



## TERMS AND CONDITIONS OF SALE

### 1 Definitions

- 1.1 "Company": means Penny Bricks & Timber Limited, trading as Oak By Design.
- 1.2 "Conditions": means the terms and conditions set out in this document and (unless the context requires otherwise) includes any special terms agreed in writing between the Customer and the Company;
- 1.3 "Contract": means the contract between the Company and the Customer for the sale and purchase of the Goods in accordance with these Conditions;
- 1.4 "Customer": means the person, firm or company who purchases the goods from the Company;
- 1.5 "Goods": means the goods, materials and accessories supplied by the Company to the Customer;
- 1.6 the word "writing" and any similar expressions shall include facsimile transmission and comparable means of transmission, including email or letter.

### 2 Existence of contract

2.1 Any written quotation or estimate issued by the Company shall constitute an invitation to treat. No binding contract shall be created by the placing of an order by the Customer unless and until the Company has despatched the goods to the Customer. These Conditions shall apply to all contracts to the exclusion of all other terms and conditions including any terms or conditions which the Customer may purport to apply under any purchase order or similar document. All orders for Goods shall be deemed to be an offer by the Customer to purchase pursuant to these conditions. Acceptance of delivery of the Goods shall be deemed conclusive evidence of the Customer's acceptance of these Conditions.

2.2 No particulars contained in any advertising matter, catalogues or other publication supplied by the Company (including references to weights, dimensions or performances therein), nor any verbal representation by any employee or agent of the Company shall form part of the Contract, nor shall they be treated as constituting a representation on the part of the Company, but nothing in these Conditions affects the liability of either party for fraudulent misrepresentation.

### 3 Amendments and cancellation

3.1 No amendments to these conditions shall be binding on the Company unless accepted in writing by a director of the Company.

3.2 The Contract may not be cancelled by the Customer except with the written consent of the Company.

### 4 Minimum order value

Where the Customer orders less than the minimum order value as notified from time to time by the Company, the Company will, at its discretion, apply the minimum order surcharge current from time to time.

### 5 Prices

All prices are exclusive of VAT or any other sales tax and subject to variation by the Company without notice and goods will be invoiced at prices ruling at the date of despatch from the Company's premises.

### 6 Settlement terms

Unless otherwise agreed in writing by a director of the Company the price of the Goods shall be paid by cleared funds before the goods are delivery or collected. Should the Customer fail to pay in full for any Goods on or before the due date the Company reserves the right to cancel any discounts previously offered to the Customer.

### 7 Terms of despatch and delivery

7.1 Goods will be supplied and delivery of the Goods shall take place at the Customer's premises or delivery site as indicated in the Customer's order, or as agreed by the parties.

7.2 Times or dates quoted by the Company for delivery of Goods are intended as estimates only and time is not of the essence of the Contract.

7.3 The Company shall not be liable in any way for any direct or indirect loss, damage or expenses (including but not limited to loss of profit & liability to third parties) suffered or incurred by the Customer as a consequence of any delay.



7.4 The Company reserves the right to deliver the Goods by instalments in any sequence and to tender a separate invoice in respect of each instalment. Where the goods are delivered by instalments, the Contract shall become severable and each instalment shall be deemed to be subject to a separate contract. No default or failure by the Company in respect of any one or more instalments shall entitle the Customer to treat the Contract as repudiated or to damages.

7.5 The Company may decline to deliver if the Company believes it would be unsafe, unlawful or unreasonably difficult to do so or the premises (or the access to them) are unsuitable for the Company's or third party delivery vehicle(s).

## 8 Specifications

8.1 Where the Company is instructed to prepare Goods in accordance with Customer's specifications and instructions, it is the Customer's responsibility to ensure that any specifications and/or instructions are accurate. The Customer must also ensure that Goods prepared in accordance with those specifications or instructions will be fit for the purpose of the intended use. The Company accepts no liability for Goods which have been prepared in accordance with Customer instructions and specification but which prove to be unfit for the purpose of the intended use through no fault of the Company.

The Company reserves the right to make any changes to specifications of its Goods which are necessary to ensure that the Goods conform to any applicable safety or other statutory requirements. Where it is necessary to make any such changes to specifications of Goods the Company will, where possible, attempt to notify the Customer in advance of any such changes.

8.2 In order to supply the full quantity ordered on all specially manufactured, non-stock products, the Company may have to supply and charge, for no more than 10% overage.

## 9 Force majeure

The Company shall not be liable for failure to deliver the Goods for any reason whatsoever outside the reasonable control of the Company including, without limitation to the generality of the foregoing, industrial action, war, storm, fire, explosion, flood, governmental action or regulation, act of god, riots, strikes, walkouts or non-availability of stocks or materials. Any such failure shall not affect the obligation of the Customer to pay for goods already delivered.

