



## TERMS AND CONDITIONS OF SALE

# **BALCAS TIMBER LIMITED (“BALCAS”)**

## **STANDARD TERMS AND CONDITIONS OF SALE**

### **1. GENERAL**

- 1.1 The following Terms and Conditions (“the Conditions”) shall govern any contract for the purchase and sale of goods (including any instalment of goods or parts of them) entered into by any person, firm or company (“the Buyer”) and Balcas, to the exclusion of any other terms and conditions subject to which any order is made or purported to be made by the Buyer. The Conditions shall prevail over any small terms and conditions put forward by the Buyer. No conduct by Balcas shall be deemed to constitute acceptance of any terms and conditions put forward by the Buyer.
- 1.2 No contract between Balcas and the Buyer shall be formed until an order for goods has been accepted in writing by an authorised representative of Balcas.
- 1.3 Where the Buyer is in breach of any of the Conditions Balcas may without prejudice to any other rights or remedies, withhold or cancel further or any deliveries under the contract and may recover all losses resulting from such breach.
- 1.4 No variation to or waiver of the Conditions shall be binding unless agreed in writing between the authorised representatives of the Buyer and Balcas.
- 1.5 No employees of Balcas are authorised to make any representations concerning goods unless confirmed in writing. In entering into the contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.
- 1.6 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, sales order form, written acceptance of offer, invoice or other document or information issued by Balcas shall be subject to correction without any liability on the part of Balcas.
- 1.7 In the event of a written waiver by an authorised representative of Balcas of any breach of the Conditions by the Buyer, such waiver shall not be considered as a waiver of any subsequent breach of the same or any other provision.
- 1.8 If any provision of the Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Conditions and the remainder of the provision in question shall not be affected thereby.
- 1.9 Any contract between the Buyer and Balcas shall be governed by the law of Northern Ireland and the exclusive jurisdiction of the Courts of Northern Ireland.

### **2 QUOTATIONS AND ORDERS**

- 2.1 Unless expressly stated quotations issued by an authorised representative of Balcas shall remain valid for 21 days only from date of their issue, thereafter the price may be readjusted by Balcas.
- 2.2 All prices quoted are inclusive of delivery costs to the agreed delivery point.
- 2.3 Prices are not subject to any discount or deductions except as agreed in writing by an authorised representative of Balcas.
- 2.4 No order submitted by the Buyer by telephone, or on documentation of the Buyer, or by means of a completed sales order form issued by Balcas, shall be deemed to be accepted by Balcas unless and until confirmed in writing by an authorised representative of Balcas.
- 2.5 No order which has been accepted by Balcas may be cancelled by the Buyer except by agreement in writing by an authorised representative of Balcas, and then only on terms that the Buyer shall indemnify Balcas in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges, and expenses incurred by Balcas as a result of cancellation.
- 2.6 The Buyer shall be entirely responsible for ensuring the accuracy of the terms of any order submitted.

### **3. DELIVERY**

- 3.1 Delivery of the goods shall take place when the goods reach the agreed delivery point.
- 3.2 Any dates quoted for delivery of goods are approximate only and Balcas shall not be liable for any delay in delivery howsoever caused. Time for delivery shall not be of the essence unless previously agreed in writing by an authorised representative of Balcas.
- 3.3 Where goods are to be delivered in instalments each delivery shall constitute a separate contract and failure by Balcas to deliver any one or more of the instalments in accordance with the Conditions or any claim by the Buyer in respect of any one or more of the instalments shall not entitle the Buyer to treat the contract as a whole repudiated.
- 3.4 If the Buyer fails to take delivery of goods then without prejudice to any other right or remedy available to Balcas, it may:
  - 3.4.1 store the goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
  - 3.4.2 sell the goods at the best price readily obtainable and after deducting all reasonable storage and selling expenses account to the Buyer for the excess over the price under the contract, or charge the Buyer for any shortfall below the price under the contract.

### **4. CLAIMS**

- 4.1 The Buyer shall immediately inspect goods delivered and ensure that the description and quantity of the goods delivered corresponds with the description and quantity of the goods indicated on any label or marking attached to the goods and is in accordance with the Buyer's order.
- 4.2 The Buyer shall be deemed to have accepted the goods if he/it retains them for more than seven days without notifying Balcas in writing that he has rejected them.
- 4.3 Any complaint or claim must be notified to Balcas in writing within seven days of the receipt of the goods by the Buyer, failing which the goods shall be deemed to have been delivered in conformity with the contract in all respects - description, quantity, quality, and condition.
- 4.4 Where a complaint is made the consignment of goods as a whole must be retained or returned and no claim whatsoever shall be accepted for a portion or a part of any consignment of goods unless agreed to in writing by an authorised representative of Balcas.
- 4.5 The return of the goods shall not be accepted unless and until Balcas' representatives shall have had a reasonable opportunity to examine them, and an authorised representative has confirmed in writing such acceptance.

### **5. TERMS OF PAYMENT**

- 5.1 The Buyer shall pay the price of the goods not later than the end of the month following the month in which the invoice of Balcas was received by the Buyer ("the Due Date").
- 5.2 The time of payment of the price shall be of the essence.
- 5.3 If the Buyer fails to make payment on or before the Due Date it will be regarded as being late, and without prejudice to any other right or remedy available to it, Balcas shall be entitled to:
  - 5.3.1 cancel the contract or suspend any further deliveries to the Buyer,
  - 5.3.2 appropriate any payment made by the Buyer to such of the goods or goods supplied under any other contract between the Buyer and Balcas as Balcas may think fit, and
  - 5.3.3 pursuant to the Late Payment of Commercial Debts (Interest) Act 1998 as amended by the Late Payment of Commercial Debts Regulations 2002 in the case of goods supplied to Buyers in England and Wales and Northern Ireland (and the equivalent legislation in Scotland), and the Prompt Payments of Accounts Act 1997 as amended by the European Communities (Late Payment in Commercial Transactions) Regulations 2002 in the case of goods supplied to Buyers in the Republic of Ireland, charge the Buyer

interest on the amount unpaid at the rate of eight per cent per annum above the base rate from time to time of the Bank of England or in the case of the Republic of Ireland seven per cent per annum above the main refinancing rate from time to time of the European Central Bank, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest), and

5.3.4 statutory compensation arising out of the late payment, and

5.3.5 retain title to the goods until they are fully paid for.

