

JAMES JONES & SONS (PALLETS AND PACKAGING) LIMITED
TERMS AND CONDITIONS OF PURCHASE

1. INTERPRETATION

1.1 Definitions:

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Conditions: the terms and conditions set out in this document, as amended from time to time in accordance with clause 13.4.

Contract: the contract between the Customer and the Supplier for the sale and purchase of the Goods in accordance with these Conditions and those set out in the Order.

Customer: James Jones & Sons (Pallets and Packaging) Limited (registered in Scotland with company number SC537342).

Delivery: delivery of the Goods in accordance with clause 4.2.1.3 or 4.2.2.6 as the case may be;

Delivery Date: the date specified in the Order, or, if none is specified, within 20 Business Days of the date of the Order.

Delivery Location: the address for delivery of Goods as set out in the Order.

Delivery Specification: the specific requirements applying to delivery of the Goods, as more specifically set out in the Order.

Goods: the goods (or any part of them) set out in the Order.

Order: the Customer's order for the Goods, as set out in the Customer's purchase order form or in the Customer's written acceptance of the Supplier's quotation, as the case may be.

Specification: the specification for the Goods, including any related plans and drawings, that is set out in the Order.

Supplier: the person or firm from whom the Customer purchases the Goods.

1.2 a reference to a statute or statutory provision is a reference to such statute or provision as in force on the date the Contract is entered into. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

1.3 any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;

1.4 Headings are inserted for convenience only and shall not affect the meaning or interpretation of these Conditions;

1.5 Any terms stated in the Order shall prevail over these Conditions;

1.6 Where the context so admits the singular shall include the plural and vice versa; and

1.7 a reference to **writing** or **written** includes faxes and emails.

2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Customer to purchase the Goods from the Supplier in accordance with these Conditions and those contained in the Order.

2.2 These Conditions and those contained in the Order apply to the Contract to the exclusion of any other terms: (1) that the Supplier seeks to impose or incorporate; (2) which are implied by trade, custom, practice or course of dealing; and (3) on which any quotation has been given to the Customer or subject to which the Order is accepted or purported to be accepted by the Supplier.

2.3 The Order shall be deemed to be accepted upon the earlier of the Supplier:

2.3.1 17:00pm on the 5th Business Day following the date the Order was submitted to the Supplier (unless the Supplier has expressly rejected the Order before such time by notifying the Customer in writing)

2.3.2 issuing a written acceptance of the Order; and

2.3.3 doing any act consistent with fulfilling the Order;

at which point the Contract shall come into existence.

2.4 The Supplier's acceptance of the Order (or any part thereof) shall constitute acceptance of these Conditions and those set out in the Order to the exclusion of (and the Supplier waives any right it may have to rely upon) any other terms and conditions appearing on any acceptance form, delivery form or other document whatsoever issued by the Supplier that are inconsistent with these Conditions or those contained in the Order.

3. THE GOODS

3.1 The Supplier shall ensure that the Goods shall on Delivery and on inspection in accordance with clause 3.4:

3.1.1 correspond with their Specification;

3.1.2 conform in all respect as to quantity and description as described in the Order;

3.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by the Customer expressly or by implication, and in this respect the Customer relies on the Supplier's skill and judgement;

3.1.4 be equal in all respects to any samples or patterns of the same provided by the Supplier;

3.1.5 (where they are manufactured products) be free from defects in design, material and workmanship and remain so for 12 months after Delivery;

3.1.6 comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods; and

3.1.7 where the Goods are made from or consist of timber:

3.1.7.1 be free from transit dirt, grit, contamination, stain, infestation, discolouration, rot, dote, fungus or mould of any kind; and

3.1.7.2 be clean and fresh sawn;

3.2 The Supplier undertakes that:

3.2.1 the Supplier,

3.2.2 the Supplier's employees and agents; and

3.2.3 the Goods;

will comply at all times with all relevant statutory, regulatory and best practice requirements, in force from time to time, (including but not limited to health and safety regulations and laws) and relating to the manufacture, delivery and sale of the Goods.

3.3 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract.

3.4 The Customer and any of its authorised representatives may inspect and test the Goods at any time before Delivery. The Supplier shall remain fully responsible for the Goods despite any such inspection or testing. Any such inspection shall not be deemed acceptance by the Customer of the Goods or reduce or otherwise affect the Supplier's obligations under the Contract.

4. DELIVERY

4.1 The Supplier shall ensure that:

4.1.1 each delivery of the Goods is accompanied by a delivery note which shall be presented to the Customer's authorised representative at the point of delivery and which shows; the name and address of the Supplier, the date of the Order, the Supplier's reference, the Customer's Order number (if any), the type and quantity of the Goods (including number of packs (where Goods are delivered in packs, the total number of items per pack and the code number of the Goods, where applicable), the hauliers company name and vehicle identification details (**Hauliers carriage notes alone will not be accepted**), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered;

4.1.2 all Goods are delivered in accordance with the requirements set out in the Delivery Specification; and

4.1.3 if the Supplier requires the Customer to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall be returned to the Supplier at the cost of the Supplier.

