

## **TERMS & CONDITIONS OF SALE – NASON DAVIS LTD**

### **1 DEFINITIONS**

In these conditions: "Seller" means NASON DAVIS LTD "Buyer" means persons, firms or companies purchasing The Goods. "The Goods" means goods or materials supplied by Seller to Buyer. "Supplier" means any persons, firms or companies by whom Seller has been supplied with The Goods.

### **2 FORMATION OF CONTRACT**

Seller contracts on these conditions only and acceptance by Seller of any order from Buyer shall be upon such conditions subject only to any variation agreed in writing by an authorised representative of Seller. The signing by Seller of any Buyer's documentation shall not imply any modification of these terms. Buyer acknowledges that there are no representations outside these terms which have induced him to enter into the contract.

### **3 DELIVERY**

(1) Sales shall be subject to shipment and safe arrival. Any time or date specified by Seller is given and intended as an estimate only and Seller shall not be liable for any direct or indirect loss, damage or expense however arising from delay in delivery save as may otherwise be required by law or statute. (2) Seller may deliver by instalments and each delivery shall be treated as a separate contract. Buyer shall accept delivery of the Goods when offered and shall provide such instructions as necessary to carry out such delivery. In the case of Buyer's default, seller may demand payment for the Goods which shall become due immediately in full or, without prejudice to the foregoing, Seller may cancel the delivery and take such steps as it considers necessary to sell or otherwise dispose of The Goods. Any costs, loss of profit or other damage incurred as a result of such action or delay shall be for Buyer's account.

### **4 PAYMENT**

(1) Terms of payment are stated on the front hereof, and time for payment shall be of essence of this contract. If payment terms quote a discount for prompt settlement, discount will only apply when specific terms are adhered to, and in default The Goods are sold strictly net. (2) Payment shall be applied to invoices in the order in which they fall due for payment and, in the event that two or more invoices fall due for payment on the same date, in the order in which they were issued. (3) Buyer shall not be entitled by reason of any dispute with Seller under any contract to withhold payment of any amount due to Seller hereunder or to sell off against any such amount or payment any cross-claim of any kind. (4) If Buyer defaults in payment under this contract or in respect of any other debt or obligation due to Seller or in the event that Buyer, being a natural person, shall die or become bankrupt or, being a company, shall enter into liquidation or have a receiver appointed of its undertaking, property or assets or any part thereof or shall enter or offer to enter into any agreement or composition with his or its creditors, or in the event that anything similar or analogous to any of the foregoing shall occur under the laws of any jurisdiction in which Buyer is incorporated, resident, or carries on business, or if for any other reason Buyer shall appear to become uncreditworthy in the opinion of the Seller, then the purchase price of all The Goods invoiced or despatched by Seller shall become immediately due and payable. In addition Seller may demand full or partial payment before proceeding further with the contract, or suspended or cancel further deliveries without prejudice to any other rights of Seller. (5) Any costs, suspension or cancellation pursuant to this Clause 4 shall be for the account of Buyer.

### **5 V.A.T. AND INTEREST**

(1) All prices are exclusive to Value Added Tax where applicable. If payment is not made by the due date, Seller shall be entitled to recover from Buyer interest on any outstanding balance, at the rate shown on the face of the sale note, or if no such rate quoted at the rate of 2.5% per 30 day period. (2) In the case of any other default by Buyer, damages shall include but not be restricted to interest at the aforesaid rate on all costs incurred by Seller in connection with this contract including value of The Goods at contract price until such default is remedied by Buyer or The Goods are disposed of by Seller.

### **6 RETENTION OF TITLE**

1) No property in The Goods nor in any part thereof shall pass to Buyer until Buyer has paid to Seller the whole price thereof, and, until such price has been paid, Buyer holds The Goods as bailee or trustee for Seller and the following provisions of this clause shall apply. (2) Buyer shall not pledge or allow any lien or charge to be created over The Goods, and will not process The Goods nor use them in any manufacturing operation nor deal with nor dispose of The Goods, or any interest therein. (3) In the event of any default in payment or other event described in clause 4(4) Buyer hereby authorises Seller to enter on Buyer's premises and recover The Goods, and Buyer shall keep The Goods at all times separate and identifiable for such purpose. (4) Notwithstanding clause 6(2) above, if any of The Goods shall have been processed or used in any manufacturing operation, Buyer hereby authorises Seller to sell or otherwise dispose of such goods, and to appropriate against the debt due from Buyer such proceeds as represent the original invoiced cost to Buyer of The Goods incorporated in such processed or manufactured goods, and to enter Buyer's premises and recover such quantity of goods as are sufficient to discharge Buyer's obligations to Seller and if Buyer sells The Goods in such manner as to pass a valid title to a third party, Buyer shall hold the proceeds of such sale (and pending payment the right to receive the proceeds of such sale) on trust for Seller. (5) Recovery of the Goods in accordance herewith shall not of itself

