

## IFP AFRICA LLC

### STANDARD TERMS AND CONDITIONS OF SALE

#### 1. DEFINITIONS AND INTERPRETATION

- 1.1 Unless such meaning is inconsistent with the context, the following terms shall, throughout these Terms and Conditions, have the meanings respectively ascribed to them, namely:
- 1.1.1 **“Agreement”**: these Terms and Conditions and the Contract;
  - 1.1.2 **“Business Hours”**: 08h00 – 16h30, Monday to Friday, excluding public holidays in South Africa;
  - 1.1.3 **“Contract”**: any contract for the manufacture, modification, and sale of Goods from the Seller to the Purchaser;
  - 1.1.4 **“Delivery Date”**: the date specified by the Seller when the Goods are to be delivered;
  - 1.1.5 **“Goods”**: the articles which the Purchaser agrees to purchase from the Seller;
  - 1.1.6 **“Parties”**: the Seller and the Purchaser and “Party” means either of them;
  - 1.1.7 **“Price”**: the price as noted on the Seller’s Order Acknowledgment;
  - 1.1.8 **“Purchaser”**: the person who purchases or agrees to purchase the goods from the Seller;
  - 1.1.9 **“Seller”**: IFP Africa LLC (incorporated in the United States of America) External Profit Company of 1 Eastgate Lane, Bedfordview, Johannesburg, Gauteng, 2007, South Africa;
  - 1.1.10 **“Seller’s Order Acknowledgment”**: specification of the Goods ordered by the Purchaser.
  - 1.1.11 **“Terms and Conditions”**: the terms and conditions of sale set out in this document and any special terms and conditions agreed to in writing by the Seller.
- 1.2 In these Terms and Conditions, unless the context otherwise requires -
- 1.2.1 the singular shall import and include the plural and vice versa;
  - 1.2.2 words indicating one gender shall import and include other genders;
  - 1.2.3 words indicating natural persons shall import and include juristic and artificial persons;
  - 1.2.4 the headnotes to these Terms and Conditions are used for the sake of convenience only and shall not govern the interpretation of the clauses to which they relate;
  - 1.2.5 where any numbers of days are prescribed in these Terms and Conditions, they shall be calculated exclusive of the first day and inclusive of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday;
  - 1.2.6 if any doubt or conflict arises where figures are referred to in numerals and in words, the figure in words shall prevail;
  - 1.2.7 the rights and obligations of any Party arising from these Terms and Conditions shall devolve upon and bind its successors-in-title;
  - 1.2.8 if any provision in a definition contained in these Terms and Conditions is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it only appears in the definition clause, effect shall be given to it as if it were a substantive provision in the body of these Terms and Conditions;
  - 1.2.9 these Terms and Conditions shall be governed by and interpreted in accordance with the laws of the Republic of South Africa.

1.2.10 the rule of construction that these Terms and Conditions shall be interpreted against the Party responsible for the drafting or preparation of these Terms and Conditions shall not apply.

## **2. APPLICATION AND ALTERATION OF TERMS AND CONDITIONS**

- 2.1 These Terms and Conditions shall apply to all Contracts for the sale of Goods by the Seller to the Purchaser to the exclusion of all other terms and conditions including any terms or conditions which the Purchaser may purport to apply under any purchase order, confirmation of order or similar document.
- 2.2 All orders for Goods shall be deemed to be an offer by the Purchaser to purchase Goods pursuant to these Terms and Conditions and acceptance of the same shall take place on the issue of the Seller's Order Acknowledgement. Any acceptance by the Seller is conditional on the approval of the relevant authorities in the country of manufacture and or/sale.
- 2.3 Acceptance of delivery of the Goods shall be deemed conclusive evidence of the Purchaser's acceptance of these Terms and Conditions.
- 2.4 Any variation to these Terms and Conditions (including any special terms and conditions agreed between the Parties) shall be inapplicable unless agreed to in writing by the Seller.

