

Timberwood Panels Pty Ltd

Terms and Conditions - please read carefully

Date		
Our details	Name	Timberwood Panels Pty Ltd ACN 56 161 640 302 "Timberwood Panels", "we" or "us"
	Address	
Your details	Name	("you")
	Registered Office	
	Principal Place of Business	
	ABN	
	ACN	
	Email	
	Trustee's Name	
	Trustee's ABN	

The following are our Terms and Conditions of trade:

1. Purchase and supply

- 1.1. You agree to purchase and we agree to supply all Products and Services subject to these Terms and Conditions.
- 1.2. You will be bound by these Terms and Conditions upon:
 - (i) signing this document; and/or
 - (ii) placing a written or oral purchase order ("Order") for our Products and/or Services which we accept.
- 1.3. All invoices in respect of Products delivered shall be deemed to be accepted as a correct charge if, after seven days from the date of receipt of the invoice, you raise no objection to the invoice.
- 1.4. A minimum order value may be implemented and varied from time to time at Timberwood Panel's sole discretion.
- 1.5. A deposit may be required at Timberwood Panel's discretion.

2. Credit

- 2.1. Upon completion by you of an Application for Credit Account and Guarantee, we may, at our sole discretion, extend credit to you and set a credit limit. You are not entitled to any extension of credit, nor the provision of Products and/or Services, until you receive written notice from us stating that the credit facility has been granted.
- 2.2. Once your credit limit has been reached, Timberwood Panels has the right to refuse further credit at its sole discretion. Timberwood Panels reserves the right to reduce or withdraw credit at any time.

3. Orders

- 3.1. Any information Timberwood Panels provides in respect of the Products does not constitute an offer and is subject to the availability of the Products. An Order is an offer by you to purchase Products at Timberwood Panel's current prices at the date of delivery (plus any delivery charges or other applicable charges payable by you). Timberwood Panels reserves the right to accept or reject such offer.
- 3.2. Once an Order is accepted by us, we may immediately incur costs and expenses associated with filling that order. You hereby agree that if an Order is placed by you and subsequently cancelled, you are liable for any such costs and expenses, any loss suffered by us or any claim against Timberwood Panels by a third party with respect to that Order. You hereby indemnify Timberwood Panels (without set-off or deduction) for all amounts associated with such loss, costs, expenses or claim, including legal costs on an indemnity basis.
- 3.3. Timberwood Panels may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to you. On giving such notice Timberwood Panels shall repay you any money paid by you for the Goods. Timberwood Panels shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 3.4. Timberwood Panels may license or sub-contract all or any part of its rights and obligations without your consent.

4. Quote

- 4.1. We may provide you with a Quote for the supply of Products and/or Services but we are not obliged to supply the Products and/or Services until an Order is placed by you and that Order is accepted by Timberwood Panels.
- 4.2. Prices quoted are based on current rates of freight, insurance, customs duties, exchange, shipping expenses, sorting and stacking charges, cartage, rate of waste, cost of materials and other charges affecting the cost of production. These may vary from time to time and, if varied, will be at your expense.
- 4.3. Price as at the date of delivery of the Goods or the quoted price will be valid for the period stated in the quotation or otherwise for a period of thirty (3) days.

5. Delivery

- 5.1. Delivery ("Delivery") of the Goods is taken to occur at the time that:
 - (i) Your nominated carrier takes possession of the Goods at Timberwood Panels address; or
 - (ii) Timberwood Panels (or Timberwood Panels' nominated carrier) delivers the Goods to your nominated address even if the customer is not present at the address.
- 5.2. At Timberwood Panels' sole discretion the cost of delivery is in addition to the Price.
- 5.3. Timberwood Panels will deliver the Products to the delivery address agreed with you.
- 5.4. The delivery times made known to you are estimates only and Timberwood Panels is not to be liable for late delivery or non-delivery.
- 5.5. Timberwood Panels is not to be liable for any loss, damage or delay occasioned to you or your customers arising from late or non-delivery or late installation of the Products.
- 5.6. Timberwood Panels may at its option deliver the Products to you in any number of instalments unless Timberwood Panels has been advised in writing that you will not take delivery by instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 5.7. If Timberwood Panels delivers any of the Products by instalments, and any one of those instalments is defective for any reason:
 - (i) it is not a repudiation of the contract of sale formed by these conditions; and
 - (ii) the defective instalment is a severable breach that gives rise only to a claim for compensation.
- 5.8. If you cannot take delivery of stock you may be invoiced storage fees and charged for redelivery. You must pay such storage fees within 7 days of receipt of that invoice.
- 5.9. Delivery of Products will be:
 - (i) at your expense; and
 - (ii) to a carrier selected by Timberwood Panels unless otherwise agreed between the parties.
- 5.10. You agree to accept delivery of the Products during Business Hours.
- 5.11. To the extent permitted by law, Timberwood Panels disclaims any and all liability for the acts, omissions and conduct (wilful or otherwise), including negligence of the carrier.
- 5.12. Where you require the Products to be delivered or available for delivery on a specified date, you must clearly specify such date in both the ordering document and your confirmation order.
- 5.13. Timberwood Panels will make all reasonable efforts to have the Products delivered to you on the date agreed between the parties. To the extent permitted by law, Timberwood Panels excludes all liability should any or all of the Products be delivered late.

