

**Engineered Timber Solutions ('ETS')**  
**A Division of Fletcher Distribution Limited**  
**CONDITIONS OF SALE**

1. **Sale/Price:** The Customer is buying from ETS the goods specified for the prices specified herein and the price shall be increased by the amount of any GST and other taxes and duties (if any), except to the extent that such taxes are expressly included in any estimate given by ETS. The price may be increased or decreased by notice by ETS by the amount of any increase or decrease in the cost of any items (including any change in currency exchange rates) affecting the cost of supply, production and/or delivery of the goods between the date of the contract and the date of delivery. Alterations to any price will be effective from the date specified by ETS at the time of giving notice to the Customer. However, should ETS increase the total price of the goods by more than 5% then the Customer may, within 7 days of receiving notice of any price increase, by notice to ETS cancel this contract.
- 1.1 **Sale/Price:** For Special Orders, the price of the goods is determined when the Special Order is placed by ETS with the Supplier of the goods but may be subject to change through circumstances arising beyond ETS control. ETS will do its best to advise the Customer of any price change occurring before the goods are delivered.
2. **Authorisations:** It is the Customer's risk and responsibility to obtain every necessary or prudent authorisation (including licences, permits and consents) to buy, possess, use, export, import or resell any goods.
3. **Payment:** The parties agreement on payment is:
  - (a) that this contract is to be a "cash sale" unless otherwise agreed and the Customer must pay the Amount Owing prior to the delivery of any goods;
  - (b) any deposit required by ETS will be paid immediately on the creation of this contract and, subject to clause 6 below, is non-refundable;
  - (c) where payment is on credit then payment is due by the 20th of the month following the date of delivery;
  - (d) settlement of monthly accounts requires payment in full either by Cash, Cheque or Electronic Funds Transfer. Any other payment arrangement is at ETS discretion;
  - (e) ETS may impose a credit limit at its discretion, and alter the credit limit without notice. Where the credit limit is exceeded, ETS may refuse to supply goods to the Customer;
  - (f) payment of the Amount Owing shall be made free of any counterclaim, set-off, deduction or other claim whatsoever.
4. **Alteration of Rights:** The Customer acknowledges that ETS supplies the Customer on condition that all payments made to and received by ETS from the Customer are valid and made in the ordinary course of business. Any payments are agreed to be received in good faith and in the reasonably held belief that the payments are valid. The Customer acknowledges that ETS may, by accepting payment from the Customer, have altered its position in reliance on the validity of that payment.
5. **Delivery:** The parties agreement on delivery is:
  - (a) delivery FIS by ETS will generally be included in the price of the goods, although additional surcharges and fees may apply for smaller or unusual deliveries;
  - (b) all claims for errors or short delivery must be made within 3 days of delivery;
  - (c) if ETS is organising delivery it is entitled to deliver the goods between 7:00am and 8:00pm on any day which is not a public holiday. If the Customer or a representative is not present at the delivery site, then the goods will be deemed to be delivered in any event;
  - (d) any periods or times quoted for delivery are to be regarded as estimates and while ETS will make reasonable endeavours to keep such periods or times, no guarantee is given and ETS will have no responsibility for any loss or damage resulting from delay. Delay due to circumstances outside the control of ETS shall not entitle the Customer to cancel any order or refuse to accept delivery;
  - (e) the Customer shall ensure site access for deliveries.
6. **Returns:**
  - (a) ETS liability in any event shall not exceed the value of the goods.
  - (b) If goods are damaged in transit the claim is on the carrier not ETS.
  - (c) If incorrect product has been ordered please return to ETS within 3 days, freight Customer's care.
  - (d) For other issues please contact ETS within 3 days of delivery for direction and authorisation from ETS on return process.
7. **Ownership:** Ownership of the goods remains with ETS and does not pass to the Customer until the Customer:
  - (a) pays the Amount Owing and any other moneys owing by the Customer to ETS from time to time, whether in relation to this contract or any other contract or on any other account whatever ("Customer's Indebtedness"); or
  - (b) resells the goods pursuant to the authority granted in clause 8(b).ETS may without prejudice to any other rights or remedies sue for payment even though ownership has not passed and ETS shall retain its ownership rights in respect to the goods even if any goods become intermingled or reconstituted into any other form whatsoever or becomes a part of any other object or thing and the proceeds of any such sale or use shall be held separately and in trust for ETS by the Customer and dealt with only at ETS' direction.
8. **Use:** While ownership of the goods remains with ETS:
  - (a) the Customer must store them separately and clearly identify them as belonging to ETS;
  - (b) ETS authorises the Customer in the ordinary course of its business to use the goods or in bona fide and arms length transactions, sell them. This authority is automatically revoked from the earlier of the time that an Event of Default occurs or ETS notifies the Customer in writing that this authority is revoked;
  - (c) the Customer irrevocably grants ETS the right to enter the premises where the goods are stored and remove them, without being responsible for any damage caused in doing so. ETS may resell any of the goods and apply the proceeds of sale in reduction of the Customer's Indebtedness;
  - (d) the Customer must advise ETS immediately of any Event of Default or any action by third parties (including any creditor) affecting ETS' interest in the goods.
9. **Application:** ETS may apply any payments received from or on behalf of the Customer in reduction of the Customer's Indebtedness as ETS thinks fit.
10. **Risk:** Each good is at the Customer's risk once within the Customer's possession or control which includes arrival of a ETS' vehicle delivering the goods at the delivery site or from the time ETS gives possession of the goods to a carrier. If any good is damaged or destroyed prior to risk passing to the Customer, ETS may promptly repair the good or cancel this contract in respect of that good without penalty or compensation to the Customer.
11. **Failure to comply:** If payment in full of any amount under this contract is not made when due, or the Customer breaches any of its other obligations to ETS or an Event of Default occurs then ETS may without prejudice to and in addition to any other rights or remedies exercise all or any of the following rights:
  - (a) delay delivery of any good until the matter is resolved to ETS' satisfaction;

