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Specializing in Re-growth, Re-milled and
Recycled Australian Hardwoods

Standard Terms and Conditions of Sale

1. GENERAL

- 1.1 These Terms and Conditions of Sale (**Terms**) apply to all transactions between the Customer and Eco Timber relating to the provision of Goods and Services, including all quotations, orders, contracts and variations.
- 1.2 The variation or waiver of a provision of these terms or a party's consent to a departure from a provision by another party is ineffective unless in writing signed by the parties.
- 1.3 Eco Timber may amend any details in a Quote or Order Form by notice in writing to the Customer. Such amended details supersede any relevant prior detail in dealings between the parties.

2. QUOTES

- 2.1 Eco Timber may provide the Customer with a Quote. Any Quote issued by Eco Timber is valid for the time specified in the Quote, or if no such time is specified, for 30 days from the date of issue.
- 2.2 Quotes are based upon the cost of materials available at the time of preparation of the Quote and assume the timely supply by the Customer of necessary access and instructions to Eco Timber.
- 2.3 Following provision of a Quote to the Customer, Eco Timber is not obliged to deliver or commence work until the Quote has been accepted by the Customer by completing and returning the Acceptance Slip to Eco Timber together with the deposit specified in the Quote.
- 2.4 Eco Timber reserves the right to amend any Quote or Order Form before the Order has been completed to take into account any rise or fall in the cost of completing the Order. Eco Timber will notify the Customer of any amendment as soon as practicable, at which point the amended Quote or Order Form will be the estimate or Quote for the purposes of these Terms.
- 2.5 An indication in a Quote or Order Form of the time frame for the provision of the Goods or Services is an estimate only and is not a fixed time frame. Subject to any obligations in respect of consumer guarantees under the Australian Consumer Law, this estimate is not binding upon Eco Timber.

3. VARIATIONS

- 3.1 The Customer may request that its Order be varied by providing a request in writing to Eco Timber. A request for a variation must be agreed to in writing by Eco Timber in order to have effect.
- 3.2 If the Customer wishes to vary its requirements after a Quote or Order Form has been prepared, Eco Timber reserves the right to vary the Quote or Order Form to include any Additional Charge in respect of any extra costs incurred or additional work carried out due to the variation, in accordance with its then current charge rates. A revised Quote or Order Form issued by Eco Timber in respect of the requested variation supersedes the original Quote or Order Form. If the revised Quote or Order Form only specifies additional work, the Quote or Order Form

for that additional work will be in addition to the immediately preceding Quote or Order Form for the Goods and/or Services.

- 3.3 Eco Timber has an automatic extension of time for the provision of the Goods or Services equal to the delay caused by the variation.

4. INVOICING AND PAYMENT

- 4.1 Eco Timber may in its absolute discretion, issue an invoice to the Customer in any one or more of the following ways:
- 4.1.1 upon acceptance of the Quote or issue of the Order Form, a Deposit equal to 50% of the quoted price;
 - 4.1.2 prior to delivery of the Goods or commencing the Services, for an amount equal to the quoted price and Additional Charges (or balance of the quoted price if a deposit has been paid); or
 - 4.1.3 upon completion of the provision of the Goods or Services or any time thereafter, for an amount equal to the quoted price or the balance outstanding, any Additional Charges and any amount not previously invoiced, or if no Quote or Order Form was provided, for an amount representing Eco Timber's charge for the work performed in completing the Order and for any Additional Charges.
- 4.2 The Customer must pay an invoice issued by Eco Timber to Eco Timber within the time specified on the invoice, or if no time is specified, within 14 days of the invoice being issued to the Customer.
- 4.3 If any invoice is due but unpaid, Eco Timber may withhold delivery or the provision of any further Goods or Services until overdue amounts are paid in full.
- 4.4 Eco Timber may in its complete discretion apply any payment received from the Customer to any amount owing by the Customer to Eco Timber.
- 4.5 The Customer is not entitled to retain any money owing to Eco Timber notwithstanding any default or alleged default by Eco Timber of these Terms, including (but not limited to) the supply of allegedly faulty or defective Goods, provision of Services to an inadequate standard or a delay in the provision of Goods or Services. Nothing in this paragraph affects the Customer's rights for any alleged failure of a guarantee under the Australian Consumer Law.
- 4.6 The Customer is to pay Eco Timber on demand interest at the rate at the rate fixed from time to time by the Attorney General under the *Penalty Interest Rates Act 1983* (Vic) plus 2% per annum on all overdue amounts owed by the Customer to Eco Timber, calculated daily.
- 4.7 All costs and expenses associated with collecting overdue amounts, including (but not limited to) legal fees and internal costs and expenses of Eco Timber, are to be paid by the Customer as a debt due and payable under the Terms.
- 4.8 The Customer and Eco Timber agree to comply with their obligations in relation to Goods and Services Tax (**GST**) under the *A New Tax System (Goods and Services Tax) Act 1999* and any other applicable legislation governing GST.