5.14. Late delivery will not entitle you to rescind the Agreement.

6. Payment

6.1. Our trading terms are strictly 30 days from end of month or the date specified on any invoice.

6.2. If payments are not made on time or in full, Timberwood Panels may in its absolute discretion do any or all of the following:

- (i) Reduce or cancel your credit limit;
- (ii) Reduce or cancel any of your current orders which remain unfulfilled;
- (iii) Refuse to supply you with further Products;
- (iv) Require you to pay for all Products in full prior to further Products being delivered;
- (v) Commence legal proceedings;
- (vi) Notify the relevant credit reporting bodies;
- (vii) Terminate this agreement in writing.

6.3. You are required to pay the Amount Due for purchases with no deduction or set-off, subject to clause 6.5.

6.4. In the event of a dispute, the complete undisputed portion of the account must be paid to us in full within 30 days and the Dispute Resolution clause will apply.

6.5. In the event of non-payment of any non-disputed amount, Timberwood Panels may in its absolute discretion do any or all of the following:

Reduce or cancel your credit limit;

- (i) Refuse to supply you with further Products;
- (ii) Require you to pay for all Products in full prior to further Products being delivered;
- (iii) Commence legal proceedings;
- (iv) Terminate this agreement in writing.

7. Payment methods

7.1. All payments must be made by cash, bank cheque, credit card (plus surcharge), electronic online banking or cheque.

7.2. Payments must be made without any deduction for fees or charges imposed by your bank and or any third parties.

7.3. Payments other than cash shall not be deemed to be made until that form of payment has been honoured or cleared.

8. GST

8.1. You agree to pay any GST applicable to any Products and Services.

8.2. We will provide you with a Tax Invoice for the Amount Due if GST applies to any Products and Services.

8.3. You must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

9. Default

9.1. If you do not pay the Amount Due in full in accordance with these Terms and Conditions, then you must pay to us interest charged at the Commonwealth Bank's Benchmark Business Lending Indicator Rate, as published from time to time, plus 3% per annum on the balance of the Amount Due for the period from and including the due date for payment until the date that payment of the Amount Due is made in full.

9.2. You agree to pay any costs and expenses incurred by us in connection with exercising our rights for the recovery of the Amount Due under these Terms and Conditions, including but not limited to debt collection agent fees and commission and legal costs on an indemnity basis in bringing debt recovery proceedings or a claim for breach of these Terms and Conditions.

9.3. You agree to make good any loss incurred or suffered by Timberwood Panels as a result of your failure to pay the Amount Due in full or your breach of these Terms and Conditions.

10. Retention of Title

10.1. Property in and ownership of the Products shall not pass to you until payment of the Amount Due and any other amounts owing to Timberwood Panels by you from time to time have been paid in full.

10.2. Timberwood Panels retains equitable and legal title in the Products until such title has passed.

10.3. Until title has passed, you take custody of the Products and retain them as fiduciary agent of Timberwood Panels (storing them separately in a manner which clearly identifies the Products as the property of Timberwood Panels) and you must not sell or use the

Products or any part of them until title passes to you.

- 10.4. Upon demand you will immediately deliver the Products to Timberwood Panels and/or allow Timberwood Panels, its employees or agents to enter upon any premises where the Products have been stored (or where Timberwood Panels suspects the Products have been stored) to recover them.
- 10.5. You hereby indemnify Timberwood Panels from and against any liability to any third party in respect of any claims, actions, proceedings, demands, costs, damages and loss arising from Timberwood Panels exercising its rights under this clause.
- 10.6. If, in breach of this clause, you sell the Products prior to paying the Amount Due and any other amounts owing to Timberwood Panels by you from time to time, you hereby acknowledge that you are holding all proceeds of sale from such Products on trust for Timberwood Panels until your liability to Timberwood Panels is discharged.

