

## LMA TIMBER TERMS AND CONDITIONS

(Last Date Reviewed – 23th September 2024)

### 1. Definitions

1.1 In these Terms, unless the context requires otherwise: (a) **CGA** means the Consumer Guarantees Act 1993;

(b) **Customer** means the party(s) stated in the credit application form as the customer (together with its successors), or any other person whose order for the purchase of Goods is accepted by LMA. If the Customer comprises more than one person, each of those person's liability and agreement is joint and several. Where the Customer is a trust, the trustees liability shall not be limited to the assets of the trust;

(c) **Delivery** means delivery of the Goods in accordance with clause 5;

1. (d) **Event of Default** means an event where: (i) the Customer fails to comply with these Terms or any other contract with LMA, and does not remedy that failure within 10 days of receiving notice from LMA advising them of the failure;

2. (ii) the Customer commits an act of bankruptcy;

3. (iii) the Customer's ownership or effective control is transferred without LMA's consent;

4. (iv) if the Customer: (1) becomes insolvent or is unable to pay its debts as they fall due or is deemed or presumed to be so under any law;

5. (2) makes, or proposes to make, an assignment, arrangement, composition or compromise with, for the benefit of, or affecting its creditors in relation to any of its indebtedness;

6. (3) a receiver, liquidator, trustee, manager, administrator or statutory or official manager or similar officer is or has been appointed in respect of the Customer or over all or any of the Customer's assets;

1. (e) **Goods** means all timber, timber products and other goods supplied by LMA to the Customer;

2. (f) **GST** means any amounts levied or charged pursuant to the Goods and Services Tax Act 1985;

3. (g) **LMA** means LMA Timber Limited and its successors and assigns;

4. (h) **Person** means a corporation, association, firm, company, trust, partnership or individual;

5. (i) **PPSA** means the Personal Property Securities Act 1999;

6. (j) **Proceeds** has the meaning given to it in the PPSA;

7. (k) **Related Company** has the meaning given to it in the Companies Act 1993, and in relation to LMA will include other entity and/or person authorised to trade under the name LMA;

8.(l) **Receiver** means any person appointed as a receiver or receiver and manager under these Terms or any collateral security;

9.(m) **Secured Indebtedness** means all indebtedness, of whatever nature, which the Customer is now or at any subsequent time actually, prospectively or contingently liable to pay to LMA or any Related Company (including, for the purposes of the PPSA, future advances under or in connection with these Terms or any related or ancillary document);

(10.n) **Terms** means these Terms and Conditions, as amended from time to time by LMA in accordance with clause 14.

## **2. Acceptance and account terms**

2.1 Any instructions received by LMA from the Customer for the supply of Goods and/or the Customer's acceptance of Goods supplied by LMA shall constitute acceptance of these Terms.

2.2 Where more than one Customer has entered into the credit application, each Customer shall be jointly and severally liable for all payments due to LMA.

2.3 Once accepted these Terms are irrevocable and can only be rescinded by written authorisation of LMA.

2.4 Unless otherwise agreed in writing by LMA these Terms (which supersede any earlier sets of terms appearing in any catalogue, application for credit or elsewhere) shall override any terms or conditions stipulated, incorporated or referred to by the Customer whether in an order or in any negotiations.

2.5 These Terms and the order which they form part and any written terms of contract to which they are attached with the consent of LMA express the entire agreement between LMA and the Customer.

2.6 The Customer is liable for all purchases made in its account name. It is not LMA's responsibility to confirm authority for the purposes of providing Goods to the Customer or its agents. It is the sole responsibility of the Customer to ensure there is no unauthorised use of its account.

2.7 LMA may at any time withdraw, suspend or alter the Customer's credit account without notice at its sole discretion. Any such change to the Customer's credit account will not release either the Customer or the Guarantor(s) from any liability whatsoever.

## **3. Quotations/estimates and ordering**

3.1 A quotation or estimate will not constitute an offer to provide Goods to the Customer. No agreement or contract for the provision of Goods shall exist between LMA and the Customer until a Customer's order for the Goods has been accepted by LMA (such acceptance of the Customer's orders may be made and communicated by LMA in writing, orally or by an overt act of acceptance). Subject to clause 5.2 each accepted order shall constitute a separate contract.