discharge Buyer's ability in respect of The Goods, and such action shall be without prejudice to Seller's other rights under the contract. (6) Nothing herein contained shall constitute Buyer as the agent of Seller for the purpose of any such sale as aforesaid. (7) The Goods shall be at risk of Buyer from time they are ready for collection by, or delivered to it, but notwithstanding any other provisions of these conditions, Seller may at its sole discretion and at any time by notice in writing to Buyer transfer the property in The Goods to it. (8) Notwithstanding the above and for the sake of clarity: -The risk in the Goods shall pass from the Seller to the Buyer upon delivery of such goods to the Buyer. However, notwithstanding delivery and the passing of risk in the Goods, title and property in the goods, including full legal and beneficial ownership, shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full for all Goods delivered to the Buyer under this and all other contracts between the Seller and the Buyer for which payment of the full price of the Goods thereunder has not been paid. Payment of the full price of the Goods shall include the amount of any interest or other sum payable under the terms of this and all other contracts between the Seller and the Buyer under which the Goods were delivered.

### **7 CLAIMS**

Any claim in respect of error in quantity of The Goods delivered, or in relation to damage to The Goods or otherwise, must be made in writing to Seller within seven days of receipt of The Goods. Failure to make such a claim within the time limit specified shall constitute unqualified acceptance of all The Goods delivered and waiver by Buyer of all claims relating to The Goods of any kind whatsoever. Buyer's claims will only be investigated, in accordance with normal trade practice, once payment in full for The Goods has been made. Seller shall be under no liability whatsoever if bulk is broken, other than that necessary to make reasonable examination of The Goods or (where The Goods include plywood or particle board) if the marked battens or packages are not produced with The Goods for inspection by Seller. It is the responsibility of Buyer in any case to establish identification of goods claimed to have been supplied by Seller.

### **8 VARIATIONS IN QUANTITY**

Seller may at its option deliver a margin of 15% more or less than the amount stated. Delivery of more or less than the quantity of goods contracted, allowing for the margin referred to shall not entitle Buyer to reject the whole consignment.

### **9 WARRANTIES**

(1) Seller warrants that it has the right to sell The Goods and that so far as Seller is aware they are free from any charge or encumbrance unknown to Buyer, and that they comply with written terms and descriptions contained in the contract. (2) The Goods are not tested and no warranty is given or shall be implied that The Goods are suitable for any specific purpose. In the event of any claim, liability of Sellers shall in no circumstances exceed invoice price of the defective pieces. (3) Apart from the warranties set out in this clause, and save any which may be implied by law or statute and which by law or statute cannot be excluded, no warranties, conditions, or undertakings of any kind, whether express or implied, statutory, or at common law or otherwise, are to be implied in the contract for sale of goods, and any contractual terms relating to the quality of The Goods, whether express or implied, are warranties only, the breach of which gives no right to reject The Goods or to terminate the contract in any circumstances whatever.

### **10 INDEMNITY**

Buyer agrees to indemnify Seller against all claims relating to The Goods sold to Buyer by Seller in respect of any loss, damage or expense sustained by any third party other than caused by the negligence of Seller.

### **11 FORCE MAJEURE**

Seller shall bear no liability for loss, damage or delay, however arising, caused in circumstances outside its control, and may suspend or cancel further deliveries as a result, or reallocate its available supply at its discretion between its customers as, it thinks fit, without otherwise affecting this contract.

### **12 HAULAGE**

The Goods are carried within the United Kingdom under the Road Haulage Association Conditions of Carriage, a copy of which can be supplied on request.

### **13 PROCESSING**

Any processing to The Goods carried out at the request of Buyer by a third party shall be carried out at the expense, and at the risk of, Buyer on the standard terms and conditions of the third party.

### **14 CONSUMER SALES**

Any provision herein set out, to the extent to which it would by virtue of the Unfair Contract Terms Act 1977 be of no effect as against a person dealing as a consumer, shall not apply in respect of a sale to a person so dealing.

### **15 PROPER LAW AND JURISDICTION**

This contract together with the terms and conditions contained therein shall be constructed in accordance with English Law and the English Courts shall have sole jurisdiction in any dispute relating thereto, except where Buyer is situated in Scotland, when Scottish Law will apply and Scottish Courts shall have jurisdiction thereto.