



# INTEREX FOREST PRODUCTS LTD.

## TERMS AND CONDITIONS OF SALE

### 1. Definitions and Interpretation.

- (a) In this Agreement, including these Terms and Conditions, the following words shall have the following meanings:
- (i) “**Agreement**” means the Contract of Sale, these Terms and Conditions, and all other documents or made part hereof by written agreement of the Parties.
  - (ii) “**Buyer**” means the party identified as the buyer of the Goods in the Contract of Sale.
  - (iii) “**Contract of Sale**” means each confirmed contract of sale between the Parties describing the Goods, the Price, the payment terms, the order number, agreement date, delivery destination, shipping type, applicable Trade Term or such other or additional term and condition agreed to by the Parties and, for greater certainty, shall be deemed to include these Terms and Conditions.
  - (iv) “**Goods**” means the Goods described in the Contract of Sale.
  - (v) “**Incoterms**” the most recent revision of the “International Rules for the Interpretation of Trade Terms” published by the International Chamber of Commerce.
  - (vi) “**Price**” means the purchase price for the Goods as set out in the Contract of Sale, including all costs payable by Buyer under the applicable Trade Term and any other amount payable by Buyer in connection with the purchase and sale of the Goods as agreed by Seller and Buyer.
  - (vii) “**Parties**” means Buyer and Seller and “**Party**” means any one of the Parties.
  - (viii) “**Seller**” means Interex Forest Products Ltd.
  - (ix) “**Terms and Conditions**” means these terms and conditions of sale.
  - (x) “**Trade Term**” means the Incoterm trade term set out in the Contract of Sale.
- (b) Except to the extent that these Terms and Conditions expressly provide for a different interpretation, the Trade Term shall be interpreted in accordance with Incoterms.



# INTEREX FOREST PRODUCTS LTD.

- (c) Buyer acknowledges and agrees that these Terms and Conditions apply to and are incorporated into all Contracts of Sale between the Parties. Seller does not accept any terms contained in any purchase order or other documents issued by Buyer which are different from, conflict with, modify or add to these Terms and Conditions. Seller's execution of any document issued by Buyer shall constitute only an acknowledgement of receipt thereof, and shall not be construed as an acceptance of any of the terms therein. Buyer's issuance of a purchase order or other document which purports to reject some or all of these Terms and Conditions by virtue of Buyer's standard form language, or otherwise, shall not be sufficient objection to the application of these Terms and Conditions. Where Buyer specifically objects to any of these Terms and Conditions, no contract shall be formed unless and until Seller agrees to accept in writing Buyer's proposed modifications to these Terms and Conditions or the Parties otherwise agree on modifications to these Terms and Conditions.

## 2. **Shipment, Delivery and Inspection of the Goods**

- (a) Buyer agrees that Seller has the right to increase or decrease the quantity called for under the Contract of Sale by up to 10%, subject to a proportional adjustment of the Price.
- (b) Seller shall have the right to ship or deliver all Goods at one time or any portion or portions thereof from time to time on one or more vessels within the period for shipment and/or loading set forth in the Contract of Sale. If Seller is responsible for procuring contracts of carriage in respect of the Goods under the applicable Trade Terms, Seller shall have the right to choose alternate ports of destination if, for reasons of Force Majeure, unloading is impeded at the agreed upon port of destination, and the applicable Incoterms shall be amended accordingly. Buyer shall not refuse to receive any portion of the Goods shipped hereunder for failure of any other portion to be shipped. In case of orders requiring specific percentages of grades or dimensions, Seller need not maintain those percentages in each portion shipment but may ship the Goods as received from the manufacturer or as convenient, but the total of all portions or shipments comprising the Goods delivered pursuant to this Agreement shall comply therewith as to the said percentages.
- (c) Buyer shall have the right to inspect the Goods prior up to 72 hours prior to commencement of loading process at reasonable times and on prior notice to Seller at the facility used by Seller to store the Goods immediately prior to shipment in accordance with the applicable Trade Term. Any rejection by Buyer of the Goods, or any of them, for failure to conform to this Agreement, must occur at the time of inspection or immediately thereafter prior to their shipment. Buyer shall be deemed to have accepted the Goods



# INTEREX FOREST PRODUCTS LTD.

upon delivery to Buyer. After acceptance, Buyer shall not be entitled to reject the Goods which are not in accordance with this Agreement.