- (b) suspend or cancel (in whole or in part) this contract by written notice to the Customer;
- (c) recover from the Customer, or deduct from or set-off against any amount ETS may owe the Customer, amounts for any damage, loss or cost (including legal costs) to ETS relating to the nonperformance by the Customer;
- (d) charge, and the Customer must pay, interest at the rate of 1.5% per month plus GST (if any), calculated on a daily basis until the Customer's Indebtedness is paid in full; and/or
- (e) by notice to the Customer require that all the Customer's Indebtedness, whether or not due, is paid immediately and such amounts will then become immediately due and payable.
12. **Force majeure:** A party is not liable for any failure or delay in performing an obligation in this document if it is due to a cause reasonably beyond the control of that party and that party has used its best endeavours to perform on time despite the cause.
13. **ETS' liability limited:** To the extent allowed by law, ETS has no liability (in contract or tort, including negligence) to the Customer for any physical, direct or indirect damage, loss or cost (including legal costs) caused or contributed to by ETS or any of its representatives in respect of this contract, except to the extent of direct damage to the Customer caused by a breach of this contract by ETS and has no responsibility for any dangerous good or any contaminant, ozone depleting or hazardous substance in or emitted by any good, but any liability will not exceed the price of the goods purchased under this contract. To the extent allowed by law, every warranty or guarantee implied by custom or law is excluded.
14. **Customer indemnity:** The Customer will indemnify ETS for any physical, direct and indirect damage, loss or cost (including legal and lawyer/client costs) to ETS or any other person, and will protect ETS from any claim or proceedings against ETS to the extent caused or contributed to by the Customer in respect of this contract or by a good after risk or title has passed to the Customer.
15. **Use of information:** The Customer agrees that ETS and any members of the Fletcher Building Group of companies ("FB Group") may use information about the Customer and obtain, to use in their business, any information from the Customer or any other person. The Customer consents to any person providing ETS with such information and the Customer must notify ETS of any change in circumstances that may affect the accuracy of the information provided by the Customer to the FB Group.
16. **No assignment:** The Customer may not directly or indirectly assign to any person any of its benefits or burdens in respect of this contract but ETS may do so.
17. **Survival:** Each provision in this contract survives to the extent unfulfilled, and remains enforceable and does not merge, on performance of another provision.
18. **Waiver:** No delay or failure to act is a waiver. No waiver is effective unless it is in writing. A waiver of a breach is not a waiver of any other breach.
19. **Reliance:** ETS may rely on any plans, specifications, information or quality and/or standard of any manufactured product used by the Customer and has no liability whatever for any loss or damage caused or contributed to by any act of the Customer.
20. **Entire agreement:** This is an entire agreement. The Customer acknowledges that any representations, statements or opinions made or expressed are not relied upon by the Customer in entering into this contract.
21. **Consumers:** Where the Customer is a "Consumer" and acquires any goods, or holds themselves out as acquiring goods, for the purposes of a "Business" (as those terms are defined in the Consumer Guarantees Act 1993) then to the extent permissible ETS and the Customer agree that Act is hereby excluded. Otherwise, where the Customer is a Consumer this contract is to be read subject to the terms of that Act.
22. **Interpretation:** In this contract, unless the context otherwise requires or specifically otherwise stated:
- (a) "*Amount Owed*" means the price charged by ETS for the goods, and any other sums which ETS is entitled to charge under the contract;
- (b) "*ETS*" means Fletcher Distribution Limited and/or any other entity or person (or their successors or assigns) authorised by them (whether previously, now, or in the future) to trade under the name ETS.
- (c) an "*Event of Default*" means an event where the Customer fails to comply with this contract or any other contract with ETS or the Customer commits an act of bankruptcy; or the Customer enters into any composition or arrangement with its creditors; or if the Customer is a company the Customer has done or does anything which would make it liable to be put into liquidation; or a resolution is or has been passed or an application is or has been made for the liquidation of the Customer; or a receiver or statutory or official manager is or has been appointed over all or any of the Customer's assets;
- (d) "*good*" includes any product, equipment, material or other item sold by ETS whether under this contract or otherwise;
- (e) "*Special Order*" means the sale of goods ordered by the Customer which do not form part of ETS' standard stock lines;
- (f) references to a party or a person includes any form of entity and their respective successors, assigns and representatives;
- (g) if the Customer comprises more than one person, each of those person's liability is joint and several.

March 2008