

## TERMS OF SALE AND SECURITY AGREEMENT- CARTER HOLT HARVEY AUSTRALIA GROUP OF COMPANIES

The following Terms govern all Orders placed by the Buyer with the Seller and will be incorporated into each contract entered into between the Buyer and the Seller for the supply of Goods, together with any invoices issued by the Seller for those Goods. The Buyer accepts the incorporation of these Terms into each contract between the Buyer and the Seller by signing and returning these Terms to the Seller or by placing an Order for Goods with the Seller.

### 1. COMMENCEMENT

Where the Buyer has entered into other terms of sale with the Seller prior to the Registration Commencement Time, those terms of sale shall govern all supplies by the Seller to the Buyer prior to the Registration Commencement Time but these Terms shall govern all supplies made by the Seller to the Buyer after the Registration Commencement Time.

### 2. PRICE AND ORDERS

- 2.1 The Buyer will place Orders with the Seller in accordance with the Seller's processes as advised to the Buyer from time to time. The Seller may, at its discretion, reject any Order.
- 2.2 The Buyer will pay to the Seller the Price for the Goods in accordance with clause 3. The Buyer's obligation to pay the Price will not be affected by any defect in, or damage to, the Goods.
- 2.3 The Price will be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent that such taxes or duties are expressly included in the Price.

- 2.4 The Seller may change the Price for the Goods at any time on giving prior notice to the Buyer. Any change to the Price will apply to all Goods delivered on or after the date specified by the Seller in the notice to the Buyer. If no date is specified in the notice, the change will be effective immediately for all Goods delivered after the date of notification, and whether or not an Order for the Goods had already been received and accepted prior to the change.

- 2.5 There is no obligation on the Seller to enquire as to the authority of any person placing an Order on behalf of the Buyer.

### 3. PAYMENT

- 3.1 Unless otherwise agreed by the Seller, payment of the Price is to be made by such method as the Seller nominates from time to time and is due by the last business day of the month following the date of Delivery.

- 3.2 The Buyer may not withhold payment or make any set-off or deduction from any Amount Owing without the Seller's prior written consent.

- 3.3 The Seller may apply any payments received in reduction of the Amount Owing as the Seller thinks fit.

- 3.4 If the Buyer does not pay any Amount Owing by the due date for payment, the Seller may charge default interest on the due but unpaid amount at the rate specified from time to time under section 2 of the *Penalty Interest Rates Act 1983 (Vic)*, calculated on a daily basis from the due date until payment is received in full (after as well as before judgment).

### 4. DELIVERY

- 4.1 Where the Goods are to be supplied 'Free into the Buyer's Store', the Seller will deliver, or arrange delivery of, the Goods to the agreed destination on the delivery date advised to the Buyer and pay any storage, transportation and insurance costs incurred as a result up to the time of delivery.

- 4.2 Where the Goods are to be supplied 'Ex-Works the Seller', the Buyer will take delivery of the Goods as soon as the Goods are made available for collection at the Seller's premises, as advised to the Buyer.

- 4.3 Where Goods are to be supplied 'Free on Wharf':

- (a) the Seller is responsible for all expenses arising from the importation of the Goods, to the time that the Goods are available for collection by the Buyer, and the Seller agrees to provide all of the documentation necessary to enable the Buyer to take delivery of the Goods and remove them from the agreed location; and
  - (b) the Buyer will take delivery of the Goods as soon as the Goods are made available for collection, as advised to the Buyer.

- 4.4 In the absence of any specific agreement, Goods are supplied 'Ex-Works the Seller' and clause 4.2 will apply.

- 4.5 Any time advised for delivery is an estimate only. The Seller has the right to nominate a suitable time for loading the Goods onto a delivery vehicle, taking into account weather conditions and safety matters, and the Seller is not liable for any delay in delivery. Upon delivery, the Buyer must acknowledge delivery by providing a first name, surname and signature on the relevant delivery docket.