### 3. **Payment Terms**

Unless the Parties have agreed in writing to “Documents On Payment” (DOP), “Cash Against Documents” (CAD) or “Open Account” payment terms, payment is to be made by Buyer by irrevocable without recourse, divisible “Letter Of Credit” (LOC), with a bank to be approved by Seller, in favour of Seller for the Price plus 10%, payable at sight upon first presentation of one set of documents, including an invoice, bill of lading and any other documents that may be required by this Agreement or any other terms acceptable to the Seller in its sole discretion. The letter of credit shall be established no later than fourteen (14) days prior to the earlier of (a) the loading of Goods by the Seller in the container or on the vessel or (b) earliest delivery date set forth in this Agreement (as defined in the applicable Trade Term) and shall not expire until twenty-one (21) days after the latest shipment date set forth in the Agreement to enable Seller to assemble the documents. Notwithstanding the foregoing, the Seller preserves the right to require a later expiration date of the LOC if the processing times or requirements of the destination country to produce the documents for presentation under the LOC or for delivery to the Buyer are such that they cannot be reasonably completed, as determined by the Seller in its sole discretion, within the twenty-one (21) day period after the latest shipment date. If it becomes apparent at any time that there is not sufficient remaining credit in a letter of credit established by Buyer to cover the aggregate amounts that remain to be invoiced by Seller in respect of Goods not yet delivered, Buyer shall replace or supplement any existing letter of credit with a letter of credit that is sufficient in amount to cover the amounts to be invoiced and that otherwise complies with the requirements of the Agreement. Seller shall have no obligation to deliver any particular Goods to Buyer unless the letter of credit established by Buyer in accordance with this Section 3 has sufficient remaining credit to pay the aggregate amount to be invoiced by Seller in respect of such Goods. Delay by Buyer in establishing this or such other credit as may be agreed upon in writing by the Parties shall extend the time for the performance of this Agreement by Seller to such extent as may be necessary to enable Seller to make delivery in the exercise of reasonable diligence after such credit has been established or, at Seller’s option, may be treated by Seller as a default of Buyer to which Section 5(d) applies. All payments are non-refundable.

### 4. **Warranty, Title and Security Interest.**

- (a) The warranties provided by the manufacturer of particular Goods constitute the sole warranty with respect to such Goods. All Goods are warranted by



# INTEREX FOREST PRODUCTS LTD.

their manufacturer directly to Buyer. SELLER DOES NOT MAKE, AND EXPRESSLY DISCLAIMS, ANY WARRANTIES, REPRESENTATIONS, CONDITIONS, GUARANTEES OR OBLIGATIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, COMMON LAW, EQUITY OR ARISING OUT OF TRADE USAGE OR OUT OF A COURSE OF DEALING OR COURSE OF PERFORMANCE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OR CONDITION OF DURABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, CORRESPONDENCE TO SAMPLE, CONDITION OR QUALITY IN RESPECT OF THE GOODS.

- (b) Subject to Seller's security interest pursuant to Section 4(c), title to the Goods shall transfer from Seller to Buyer at the same time risk of loss or damage is transferred to Buyer pursuant to the applicable Trade Term.
- (c) As security for the payment and performance of all debts and liabilities of Buyer to Seller under this Agreement, Buyer hereby grants to Seller a security interest in, and mortgages, charges, transfers and assigns absolutely in favour of Seller, the following:
  - (i) all Goods now owned or hereafter owned or acquired by Buyer pursuant to this Agreement;
  - (ii) all proceeds that are Goods, intangibles, investment property, documents of title, chattel paper, instruments or money (all as defined in the *Personal Property Security Act* (British Columbia) as amended from time to time) and substitutions and replacements of any of the foregoing only related and referred to the Goods now owned or hereafter owned or acquired by Buyer which are supplied by Seller pursuant to this Agreement;
  - (iii) all deeds, documents, writings, papers, books of account, and other books and electronically recorded data relating to any of the foregoing or by which any of the foregoing is or may in the future be secured, evidenced, acknowledged or made payable only related and referred to the Goods now owned or hereafter owned or acquired by Buyer which are supplied by Seller pursuant to this agreement; and
  - (iv) all contractual rights, insurance claims, or property relating to any of the foregoing only related and referred to the Goods now owned or hereafter acquired by Buyer which are supplied by Seller pursuant to this Agreement.