11. Risk in the Products

- 11.1. The risk in the Products and all insurance responsibility for theft, damage or otherwise in respect of the Products passes to you
 - (i) immediately upon delivery of the Products to the agreed delivery address; or
 - (ii) upon delivery to your nominated carrier.
- 11.2. Until property in and ownership of the Products passes to you, you must keep the Products insured and produce to us, upon demand, evidence of such insurance. If you fail to insure the Products, we may do so and the cost of such insurance shall be payable by you to us upon demand.
- 11.3. The Products will be packaged for delivery and dispatched in good order. To the extent permitted by law, Timberwood Panels excludes liability for any damage to the Products sustained in transit.
- 11.4. If any of the Goods are lost, damaged or destroyed following delivery but prior to ownership passing to you, Timberwood Panels is entitled to receive all insurance proceeds payable for the Goods. You hold such insurance proceeds on trust for Timberwood Panels. The production of these terms and conditions by Timberwood Panels is sufficient evidence of Timberwood Panels rights to receive the insurance proceeds.
- 11.5. If you request Timberwood Panels to leave Goods outside Timberwood Panels premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at your sole risk.

12. Natural Product and Returns

- 12.1. Timber is a natural product and as such may exhibit variations in texture, shade, colour, surface, finish, marketing's, veining, and contain natural fissures, occlusions, and indentations. Whilst Timberwood Panels will make every effort to match sales samples to the finished Goods Timberwood Panels accepts no liability whatsoever where such samples differ to the finished Goods supplied.
- 12.2. You acknowledge that Goods supplied may:
 - (i) Fade or change colour over time; and
 - (ii) Expand, contract or distort as a result of exposure to heat, cold, weather; and
 - (iii) Mark or stain if exposed to certain substances; and
 - (iv) Be damaged or disfigured by impact or scratching.
- 12.3. Returns within 7 days of purchase will be considered for credit at the discretion of Timberwood Panels only if such returns are based on damaged or faulty stock or a Timberwood Panels supply error.
- 12.4. You may, at your own cost, return non-compliant Products to Timberwood Panels only:
 - (i) where Timberwood Panels is obliged to accept them under the Australian Consumer Law; or
 - (ii) if the Products were returned within 30 days of the date of delivery, and Timberwood Panels authorises their return. If the Products were returned more than 30 days from the date of delivery, the return will not be accepted.
- 12.5. Timberwood Panels will only be obliged to accept such returned Products, if they are:
 - (i) packaged in a manner which will ensure that the Products are not damaged in transit;
 - (ii) clearly labelled, identifying the 'Permission to Return' number provided by Timberwood Panels;
 - (iii) returned to Timberwood Panel's receiving point in your state or territory, as set out on the relevant invoice; and
 - (iv) returned in the condition in which they left Timberwood Panel's premises.
- 12.6. Where Products are returned otherwise under clause 12.3, a fee of not less than 50% of the list price of the returned Products applies to all returns.
- 12.7. To the extent permitted by law, Products manufactured or produced to specifications may not be returned by you. Timberwood Panels will not accept them for credit.

13. Privacy

- 13.1. By accepting these Terms and Conditions, you confirm that you have accessed, read and agree to our Privacy Policy at <https://timberwood.com.au/> or in hard copy.
- 13.2. You authorise Timberwood Panels to collect personal information about you including but not limited to your credit record and credit worthiness and to disclose that personal information to credit reporting bodies, our related entities and third parties as outlined in our Privacy Policy.
- 13.3. You will be notified of any updates to our Privacy Policy by email or, where email is not available or unsuccessful, by post.

