

# MLM DISTRIBUTION Ltd TRADING TERMS 1<sup>st</sup> April 2009

## 1. Definitions

- 1.1 In these conditions "the Company" means MLM Distribution Limited (t/a William T Eden, Montague L Meyer or Anglo Welsh Timber Company, whose registered office is at PO Box 3 Rippleway Wharf, River Road, Barking, Essex IG11 0DU, as specified in the acknowledgement of order and "the Customer" means the person, firm or company to whom this acknowledgement of order is addressed.
- 1.2 Subject to sub-clause 1.3 below, "the Goods" means the goods the subject of this order.
- 1.3 Where the contract is for the provision of services, the words "the Goods" shall be read, where the context permits, as meaning the services which the Company has contracted to provide.

## 2. Formation of the Contract

- 2.1 These conditions shall form the basis of the contract between the Company and the Customer. Notwithstanding anything to the contrary in the Customer's standard conditions of purchase, these conditions shall apply except so far as expressly agreed in writing by a person authorised to sign on behalf of the Company.
- 2.2 No servant or agent of the Company has power to vary these conditions orally, or to make representations or promises about the condition of the Goods, their fitness for any purpose or any other matter whatsoever.
- 2.3 Unless otherwise expressly stated in writing, all quotations and estimates by the Company are invitations to treat. The Customer's order is an offer which offer will be accepted by the Company posting its acknowledgement of the order.
- 2.4 The acceptance by the Customer of the quotation shall constitute acceptance by the Customer of these conditions.
- 2.5 The Company will provide the Goods at the request of any representative of the Customer, unless otherwise instructed in writing by the Customer.
- 2.6 The construction, validity and performance of these conditions and this order shall be governed by English Law.
- 2.7 These general conditions shall be subject to such further special conditions as may be prescribed in writing by the Company.
- 2.8 In the event of any conflict, or apparent conflict, between the special conditions and these general conditions, the special conditions shall prevail.
- 2.9 These conditions supersede all previous terms and conditions of sale issued by the Company.
- 2.10 All notices to be served hereunder shall be served by first class pre-paid post or facsimile message at the registered office or principal trading address of the intended recipient. Notices shall be deemed served when they would ordinarily have been received in normal business hours according to the means of transmission of such notices.

## 3. Cancellation

- 3.1 No cancellation or variation of the whole or any part of the order by the Customer is permitted, except where expressly agreed in writing by a person authorised to sign on behalf of the Company.
- 3.2 The consent of the Company to cancellation or variation of the order shall not in any way prejudice the Company's right to recover from the Customer full compensation for any loss or expense arising from such cancellation or variation on an indemnity basis.
- 3.3 Where the Goods are returned by the Customer without the Company's consent, they will not be accepted for credit.

## 4. Price

- 4.1 Quoted prices are based on costs prevailing at the time when they are given or agreed and are exclusive of VAT. The Company shall be entitled to adjust the price of the Goods as at the time of delivery by such amounts as may be necessary to cover any direct or indirect price increase(s) sustained by the Company after the date of the quotation or order in relation to the supply and/or delivery of the Goods.
- 4.2 VAT will be added to all invoices at the rate applying at the appropriate tax point.

## 5. Payment

- 5.1 Unless the sale is for cash, or other credit terms have been expressly agreed, all accounts are due for payment 30 days following the end of the month during which the Goods are delivered.
- 5.2 If any payment which has become due is not paid in accordance with credit terms, all sums payable to the Company by the Customer in respect of the Goods or otherwise shall become due and payable immediately, without requirement for any notice to be given.
- 5.3 The Company reserves the right to charge interest at 8% per annum above the base rate from time to time in force of Royal Bank of Scotland Plc on all overdue accounts, together with compensation for the costs suffered by the Company arising from late payment, in accordance with its rights under the Late Payment of Commercial Debts (Interest) Act 1998.
- 5.4 The Customer shall not be entitled to withhold payment of any amount payable under this order by reason of any dispute or claim by the Customer.
- 5.5 The Customer shall not be entitled to set off against any amount payable under this order any amount due by the Company to the Customer under any other agreement.
- 5.6 In the case of short delivery, partial delivery or delivery of damaged Goods, the Customer shall remain liable to pay the full invoice price of all Goods delivered or available for delivery.
- 5.7 The Company reserves the right at any time at its discretion to demand security for payments before continuing with or delivering any of the Goods notwithstanding any subsisting agreement to provide credit to the Customer.
- 5.8 Without prejudice to any other rights of the Company, if the Customer shall fail to make punctual payments of any sum under any contract between the Company and the Customer, the Company may, at its option, either withhold delivery of the Goods until the total indebtedness of the Customer to the Company has been discharged, or cancel this order.
- 5.9 All legal costs and expenses reasonably incurred by the Company in seeking to collect overdue invoices from the Customer or otherwise to enforce its rights under this contract will be recoverable from the Customer on an indemnity basis.