# INTEREX FOREST PRODUCTS LTD.

Seller shall have the right to file financing statements and any other documents that may be necessary to evidence and perfect such a security interest in any jurisdiction. Buyer agrees to execute and deliver such additional documents as Seller may reasonably request to evidence and perfect such security interest.

- (d) Subject to Section 2(c), Buyer shall give Seller written notice of a claim in respect of the Goods together with reasonable particulars within ten (10) days of Goods being accessible to the customer unless otherwise agreed upon in writing. Reasonable particulars shall include the Contract of Sale No. and a statement as to whether the claim is for quantity and together with a statement of the sizes and marks including mill marks (if any) complained of and an estimate of percentages and of the amount claimed.
- (e) Seller shall not be responsible for grading, finishing, conditioning or dressing of the Goods or for confirming any grading, finishing, conditioning or dressing provided by or on behalf of the manufacturer or a third party in respect of the Goods and Seller expressly disclaims any warranties, representations, conditions, guarantees or obligations of any kind, whether express, implied, statutory, common law, equity or arising out of trade usage or out of a course of dealing or course of performance in connection therewith.
- (f) It is understood that the Goods supplied hereunder will be produced or manufactured in Canada unless otherwise expressly agreed.

## 5. **Limitation of Liability, Force Majeure and Default.**

- (A) IF BUYER HAS VALIDLY AND TIMELY REJECTED THE GOODS, OR ANY OF THEM, SELLER'S LIABILITY SHALL BE LIMITED TO THE COST OF REPLACING DULY REJECTED GOODS TO THE POINT OF DELIVERY AS SPECIFIED IN THIS AGREEMENT WITHIN A REASONABLE PERIOD OF TIME AFTER PROPER AND TIMELY REJECTION BY BUYER. IN ANY OTHER CIRCUMSTANCES IN WHICH BUYER IS ABLE TO CLAIM DAMAGES AGAINST SELLER IN ANY CAUSE OF ACTION WHATSOEVER, REGARDLESS OF THE FORM OF ACTION (INCLUDING BREACH OF WARRANTY, OTHER BREACH OF CONTRACT, STRICT LIABILITY, TORT INCLUDING NEGLIGENCE, OR OTHER LEGAL OR EQUITABLE THEORY), DAMAGES WILL BE LIMITED TO THE ACTUAL DIRECT PROVABLE DAMAGES IN AN AMOUNT NOT TO EXCEED THE PRICE OF THE GOODS SUBJECT TO BUYER'S CLAIM FOR DAMAGES. FOR GREATER CERTAINTY, BUYER SHALL NOT BE ENTITLED TO REJECT THE GOODS BECAUSE THE QUANTITY OF THE GOODS DELIVERED IS LESS THAN THE QUANTITY STATED IN THE CONTRACT OF SALE