4.2 Where the Order states in writing that the Goods are to be:

4.2.1 collected by the Customer from the Delivery Location then:

- 4.2.1.1 the Customer shall within 10 Business Days of the Delivery Date (and providing the Supplier no less than 24 hours prior notice of its intended collection date), collect the Goods from the Delivery Location, on a Business Day and during normal business hours (being between 08:00 and 17:30) of the Customer ("**Collection Date**");
- 4.2.1.2 on the Collection Date, the Supplier shall ensure that the Goods are available for collection (and time for this shall be of the essence) at the Delivery Location and provide the Customer, its agents and employees with suitable access to the Delivery Location and shall at its own costs and risk load the Goods onto the Customers and/or the Customers agents vehicles as the Customer so directs; and
- 4.2.1.3 Delivery of the Goods shall be completed on completion of the loading of the Goods onto the Customers and/or its agents vehicles at the Delivery Location.
- 4.2.2 delivered by the Supplier, then the Supplier shall deliver the Goods:
- 4.2.2.1 on the Delivery Date (unless agreed otherwise in writing with the Customer);
- 4.2.2.2 in a manner without risk to any persons health or property;
- 4.2.2.3 accordance with any Delivery Specification;
- 4.2.2.4 to the Delivery Location;
- 4.2.2.5 on a Business Day and during the Customer's normal business hours (being between 08:00 and 15:00), or as instructed by the Customer; and
- 4.2.2.6 Delivery of the Goods shall be completed on completion of unloading of the Goods at the Delivery Location.
- 4.3 The Supplier shall not deliver the Goods in instalments without the Customer's prior written consent. Where it is agreed that the Goods are to be delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Customer to the remedies set out in clause 5.

5 REMEDIES

- 5.1 (i) If the Goods are not delivered in accordance with clauses 4.1 and 4.2; (ii) the Supplier fails to comply with the undertakings set out in clauses 3.1 to 3.3 (inclusive); or (iii) if following inspection in accordance with clause 3.4 the Customer considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at clause 3.1, then, without limiting any of its other rights or remedies, and whether or not it has accepted the Goods, the Customer may exercise any one or more of the following remedies:
- 5.1.1 terminate the Contract;
- 5.1.2 reject the Goods (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense;
- 5.1.3 require the Supplier to repair or replace the rejected Goods within a reasonable period of time, or to provide a full refund of the price of the rejected Goods (if paid);
- 5.1.4 require the Supplier to redeliver the Goods in compliance with the Delivery Specification (at the Supplier's costs and risk);
- 5.1.5 refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
- 5.1.6 recover from the Supplier any costs incurred by the Customer in obtaining substitute goods from a third party; and
- 5.1.7 claim under the indemnity set out at clause 9.1.
- 5.2 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.
- 5.3 The Customer's rights and remedies under these Conditions are in addition to its rights and remedies implied by statute and common law.

6 TITLE AND RISK

- 6.1 Risk in the Goods shall pass to the Customer on completion of Delivery. Where Goods are delivered by instalments, Risk shall only pass in relation to the proportion of the Goods Delivered.
- 6.2 Title in the Goods shall pass to the Customer on the earlier of:
- 6.2.1 Delivery of any of the Goods (including delivery of an instalment); or
- 6.2.2 payment for any part of the Goods.

7 PRICE AND PAYMENT

- 7.1 The price of the Goods shall be the price set out in the Order ("**Price**").
- 7.2 The Price of the Goods:
- 7.2.1 excludes amounts in respect of value added tax (**VAT**), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice; and
- 7.2.2 includes the costs of packaging, insurance and carriage of the Goods (unless agreed otherwise in writing).
- 7.3 No extra charges shall be effective unless agreed in writing by the Customer.
- 7.4 The Supplier may invoice the Customer for the Price of the Goods on or at any time after the completion of Delivery.
- 7.5 All invoices raised by the Supplier must include the following to constitute a correctly rendered invoice: (1) the date of the Order; (2) the invoice number; (3) the Customer's order number; (4) the Supplier's VAT registration number; (5) all information required in the delivery note (as set out in clause 4.1.1. above); (6) the Supplier's FSC certification and/or the Supplier's PEFC certification if FSC timber or PEFC Timber is requested in the Order; (7) the date(s) the Goods were Delivered; and (8) any other supporting documents that the Customer may reasonably require.
- 7.6 The Customer shall pay correctly rendered invoices within 30 days of the end of the calendar month in which the invoice is received. Payment shall be made to the bank account nominated in writing by the Supplier.
- 7.7 If a party fails to make any payment due to the other under the Contract by the due date for payment, then the defaulting party shall pay interest on the overdue amount at the rate equal to the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount. This clause shall not apply to payments the defaulting party disputes in good faith.
- 7.8 The Customer may at any time, without limiting any of its other rights or remedies, set off any liability of the Supplier to the Customer against any liability of the Customer to the Supplier.