- 4.6 In all circumstances whatever the agreed method of delivery, the Buyer will be responsible at its own cost for unloading the Goods, or for arranging for a suitable means of unloading the Goods, from the relevant delivery vehicle. The Buyer will indemnify the Seller against any loss, liability, costs or expenses incurred by the Seller in unloading the Goods.

- 4.7 The Seller may deliver the Goods by instalments. Each instalment will be treated as a separate contract under these Terms.

- 4.8 The Buyer will indemnify the Seller against any loss, liability, costs or expenses incurred by the Seller if, after the time for Delivery of the Goods, the Seller subsequently arranges storage or transportation of, or insurance for, the Goods (whether due to any failure or refusal of the Buyer to take delivery or following agreement with the Buyer).

- 4.9 The parties agree that:

- (a) seven days represents a reasonable period for the Buyer to examine the Goods for conformity with the contract;
  - (b) the Goods will be deemed accepted by the Buyer unless:

- (i) the Buyer notifies the Seller in writing of any alleged defects, errors, discrepancies or non-conformity within seven days of Delivery; and
    - (ii) the Seller is able to inspect the Goods to confirm the defects, errors, discrepancies, or non-conformity in order to determine whether to agree to the return of the Goods (at the Seller's discretion); and

- (c) for the avoidance of any doubt, the Seller will not be liable for Goods that have been modified or incorrectly used without the Seller's approval, or which have not been stored or maintained in a proper manner; and
  - (d) except as set out in these Terms, the Buyer is not entitled to return the Goods for any reason.

### 5. RISK AND SECURITY

- 5.1 Risk of any loss, damage or deterioration of or to the Goods passes to the Buyer on Delivery.

- 5.2 Ownership of the Goods remains with the Seller and does not pass to the Buyer until the Buyer pays in full to the Seller:

- (a) the Amount Owing in respect of the Goods; and
  - (b) all other monies owing by the Buyer to the Seller on any account whatsoever.

- 5.3 The Buyer acknowledges that upon delivery of the Goods to the Buyer, the Goods become subject to a Security Interest in favour of the Seller, which shall remain in effect until such time as the Goods are returned to the Seller (in accordance with this Agreement), or the Buyer has paid the Seller in full for the Goods.

- 5.4 While Ownership of the Goods remains with the Seller, the Seller authorises the Buyer in the ordinary course of its business to use the Goods and to sell the Goods for full consideration. Except as otherwise expressly permitted by these Terms, the Buyer must not sell, lease, dispose of, create a security interest in, mortgage or part with possession of the Goods or any interest in the Goods (or purport to attempt to do such a thing) or permit any lien over the Goods.

- 5.5 The authority referred to in clause 5.4:

- (a) may be revoked at any time by the Seller notifying the Buyer, in such manner and at such time as the Seller determines in its sole discretion, that the authority is revoked;
  - (b) is, in any event, revoked automatically from the time an Event of Default occurs.

- 5.6 Where the authority conferred by clause 5.4 is revoked under clause 5.5:

- (a) the Buyer authorises the Seller to use reasonable force to enter the premises where the Goods are stored and remove them;
  - (b) the Seller shall exercise reasonable care in entering such premises and removing such Goods, but shall not be liable for trespass or any damage caused by the use of reasonable force;
  - (c) the Buyer is released from the obligation to pay the Price for all Goods repossessed by the Seller but only to the extent any proceeds obtained by the Seller reselling the Goods (less all costs incurred) exceeds the Price owing by the Buyer to the Seller for those same Goods;
  - (d) the Seller may resell any repossessed Goods and apply the proceeds of sale in reduction of the Amount Owing as the Seller thinks fit; and
  - (e) the Buyer is liable for all costs associated with the exercise by the Seller of its rights under this clause and costs are payable to the Seller on demand.

- 5.7 The Seller may bring an action for the Amount Owing in respect of the Goods even where Ownership of the Goods has not passed to the Buyer.