3.2 All quotes, estimates and pricing, unless expressly stated otherwise, are deemed to be estimates only and are based on rates and charges in effect at the date of issue. Any increase in the costs of any items (including change in currency exchange rates) affecting the cost of provision, production and/or delivery of the Goods will be added to the price of the Goods payable by the Customer. At its discretion, LMA may remove any discount provided in an estimate or order where there is a reduction in quantities actually purchased.

3.3 Quotes and estimates are valid for 30 days from the date of issue and may be subject to such further terms as are expressly set out in the quote or estimate.

3.4 The Customer may cancel an order accepted by LMA if the Customer provides reasonable written notice (which may be by email to the email address of an authorised representative of LMA) of such cancellation prior to Delivery if the order has not already been milled or LMA Timber chose to take this on as stock.

3.5 If the Customer requires a variation to an order (including for any changes in quantities, measurements or as a result of any inaccuracies or misstatements in the information provided to LMA), the Customer acknowledges such variation may result in a delay in the Delivery of the Goods or an increase in the price specified in the order.

3.6 Goods are offered subject to availability as directed by LMA from time to time.

#### **4.Pricing and payment**

4.1 The price of the Goods will be the price current on the date of Delivery of the Goods, unless otherwise expressly agreed in writing by LMA.

4.2 Unless stated otherwise in writing, all prices are exclusive of any delivery costs and GST (and other taxes and duties (if any)) payable on the Goods and such taxes and delivery costs are payable by the Customer in addition to the price.

4.3 LMA may vary its pricing from time to time within 14 days from the date that the new pricing will be effective to the Customer. Any variation will be effective from the date specified by LMA and will apply to all orders accepted by LMA on or after that date.

4.4 All timber rates are based on quantities listed and allow for random lengths only. If selected lengths are required by the customer then a surcharge will apply depending on the lengths.

4.5 Unless you are a New Zealand based recognised merchant with LMA, payment for the Goods (together with any other amounts owing to LMA) must be made by electronic funds transfer in cleared funds in the following installments and prior to Delivery: (a) 30% deposit payable (unless agreed otherwise) within 7 days of the of the quotation being accepted by the Customer and before the Goods are ordered; and

4.5. (a) 70% payable (or 100% of the remaining outstanding costs) once the Goods have been milled and photos provided to show proof of milling.

4.6 Orders that have had the deposit paid to LMA by the Customer will be prioritised by LMA.

4.7 Where purchases of Goods are charged to a valid credit account, then payment is due in full in cleared funds by the 30th day of the month following the date of invoice (with

photos of milled product sent verifying the order has been completed) (including where Goods are delivered by instalments). LMA may, at its absolute discretion, and subject to additional payment terms, allow payment of a credit account by credit card via internet banking.

4.8 Any deposit required by LMA will be paid within 7 days by the Customer upon the making of an order and, unless otherwise specified on the deposit terms, is non-refundable.

4.9 Payment of all monies owing to LMA must be made free of any counterclaim, set-off, deduction or other claim whatsoever. LMA may deduct or withhold any amount (whether by way of set off, counterclaim or other equitable or lawful claim or otherwise) from any money owing by LMA or any Related Company to the Customer or any account whatsoever.

4.10 LMA may allocate any payment made by or on behalf of the Customer to the account and/or payment of any Goods as it sees fit and the Customer waives any right to receive notification of that allocation.

4.11 If full payment for the Goods is not made by the due date for payment, the Customer will pay, at LMA's discretion (and without prejudice to any other rights or remedies it may have), on demand, default interest on the amount outstanding at the rate of **2% per week** until the account is paid in full and all expenses and costs (including debt collection agency charges and legal costs on a solicitor and client basis) incurred by or on behalf of LMA recovering or attempting to recover the overdue amount.

## **5.Delivery**

5.1 Unless otherwise agreed in writing, delivery of the Goods will be deemed to be effected upon delivery of the Goods supplied by LMA to the Customer's designated address following an order by the Customer. Delivery of Goods must be signed for by the Customer.

5.2 Delivery of Goods will be made in one instalment where possible, unless otherwise specified by LMA and will be treated as one contract subject to these Terms.

