

ENGINEERED TIMBER SOLUTIONS LIMITED
STANDARD CONDITIONS OF BUSINESS
01.01.2021

1. Definitions

In these conditions the following words have the following meanings unless the context requires otherwise:

"Contract"	means any contract between You and Us incorporating these conditions for the sale of Products and/or the provision of the Services;
"Liability"	means liability for any and all damages, claims, proceedings, actions, awards, expenses, costs and any other losses and/or liabilities;
"Products"	means any products and/or goods ordered from Us by You and to be supplied by Us to You, including but not limited to any goods, products and/or materials which are to be utilised in the performance of the Services;
"Services"	means the services and/or work to be performed by Us for You including but not limited to the advisory and consultancy design services;
"Working Days"	means each day between Monday and Friday (inclusive) excluding bank and public holidays in England and Wales;
"We, Us, Our"	means Engineered Timber Solutions Limited (CRN:04855981) and whose registered office is at Littles Lane, Wolverhampton, West Midlands, WV1 1JY; and/or
"You, Your, Yourself"	means the person whose order for Products and/or Services is accepted by Us and to whom We supply the Products and/or the Services.

2. Basis of Contract

- 2.1 These conditions shall govern the agreement between You and Us to the exclusion of any other terms or conditions. Orders placed by You leading to a contract which is not expressed to be subject to these conditions shall still be subject to them.
- 2.2 These conditions supersede all previous terms and conditions and shall replace any terms and conditions previously notified to You.
- 2.3 No variation of these conditions shall be binding on Us unless agreed in writing between You and one of Our authorised representatives.
- 2.4 No oral warranties or representations shall bind Us. You acknowledge that You do not rely on any representation and/or warranty that has not been made in accordance with these conditions.

3. Orders and Contract

- 3.1 "Quotations" are not binding or capable of acceptance and are estimates only.
- 3.2 We shall have the right to refuse to accept any orders placed for Products and/or Services. You shall be responsible for the accuracy of an order and for giving Us any information necessary for Us to perform the Contract.
- 3.3 The Contract between You and Us shall come into effect on Our written acceptance of Your order.
- 3.4 No order for Products and/or Services shall be deemed accepted by Us until confirmed in writing by Our authorised representative.
- 3.5 If You cancel this Contract for any reason You shall have no further recourse against Us under this Contract.

4. Delivery and Performance

- 4.1 Dates for delivery and/or performance are estimates only and are not guaranteed. Time is not of the essence in relation to such dates. They are also subject to any matter beyond Our reasonable control.
- 4.2 We will use Our reasonable commercial endeavours to ensure delivery and/or performance on the dates specified.
- 4.3 Where Products are to be delivered in instalments, each delivery shall constitute a separate and distinct contract and failure by Us to deliver, or any claim by You in respect of, any instalment shall not entitle You to repudiate and/or terminate this Contract as a whole.

- 4.4 Where Services are to be performed in stages, each separate stage shall constitute a separate and distinct contract and failure by Us to perform, or any claim by You in respect of, any stage shall not entitle You to repudiate and/or terminate this Contract as a whole.
- 4.5 You shall have no right to reject Products and/or Services and shall have no right to rescind for late delivery and/or performance unless the due date for delivery and/or performance has passed and You have served on Us a written notice requiring the Contract to be performed and giving Us not less than 21 Working Days in which to do so and the notice has not been complied with.
- 4.6 You shall be responsible at Your own cost for all arrangements to unload the Products when delivered to You including the costs of provision of suitable labour and equipment to effect delivery. Delivery will be made between 08.00hrs and 17.00hrs on Working Days at our sole discretion unless otherwise expressly agreed in writing. Where loading or unloading exceeds 2 hours then demurrage will be charged at Our then current rates, which are available on request.
- 4.7 You shall procure during normal working hours that We have free rights of access to the address for delivery for the purpose of delivering the Products.
- 4.8 If You refuse to take delivery of any Products and/or to allow performance of the Services then We shall be entitled to withhold delivery and/or performance of any other Products and/or Services and to treat this Contract as repudiated by You and shall have the right to rescind this Contract.
- 4.9 If the parties agree that the Products are to be collected from Our premises then You shall collect the Products within 3 Working Days of being notified that the Products are ready for collection. If the Products are not collected by You within the specified period We may despatch the Products to You at Your expense and risk and/or store the Products at Your expense and risk until despatch and/or collection.
- 4.10 Where You collect the Products Your vehicle must be equipped with sufficient skids to enable loading by fork-lift truck and You shall be solely responsible for the size, weight and positioning of the load on Your vehicle and You shall fully indemnify Us against any and all Liability arising from Your collection and transportation of the Products.