## **3. THE GOODS**

- 3.1 The Seller warrants that the Goods shall conform to the specifications stated in the Seller's Order Acknowledgment or invoice, subject to variations in solid wood products, paper, pulp, paperboard and colour within industry standards and shall be substantially equivalent in quality to comparable goods supplied by the Seller from the producing mill.
- 3.2 The Purchaser agrees to accept delivery and pay for the Goods described in the Seller's Order Acknowledgment unless the Purchaser gives the Seller written notice of any correction which it wishes to make to such Acknowledgement within 10 days of the Purchaser's receipt of such Acknowledgement or prior to the date of manufacture, if earlier.
- 3.3 Save as provided in clause 3.2 above, the Purchaser shall not cancel the Contract or change the Seller's Order Acknowledgement without the Seller's prior written consent.
- 3.4 An overrun or underrun of up to 10% will constitute fulfilment of an order, unless agreed otherwise by the Parties in writing.
- 3.5 The Purchaser shall satisfy itself that the Goods are suitable for any special purpose and it is not a term of the Contract that the Goods are fit for that purpose.

## **4. PRICE AND PAYMENT**

- 4.1 The Seller agrees to sell and the Purchaser agrees to purchase the Goods upon these Terms and Conditions.
- 4.2 The Purchaser agrees to pay the Seller (if appropriate) value added or other sale tax incurred by the Seller.
- 4.3 If the Seller incurs extra cost or suffers any loss in supplying the Goods because of a lack of or defects in the instructions given by the Purchaser or any other conduct by the Purchaser, the Seller may increase the price of the Goods by the amount of the extra costs or loss without affecting any other remedy the Seller may have.
- 4.4 If the Purchaser fails to pay on the due date then the Price of all Goods invoiced or dispatched by the Seller shall immediately become due and payable (together with any value added or sales tax due thereon) and without affecting any other remedy of the Seller (and in addition to any lien to which the Seller may be entitled) the Seller may:
  - 4.4.1 treat all Contracts made between the Parties as cancelled;
  - 4.4.2 suspend any further deliveries to the Purchaser;
  - 4.4.3 appropriate any payment made by the Purchaser as it thinks fit (notwithstanding any purported appropriation by the Purchaser);

- 4.4.4 charge the Purchaser interest on all sums due and outstanding at 1.5% per month;
- 4.4.5 be entitled to a general lien on the Goods and all the Purchaser's Goods in the Seller's possession (although payment may have been made for such goods), for the unpaid price of the Goods or any other goods sold and delivered to the Purchaser.
- 4.5 The Purchaser is not entitled by reason of any dispute relating to the Goods to withhold payment of any amount due to the Seller or to set-off against any such amount or payment of any counter-claim (whether liquidated or unliquidated) for any sum or sums for which the Seller does not admit liability.
- 4.6 The Purchaser warrants to the Seller that it is able to pay its debts, as and when they become due, as at the date of its order for the Goods. The Seller reserves the right to refuse to execute or perform or proceed further with the execution or performance of any order or Contract if the Purchaser's arrangements for payment or credit appear to be or become unsatisfactory and the Purchaser shall fail to provide the Seller with any security or cash payment for the Goods demanded by the Seller at its sole discretion.