5. CANCELLATION

- 5.1 Subject to clause 5.2, cancellation may only be effected by the Customer giving notice in writing to Eco Timber. Cancellation will be effective from the next Business Day following receipt of the notice.

- 5.2 Cancellations of orders are not accepted once delivery has been made or after a special order has been made with our suppliers.
- 5.3 The Customer agrees to pay the quoted amount plus any Additional Charge for all machined Goods or timber cut to size prior to cancellation.
- 5.4 If the Customer cancels the Order or Eco Timber terminates the Order or the Terms in accordance with clause 12.2, any Deposit will be forfeited by the Customer without prejudice to any other rights Eco Timber may have against the Customer under these Terms or otherwise.

6. ADDITIONAL CHARGES AND SET-UP FEE

- 6.1 As part of the Services Eco Timber may charge Customers a non-refundable set-up fee to process the Order. If applicable, the amount of the fee will be disclosed in the Quote or Order Form.
- 6.2 Quotes are provided subject to site inspection and Eco Timber may require the Customer to pay Additional Charges if a site visit reveals additional works and costs associated with the Order or delivery.
- 6.3 Eco Timber may require the Customer to pay Additional Charges in respect of Costs incurred by Eco Timber as a result of reliance on inadequate or incorrect information or material provided by the Customer or information or material supplied later than required by Eco Timber in order for it to provide the Goods or Services within the specified time frame (if any).
- 6.4 The imposition of Additional Charges may also occur as a result of cancellation by the Customer of an Order where cancellation results in Loss to Eco Timber, storage costs for Goods not delivered or collected from Eco Timber on the agreed date for collection or delivery, Government or council taxes or charges, additional work required by the Customer or any other occurrence which causes Eco Timber to incur costs in respect of the Customer's Order additional to the quoted cost.

7. DELIVERY

- 7.1 The scheduled dispatch date is an estimate only and will be advised by Eco Timber on receipt of the Acceptance Slip and Deposit.
- 7.2 Eco Timber will use its best endeavours to execute dispatch on or before the estimated dispatch date, but will not be liable for any delays in delivery arising from causes beyond its reasonable control.
- 7.3 Delivery is taken to have occurred when the Goods are delivered to the designated site in the Quote or Order Form or, if the Customer collects the Goods or engages an agent or third party to collect, delivery is taken to have occurred upon delivery to the Customer, agent or third party as applicable.
- 7.4 Delivery of the Goods will be made at the curb alignment of the designated site. Delivery onto site will be at the sole discretion of Eco Timber (or its carrier / agent) and may incur Additional Charges. In the event of any such entry Eco Timber will not be liable in any way or manner whatsoever for any loss or damage or injury caused to or sustained by any person or persons arising out of or in any way connected with such entry and Eco Timber will at all times be indemnified and be kept indemnified by the Customer. It is the Customer's responsibility to provide adequate signs and directions to enable the carrier / agent to affect delivery.

