



**ARAUCO NORTH AMERICA**  
**TERMS AND CONDITIONS OF PURCHASE ORDER**

**Important Notice:** ALL PURCHASE ORDERS ARE STRICTLY LIMITED TO THE TERMS AND CONDITIONS CONTAINED HEREIN AND ANY COUNTER-OFFERS OR CHANGES OF TERMS PROPOSED BY THE SUPPLIER ARE HEREBY REJECTED, UNLESS SPECIFICALLY AGREED TO IN WRITING BY ARAUCO, NORTH AMERICA.

“Arauco, North America” is a trade name used by the following four entities: Flakeboard America Limited, a Delaware corporation; Flakeboard Company Limited, a New Brunswick corporation; Arauco Panels USA, LLC, a Georgia limited liability company; and Arauco Wood Products, Inc., a Delaware corporation. Although each entity uses this trade name, each of them is an independent company and is not liable or responsible for acts or obligations of its affiliates.

It shall be understood by the parties that the trade name “Arauco, North America” (“ANA”) is used to refer only to the entity that is stated on the Purchase Order and all obligations and liabilities held by Arauco, North America shall be subject to that entity only.

**1. Definitions.** The following definitions shall apply to the Terms and Conditions.

- (a) “Agreement” means the agreement between Supplier and ANA for the purchase and sale of Goods and/or Services.
- (b) “Defective” refers to a Good or Service that is not in conformity with the Specifications set forth in the applicable Purchase Order.
- (c) “Delivery Date” means the date of delivery for Goods or performance of Services as specified in a Purchase Order.
- (d) “Delivery Point” means the location identified by Buyer in the Purchase Order to which the Supplier is to deliver Goods and/or perform the services, or such other delivery area or point which is specified in writing by Buyer.
- (e) “Goods” means the goods that are required to be delivered by Supplier pursuant to a Purchase Order, and include all materials, component parts, packaging and labelling of such goods.
- (f) “Intellectual Property Rights” means all intellectual and industrial property rights and rights of a similar nature including all rights in and to, patents including all issued patents and pending applications therefore and patents which may be issued therefrom (including divisions, reissues, re-examinations, continuations and continuations-in-part); trade-marks; copyrights; industrial design rights; rights pertaining to trade secrets and confidential information; publicity rights; personality rights; moral rights; and other intellectual property rights whether registered or not and all applications, registrations, renewals and extensions pertaining to the foregoing.
- (g) “Purchase Order” means the purchase order between ANA and Supplier for the purchase and sale of Goods and/or Services, to which these Standard Purchase Terms are attached or are incorporated by reference.
- (h) “Services” means any services to be provided by Supplier to ANA pursuant to a Purchase Order.
- (i) “Specifications” means the requirements, attributes and specifications for the Goods or Services that are set forth in the applicable Purchase Order. Specifications can also include:
  - (a) documentation relating to the Goods or Services;
  - (b) operational and technical features and functionality of the Goods or Services;
  - (c) standards or levels of service performance for Services;
  - and (d) ANA business requirements that are expressly set out in a Purchase Order.

- (j) "Supplier" means the party indicated on the face page of the Purchase Order that is contracting with ANA for the purchase and sale of Goods and/or Services.
- (k) "Supplier Proposal" means any acknowledgement, estimate, quote, offer to sell, invoice, or proposal of Supplier relating to the supply of Goods and/or Services to Buyer, including any delivered in connection with a request for quotations, request for proposal or similar process initiated by Buyer.
- (l) "Warranty Period" means in respect of any Goods or Services, the longer of: (i) the express written warranty period provided by Supplier for the Goods or Services; and (ii) the period commencing on the date of acceptance of such Goods or Services and ending on the date that is one (1) year from that date.

## **2. Agreement**

- (a) Each Purchase Order placed by ANA for Goods and/or Services is subject to the Terms and Conditions herein and any other agreed to Terms and Conditions as stated within the Purchase Order.
- (b) By accepting the Purchase Order or any part of it, Supplier shall be deemed to have agreed to be bound by such Terms and Conditions and any other Terms and Conditions as stated within the Purchase Order.
- (c) ANA may insist upon strict compliance with Terms and Conditions herein despite any previous custom, practice or course of dealing to the contrary.
- (d) The Agreement between ANA and Supplier consists only of: (i) the Terms and Conditions herein; (ii) the applicable Purchase Order; and (iii) any Specifications or other documents expressly referenced in the Purchase Order.
- (e) Any reference in the Purchase Order to any Supplier Proposal is solely for the purpose of incorporating the descriptions and specifications of the Goods and/or Services contained in the Proposal, and only to the extent that the terms of the Supplier Proposal do not conflict with the descriptions and Specifications set out in the Purchase Order.
- (f) ANA's acceptance of, or payment for, Goods and/or Services will not constitute ANA's acceptance of any additional or different terms in any Supplier Proposal, unless otherwise accepted in writing by ANA. If there is any conflict or inconsistency between the documents constituting the Agreement, then unless otherwise expressly provided, the documents will rank in the order of precedence in accordance with the order in which they are listed in this Section 2(d).
- (g) ANA may at times need to make changes to the Specifications. Any changes to any Specifications made by ANA will be made with a timely notice to Supplier of such changes.

