

# Terms & Conditions of Trade

## 1. Definitions

"Agreement" means these Terms together with any Account Application Form, Order Form, quotation, request for Goods or Services or any written agreement between Us and the Customer.

"Account" means any trade credit account established in the name of the Customer by Us.

"Account Application Form" means any account application form signed by the Customer in respect of any Goods or Services provided by Us.

"Credit Agency" means Baycorp (NZ) Limited or any third party credit agency notified by Us to the Customer.

"Credit Limit" means the dollar amount of credit to be made available to the Customer by Us under the Account.

"Credit Term" means the term over which the Account will remain open.

"Customer" means the customer named in the Agreement and where the Customer comprises two or more persons, means those persons jointly and severally.

"Goods" means all goods supplied by Us to the Customer from time to time.

"GST" means goods and services tax pursuant to the Goods and Services Tax Act 1985 (as amended or replaced).

"Order Form" means any order form signed by the Customers in respect of Goods or Services provided by Us.

"Person" includes a body corporate and vice versa.

"PPSA" means the Personal Property Securities Act 1999.

"Price" shall mean the price payable for the Goods and/or Services as specified in clause 3 of these Terms.

"Services" shall mean all services supplied by Us to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).

"Terms" means these Terms and Conditions of Trade as replaced or amended from time to time as advised by Us.

"Us" "Our" or "We" means Fortis Forestry Limited.

## 2. Application of Terms

2.1 By requesting Us to supply Goods and/or Services to you, you acknowledge and agree (or are deemed to have acknowledged or agreed) that:

- (a) you have assented or agreed to these Terms which will form part of the Agreement notwithstanding anything that may be stated to the contrary in any document; and
- (b) each contract creates in Our favour a security interest in all of the Customer's present and after acquired property pursuant to clause 9 of these Terms.

## 3. Orders and Price

3.1 The Customer warrants that its employees and representatives who order Goods or Services from Us on behalf of the Customer are authorised to place such orders and to pledge the credit of the Customer to Us.

3.2 The Customer acknowledges that We will incur obligations and costs once the Customer places or confirms an order. Therefore, the Customer may not cancel or vary an order once it has been placed without Our written consent.

3.3 Where no quotation has been provided by Us for the Goods or Services, the Price will be calculated based on Our standard pricing for the Goods and Our standard hourly rates for the Services.

3.4 Where We provide a quote, unless otherwise agreed the quotation is valid for 30 days from the date of issue and may be withdrawn by Us prior to acceptance. We reserve the right to change the Price set out in the quotation in the event that:

- (a) the Customer requests a variation in the quantity of the Goods or the specifications of the Services; or
- (b) the cost of labour or materials increases.

3.5 Unless otherwise agreed in writing prices are given in New Zealand dollars and exclude GST and taxes.

3.6 We will use reasonable endeavours to source the Goods and supply the Services that are the subject of an accepted order and may cancel the order where Goods or Services are unable to be supplied. We shall not be liable to the Customer for any loss whatsoever from a cancelled order arising out of the unavailability of Goods or Services (as the case may be).

## 4. Our Account

4.1 The provisions of this clause 4 shall apply where the Customer has an Account.

4.2 The Customer must notify Us of any changes to its contact details or to any other information given to us on in respect of the Account.

4.3 Goods may be charged to the Account by the Customer in person or by telephone. We may require the person charging Goods to the Account to provide their name.

4.4 The Customer authorises Us to debit to the Account all such money as is now owing or remains unpaid or shall become owing or remain unpaid to Us (including any interest or fees incurred or payable under these Terms).

4.5 The Customer authorises Us to credit to the Account money advanced or paid to the Customer.

4.6 We reserve the right to refuse to debit or credit the Account at Our sole discretion.

4.7 We may at Our discretion impose a Credit Limit and Credit Term in respect of the Account by notifying the Customer in writing.

4.8 We may at Our sole discretion alter or cancel the Credit Limit at any time upon giving written notice to the Customer.

4.9 The balance of the Account, including all accrued interest, fees and charges may not exceed the Credit Limit at any time unless We agree in writing. Notwithstanding this, We may at Our discretion choose to honour a transaction in excess of the Credit Limit.