8. ACCEPTANCE OF GOODS

- 8.1 Eco Timber Group agrees to supply Goods in good order and condition according to the applicable timber rating and quality standard specified in the Quote or Order Form. The onus is on the Customer to ensure that the Goods are suitable for purpose.

- 8.2 The Customer agrees to carefully inspect the Goods upon delivery.
- 8.3 The Customer acknowledges that:
- 8.3.1 timber products of a particular grade description may vary in grain colour, hardness, density, size, feature and other characteristics; and
- 8.3.2 all lengths of timber will be random unless agreed prior.
- 8.4 Credit claims for incorrect quantities or quality of Goods must be received within 7 days of delivery. If the Customer fails to advise Eco Timber in writing of any fault in Goods or failure of Goods to accord with the Customer's Order within this timeframe, the Customer is deemed to have accepted that the Goods are not faulty and accord with the Customer's Order. Nothing in this paragraph affects the Customer's rights for any alleged failure of a guarantee under the Australian Consumer Law.
- 8.5 Eco Timber will (at its discretion) refund, replace or discount defective or damaged Goods if the damage or defect was sustained prior to delivery and the Goods are in the original condition as supplied. Replacement costs are for materials only, and do not include labour.
- 8.6 In the absence of any material defect, machined Goods or timber cut to size are non refundable and cannot be returned.
- 8.7 Eco Timber will not exchange, credit or refund a Customer for change of mind or incorrect product choice by Customer.

9. TITLE AND RISK

- 9.1 Risk in Goods passes to the Customer immediately upon delivery.
- 9.2 Property in Goods supplied to the Customer pursuant to these Terms does not pass to the Customer until all money (including money owing in respect of other transactions between Eco Timber and the Customer) due and payable to Eco Timber by the Customer have been fully paid.
- 9.3 Where Goods are supplied by Eco Timber to the Customer without payment in full of all moneys payable in respect of the Goods and any Services provided by Eco Timber in respect of those Goods, the Customer:
- 9.3.1 is a bailee of the Goods until property in them passes to the Customer;
- 9.3.2 irrevocably appoints Eco Timber its attorney to do all acts and things necessary to ensure the retention of title to goods including the registration of any security interest in favour of Eco Timber with respect to the Goods under applicable law;
- 9.3.3 must be able upon demand by Eco Timber to separate and identify as belonging to Eco Timber Goods supplied by Eco Timber from other goods which are held by the Customer;
- 9.3.4 must not allow any person to have or acquire any security interest in the Goods;
- 9.3.5 agrees that Eco Timber may repossess the Goods if payment is not made within 14 days (or such longer time as Eco Timber may, in its complete discretion, approve in writing) of the supply of the Goods; and
- 9.3.6 the Customer grants an irrevocable licence to Eco Timber or its agent to enter the Customer's premises in order to recover possession of Goods pursuant to this paragraph. The Customer indemnifies Eco Timber in respect of any damage to property or personal injury which occurs as a result of Eco Timber entering the Customer's premises.
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- 9.4 Where Goods are supplied by Eco Timber to the Customer without payment in full of all moneys payable in respect of the Goods and any Services provided by Eco Timber in respect of those Goods, and the Customer makes a new object from the Goods, whether finished or not, or the Customer mixes the Goods with other goods or the Goods become part of other goods (**New Goods**), the Customer agrees with Eco Timber that the ownership of the New Goods immediately passes to Eco Timber. The Customer will hold the New Goods on trust for Eco Timber until payment of all sums owing to Eco Timber whether under these Terms or any other contract have been made and Eco Timber may require the Customer to store the New Goods in a manner that clearly shows the ownership of Eco Timber.
- 9.5 For the avoidance of doubt, under paragraph 9.4, the ownership of the New Goods passes to Eco Timber at the beginning of the operation or event by which the Goods are converted into, are mixed with or become part of other goods.
- 9.6 Notwithstanding paragraph 9.3 the Customer may transfer, sell or dispose of Goods, including New Goods, to a third party in the ordinary course of business provided that:
- 9.6.1 where the Customer is paid by a third party in respect of Goods including New Goods, the Customer holds the whole of the proceeds of sale less any GST on trust for Eco Timber - in a separate account - until all amounts owed by the Customer to Eco Timber have been paid; or
- 9.6.2 where the Customer is not paid by a third party, the Customer agrees to assign all of its rights against the third party to Eco Timber upon Eco Timber giving the Customer notice in writing to that effect and for the purpose of giving effect to that assignment the Customer irrevocably appoints Eco Timber as its attorney.
- 9.7 Where Goods are supplied by Eco Timber to the Customer without payment in full of all moneys payable in respect of the Goods and any Services provided by Eco Timber in respect of those Goods, the Customer acknowledges that Eco Timber has a right to register and perfect a personal property security interest.
- 9.8 If:
- 9.8.1 a PPS Law applies or commences to apply to these Terms or any transaction contemplated by them, or Eco Timber determines (based on legal advice) that this is the case; and
- 9.8.2 in Eco Timber's opinion, the PPS Law:
- (a) does or will adversely affect Eco Timber's security position or obligations; or
- (b) enables or would enable Eco Timber's security position to be improved without adversely affecting the Customer,