- 5.8 The Buyer must insure and keep insured with a reputable insurance company all Goods in its possession or control from the time for Delivery of such Goods against risk of loss or damage by hazards normally insured against.

- 5.9 Until Ownership of the Goods passes to the Buyer under these Terms, the Buyer must:

- (a) keep the Goods in a manner that they are separately identifiable; and
  - (b) keep proper stock records and records of account with respect to the purchase, receipt, sale of, and other dealings with, the Goods; and
  - (c) make those records and/or the Goods themselves available to the Seller for inspection (and, in the case of the records, copying them) at its reasonable request and upon any failure to do so (and without limiting the Seller's other rights and remedies), the Seller may enter, and use reasonable force to enter, the premises where the records and/or the Goods are kept for any such purpose; and
  - (d) not do or allow anything to happen that might contribute to a deterioration in the value of the Goods or otherwise adversely affect the rights or interest of the Seller in the Goods under these Terms.

- 5.10 The Buyer agrees that the Seller shall have the right at any time to complete and register a mortgage (on terms determined by the Seller, in its absolute discretion) over any interest in real property owned by the Buyer to secure the Amount Owing and the Seller shall have the right at its discretion to place a caveat on any such property for the purposes of this clause and the Buyer irrevocably appoints the Seller as the attorney of the Buyer for the purpose of the Seller exercising its rights under this clause whilst any Amount Owing remains outstanding.

- 5.11 The Buyer must immediately notify the Seller if the Buyer is considering whether to appoint an Administrator or Liquidator to the Buyer and will not without the consent of the Seller appoint an Administrator or Liquidator.

- 5.12 The Buyer's obligations under these Terms are not affected by the administration of the Buyer.

- 5.13 The Buyer agrees to promptly do anything the Seller requests (such as obtaining consents, providing information and signing and producing documents) in order to perfect, preserve, maintain, protect, or otherwise give full effect, under the *Personal Property Securities Act 2009 (Cth)* ('PPS Act') and related regulations, to this document and the

Security Interest created by this document, including registering one or more financing statements in relation to the Security Interest created by this document on any register established pursuant to the PPS Act.

5.14 To the extent the law permits, the Buyer waives its rights to receive any notice that is required by any provision of the PPS Act (including a notice of a verification statement under section 157(1) of the PPS Act).

5.15 The Buyer agrees to indemnify the Seller for all costs, fees, charges and expenses incurred by the Seller in connection with the enforcement of the Security Interest created by this document.

## 6. ASSIGNMENT OF RECEIVABLES

On request from the Seller, the Buyer agrees to give notice to any Customer that has a debt due (Debt) to the Buyer, in respect of Goods sold by the Buyer to the Customer, that the Seller is appointed as the Buyer's agent to collect the Debt, and the Buyer should make any payment in respect of the Debt to the Seller. The Buyer appoints the Seller to act as its attorney for the purpose of giving any such notice to the Customer.

## 7. ENFORCEMENT UNDER THE PPS ACT

To the extent that goods are not used predominantly for personal, domestic or household purposes, the Buyer and the Seller agree to contract out of all sections referred to in section 115(1) of the PPS Act other than those sections referred to in section 115(1)(e), (i), (j) and (k).

## 8. CONFIDENTIALITY

8.1 The Buyer agrees not to disclose the agreement of which these Terms form part of or any information relating to price, products or quantities being provided under these Terms other than to a related body corporate of the Buyer (as that term is used in the Corporations Act 2001), a professional advisor, or as required by law or the regulations of a registered securities exchange.

8.2 The Buyer and the Seller agree that neither of them will disclose information of the kind described in section 275(1) of the PPS Act.