4.10 Any balance outstanding in excess of the Credit Limit shall be immediately due and payable. We may at Our discretion charge interest on balances in excess of the Credit Limit at a rate specified in clause 5.5(a).

4.11 We will send the Customer a statement or statements setting out the transactions of the Account over the period the statement covers and the outstanding balance at the end of the period, together with an invoice for that amount.

4.12 Either party may close the Account at any time by giving prior written notice to the other party. The closure shall be effective on the later of:

- (a) receipt of the notice by the other party; and
- (b) payment to Us of all outstanding amounts owing.

4.13 The outstanding balance of the Account will be payable by the Customer by the 20th of the month following the date on which notice to close the Account is given.

## **5. Payments**

- 5.1 The Customer will pay Us the price plus GST for Goods or Services.
- 5.2 The outstanding balance of the Account including any interest is due to be paid on the 20th of the month following the date of the relevant invoice.
- 5.3 Payment must be made to Us in accordance with the payment instructions set out in the invoice and will not be credited to the Account until received by Us in cleared funds.
- 5.4 In the event that payment is not received when due and without prejudice to any other remedies available to Us, We may charge default interest on monies overdue at the rate specified in clause 5.5(a) which will accrue on a daily basis and compound monthly from the due date for payment until all amounts due, including default interest, have been paid in full. All amounts received by Us will be applied first in payment of default interest.
- 5.5 We may charge the following:
  - (a) interest on overdue balances at the rate of 18% per annum; and
  - (b) all costs incurred by Us in recovering overdue monies and enforcing the Agreement (including court, solicitor and debt collection costs).

## **6. Default**

- 6.1 If the Customer breaches any of these Terms and fails to remedy that breach within 7 days of receiving notice to remedy by Us (and without prejudice to any other remedies available to Us), We may at Our discretion suspend or cancel the Account.
- 6.2 Upon suspension or cancellation, the outstanding balance of the Account will be immediately due and payable by the Customer. Any interest payable under these Terms will continue to accrue after the date of suspension or cancellation until payment of all outstanding amounts is made.

## **7. Title**

- 7.1 Ownership of the Goods remains with Us and does not pass to the Customer until We receives full payment of all amounts due and payable from the Customer and the Customer has satisfied all of its obligations to Us.
- 7.2 Until all amounts owing to Us have been paid, the following shall apply:
  - (a) the Customer will hold or deal with the Goods and any crops resulting from the Goods as Our fiduciary of and deal with it as Our agent and on Our behalf (but the Customer will not hold itself out to be Our agent to any third parties);
  - (b) the Customer shall insure the Goods at full replacement value, and if Goods are damaged or destroyed, hold the proceeds of such insurance in a separate fund and on trust for Us;
  - (c) the Customer will keep the Goods separate from other goods or otherwise ensure that the Goods and any crops resulting from the Goods are separately identified or identifiable; and
  - (d) the Customer must not grant any interest or charge over the Goods to any person.
- 7.3 The Customer will not assign or purport to assign to any other person the right to receive any such proceeds held or owing to the Customer by a third party in respect of the Goods.
- 7.4 The Customer grants Us (and its agents) an irrevocable licence to take any action We considers necessary at any time to protect the Goods or Our security interest (including, without limitation, taking possession of the Goods at any time without notice and entering onto the land and premises where any Goods are, regardless of whether or not an occupier is present, and repossessing the Goods) without incurring any liability to the Customer or (to the extent permitted by law) any other person. To the extent permitted by law, We will not be liable to the Customer or any third party for any loss or damage caused by Our actions under this clause and the Customer indemnifies Us, Our servants and agents, for any alleged liability resulting from the repossession, and the Customer will pay all costs incurred by Us in respect of the repossession.
- 7.5 The reservation of title and the ownership is effective whether or not the Goods have been altered from their supplied form or mixed with other goods. Where such Goods are mixed with other goods and are severable but not identifiable or incorporated with other goods into another product so that they are not severable (whether such mixture or incorporation or loss of identity is as a result of the Customer's defaults or otherwise) or in any situation where a similar dealing with the Goods has resulted in their removal being impossible or impracticable, We are a co-owner of the mixed goods or products in proportion to the contribution made by the Goods to such mixed goods or products.