Eco Timber may give notice to the Customer requiring the Customer to do anything (including amending these Terms or execute any new Terms and Conditions) that in Eco Timber's opinion is necessary, to the maximum possible extent, to overcome the circumstances contemplated in paragraph (a) or improve the security position as contemplated in paragraph (b). The Customer must comply with the requirements of that notice within the time specified in the notice. If having completed everything reasonably practicable as required under this paragraph, in Eco Timber's opinion Eco Timber's security position or obligations under or in connection with these Terms have been or will be materially adversely affected, Eco Timber may by further notice to the Customer cancel these Terms, in which case the Customer must pay to Eco Timber any money owed to Eco Timber by the Customer immediately.

10. INSTALLATION

- 10.1 Unless otherwise expressly agreed in writing, a Quote does not include installation of the Goods.
- 10.2 Where Eco Timber arrangers or refers an installer to fit supplied Goods, the Customer must contract separately with the installer. Eco Timber will not be liable for any aspect of the installation of Goods including defective installation or damage to the Goods by any third-party.

11. AGENCY AND ASSIGNMENT

- 11.1 The Customer agrees that Eco Timber may at any time appoint or engage an agent to perform an obligation of Eco Timber arising out of or pursuant to these Terms.
- 11.2 Eco Timber has the right to assign and transfer to any person all or any of its title, estate, interest, benefit, rights, duties and obligations arising in, under or from these Terms provided that the assignee agrees to assume any duties and obligations of Eco Timber owed to the Customer under these Terms.
- 11.3 The Customer is not to assign, or purport to assign, any of its obligations or rights under these Terms without the prior written consent of Eco Timber.

12. DEFAULT BY CUSTOMER

- 12.1 Each of the following occurrences constitutes an event of default:
- 12.1.1 the Customer breaches or is alleged to have breached these Terms for any reason (including, but not limited to, defaulting on any payment due under these Terms) and fails to remedy that breach within 14 days of being given notice by Eco Timber to do so;
 - 12.1.2 the Customer, being a natural person, commits an act of bankruptcy;
 - 12.1.3 the Customer, being a corporation, is subject to:
 - (a) a petition being presented, an order being made or a meeting being called to consider a resolution for the Customer to be wound up, deregistered or dissolved;
 - (b) a receiver, receiver and manager or an administrator under Part 5.3A of the *Corporations Act 2001* being appointed to all or any part of the Customer's property and undertaking;
 - (c) the entering of a scheme of arrangement (other than for the purpose of restructuring);
 - (d) any assignment for the benefit of creditors;
 - 12.1.4 the Customer purports to assign its rights under these Terms without Eco Timber's prior written consent;
 - 12.1.5 the Customer ceases or threatens to cease conduct of its business in the normal manner.
- 12.2 Where an event of default occurs, except where payment in full has been received by Eco Timber, Eco Timber may:
- 12.2.1 terminate these Terms;
 - 12.2.2 terminate any or all Orders and credit arrangements (if any) with the Customer;
 - 12.2.3 refuse to deliver Goods or provide further Services;
 - 12.2.4 pursuant to clause 9.3, repossess and re-sell any Goods delivered to the Customer, the payment for which has not been received; or

12.2.5 retain (where applicable) all money paid on account of Goods or Services or otherwise.

