

## Howarth Timber Group Limited and Subsidiary Companies ('Howarth Timber Group of Companies')

### Terms of Trading ('terms')

#### Definitions

'We', 'Us' or 'Howarth Timber' means the appropriate company belonging to the Howarth Timber Group of Companies including Howarth Online and any other internet forum or website operated by the Howarth Timber Group of Companies for the supply of goods and services

'You' means the corporate entity, firm or person seeking to purchase goods or services

**Your attention is drawn to the limitations on our liability to you which are contained in these terms**

#### 1. Business customers and consumers

1.1 Some of these terms apply to consumers only; some apply to business customers only. Those terms are marked as such.

1.2 All other terms apply to all customers.

1.3 You are classified as a business customer if you indicate to us that the goods supplied by us will be used in the course of your business or if you use the goods in the course of your business.

1.4 If you are not a business customer, you are a consumer. You have certain statutory rights as a consumer which are not affected by these terms.

#### 2. Price

2.1 The price quoted excludes VAT (unless otherwise stated). VAT will be charged at the rate applying at the time of delivery.

2.2 Our quotations lapse after 30 days (unless otherwise stated).

2.3 All orders are subject to such delivery charge as is advised at the point of sale or checkout.

2.4 Business customers only: unless otherwise stated, the price quoted to business customers is an illustrative estimate only and the price charged will be our price current at the time of delivery.

2.5 Business customers only: rates of tax and duties on the goods will be those applying at the time of delivery.

2.6 Business customers only: at any time before delivery we may adjust the price to reflect any increase in our costs of supplying the goods.

2.7 On occasion the prices payable in respect of goods advertised on any of our websites may differ from those prices payable at the same time in Howarth Timber branches. We are under no obligation to honour any Howarth Timber branch prices in the event that they differ from those on any website operated by us. Similarly Howarth Timber branches are under no obligation to honour any of our website prices in the event that they differ from those in-branch.

2.8 Although we endeavour to ensure that all pricing information on our websites is accurate, occasionally an error may occur and goods may be mispriced. If we discover the pricing error we will, at our discretion, either contact you and ask whether you wish to continue with the order at the correct price or notify you that we have cancelled your order. We are not obliged to supply goods at the incorrect price.

2.9 Prices that are reduced for sales and promotions are only valid for the specified period.

2.10 We reserve the right to adjust prices, offers, goods and specifications of goods on any of the websites operated by us at our discretion at any time before (but not after) we accept your order.

#### 3. Delivery

3.1 All delivery times quoted are estimates only and apply to mainland UK only. Certain postcode delivery exclusions apply to UK delivery services. We cannot deliver to the following UK postcode areas: BT, GY, HS, IM, IV, JE, KA, KW, PA, PH and PO.

3.2 We aim to deliver goods within 21 working days from processing your order (starting the working day after the order has been placed). The delivery time will depend upon the product ordered. In the event of a problem our Customer Services Team will endeavour to contact you within 24 hours on the next working day. If we fail to deliver within a reasonable time after the quoted delivery time, you may (by informing us in writing) cancel the contract, however:

3.2.1 you may not cancel if we receive your notice after the goods have been dispatched; and

3.2.2 if you cancel the contract, you can have no further claim against us under that contract.

3.3 If you accept delivery of the goods after the estimated delivery time it will be on the basis that you have no claim against us for delay (including indirect or consequential loss, or increase in the price of the goods).

3.4 We may deliver the goods in instalments. Each instalment is treated as a separate contract.

3.5 Any problems or difficulties with access to the delivery address for example narrow roads, low bridges, end of a dirt track road, farm buildings etc must be notified by you to us at the time of ordering so that the type of vehicle required to make such a delivery can be selected. If special vehicles and staff are required to make the delivery then an additional charge will be advised prior to goods being despatched. We may decline to deliver if:

3.5.1 we believe that it would be unsafe, unlawful or unreasonably difficult to do so; or

3.5.2 the premises (or the access to them) are unsuitable for the delivery vehicle.

3.6 We may charge you for storage and/or abortive delivery costs and/or additional costs arising from any delay if you do not accept delivery at the quoted delivery time (or any later time agreed in writing) or if we decline to deliver in accordance with clause 3.5 or if you fail to comply with your obligations under clauses 3.7 and 3.8. In any of these circumstances you must contact our Customer Services Team within five working days of the relevant date in order to re-arrange delivery. otherwise goods will be returned to our supplier and in any event you will be liable to pay us a reasonable handling charge and a re-stocking charge of a minimum of 35% of the price of the goods. You will be liable to pay a charge for re-delivery.

