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# Wood Products

## General Terms and Conditions of Quotation and Sale (Canada)

February 2020



Canadian Forest Products Ltd.  
and its Canadian Wood Products Affiliates

## **General Terms and Conditions of Quotation and Sale For Wood Products (Canada)**

### **INTRODUCTION**

In the belief that it is of the utmost importance to our customers that they be fairly and consistently treated, we have developed the following Terms and Conditions of Quotation and Sale which govern our sales of wood products.

In presenting these to you, our valued customer, we urge that you carefully review them and contact us for any clarification that you might require. In case you find any term or condition which does not apply to your area, please bring it to our attention.

We are convinced that the mutual understanding of a clear set of Terms and Conditions of Quotation and Sale is to the benefit of both parties and is a vital part of our relationship.

## 1. GENERAL

- a) All orders or contracts of sale are entered with the understanding that the buyer accepts and will comply with the following terms and conditions and any amendments thereto. The terms and conditions of quotation and sale herein set forth and any amendments thereto shall apply in the absence of such specific written agreement and form part of the order or contracts of sale.
- b) All agreements or contracts of sale must be made or ratified by the seller's head office in Vancouver, British Columbia, Canada.
- c) All stock of wood products is offered subject to prior sale.
- d) Contracts of sale are not transferable or assignable by the buyer.
- e) The seller is not bound by any terms and conditions listed on the buyer's purchase order or any other document issued by the buyer without the agreement in writing of the seller.
- f) These terms and conditions of quotation and sale, together with the terms of any contract of sale or order to which they apply and any other documents expressly incorporated therein, constitutes the entire agreement between the seller and the buyer with respect to the purchase and sale of the goods, and supersede all prior agreements, proposals and discussions between the parties.
- g) The seller may unilaterally modify the terms and conditions from time to time without notice to buyer. The most current and effective version of the seller's terms and conditions will be posted on the seller's website at [www.canfor.com](http://www.canfor.com). It is the buyer's duty to review the terms and conditions of the seller on the seller's website from time to time to keep itself updated as to the current effective terms and conditions.
- h) The United Nations convention on Contracts for the International Sale of Goods does not apply to the purchase and sale of goods between the seller and the buyer hereunder.
- i) Notwithstanding the delivery term set out in the order or the contract of sale, the buyer will use commercially reasonable efforts to obtain, at its cost, all risk cargo insurance coverage at least equal in value to the replacement value of the goods on order and keep such insurance policy effective during the transport to the port of destination.
- j) The seller may obtain its own insurance for the goods shipped under the contract of sale or purchase order, but any such insurance obtained by the seller shall not constitute a waiver of the buyer's obligations under Section 1(i).
- k) All references to "shipment", whether singular or plural, mean wood products ordered by the buyer which may be transported by any mode of transportation over waterways or land and includes consigned goods from the seller's consignment inventory.
- l) All references to "product", "wood product" or "goods", whether singular or plural, mean wood products manufactured or distributed by the seller.
- m) For the purposes of these terms and conditions, "Affiliate" has the meaning set out in the British Columbia *Business Corporations Act*, as it may be amended from time to time, which for Canadian Forest Products Ltd. includes without limitation, Canfor Wood Products Marketing Ltd. and Canfor Japan Corporation.