- 5.4 Balcas shall be entitled to reject any claim by the Buyer in respect of its invoice for goods which is not notified to Balcas within seven days from the invoice date
- 5.5 The Buyer shall not be entitled to withhold payment of the price payable under the contract by reason of any alleged dispute in respect of the goods supplied.

## **6. TITLE**

- 6.1 Notwithstanding delivery and the passing of risk in the goods, title to the goods shall not pass to the Buyer until Balcas has received in cash or cleared funds payment in full of the price of the goods.
- 6.2 Until such time as the title passes to the Buyer, the Buyer shall hold the goods as Balcas' fiduciary agent and bailee, and shall keep the goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as Balcas' property. Until that time the Buyer shall be entitled to resell or use the goods in the ordinary course of his/its business but shall account to Balcas for the proceeds of sale or otherwise of the goods and shall keep all such proceeds separate from any monies or property of the Buyer and third parties.
- 6.3 Until such time as the title to the goods passes to the Buyer Balcas shall be entitled at any time to require the Buyer to deliver up the goods to Balcas and if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the goods are stored or reasonably believed to be stored and repossess the goods.
- 6.4 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the goods which remain the property of Balcas but if the Buyer does so all monies owing by the Buyer to Balcas shall, without prejudice to any other right or remedy of Balcas, forthwith become due and payable.

## **7. PASSING OF RISK**

Risk of damage to or loss of the goods shall pass to the Buyer on the goods reaching the agreed delivery point, or where goods are to be collected at Balcas' premises at the time when Balcas notifies the Buyer that the goods are available for collection.

## **8. FORCE MAJEURE**

Balcas shall not be liable to the Buyer or be deemed to be in breach of contract by reason of any delay in performing or any failure to perform any of its obligations in relation to the goods, if the delay or failure to perform was due to any cause beyond its reasonable control, including but without limitation, act of God, explosion, flood, tempest, fire or accident, war or threat of war, sabotage, insurrection, civil disturbance or requisition, acts, orders, restrictions, regulations, bye laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority, import or export regulations or embargoes, strikes, lock-outs or other industrial actions or trade disputes, difficulties in obtaining raw materials, labour, fuel, parts or machinery, or power failure or breakdown in machinery.

## **9. WARRANTIES AND LIMITATION OF LIABILITY**

- 9.1 The goods are supplied under the Timber Trade Warranty Clause viz. the goods have not been tested or sold as fit for any particular purpose.
- 9.2 Unfinished timber is a natural material making variation in such characteristics (without limitation) as texture, colour, and grain inevitable. Such natural variations do not constitute defects in the goods or defective workmanship.
- 9.3 All warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 9.4 If Balcas fails to deliver the goods for any reason other than any cause beyond its reasonable control or the Buyer's fault, and Balcas is accordingly liable to the Buyer, Balcas' liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered, over the price of the goods.
- 9.5 Where Balcas accepts the return of goods, it shall be entitled to offer replacement goods or if no replacement goods are available to provide the Buyer with a credit for the goods.
- 9.6 In no circumstances shall Balcas' liability (in contract, tort, or otherwise) to the Buyer arising under, out of, or in connection with the contract or the goods supplied, exceed the invoice price of the particular goods in respect of which a complaint has been made. Except in respect of death or personal injury caused by Balcas' negligence, Balcas shall not be liable to the Buyer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law or under the express terms of the contract, for any consequential or indirect economic loss or damage arising out of or in connection with the supply of the goods or their use or resale by the Buyer.
- 9.7 Under the relevant provisions of the appropriate Health and Safety at Work legislation the Buyer is responsible to ensure that goods supplied to his/its order, instruction or specification shall be safe for their intended application and that such goods supplied shall only be used under safe conditions as regards their application by properly instructed operators. No liability shall rest with Balcas for any failure on the part of the Buyer to discharge this responsibility.

## **10. INSOLVENCY OF THE BUYER**

- 10.1 Without prejudice to any other right or remedy available to it, Balcas shall be entitled to cancel the contract or suspend any further deliveries under the contract without any liability to the Buyer (and if the goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary, and Balcas shall be entitled to exercise its rights under paragraph 6.3 above, viz. to request delivery up, and failing which to enter upon the Buyer's premises to repossess the goods) if:
  - 10.1.1 the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or becomes bankrupt or goes into liquidation otherwise than for the purpose of amalgamation or reconstruction
  - 10.1.2 an encumbrancer takes possession or a receiver is appointed of any of the property or assets of the Buyer
  - 10.1.3 the Buyer ceases or threatens to cease to carry on business
  - 10.1.4 Balcas reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.



## TERMS AND CONDITIONS OF SALE

I ..... hereby confirm that I have read and understood the enclosed Terms and Conditions and I agree to be bound by them in relation to all transactions entered into between ourselves and Balcas Timber Ltd.

Signed: .....

Date: .....

Company: .....

Position in company: .....

Please return the completed form by fax to **+44 (0) 28 6632 7924** or alternatively e-mail to **info@balcas.com**