5.3a Any times quoted for delivery are estimates only and other than liability that cannot be excluded by law, LMA will not be liable for any delay in Delivery, whether or not beyond its control. Late Delivery or failure in delivery of any installment of the Goods does not entitle the Customer to cancel any order or part order or to refuse to accept Delivery and;

5.3b LMA will not be liable for any liquidated damages or variations to a build / construction contract that the Customer has signed should the timber be delivered beyond the estimated time frames provided.

5.4 The Customer must provide adequate safe and unobstructed access for Delivery required by LMA to supply the Goods (including in compliance with the Health & Safety at Work Act 2015 and Hazardous Substances and New Organisms Act 1996, as applicable).

5.5 If the Customer fails or refuses to take delivery of the Goods at an agreed delivery time, any liability or cost incurred by LMA as a result of the refusal or delay in delivery shall form part of the Secured Indebtedness and shall be paid immediately by the Customer upon demand.

5.6 Unless LMA has agreed to deliver the Goods or store the Goods for a limited period (must be agreed and in writing if beyond 90 days), any Goods not uplifted by the Customer after 90 days of notification by LMA that the Goods are ready for collection may be sold or otherwise disposed of by LMA and all sale proceeds may be retained by LMA without any obligation to account to the Customer.

5.7 Where the Customer is uplifting the Goods, it must ensure that it and its employees and agents comply with all LMA's health and safety policies including that of entering LMA warehouse/ yard observing all signs and site requirements made known to it or as directed by LMA's staff from time to time.

5.8 The Goods will be deemed accepted upon Delivery unless the Customer notifies LMA in writing of any defects, errors or discrepancies within 7 days of Delivery, provided LMA has the potential to be able to inspect the Goods to confirm the defect, error or discrepancy.

### **5.A - Timber Returns Policy**

LMA Timber reserves the sole right to determine whether surplus timber from a client order can be returned to the warehouse. If the return is approved, the timber will be repurchased at 70% of its invoiced value, subject to a restocking fee of \$150 plus GST. Before processing, the returned timber will undergo assessment and counting by our warehouse team to verify the quantity received.

To qualify for a credit, all returned timber must be in resalable condition. This means it must be in the same state as when it was originally dispatched, free from contaminants, watermarks, UV damage, or any other damage typically associated with exposure to building sites.

The customer is responsible for all costs involved in returning the timber to our main warehouse, located at 66 Wickham Street, Bromley, Christchurch.

### **6.Warranties and limitation of liability**

6.1 Where the Customer is a "Consumer" under the CGA and is supplied with any Goods, or holds itself out as being supplied with Goods, for the purposes of a "Business" (as those terms are defined in the CGA) then to the fullest extent permissible by law LMA and the Customer agree the CGA and any other applicable consumer law is hereby excluded. Otherwise, where the Customer is a "Consumer" these Terms are to be read subject to the terms of the CGA.

6.2 Subject to any express warranties given by LMA to the Customer in writing, all conditions, warranties, guarantees, descriptions, representations, and statements as to fitness or suitability for any purpose, workmanship, tolerance to any conditions, merchantability or otherwise, express, or implied, are expressly excluded to the fullest extent permitted by law.

6.3 The supply of any Goods shall not, unless expressly agreed in writing, give the Customer the right to use, sell, disseminate, or duplicate any LMA trademark, copyright, design or any other intellectual property right.

6.4 LMA will not be liable in respect of Goods that have been tampered with or modified without LMA's approval or which have been stored in an improper manner.

6.5 Goods procured via special orders (including but not limited to piles, wharf/jetty sawn timbers or bespoke beams/posts) are not returnable under any circumstances.

6.6 For Goods that the Customer is entitled to reject (pursuant to clause 5.8) or LMA's liability for breach of a non-excludable condition, warranty or any other liability, is limited at LMA's discretion to: (a)repairing the Goods;

1. (a) replacing the Goods; or

2. (b) refunding the price of the Goods.

6.7 If LMA agrees to return the defective Goods, the Customer will be responsible for the cost of delivery of the Goods to LMA warehouse at 66 Wickham Street, Bromley, Christchurch.