5. Postponement and Cancellation

- 5.1 We will use Our reasonable commercial endeavours to comply with reasonable requests by You for postponement of delivery of the Products and/or performance of the Services but shall be under no obligation to do so.
- 5.2 Where delivery of the Products and/or performance of the Services is postponed at Your request then You shall pay all Our costs and expenses incurred as a result including reasonable charges for storage, transportation and insurance. In addition You shall be obliged to pay for the Products and/or Services as if delivery and/or performance had not been postponed.
- 5.3 You may not cancel this Contract once Your order for Products and/or Services has been accepted by Us by way of our acknowledgement of Your order sent by Us to You in accordance with section 3 of these Conditions.
- 5.4 If You purport to cancel this Contract and/or refuse to accept delivery of ordered Products and/or performance of ordered Services You will indemnify and keep Us indemnified against any and all lost profits, costs (including increased administration costs and legal costs on a full indemnity basis), expenses, damages and any other loss and/or Liability suffered by Us as a result.

6. Price

- 6.1 The price of the Products and/or the Services shall be as quoted to You at the date of Our acceptance of Your order.
- 6.2 Except as otherwise stated, prices are ex-works, and You shall be liable to pay Our charges (if any) for transport, packaging and insurance.
- 6.3 We may increase Our prices in relation to the Products and/or the Services which We have agreed to supply where the increase is to take account of increases in costs, expenses and/or materials suffered by Us.
- 6.4 You will be informed in writing by Us of any increases in prices not less than 4 weeks before such increase takes effect.
- 6.5 You may cancel without Liability any Contract in relation to which the price is to be increased by more than 10% provided that the notice of cancellation is received by Us before the price increase becomes effective.
- 6.6 If You do not cancel the Contract within the specified time period then the price increase shall take effect for the Products and/or Services ordered by You.
- 6.7 Our prices are exclusive of any applicable VAT for which You shall additionally be liable.
- 6.8 Our terms of payment are net cash prior to Our commencement of the manufacture of the Products, unless we have agreed alternative credit terms with you in writing. Time for payment shall be of the essence.
- 6.9 If You fail to make any payment in full on the due date We may charge You any reasonable additional administration costs and/or interest (both before and after judgment) on the amount unpaid at the rate of 4% above the base rate from time to time of Lloyds Bank plc. Such interest shall be compounded with monthly rests.

- 6.10 Any monies received by Us from You may be applied by Us at Our option against any additional administrative costs and/or interest charged prior to application against any principal sums due from You against which it may be applied in any order.
- 6.11 We shall be entitled to invoice each delivery of Products and/or stage of the Services separately.
- 6.12 You shall pay all sums due to Us under this Contract without any set-off, deduction, counterclaim and/or any other withholding of monies.
- 6.13 Payment shall not be deemed to be made until We have received either cash or cleared funds in respect of the full amount outstanding under this and any other agreement between You and Us.
- 6.14 We shall be entitled to render an invoice to You any time after the Products have been ordered.
- 6.15 If payment in full is not made to Us when due then We may withhold or suspend future or current deliveries of the Products and/or performance of the Services including but not limited to suspend the issue of 'Structural Calculations' and delivery and/or performance under any other agreement with You.
- 6.16 If any Services are cancelled or this Contract terminated or delivery and/or performance is suspended before completion of the Services We shall be entitled to be paid on a quantum meruit basis for that part of the Services performed. We may invoice You accordingly and such monies shall be immediately due for payment.