## 2. Transportation and Shipment

- a) Each shipment under an order or a contract of sale, as the case may be, shall be considered as a separate contract and default on one or more shipments shall not invalidate the balance of the order or contract of sale, as the case may be, except as herein otherwise provided.
- b) The seller shall have the discretionary right to transport the entire order at one time or any portion or portions thereof from time to time on one or more vehicles, railcars, barges or vessels within the time of transport, shipment and/or loading therein provided for. The buyer shall not refuse to receive any portion of the goods shipped hereunder for failure of any other portion to be transported or shipped, or to comply with the relevant contract of sale unless the right to refuse is expressly reserved on the face of such contract of sale.
- c) The seller reserves the right to determine the mode of transport and shipment.
- d) The seller shall have the option to route any shipments via any vehicle, carrier, vessel, barge, railcar or port of origin (dock) not named in the order or contract of sale. In the case of offshore shipments, if the buyer's choice of port is unavailable to the seller, the seller will have the right to choose an alternate port of arrival and notify the buyer of the required change. Any additional transportation costs resulting from a required port change will be the responsibility of the buyer. Any reduction in transportation costs resulting from a required port change will be credited to the buyer.
- e) For shipments offshore where freight is included in the contract price, unless otherwise set out or agreed to in writing in the order, contract of sale or the invoice, the buyer undertakes to receive the goods at destination ex-ship's tackle as fast as the vessel can discharge, failing which any demurrage or other charges shall be for the buyer's account. Unless otherwise agreed in writing, all charges at destination, including lighterage, wharfage, landing charges, dues and duties, are for the buyer's account and are not included in the seller's price. **Any change of freight rate even if made subsequent to the date of sale shall be effective retroactively for the account of the buyer.**
- f) For domestic shipments within Canada, the delivery terms shall be as set out in the order, contract of sale or invoice from the seller.
- g) When delay in shipment is likely to occur, it shall be the responsibility of the seller to so notify the buyer. Notwithstanding any terms set out in the order or the contract of sale, shipping or delivery dates for wood products are estimates only and are not guaranteed by the seller.
- h) Delivery terms set out in or applied to any order, contract of sale or invoice for the goods shall have the following meaning:
  - i) "FOB Destination" means (A) the risk of loss for goods transfers to the buyer once the goods have been delivered to the first carrier enroute to the buyer or the buyer's designated destination pursuant to the associated order or contract of sale; and (B) the seller shall pay or be liable to cover the cost of freight for shipments to buyer or the buyer's designated destination pursuant to the associated order or contract of sale, save and except for shipments of consigned goods (where the buyer shall bear any and all freight costs) and for shipments where the parties have expressly agreed in writing in the order or contract of sale to reallocate liabilities for freight costs differently; and

- ii) "FOB Origin" or "FOB Mill" means risk of loss transfers to the buyer once the goods have been picked up by the buyer or its designated carrier at the seller's mill or warehouse and the buyer shall be liable to pay any freight cost incurred.

The buyer shall refer to the order, contract of sale or the invoice to determine the applicable delivery term. In the event that the delivery terms or any other terms set out in the order, contract of sale or the invoice contradict or are inconsistent with each other, the order of precedence shall be as follows:

- A) Contract of Sale;
- B) Invoice for the goods; and
- C) Order.

### **3. PAYMENT TERMS**

- a) Payment terms are as indicated on the face of the invoice.
- c) Invoices are payable in the currency stipulated on the invoice at the seller's office, at lock boxes as published by the seller or by wire transfer as per instructions provided by the seller.
- d) The buyer shall be liable for all expenses (including legal fees) incurred by the seller in collecting past due amounts from the buyer.

### **4. TAXES & DUTIES**

Notwithstanding the incoterms set out in the order or the contract of sale, all taxes and duties, where applicable, are extra and are to be paid by the buyer. For shipments to the United States, any applicable duties are included in the price. For all other offshore shipments, any applicable taxes and duties are excluded from the price.

### **5. GRADES**

Unless otherwise specified in writing, the grading and dressing rules of the **National Lumber Grades Authority** (NLGA) in effect on the date of acceptance of the order shall govern the manufacture and grading of all lumber shipped on all orders save and except where off-grade products are specially requested and ordered by the buyer, in which case the buyer shall accept such off-grade products on an "as is, where is" basis.

### **6. CREDIT**

If at any time the buyer's creditworthiness shall become impaired or unsatisfactory, proof satisfactory to the seller of the buyer's creditworthiness shall be furnished forthwith or satisfactory security shall be given by the buyer to the seller upon demand. Failing this, and notwithstanding any other terms set out in the order, the contract of sale or herein, payment shall be made in advance; otherwise the seller shall have the right to decline to make further shipments or deliveries.

If the buyer fails to make payments in accordance with “Terms of Payment” contained in the contract, the seller may forthwith cancel all further orders and terminate the contract.