## 6. Delivery

- 6.1 Delivery will be deemed to have been effected when the Goods leave the premises of the Company or, as the case may be, the premises of the suppliers to the Company in circumstances where the Goods are delivered direct from such suppliers or, where the Goods are not delivered by the Company, but by an independent carrier, delivery of the Goods by the Company to the carrier shall be delivery to the Customer.
- 6.2 Delivery dates are given in good faith but are not guaranteed and no liability will be accepted for any loss whatsoever suffered or caused through late delivery or non delivery and time of delivery shall not be of the essence.
- 6.3 The Company reserves the right to make delivery by instalments and tender a separate invoice in respect of each instalment.
- 6.4 Unless specified to the contrary on the acknowledgement of order form, the order price includes the cost of delivery by the Company to the Customer's premises as specified on the acknowledgement of order form in one delivery, on weekdays during normal working hours. Any deliveries made at the Customer's request outside normal working hours, in instalments, on Saturdays, Sundays and/or Bank Holidays, will be subject to additional charges.
- 6.5 The Customer shall provide, at its own expense, the labour necessary for unloading the Goods, such labour to be available during normal working hours on the day notified by the Company for delivery. The Customer shall unload the Goods with reasonable speed. If the Company's delivery vehicle is kept waiting for an unreasonable time or is obliged to return to the Company without completing delivery through lack of assistance or if additional staff have to accompany the Company's driver to unload the Goods, an appropriate additional charge will be made.
- 6.6 If the Customer fails to take delivery on the agreed delivery date or, if no specific delivery date has been agreed, when the Goods are ready for dispatch, the Company shall be entitled to store and insure the Goods and to charge the Customer the reasonable costs of so doing. The date upon which the Goods are made available for delivery shall be deemed to be the delivery date for the purposes of sub-

- clause 6.1 above.
- 6.7 If the Customer fails to take delivery of the Goods within two weeks of the agreed delivery date or, if no specific delivery date has been agreed, when the Goods are ready for delivery, the Company may, after giving reasonable prior notice in writing, resell or otherwise dispose of all or part of the Goods and, after deducting reasonable storage and selling costs, charge the Customer the gross profit that the Company would have made had the Customer taken delivery and paid for the Goods.
- 6.8 The Customer shall ensure that the Company's delivery note is signed to acknowledge delivery.
- 6.9 The Company will deliver the Goods as near as possible to the delivery address as a safe hard road permits. The Company reserves the right to refuse to deliver Goods to premises considered at the discretion of the Company to be unsuitable.
- 6.10 If the Customer wishes to claim that there is any shortage on the delivery of any Goods or that any of the Goods are delivered damaged, the Customer shall give notice in writing to the Company within 72 hours after the date of delivery, or within 72 hours of non-delivery if the Goods are not delivered on the anticipated delivery date, failing which the Goods shall be deemed to have been delivered undamaged and in accordance with the delivery documents.
- 6.10.1 If short delivery does take place, the Customer shall not reject the Goods but shall accept the Goods delivered as a part performance of the order;
- 6.10.2 If short delivery or damaged Goods are complained of, the Company shall be under no liability in respect thereof unless a reasonable opportunity to inspect the Goods is provided to the Company before any use of the Goods is made by the Customer. The liability of the Company for short delivery or damaged Goods shall be strictly limited to the provision of any Goods not delivered or the replacement or, at the Company's option, repair of any damaged Goods.

