods may be repaired or replaced or the Price refunded for the whole or part thereof having been returned. These are the sole remedies available to the Buyer for default by the Seller under these Terms. No claim may be made against the Seller for loss of profits, consequential or indirect damages or special loss.

5.2 Claims with respect to non-conforming or defective Goods will only be accepted if made to the Seller in writing within 3 days after Delivery, or such further period as the Seller may agree in writing, and the Seller has first been given the opportunity to inspect the Goods and agrees to their return.

5.3 To the extent permitted by law, the Seller expressly excludes liability for any Claim by the Buyer or any other person relating to or arising from the supply of the Goods which is not expressly accepted by the Seller in writing and the Buyer agrees to indemnify the Seller against any such Claim.

5.4 In any event, the Seller's liability arising out of any Claim or otherwise under these Terms will not exceed the Price of the Goods, found and agreed to be defective for the uses of the Buyer.

5.5 The only guarantees agreed to by the Seller are those confirmed by the Seller in writing.

5.6 In respect of any Goods supplied to a Buyer, it is expressly understood and agreed by the Buyer:

- Goods are acquired by the Buyer for business purposes and that the laws on Consumer Protection, known by whatever names or enactments do not apply;
- the Buyer agrees to indemnify the Seller against any liability or cost incurred by the Seller under the Consumers Law t as a result of any breach by the Buyer of its obligations under Such law to any person; and
- nothing in these terms is intended to have the effect of contracting out of the provisions of such law except to the extent permitted under such Law.

5.7 Further, in respect of the sale and supply of Goods to Buyers (Individual Consumers buying the Goods for personal consumption within the meaning of the Consumers protection law for the time being in force)

- nothing in these Terms excludes, restricts, or modifies any condition warranty or liability which is implied by the Law on Consumer protection, or other applicable laws where to do so is illegal or would render any provision of these Terms void; and
- the Seller's liability for breach of a condition or warranty implied by any such law In relation to the supply of goods or services which are not of a kind ordinarily acquired for personal, domestic or household use or consumption, is limited, at the Seller's option to:
- in the case of goods, the replacement, repair, or payment of the cost of the replacement or repair of the goods, or value of the goods returned;

## 6. **DEFAULT**

6.1 If any Event of Default occurs,

- the Seller may suspend or terminate these Terms;
- any Amount Owing will immediately become due and payable notwithstanding that the due date has not arisen; and/or
- to the extent permitted by law, each security interest created by these Terms will become immediately enforceable and the Buyer must return the Goods to the Seller promptly on request or the Seller may take possession of and sell the Goods and the Seller has all the rights of a natural person in relation to the Goods and all other rights conferred by law in relation to the Goods.

6.2 The Seller is entitled to recover from the Buyer all costs that the Seller incurs in connection with the exercise, protection or enforcement of the Seller's rights under these Terms or conferred by law, in each case on demand and on a full indemnity basis (including solicitor client costs)..

6.3 Subject to any mandatory law, the Seller will not be liable:

- in respect of any loss or damage that results from the exercise, attempted exercise or non-exercise by the Seller of its rights under these Terms or conferred by law; or
- to account as a mortgagee in possession in respect of the Goods if it or any person on its behalf takes possession of the Goods.

## **7. FORCE MAJEURE**

- 7.1 Without limiting the foregoing, neither the Seller nor the Buyer will be liable for any delay or failure in the performance of any obligation or the exercise of any right under these Terms or for any loss or damage (including indirect or consequential loss or damage) if such performance or exercise is prevented or hindered in whole or in part by reason of a Force Majeure Event. Nothing contained in this clause will excuse payment of any money due or which becomes due under these Terms.
- 7.2 The rights and obligations of either party which are affected by a Force Majeure Event will be suspended during the continuance of the Force Majeure Event, and either party claiming to be affected by the Force Majeure Event will give immediate notice to the other party containing full particulars of the Force Majeure Event. The party giving notice under this clause will take all reasonable steps to mitigate the effects of the Force Majeure Event and remove such Force Majeure Event provided that neither party will be required to remove any such Force Majeure Event if to do so would require it contrary to its judgment to settle a strike or labour dispute or otherwise submit to the demands of opposing parties.
- 7.3 If the Force Majeure Event prevents or hinders performance of these Terms for a period of 30 days either party may, on not less than 14 days prior written notice to the other party, terminate these Terms or the Contract or Order awaiting performance.

## **8. USE OF INFORMATION**

- 8.1 The Buyer agrees that the Seller may obtain information about the Buyer from the Buyer or any other person (including any Person related to the Seller and including any company within the wider group of companies of which the where Seller forms part (the "Wider Seller Group") and any credit or debt collection agencies) in the course of the Seller's business, including credit assessment, debt collecting and direct marketing activities, and the Buyer consents to any person providing the Seller with such information.
- 8.2 The Buyer agrees that the Seller may use any information it has about the Buyer relating to the Buyer's creditworthiness and, subject to any confidentiality agreement between the Buyer and the Seller, give that information to any other person, including any credit or debt collection agency and other members of the Wider Seller Group for credit assessment and or, debt collection purposes. The Buyer agrees that any other information collected by the Seller about the Buyer is accessed or collected for the use of any member of the Wider Seller Group in the course of its business, including direct marketing activities.
- 8.3 In the case of any Goods supplied to a Buyer, notwithstanding any of these Terms, where the Buyer is a natural person, the Buyer specifically agrees for the purposes of privacy legislation including any other law for the time being in force to the Seller:
- being given a credit report on him or her for the purpose of assessing an application for credit or for the purpose of the collection of payments that are overdue under these Terms; and
  - disclosing to or obtaining from another credit provider a credit report or personal information derived from a credit report on him or her for the purpose of assessing or exchanging information relating to his or her creditworthiness, credit history or credit capacity.
  - The Seller advises the Buyer and the Buyer acknowledges that the Seller may disclose the information it acquires about the Buyer to a credit agency or other members of the Wider Seller Group.