## 9. WARRANTIES AND LIABILITY

9.1 **Sole remedies for the Buyer:** In respect of Claims of any kind:

- (a) the Buyer and the Seller agree that Claims shall be subject to the qualifications, limitations, exclusions and caps contained in these Terms; and
- (b) the sole remedies available to the Buyer against the Seller, whether under these Terms or at law shall be:
  - (i) at the Seller's discretion, the repair or replacement of the Goods under these Terms; or
  - (ii) payment of compensation up to the liability cap prescribed in clause 9.2.

9.2 **Liability cap:** The Seller's maximum liability arising out of any Claim or under these Terms or at law (whether in contract, tort, including negligence, statute or otherwise) shall not exceed the Price of the Goods.

9.3 **Limitation period on actions in respect of Buyer's Claims:** No legal action or proceeding may be brought in respect of any Claim more than six (6) months after the date of Delivery. Where Goods are delivered by multiple instalments, a Claim in respect of each instalment must be made within the specified notice period from that Delivery.

9.4 **Exclusions of liability:** In addition to other qualifications, limitations, exclusions and caps contained in these Terms, the Seller will not be liable (whether in contract, tort, including negligence, statute or otherwise) for any: (a) loss of profits (whether actual or anticipated); (b) consequential loss or damage, including but not limited to economic loss or loss of production, revenue or management time; (c) indirect loss or damage; or (d) special loss or damage of any kind.

9.5 **Representations must be expressly made in writing:** The only conditions, warranties, descriptions, representations or guarantees agreed to by the Seller are those expressly provided by the Seller in writing or referred to in clause 9.6.

9.6 To the maximum extent permitted by law:

- (a) Nothing in these Terms excludes, restricts, or modifies any condition, warranty, guarantee or liability which is implied by or which is given by the Competition and Consumer Act 2010 (Cth) ('CCA'), or other applicable laws where to do so is illegal or would render any provision of these Terms void; and
- (b) The Seller's liability for breach of the CCA (other than a guarantee under sections 51, 52 or 53 of Schedule 2 of the CCA) in relation to the supply of goods or services which are not of a kind ordinarily acquired for personal, domestic or household use or consumption, is limited, at the Seller's option to:
  - (i) in the case of goods, the replacement, repair, or payment of the cost of the replacement or repair of the goods; and
  - (ii) in the case of services, supply of the services again, or payment of the cost of having the services supplied again.

9.7 The Buyer acknowledges that any Goods which are sold as downgraded product (however labelled, including 'second grade', 'seconds' or where the grade designator (eg MGP12) has been deliberately obscured by over-spray or other methods) must not be used in any structural application where a defined structural grade is specified or required, as they are not suitable for that purpose.

9.8 **Buyer's wrongful acts to third parties:** The Buyer agrees to indemnify the Seller against any liability or cost incurred by the Seller (however arising) as a direct or indirect result of the Buyer breaching any obligations (whether under statute or the general law) to any person in respect of Goods including (for the avoidance of doubt) any misrepresentation regarding the grade, characteristics or suitability of any Goods.

## 10. DEFAULT

10.1 If any Event of Default occurs,

- (a) the Seller may suspend or terminate these Terms, effective immediately on notice in writing to the Buyer;
- (b) any Amount Owing will immediately become due and payable notwithstanding that the due date has not arisen; and/or
- (c) to the extent permitted by law, each security interest created by these Terms will become immediately enforceable and the Buyer must return the Goods to the Seller promptly on request or the Seller may take possession of and sell the Goods and the Seller has all the rights of a natural person in relation to the Goods and all other rights conferred by law in relation to the Goods.

10.2 The Seller is entitled to recover from the Buyer all costs that the Seller incurs in connection with the exercise, protection or enforcement of the Seller's rights under these Terms or conferred by law, in each case on demand and on a full indemnity basis (including solicitor client costs).

10.3 Subject to any mandatory law, the Seller will not be liable:

- (a) in respect of any loss or damage that results from the exercise, attempted exercise or non-exercise by the Seller of its rights under these Terms or conferred by law; or
- (b) to account as a mortgagee in possession in respect of the Goods if it or any person on its behalf takes possession of the Goods.