3.7 Doors, flooring, aggregate, windows and timber products are kerb-side deliveries only.

3.8 You will in any event ensure :

3.8.1 secure and dry storage for the goods (and other reasonable facilities) until payment is made in accordance with clause 5;

3.8.2 reasonable and safe access for delivery to take place;

3.8.3 that adequate assistance is available to enable the driver to off load materials when delivery of the goods is made;

3.8.4 that you or someone with authority to do so on your behalf is available to sign for the goods upon delivery being made.

3.9 *Click and Collect* The 'Click and Collect' service offered online makes it possible for you to collect a range of selected items from your local branch of Howarth Timber. Once your order has been placed, contact will be made with you by the branch nominated to collect from advising of the stock position. For 'Click and Collect' returns see clause 10 'Return of goods' and clause 11 'Cancellation'.

3.10 *Free Delivery* Any offers of Free Delivery apply only to Standard UK Delivery (any postcode which is within the Howarth Timber branch postcode areas), unless otherwise stated. In all cases of Free Delivery, the delivery charge only will not be payable. No taxes, duties or customs charges will be removed.

#### 4. Risk

4.1 The goods are at your risk from the time of delivery.

4.2 Delivery takes place either:

4.2.1 at our premises (if you are collecting them or arranging carriage); or

4.2.2 at your premises or the address specified by you (if we are arranging carriage).

4.3 You must inspect the goods on delivery. If any goods are damaged or defective or not delivered, you must inform us (in writing) with full details within 24 hours of delivery or the expected delivery time. You must give us (and any carrier) a fair chance to inspect the damaged or defective goods.

#### 5. Payment terms

5.1 You are to pay us in cash or in cleared funds on or prior to delivery, unless you have an approved credit account.

5.2 Business customers only: If you have an approved credit account, payment is due net monthly, that is at the end of the month following the month of the date of our invoice, unless otherwise agreed in writing.

5.3 If you fail to pay us in full on the due date we may:

5.3.1 suspend or cancel future deliveries;

5.3.2 cancel any discount offered to you;

5.3.3 Business customers only: charge you interest at the rate set under s.6 of the Late Payment of Commercial Debts (Interest) Act 1998;

a. calculated (on a daily basis) from the date of our invoice until payment;

b. before and after any judgment (unless a court orders otherwise);

5.3.4. Consumers only: Charge you interest at a rate equivalent to the rate set for business debts under s.6 of the Late Payment of Commercial Debts (Interest) Act 1998;

5.3.5 claim fixed sum compensation from you under s.5A of the Late Payment of Commercial Debts (Interest) Act 1998 to cover our credit control overhead costs; and

5.3.6 recover (under clause 5.8) the full costs of taking legal action to make you pay as well as any ancillary costs or fees payable in connection with such legal action.

5.4 If you have an approved credit account we may withdraw it or reduce your credit limit or bring forward your due date for payment. We may take any of these actions at any time and without notice.

5.5 Business Customers only: you do not have the right to set off any money you may claim from us against anything you may owe us.

5.6 Consumers only: you may only set off money you claim from us against money you owe us with our written agreement and on such terms as we may state.

5.7 While you owe money to us, we have a right to keep any property we may hold of yours until you have paid us in full (a lien).

5.8 You are to fully and promptly indemnify us and hold us indemnified from and against all losses, expenses and liabilities we may incur (directly or indirectly and including finance costs, legal costs on a full indemnity basis and the costs of instructing a debt collection agency to recover a debt due to us if any) following any breach by you of any of your obligations under these terms and/or the contract between us.

5.9 Consumers only: clause 5.8 means that you are liable to us for losses we incur because you do not comply with these terms. We may claim those losses from you at any time and if we have to take legal action we will ask the court to make you pay our legal costs.

## 6. Title

6.1 Consumers only: your statutory rights are unaffected.

6.2 Business customers only: until you pay all debts you may owe us:

6.2.1 all goods supplied by us remain our property;

6.2.2 you must store them so that they are clearly identifiable as our property;

6.2.3 you must insure them (against the risks for which a prudent owner would insure them) and hold the insurance policy and any policy monies on trust for us;

6.2.4 you may use those goods and sell them in the ordinary course of your business, but not if:

a. we revoke that right (by informing you in writing); or

b. you become insolvent.