## **9 OTHER AGREEMENTS**

9.1 If there is any inconsistency between these Terms and any Order submitted by the Buyer (whether in writing, verbally or otherwise) or any other arrangements between the parties, these Terms prevail unless otherwise agreed in writing by the parties, save that as between these Terms and any valid, binding and current written agreement signed by the Buyer and the Seller, such formal written agreement shall prevail to the extent of any inconsistency.

## **10 WAIVER**

10.1 If the Seller exercises or fails to exercise or delays exercising any right or remedy available to it, this will not prejudice the Seller's rights in exercising that or any other right or remedy unless expressly specified in writing and signed by the Seller.

## **11 NO ASSIGNMENT**

11.1 The Buyer must not transfer or assign its rights under these Terms to anyone else without the Seller's prior consent in writing. The Seller may assign or transfer any of its rights or obligations under these Terms without the Buyer's consent. Each assignee or transferee is to have the same rights against the Buyer under these Terms as if named as the Seller.

11.2 In the event of the sale of the Seller's business or a substantial portion thereof the Seller shall be entitled to novate these Terms to the purchaser upon giving notice to the Buyer, and the Buyer agrees to such novation.

## **12 ELECTRONIC MESSAGES**

12.1 The Buyer agrees that the Seller may send electronic messages relating to its business, including promotional messages in respect of goods and services offered by the Seller, to the Buyer from time to time to the email addresses provided by the Buyer. If the Buyer no longer wishes to receive such messages it may notify the Seller in which event no promotional messages will be sent by the Seller by electronic means to the Buyer.

## **13 GOVERNING LAW**

13.1 These Terms will be governed by the laws of India and the parties submit to the nonexclusive jurisdiction of the Courts of India in the town from where the deliveries of the goods have been made or effected and or dispatched or in the town where the Registered Office of the Seller is situated, at the option of the Seller.

14. The Terms of Sales are liable to change without prior notice. The Buyers are advised to obtain the latest copy of the Terms of Sale from the Seller at the time of placing any order should they so desire.

## **15 WORDS USED IN THESE TERMS**

15.1 "Amount Owing" means, at any time, all amounts owing by the Buyer to the Seller under these Terms, or if the context expressly provides in respect of specific Goods.

15.2 "Buyer" means the person purchasing the Goods from the Seller pursuant to these Terms, including that person's successors and assigns.

15.3 "Claim" includes any claim:

- for loss of profits; or

- for any loss, damage or injury of any kind, including consequential, indirect or special loss or damage, suffered by any person arising directly or indirectly from:
  - any breach of the Seller's obligations under these Terms; or
  - any cancellation of these Terms; or
- any negligence, misrepresentation or other act or omission by the Seller or its employees, agents or contractors; or
- for any other compensation, demand, remedy, liability or action.

15.4 "Delivery " means delivery of the Goods as determined pursuant to clause 3 of these Terms.

15.5 "Event of Default" means an event where:

- the Buyer fails to comply with these Terms; or
- the Buyer commits an act of bankruptcy; or
- the Buyer enters into any composition or arrangement with its creditors; or
- if the Buyer is a company:
  - the Buyer does anything which would make it liable to be put into liquidation; or
  - a resolution is passed or an application is made for the liquidation of the Buyer; or
  - a receiver or statutory or official manager is appointed over all or any of the Buyer's assets, or the Buyer, its board or shareholders is considering appointing an administrator or liquidator; or
  - the Buyer, its board, or shareholders is considering appointing an administrator or liquidator; or
  - an administrator is appointed to the Buyer;
  - anything analogous to or having similar effect to any of the other events above arises.

15.6 "Force Majeure Event" means any event or circumstance which is beyond the reasonable control of the affected party and which results in or causes the failure of that party to perform any of its obligations under these Terms.

15.7 "Goods" means all goods and associated services supplied to the Buyer by the Seller under these Terms now and at any time in the future including (but not limited to) Wood & Wood products and other products together with all accessories and replacements that are at any time supplied or attached to the Goods and all of the Buyer's present and future right, title and interest (legal and equitable) in, all documents of title relating to, and all debts and proceeds arising from the sale of the Goods.

15.8 "Order" means an order placed by the Buyer with the Seller for the purchase of Goods.

- 15.9 "Ownership" means the property in and legal and beneficial ownership of the Goods.
- 15.10 "Person" includes a corporation, association, firm, company, partnership or individual.
- 15.11 "Price" means the purchase price of the Goods as most recently specified by the Seller to the Buyer in writing or otherwise on its Sales Invoices together with any applicable taxes or duties and freight charges where incurred by the Seller and payable by the Buyer under these terms (including, without limitation, costs relating to transportation, storage and insurance).
- 15.12 "Seller" means Eximcorp India Pvt Ltd, its successors and assigns.
- 15.13 "Terms" means these terms of sale and, as the context requires, each contract entered into between the Buyer and the Seller for the supply of Goods and includes each invoice issued by the Seller to the Buyer for Goods.
- 15.14 References to legislation include as amended, re-enacted or substituted and any statutory instruments, regulations and orders issued under such legislation.
- 15.15 Whenever "include" or any form of that word is used, it must be construed as if it were followed by "(without being limited to)".