

TERMS AND CONDITIONS OF TRADE

Jenkin Timber Limited, TruPine, FutureProof ("Jenkin")



JENKIN TIMBER LIMITED 55 The Concourse, PO Box 21702, Henderson, Auckland, New Zealand

T + 64 9 836 8450

E accounts@jenkin.co.nz

F + 64 9 836 8453

W www.jenkin.co.nz

1. GENERAL

1.1 In these terms and conditions:

"Customer" means the customer whose name appears on the front page of this form;

"Delivery Address" means the Customer's address, or, with Jenkin's consent such other address as the Customer specifies;

"Goods" means all Jenkin solid wood products supplied by Jenkin to the Customer from time to time;

"Jenkin" means Jenkin Timber Limited all of its related companies and their respective successors and assigns;

"PPSA" means the Personal Property Securities Act 1999; and

"Services" means all services supplied by Jenkin to the Customer from time to time.

1.2 The Goods and Services are supplied on these terms and conditions. No variation of these terms and conditions is permitted unless Jenkin has agreed in writing to such variation.

2. ORDERS AND PRICE

- 2.1 Unless otherwise agreed in writing, Goods and Services will be invoiced at Jenkin's price current at the date of invoice plus GST.
- 2.2 Any quotation given by Jenkin is not an offer to sell or to provide Goods or Services and unless otherwise agreed in writing no order presented to Jenkin on the basis of any quotation or otherwise will bind Jenkin until accepted by Jenkin in writing or by commencement of the supply of Goods or Services;
- 2.3 The Customer acknowledges that Jenkin may alter its prices from time to time on written notice and that except for then current orders accepted by Jenkin the price of the Goods and Services charged may differ from the price quoted.
- 2.4 No order for Goods or Services once accepted by Jenkin or once Jenkin has commenced manufacture of any of the Goods or the supply of any of the Services may be varied or cancelled by the Customer except with the written agreement of Jenkin.

3. PAYMENT

- 3.1 Unless Jenkin agrees otherwise, the invoiced price for Goods and Services plus GST will be paid:
 - 3.1.1 in the case of deliveries of Goods within New Zealand or the provision of Services in cash on or before delivery or provision (as the case may be); or
 - 3.1.2 in the case of deliveries of Goods outside New Zealand in the manner agreed by Jenkin in writing.
- 3.2 With Jenkin's prior approval, a Customer who takes delivery of the Goods within New Zealand or has procured the Services may pay the invoiced price for the Goods or Services plus GST in cash on or before the 20th of the month following the month of invoicing.
- 3.3 The Customer will make all payments due to Jenkin whether in respect of the price of the Goods or Services or otherwise in full without deduction or set off.
- 3.4 If payment is not made on the due date, the Customer will, if required by Jenkin, pay interest to Jenkin at the rate of 4% per annum above Jenkin's current account overdraft rate from time to time, on all money owing by the Customer to Jenkin from the due date until the date payment is received. Payments made to Jenkin will be applied first in payment of interest and secondly, in reduction of invoiced amounts.
- 3.5 In the event of default in payment due to Jenkin by the Customer, the Customer will pay Jenkin all costs including legal costs on a solicitor and own client basis, incurred by Jenkin, arising from, or consequent on, enforcement and/or collection of money due and owing.

4. SUPPLY AND DELIVERY

- 4.1 Unless otherwise agreed in writing, delivery of the Goods (and the provision of Services) will be deemed complete when the Goods (or the products treated by the Services) are delivered at the Delivery Address (whether or not the Customer is present at the time of delivery to acknowledge receipt). Jenkin will be responsible for arranging the carriage of Goods (or the products treated by the Services) to the Delivery Address. If the Customer fails or refuses to take delivery of any of the Goods (or the products treated by the Services), Jenkin may (without prejudice to its other rights and remedies) charge the Customer for any additional expense incurred.
- 4.2 Where the Customer arranges for a carrier to collect the Goods (or the products treated by the Services), delivery of the Goods will be deemed complete when they are collected from Jenkin by a carrier nominated by the Customer.
- 4.3 The Customer will accept responsibility to ensure reasonable on site access is available for delivery of the Goods (or the products treated by the Services).
- 4.4 Jenkin will not be liable for loss, damage or delay, of whatsoever nature or kind howsoever arising as a result of not complying with the Customer's timetable for

delivery, caused by circumstances outside Jenkin's reasonable control, provided Jenkin takes all reasonable steps to comply with the Customer's timetable for delivery. Any stated time for delivery is an estimate only. Late delivery or failure to deliver any of the Goods (or the products treated by the Services) does not entitle the Customer to cancel any order or part order.

4.5 All claims for errors or short delivery must be made in writing to Jenkin within 14 days of delivery in each case quoting the relevant invoice or packing slip number(s).

4.6 Jenkin reserves the right to:

- 4.6.1 suspend the supply of any order in whole or in part or to discontinue the supply of Goods or the provision of Services without incurring any liability whatsoever and without being obliged to give any reason for its action; and/or
- 4.6.2 make part delivery of any order and each part delivery will constitute a separate contract of supply.