12.3 In addition to any action permitted to be taken by Eco Timber under paragraph 12.2, on the occurrence of an event of default all invoices will become immediately due and payable.

13. TERMINATION

In addition to the express rights of termination provided in these Terms, a party may terminate these Terms by giving 30 days written notice to the other party.

14. EXCLUSIONS AND LIMITATION OF LIABILITY

14.1 The Customer expressly agrees that use of the Goods and Services is at the Customer's risk. To the full extent allowed by law, Eco Timber's liability for breach of any term implied into these Terms by any law is excluded.

14.2 All information, specifications and samples provided by Eco Timber in relation to the Goods or Services are approximations only and, subject to any guarantees under the Australian Consumer Law, small deviations or slight variations from them which do not substantially affect the Customer's use of the Goods or Services will not entitle the Customer to reject the Goods upon delivery, or to make any claim in respect of them.

14.3 Eco Timber gives no warranty in relation to the Services provided or supplied. Under no circumstances is Eco Timber or any of its suppliers liable or responsible in any way to the Customer or any other person for any loss, damages, costs, expenses or other claims (including consequential damages and loss of profits or loss of revenues), as a result, direct or indirect of any defect, deficiency or discrepancy in the Goods or Services including in their form, content and timeliness of deliveries, failure of performance, error, omission, defect, including, without limitation, for and in relation to any of the following:

14.3.1 any Goods or Services supplied to the Customer;

14.3.2 any delay in supply of the Goods or Services; or

14.3.3 any failure to supply the Goods or Services.

14.4 Any advice, recommendation, information, assistance or service given by Eco Timber in relation to Goods and/or Services is given in good faith and is believed to be accurate, appropriate and reliable at the time it is given, but is provided without any warranty or accuracy, appropriateness or reliability. Eco Timber does not accept any liability or responsibility for any Loss suffered as a result of the Customer's reliance on such advice, recommendation, information, assistance or service.

14.5 To the fullest extent permissible at law, Eco Timber is not liable for any direct, indirect, punitive, incidental, special, consequential damages or any damages whatsoever including, without limitation, damages for loss of use, data or profits, arising out of or in any way connected with the provision of or failure to provide Goods or Services, or otherwise arising out of the provision of Goods or the Services, whether based on Terms, negligence, strict liability or otherwise, even if Eco Timber has been advised of the possibility of damages.

14.6 The Australian Consumer Law may give to the Customer certain guarantees. Where liability for breach of any such guarantee can be limited, Eco Timber's liability (if any) arising from any breach of those guarantees is limited with respect to the supply of Goods, to the replacement or repair of the Goods or the costs of resupply or replacement of the Goods or with respect to Services to the supply of Services again or cost of re-supplying the Services again.

15. INDEMNITY

15.1 Indemnity

The Customer indemnifies and keeps indemnified Eco Timber, its servants and agents in respect of any claim or demand made or action commenced by any person (including, but not limited to, the Customer) against Eco Timber or, for which Eco Timber is liable, in connection with any Loss arising from or incidental to the provision of Goods or Services, any Order or the subject matter of these Terms including, but not limited to any legal costs incurred by Eco Timber in relation to meeting any claim or demand or any party/party legal costs for which Eco Timber is liable in connection with any such claim or demand. This provision remains in force after the termination of these Terms.