6.8 To the fullest extent permitted by law, LMA has no liability (whether statutory, in contract or tort (including negligence), or howsoever) to the Customer or any of its agents or employees for any physical, or special damage, direct loss, indirect loss, economic loss of any kind (including loss of profits and expectation loss), any other loss or costs (including legal and solicitor/client costs) caused or contributed to by LMA or any of its agents or employees in respect of any Goods supplied. Without limiting the foregoing, LMA has no responsibility or liability for any dangerous good(s) or any contaminant, ozone depleting or hazardous substance in or emitted by any Goods supplied.

6.9 To the maximum extent permitted by law, LMA's total liability (whether in contract, statute, tort, including negligence, or otherwise arising) for any claim by the Customer, its agents, employees or contractors, or any other person, relating to or arising from the supply of Goods shall not exceed the price of the Goods to which the claim relates.

## **7. Insurance, Ownership and risk**

7.1 LMA will insure the Goods under Marine Insurance cover from departure in Brisbane to arrival in New Zealand. The insurance cover extends to include cover from port in New Zealand to the Customers designated address.

7.2 Ownership of the Goods (whether or not any of the Goods have been paid for by the Customer) shall not pass to the Customer until the Customer has paid all of the Secured Indebtedness and all the Customer's obligations to LMA or any Related Company in respect of the Goods or otherwise have been met unless a credit account has formally been agreed.

7.3 Until ownership of the Goods passes to the Customer, the Customer must:

- (a) hold the Goods on trust for LMA as bailee;
- (b) store the Goods safely and in such a way that clearly identifies the Goods as the sole property of LMA and shall not relinquish possession or remove the Goods from the Customer's premises except in the ordinary course of business;
- (c) insure the Goods against all usual risks for full replacement value. Any insurance claims in respect of damage to, or destruction of, the Goods are hereby assigned by the Customer to LMA;
- (d) disclose to LMA all information reasonably required regarding the Goods and any on-sale of the Goods by the Customer;
- (e) inform LMA immediately of any attempt by any third party to exercise remedies against the Goods or of any circumstances that may jeopardise LMA interest in the Goods;
- (f) not do or allow to be done anything that might contribute to a deterioration in the value of the Goods or otherwise adversely affect LMA's security in the Goods.

**7.4 The risk of any loss or damage to, or deterioration of, the Goods due to any cause whatsoever will pass to the Customer on Delivery to the Customer or into custody on the Customer's behalf. If any Goods are damaged or destroyed prior to risk passing to the Customer, LMA may promptly repair the Goods or cancel the order in respect of those Goods without penalty or compensation to the Customer.**

7.5 While legal or equitable ownership of the Goods remains with LMA, or if LMA considers the Goods are "at risk" (in accordance with the PPSA) LMA may (in addition to any other rights or remedies it may have) enter the Customer's premises (or any other premises which the Customer has access to and where the Goods are stored) at any time, without notice, to view the Goods and to sever and remove the Goods (as agent for the Customer), and LMA and may resell the Goods or retain the Goods for the benefit of LMA or any Related Company, without incurring any liability to any person. The Customer may not revoke the permission granted in this clause.

## **8. Security and Personal Properties Securities Act**

8.1 The Customer must not: (a) change its name, address or contact details without providing LMA 30 days prior written notice (which may be by email the address of an authorised LMA representative);

8.2 Give to LMA a written demand, or allow any other person to give LMA a written demand requiring a financing change statement to be registered; or

8.3 Lodge a change demand or allow any other person to lodge a change demand, in each case in relation to a financing statement registered by LMA under the PPSA.

## **9.0 Default**

2. If, at any time and for any reason, an Event of Default occurs, then (without prejudice to any other remedies LMA may have):

1. LMA may suspend or cancel (in whole or in part) any order created under these Terms or any other contract with the Customer by written notice to the Customer;
2. LMA may delay delivery of any Goods until the matter is resolved to LMA's satisfaction;
3. the Secured Indebtedness will become immediately due and payable;
4. LMA may suspend all payment credit arrangements offered to the Customer immediately, without notice, until the Event of Default is remedied to LMA's satisfaction and require future orders to be paid in full prior to Delivery.