## **5. DELIVERY AND ACCEPTANCE OF THE GOODS**

- 5.1 Delivery of the Goods shall be made to the Purchaser's address as stipulated in the Seller's Order Acknowledgement.
- 5.2 Any date specified by the Seller for the delivery of the Goods is intended to be an estimate and time for delivery shall not be of the essence.
- 5.3 The Goods may be delivered in advance of the Delivery Date upon the giving of reasonable notice to the Purchaser.
- 5.4 The Purchaser shall make all arrangements to take delivery of the Goods whenever they are tendered for delivery.
- 5.5 If the Seller is prevented, hindered or delayed from manufacturing or delivering the Goods by reason of any act of God, fire, flood, war, hostilities, civil disturbance, epidemic and pandemic, governmental restriction or regulation of any kind, strikes or industrial disputes, sub-contractor's default, equipment failure or shortage, inability to obtain materials, fuel, equipment, labour or transportation or force majeure or any other cause of whatsoever nature beyond the Seller's control, the Seller may give notice in writing to the Purchaser either:
  - 5.5.1 cancelling the Seller's outstanding obligations to deliver Goods under the Contract; or
  - 5.5.2 extending the time for delivery by such period as the Seller may reasonably require.
- 5.6 The Seller will not be liable to the Purchaser for any damage or loss of whatsoever nature, whether direct or indirect, as a result of giving a notice under clause 5.5.1 above.
- 5.7 The Seller will not be liable to the Purchaser for any late delivery as a result of giving notice under clause 5.5.2 above.
- 5.8 Clauses 5.5 to 5.7 are without prejudice to the Seller's right to recover the price of any Goods that have already been invoiced to the Purchaser or in respect of which the risk has passed to the Purchaser.
- 5.9 If the Seller fails to make due delivery or makes late or short delivery of the Goods or any part thereof for any cause not set out in clause 5.5 above, the Seller's liability to the Purchaser for damages in respect of any loss or expense of whatsoever nature thereby occasioned shall be limited to and shall not exceed a sum which equals the price of that part of the Goods in respect of which default has been made.
- 5.10 If the Purchaser fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (or any date for delivery as extended under clause 5.5.2 above), then:
  - 5.10.1 the Price of the Goods becomes due and payable and risk in and to the Goods shall pass to the Purchaser;

- 5.10.2 the Seller shall be entitled to treat such failure as a repudiation of the Contract;
- 5.10.3 the Purchaser shall be liable to the Seller for all loss and damage caused by such failure, and without affecting such rights, the Seller may choose to store the Goods until actual delivery and charge to the Purchaser the reasonable costs (including insurance) of storage.

## **6. RISK AND TITLE**

- 6.1 Title in and to the Goods will pass to the Purchaser on the Seller receiving unconditional payment in full for the Goods and all other sums which are or which become due to the Seller from the Purchaser on any account.
- 6.2 Risk will pass to the Purchaser on the Delivery Date, or, if the Purchaser fails to take delivery through fault on the part of the Purchaser, when the Seller tenders delivery of the Goods.
- 6.3 Until such time as ownership and title in and to the Goods pass to the Purchaser in accordance with clause 6.1 above, the Purchaser shall:
  - 6.3.1 hold the Goods on a fiduciary basis as bailee for the Seller;
  - 6.3.2 without prejudice to the foregoing, keep and store the Goods (at no cost to the Seller) as separate from those of the Purchaser and third parties and properly packaged, stored, protected and insured and identified as the Seller's property;
  - 6.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
  - 6.3.4 maintain the Goods in a satisfactory condition and keep them insured at all times for their full price against all risks to the reasonable satisfaction of the Seller. The Purchaser shall, on request, produce a copy of the policy of insurance to the Seller.
- 6.4 The Purchaser may resell the Goods before ownership passes to it solely on the following conditions:
  - 6.4.1 any sale must be effected in the ordinary course of the Purchaser's business at full market value;
  - 6.4.2 any such sale shall be a sale of the Seller's property on the Purchaser's own behalf and the Purchaser shall deal as a principal when making such a sale.
- 6.5 The Purchaser's right to possession of the Goods shall terminate immediately if:
  - 6.5.1 the Purchaser has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or, being a body corporate, convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Purchaser or notice of intention to appoint an administrator is given by the Purchaser or its directors, or a resolution is passed or a petition presented to any court for the winding-up of the Purchaser or for the granting of an administration order in respect of the Purchaser, or any proceedings are commenced relating to the insolvency or possible insolvency of the Purchaser; or
  - 6.5.2 the Purchaser suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Seller and the Purchaser, or is unable to pay its debts as they become due.
- 6.6 The Seller shall be entitled to recover the price of any Goods, notwithstanding that ownership in the Goods has not passed from the Seller to the Purchaser.