8 CUSTOMER MATERIALS

- 8.1 The Supplier acknowledges that all materials, equipment and tools, drawings, Specifications, and data supplied by the Customer to the Supplier (**Customer Materials**) and all rights in the Customer material are and shall remain the exclusive property of the Customer and shall be used solely for completing the Contract. The Supplier shall keep the Customer Materials in safe custody at its own risk, maintain them in good condition until returned to the Customer, and not dispose or use the same other than in accordance with the Customer's written instructions or authorisation.
- 8.2 All patent, copyright, trade mark or other intellectual property rights existing in any drawings, plans, specifications, samples and materials prepared or obtained (including but not limited to the Customer Materials) by the Supplier at the cost of the Customer in connection with the Order and/or held by the Supplier for the purpose of completing the Order shall be the Customers absolute property and shall be used solely for the purpose of completing the Order and the Supplier shall at the Customer's request and cost, execute such documents and do such acts and things as the Customer may require in connection therewith.
- 8.3 All drawings and specifications provided by the Customer (including but not limited to the Customer Materials) or prepared by the Supplier in accordance with Clauses 8.1 or 8.2 shall be confidential and the Supplier shall keep them secret at all times and shall maintain the same in good condition and shall use, return or dispose of the same in strict accordance with the written instructions given by the Customer from time to time. Without prejudice to the generality of the foregoing, the Supplier shall not use or knowingly permit the use or copying of any such drawings or specifications except for the purpose of completing the Contract and shall not supply any third party with any goods, or parts thereof, made in accordance with any such drawings or specifications without the Customer's prior written consent.
- 8.4 The Supplier shall not (without the Customer's prior written consent) make known that the Supplier supplies or has supplied the Customer.

9 INDEMNITY

- 9.1 The Supplier shall keep the Customer indemnified against all liabilities, costs, expenses, damages and losses, including but not limited to any:

- (i) direct losses;
- (ii) indirect losses;
- (iii) consequential losses;
- (iv) loss of profit;
- (v) loss of reputation;

(and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Customer as a result of or in connection with:

9.1.1 any claim made against the Customer for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the supply or use of the Goods, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;

9.1.2 any claim made against the Customer by a third party for death, personal injury or damage to property arising out of or in connection with defects in Goods, to the extent that the defects in the Goods are attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;

9.1.3 any breach of Contract, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors.

9.2 This clause 9 shall survive termination of the Contract.

10 INSURANCE

During the term of the Contract and for a period of 3 years thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract, and shall, on the Customer's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

11 TERMINATION

11.1 Notwithstanding the Customer's rights to terminate the Contract without payment in accordance with clause 5.1, the Customer may terminate the Contract in whole or in part at any time before Delivery with immediate effect by giving the Supplier written notice, whereupon the Supplier shall discontinue all work on the Contract. The Customer shall pay the Supplier fair and reasonable compensation for any work in progress on the Goods at the time of termination, but such compensation shall not include loss of anticipated profits, loss of reputation or any consequential loss.

11.2 Without limiting its other rights or remedies, the Customer may terminate the Contract with immediate effect by giving written notice to the Supplier and without payment if the Supplier:

11.2.1 commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 5 Business Days of being notified in writing to do so;

11.2.2 takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

11.2.3 takes any step or action in connection with the Supplier being made bankrupt, entering any composition or arrangement with his creditors, having a receiver appointed to any of his assets, or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

11.2.4 suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

11.2.5 financial position deteriorates to such an extent that in the Customer's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

11.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination.

11.4 Clauses that expressly or by implication survive termination of the Contract shall continue in full force and effect.

12 FORCE MAJEURE

Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under it if such delay or failure results from an event, circumstance or cause beyond its reasonable control. If the period of delay or non-performance continues for 3 weeks, the party not affected may terminate this Contract by giving 5 Business Days' written notice to the affected party.

13 GENERAL

13.1 The Customer may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract.

13.2 The Supplier may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Customer.

13.3 This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

13.4 Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the Customer.

13.5 Except as set out in clause 2.2, a waiver by the Customer of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure by the Customer to exercise, or the single or partial exercise of, any right or remedy shall not:

13.5.1 waive that or any other right or remedy; or

13.5.2 prevent or restrict the further exercise of that or any other right or remedy.

13.6 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

13.7 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next Business Day delivery service, commercial courier, fax or email.

13.8 A notice or other communication shall be deemed to have been received:

13.8.1 if delivered personally, on the next Business Day after the date when it was left at the address referred to in clause 13.7;

13.8.2 if sent by pre-paid first class post or other next Business Day delivery service, at 9.00 am on the second Business Day after posting;

13.8.3 if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or,

13.8.4 if sent by fax or email, the next Business Day after the date of receipt of a valid delivery receipt;

The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

13.9 No one other than a party to this agreement and their permitted assignees shall have any right to enforce any of its terms.

13.10 The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.

13.11 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).