7. Credit Limit

- 7.1 We may in our sole discretion set a reasonable credit limit for You and we will notify this limit to you in writing. Changes in Your credit limit will also be notified to You in writing from time to time.
- 7.2 We reserve the right to refuse to accept orders for Products and/or Services and/or to suspend or withhold delivery of Products and/or the performance of the Services if such Products and/or Services would result in You exceeding Your credit limit or the credit limit is already exceeded.

8. Specification

- 8.1 Any specification, advice or recommendation supplied by Us to You shall only be approximate unless stated on Our quotation or otherwise agreed in writing and anything not recorded in writing is acted or relied upon by You at your own risk.
- 8.2 The quantity, quality, description and/or specification for the Products and/or the Services shall be that set out in Our quotation (if agreed by You).
- 8.3 You are responsible for checking the quotation and satisfying Yourself that any specification given is accurate and adequate for the Products and/or Services.
- 8.4 We are not responsible for the design of the Products and/or the preparation of the specification unless and to the extent that design responsibility is expressly agreed in writing. If there is an error in the specification made by Us for You then, where that error is material and it has been relied upon by You, You may cancel that part of this Contract which is affected by the error without Liability due to the cancellation.
- 8.5 We shall have no Liability for errors in any specification or details supplied by You and You are solely responsible for their accuracy. You will disclose to Us any information and details relevant and necessary for us to properly perform any Services which we have agreed in writing to perform including but not limited to any unusual, abnormal or special site conditions or requirements.
- 8.6 Details and/or specifications in brochures and price lists produced by Us are intended as a guide only and only give a general approximation of the Products and/or Services.
- 8.7 You agree to indemnify and keep indemnified Us against any and all claims, losses, expenses, proceedings, actions, awards, liabilities, costs (including legal costs on a full indemnity basis and increased administration costs) expenses, damages and any other losses and/or liabilities arising out of Our use of specifications, details and/or drawings supplied by You.
- 8.8 You confirm and agree that You have not relied upon the details and information contained in Our brochure unless You have sought and obtained written confirmation from Us of their accuracy.
- 8.9 We reserve the right to make changes to the specification of the Products and/or Services as required from time to time by law, applicable safety requirements or manufacturing requirements provided that they do not have a material adverse effect on the quality and/or performance of the Products and/or the Services.
- 8.10 If We do make changes to the specification of the Products and/or Services which have a material adverse effect then You shall have the right to cancel the Contract without Liability.
- 8.11 You are solely responsible for obtaining and complying with all required local government and other consents, permits, licences and/or approvals of any nature howsoever arising or required in relation to the Products and/or their use.

9. Intellectual Property Rights and Confidentiality

- 9.1 All intellectual property rights (including without limitation all patents, copyright, design rights and trade marks (whether registered or unregistered) skill and/or know-how and other similar rights, whether existing now and/or in the future, wherever existing in the world together with the right to apply for protection of the same) in the Products and/or arising from the Services shall be owned by Us absolutely. This clause will not apply to any intellectual property rights contained in any specification supplied by You to Us.

9.2 You agree that, at Our cost, You will do all acts and/or things and execute all documents and/or deeds which are necessary or desirable to give effect to clause 9.1 above and/or to assist Us in the application, registration, renewal and/or protection of such intellectual property rights.

9.3 Each party agrees with the other that it will keep all confidential business information regarding the other party confidential and not disclose or use such information which may be disclosed to it or which it may learn except where such information is public knowledge or it is required to be disclosed by law.

10. Property And Risk

10.1 Risk in the Products shall pass to You at the time of delivery. Delivery shall be deemed to occur:-

10.1.1 at the time when the Products arrive at the place of delivery if We deliver the Products by Our own transport (being either, owned, hired, or sub-contracted out by Us) or We arrange transport in accordance with a specific contractual obligation; or

10.1.2 when the Products leave Our premises by Your own transport (being either owned, hired or sub-contracted out by You); or

10.1.3 after the expiration of 3 Working Days after You have been notified, if the Products are available for collection from Us in accordance with clause 4.9 above.