- 6.7 The Purchaser grants the Seller, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Purchaser's right to possession has terminated, to recover them.
- 6.8 The Purchaser shall not pledge or encumber the Goods and shall indemnify the Seller against any charge, lien, or other encumbrance thereon.

## **7. WARRANTIES AND LIABILITY**

- 7.1 Without prejudice to the effect or operation of any other of these Terms and Conditions, the Seller's aggregate liability to the Purchaser for any loss or damage of whatsoever nature arising out of any breach of the Agreement or the Seller's negligence, breach of statutory duty or otherwise shall be limited to and shall not exceed a sum equal to the total Price of the Goods.
- 7.2 Save as expressly provided in the Agreement, all warranties, conditions or terms relating to fitness for purpose, quality or condition of the Goods, whether express or implied by statute or common law or otherwise, are excluded to the fullest extent permitted by law.
- 7.3 The Seller shall not be liable to the Purchaser in contract, delict or otherwise, for the cost of any labour or machine time or for any loss of profit, loss of business or depletion of goodwill, and in each case, whether direct, indirect or consequential, whatsoever and howsoever caused which arise out of or in connection with the Agreement.
- 7.4 The Seller shall not be responsible for any actions taken or fines or penalties imposed by any governmental agency against shipment of the Goods because of the failure of the Purchaser to comply with any relevant laws or regulations or with a notification issued to the Purchaser by any such governmental agency.
- 7.5 Nothing in this clause shall operate to restrict or exclude the Seller's liability for any matter which would be illegal to restrict or exclude or attempt to restrict or exclude.

## **8. DEFECTIVE GOODS**

- 8.1 The Purchaser is deemed to have waived its claim for shortages or defects in quality and the Seller shall have no liability in respect of the same unless the Seller has been given written notice of such shortage or defect within 15 days of the date of receipt of the Goods by the Purchaser.
- 8.2 The Seller shall, at its option, repair, replace or refund the Price of any Goods which the Seller is satisfied were defective in material or workmanship at the time of delivery provided that:
- 8.2.1 written notice has been given to the Seller within 15 days of the date of receipt of the Goods by the Purchaser;
  - 8.2.2 the Goods have not been used, processed, sold, transferred or otherwise disposed of by the Purchaser;
  - 8.2.3 any defect has not arisen because of the Purchaser's failure to follow the Seller's instructions as to storage of the Goods;
  - 8.2.4 the defective Goods are held by the Purchaser, at its expense, for the Seller's inspection.
- 8.3 The Purchaser shall not be entitled to cancel the Contract as a result of delivery of defective Goods.
- 8.4 If the Contract is for paper products supplied by the Seller in rolls the Purchaser accepts that no claim may be made for any damage to the 10 outer plies of each roll which the Purchaser accepts constitute the packaging of the Goods.
- 8.5 It shall be the Purchaser's responsibility to pursue claims against the carrier when the Goods have been lost or damaged in transit.
- 8.6 No agent or employee of the Seller shall have authority to alter or waive any of the provisions of this clause 8 or of clause 7 above.

## **9. THIRD PARTY SERVICES**

The Seller is authorised to engage carriers, truckmen, lightermen, forwarders, customhouse brokers, agents, warehousemen and others, as required, to transport, store, deal with and deliver the Goods. The Goods may be entrusted to such third parties subject to all conditions as to limitations of liability for loss, damage, expenses or delay and to all rules, regulations, requirements and conditions whether printed, written or stamped, appearing in bills of lading, receipts or tariffs issued by such third parties. The Seller shall under no circumstances be liable for any loss, damage, expense or delay to the Goods for any reason whatsoever when said Goods are in the custody, possession or control of such third parties. Any third party so engaged by the Seller shall be considered to be the agent of the Purchaser. The Purchaser shall be liable for any injury, loss or damage to any person or property caused by any such third party.