6.3 Business customers only: you must inform us (in writing) immediately if you become insolvent.

6.4 Business customers only: if your right to use and sell the goods ends you must allow us to remove the goods.

6.5 Business customers only: we have your permission to enter any premises where the goods may be stored:

6.5.1 at any time, to inspect them; and

6.5.2 after your right to use and sell them has ended, to remove them, using reasonable force if necessary.

6.6 Despite our retention of title to the goods, we have the right to take legal proceedings to recover the price of goods supplied should you not pay us by the due date.

6.7 You are not our agent. You have no authority to make any contract on our behalf or in our name.

## 7. Warranties

7.1 We warrant that the goods:

7.1.1 materially comply with their description on our acknowledgement of order form; and

7.1.2 are free from material defect at the time of delivery (as long as you comply with clause 8.1).

7.1.3. Natural products such as timber or quarried products may vary in grain or shading from the samples supplied.

7.1.4. If materials are supplied at the request of the customer to be a specific grade, no warranty is given that the grade will be suitable for the purposes required by the customer.

## 7.2 Business customers

7.2.1. We give no other warranty (and exclude any warranty, term or condition that would otherwise be implied) as to the quality of the goods or their fitness for any purpose.

7.3 Consumers only: the warranty in clause 7.1 is in addition to your statutory rights.

## 8. Limitations

8.1 We will accept no responsibility for any goods that are damaged or defective and then installed or fitted, and it is important that all items are inspected on delivery and prior to installation or fitting.

Where applicable, the manufacturer's installation/assembly/fitting/finishing/maintenance instructions must be followed.

If you believe that we have delivered goods which are defective in material or workmanship, you must:

8.1.1 inform our Customer Services Team (in writing or by email addressed to sales.online@howarth-timber.co.uk), with full details including photographs within:

- a. twenty four hours of delivery if defect, damage or variance is reasonably discoverable on careful examination on delivery; or
- b. seven working days of supply if defect, damage or variance is not reasonably discoverable on careful examination on delivery;

8.1.2 you must allow us to investigate (we may need access to your premises and product samples).

8.2 If the goods are found to be defective in material or workmanship (following our investigations), and you have complied with those conditions in clause 8.1 in full, we will (at our option) repair or replace the goods or refund the price.

8.3 We are not liable for any other loss or damage arising from the contract or the supply of goods or their use or the failure to deliver the goods or the failure to deliver the goods on time, even if we are negligent, including (as examples only):

- 8.3.1 direct financial loss, loss of profits or loss of use; and
- 8.3.2 indirect or consequential loss

8.4 No liability will be accepted for the cost of reinstating or refitting goods and/or materials

8.5 Our total liability to you (from one single cause) for damage to property caused by our negligence is limited to the price of the goods supplied.

8.6 Where we are not the manufacturer of the goods supplied by third parties our liability is limited only to any benefit received under any manufacturer's warranty or guarantee of the goods. You will be responsible for making and dealing with any claims under a manufacturer's warranty or guarantee.

8.7 For all other liabilities not referred to elsewhere in these terms our liability is limited in damages to the price of the goods supplied.

8.8 Nothing in these terms restricts or limits our liability for death or personal injury resulting from negligence.

8.9 Nothing in these terms affects or limits our liability for fraudulent misrepresentation.

## 9. Specification

9.1 If we prepare the goods in accordance with your specifications or instructions you must ensure that:

- 9.1.1 the specifications or instructions are accurate;
- 9.1.2 goods prepared in accordance with those specifications or instructions will be fit for the purpose for which you intend to use them;
- 9.1.3 your specifications or instructions will not result in the infringement of any intellectual property rights of a third party, or in the breach of any applicable law or regulation; and
- 9.1.4 you are responsible for rechecking your specifications or instructions to verify they meet your requirements.

9.2 Business Customers only: We reserve the right;

9.2.1 to make any changes in the specifications of our goods that are necessary to ensure they conform to any applicable safety or statutory requirements; and

9.2.2 to make without notice any minor modifications in our specifications we think necessary or desirable.

## 10. Return of goods

10.1 Unless such return of goods is expressly permitted under the terms of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 ('the Regulations') in accordance with clause 11.4, we will accept the return of goods from you only:

- 10.1.1 by our prior agreement (which must be confirmed in writing by us);
- 10.1.2 on payment by you of an agreed handling charge (unless the goods were defective when delivered); and
- 10.1.3 where the goods are as fit for sale on their return as they were on delivery.

## 11. Cancellation

11.1 Unless cancellation is expressly permitted under the Regulations in accordance with clause 11.4, you may not cancel the order unless we agree in writing (and clauses 3.2.2 and 11.2 then apply).

