# **TOTALLY TIMBER**

# Terms And Conditions Of Supply Of Goods And Services

1. Terms
   1. These terms (together with any quotation, estimate, order confirmation, specification documents or other order details (as applicable) provided by the Supplier to you) form the contract between you and the Supplier (**Contract**) and apply in respect of all Goods and/or Services supplied by the Supplier to you.
   2. You will become bound by these terms as soon as:
      1. you order Goods and/or Services from the Supplier; or
      2. the Supplier supplies Goods and/or Services to you.
2. Quotations and estimates
   1. All quotations and estimates provided by the Supplier are provided subject to the following (as applicable):
      1. that any Services to be performed by the Supplier will proceed smoothly and that there are no unforeseen difficulties with the work;
      2. any changes to the scope of the Services or specification of the Goods (no matter how minor or insignificant a change may be).
   2. Quotations and estimates shall only be valid for the period specified in such quotation or estimate, and if no timeframe is specified, 14 days from the date of the relevant quotation or estimate.
3. Price
   1. In respect of all Goods and/or Services supplied by the Supplier to you, you will pay to the Supplier the Price applicable to such Goods and/or Services, plus goods and services tax and any other applicable amounts referred to in clause 3.2.
   2. Unless expressly specified otherwise in your Contract, all Prices are exclusive of freight, insurance, installation, any other costs or expenses, and all applicable taxes (goods and services tax) assesses or levied in connection with the supply of the Goods and/or Services. You shall be responsible for all such costs and expenses.
4. Variations
   1. No variations to the work originally contracted for shall be carried out without the agreement of both the you and the Supplier. Where you and the Supplier have agreed to a variation, the Supplier will be entitled to charge for the work involved in such variation at the rates notified by the Supplier.
5. Payment
   1. Payment is due within 7 days of the date of invoice, unless otherwise specified in your Contract (which may include an obligation to make payment in full prior to delivery of any Goods or commencement of any Services).
   2. The Supplier may, in its discretion, request you to pay a deposit upon acceptance of a quotation or estimate, confirmation of an order, or at such other time notified by the Supplier.
   3. Interest at 10% per annum calculated on a daily basis shall be payable on any moneys outstanding by you to the Supplier from the date payment is due until the date payment is received by the Supplier. Such interest shall be payable on demand.
6. Storage of Goods or Work Product
   1. If requested by you, the Supplier may (in its discretion and at the price specified by the Supplier) agree to store the Goods and/or Work Product at the Supplier’s premises for you, until such time as you can take delivery of the relevant Goods and/or Work Product. You will be deemed to be in default under the Contract if you do not take delivery of the relevant Goods and/or Work Product within the time period agreed by you and the Supplier, which shall not, in any case, exceed three months.
   2. Without limiting any other right or remedy for default under the Contract or at law, if you fail to take delivery of Goods and/or Work Product at the time of delivery under clause 7, or within the agreed timeframe where storage is being provided by the Supplier, the Supplier may, on notice to you, terminate the Contract and sell the relevant Goods or Work Product to a third party, and the Supplier shall not be required to refund any amounts paid by you in respect of such Goods or Work Product under the Contract.
   3. You agree that the remedy available to the Supplier under clause 6.2 is not onerous or a penalty and is a genuine pre-estimate of loss likely to be suffered by the Supplier if you fail to take delivery of your Goods and/or Work Product within the agreed timeframe.
   4. Any storage of Goods and/or Work Product by the Supplier shall not affect the transfer of risk in such Goods and/or Work Product under clause 8.
7. Delivery
   1. Delivery of Goods and Work Product shall be made at the location notified by the Supplier. If a delivery location has not been agreed by you and the Supplier, delivery shall be made at the Supplier’s premises. Unless expressly provided otherwise in your Contract, delivery shall be deemed to have occurred at the time that the Goods or Work Product (as applicable) are made available by the Supplier for pickup at the delivery location.
   2. Any quotations relating to the time for delivery of Goods or completion of Services are estimates only and not commitments. The Supplier will not be bound by, or liable for a failure to comply with, any such quotations.
   3. The Supplier may, in its discretion, deliver Goods and/or Work Product in separate instalments.
   4. You acknowledge and agree that, if you are unable to take delivery of any Goods or Work Product within 12 months of the date of your order, without limiting any other right or remedy available to the Supplier under the Contract (including as specified in clause 6), the Supplier may, in its discretion, amend the Price payable for such Goods or Work Product.
8. Risk
   1. Risk of any loss, damage or deterioration of or to the Goods shall be borne by you from the time of delivery of the goods in accordance with clause 7.1.
   2. Risk of any loss, damage or deterioration of or to any Work Product shall be borne by you from the time of completion of the relevant Services.
   3. It is up to you to satisfactorily insure all risks in the Goods and/or Work Product from the time that risk passes to you in such items.
9. Title
   1. Property in and ownership of all Goods and/or Work Product remains with the Supplier until payment has been made in full by you for the relevant Goods and/or Services and any other amounts payable by you under the Contract.
   2. You grant a security interest to the Supplier in each and every part of the Goods and/or Work Product as security for payment for the Goods and/or relevant Services, for any other amounts owing by you to the Supplier from time to time, and for the performance by you of all your other obligations to the Supplier.
   3. You will do all things that the Supplier reasonably requires to ensure the Supplier has a perfected security interest in all Goods and/or Work Product to the extent of the Price for such Goods and/or Services, and the Supplier may allocate amounts received from you in any manner the Supplier determines.
   4. You will reimburse the Supplier for all costs and/or expenses incurred or payable by the Supplier in relation to registering, maintaining or releasing any financing statement in respect of any security interest under your Contract.
   5. You waive the right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to the security interest.
10. Warranty and returns
    1. The Supplier warrants that Goods and Work Product supplied to you will not contain any material defects at the time of delivery (in the case of Goods) or completion of the Services (in the case of Work Product).
    2. Except for any guarantees which apply pursuant to clause 14.5, you acknowledge that the Supplier provides no warranties or guarantees in respect of the Goods or Services other than as provided for in clause 10.1. Without limiting the generality of the foregoing, the Supplier provides no warranty as to the suitability of the Goods or Work Product for the purposes for which you require such Goods or Work Product. You acknowledge that you have made your own investigations as to suitability.
    3. In the event of a breach of the warranty in clause 10.1 (or any other guarantees that apply pursuant to clause 14.5), the Supplier will repair or make good any defects in Goods or Work Product, provided such defects have been notified to the Supplier within 5 working days of the date of delivery of the relevant Goods or completion of the relevant Services (as applicable). The Supplier shall not be liable to accept any returns or carry out any remedial work:
       1. in respect of any damage occurring after delivery of the Goods or completion of the Services (as applicable);
       2. if loss or damage occurs during transportation in a situation where you have arranged transportation;
       3. if any attempt to repair the defective Goods or Services has made by any person other than the Supplier;
       4. if the relevant Goods or Work Product have been modified or dismantled without the prior approval of the Supplier;
       5. if the relevant Goods and/or Work Product have not been stored, maintained or used in a proper and diligent manner;
       6. if the Goods or Work Product have been used for a purpose not anticipated by the Supplier or otherwise consistent with all laws and regulations (including building regulations and standards); or
       7. for so long as you are in default in relation to any obligation (including as to payment) under your Contract.