## 11. FORCE MAJEURE

11.1 Without limiting the foregoing, neither the Seller nor the Buyer will be liable for any delay or failure in the performance of any obligation or the exercise of any right under these Terms or for any loss or damage (including indirect or consequential loss or damage) if such performance or exercise is prevented or hindered in whole or in part by reason of a Force Majeure Event. Nothing contained in this clause will excuse payment of any money due or which becomes due under these Terms.

11.2 The rights and obligations of either party which are affected by a Force Majeure Event will be suspended during the continuance of the Force Majeure Event, and either party claiming to be affected by the Force Majeure Event will give immediate notice to the other party containing full particulars of the Force Majeure Event. The party giving notice under this clause will take all reasonable steps to mitigate the effects of the Force Majeure Event and remove such Force Majeure Event provided that neither party will be required to remove any such Force Majeure Event if to do so would require it contrary to its judgement to settle a strike or labour dispute or otherwise submit to the demands of opposing parties.

11.3 If the Force Majeure Event prevents or hinders performance of these Terms for a continuous period of 180 days either party may, on not less than 14 days prior written notice to the other party, terminate these Terms.

## 12. PRIVACY

12.1 The Carter Holt Harvey External Privacy Policy, available at <http://www.chhwoodproducts.com.au/privacy> ('External Privacy Policy') sets out how the Seller manages personal information. Under the Privacy Act 1988 (Cth) ('Privacy Act'), the Buyer has rights of access to, and correction of, their personal information. In accordance with the Privacy Act, any person may access personal information about them held by the Seller and advise if they think it is inaccurate, incomplete or out of date.

12.2 To arrange access to personal information, request a copy of the External Privacy Policy or enquire generally about privacy matters, write to the Privacy Officer in any of the ways set out in the External Privacy Policy.

12.3 In this section, 'personal information' means information or an opinion about an identified individual, or an individual who is reasonably identifiable, whether the information or opinion is true or not, and whether recorded in a material form or not, about the Buyer, such as the Buyer's name and contact details, and including information about the Buyer's financial circumstances, credit worthiness, credit history, credit standing, credit capacity and the Buyer's conduct of account with the Seller.

12.4 The Buyer agrees that the Seller may obtain personal information about the Buyer from the Buyer or any other person (including any Person related to the Seller and including any company within the wider group of companies of which the Seller forms part (the 'Wider Seller Group') and any credit or debt collection agencies) in the course of the Seller's business, including credit assessment, debt collecting and direct marketing activities, and the Buyer consents to any person providing the Seller with such information.

12.5 The Seller collects and uses personal information as described in the External Privacy Policy, including for purposes such as:

- (a) providing products or services to the Buyer;
- (b) assessing the Buyer's credit application with the Seller in accordance with the Carter Holt Harvey Application for Commercial Credit and determining the provision of credit;
- (c) administering the Seller's relationship with the Buyer including responding to queries;
- (d) to identify and inform the Buyer about other products or services that may be of interest to the Buyer; and
- (e) the Wider Seller Group's internal administrative purposes.

12.6 The Seller may disclose the Buyer's personal information to third parties as described in the Carter Holt Harvey External Privacy Policy, including to its related entities including the Wider Seller Group or any other third parties that provide products and services to the Seller to achieve any purpose described in the External Privacy Policy, including to the Company's related entities located in New Zealand, credit reporting agencies (in accordance with the Carter Holt Harvey Application for Commercial Credit) and IT service providers. Where such parties are located overseas, the Buyer may have rights to enforce such parties' compliance with applicable data protection laws, but the Buyer may not have recourse against those parties under the Australian Privacy Act in relation to how those parties treat the Buyer's personal information.

12.7 The Buyer agrees to the disclosure and use of such personal information in accordance with the External Privacy Policy and these Terms, and consents to its disclosure overseas and its use by third parties, including the Seller's related entities and service providers, in New Zealand and such other countries in which those parties or their computer systems may be located from time to time, without the Seller being responsible for such use (or for any breach).