## 10 Property, Risk and Retention of Title

10.1 Risk of loss or damage to the Goods shall pass to the Customer on delivery.

10.2 Property and ownership in the Goods shall, notwithstanding delivery of goods to the Customer, not pass to the Company until:

- (a) the Customer shall have paid the Company in full therefor pursuant to these Conditions; and
- (b) no other sums are outstanding from the Customer to the Company on any account whatever whether or not such sums have become due for payment.

10.3 The Customer shall, while property in the Goods remains with the Company pursuant to this clause 10, hold the Goods on a fiduciary basis only and as baillee only for the Company. The Customer shall store the Goods without charge to the Company separately from its own goods or those of any other person, in good condition and marked in such a way that they are clearly identifiable as the property of the Company, and shall insure the goods to their full value against "All Risks" but the Customer may resell the Goods in the ordinary course of its business.

10.4 In the event that the Company is entitled to exercise any of its rights under clause 14, the Customer shall immediately place any of the Goods the property and the ownership in which remains vested in the Company in its possession or under its control at the disposal of the Company and the Company shall (without prejudice to any of its other rights and remedies) have the right to repossess, resell and use such Goods and may by itself, its servants or agents enter upon any land or building, vehicle or vessel or other place upon or in which such Goods are reasonably thought to be situated for the purpose of removing any such Goods.

10.5 Title to the Goods shall remain vested in the Seller and shall not pass to the Buyer until the purchase price for the Goods has been paid in full and received by the Seller. Until title to the Goods passes:

The Seller shall have authority to retake, sell or otherwise deal with and/or dispose of all or any part of the Goods; The Seller and its agents and employees shall be entitled at any time and without the need to give notice enter upon any property upon which the Goods or any part are stored, or upon which the Seller reasonably believes them to be kept;

The Buyer shall store or mark the Goods in a manner reasonably satisfactory to the Seller indicating that title to the Goods remains vested in the Seller; and the Buyer shall insure the Goods to their full replacement value, and arrange for the Seller to be noted on the policy of insurance as the loss payee.



Irrespective of whether title to the Goods remains vested in the Seller, risk in the Goods shall pass to the Buyer upon delivery or collection.

#### 11 Claims for defects, damage, loss or non-delivery

11.1 The Customer shall inspect the Goods on delivery and shall within 24 hours of the date of delivery notify the Company of any alleged defect, shortage in quantity, damage or failure to comply with description or samples. In relation to any defect that is not apparent on reasonable inspection, the Customer shall notify the Company of any defect within a reasonable time after discovery of the defect. The Customer shall give the Company an opportunity to inspect such goods at the Customer's premises or delivery site within a reasonable time following such notice and before any use is made of them.

11.2 The Customer shall notify the Company of any non-delivery of a whole consignment within 24 Hours of the date of receipt of the Company's sales invoice.

11.3 If the Customer shall fail to comply with the foregoing, the Goods shall be conclusively presumed to be in accordance with the Contract and free from any defect or damage which would be apparent on a reasonable examination of the Goods and the Customer shall be deemed to have accepted the Goods. If the Customer establishes to the Company's reasonable satisfaction that the Goods are not in accordance with the Contract or are defective, the Customer's sole remedy in respect thereof shall be limited, as the Company may elect, to making good any shortage to repairing or replacing such goods free of charge or refunding all, or part of the Contract price against the return of the Goods.

11.4 The Company's liability to the Customer whether for any breach of the Contract or otherwise shall not in any event exceed the Contract price and the Company shall be under no liability for any special consequential or indirect loss or damage suffered (including but not limited to loss of profit) or liability to third parties incurred, by the Customer.

11.5 The Company shall be under no liability in respect of any defect in the Goods:

- (a) if the price for the goods has not been paid in full;
- (b) in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow installation instructions, misuse or alteration or repair of the Goods by the Customer without the approval of the Company in writing.

11.6 Subject to the provisions of this clause 11 all warranties and conditions whether implied by statute or otherwise are hereby excluded PROVIDED THAT nothing herein shall restrict or exclude liability for death or personal injury caused by the negligence of the Company or affect the statutory right of the Customer dealing as a consumer (as defined in section 12 of the Unfair Contract Terms Act 1977).

11.7 The Company cannot cover against natural timber defects this includes, colour variations, knot content in timber, any level of deformation or shrinkage deemed to be normal by the Company.

#### 12 Over orders or a change of requirement

The Company will accept the return of goods if not required by the Customer due to over ordering or a change of requirement. In such circumstances the Customer will be credited for the part of the order to be returned, less the Company's reasonable restocking charges. Such claims must be received within 5 days of the delivery date, and the Goods must be in a saleable condition and in full packs or bundles. This clause 12 excludes all items manufactured to the Customer's individual specification. Any credits given by the Company in such circumstances will be issued to the Customer on receipt of the goods to be returned being received by the Company.