This obligation to repair or make good under this clause 10.3 shall be your sole remedy in respect of any defective Goods, Work Products and/or Services.

* 1. The Supplier may, in its absolute discretion, accept a request by you to return Goods to the Supplier for credit, exchange or refund and if the Supplier accepts any such request, such acceptance shall be conditional on you complying with any terms and conditions as the Supplier may apply in respect of that return.
  2. Without limiting the generality of clause 10.2, you acknowledge and agree that:
     1. Timber cut to specific measurements is subject to availability and discrepancies in measurements. The Supplier shall not be in breach of the Contract (including any warranty given in respect of the Goods or Work Product) where timber delivered is of a greater or lesser quantity than that purchased by you, unless such discrepancy exceeds **5%** of the total timber supplied.
     2. Timber will be used by you strictly in accordance with all applicable building laws, regulations and codes and manufacturer’s instructions.

1. Health and safety
   1. If you enter the premises of the Supplier, you will comply (and ensure all persons attending with you or on your behalf comply) with all requirements and instructions of the Supplier relating to the safety and security of the property and persons located at the property.
2. Privacy
   1. For the purpose of facilitating the efficient running of the Supplier’s business (including for marketing purposes) and enforcing its rights under your Contract, you authorise the Supplier:
      1. to collect all information it may require from any third parties (including for the purpose of assessing your creditworthiness) and authorise those third parties to release that information to the Supplier;
      2. to hold all information given by you or any third parties to the Supplier; and
      3. to use that information, including giving information to any other person to facilitate collection of debts from you.
   2. The information will be collected, held and used on the condition that:
      1. it will be held securely at the Supplier’s premises;
      2. it will be accessible to any of the Supplier’s employees and representatives who need access to it for the efficient running of the Supplier’s business; and
      3. you may request access to and correction of it at any time.
3. Default
   1. If:
      1. you default in the due payment of any monies payable to the Supplier, or in the due performance of any of your other obligations, whether under your Contract or otherwise;
      2. you commit any act of bankruptcy, enter into any composition or arrangement with creditors or (in the case of a company) do any act which would render you liable to be wound up or if a resolution is passed or proceedings commenced for the you winding up or if a receiver is appointed in respect of all or any of your assets; or
      3. you act in a manner that detrimentally affects (or may detrimentally affect) the reputation of the Supplier or any of its personnel,

the Supplier may, without prejudice to any other rights or remedies, at its option:

* + 1. suspend the performance of any Services until such time as your default has been remedied;
    2. retain any moneys paid (including any deposit) under the Contract, or any Goods and/or Work Product located at the Supplier’s premises, in satisfaction of any loss, liability, costs or damage suffered or incurred by the Supplier in connection with your default;
    3. terminate your Contract;
    4. require all monies outstanding to be immediately due and payable and enforce the security interest created by clause 9; and/or
    5. enter upon your premises where the Goods or Work Product are situated and take possession of and/or remove such Goods and/or Work Product without being responsible for any damage caused.
  1. You shall pay all costs incurred by the Supplier in the recovery or attempted recovery of outstanding moneys and enforcement of your Contract.

1. Liability
   1. Except to the extent liability cannot be limited by law, the total liability of the Supplier for any loss arising from any defect or non-compliance of the Goods, Work Product and/or Services or any other breach by the Supplier of its obligations under or in connection with your Contract will not in any circumstances exceed the Price for the Goods and/or Services in respect of which liability arises.
   2. Neither party shall be liable for any loss of profits, or any consequential, indirect or special damage or damage or injury of any kind suffered by the other party or any of its representatives.
   3. You use the Goods and Work Product at your own risk and the Supplier shall have no liability in respect of any damage, loss or injury (to persons or property) arising out of or in connection with your use of the Goods or Work Product.
   4. Except where you are acquiring the Goods in “trade” (as defined in the Consumer Guarantees Act 1993 (**CGA**)), nothing in this Contract is intended to have the effect of limiting or reducing your rights against the Supplier under the CGA. As a consumer, you are entitled to certain guarantees under the CGA. If the Supplier breaches any of these guarantees, your rights of redress are set out in the CGA.
   5. Where you are acquiring the Goods in “trade” (as defined in the CGA), you agree that the provisions of the CGA will not apply to the Contract.
2. General
   1. All intellectual property rights in the Goods, Work Product and/or Services are and shall remain the property of the Supplier.
   2. The Supplier may request additional security from you in connection with your obligations under the Contract (including your payment obligations), which may include a guarantee. You shall comply with any such request.
   3. To the extent any confidential information is provided by the Supplier to you, you, you must keep that information confidential.
   4. You consent to the use of your name (and logo, if applicable) by the Supplier in any future marketing campaign or advertisement of the Supplier’s goods and/or services.
   5. Neither party will be liable for any delay or for any failure to fulfil its obligations under this agreement (except with respect to any payment obligations) if the failure or delay arises directly or indirectly from or as a consequence of any cause or circumstance beyond the reasonable control of that party.
   6. The parties agree to use their best endeavours to promptly resolve any dispute or difference between them by way of good faith negotiations. The Supplier may, at its option, require you to submit to mediation with assistance of a qualified mediator.
   7. You are not entitled to assign your rights under this Contract.
   8. Where the Contract has been entered into by more than one customer, the customers shall be jointly and severally liable under the Contract.
   9. You acknowledge that you have received a copy of these terms and in particular that your Contract with the Supplier constitutes a “security agreement” for the purposes of the Personal Properties Securities Act 1999, and that the Supplier may register a financing statement.
   10. The failure of the Supplier to enforce any provision of your Contract shall not be treated as a waiver of that provision, nor shall it affect the Supplier’s future right to enforce that provision.
   11. This Contract is governed by and construed in accordance with the laws of New Zealand.
3. Definitions
   1. In these terms:

**Goods** means any goods or property supplied by the Supplier to you.

**Price** means the price of the Goods and/or Services and any other services (for example, storage of timber) notified by the Supplier to you, whether in the form of a quotation, estimate or otherwise.

**Services** means any services performed by the Supplier for you.

**Supplier** means Totally Timber.

**Work Product** means the work product of any Services undertaken by the Supplier for you.

* 1. A reference to a person includes a corporation, association, firm, company, partnership, individual or government or local body.
  2. The terms “perfected” and “security interest” have the meanings given to them under, or in the context of, the Personal Properties Securities Act 1999.