5. PROPERTY AND RISK

- 5.1 Title to, and property in, the Goods (whether or not any of the Goods have been paid for by the Customer) will not pass to the Customer unless and until all amounts owing by the Customer to Jenkin, in respect of the Goods or any Services or otherwise, have been paid.
- 5.2 Until title to, and property in, the Goods passes to the Customer:
 - 5.2.1 All the Goods are held by the Customer as bailee for, and on behalf of Jenkin;
 - 5.2.2 The Customer will keep Jenkin informed as to the whereabouts of the Goods and will not, other than in the Customer's ordinary course of business, part with possession, sell or otherwise dispose of any of the Goods or any part of them or attempt to deal with them in any way whatsoever; and
 - 5.2.3 Jenkin will be entitled to (in accordance with the PPSA) enter the Customer's premises and any other premises in respect of which the Customer has a right of entry, for the purposes of seizing, repossessing and removing the Goods at any time if, in Jenkin's opinion, payment for any Goods is unlikely to be made or if payment for any Goods has not been made by the due date, or a liquidator, receiver or statutory manager has been appointed in respect of the Customer or the Customer proposes to enter into a compromise or scheme or arrangement with its creditors. If Goods are stored or held at any premises other than the premises to which the Customer has a right of access, then the Customer will before delivery of the Goods to these premises notify the person or persons entitled to possession of such premises of the rights of Jenkin under these terms and conditions. The Customer will not place the Goods in any premises where Jenkin's rights under these terms and conditions are not consented to by the person in possession thereof. Jenkin, its servants or agents will not be liable for any loss or damage whatsoever incurred as a result of seizure, repossession or removal of the Goods from any premises pursuant to this clause.
- 5.3 The Customer will, on request, disclose to Jenkin all relevant information regarding the Goods and any sub-sale of the Goods by the Customer.
- 5.4 Notwithstanding clauses 5.1 and 5.2, the Customer bears the risk of loss or damage to, or deterioration of, the Goods due to any cause whatsoever which occurs after delivery of the Goods has been made.
- 5.5 Until title to, and property in, the Goods passes to the Customer in accordance with clauses 5.1 and 5.2:
 - 5.5.1 the Customer will take due and proper care of the Goods and insure the Goods against all usual risks for the full insurable value;
 - 5.5.2 entitlement to the proceeds of any insurance claim in respect of damage to, or destruction of, such Goods is hereby assigned by the Customer to Jenkin;
 - 5.5.3 the Customer hereby indemnifies Jenkin against loss of or damage to, the Goods delivered to the Customer howsoever arising.
- 5.6 Jenkin may exercise a lien over any products treated by the Services until all amounts owing by the Customer to Jenkin, in respect of the Goods or any Services or otherwise, have been paid.

6. PERSONAL PROPERTY SECURITIES ACT 1999

- 6.1 These terms and conditions create a security interest in the Goods as security for all the Customer's obligations to Jenkin under these terms and conditions, which is registrable in the Personal Property Securities Registry once the PPSA comes into force.
- 6.2 The Customer must do all such things and execute all such documents as Jenkin may require to ensure that, from the time the PPSA comes into force, Jenkin has perfected first ranking security interest(s) in the Goods under the PPSA.
- 6.3 Jenkin may register a financing statement to perfect its purchase money security interest as an unpaid seller in Goods delivered, or, to be delivered, to the Customer.
- 6.4 The Customer will indemnify Jenkin for any costs Jenkin incurs in doing any of the above.

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6.5 The Customer waives its right to receive a copy of any verification statement(s) under the PPSA and agrees that as between Jenkin and the Customer:

6.5.1 the Customer will have no rights under (or by reference to) sections 114(1)(a), 116, 117(1)(c), 119, 120(2), 121, 125, 126, 127, 129, 131, 132, 133 and 134 of the PPSA; and

6.5.2 where Jenkin has rights in addition to those in Part 9 of the PPSA, those rights shall continue to apply.

6.6 The Customer must:

6.6.1 in addition to any other obligation, indemnify Jenkin for any costs Jenkin incurs in registering or maintaining, and/or in enforcing or attempting to enforce the security interest created by these terms and conditions;

6.6.2 immediately upon request by Jenkin, procure from any person considered by Jenkin to be relevant to Jenkin's security position such agreements and waivers (including as equivalent to those above) as Jenkin may at any time require; and

6.6.3 immediately notify Jenkin of any change in the Customer's name.

7. CANCELLATION

7.1 If:

7.1.1 any amount payable by the Customer to Jenkin is overdue, or the Customer fails to comply with any other obligation owed to Jenkin, or in Jenkin's opinion the Customer is unlikely to be able to meet its obligations to Jenkin; or

7.1.2 the Customer becomes insolvent, has a receiver appointed in respect of all or some of the Customer's assets, makes or is likely to make an arrangement with the Customer's creditors or has a liquidator (provisional or otherwise) appointed or is placed in statutory management;

then, without prejudice to any other remedy of Jenkin:

7.1.3 Jenkin is entitled to cancel all or any part of any contract or contracts with the Customer which remains unperformed;

7.1.4 all amounts outstanding under all the then current contracts between the Customer and Jenkin will, whether or not due for payment, immediately become due and payable; and

7.1.5 Jenkin is entitled to (in accordance with the PPSA) reclaim any Goods which are in the Customer's possession or control and to dispose of them for its own benefit and for that purpose Jenkin will be entitled, without notice, to enter directly or by its agents on any premises where Jenkin believes the Goods may be located, without being liable in any way to any person.