12.8 If the Buyer does not consent to the use or disclosure of such personal information by the Seller in accordance with these Terms, the Seller may not be able to provide the

Buyer with the goods, services or entitlements (including the provision of commercial credit) set out in these Terms.

- 12.9 The Seller uses Personal Information it collects in accordance with the External Privacy Policy which is available on request. It contains information about how the Buyer may access and seek correction of the Buyer's personal information, how the Buyer may complain about a breach of privacy, and how the Seller will deal with that complaint. To contact the Seller in relation to privacy please do so in accordance with clause 12.2.
- 12.10 The Buyer must ensure that any relevant Buyer personnel who deal with the Seller in relation to the Seller's provision of goods and services to the Buyer or whose personal information is made available to the Seller are aware of and have agreed to the terms of this clause 12 and the disclosure and use of their personal information in accordance with these Terms.
- 12.11 The Buyer agrees that the Seller may use any personal information it has about the Buyer relating to the Buyer's creditworthiness in accordance with the Carter Holt Harvey Application for Commercial Credit and, subject to the Carter Holt Harvey Application for Commercial Credit and any confidentiality agreement between the Buyer and the Seller, disclose that information to any other person, including any credit or debt collection agency; and other members of the Wider Seller Group for credit assessment and or, debt collection purposes. The Buyer agrees that any other information collected by the Seller about the Buyer is accessed or collected for the use of any member of the Wider Seller Group in the course of its business, including direct marketing activities, in accordance with the External Privacy Policy.
- 12.12 Notwithstanding any of these Terms, where the Buyer is a natural person, the Buyer specifically agrees for the purposes of privacy legislation including the Privacy Act to the Seller:
- being given a credit report that may contain personal information of or relating to the Buyer for the purpose of assessing an application for credit or for the purpose of the collection of payments that are overdue under these Terms, but only in accordance with the Carter Holt Harvey Application for Commercial Credit;
  - disclosing to or obtaining from another credit provider a credit report or personal information derived from a credit report on the Buyer for the purpose of assessing or exchanging information relating to the Buyer's creditworthiness, credit history or credit capacity, but only in accordance with the Carter Holt Harvey Application for Commercial Credit; and
  - collecting and using personal information as may be required for the purposes of the PPS Act, including but not limited to, use in financing statements registered by the Seller,

and the Seller advises the Buyer and the Buyer acknowledges that the Seller may disclose the information it acquires about the Buyer to a credit agency (but only in accordance with the Carter Holt Harvey Application for Commercial Credit), other members of the Wider Seller Group or as may be required by law (including the PPS Act).

### 13. MEDIATION

- 13.1 Either party may require any dispute arising which has not been resolved within 14 days to be referred to mediation. The mediator will be appointed by both parties or, where the parties cannot agree within 14 days, appointed by the Australian Commercial Disputes Centre. The mediator will conduct the mediation in accordance with the guidelines agreed between the parties or if the parties cannot agree within 14 days following appointment of the mediator, the guidelines set by the mediator. The costs and expenses of the mediator will be shared by the parties equally.

### 14. OTHER AGREEMENTS

- 14.1 If there is any inconsistency between these Terms and any Order submitted by the Buyer (whether in writing, verbally or otherwise) or any other arrangements between the parties, these Terms prevail unless otherwise agreed in writing by the parties.

### 15. WAIVER

- 15.1 If the Seller exercises or fails to exercise or delays exercising any right or remedy available to it, this will not prejudice the Seller's rights in exercising that or any other right or remedy unless expressly specified in writing and signed by the Seller.

### 16. SEVERABILITY

- 16.1 Each provision in these Terms shall be valid and enforceable to the fullest extent permitted by law and any invalid, illegal or unenforceable provision in these Terms shall be replaced by a provision that is valid and enforceable and that comes closest to expressing the intention of the invalid, illegal or unenforceable term or provision.