11.2 If the order is cancelled (for any reason) you are then to pay us for all stock, goods and materials (finished or unfinished) that we may then hold (or to which we are committed) for the order.

11.3 We may suspend or cancel the order, by written notice if:

- 11.3.1 you fail to pay us any money when due (under the order or otherwise);

11.3.2 you become insolvent;

11.3.3 you fail to honour your obligations under these terms.

11.4 Consumers only: In the case of internet, brochure and phone sales a consumer shall have fourteen days within receipt of goods or upon agreeing to proceed with a contract for services, to cancel the same whereupon any goods must in all cases be returned to us at the same branch of Howarth Timber they were collected from or ordered from (unless collection is arranged in accordance with clause 11.7) with you being fully liable for all costs incurred directly or indirectly in connection with such return ;

11.5 Consumers only: For the avoidance of doubt the right to cancel specified in clause 11.4 shall not apply in respect of any services provided within the fourteen day period referred to;

11.6 Consumers only: For the avoidance of doubt the right to cancel specified in clause 11.4 shall not apply in respect of any goods made to personal specification in accordance with clause 9;

11.7 Consumers only: In the event that you seek to cancel the contract in accordance with clause 11.4, you must email our Customer Services Team at [sales.online@howarth-timber.co.uk](mailto:sales.online@howarth-timber.co.uk) with a duly completed Cancellation Form (the form of which will be supplied by our Customer Service Team upon request) and confirm such cancellation in writing to the same branch of Howarth Timber that the goods were collected from or ordered from to organise collection or confirm that goods are to be returned. All goods to be returned must be notified to our Customer Services Team and returned within 14 days from the date of delivery or collection. No goods will be accepted for return if not notified and returned as aforesaid. A charge for collection will be made should you request branch collection by us. This charge will be waived if you return goods to the branch yourself. Goods must be unused and in the same condition as when delivered, in the original packaging and, if we are to collect, be available for the driver to collect from the roadside (with all necessary assistance provided by you). Refunds will be made within 14 days of collection and return of goods provided that you have complied with the provisions of these terms, 12. Waiver and variations

12.1 Any waiver or variation of these terms is not binding unless:

12.1.1 made (or recorded) in writing;

12.1.2 signed on behalf of each party; and

12.1.3 expressly stating an intention to vary these terms.

12.2 All orders that you place with us will be on these terms (or any that we may issue to replace them). By placing an order with us, you are expressly waiving any terms you may have to the extent that they are inconsistent with our terms.

13. Force majeure- business customers only

13.1 If we are unable to perform our obligations to you (or able to perform them only at unreasonable cost) because of circumstances beyond our control, we may cancel or suspend any of our obligations to you, without liability.

13.2 Examples of those circumstances include act of God, accident, explosion, war, terrorism, fire, flood, transport delays, strikes and other industrial disputes and difficulty in obtaining supplies.

14. General

14.1 English law is applicable to any contract made under these terms. The English courts shall have non-exclusive jurisdiction.

14.2 Any dispute arising out of the contract may be referred to the arbitration of an agreed arbitrator, or, failing that, an arbitrator appointed by the Chartered Institute of Arbitrators. The costs of such arbitration shall be borne as the arbitrator directs

14.3 If you are more than one person, each of you is liable for all of your obligations under these terms (joint and several liability).

14.4 If any of these terms are unenforceable as drafted:

14.4.1 it will not affect the enforceability of any other of these terms; and

14.4.2 if it would be enforceable if amended, it will be treated as so amended.

14.5 We may treat you as insolvent if:

14.5.1 you are unable to pay your debts as they fall due; or

14.5.2 you (or any item of your property) becomes the subject of:

a. any formal insolvency procedure (examples of which include receivership, liquidation, administration, voluntary arrangements (including a moratorium) or bankruptcy);

b. any application or proposal for any formal insolvency procedure; or

c. any application, procedure or proposal overseas with similar effect or purpose.

14.6 Business customers only: all brochures, catalogues and other promotional materials are to be treated as illustrative only. Their contents form no part of any contract between us and you should not

rely on them in entering into any contract with us.

14.7 Business customers only: any notice by either of us which is to be served under these terms may be served by leaving it at or by delivering it to (by first class post or by fax) the other's registered office or principal place of business. All such notices must be signed.

14.8 No contract will create any right enforceable (by virtue of the Contracts (Rights of Third Parties) Act 1999) by any person not identified as the buyer or seller.

14.9 The only statements upon which you may rely in making the contract with us are those made in writing by someone who is our authorised representative and either:

14.9.1 contained in our estimate (or any covering letter) and not withdrawn before the contract is made; or which expressly state that you may rely on them when entering into the contract.