## **10. INDEMNITY**

- 10.1 The Purchaser shall indemnify the Seller against any claim of whatsoever nature by a third party against the Seller in respect of any death, injury, loss or damage to any property or person caused in any way by the negligence of or the use or possession of the Goods by the Purchaser.
- 10.2 The indemnity contained in clause 10.1 above includes costs and expenses incurred by the Seller and shall continue after the end of the Contract.

## **11. EXPORT TERMS**

- 11.1 When Goods are supplied for export from South Africa the provisions of this clause 11 shall (subject to any special terms agreed in writing between the Parties) apply, notwithstanding any other provisions of the Agreement.
- 11.2 The Purchaser is responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties on them.
- 11.3 Unless otherwise agreed in writing between the Parties, the Goods shall be delivered in accordance with the provisions of clause 5.1 above.

## **12. TAXES**

Any existing or future taxes imposed in respect of the Contract or the manufacture, sale, delivery, transportation or storage of the Goods (other than income or corporation taxes imposed upon the profits of the Seller) shall be paid by the Purchaser or shall be reimbursed by the Purchaser to the Seller, if paid or required to be paid by the Seller. The Seller shall be entitled to cancel any order for Goods, either wholly or in part, in the event of the Purchaser's failure to pay any such taxes or reimburse the Seller in respect of the same.

## **13. PRIVACY AND DATA PROTECTION**

- 13.1 The Seller shall at all times during the performance of its obligations in terms of the Agreement ensure that:
  - 13.1.1 no data collected from any person during the supply of the Goods is sold, disclosed, commercially exploited or used in any way other than as expressly authorised by the Purchaser; and
  - 13.1.2 it processes data only for the express purpose for which the data was obtained.
- 13.2 The Purchaser consents to the collection, processing and further processing of its personal information (including personal information contained in electronic communications) by the Seller for the purposes of implementing the Agreement and facilitating the supply of the Goods.

## **14. DISPUTE RESOLUTION**

- 14.1 Should a dispute occur between the Parties in connection with any matter arising out

- of the Agreement or its interpretation or their respective rights and obligations under the Agreement or its cancellation or termination or any matter arising out of its cancellation or termination (any of which, a “**Dispute**”), the Dispute shall be referred to the respective Parties’ senior management, who shall endeavour to resolve the Dispute in good faith and with due willingness and intention to determine a solution.
- 14.2 If the Parties’ senior management are unable to resolve the Dispute in accordance with clause 14.1 above within 21 days of any Party having declared a Dispute, then the matter may be referred by any Party to arbitration in accordance with clause 14.3 below.
- 14.3 Arbitration amongst the Parties shall be subject to the following terms and conditions:
- 14.3.1 There shall be 1 arbitrator who shall be, if the question in issue is:
- 14.3.1.1 primarily an accounting matter, an independent chartered accountant of not less than 15 years’ standing;
- 14.3.1.2 primarily a legal matter, a practising attorney or advocate of not less than 15 years’ standing;
- 14.3.1.3 primarily a technical matter, a suitably qualified person; and
- 14.3.1.4 any other matter, a suitably qualified person.
- 14.3.2 The appointment of the arbitrator shall be agreed upon between the Parties, but failing agreement between them within a period of 10 business days after the arbitration has been demanded, any of the Parties shall be entitled to request the chairperson for the time being of the Arbitration Foundation of Southern Africa (“**AFSA**”) to make the appointment and, in making his appointment, to have regard to the nature of the dispute;
- 14.3.3 Each arbitration shall take place in Johannesburg and shall be submitted to and determined by arbitration in accordance with the Commercial Arbitration Rules of AFSA, provided that a Party which has been given notice of breach in terms of this Agreement and has not disputed such breach within the time period provided for remedying of such breach (if any) shall not thereafter be entitled to raise or refer such dispute to arbitration in terms of this clause 14.3, and the costs of any such arbitration shall be determined by the arbitrator as part of his finding;
- 14.3.4 The decision of the arbitrator shall be final and binding on the Parties, and may be made an order of any Court of competent jurisdiction; and
- 14.3.5 Should any other Party wish to make the arbitrator’s decision an order of that court, each of the Parties hereby submits itself to the jurisdiction of the South Gauteng High Court of South Africa.
- 14.4 The provisions of this clause will not preclude any Party from access to a competent division of the High Court of South Africa for urgent and/or interim relief pending the outcome of an arbitration in terms hereof or in respect of arbitration proceedings in terms hereof.