### 17. NO ASSIGNMENT

- 17.1 The Buyer must not transfer or assign its rights under these Terms to anyone else without the Seller's prior consent in writing. The Seller may assign or transfer any of its rights or obligations under these Terms without the Buyer's consent. Each assignee or transferee is to have the same rights against the Buyer under these Terms as if named as the Seller.

- 17.2 In the event of the sale of the Seller's business or a substantial portion thereof the Seller shall be entitled to novate these Terms to the purchaser upon giving notice to the Buyer, and the Buyer agrees to such novation.

### 18. GOVERNING LAW

- 18.1 These Terms will be governed by the laws of Victoria and the parties submit to the non-exclusive jurisdiction of the Courts of Victoria.

### 19. GST

- 19.1 In this clause 19.1:

- 'GST Act' means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- 'Consideration', 'Input Tax Credit', 'Recipient', 'Supply', 'Tax Invoice' and 'Taxable Supply' have the meanings given to those expressions in GST Act; and
- 'Supplier' means any party treated by the GST Act as making a Supply on these terms.

- 19.2 Unless otherwise expressly stated, all prices or other sums payable or Consideration to be provided under or in accordance with these Terms are exclusive of GST.

- 19.3 If GST is imposed on any Supply made under or in accordance with these Terms, the Recipient of the Taxable Supply must pay to the Supplier an additional amount equal to the GST payable on or for the Taxable Supply, subject to the Recipient receiving a valid Tax Invoice in respect of the Supply. Payment of the additional amount must be made at the same time and in the same way as payment for the Taxable Supply is required to be made in accordance with these Terms.

### 20. CLAUSES SURVIVING TERMINATION

- 20.1 Despite any other provision of these Terms:

- all Orders will be automatically cancelled, unless otherwise directed in writing by the Seller; and
- the Buyer must pay to the Seller all amounts owing by the Buyer to the Seller, in accordance with clause 10.1,

and otherwise this clause 20 together with clauses 3, 5, 7, 8, 9, 12, 13 and 18 survive termination of these Terms.

### 21. THE FOLLOWING CLAUSE 21 APPLIES TO THE PURCHASE OF DOWNGRADE GOODS

- 21.1 The Buyer agrees to purchase Downgrade Goods on an '*as is*' basis, meaning that the Seller makes no representations as to the condition or capability of the Downgrade Goods. The Buyer accepts all risks in this regard and confirms to the Seller that the Buyer's decision to purchase the Downgrade Goods is based solely on the Buyer's own investigations and evaluations. Without limiting this clause, the Buyer acknowledges and agrees that Downgrade Goods may not comply with Australian Standards.

- 21.2 If the Buyer is not the end user of the Downgrade Goods, the Buyer warrants that it will make the end user aware that the Seller has purchased the Goods as Downgrade on the terms of this clause 21.

- 21.3 To the extent permitted by law, the Seller disclaims all liability, direct or indirect (and whether or not arising out of the negligence, default or lack of care of the Seller) for any loss or damage (whether foreseeable or not) suffered by the Buyer or any other person in connection with the Downgrade Goods.

- 21.4 The Buyer agrees to indemnify the Seller for any liability incurred by the Seller in respect of any action, suit, claim, demand, cost or expense (including without limitation, damage to property, plant or equipment) arising as a direct or indirect result of any act or omission by the Buyer or the Buyer's employees, agents or sub-contractors in anyway relating to the Downgrade Goods.

### 22. WORDS USED IN THESE TERMS

- 22.1 'Amount Owing' means, at any time, all amounts owing by the Buyer to the Seller under these Terms, or if the context expressly provides in respect of specific Goods.

- 22.2 'Buyer' means the person purchasing the Goods from the Seller pursuant to these Terms, including that person's successors and assigns.