## **3. Indemnity and Guarantee**

10. (a) The Customer hereby indemnifies LMA, its employees, officers, agents, any Receivers and any Attorney (Indemnified Parties) against all losses, liabilities, damages, claims, actions costs or expenses (including legal and solicitor/client costs and expenses) which the Indemnified Parties (or any one of them) may incur, of which have been made against any of the Indemnified Party as a result of or in relation to: (a) any act, omission, default by the Customer or any subsequent purchaser of the Goods;

10. (b) any breach of the Customer's obligations under these Terms;

10. (c) anything done or omitted to be done, or purported to be done or omitted by LMA and/or a Receiver and/or an Attorney in the exercise or purported exercise of its rights under these Terms or conferred by law (and whether or not arising by reason of mistake, oversight, negligence or error of judgment);

10. (d) any liability, loss or any act or omission of the Customer in respect of any circumstance which breaches or might breach any environmental law.

10. (e) The Customer acknowledges and agrees that, to the extent that any guarantee of any monies or any other obligations owing by the Customer to LMA or any Related Company is in existence prior to the date that these Terms are signed, the Customer will procure that such guarantee will remain in full force and effect.

## **11. Change of Control**

11.1 Where the Customer is a company or a partnership, the Customer must not without the prior written consent of LMA do anything which directly or indirectly changes the legal or beneficial ownership or in the shares in the Customer that would result in a change in the effective management or control of the Customer. Such written consent from LMA cannot be unreasonably withheld or delayed.

## **12. Privacy**

12.1 LMA may at any time collect, hold and use information relating to this credit application for any purpose connected with its business. Information disclosed by LMA to credit reporting agencies will be disclosed on the basis that it will be held and used by such agencies to provide credit reporting services. Under the Privacy Act 1993, individuals have rights to access to, and request correction of, their personal information by contacting LMA where the Customer holds an account.

12.2 The Customer, any director signing on behalf of the Customer and any Guarantor authorises LMA to collect, hold and use information from any person or entity for any of the above purposes, and for such person or entity to disclose information to LMA, and the Customer further authorises LMA to disclose information to any person or entity for any of the above purposes and such person or entity to collect, hold and use information from LMA.

## **13. Review of terms**

13.1 LMA may vary these Terms at any time by publishing the varied terms on the LMA's website or such other platforms at the sole discretion of LMA. Goods ordered after the date



of the publication of the varied terms will be subject to the variation and the placing of the order shall be deemed to be an acceptance of such varied Terms.

## **14 .General**

14.1 The Customer may not directly or indirectly assign to any person any of its benefits or burdens in respect of the contract created by these Terms. LMA may at any time assign or transfer to any other person all or any part of its rights, remedies and obligations under these Terms and any related or ancillary document without the Customer's consent.

14.2 Each supply of these Terms survives to the extent unfulfilled, and remains enforceable and does not merge, on performance of another supply.

14.3 No delay or failure to act is a waiver. No waiver is effective unless it is in writing. Any waiver of a breach so given, is not a waiver of any other breach.

14.4 LMA is not liable for any failure or delay in performing an obligation in these Terms if it is due to a cause reasonably beyond its control including but not limited to international shipping, domestic freight and timber suppliers both locally and internationally.

14.5 These Terms will not be discharged, nor will the obligations of the Customer be affected or restricted in any way whatsoever, by any time, indulgence, waiver or consent given to the Customer or another person.

14.6 Any notice or other communication to the Customer may be served by delivery at the Customer's physical account address, email address specified by the Customer, or any other address specified by the Customer from time to time for such purposes or the Customer's usual residential address (if an individual) or otherwise the Customer's principal place of business or registered office. The Customer acknowledges that unless otherwise agreed, as a matter of course LMA will communicate with the Customer and any other parties by electronic means. Such communications can be subject to interception or contain viruses or other defects. LMA does not accept responsibility and will not be liable for any damage or any loss caused in connection with the corruption of an electronic communication. LMA has virus protection software and security protocols in place, however, LMA cannot guarantee that electronic communications will always be free from viruses or other defects and are secure or will be received.

