

## **MEDITE EUROPE DAC**

### **Conditions of Sale**

#### 1. QUALITY:

The goods shall be of merchantable quality and shall in any event be of a quality to least equal to the Sellers' usual quality in respect of board presently being imported into the country of destination.

#### 2. SIZES:

When used the term "Full Press Size" signifies the maximum size produced by the factory. It is understood that unless otherwise agreed Buyers' specification will comprise complementary which will leave no waste.

#### 3. QUANTITIES:

When used the term "about" shall mean that Sellers at their option may ship in respect of any contract quantity a margin of 2 1/2% in quantity more or less on any or every item of the specification.

#### 4. PACKING:

Packing shall be as specified in the Contract and, save where otherwise provided, shall be properly packed for export to the country of destination to be despatched in undamaged condition from Sellers' warehouse or quay, properly protected. There shall be uniformity in number of boards per package as regards both size and thickness of contents. Each package to contain only one size and thickness. The number of boards per package shall be in accordance with Seller's usual packing unless otherwise agreed.

#### 5. MARKING:

Every package shipped under this contract to be legibly marked with trademark, country of origin, size, thickness, number of boards and weight, in addition to any other marks specified.

#### 6. INSURANCE:

(a) Marine Insurance to be covered by Sellers for C.I.F. value plus 10 percent. The Insurance to be subject to Institute Cargo Clauses (A), Institute Strikes Clauses (Cargo) and Institute War Clauses (Cargo). Any surcharge in Insurance Premium applied by the war risks rating committee or Lloyds to be borne by Buyers.

(b) Premium in excess of 25p per stg£100, in the case of War and Strike risks, to be borne by Buyers. If Buyers cover these risks, proof of insurance must be lodged before shipment with Sellers' Representatives. If Sellers are unable to effect war risk insurance on the goods for a premium of maximum Stg £2 per Stg £100 they shall give Buyers immediate facsimile advice and Buyers shall thereupon have the option of endeavouring to effect war risk insurance themselves or accepting the increased premium or of calling upon Sellers to ship the goods uninsured. In every event Buyers to give Sellers' Representatives prompt notice after receipt of advice of Seller's inability to ensure at the aforesaid rate of the option they intend to exercise.

(c) Should it not be possible to cover such insurance or should insurance whether effected by Sellers or Buyers be cancelled by insurers, Sellers or Buyers as the case may be shall give prompt facsimile advice to the other party, and Buyers shall thereupon have the option of cancelling the contract or of calling upon Sellers to ship the goods uninsured, If Buyers call upon Sellers to ship the goods uninsured they shall provide, before the goods are put on board, such security for payment as may be required by Sellers or their Representatives and shall pay goods lost or not lost, against presentation of documents the value of the goods shipped at contract prices.

(d) Any additional cover requested by Buyers to be effected by Sellers if possible but for Buyers' Account.

(e) If insurance is effected by Sellers other than with Lloyd's or a British Insurance Company, Sellers shall ensure that the insurance will include the following provisions:-

(i) Any question as to the interpretation of the Insurance Policy to be decided according to English Law, the jurisdiction of the English Courts being admitted by the Insurers.

(ii) Settlement to be made in London and names of paying brokers and/or Agents, to whom notice of claim is to be sent and who shall be authorised to accept service of writ for and on behalf of the insurers, to be stated on Policy.

(iii) Where the insured amount is expressed both in sterling and in another currency, claims shall be adjusted at the rate of exchange thereby indicated. If the insured amount is expressed in a currency other than sterling, the settlement shall be effected at the rate in force for sight bills in London on the date of the Policy.

#### 7. SHIPMENT:

Shipment means placing the goods on board on carrying transport for final despatch from the Sellers premises to the contract destination. The term "Shipped" shall be construed accordingly.

#### 8. SHIPPING DOCUMENTS and PAYMENTS:

(a) Shipping documents shall consist of the seller's invoice with specifications, and Certificate of Origin if required. The invoice shall include brief particulars of the insurance cover on the goods and set out the requirements for making claims under the insurance policy. Payment for the full amount of the sellers invoice to be made according to the terms and payment instructions stated on our invoice.

(b) The price of the Goods includes insurance, loading on to on-carrying transport and transport to the destination. Value added Tax shall be added, where appropriate.

