

1. DEFINITIONS AND INTERPRETATION

In these General Terms of Sale the following terms have the following meanings unless the context requires otherwise:

'Affiliated Companies' or **'Affiliates'** means, in relation to the Company, a company in which the Company has a direct or indirect controlling interest, or any holding company of the Company and any company in which that holding company has a direct or indirect controlling interest.

'Business Day' means a day from Monday to Friday which banks are open for business in England;

'Buyer' means the corporate entity firm or a person from whom the Company accepts an order for goods.

'Company' means James Hardie Building Products Limited or any Affiliated Company.

'Contract' means the agreement made between the Buyer and the Company for the supply of goods which agreement shall be subject to these General Terms of Sale.

"Control" means the possession by person, directly or indirectly, of the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and "Controls" and "Controlled" shall be interpreted accordingly.

'Delivery' means delivery of any goods to the Buyer or to a carrier arranged by the Buyer or by the Company (at the request of the Buyer).

'Insolvency Event' means:

- i) (where the Buyer is a company) the Buyer convenes a meeting of its creditors or a proposal is made for a voluntary arrangement within part 1 of the Insolvency Act of 1986 or a proposal is made for a composition, scheme or arrangement with (or assignment for the benefit of) its creditors or if the Buyer is unable to pay its debts within the meaning of the section 1.3 of the Insolvency Act 1986 or a trustee, receiver, administrative receiver or similar officer is appointed in respect of all or a part of the business or assets of the Buyer or a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the Buyer or for the making of an administration order;
- ii) (where the Buyer is an individual or partnership) the Buyer (or in the case of a partnership any of the partners) dies or is made bankrupt or is unable to pay his or her debts within the meaning of section 123 of the Insolvency Act 1986 or a proposal is made for a composition scheme or an arrangement is made with (or an assignment for the benefit of) his or her creditors.

'Quotation' means a quotation no older than 28 days at the time the order is received by the Company, or a net price (pre-agreed discount in a distribution agreement).

'Tax' means any tax, levy, charge or duty imposed by any governmental entity or authority (including without limitation, Value Added Tax) on or in relation to goods sold to the Buyer.

2. EXCLUSION OF BUYER'S TERMS

2.1 These terms operate to the exclusion of all and any terms and conditions issued by the Buyer whether before or after the date these terms come into effect.

3. ORDERS AND PERFORMANCE

3.1 Unless otherwise agreed orders must be in writing and either mailed, couriered, faxed or transmitted by email to the Company. Orders must be made in multiples of standard quantities offered by the Company.

3.2 The Company will use its reasonable endeavours to fulfil accepted orders and comply with any requested or estimated date for Delivery and time will not be of the essence in this regard and if the Company's ability to fulfil an accepted order is affected by circumstances or events beyond its control the Company may:

- (a) extend the date for Delivery without liability for any late fees; or
- (b) cancel the order without liability for breach.

3.3 The Company may accept or refuse any order for goods in its absolute discretion and may make its acceptance of an order conditional upon a satisfactory credit assessment of the Buyer.

3.4 The Company may perform any of the obligations undertaken by it and exercise and enforce any rights granted to it under the Contract through any Affiliated Company and any act of any Affiliated Company will for the purposes of the Contract be deemed to be the act of the Company.

3.5 The Company's policy is one of constant improvement and therefore changes of specifications and performance characteristics of the goods may be made by the Company by giving one month's notice and without incurring liability to the Buyer.

4. PRICE

4.1 Prices charged for goods will be according to a Quotation for those goods, if one has been supplied. In the absence of a Quotation, the applicable price will be the Company's standard prices in effect at the date of order as published by the Company from time to time and available upon request (whether notified to the Buyer or not and regardless of any prices contained in the order). The Company will use its reasonable endeavours to notify the Buyer of price changes at least one month in advance but accepts no liability whatsoever in this regard.

4.2 Unless specifically indicated or arising from the applicable terms of Delivery, prices in a Quotation or elsewhere do not include insurance costs, special packaging at Buyer's request or Taxes.

4.3 Any reference to resale prices contained in the Company's standard price lists or other documents are recommended resale prices only and there is no obligation on the Buyer to comply with these recommendations.

5. DELIVERY AND PACKAGING

5.1 Unless otherwise agreed, Delivery of goods shall take place DDP (Incoterms 2020).

5.2 The goods will be delivered on pallets. At the Company's request, the Buyer shall return pallets, in good condition, to the Company at Buyer's costs.

5.3 Once orders have been dispatched and are in transit, any charges incurred by delays or non-acceptance will be the responsibility of the customer.

6. PAYMENT

6.1 All invoices shall be payable within 30 days as of the date of invoice.

6.2 All payments to the Company will be made without set-off, deduction or counterclaim.

6.3 If the Buyer fails to pay the invoice in full to the Company when due, and in addition to the remedies mentioned in clause 10 of these terms, the Company will be entitled (without prejudice to any other right or remedy it may have) to:

- (a) cancel or suspend any further Delivery to the Buyer under any order; and
- (b) automatically charge the Buyer interest on outstanding amounts at a rate of 4% above the Bank of England's base rate from time to time until settlement of such payment has been made in full (irrespective of whether the date of payment is before or after any judgment or award in respect of the overdue amount); and
- (c) charge the Buyer the costs of collection.

7. CLAIMS

7.1 Any claims by the Buyer for shortage, oversupply, goods lost or damaged in transit during or following Delivery should be reported to the Company in writing within 2 Business Days of Delivery of goods. Damaged goods should remain at the disposal of the Company.

7.2 All warranty claims will be dealt with in accordance with the Company's claims handling procedure set out in the relevant product warranty.