10.2 We shall retain title and ownership of the Products until We have received payment in full in cash or cleared funds of all sums due and/or owing for all Products and/or Services supplied to You by Us under this Contract and any other agreement between Us and You.

10.3 Until payment in full of the price for all Products supplied to You has been received by Us the Products shall be stored separately from any products or goods belonging to You or any third party and must be clearly marked and identified as being Our property. You agree that Our employees and/or agents shall be entitled to enter Your premises to check compliance with this clause.

10.4 Until title in the Products has passed to You, You shall keep the Products insured for the price at which the Products were sold to You against all normal risks and You shall account to Us for any proceeds of such policy of insurance in relation to the Products upon receipt of the same. Any monies received from You by Us in accordance with this clause shall not discharge Your liability to pay the price for the goods plus interest accrued in accordance with clause 6.9 but shall be set off against any such liability.

11. Default

11.1 If You:-

11.1.1 fail to make any payment to Us when due;

11.1.2 breach the terms of this Contract and, if the breach is capable of remedy, have not remedied the breach within 5 Working Days of receiving notice requiring the breach to be remedied;

11.1.3 persistently breach any one or more terms of this Contract;

11.1.4 pledge or charge any Products which remain Our property, or cease or threaten to cease to carry on business, or propose to compound with Your creditors, apply for an interim order under Section 252 Insolvency Act 1986 or have a Bankruptcy Petition presented against You, enter into voluntary or compulsory liquidation, have a receiver, administrator or administrative receiver appointed over all or any of Your assets, or take or suffer any similar action in any jurisdiction;

11.1.5 appear to Us due to Your credit rating to be financially inadequate to meet Your obligations under the Contract; and/or

11.1.6 appear reasonably to Us to be about to suffer any of the above events;

then We shall have the right, without prejudice to any other remedies, to exercise any or all of the rights set out in clause 11.2 below.

11.2 If any of the events set out in clause 11.1 above occurs in relation to You then:-

11.2.1 We may enter, without prior notice, any of Your premises (or premises of third parties with their consent) where Products owned by Us may be and repossess and dispose of or sell any Products found which are owned by Us so as to discharge any sums due to Us under this Contract or any other agreement with You;

11.2.2 We may require You not to re-sell or part with the possession of any Products owned by Us until You have paid in full all sums due to Us under this Contract or any other agreement with You;

11.2.3 We may withhold delivery of any undelivered Products and stop any Products in transit;

11.2.4 We may withhold the performance of any Services and cease any Services in progress;

11.2.5 We may cancel, terminate and/or suspend without Liability to You any agreement with You; and/or

11.2.6 All monies owed by You to Us shall forthwith become due and payable.

11.3 We shall have a lien over all property or goods belonging to You which may be in Our possession in respect of all sums due from You to Us.

11.4 Upon the termination of the Contract for any reason if any monies due to Us from You have not been paid within 5 Working Days of such termination We may sell any property or goods over which We have a lien in accordance with clause 11.3 above (and You agree that We may give good title for such property and/or goods) and shall apply the proceeds of sale firstly in discharging any costs or expenses of sale, secondly in repaying any interest owed by You to Us, thirdly in payment of any principal sums owed to Us and fourthly We shall account to You for the remainder (if any).