(c) In cases of shortage or overage and/or wrong dimensions and/or wrong descriptions, Invoice to be finally adjusted on proved contents of packages.

(d) If the documents are not presented to Buyer prior to the arrival of the vessel, Buyers shall nevertheless take up the documents on presentation. Any changes incurred through delay in presentation of documents shall be payable by Sellers unless previous sufficient particulars of shipment have been supplied to enable the consignment to be handled without delay or extra expense.

#### 9. EXCEPTIONS:

(a) In case the manufacture and/or shipment of any of the goods be delayed or prevented by Act of God, war, mobilisation, blockade, strikes, lockouts, prohibition of export or import, drought, floods, ice, accident to mill, fire, shortage of fuel or power or any other cause beyond Seller's control, they shall not be responsible for any damages arising there from provided that notice to the buyer as specified shall be given as soon as practicable after the Sellers become aware of the delay or prevention of manufacture and/or shipment.

(b) In case the manufacture and/or shipment be delayed or prevented by any cause beyond Sellers' control, except war, prohibition of export or import or blockade, Sellers to have the right to extend the stipulated time of delivery by six weeks. Should Sellers be unable to deliver within such extended time, Buyers and Sellers shall have the option of cancelling the contract or postponing the shipment to such date as may be mutually agreed upon. In the case of buyers cancelling the Contract such cancellation to be subject to the stipulation in paragraph (d) below. Sellers may exercise their right to extend the original shipping date by six weeks only provided that they, if requested, submit to buyers proof of the reason which has caused the delay.

(c) Should prohibition of export or import (other than export or import conditional only upon licence) war or blockade at any time before the shipping date, original or postponed according to above, prevent Sellers from manufacturing and/or shipping or Buyers from receiving the goods, the contract shall be cancelled.

(d) Should for any other reason than those set up in paragraph (a) above shipment be delayed beyond the time stipulated Buyers shall have the right (without prejudice to their rights under the contract) to cancel such part of the contract as does not comply with the stipulated shipment dates, but only if they give notice in writing to Sellers' Representatives in time to enable them to notify Sellers by cable before the goods are despatched from the Mill. Should Buyer's cancellation instructions be received by Sellers after the goods have left the Mill, Sellers to notify their Representatives by facsimile to this effect within six days from the receipt of Buyers' cancellation instructions to the said Representatives, in which case buyers shall accept the goods.

(e) If the contract calls for specifications and/or destination, Buyers to declare these in writing at an agreed time before shipment or of each instalment. Failing such advice, Sellers shall have the option of cancelling the contract quantity to the extent of the undeclared specification (s) and/or destination(s) or (in the case of an undeclared specification) shipping an average specification pro rata to the total specification remaining for shipment under the contract and (in the case of an undeclared destination) shipping to the Port of Buyers' domicile or nearest available thereto. Any shipments made by Sellers under the said option shall be accepted and paid for by Buyers as provided in the contract. Sellers shall notify Buyers by

facsimile which options hereunder they propose to exercise but failure by Sellers to exercise such options shall not affect in any way their rights under the contract.

#### 10. CLAIMS:

(a) In the event of any claim for quality, quantity, condition or packing the Buyer shall not reject any of the goods but shall accept and pay for them as provided above. Goods upon which there is a claim for rejection must be stored under cover by the Buyer and insured against all risks but for the account and expense of the Seller in the event and to the extent that the claim of the Buyer for rejection is upheld. The Sellers will not be liable for any claim for damage, defective, incorrect or short deliveries of goods unless a claim is notified as hereinafter provided to the Sellers within 30 days from final delivery of the goods into a public warehouse, wharf or private premises (whichever is the first) except in the case of hidden or latent defects in which case the Sellers will only be liable for such claims if notified as hereinafter provided within (6) months after such delivery. Notification of any claim shall contain details as to whether the claim is for quality, quantity, condition or packaging and a full description of the basis of the complaint and the contract under which the goods in question were delivered.

(b) The Buyers have the right to deal with any package on which there is no claim without prejudice to their right to claim on any intact package. Packages opened by Buyers shall not exceed 10% of the number of packages in the total consignment of 10 packages whichever is the greater. No claim shall exceed the total CIF value of goods under dispute together with proved costs paid by the buyers taking delivery from the vessel to the final destination as specified overleaf including import duty, storage and insurance.