# INTEREX FOREST PRODUCTS LTD.

- (b) TO THE FULLEST EXTENT PERMITTED BY LAW, SELLER, INCLUDING ITS DIRECTORS, OFFICERS, EMPLOYEES, CONSULTANTS, AGENTS AND REPRESENTATIVES, SHALL NOT BE LIABLE TO BUYER FOR ANY PUNITIVE, EXEMPLARY, AGGRAVATED, INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF PROFITS, REVENUE, BUSINESS OR GOODWILL), OF ANY NATURE WHATSOEVER, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT WHETHER BASED ON BREACH OF CONTRACT, STRICT LIABILITY, TORT INCLUDING NEGLIGENCE, OR OTHER LEGAL OR EQUITABLE THEORY.
- (c) Seller shall not be liable to Buyer for any delay in or failure to perform its obligations under the Agreement if any such delay or failure arises from acts of God; acts of government agencies; mobilization, war or the consequences of war; civil unrest; strikes, lockouts, labour disturbances of any kind; drought, flood, total or partial fire; obstruction of navigation; damage or detention at sea; default of carrier; non-availability or mechanical breakdown or destruction of equipment; interruption, reduction, suspension or shutdown of operations affecting the manufacturing, loading, transportation or discharge of the Goods; or any other contingency or cause beyond Seller's control (each an event of "**Force Majeure**"). Seller shall provide to Buyer prompt written notice of the occurrence of an event of Force Majeure and the date of delivery for the affected Goods shall be extended for a period equal to the time lost by reason of the event of Force Majeure. If such event of Force Majeure continues for more than ninety (90) days, Seller has the right to terminate this Agreement in respect of any portion of the Goods that have not yet been delivered. Notwithstanding any exercise of Seller's right pursuant to this Section 5(c), Buyer shall remain liable for paying the Price in respect of any portion of the Goods delivered prior to an event of Force Majeure.
- (d) If Buyer breaches or is otherwise in default under the terms of the Agreement, Seller, may do one or more of the following: (a) defer delivery of any the Goods to be delivered under the Agreement until the default is cured; or (b) treat the default as a repudiation by Buyer of the Agreement in its entirety, resell the Goods and hold Buyer liable for any damages incurred by Seller as a result of such breach. Buyer's insolvency shall constitute a default under this Agreement. The exercise by Seller of its rights under this Section 5(d) shall not preclude Seller from, or prejudice Seller in, exercising any other right, pursuing any other remedy or maintaining an action to which it may otherwise be entitled pursuant to this Agreement, at law or in equity. Notwithstanding the foregoing, if Buyer fails to furnish details and shipping instructions to enable Seller to perform its obligations under this Agreement, Seller shall be entitled at its sole



# INTEREX FOREST PRODUCTS LTD.

discretion, and in addition to all other rights, to cancel such portion of this Agreement as may remain unexecuted, or to make shipments in accordance with the details and shipping instructions which Buyer may have furnished for previous shipments on account of this Agreement or a previous agreement.

## 6. Miscellaneous

- (a) This Agreement shall be governed by the substantive laws of the Province of British Columbia and the federal laws of Canada applicable in British Columbia, with the exception of its conflicts of laws rules and principles of such laws that would apply a different law. The Parties expressly exclude the application of the United Nations Convention on Contracts for the International Sale of Goods or any other international convention, agreement or protocol governing sales of Goods.
- (b) If any provision of this Agreement is invalid, illegal, or incapable of being enforced by reason of any rule of law or public policy, then such covenant or other provision will be severed from and will not affect any other provision of this Agreement, and this Agreement will be construed as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement. All other provisions of this Agreement will, nevertheless, remain in full force and effect and no covenant or provision will be deemed dependent upon any other covenant or provision unless so expressed herein.
- (c) Buyer may not assign its rights or obligations under this Agreement without the prior written consent of Seller, which consent may be withheld in Seller's sole discretion. Seller may assign its rights and obligations under the Agreement without Buyer's consent.
- (d) All disputes arising out of or in connection with this Agreement, or in respect of any defined legal relationship associated therewith or derived therefrom, shall be referred to and finally resolved by arbitration before a single arbitrator under the International Commercial Arbitration Rules of Procedure of, and administered by, the British Columbia International Commercial Arbitration Centre ("BCICAC"). The appointing authority shall be the BCICAC. The place of arbitration shall be Vancouver, British Columbia, Canada and the language of the arbitration shall be English.
- (e) This Agreement constitutes the entire agreement between the Parties in respect of the sale of the Goods covered by this Agreement and supersedes all prior written or oral statements, representations, quotations, purchase orders, correspondence, negotiations, agreements and understandings.



## **INTEREX FOREST PRODUCTS LTD.**

- (f) No failure or delay on the part of any Party in exercising any power or right under this Agreement will operate as a waiver of such power or right. No single or partial exercise of any right or power under this Agreement will preclude any further or other exercise of such right or power. No modification or waiver of any provision of this Agreement and no consent to any departure by any Party from any provision of this Agreement will be effective until the same is in writing. Any such waiver or consent will be effective only in the specific instance and for the specific purpose for which it was given. No notice to or demand on any Party in any circumstances will entitle such Party to any other or further notice or demand in similar or other circumstances.
  
- (g) This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts together constitute one and the same instrument. For the purpose of this Agreement, executed copies of this Agreement may be delivered by facsimile or other electronic means by which a printed copy can be produced.

Terms and Conditions: July 21, 2016