12. Guarantee

- 12.1 We guarantee that the Products will be free from defects in raw materials which will comply in all material respects with Industry Standard tolerances at the time of delivery to You.
- 12.2 The guarantee in clause 12.1 above is given by Us subject to the following conditions:-
- 12.2.1 We shall be under no Liability in respect of any defect in the Products arising from any drawing, design or specification supplied by You;
 - 12.2.2 We shall be under no Liability in respect of any faults arising after risk in the Products has passed which is caused by any subsequent mechanical, chemical, electrolytic, inadequate or incorrect storage by You or other damage not due to a defect in the Products and/or Services as appropriate; and/or
 - 12.2.3 We shall be under no Liability in respect of any faults or defects caused by wilful damage, abnormal working conditions, failure to follow Our instructions, misuse, alteration or repair of Products without Our approval, improper maintenance or negligence on Your part or a third party.
- 12.3 If any Products are covered by the guarantee in clause 12.1 above and prove to be defective and that defect adversely affects the Structural Integrity of the Product, then We shall at Our sole option either repair or replace such Products or refund the price for such Products. Provided We comply with this clause the repair, replacement or refund shall be Your sole remedy in respect of claims under the guarantee under clause 12.1 above.
- 12.4 Any work carried out by Us which is not covered by the guarantee in clause 12.1 above will be charged for.
- 12.5 We agree that We will repair, replace or re-perform defective Products and/or Services covered by the guarantee in clause 12.1 above within a reasonable time of being notified by You of the defect.
- 12.6 We shall have no Liability to You under the guarantee in clause 12.1 above unless any defect is notified to Us within 5 Working Days of the defect becoming apparent or suspected or when it should reasonably have become apparent to or suspected by You.
- 12.7 The guarantee in clause 12.1 above will not apply if You have not paid in full for the relevant Products.
- 12.8 We may at our sole discretion (and at the sole discretion of our insurers) offer collateral warranties in exchange for the payment by You of an additional fee (plus applicable VAT), calculated at our then current rates (which are available on request) and payable in advance. You acknowledge and understand that we may not be able to accommodate requests for collateral warranties received after acceptance of Your order by Us.

13. Repairs and Replacements

- 13.1 We will at Our option either refund the price, repair, replace free of charge or re-perform any defective Products and/or Services where the defect is apparent on inspection provided that the defect is notified to Us within 5 Working Days of delivery of such Products or performance of the Services. Notwithstanding clause 13.5 below, We shall have no liability for shortages, loss or damage to Products which have not been notified to us within this time scale.
- 13.2 Any defective Products must where reasonable be returned to or be made available to Us for inspection if requested by Us before We will have any Liability for defective Products.
- 13.3 We shall have the right, upon Our request and where reasonable, to inspect the subject-matter of any allegedly defective Services at a mutually convenient time, and We will not have any Liability for defective Services until We have been allowed to make such inspection.
- 13.4 We may at Our sole discretion replace, repair free of charge, re-perform or refund the price of defective Products and/or Services which are not notified to Us within the specified time limit where in Our opinion the defect would not have been ascertainable on inspection and has been notified to Us as soon as reasonably practicable.
- 13.5 We may in our sole discretion either refund the price of or replace free of charge any Products missing from a delivery of Products provided that the missing items are notified to Us within 5 Working Days of delivery or, in the event of total non-delivery, this fact is notified to Us within 5 Working Days of the projected delivery date.

14. Limitations On Liability

- 14.1 We shall have no Liability for any defect in the Products caused or contributed to as a result of the Products being used for display or demonstration purposes.
- 14.2 We shall have no Liability for defective Products and/or Services where the defect has been caused or contributed to by You to the extent so contributed.
- 14.3 We shall have no Liability to You if the price for the Products and/or the Services has not been paid in full by the due date for payment.
- 14.4 We shall have no Liability to You for defective Products and/or Services, Products not despatched or Products damaged or lost in transit unless the event is notified to Us within the appropriate time limit set out in this Contract.
- 14.5 We shall have no Liability for damage, loss, liability, claims, costs or expenses caused or contributed to by Your continued use of defective Products and/or Services after a defect has become apparent or suspected or should reasonably have become apparent to You.

