

TERMS OF SALE – Carter Holt Harvey Building Products Limited

These Terms govern all Orders placed by the Buyer and will be incorporated into each contract entered into between the Buyer and Seller for the supply of Goods together with invoices issued by the Seller for such Goods.

1. PRICE AND ORDERS

- 1.1 The Buyer will place Orders with the Seller in accordance with the Seller's processes. The Seller may, at its discretion, reject any Order.
- 1.2 The Buyer will pay to the Seller the Price for the Goods under clause 2 and such obligation is unaffected by any defect or damage to the Goods.
- 1.3 The Price will be increased by the amount of any 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 by prior 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 the 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, whether or not an Order for the Goods had been received and accepted prior to the change.
- 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 written notice.
- 1.6 Notwithstanding clause 1.5 where the Goods are outside the Seller's standard range of Goods, or manufactured 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.

2. PAYMENT

- 2.1 Payment of the Price is to be made by the Seller's nominated method from time to time and is due by the 20th of the month after Delivery.
- 2.2 The Buyer may not withhold 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 penalty calculated at a rate per annum equal to 7% above the 30 day NZD bank bill rate at 10.45am on the due date, and calculated on a daily basis on the unpaid portion of the Price and any other monies owing by the Buyer from the due date until payment in full, plus GST (and such rate shall be chargeable both before and after any judgment is obtained).

3. DELIVERY

- 3.1 For Goods supplied "Free into the Buyer's Store", the Seller will arrange delivery of the Goods to the agreed destination on the delivery date advised to the Buyer and pay storage, transport, and insurance costs up to Delivery.
- 3.2 For Goods supplied "Ex-Works 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, as advised to the Buyer.
- 3.3 Where Goods are to be supplied "Free on Wharf": the Seller is responsible for all expenses arising from the importation of the Goods, to the time the Goods are available for collection by the Buyer, and the Seller agrees to provide all of the documentation necessary to enable the Buyer to take delivery of the Goods and remove them from the agreed location; and the Buyer will take delivery of the Goods as soon as the Goods are made available for collection, as advised to the Buyer.
- 3.4 All Goods are supplied "Ex-Works the Seller" unless otherwise agreed.
- 3.5 Any time advised for delivery is an estimate only, for which the Seller has no liability. The Seller may in its discretion nominate a suitable time for loading the Goods onto a delivery vehicle.
- 3.6 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.
- 3.7 The Seller may deliver the Goods by instalments. Each instalment will be treated as a separate contract under these Terms.
- 3.8 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 for, the Goods (whether due to any failure or refusal of the Buyer to take delivery or following agreement with the Buyer).
- 3.9 The parties agree that:
 - (a) 7 days represents a reasonable period for the Buyer to examine the Goods for conformity with the contract;
 - (b) the Goods will be deemed accepted by the Buyer unless:
 - (i) the Buyer notifies the Seller in writing of any alleged defects, errors, discrepancies or non-conformity within seven days of Delivery; and
 - (ii) the Seller is able to inspect the Goods to confirm the defects, errors, discrepancies, or non-conformity in order to determine whether to agree to the return of the Goods (at the Seller's discretion); and
 - (c) for the avoidance of any doubt, the Seller will not be liable for Goods that have been modified or incorrectly used without the Seller's approval, or which have not been stored or maintained in a proper manner; and
 - (d) subject to clause 3.9, the Buyer cannot return the Goods for any reason.

4. RISK AND SECURITY

- 4.1 Risk of any loss, damage or deterioration of or to the Goods passes to the Buyer on Delivery.
- 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 for 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:
 - (a) 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
 - (b) is, in any event, revoked automatically from when an Event of Default occurs including an administrator being appointed to the Buyer.
- 4.5 Where the authority conferred by clause 4.3 is revoked under clause 4.4:
 - (a) the Buyer authorises the Seller to use reasonable force to enter the premises where the Goods are stored and remove them;