15.2 Force majeure

15.2.1 If circumstances beyond Eco Timber's control prevent or hinder its provision of the Goods or Services, Eco Timber is free from any obligation to provide the Goods or Services while those circumstances continue. Eco Timber may elect to terminate this agreement or keep the agreement on foot until such circumstances have ceased.

15.2.2 Circumstances beyond Eco Timber's control include, but are not limited to, unavailability of materials or components, strikes, lockouts, riots, natural disasters, fire, war, acts of God, Government decrees, proclamations or orders, transport difficulties and failures or malfunctions of computers or other information technology systems.

16. OTHER MATTERS

16.1 These Terms are governed by the law of the Victoria and each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria.

16.2 These Terms and any Quote or Order Form and written variations agreed to in writing by Eco Timber represent the whole agreement between the parties relating to the subject matter of these terms.

16.3 These Terms supersede all oral and written negotiations and communications by and on behalf of either of the parties.

16.4 In entering into these Terms, the Customer has not relied on any warranty, representation or statement, whether oral or written, made by Eco Timber or any of its employees or agents relating to or in connection with the subject matter of these Terms.

16.5 If any provision of these Terms at any time is or becomes void, voidable or unenforceable, the remaining provisions will continue to have full force and effect.

16.6 A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.

16.7 A notice or other communication required or permitted to be given by one party to another must be in writing to the address shown on a Quote or Order Form (or as varied pursuant to this paragraph) and delivered personally, sent by pre-paid mail to the address of the addressee specified in the relevant Quote or Order Form; sent by facsimile transmission to the facsimile number of the addressee specified in the relevant Quote or Order Form, with acknowledgment of receipt from the facsimile machine of the addressee or sent by e-mail to the e-mail address of the addressee specified in the relevant Quote or Order Form with acknowledgement of delivery.

- 16.8 A notice or other communication is taken to have been given (unless otherwise proved) if mailed, on the second Business Day after posting; or if sent by facsimile or e-mail before 4 pm one Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt.
- 16.9 A party may only change its postal or email address or fax number for service by giving notice of that change in writing to the other party.

17. DEFINITIONS AND INTERPRETATION

17.1 Definitions

In these Terms:

Acceptance Slip means the acceptance slip attached to the Quote.

Additional Charge means:

- (a) fees or charges for additional work performed at the Customer's request or reasonably required as a result of the Customer's conduct or difficulties with the delivery site, calculated in accordance with Eco Timber's then current prices; and
- (b) expenses incurred by Eco Timber, at the Customer's request or reasonably required as a result of the Customer's conduct.

Business Day means a day that is not a Saturday, Sunday or public holiday in the place where the Services are principally being carried out or the Goods provided.

Customer means the person identified on a Quote or Order Form as the customer and includes the Customer's agents and permitted assigns.

Deposit means an amount paid by the Customer to Eco Timber upon acceptance of the Quote or issue of the Order Form.

Eco Timber means Eco Timber Group Pty Ltd ACN 108 956 216 and includes Eco Timber's agents and permitted assigns.

Goods means any products, materials or goods supplied by Eco Timber including those supplied in the course of providing Services.

Loss includes, but is not limited to, costs (including, but not limited to, party to party legal costs and Eco Timber's legal costs), expenses, lost profits, award of damages, personal injury and property damage.

Order means the Goods or Services described in the relevant Quote or Order Form as varied in writing from time to time by the parties.

Order Form means the internally generated form that may be used by Eco Timber to record and confirm orders taken directly from Customers.

PPS Law means:

- (a) the *Personal Property Security Act 2009* (Cth) (**PPS Act**) and any regulation made at any time under the PPS Act (each as amended from time to time); and
- (b) any amendment made at any time to any other legislation as a consequence of a PPS Law.

Quote means a written description of the Goods or Services to be provided, an estimate of Eco Timber's charges for delivery of the required goods and/or the performance of the required work and an estimate of the time frame for the delivery or performance of the work.

Services means the services to be provided by Eco Timber to the Customer in accordance with a Quote or Order Form and these Terms.