## **7. NO WARRANTIES**

The seller does not make, and hereby expressly disclaims, any and all warranties of any kind, express, implied, statutory or otherwise. In particular and without limiting the generality of the foregoing, the seller makes no warranty, express or implied, as to the merchantability, fitness or suitability of any product for any specific end use.

## **8. DOMICILE**

The contract shall be governed in all respects by the laws of the place of the legal domicile of the seller.

## **9. FORCE MAJEURE**

For all purposes of contracts, the expression “Force Majeure” includes any Act of God, or any act of governmental agencies, war, mobilization, strike, lockout or other labour disturbance, drought, flood, total or partial fire, obstruction of navigation, strike at port of loading or discharge, or loss, damage or detention at sea, reduction, suspension or shutdown of operations, explosions, or any other contingency or cause beyond the control of the seller which prevents the manufacture and/or shipment and/or transport of goods, or beyond the control of the buyer which prevents the receipt of goods. The buyer or the seller, as the case may be, may suspend performance under the contract (other than in the case of the buyer the obligation to pay money) citing Force Majeure, in which case neither party shall be responsible to the other party for any damage resulting from such suspension. The seller may at its option and without liability hereunder cancel such portion of its contracted volume with the buyer which as a consequence of a Force Majeure situation could not be manufactured by the seller at the seller’s mills and/or shipped to destination. In case the seller’s stock of wood products is totally or partially destroyed, the seller is entitled at its option and without any liability hereunder to cancel such quantity (and, if applicable, such portion of its contracted volume with the buyer) which, as a consequence, cannot be delivered.

The buyer or the seller, as the case may be, shall give prompt notice to the other party of any Force Majeure situation which may, according to the previous section of this clause, affect the performance under the contract, and also when such Force Majeure situation will likely cease, and as soon as practicable, notify to what extent it will necessitate a suspension or cancellation of volume. Shipments in transit from the seller’s mill must be accepted by the buyer. When such suspension is concluded, subsequent shipments will resume according to the contract.

## **10. CANCELLATIONS**

The seller shall have the right to cancel any order because of the buyer’s failure to comply with contract or order terms in respect to any prior shipment, or on account of any transfer or change in the buyer’s business, its insolvency, suit by other creditors, failure to meet financial obligations to the seller, impairment of the buyer’s credit, or for unfavourable credit reports made to the seller through the usual channels of credit information, unless the buyer promptly furnishes to the seller’s satisfaction, assurance of full payment for any shipment made or to be made.

## **11. RETURN OF GOODS**

The seller's prior written approval is necessary before material may be returned for credit.

## **12. QUANTITY TOLERANCES**

Unless otherwise specifically agreed in writing, the seller shall have the right to increase or decrease the quantity shipped on any order to fit the capacity of equipment furnished for loading, or to meet minimum tariff requirements, provided such increase or decrease does not vary more than ten percent (10%) from the quantity ordered.

In the case of orders stipulating percentages of grades or dimensions, the seller need not maintain these percentages in each partial shipment but may ship the goods as produced or as convenient, but the total of all partial shipments comprising the goods delivered pursuant to the said order shall comply therein as to the said percentages.

## **13. TITLE AND RISK OF LOSS TRANSFER**

For all shipments, the risk of loss of the goods passes to the buyer pursuant to the delivery terms set out in an order, contract of sale or invoice. The quantity identified in transferring the risk of loss to the buyer is the basis for payment by the buyer and for determining whether or not the contracted quantity has been delivered to the carrier. Once the risk of loss for the goods has passed to the buyer, the buyer must recover any losses from its insurer or the responsible party. Title to the goods does not transfer to the buyer until the later of 1) the date of receipt of full payment for such goods; and 2) the date when the goods arrive at their final destination set out in the associated order, contract of sale or invoice.

## **14. CLAIMS**

In the case of a complaint concerning grade, tally or manufacture, shipments are subject to reinspection by the agency which published the rules under which the stock is graded. Official reinspection by such agency, or any other agency agreeable to both the buyer and the seller, shall be taken as a basis for final settlement.