## **7. Title and Risk**

- 7.1 Risk in the Goods shall pass to the Customer when the Goods are delivered to the Customer.
- 7.2 The ownership of the Goods shall remain with the Company until the Customer has paid all liquidated sums owed by the Customer to the Company in respect of this order.
- 7.3 The ownership of the Goods shall remain with the Company until the Customer has paid all liquidated sums owed by the Customer to the Company whether in respect of this order or otherwise.
- 7.4 The Goods shall be stored on the Customer's premises separately from any other goods and the Customer shall not interfere with any identification marks or serial numbers on the Goods.
- 7.5 The Customer is licensed by the Company to use or agree to sell the Goods delivered to the Customer subject to the revocation of such authority in accordance with sub-clause 7.6 below.
- 7.6 Until title to the Goods passes, without prejudice to any other rights of the Company, the Company may at any time revoke the power of sale and use contained in sub-clause 7.5 above by notice to the Customer if the Customer is in default for longer than 14 days in the payment of any sum whatsoever due to the Company whether in respect of the Goods or otherwise or if the Company has bona fide doubts as to the solvency of the Customer, whereupon the Customer shall deliver up such Goods to the Company.
- 7.7 The Company may at any time recover and re-sell Goods in which title shall not have passed to the Customer. The Company by its servants and agents shall be entitled to access to the Customer's premises or those to which the Customer has a right of access where the Goods or some of them are stored or thought to be stored for the purpose of re-possession at any time.
- 7.8 Risk in the Goods shall revert to the Company following re-possession but not otherwise.
- 7.9 The Customer shall indemnify the Company against any costs, expenses or losses incurred or sustained by the Company in exercise of the Company's rights under this order.
- 7.10 If the Customer shall become bankrupt or insolvent, or have a receiving order or administration order made against him or compound with his creditors, or, being a corporation, commence to be wound up, not being a members voluntary winding up for the purpose of reconstruction or amalgamation, or carry on its business under a receiver for the benefit of its creditors or any of them, or the Company has bona fide doubts as to the solvency of the Customer all sums payable to the Company by the Customer in respect of the Goods or otherwise shall become due and payable forthwith without requirement for any notice to be given and the Company shall be released from its obligation to deliver such of the Goods as remain undelivered save on terms acceptable to the Company, or if the Goods or any of them shall have been delivered, the power of sale and use contained in sub-clause 7.5 above shall be deemed revoked forthwith, and the Goods shall be delivered up to the Company.

## **8. Warranty**

- 8.1 In the event that a defect in the Goods is discovered by the Customer and reported to the Company in writing during the period of 6 months from the date of delivery of the Goods, which defect was caused by faulty design or manufacture, the Company will, at its option, either repair the Goods at its own expense, replace the Goods or refund the purchase price of the Goods, subject in all cases to the return of the Goods (or such of them as it is claimed are defective) to the Company by the Customer, at the Customer's expense.
- 8.2 Save as set out in the foregoing sub-clause, all warranties or other terms implied by statute or otherwise shall not apply to this order, including but not limited to those implied by the Sale of Goods Act 1979 (as amended by the Sale and Supply of Goods Act 1994), the Supply of Goods and Services Act 1982 and the Consumer Protection Act 1987.
- 8.3 The Company shall not be liable for any loss of profit, loss of goodwill, loss of business, loss of business opportunity loss of anticipated saving, loss or corruption of data or information, special, consequential or indirect loss suffered by the Customer or any third party in relation to this order and the Customer shall indemnify the Company in respect of any claim of any person in respect of such consequential or indirect loss.
- 8.4 Wood is a natural product and knotting and other irregularities are perfectly normal. If the Goods are allowed to get damp, or are otherwise not properly prepared, the Goods will become damaged. The Company shall not be liable for any losses so arising.
- 8.5 The foregoing sub-clauses of this clause 8 constitute the entire liability of the Company under this order which, in any event, shall not exceed 1.5 times the contract price of the Goods, other than as set out in sub-clause 8.6 below.
- 8.6 The Company's liability for death or personal injury resulting from negligence shall be neither limited nor excluded.
- 8.7 The Customer shall indemnify the Company against any liability that the Company may incur as a result of a claim against the Company under the Consumer Protection Act 1987 in respect of an alleged defect in the Goods.

## **9. Specifications**

- 9.1 No guarantee can be given that Goods delivered will match samples submitted in all material respects, as samples are drawn from bulk and are representative of the whole.
- 9.2 Subject to sub-clause 9.1 above, the Goods are supplied on the basis that they comply with technical specifications contained in printed documentation concerning the Goods prepared by the Company and that they conform to the written descriptions contained on the acknowledgement of order form.
- 9.3 If the Goods are manufactured to the design or specification of the Customer or the Customer's agent, the Goods carry no undertaking or warranty of any kind save that they will comply with the design or specification in all material respects.
- 9.4 In the event that the Company provides estimates of quantities or measurements on the basis of drawings and/or Bills of Quantities and/or specifications submitted by the Customer, the Company shall exercise reasonable care in so doing but the Company accepts no liability for inaccuracies in the estimates or calculations.

## **10. General**

- 10.1 The Company shall not be liable for any failure to deliver or delay in delivery of the Goods arising from circumstances outside its control, including but not limited to lock-outs, fire, accidents, defective materials, delays in receipt of raw materials or bought-in goods or components.
- 10.2 No person who is not a party to this order shall have the right, under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of these conditions.