(c) The Sellers shall have the right at their discretion to replace defective, damaged or incorrect goods supplied and to make good short deliveries as an alternative to the payment of damages. The buyers shall not have a right to return defective, damaged, incorrect or short delivered goods but shall at the sellers' expense return any such goods on receiving notice to that effect from Sellers.

(d) Any claim by the Buyers shall be conditional upon the Sellers being permitted reasonable opportunities to inspect the goods in respect of which the purported claim arises and to subject them to tests.

(e) In the event of a claim for transit damage the Buyer shall give a claused receipt to the delivering ship owner or carrier and shall notify the Seller immediately so that damaged goods may be surveyed if required.

(f) Time shall be of the essence for the purpose of this clause<sup>10</sup>.

#### 11. PROPERTY IN GOODS:

(a) Both the legal and equitable title in goods sold or supplied to a Buyer will remain in the Sellers until they have received payment from the Buyer of the price in full and all other monies, taxes and duties that may be or become due from the Buyer to the Sellers hereunder. If payment is made by cheque, bill, promissory note, other negotiable instrument (and whether payable immediately or in the future) letter of credit or in any other way which does not involve the Sellers receiving the full sum due in cash, payment in full shall not, for the purposes of these conditions, be treated as received until the Sellers (or any holder of the same) have received from the Buyer actual payment in cash of any such cheque, bill, promissory note or other negotiable instrument or letter of credit or of any sum not already paid in cash. So long as payment in full has not been received by the Sellers then Buyer shall hold the goods in trust for the Sellers, separately from any other assets and clearly marked as the Sellers property and the Sellers shall be entitled to require the Buyer to deliver the goods or any of them to the Sellers on demand. The Buyer shall not interfere in any

way with labelling of containers in which goods are sold or any marking on goods themselves indicating the Sellers' rights of title or otherwise hereunder. If the Buyer fails so to deliver the goods the Sellers and their representatives shall be entitled to enter the Buyer's premises (or other premises where the goods are in storage to the Buyer's order) for the purpose of collecting the goods or any of them and to take whatever steps necessary to enable the Sellers or their representatives to remove the goods. The Buyer shall be responsible for all costs and expenses in connection with so doing.

(b) Buyer's licences contained in the preceding paragraph shall terminate automatically and without notice upon the Buyer being in breach of any of the terms hereof or having a receiver appointed of all or any part of its property or suffering the presentation of a bankruptcy or winding-up petition or passing a resolution for its winding-up or being in arrears with any sum due from it hereunder or, in the Sellers' opinion being unable to pay its debts. In any such event the Sellers may (without prejudice to any other rights or remedies available to them) without notice terminate all or any part of the contract or suspend or cancel deliveries thereunder.

(c) Where any of the goods are sold to a third party before property in them has in accordance with paragraph (c) passed to the Buyer that sale will constitute a sale by the Buyer of the Seller's property and accordingly the Buyer will account to the Sellers for the proceeds of sale up to the total amount outstanding in respect of the goods and pending such accounting will hold the same for Sellers.

(d) When, notwithstanding that a Buyer holds the proceeds of sale of goods under paragraph (d) and a Buyer applies such proceeds to meet a secured claim or claims of another creditor or creditors of the Buyer, the Sellers shall be subrogated to the rights and security of securities of such creditor or creditors to the extent of the amount of the proceeds of sale so applied.

(e) The Sellers shall have a lien for unpaid purchase prices and a right of stoppage in transit.

(f) The paragraphs of this Clause 11 shall be treated as separate and distinct stipulations and should any such paragraph be held for any reason whatsoever or in any particular circumstances to be void or ineffective this will in no way affect the effectiveness of any other paragraph.

## 12. EACH SHIPMENT A SEPARATE CONTRACT

Each shipment under the Contract shall be considered as a separate contract and default on one or more shipments shall not invalidate the balance.

## 13. NON-COMPLIANCE and LATE PAYMENT

(a) In the case of non-compliance by Buyers with payment under Clause 8(b) Sellers have the right to suspend future shipments until payment for the goods shipped has been received and shall have the power of re-sale for Buyer's account after seven days' notice in writing has been given.

(b) The Buyer shall be liable to pay interest on any sums which have not been paid on the due date at the rate of 7.50% per month calculated on a day to day basis.