- (b) 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;
 - (c) 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;
 - (d) 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
 - (e) 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.
- 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 normally insured hazards.
 - 4.8 Until Ownership passes to the Buyer under these Terms, the Buyer must:
 - (a) keep the Goods in a manner that they are separately identifiable; and
 - (b) keep proper stock records and records of account with respect to the purchase, receipt, sale of, and other dealings with, the Goods; and
 - (c) make those records and/or the Goods themselves available to the Seller for inspection and copying 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 or Goods are kept for any such purpose; and
 - (d) 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 The Buyer acknowledges and agrees that:
 - (a) the Seller has a security interest for the purposes of the PPSA in all Goods supplied by the Seller to the Buyer now or at any time in the future as security for payment of the Amount Owing (including, for the purposes of sections 71 and 72 of the PPSA, any further advances);
 - (b) it has received value from the Seller and has rights in the Goods (notwithstanding that Ownership of the Goods remains with the Seller on the basis set out in clause 4.2) as at the date of first delivery of the Goods to the Buyer 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;
 - (c) 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 for Goods;
 - (d) 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;
 - (e) the Buyer will, at its own cost, promptly provide all information and do all things the Seller may require to ensure the Seller has and maintains perfected security interests in respect of the Goods for the purposes of the PPSA (including by providing all information necessary for the Seller to register a financing statement on the Personal Property Securities Register in respect of the security interests created under these Terms) and to otherwise to secure to the Seller the full benefit of its intended rights under these Terms;
 - (f) the Buyer shall give the Seller prior written notice of any intention to change its name; and
 - (g) the Buyer waives its rights under the PPSA to receive a copy of any verification statement or any financing change statement.
 - 4.11 To the extent Part 9 of the PPSA applies to these Terms and to the extent permitted by law, the Buyer waives its rights set out in Part 9 of the PPSA and, where the Seller has rights in addition to those in Part 9 of the PPSA, 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.
 - 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 respect of Claims of any kind, to the extent permitted by law:
 - (a) the Buyer and Seller agree that Claims shall be subject to the qualifications, limitations, exclusions and caps contained in these Terms;
 - (b) the sole remedies available to the Buyer against the Seller, whether under these Terms or at law shall be:
 - (i) at the Seller's discretion, the repair or replacement of the Goods; or
 - (ii) payment of compensation up to the liability cap prescribed in clause 5.2.
 - 5.2 The Seller's maximum liability arising out of any Claim or under these Terms or at law (whether in contract, tort, including negligence, statute or otherwise) shall not exceed the Price of the Goods.
 - 5.3 No legal action or proceeding may be brought in respect of any Claim more than six (6) months after the date of Delivery. Where Goods are delivered by multiple instalments, a Claim in respect of each instalment must be made within the specified notice period from that Delivery.
 - 5.4 In addition to the other qualifications, limitations, exclusions and caps contained in these Terms, the Seller will not be liable (whether in contract, tort, including negligence, statute or otherwise) for any:
 - (a) loss of profits;
 - (b) consequential loss or damage;
 - (c) indirect loss or damage; or
 - (d) special loss or damage of any kind.
 - 5.5 The only conditions, warranties, descriptions, representations or guarantees agreed to by the Seller are those expressly provided by the Seller in writing.
 - 5.6 The Buyer must not make any representations or provide any descriptions or guarantees to any third party relating to the Goods without the Seller's express authorisation in writing. The Buyer agrees to indemnify the Seller against any liability or costs incurred by the Seller as a result of a breach of this clause.