## **8. Delivery and Risk**

- 8.1 Unless otherwise agreed, the Customer shall be responsible for the cost of and arranging transportation of the Goods.
- 8.2 Where We have agreed to deliver the Goods to the Customer, the delivery costs will be payable by the Customer at the prevailing rate on the date the Goods are ordered. We shall use reasonable endeavours to ensure that delivery of the Goods is made according to schedule, but shall not be responsible for delivery delays due to causes beyond Our control or where We have provided reasonable notice of the delay. The Customer agrees that any scheduled or proposed delivery date is an estimate only and no warranty is given by Us that the Goods or Services will be provided on that date.
- 8.3 Irrespective that the title to Goods may not have passed, risk in respect of the Goods shall pass to the Customer when the Goods are delivered to the Customer or its carrier, or at the time the Customer pays for the Goods, whichever is the earlier.
- 8.4 It is the Customer's responsibility to insure the Goods while in transit, even if We have arranged transportation of the Goods.
- 8.5 The Customer must inspect the Goods on delivery. Any Goods not rejected within 3 days of delivery are deemed to be accepted by the Customer.

## **9. PPSA**

- 9.1 Without limiting anything else in these Terms, in consideration for Us agreeing to supply the Goods and/or Services and/or providing or continuing to provide the Account, the Customer grants Us a security interest in all of the Customer's present and after acquired property on the terms of the then current "Auckland District Law Society" form of General Security Agreement (and related terms/memorandum) so as to secure all monies owing by the Customer to Us. The Customer agrees to do all things necessary to enable Us to register a financing statement on the Personal Property Securities Register and to ensure that the security interest is a perfected security interest over all of the Customer's present and after acquired property.
- 9.2 The Customer acknowledges that:
  - (a) these Terms constitute a "security agreement" for the purposes of the PPSA;
  - (b) this clause 9 will apply notwithstanding anything, express or implied, to the contrary contained in any Order Form or any other correspondence, document or discussion between Us and the Customer; and
  - (c) the security interest granted under clause 9.1 will continue in full force and effect until We give the Customer a release in writing (on terms and conditions that We may require at Our discretion).
- 9.3 The Customer undertakes to give Us not less than 14 days prior written notice of any proposed change in its name and/or any other change in its details.
- 9.4 The Customer waives its right to receive a copy of any verification statement in respect of any financing statement or financing change statement relating to the security interest.
- 9.5 The Customer agrees that nothing in sections 114(1)(a), 120(1), 122, 133 or 134 of the PPSA will apply. The Customer agrees to waive its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA to the extent that these rights may be waived under section 107(2) of the PPSA.

## **10. Health and Safety**

- 10.1 Where the Customer grants access to Us over its property for the purpose of Us providing the Goods or Services, the Customer shall ensure compliance with all legislation and regulations in relation to the property, including ensuring that the property is safe for Us or Our agents to provide the Goods or Services.
- 10.2 If We have any concerns regarding the safety of Our employees and contractors in relation to the access and use of the Customer's property, We may suspend all work until such time as Our safety concerns have been resolved. In that case the Customer shall be responsible for payment of the Goods or Services provided by Us to that point and We shall not be liable to the Customer for any loss or claim arising from the suspension of work under this clause 10.2.
- 10.3 We have not and will not assume any obligations as the Customer's agent or otherwise which may be imposed upon the Customer from time to time pursuant to the Health and Safety at Work Act 2015 arising out of the provision of Goods or Services by Us.

## **11. Limitation of Our Liability**

- 11.1 Unless otherwise agreed in writing, to the extent permitted by law, We **exclude** all liability to the Customer and any third party, whether in tort (including negligence), contract, equity or otherwise, for any loss or liability of any kind, whether direct, indirect, special or consequential.
- 11.2 Without limiting any other provision of these Terms, in the event We are liable in any way whatsoever, the **maximum** aggregate amount of Our liability to the Customer (or any third party) arising out of any claim for loss of damages is limited to 25 percent of the purchase price of the Goods or Services to which the claim relates. In the event of any claim, both parties must, in good faith, make all reasonable efforts to minimise the amount of any loss.
- 11.3 Without limiting any other provision of these Terms, any claim by the Customer against Us under or in connection with this Agreement or the Goods and Services supplied by Us must be made within 7 days of the earlier of the date that the Customer became aware or ought to have become aware of the circumstances giving rise to the claim, time being of the essence.