## 14. IMPORT AND EXPORT LICENCES AND DUTIES.

The contract is subject to Import and Export Licences if required. Export Duty and/or Export Taxes (if any) to be paid by Sellers. Import Duty and Import Licence fee (if any) to be paid by Buyers.

## 15. ARBITRATION:

Should any dispute and/or claim arise between the parties hereto out of or in connection with the contract which the parties fail to settle amicably, the same shall forthwith be referred to a sole Arbitrator to be mutually agreed between the parties, or, failing such agreement, to two Arbitrators one to be appointed by the Sellers and one by the Buyers. Such Arbitrators to appoint their Umpire. The Arbitrators and Umpire shall be engaged in or conversant with the wood products supply trade. In the event of a party failing to nominate an Arbitrator within fourteen days of the receipt of a notice from the other party calling upon them to do so or the Arbitrators fail to appoint an Umpire within fourteen days of the latest date of their appointment then the appointment of such Arbitrator or Umpire, as the case may be, shall be made by the President for the time being of the Timber Trade Federation upon the request of either party. Any notice required under this clause shall be given to Sellers' Representative by registered letter and shall constitute effective notice to the Seller. Should there be no Representative of Sellers named in the contract then notice shall be given direct to Sellers by cable. Any award shall be final and binding upon the parties and the obtaining of an Award shall be a condition precedent to any right of action hereunder. The costs of such Arbitration shall be in the discretion of the Arbitrators or Umpire who, in reaching their decision thereon, shall have agreed to the efforts of the respective parties to reach an amicable settlement. The Arbitration shall be held in the United Kingdom and in all other respects than mentioned above the said arbitration shall be subject to the English Arbitration Act 1950 or any statutory modification thereof or substitution therefore except in the case of goods sold to Scottish buyers for shipment to a Scottish port when the said arbitration shall be in Scotland subject to the Arbitration (Scotland) Act 1894. The Administration of Justice (Scotland) Act 1972 or any statutory modification thereof or substitution therefore and arbitrators shall have power to assess and award damages and interest thereon.

## 16. SEVERABILITY:

In the event of any clause or part of a clause in these terms and Conditions being declared invalid then that shall not affect the rest of the Terms and Conditions hereof.

## 17. WAIVER:

No waiver by either party whether express or implied of any term hereof or any breach or default by either party shall constitute a continuing waiver nor should a waiver in respect of any one term or breach prevent either party from enforcing all or any of its rights in respect of any other term or breach hereof.

18. APPLICABLE LAW:

These terms and conditions and any contract incorporating them shall be governed by and interpreted in accordance with the provisions of English Law.

19. Sellers are not liable for strike diversion after shipment and costs arising there from and have no duty to take insurance for such risks. Sellers arranging transport from the port of discharge to buyer's premises or selling on F.O.L/F.O.M. or container terms will not change the nature of the contract as a sale C.I.F. and the obligations provided above remain unaffected.

20. NOTICES

All notices hereunder shall be in writing (by pre-paid first class mail or by letter hand delivered) or by confirmed facsimile to:

(a) the Sellers, Medite Europe DAC at: Redmondstown, Clonmel, Co. Tipperary (or such other address advised from time to time by the Sellers). Fax No. +353 52 21815

(b) the Buyer at its normal place of business (or such other address notified to the Sellers from time to time). Notices shall be deemed to have been given on despatch (in the case of a telex) on delivery (in the case of a letter hand delivered) or within (10) days of despatch (in the case of notice by post).

21. DEFAULT BY BUYERS:

If a Buyer fails to observe and perform any of these Conditions, or shall compound with its creditors generally, or shall have a receiver appointed for all or any part of its assets, or shall take or suffer any similar action in consequence of debt, or shall become unable to pay its debts as they fall due, or shall permit or suffer any distress or execution to be levied or threatened upon any of its assets, or if any judgement against the Buyer shall remain unsatisfied for more than 14 days, or if proceedings shall be commenced by any authorised body for liquidation or bankruptcy of the buyer otherwise than for the purposes of amalgamation or reconstruction, then the Sellers shall have the right forthwith, without prejudice to any of their other rights to treat the contract as having been repudiated by the Buyer and to claim all loss or damage resulting from such repudiation.