- 5.7 Where the Buyer is acquiring Goods from the Seller for the purposes of resupplying them in trade, the Parties acknowledge and agree that the Consumer Guarantees Act 1993 ("CGA") does not apply.
- 5.8 In any event, in respect of any Goods supplied by the Seller to a Buyer registered in New Zealand and to the maximum extent permitted by law:
- the Buyer represents that it is acquiring the Goods in trade unless the Buyer expressly communicates otherwise to the Seller in writing;
 - it is acknowledged and agreed for the purposes of section 43 of the CGA and section 5D of the Fair Trading Act 1986 ("FTA") that:
 - under these Terms, the Goods are being supplied and acquired in trade;
 - the Seller and Buyer are in trade;
 - the Seller and Buyer agree to contract out of the CGA and sections 9, 12A, and 13 of the FTA;
 - it is fair and reasonable that the Seller and Buyer are bound by this clause;
 - the Seller and Buyer have each had the opportunity to be represented by, and receive advice from, a lawyer prior to contracting on these Terms.
 - the Buyer agrees, if it sells the Goods to other parties who are in trade, then:
 - the Buyer will include, in any such agreement for the sale of the Goods, terms which contract out of the CGA and the FTA to the maximum extent permitted by law (and notify its customers of the effect of such terms); and
 - the Buyer agrees to indemnify the Seller against any liability or cost incurred by the Seller under the CGA or the FTA as a result of the Buyer's failure to contract out of those acts in accordance with this clause.
- 5.9 In respect of any Goods supplied by the Seller to a Buyer registered in Australia and to the maximum extent permitted by law:
- nothing in these Terms excludes, restricts, or modifies any condition, warranty or liability which is implied by the Competition and Consumer Act 2010 (Cth) ("CCA"), 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 the CCA (other than a guarantee under sections 51, 52 or 53 of Schedule 2 of the CCA) 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, for goods, the replacement, repair, or payment of the cost of the replacement or repair of the goods; and, for services, supply of the services again, or the cost of having the services supplied again.
- 5.10 The Buyer agrees to indemnify the Seller against any liability or cost incurred by the Seller (however arising) as a direct or indirect result of the Buyer breaching any obligation (whether under statute or the general law) to any person in respect of Goods, including (for the avoidance of doubt) any misrepresentation regarding their grade, characteristics, or suitability.
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 (including under Part 9 of the PPSA) 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 The Seller will not be liable for any failure in the performance of any obligation under these Terms if the cause of the failure is beyond its reasonable control.
8. PRIVACY STATEMENT
- 8.1 The Buyer authorises the Seller to collect, use and disclose any personal (information as defined in the Privacy Act 1993, as amended or replaced from time to time ("Privacy Act")) that the Buyer provides to the Seller, or authorises the Seller to collect, in accordance with the Seller's Privacy Statement from time to time (which is available on request or on the Seller's websites).
- 8.2 If the Buyer is trading as a Sole Trader or Partnership, the Buyer acknowledges that this may include the disclosure of its personal information (including default information) to a credit reporter. If the Buyer is trading as a company, the Buyer acknowledges that this may include the disclosure of personal information about its directors to a credit reporter. In either case, the credit reporter may retain that information and use it to provide its credit reporting services (as detailed in the Seller's Privacy Statement).
9. MEDIATION
- 9.1 Either party may require any dispute or difference arising out of the terms not resolved within 14 days to be referred to mediation. Failing agreement within 14 days, the mediator will be appointed by the chairperson New Zealand chapter of LEADR (for NZ disputes) or the Australian Commercial Disputes Centre (for AUS disputes). The mediation will be conducted with the guidelines agreed between the parties or, failing agreement, the mediator. The parties will equally share the mediator's costs.
10. MISCELLANEOUS
- 10.1 These Terms prevail in the case of inconsistency between the Terms and any Order or other arrangements between the parties unless otherwise agreed in writing, 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.
- 10.2 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.
- 10.3 The Buyer must not transfer or assign its rights under these Terms to anyone else without the Seller's prior written consent. The Seller may assign or transfer any of its rights or obligations under the Terms without the Buyer's consent. Each assignee or transferee will have the same rights against the Buyer under these Terms as if named as the Seller.
- 10.4 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.
- 10.5 The Buyer agrees 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.
- 10.6 These Terms will be governed by the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the Courts of NZ.
- 10.7 "Amount Owing" means, at any time, all amounts the Buyer owes to the Seller under the Terms, or if the context requires, for specific Goods.
- 10.8 "Buyer" means the person purchasing the Goods from the Seller pursuant to these Terms, including that person's successors and assigns.
- 10.9 "Claim" means any demand or assertion of right to compensation or other legal or equitable remedy (whether in contract, tort, including negligence, statute or otherwise) arising out of or relating to the supply of Goods. "Claim" also includes any proceeding in any tribunal, court or other forum arising out of or relating to the supply of Goods.
- 10.10 "Delivery" means delivery of the Goods under clause 3.
- 10.11 "Event of Default" means an event where the Buyer:
- fails to comply with the Terms or any other contract with the Seller (including the Buyer's failure to pay for Goods by the due date); or
 - commits an act of bankruptcy; or
 - enters into any composition or arrangement with its creditors; or
 - if the Buyer is a company:
 - does anything which would make it liable to be put into liquidation; or
 - is subject to a resolution passed or application made for its liquidation; or
 - has a receiver or statutory or official manager 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
 - an administrator is appointed to the Buyer; or
 - anything analogous to or having similar effect to any of the above events.
- 10.12 "Goods" means all goods and associated services supplied to the Buyer by the Seller from time to time under these Terms, including but not limited to building-related products and all accessories and replacements supplied with 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, all debts relating to, and all proceeds arising from the sale of, the Goods.
- 10.13 "Order" means an order by the Buyer with the Seller to buy Goods.
- 10.14 "Ownership" means the property in and legal and beneficial ownership of the Goods.
- 10.15 "Person" includes an association, firm, company, or partnership.
- 10.16 "Price" means the purchase price of the Goods as most recently specified by the Seller to the Buyer in writing or otherwise (or, absent specification, the Seller's then-current market price for the Goods) and any taxes or duties payable under clause 1.3 and any other costs payable by the Buyer under the Terms (including transport, storage and insurance).
- 10.17 "PPSA" is the Personal Property Securities Act 1999. Words defined in the PPSA have the same meaning in the Terms, subject to context.
- 10.18 "Seller" means Carter Holt Harvey Building Products Limited and its successors and assigns.
- 10.19 "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 each invoice issued by the Seller to the Buyer for Goods into which these terms of sale are incorporated.
- 10.20 References to legislation include as amended, re-enacted or substituted and any instruments, regulations and orders issued under such legislation.
- 10.21 Whenever "include" or any form of that word is used, it must be construed as if it were followed by "(without being limited to)".

A copy of these Terms of Sales is available at the Seller's website:

www.chhwoodproducts.co.nz/invoice-terms

Carter Holt Harvey Building Products Limited – January 2020