- 14.6 You shall give Us a reasonable opportunity to remedy any matter for which We are liable before You incur any costs and/or expenses in remedying the matter Yourself. If You do not do so We shall have no Liability to You.
- 14.7 You shall produce to Us written evidence of any claims for which it is alleged that We are liable together with written details of how loss was caused by Us and the steps You have taken to mitigate the loss before We shall have any Liability for the claim by You.
- 14.8 We shall have no Liability to You to the extent that You are covered by any policy of insurance and You shall ensure that Your insurers waive any and all rights of subrogation they may have against Us.
- 14.9 We shall have no Liability for any matters which are outside Our reasonable control.
- 14.10 We shall have no Liability to You for any:-
- 14.10.1 consequential losses;
 - 14.10.2 loss of profits and/or damage to goodwill;
 - 14.10.3 economic and/or other similar losses;
 - 14.10.4 special damages and indirect losses; and/or
 - 14.10.5 business interruption, loss of business, contracts, opportunity and/or production.
- 14.11 You shall be under a duty to mitigate any loss, damage, costs or expenses that You may suffer (including by maintaining an adequate stock of Products).
- 14.12 Our total Liability to You shall not exceed £50,000 (fifty thousand pounds only).
- 14.13 Each of the limitations and/or exclusions in this Contract shall be deemed to be repeated and apply as a separate provision for each of:
- 14.13.1 Liability for breach of contract;
 - 14.13.2 Liability in tort (including negligence);
 - 14.13.3 Liability for breach of statutory duty; and
 - 14.13.4 Liability for breach of Common Law.
- except clause 14.12 above which shall apply once only in respect of all the said types of Liability.
- 14.14 Nothing in this Contract shall exclude or limit Our Liability for death or personal injury due to Our negligence or any Liability which is due to Our fraud or any other liability which it is not permitted to exclude or limit as a matter of law.
- 14.15 All warranties, terms, conditions and duties implied by law relating to fitness, quality or adequacy are excluded to the fullest extent permitted by law.
- 15. General**
- 15.1 You agree to indemnify and keep indemnified Us against any and all losses, proceedings, lost profits, damages, awards, expenses, costs (including increased administration costs and legal costs on a full indemnity basis), claims, actions and any other losses and/or liabilities suffered by Us and arising from or due to any breach of contract, any tortious act and/or omission and/or any breach of statutory duty by You.
- 15.2 No waiver by Us of any breach of this Contract shall be considered as a waiver of any subsequent breach of the same provision or any other provision.
- 15.3 If any provision of this Contract is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of this Contract and the remainder of the affected provision shall be unaffected and shall remain in full force and effect.
- 15.4 We shall have no Liability to You for any delay in performance of this Contract (other than in relation to payment) to the extent that such delay is due to any events outside Our reasonable control including but not limited to acts of God, war, flood, fire, labour disputes, subcontractor delays, strikes, lock-outs, riots, civil commotion, malicious damage, explosion, governmental actions and any other similar events. If We are affected by any such event then time for performance shall be extended for a period equal to the period that such event or events delayed such performance.
- 15.5 You shall not assign Your interest in the Contract (or any part) without Our written consent. We may at our sole discretion, without notice to you sub-contract any or all of our obligations under this Contract in whole or in part to any third party.
- 15.6 All third party rights are excluded and no third party shall have any right to enforce this Contract. Any right of a third party to enforce this Contract may be varied and/or extinguished by agreement between the parties to this Contract without the consent of such third party.
- 15.7 This Contract is governed by and interpreted in accordance with English law.
- 15.8 Any dispute between the parties arising out of this Contract shall be referred by either party on notice to the other for determination by an independent expert who shall be appointed either by agreement between the parties or failing agreement within 5 Working Days of the date of the notice, on the application of either party, by the President of the Law Society.
- 15.9 The expert shall act as an expert and shall be requested to consider such representations as may be made to him by either of the parties in person or in writing. The expert shall notify the parties of his determination as soon as possible and in any event within 1 month of his appointment.

- 15.10 The parties shall initially pay and bear the cost of the expert in equal proportions. The expert's determination shall be final and binding on the parties. The expert may make an award as to costs in his absolute discretion.
- 15.11 In the event of the expert refusing to act or being incapable of acting either party may apply to the President of the Law Society for the appointment of an alternative expert and this procedure may be repeated twice. If after the procedure has been repeated twice the dispute remains unsettled it shall be referred to and resolved by the Courts and the parties agree to submit to the exclusive jurisdiction of the English courts.
- 15.12 This clause shall not prevent either party seeking interim injunctive relief from a Court of Law.