## **12. Guarantee**

- 12.1 We may require the Customer to provide another Person to act as guarantor in respect of the Customer's obligations to Us.
- 12.2 Where there is a guarantor specified under this Agreement, the guarantor guarantees the performance of the Customer's obligations under this Agreement and it is acknowledged and agreed that as between the Customer and the guarantor, the guarantor may for all purposes be treated as being primarily liable and We shall be under no obligation to take proceedings against the Customer before taking any proceedings against the guarantor.

## **13. Warranties, the Consumer Guarantees Act and Fair Trading Act**

- 13.1 Where any Goods and/or Services are supplied by Us and acquired by the Customer for business purposes, We and the Customer and each agree that those Goods and/or Services are supplied and acquired in trade and therefore the Consumer Guarantees Act 1993 does not apply.
- 13.2 The Customer acknowledges that it has not relied on any representations made by Us in entering into the Agreement and that this clause is fair and reasonable.
- 13.3 Any warranties or guarantees expressed or implied by law or statute are excluded to the fullest extent permitted by such law or statute.

## **14. Information**

- 14.1 The Customer (and any guarantor) authorise Us to collect, retain and use information about it for the purpose of carrying out credit checks, deciding whether to continue to make any Goods or Services available to the Customer, debt collection or marketing.
- 14.2 The Customer (and any guarantor) authorises Us to obtain credit reports and other information about the Customer from any third party (including the Credit Agency) for this purpose.
- 14.3 The Customer (and any guarantor) also authorises Us to provide information about it (including information relating to any default in its payment obligations) to any third party (including the Credit Agency) for the purpose of that party carrying out credit checks, obtaining credit reports or debt collection. To the extent permitted by law those third parties may hold that information in their systems and use it now and in the future. The Credit Agency may also share the Customer's (and any guarantor's) information to other customers using its services.
- 14.4 The Customer (and any guarantor) may ask to see any personal information We hold about it and ask for any details that are wrong to be corrected.

## **15. Force Majeure**

- 15.1 We are not liable to the Customer for any delay in delivery or default in performance of any of Our obligations directly or indirectly caused by an event beyond Our reasonable control ("force majeure") that affects the provision of the Goods or Services. If a force majeure event occurs, We may, at Our discretion, either cancel, suspend or delay delivery of the Goods and/or Services (in whole or part). The Customer will have no claims against Us as a consequence of any such cancellation, suspension or postponement.

## **16. General**

- 16.1 We may assign Our rights and obligations under the Agreement without the Customer's consent. The Customer may not assign any of its rights and obligations under the Agreement without Our agreement in writing.
- 16.2 A reference to any legislation in these Terms includes a reference to any amended or substitute legislation and any regulations enacted under that legislation.
- 16.3 This Agreement is subject to, governed by and interpreted in accordance with New Zealand law and the parties submit to the exclusive jurisdiction of the courts of New Zealand in respect of any dispute in relation to this Agreement.
- 16.4 Each clause of these Terms is separately binding. If any clause is void, unenforceable or otherwise ineffective by operation of New Zealand law the remaining clauses will continue to be valid and enforceable.
- 16.5 This Agreement may be entered into in counterparts (including electronic copies) which when taken together will constitute one agreement.

## **17. Dispute Resolution**

- 17.1 **Notice:** Any party wishing to invoke these dispute resolution procedures must give written notice to the other party to the Agreement specifying the nature of the dispute.
- 17.2 **Negotiation:** If notice of a dispute is provided, the parties must in good faith promptly endeavour to resolve the dispute by negotiation.
- 17.3 **Mediation:** If the parties are unable to resolve the dispute within 7 days of the date of the notice in 17.1 then the dispute must be referred to mediation before a mediation to be agreed by the parties.
- 17.4 **Arbitration:** If no agreement has been reached in mediation within one month of the referral to mediation or within such other time as the parties may agree then either party may refer the dispute to arbitration. The arbitration will be by a single arbitrator and in accordance with the Arbitration Act 1996.

## **18. General Indemnity**

- 18.1 The Customer shall indemnify Us against all costs, claims and expenses suffered or incurred by Us which are directly or indirectly caused by the Customer's negligence, non-compliance with any and all applicable laws or breach of these Terms.