14. Personal Property Securities Act 2009 (Cth) ("PPSA")

- 14.1. In this clause, capitalised expressions have the meaning given to them in the PPSA.
- 14.2. You hereby:
 - (i) Acknowledge and agree that these Terms and Conditions constitute a Security Agreement for the purposes of the PPSA;
 - (ii) Grant a Security Interest to Timberwood Panels in the Products and any proceeds of sale in respect of those Products;
 - (iii) Acknowledge and agree that each supply of Products on credit terms is subject to this Security Agreement for the purposes of the PPSA and that Timberwood Panels may register its Security Interest in the Products and in the proceeds of sale of the Products as a Purchase Money Security Interest on the Register.
- 14.3. You and Timberwood Panels acknowledge and agree for the purposes of satisfying s 20(1)(iii) of the PPSA that the description of the Products the subject of the Security Interest created under this Security Agreement is as set out in these Terms and Conditions and any invoice in relation to those Products and the description of the Products in any invoice is expressly incorporated into these Terms and Conditions.
- 14.4. You consent to Timberwood Panels registering any one or more Financing Statement or Financing Change Statement in respect of any Security Interest created by or contemplated under these Terms and Conditions and undertake to do all things reasonably required by Timberwood Panels to facilitate this.
- 14.5. You agree to pay, on demand by Timberwood Panels, all costs incurred in connection with registering any Financing Statement or any Financing Change Statement and hereby indemnify Timberwood Panels (and its agents) in respect of all such costs incurred.
- 14.6. You agree not to cause (directly or indirectly) the registration of a Financing Change Statement in respect of the Products without Timberwood Panels's prior written consent.
- 14.7. You agree that the following provisions of the PPSA will not apply to these Terms and Conditions: section 95 (notice of removal of accession) to the extent that it requires the secured party to give a notice to the grantor; section 96 (when person with an interest in the whole may retain accession); section 118 (to the extent it requires the secured party to give a notice to the grantor); section 121(4) (notice under section 120(2)); section 125 (obligation to dispose of or retain collateral); section 129 (disposal by purchase); section 130 (notice of disposal) to the extent that it requires the secured party to give a notice to the grantor; paragraph 132(3)(d) (contents of statement of account after disposal); subsection 132(4) (statement of account if no disposal); section 135 (notice of retention); section 142 (redemption of collateral); and section 143 (reinstatement of security agreement).
- 14.8. For the purposes of section 157 of the PPSA, you waive your right to receive notice of any verification statement in relation to the registration of a Financing Statement or a Financing Change Statement.
- 14.9. For the purposes of s 275(6) of the PPSA, Timberwood Panels and you agree that neither party will, or is entitled to, disclose information of the kind specified in s 275(1) of the PPSA.
- 14.10. You agree that you will not enter into any agreement or arrangement which permits any other person to register any Security Interest in respect of the Products, the proceeds of sale of the Products, or any amounts owed in respect of the Products without Timberwood Panels's prior written consent.
- 14.11. You agree to provide us with immediate written notice upon a change of your corporate details, such as organisation name, ABN, principal place of business, directors or a material change in shareholders.

15. Limitation of Liability

- 15.1. To the extent permissible under the *Competition and Consumer Act 2010* (Cth), our liability for any breach of guarantee in relation to the supply of Products arising under that Act is limited to, at our discretion:
 - (i) providing you with a refund; or
 - (ii) repairing or replacing the Products within one month after the Products have been dispatched.
- 15.2. To the extent permissible under the *Competition and Consumer Act 2010* (Cth), our liability for any breach of guarantee in relation to the supply of Services arising under that Act is limited to supplying the Service to you again.

- 15.3. The maximum amount of refund that is payable to you in accordance with this clause is the amount which you have paid to us for the Products.
- 15.4. You agree that Timberwood Panels may (at no cost) use for the purpose of marketing or entry into any competition, any documents, designs, drawings or Goods which Timberwood Panels has created for you.

16. Updating Terms and Conditions

- 16.1. We may update our Terms and Conditions from time to time and notify you by email.
- 16.2. If no email address is given or an email is returned unread, we will send you by ordinary mail either a copy of the updated Terms and Conditions or written notice of the change and a link to our website.
- 16.3. By placing a written or oral purchase Order for our Products and / or Services after we have updated our Terms and Conditions you accept such terms and conditions.

17. Exclusions

- 17.1. You agree that use of the Products and Services is at your risk. To the full extent allowed by law, our liability for breach of any term implied into these Terms and Conditions is excluded.
- 17.2. All information, specifications and samples provided by us in relation to the Products or Services are approximations only and, subject to any guarantees under the Australian Consumer Law, small deviations or slight variations from them which do not substantially affect your use of the Products or Services will not entitle you to reject the Products upon delivery, or to make any claim in respect of them.
- 17.3. Any advice, recommendation, information, assistance or service given by us in relation to Products or Services or both, is given in good faith and is believed to be accurate, appropriate and reliable at the time it is given. It is provided without any warranty as to accuracy, appropriateness or reliability. We do not accept any liability or responsibility for any loss suffered as a result of your reliance on such advice, recommendation, information, assistance or service.
- 17.4. To the fullest extent permissible at law, we are not liable for any direct, indirect, punitive, incidental, special, consequential damages or any damages whatsoever including, without limitation, damages for loss of use, data or profits, arising out of or in any way connected with the provision of or failure to provide Products or Services, or otherwise arising out of the provision of Products or the Services, whether based on terms and conditions of trade, negligence, strict liability or otherwise, even if we have been advised of the possibility of damages.