## **15. NOTICES AND DOMICILIA**

- 15.1 Any notice to be given to the Parties in terms of the Agreement shall be in writing and delivered during Business Hours by way of e-mail or posted by prepaid registered post to the addresses mentioned hereunder, which addresses the Parties choose as their domicilium citandi et executandi for all purposes arising out of the Agreement:
- 15.1.1 The Seller: c/o Rödl & Partner at 1 Eastgate Lane, Bedfordview, Johannesburg, Gauteng, 2007, South Africa;
- 15.1.2 The Seller: As indicated on the Seller’s Order Acknowledgment.
- 15.2 The Parties may choose such other physical address by written notice to the other.

## **16. ASSIGNMENT AND DELEGATION**

- 16.1 The Purchaser shall not be entitled to assign the Contract or any part of it without the prior written consent of the Seller.
- 16.2 The Seller may assign the Contract or any part of it to any person, firm or company.

16.3 The Purchaser shall not be entitled to delegate any part of its performance under the Contract without the prior written consent of the Seller.

**17. GENERAL**

17.1 Each right or remedy of the Seller under the Agreement is without prejudice to any other right or remedy of the Seller whether under the Agreement or not.

17.2 These Terms and Conditions, the Contract and the Seller's Order Acknowledgement constitute the entire agreement between the Parties and the Purchaser acknowledges that in agreeing to enter into the Contract it has not relied on any representations relating to the Goods or the Contract made by any of its directors, employees or agents.

17.3 Save as expressly referred to in the Terms and Conditions, there is no right to cancel or vary any order once it has been accepted by the Seller.

17.4 Subject to the Company's discretion to update and amend these Terms and Conditions from time to time, no variation, alteration or consensual cancellation of these Terms and Conditions shall be of any force or effect, unless done in writing and signed by the authorised representatives of the Parties.

17.5 No waiver or abandonment by either Party of any of its rights in terms of the Agreement shall be binding on that Party, unless such waiver or abandonment is in writing and signed by the waiving Party.

17.6 No indulgence, extension of time, relaxation or latitude which any Party may show, grant or allow to another shall constitute a waiver by a Party of any such Party's rights and such Party shall not be prejudiced or stopped from exercising any of its rights against any Party which may have arisen in the past or which might arise in the future. Unless the context indicates otherwise, the rights and obligations of any Party arising from the Agreement shall devolve upon and bind its successors-in-title.

17.7 Any provision of the Agreement which contemplates performance or observance subsequent to any termination or expiration of the Agreement shall survive any termination or expiration of the Agreement and continue in full force and effect.

17.8 The Parties agree that they will do all things and sign all documents necessary to give effect to the Agreement and to all transactions deriving therefrom.

17.9 If any provision of the Agreement is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Agreement and the remainder of such provision shall continue in full force and effect.

17.10 The formation, existence, construction, performance, validity and all aspects of the Agreement shall be governed by the laws of the Republic of South Africa and the Parties submit to the exclusive jurisdiction of the South African courts.