## **15. TIME LIMIT FOR DISPUTES AND CLAIMS**

The buyer shall promptly unload and properly store and cover by insurance any shipments which are the subject of a dispute. All lumber disputes and claims, except for quantity disputes, will be addressed in accordance with the re-inspection rules outlined in paragraphs 400 through 413 of the Standard Grading Rules for Canadian Lumber published by the NLGA (the "Standard Grading Rules"). In all cases, however, the buyer shall make payment when due under the terms of the contract.

No claim made after the periods mentioned in the Standard Grading Rules shall be recognized and good delivery shall be conclusively deemed to have been made by the seller if no claim is made within the time limits stated.

In the event of a claim, one hundred percent (100%) of the shipment must be available for re-inspection.

## **16. LIMITATION OF DAMAGES**

If the buyer makes claims for damages as outlined in clauses 16(a) and 16(b) hereof the buyer is to make full payment for the shipment in accordance with the “Terms of Payment” contained in the contract. For greater certainty, the buyer shall not be entitled to deduct from the price invoiced to it by the seller the amount of any claim asserted against the seller, unless the seller has agreed in writing.

### **(a) Defective Quality**

If the buyer rejects the goods delivered for proven defective manufactured quality as to standard and grade set out at Section 5 herein, or rejection is awarded by re-inspections due to non-compliance with standards and grades set out at Section 5 herein, the seller shall without delay replace such defective goods or issue a credit note to the buyer equal to the value of the damaged goods. If the defective quality as to standard and grade does not result in rejection of the goods, the buyer shall pay the reduced value of such defective goods and shall not be entitled to any other compensation or damages.

### **(b) Short delivery**

If the quantity delivered is proven to be less than the contracted amount, other than as provided for in clause 12, the seller shall without delay make good any shortage unless the shortage is acceptable to the buyer. In the event of delivery in excess of the range provided for in clause 12, The seller shall have the option of selling such excess product to buyer at a mutually agreed upon price.. Payment in any event shall be made only for the exact quantity delivered.

### **(c) Liability Limits**

The seller shall not be liable to the buyer for compensation or damages of any kind whatsoever because of the defect or shortage of product except as noted in clauses 16(a) and 16(b) hereof. The liability of either party shall not exceed the loss which could reasonably have been foreseen at the time of entering into the contract, nor shall it include any indirect, consequential or economic damages including, without limitation, loss of profits, loss of use and loss of goodwill. In no case shall seller be liable for loss or damage that exceeds the invoiced value of such defective goods or the shortage of products.

The seller’s liability for personal injury and/or property damage (excluding any indirect, consequential or economic damages, as indicated in the preceding paragraph) arising from the purchase, processing or use of products manufactured by the seller shall be limited to such damages that are proven to have resulted from the sole gross negligence of the seller or its directors, officers, or employees. The seller shall not be liable for claims arising out of:

- any physical or chemical change in the form of the product made intentionally by the buyer or any other party, or
- repacking, unless unpacked solely for the purpose of inspection, demonstration, testing or the substitution of parts under instruction from the seller and then repacked in the original container, or
- demonstration, installation, servicing or repair operations except such operations performed at the seller’s premises in connection with the sale of the product, or
- products which after sale by the seller have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance.



The buyer shall indemnify, defend and hold harmless the seller, its affiliates and their respective directors, officers, employees, representatives and agents, from and against any and all claims, losses, liabilities, costs and expenses (including legal fees) arising out of or resulting from the use, handling, manufacture, processing, alteration, distribution, sale or marketing of the goods, or any other action or omission with respect to the goods, after delivery thereof to the buyer.

## **17. GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia, Canada. The courts in British Columbia shall have jurisdiction over all disputes arising from the contract of sale or order. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

## **18. ARBITRATION**

It is the intent that the buyer and the seller shall endeavour by all reasonable means to settle amicably any dispute or claim arising hereunder. If amicable settlement proves impossible, and unless otherwise provided herein, the dispute shall be arbitrated under the *Commercial Arbitration Act* and the buyer and the seller shall each appoint an arbitrator experienced in the trade and the commodity in question, and the findings of such arbitrators shall be binding upon both parties, and the expense of the arbitrators' services paid by the party found at fault. If the arbitrators cannot reach agreement, they shall appoint a single umpire to review their findings and issue the final binding decision.