- 22.3 'Claim':

- means any demand or assertion of right to compensation or other legal or equitable remedy (whether in contract, tort, including negligence, statute or otherwise) arising out of or relating to the supply of Goods; and
- includes any proceeding in any tribunal, court or other forum arising out of or relating to the supply of Goods.

- 22.4 'Customer' means a person who is a customer of Buyer who purchases Goods under a sale permitted by clause 5.4;

- 22.5 'Downgrade' means Goods that are not in accordance with the marked grade and is sold as green case, industrial, merch-grade, rskd (rough sawn kiln dried), distressed, non-structural grade, pallet or reject grade.

- 22.6 'Delivery' means delivery of the Goods as determined in accordance with clause 4 of these Terms.

- 22.7 'Event of Default' means an event where:

- the Buyer fails to comply with the terms of this contract or any other contract with the Seller (including, without limitation, where the Buyer fails to pay for Goods on or before the due date); or
- the Buyer commits an act of bankruptcy; or
- the Buyer enters into any composition or arrangement with its creditors; or
- if the Buyer is a company:
  - the Buyer does anything which would make it liable to be put into liquidation; or
  - a resolution is passed or an application is made for the liquidation of the Buyer; or
  - a receiver or statutory or official manager is appointed over all or any of the Buyer's assets or the Buyer, its board or shareholders is considering appointing an administrator or liquidator; or
  - the Buyer, its board, or shareholders is considering appointing an administrator or liquidator; or
  - an administrator is appointed to the Buyer;
  - anything analogous to or having similar effect to any of the other events above arises.

- 22.8 'Force Majeure Event' means any event or circumstance which is beyond the reasonable control of the affected party and which results in or causes the failure of that party to perform any of its obligations under these Terms.

- 22.9 'Goods' means all goods and associated services supplied to the Buyer by the Seller under these Terms now and at any time in the future including (but not limited to) Timber, Roundwood, Plywood, Laminated Veneer Lumber, Panels, MDF, Particle Board, Mouldings and other building and building related products together with all

- accessories and replacements that are at any time supplied or attached to the Goods and all of the Buyer's present and future rights, title and interest (legal and equitable) in, all documents of title relating to, and all proceeds arising from the Goods.
- 22.10 'Order' means an order placed by the Buyer with the Seller for the purchase of Goods.
- 22.11 'Ownership' means the property in and legal and beneficial ownership of the Goods.
- 22.12 'Person' includes a corporation, association, firm, company, partnership or individual.
- 22.13 'PPS Act' means the Personal Property Securities Act 2009 (Cth), any regulations made pursuant to that Act and any variation or replacement of that Act or those regulations from time to time.
- 22.14 'Price' means the purchase price of the Goods as most recently specified by the Seller to the Buyer in writing or otherwise (or, if no such price has been specified, the Seller's then-current market price for the Goods) and any taxes or duties payable under clause 2.3 and any other costs payable by the Buyer under these terms (including costs relating to transportation, storage and insurance).
- 22.15 'Proceeds' has the meaning given to that term in the PPS Act.
- 22.16 'Registration Commencement Time' has the meaning given to it in the PPS Act.
- 22.17 'Security Interest' has the meaning given to that term in the PPS Act.
- 22.18 'Seller' means the member of the Carter Holt Harvey Australia Group of Companies, as identified on this Application for Commercial Credit, from which the Goods are purchased.
- 22.19 'Terms' means these terms of sale and, as the context requires, each contract entered into between the Buyer and the Seller for the supply of Goods and each invoice issued by the Seller to the Buyer for Goods into which these terms of sale are incorporated.
- 22.20 References to legislation include as amended, re-enacted or substituted and any statutory instruments, regulations and orders issued under such legislation.
- 22.21 Wherever 'include' or any form of that word is used, it must be construed as if it were followed by '(without being limited to)'.

For and behalf of: ..... Date : .....  
(Company Name)

Authorised Signature/s:.....

Print Name/s: .....