7.3 The Buyer will without any charge being made therefore refer all third party warranty claims arising from the state or condition of the goods to the Company in writing within two Business Days of the Buyer becoming aware of them and will provide the Company with such information and assistance relating to the assessment and resolution of the claim as shall be reasonable in the circumstances at no charge to the Company. Unless expressly agreed, Buyer is not authorised to deal with warranty claims on behalf of the Company.

7.4 Return of goods to the Company by the Buyer may only be made if the Company has agreed to that return and all such returns will be subject to a

handling charge with freight costs and risk remaining the responsibility of the Buyer.

8. RISK AND PROPERTY

8.1 The responsibility for and the risk of damage, loss or deterioration to any goods will pass to the Buyer upon Delivery. Unless otherwise agreed, goods are not insured by the Company.

8.2 Notwithstanding that risk in the goods may pass to the Buyer, property in and title to the goods will not pass to the Buyer until those goods and all other amounts owed to the Company by the Buyer have been paid for in full.

8.3 Until property in and title to the goods passes to the Buyer, the Buyer shall hold the goods on the following terms:

- (a) the Buyer will hold the goods as fiduciary and agent for the Company;
- (b) the goods shall be stored, in a manner as recommended by the Company, separately from other goods held by the Buyer and in a manner enabling them to be identified and cross-referenced to particular invoices and the Buyer acknowledges that if it should mix the goods with other products or items such that the goods are no longer separately identifiable then the Buyer and Company will be owners in common of the new product;
- (c) the Buyer may resell (but may not deal in any other way with) the goods to a third party and pass good title to that third party provided the sale is in the ordinary course of the Buyer's business and the Buyer holds the proceeds of any resale on trust for the Company;
- (d) the Buyer may not resell outside the country it is located in, without the express approval of the Company;
- (e) the Buyer grants the Company an irrevocable licence for the Company and any other Affiliated Company, its agents and employees to enter any premises where the goods of the Buyer are stored to ascertain whether any of the Company's goods are stored there and to inspect, count and/or recover them.

9. WARRANTIES AND LIABILITY

The Company shall not be liable in contract, tort (including negligence) or otherwise, for any direct or indirect damages or losses resulting from breach of contract or the sale or use of the goods.

10. TERMINATION AND SUSPENSION

10.1 Without prejudice to any other rights or remedies available to it whether under the Contract or otherwise the Company shall be entitled in its absolute discretion and upon giving to the Buyer written notice of its intention to do so, either to terminate wholly or in part the Contract or to withhold, vary or suspend performance of all or any of its obligations under the Contract upon the occurrence of any one or more of the following events:

- (a) if any sum owing to the Company from the Buyer on any account whatsoever shall be unpaid after the due date for payment;
- (b) if the Buyer shall refuse to take Delivery or collect any of the goods in accordance with the terms of the Contract;
- (c) if an Insolvency Event occurs;
- (d) if the Buyer shall commits any material breach of its obligations under any the Contract and such breach is not remedied within 30 days written notice from the Company or not capable of remedy; or
- (e) if the Company in good faith shall have doubts as to the solvency of the Buyer.

11. INTELLECTUAL PROPERTY

11.1 The Buyer licences the use by the Company of any of the Buyer's intellectual property rights, including any copyright material, patents, registered designs, or trade or identification marks where this is necessary or desirable for the performance of the Contract.

11.2 The sale to and purchase by the Buyer of goods does not confer on the Buyer any licence or right under any copyright, patent, registered design or trade mark which is the property of the Company or Affiliated Companies, except as provided under applicable mandatory law. The Buyer will comply with all reasonable requirements imposed by the Company with respect to the Buyer's authorised use of the Company's or Affiliated Companies' intellectual property in respect of the goods.

11.3 When marketing Company's goods, the Buyer shall not make any incorrect or misleading statements regarding James Hardie goods. As such, the Buyer shall use official James Hardie marketing material and technical manuals as a reference for its own marketing material. The Buyer shall be held fully liable for making incorrect or misleading statements regarding goods supplied by the Company made by the Buyer (including its agents, employees and subcontractors).

12. MISCELLANEOUS

12.1 Each party acknowledges and agrees that:

- (a) the Contract represents the entire agreement between the parties relating to the subject matter of the Contract at the date hereof to the exclusion of any terms implied by law which may be excluded by contract and supersedes any previous written or oral agreement between the parties in relation to the matters dealt with in the Contract; and
- (b) the Buyer has not been induced to enter into the Contract by any representation, warranty or undertaking not expressly incorporated into it.

12.2 Nothing in these terms shall entitle the Buyer to any priority of supply of goods as against the Company's other distributors, agents and customers.

12.3 The Company will be entitled to set off against any amount it owes to the Buyer, amounts owed to the Company by the Buyer under the Contract or on any other account.

12.4 All amendments to these General Terms of Sale must be in writing and agreed by both parties.

12.5 Except insofar as the context otherwise requires, each provision herein shall be construed as independent of every other provision, and if any provision hereof is or becomes partially or totally invalid or unenforceable then the validity of the remaining provisions shall not be affected.

12.6 The Buyer shall not assign or delegate the performance of the Contract without the prior written consent of the Company. The Company may at its discretion assign any of its rights under the Contract to its Affiliates without the prior consent of the Buyer.

12.7 The Contract shall be governed and construed on all respects in accordance with English law and the parties submit to the exclusive jurisdiction of the courts of England and Wales. Nothing in this clause 12.7 shall limit the right of the Company to take proceedings against the Buyer in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdiction preclude the taking of proceedings in any other jurisdiction, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

12.8 Terms are agreed in accordance to our current valid Terms & Conditions of Sale (current status: October 2021) and current valid price list. Our Terms & Conditions of Sale are available on our website www.jameshardie.co.uk/downloads