18. Warranty

- 18.1. If you are entering into these Terms and Conditions as the Trustee of a trust, then you warrant and represent to us that:
 - (i) You are liable to us personally / directly as well as in your capacity as Trustee;
 - (ii) all of the powers and discretions conferred on the Trustee by the trust deed are capable of being validly exercised by the Trustee and have not been varied or revoked and the relevant trust is a valid and subsisting trust;
 - (iii) The Trustee is the sole trustee of the trust and has full and unfettered power under the trust deed to enter into these Terms and Conditions and that these Terms and Conditions are being executed and entered into as part of the due and proper administration of the trust for the benefit of the beneficiaries of the trust; and
 - (iv) no restrictions on the Trustee's right of indemnity out of, or lien over, the trust's assets exist or will be created or permitted to exist and that right will have priority over the right of the beneficiaries to the trust's assets.

19. Termination

- 19.1. Timberwood Panels may terminate this agreement on 10 Business Days' notice in writing.
- 19.2. You may terminate this agreement on 10 Business Days' notice in writing if we commit a breach of this agreement and do not rectify the breach within 5 Business Days of receiving written notice of the breach.

20. Dispute resolution

- 20.1. Apart from legal action initiated by Timberwood Panels with respect to the recovery of a debt, if a dispute arises between you and us, one party must give the other party written notice of the dispute and the parties must endeavor to resolve the dispute immediately and in a co-operative manner prior to commencing legal or administrative proceedings.

21. Jurisdiction & governing law

- 21.1. These Terms and Conditions are governed by the laws of Victoria.
- 21.2. Notwithstanding the above clause, Timberwood Panels shall have the exclusive right to nominate another jurisdiction in which any legal action is to be commenced and conducted.
- 21.3. These Terms and Conditions are not intended to exclude any provisions of the Construction Industry Security of Payment Act 2002 (VIC).

22. General

- 22.1. Our records are conclusive about the Amount Due;
- 22.2. You may not assign any of your rights under these terms;
- 22.3. A waiver by us of any rights arising due to any breach, default or omission is only effective if it is in writing and shall not be deemed to be a waiver of any other unspecified rights.
- 22.4. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 22.5. Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 22.6. You warrant that you have the power to enter into this agreement and have obtained all necessary authorisations to allow you to do so.

23. Interpretation

- 23.1. Headings do not affect interpretation.
- 23.2. All references to the singular includes the plural and vice versa.
- 23.3. Person includes a firm or body corporate, an incorporated body, association or authority.
- 23.4. A reference to a person includes its executors, administrators, successors and permitted assigns.
- 23.5. And where two or more persons are a party, they are bound jointly and severally.

24. Definitions

In these Terms and Conditions:

- (i) "Amount Due" means either:
 - a. the amount stated on any Invoice issued to you;
 - b. the sum of all such Invoices;
 - c. the price; or
 - d. quoted price.
- (ii) "GST" has the same meaning as in the *A New Tax System (Products and Services Tax) Act 1999*;
- (iii) "Nominated Account" means the bank account nominated by you in the direct debit request form;
- (iv) "Order" means a purchase order placed in accordance with Timberwood Panel's usual course of business;
- (v) "Products" means any products we have supplied to you or will supply to you in the future;
- (vi) "Quote" means a verbal or written estimate of the amount to be charged by us;
- (vii) "Services" means any Services we are to supply or have supplied to you;
- (viii) "Tax Invoice" has the same meaning as in the *A New Tax System (Products and Services Tax) Act 1999*;
- (ix) "Terms and Conditions" means these Terms and Conditions and any amendments to these Terms and Conditions made from time to time;
- (x) "We" / "us" / "our" means Timberwood Panels Pty Ltd; and
- (xi) "You" means the entity identified or intended to be identified on page 1 of these Terms and Conditions – Your details.

I confirm I have read and accept these terms and conditions:

I confirm I have read and accept these terms and conditions:

Signed

Signed

Name: _____

Name: _____

Date: _____

Date: _____

Director: _____

Director/Secretary: _____

Sole trader: _____

Trustee: _____