14.7 These Terms will be governed by the laws of New Zealand. The Customer irrevocably agrees to submit to the non-exclusive jurisdiction of the New Zealand courts.

14.8 The illegality, invalidity or un-enforceability of a supply of these Terms will not affect the legality, validity or enforceability of another supply.

14.9 Provided the Customer is meeting its obligations to LMA and subject to proof of identity (if requested), the Customer is able to acquire Goods from any Related Company of LMA operating a LMA store and charge them to their existing account with the LMA entity stated in the credit application form.

## **15. Product Performance, Storage, Timber Colour / Tone Variation**

15.1 As per AS 5604-2003 timber-nature durability. The natural durability of the Australian hardwood timber is defined as being class 1 (40 years plus durability) and class 2, (15-40 year durability) timber. It is beyond LMA's control if the Goods do not perform to this durability standard and LMA has no liability for any product instability.

15.2 The stability and nature of the Goods may be altered depending on storage conditions, prolonged exposure to air, sun or when used in combination with other building supplies. This is beyond LMA's control and LMA strongly recommends the Customer tests the Goods prior to use.

15.3 Storage – Goods that are going to be installed internally need to be stored with adequate protection from moisture. Timber is hygroscopic so takes on and expels moisture. Flooring and internal linings need to have a similar moisture content to environment they are being laid in to ensure minimal movement occurs (Equilibrium Moisture Content). Best practice would be that the moisture content of the interior timber does not exceed 10-11% to help minimise cupping, movement or shrinkage across the timber. It is paramount that before any internal timber is laid that a moisture test is taken to ensure the timber does not

All Goods that are 50mm or less are kiln dried to 9-14% moisture. It is up to the Customer to ensure that the Goods are installed with this in mind and to be seasoned fit for purpose for the environment they are being installed into, both internally (e.g. Flooring, Sarking, Overlay, Internal Wall lining) and externally including cladding. It is particularly important that interior timber Goods such as are kept in a dry place away from moisture / weather.

15.4 Timber Colour / Tone Variation is beyond LMA's control. Australian Hardwood in particular has varying tones in each species and thus LMA cannot be held responsible for any colour tones that are outside of the customer's expectations. LMA will do what is practically possible to achieve a certain colour / tone but cannot control the variation of colour between species. As such the customer cannot ask for a refund or return the timber should colour / tone become an issue.

15.5 - **TIMBER CHARACTERISTICS** - Australian Hardwood has lots of magnificent features including some gum veins, surface checking, tight knots etc - it is not always a completely 100% clear board or exactly like your sample if you have received / viewed one. Please refer to <https://lmatimber.co.nz/timber/characteristics/> for further information and photos of some of the natural characteristics in Australian Hardwood.

## **16. Visually stress graded hardwood timber for structural purposes – Complying with standard 2082-2007**

16.1 All timber supplied by LMA that requires a structural Grade e.g. F17, F22, F27, F34 must comply with the 2082-2007 r 2017 – Timber – Hardwood – Visually stress graded for structural purposes standard. In particular, if a structural beam / post is supplied, it must meet the maximum permissible bow and spring as per Table C1 – page 45 of this document.

16.2. Should the timber be deemed to fit outside this maximum permissible bow / spring then LMA will seek clarification through clear photos showing this or undertake a site visit to confirm. These photos / evidence will be sent through to the supplier for comment and LMA will seek to replace the beam / post at no charge to the customer. Any costs

associated with domestic freight to redeliver the beam / posts will be charged to the customer.

16.3. LMA will in return organise for the out of grade beam / post to be collected and returned at LMA's cost to LMA's chosen warehouse.

## 18.Disclaimer

18.1 The information contained in LMA's website is for general information purposes only. The information is provided by LMA and while LMA endeavours to keep the information up to date and correct, LMA makes no representations or warranties of any kind, express or implied, about the completeness, accuracy, reliability, suitability or availability with respect to the website or the information, products, services, or related graphics contained on the website for any purpose. Any reliance the Customer places on such information is therefore strictly at the Customers own risk. In no event will LMA be liable for any loss or damage including without limitation, indirect or consequential loss or damage, or any loss or damage whatsoever arising from loss of data or profits arising out of, or in connection with, the use of this website.