#### 13 Compliance with statute

The Customer shall be responsible for ensuring that its use of the Goods complies with all and any relevant statutes, statutory instrument and regulations having the force of law and any British Standards and shall fully indemnify the Company and keep it indemnified against all costs, claims, demands, expenses and liabilities suffered or incurred by the Company as a result of any non-compliance by the Customer.

#### 14 Default by the Customer

14.1 If the Customer fails to make payment for the Goods in accordance with clause 6, or otherwise commits a breach of the Contract, or if the Customer offers to make an arrangement with its creditors or commits an act of bankruptcy, or if the Customer becomes subject to any of the events listed in clause 14.2 below, all sums outstanding in respect of Goods shall become payable immediately. In addition, the Company may, in its absolute direction and without prejudice to any other rights which it may have:

- (a) suspend all future deliveries of Goods to the Customer and/or terminate the Contract without liability on its part;

and/or

(b) exercise any of its rights pursuant to clause 10.

and the price for any Goods delivered but not paid for shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

14.2 For the purposes of clause 14.1 the relevant events are:

(a) the Customer is unable to pay its debts as they fall due or has an inability to pay its debts;

(b) the Customer offers to make any arrangements with its creditors (other than where the Customer is a company where these events take place for the sole purpose for a scheme for a solvent amalgamation or reconstruction without insolvency);

(c) (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, (other than for the sole purpose of a scheme for a solvent amalgamation or reconstruction without insolvency) ;

(d) (being a company) an application is made to court, or an order made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;

(e) (being a company) the holder of a qualifying floating charge over the Customer's assets has become entitled to appoint or had appointed an administrative receiver;

(f) a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;

(g) (being an individual) the Customer is the subject of a bankruptcy petition or order;

(h) a credit or encumbrancer of the Customer attaches or takes possession or, or a distress, execution, sequestration or other such process is levied or enforced or pursued against the whole or any part of its assets and such attachment or process is not discharged within 14 days;

(i) the Customer commits any act of bankruptcy;

## 15 Intellectual property rights

15.1 No right or licence is granted under the Contract to the Customer under any patent, trade mark, copyright, registered design or other intellectual property rights except the right to resell the Goods.

15.2 If the Goods are manufactured or supplied by the Company in accordance with designs, specifications or other requirements expressly by the Customer the Customer warrants to the Company that the manufacture or supply of such Goods by the Company does not infringe the rights of any third party, howsoever arising, and agrees to indemnify the Company in full against any liability which may arise in respect of such infringement.

## 16 Credit notes

All credit notes issued by the Company will expire after 12 months from the date of issue in this case the expired credit note will hold no value. This means the expired credit note cannot be used by the Customer against invoices that are due and/or towards the purchase of any item. The Company holds the right to waive this clause 16 in certain exceptional circumstances; the waiver needs to be agreed with a director of the Company in writing.

## 17 Set off and counterclaim

The Customer shall not be entitled to withhold any payment of any invoice by reason of any rights of set off or counterclaim which the Customer may have or allege to have or for any other reason whatsoever.

## 18 Notices

Any notice required to be served pursuant to these Conditions shall be in writing and served by first class post or facsimile or by hand to the Company Unit 2 Locksley Park, Blind Lane, Tockwith, York YO26 7QJ or such other address as the Company may from time to time notify to the Customer. Any notices to the Customer will be served at the address notified to Company or, in default of notification, to the address from which the Goods were ordered, or if the Customer is a company, at the option of the Company at the Customer's registered office. A properly addressed notice sent by prepaid first class post shall be deemed to have been served two days after the date of its despatch. Any notice given by facsimile shall be deemed to have been served 24 hours after despatch. In proving service by facsimile, it shall be sufficient to show that the facsimile was despatched to the correct facsimile number.

## 19 Severance

Any provision or term of these Conditions, which is or may be void or unenforceable shall to the extent of such invalidity or unenforceability be deemed severable and shall not affect any other provision hereof.



#### 20 Waiver

No waiver or forbearance by the Company, whether express or implied, in enforcing any of its rights hereunder shall prejudice its rights to do so in future.

#### 21 Assignment

The Customer may not assign, subcontract or in any way dispose of its rights or obligations under the Contract without the prior written consent of the Company.

#### 22 Law and jurisdiction

These Conditions and the Contract shall be governed in all respects by the laws of England and any dispute hereunder shall be subject to the exclusive jurisdiction of the English courts.

#### 23 Third party rights

A person who is not a party to these Conditions shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefits of these Conditions.