14.10 Please note that we may transfer personal information about you to those we may appoint to administer your account or recover amounts owing. That may include, for example, passing information about you to our insurers, debt recovery agents and solicitors, if you fail to pay us.

15 Kitchen installations and delivery of kitchen components (PLEASE NOTE: These provisions do not apply to online sales)

15.1 In the case of any kitchen installations and delivery of any kitchen components, our Standard Kitchen Installation/Delivery Policy ('Kitchen Policy') shall apply in addition to these terms. In such circumstances, a copy of the Kitchen Policy will be annexed to these terms as 'Annexure – Kitchen Installation/Delivery Policy'

15.2 In the event of any conflict between the Kitchen Policy and these terms, the provisions of the Kitchen Policy shall prevail.

16 Truss/window fitting (PLEASE NOTE: These provisions do not apply to online sales)

16.1 In the case of any truss or window installation and/or fitting, our Standard Windows Installation/Delivery Policy ('Windows Policy') shall apply in addition to these terms. In such circumstances, a copy of the Windows Policy will be annexed to these terms as 'Annexure – Windows Installation/Delivery Policy'

16.2 In the event of any conflict between the Windows Policy and these terms, the provisions of the Windows Policy shall prevail.

17 Export terms (PLEASE NOTE: These provisions do not apply to online sales)

Where we supply the goods over an international border or overseas, our Standard Export/Delivery Policy ('Export Policy') shall apply in addition to these terms (except to the extent that it is inconsistent with any written agreement between us). In such circumstances, a copy of the Export Policy will be annexed to these terms as 'Annexure – Export/Delivery Policy'

## 18 Promotions

Discounts are issued in the form of either 'money off' offers or 'percentage off' offers and are offered to customers via promotional emails, advertisements, on-site banners, social networking or third party communications. Promotions are non-negotiable and only refundable at the actual sale price and there are no cash or credit alternatives. Unless otherwise stated, discounts are only applicable to full price items (sale and clearance items are not included). We reserve the right to cancel or change any promotion without notice at any time.

## 19 Promotion Expirations

All promotions will have a 'valid until' or 'expiry' date. Please refer to the original promotion source for this information. Promotional codes cannot be used in conjunction with any other offer, unless otherwise stated. Promotional codes are valid for one transaction per person and cannot be used on multiple accounts, unless otherwise stated. Promotional codes cannot be applied retrospectively to previous orders.

## 20 Using Promotional Codes

If using a promotional code, the code provided should be entered in the appropriate box on the checkout of the relevant website operated by us. Some promotions will be subject to a minimum spend threshold. Please refer to the original source of the promotion. Wherever a minimum spend threshold applies, the minimum spend does not include any Delivery costs or charges.

## 21 Returning An Item Bought Under A Promotion

If returning an item purchased using a promotional code, the code used will remain valid if the retained items exceed the threshold required (if a threshold is applicable). If the retained items fall below the minimum spend, you will be refunded accordingly and the promotional code will be expired. We will not cover the cost of returning any items purchased under a promotion.

## 22 Competitions

22.1 Prizes are non-negotiable, non-refundable and non-returnable and there are no cash or credit alternatives. Promotional Codes and Gift certificates are non-transferable and they can only be used by the competition winner. Competitions and prizes will vary. Please refer to the competition source for details of full terms and conditions. As with all purchases (with or without a Promotional Code or Gift certificates) these terms will apply.

22.2 Where any prize in a competition is to be provided by any third party, we shall accept no liability in relation thereto whether for any injury or other loss howsoever arising from the provision of the prize whether by reason of negligence of the supplier of the prize or otherwise

23 Your order (PLEASE NOTE: These provisions apply to online sales only)

23.1 All orders placed with us by you will be on the basis of these terms and subject to our acceptance by delivery of the goods at which point a legally binding contract is constituted between us on these terms. We may choose not to accept your order for any reason and will not be liable to you or anyone else in those circumstances,

23.2 After submitting an order to us we will send you an order acknowledgement email with your order number and details of the goods that you have ordered. Please note that this email is an acknowledgement and is not an acceptance of your order. The processing of your payment and acknowledgement of your order does not constitute legal acceptance of your order by us.

Information concerning stock availability may not be available on the websites operated by us. If you order goods which are not available from stock, we will contact you by email or by telephone to discuss how you wish to proceed. You will have the option to wait until the goods are available from stock or to cancel your order in accordance with our returns policy.