8. LIMITATION OF LIABILITY

8.1 If Jenkin exercises, or fails to exercise, its rights to seize, repossess or remove the Goods as provided in these terms and conditions it will not affect or prejudice any other of Jenkin's rights or remedies to seek recovery of any unpaid money and/or damages for breach of contract or otherwise.

8.2 Subject to clauses 8.3 and 8.4, Jenkin warrants that the Goods and any Services provided will substantially conform with relevant New Zealand standards subject to the customary manufacturing variations, tolerances and classifications of Jenkin at the date of delivery of the Goods or the provision of the Services. For Goods which are (or Services that relate to) treated products, this warranty only applies if the Goods (or the products treated by the Services) are painted by the Customer in the manner at the time specified in relevant Australian and New Zealand standards. If the Goods or the Services are proven to be defective, Jenkin's liability under any warranty will be limited to (at Jenkin's sole option):

8.2.1 replacement of the Goods or the supply of equivalent Goods;

8.2.2 re-provision of the Services; or

8.2.3 refund of the purchase price of the Goods or the Services (as the case may be).

The Customer will afford Jenkin a full opportunity to examine any Goods (or the products treated by the Services) which the Customer claims do not comply with the warranty in this clause 8.2. In no event will Jenkin be liable for anything other than to replace the Goods, re-provide the Services, or refund the purchase price of defective Goods or Services.

8.3 Whether or not any plans or requirements have been submitted to Jenkin, it is the Customer's exclusive responsibility to ensure that any of the Goods supplied or Services provided by Jenkin will be satisfactory to meet the Customer's (or any sub-customer's) intended plans or requirements in respect of any of the Goods (or the products treated by the Services).

8.4 Other than as expressly provided in clause 8.2, and to the maximum extent permitted by law:

8.4.1 Jenkin gives no other representations, warranties or conditions, express or implied, as to the nature or quality of Goods or Services (and any and all other representations, warranties, terms and conditions implied by any laws including but not limited to the Sale of Goods Act 1908 are excluded); and

8.4.2 Jenkin will not be liable for any consequential, incidental or special damages arising directly or indirectly from the use of the Goods or the provision of the Services in any circumstances whatsoever.

9. CUSTOMER WARRANTIES

The Customer warrants that:

9.1 the Customer will correctly advise the Customer's sub-customers as to the purposes to which the Goods (or any products treated by the Services) should or should not be put; and

9.2 where the Customer is purchasing the Goods for the purposes of a business the provisions of the Consumer Guarantees Act 1993 do not apply to these terms and conditions and the Customer will effectively and in writing contract out of the Consumer Guarantees Act 1993 whenever the Customer agrees to supply the Goods (or any products treated by the Services) to a sub-customer for the purposes of that sub-customer's business.

10. PRIVACY

The Customer hereby agrees and authorises Jenkin to obtain information about the Customer from the Customer or any third party or to divulge any such information to any third party in the course of Jenkin's business activities including, but not limited to, any credit or debt collection agency for the purposes of credit assessment or debt collection and any direct marketing activities. The information collected will be retained by Jenkin for the duration the Customer holds an account or continues to purchase Goods or Services from Jenkin or, in the opinion of Jenkin, may do so in the future. The Customer will be provided with access to the information held by Jenkin for review or corrective purposes.

11. MISCELLANEOUS

11.1 The parties acknowledge that each contract arising between the parties will be deemed to have been made at Auckland in New Zealand and the parties' rights and obligations pursuant to such contract will be governed by the laws of New Zealand.

11.2 References to clauses are references to the clauses in these terms and conditions.

11.3 Jenkin and the Customer each acknowledges that these terms and conditions express the entire understanding and agreement between them and that there have been no representations made by either party to the other except as expressed in these terms and conditions. If there is any inconsistency between these terms and conditions and any order that may be lodged by the Customer, then these terms and conditions will prevail.

11.4 If at any time Jenkin does not enforce any of these terms and conditions or grants the Customer time or any other indulgence, Jenkin will not be construed as having waived that term or condition or its rights to later enforce that or any other term or condition.

11.5 All customary building industry tolerances will apply to the dimensions and measurements of the Goods unless Jenkin and the Customer agree otherwise in writing. All timber sizes quoted are nominal. Dressed or gauged finished sizes will vary from the nominal call size.

11.6 Jenkin reserves the right to:

11.6.1 change or modify the design or composition of any of the Goods or the Services without notice; and

11.6.2 subcontract any order.

11.7 Where Jenkin provides Services on the Customer's products on Jenkin's premises it is the Customer's obligation to insure such products during that period and Jenkin bears no liability for loss or damage to such products.