## **3. Delivery of Goods and/or Services**

- (a) Supplier shall, at its own expense, pack, load, and deliver Goods to the Delivery Point and in accordance with the invoicing, delivery terms, shipping, packing, and other instructions printed on the face of the Purchase Order or otherwise provided to Supplier by ANA in writing (or, if no method of shipment is specified, by the least expensive method of shipment).
- (b) Except with the prior written consent of ANA, where the goods are shipped by a method other than as instructed, ANA may (i) refuse to accept delivery of the goods; or (ii) accept delivery of the Goods, and deduct any extra cost incurred by ANA by reason of their shipment by an improper method from the price payable to the Supplier.
- (c) All Goods shall be in proper condition for transportation in accordance with any applicable provincial or federal laws or regulations. No charges will be allowed for freight, transportation, insurance, shipping, storage, handling, demurrage, cartage, packaging or similar charges unless provided for in the applicable Purchase Order or otherwise agreed to in writing by ANA. Supplier shall indemnify and save ANA harmless from any claims, penalties or damages incurred by ANA as a result of the improper shipment of Goods or the improper delivery of Services provided.
- (d) Time is of the essence with respect to delivery of the Goods and performance of Services.

Goods shall be delivered and Services performed by the applicable Delivery Date. Supplier must immediately notify ANA if Supplier is likely to be unable to meet a Delivery Date in the quantities, manner and/or times specified in the delivery schedule. At any time prior to the Delivery Date, ANA may, upon notice to Supplier, cancel or change a Purchase Order, or any portion thereof, without prejudice to its other rights, and may return at the Supplier's expense part or all of any shipment of Goods received after the Delivery Date. Unless such late shipment has been approved, and, irrespective of whether a Purchase Order is cancelled, ANA may charge the Supplier with any loss or expense sustained as a result of the late delivery of Goods/Services or failure to deliver Goods/Services, for any reason, including, without limitation, for the convenience of ANA or due to failure of Supplier to comply with this Agreement, unless otherwise noted.

- (e) The Purchase Order is for the exact quantity and prices stated, and no overrun, over-shipment or additional costs will be chargeable to ANA unless approved by ANA in writing prior to shipment. There shall be no back-order without prior approval of ANA.
- (f) Title and risk of loss or damage shall pass to ANA upon receipt of Goods at the Delivery Point, unless otherwise agreed to by ANA in writing. ANA has no obligation to obtain insurance while Goods are in transit from Supplier to the Delivery Point.
- (g) When applicable, Supplier shall follow all instructions of ANA and cooperate with ANA's customs broker as directed by ANA (including by providing requested shipping documentation) with respect to all Goods that originate from sources or suppliers based outside of the US. Supplier shall comply with all the requirements of border agents with respect to the importation of Goods from outside the US.
- (h) Goods or Services shall not be deemed or construed to be delivered/provided until actually received by ANA at the place designated on the Purchase Order.

#### **4. Right of Inspection**

- (a) All Goods received and performance of Services rendered shall be subject to ANA's right of inspection and rejection (and to the inspection and rejection of any Federal, Provincial or Municipal Government or agency, the permission of which is required to use the Goods), and the Supplier shall
  - (i) permit any accredited representative of ANA or applicable Government or agency to attend at the plant, warehouse or other place of shipment;
  - (ii) supply such samples of goods as ANA or any representative of a Government or agency may reasonably request; and
  - (iii) provide all reasonable assistance to any representative of ANA or any Government or agency, for the purpose of testing or otherwise inspecting the Goods.
- (b) The Supplier shall bear the cost of delivery and inspection of Defective, unordered or otherwise rejected Goods and/or Services.
- (c) No rejected Goods or Services shall be replaced without a new Purchase Order unless prior approval from ANA is obtained. Supplier shall not deliver Goods that were previously rejected on grounds of non-compliance with this Agreement, unless delivery of such Goods is approved in advance by ANA, and is accompanied by a written disclosure of ANA's prior rejection(s).
- (d) Where additional work is required to meet Specification requirements, such work shall be arranged forthwith by the Supplier, and shall be carried out at no extra cost to ANA.
- (e) Unauthorized late deliveries, unordered Goods or Services, Defective Goods or Services, and Goods or Services not in accordance with ANA's Specifications shall be held for 3 days for the Supplier's instructions and at the Supplier's risk, and where the Supplier so directs, shall be returned at the Supplier's expense.
- (f) Payment for Goods or Services prior to inspection shall not constitute acceptance of those Goods or Services.
- (g) Where Goods or Services are rejected, any allowance for the price of those Goods or Services shall be deducted from payments made in regards to the total invoice.

## **5. Price/Payment Terms/Invoices**

- (a) Prices for the Goods and/or Services will be set out in the applicable Purchase Order.
- (b) Price increases or charges not expressly set out in the Purchase Order shall not be effective unless agreed to in advance in writing by ANA.
- (c) Supplier will issue all invoices in a timely manner to the billing address stated on the Purchase Order and shall identify the Goods shipped or Services rendered, the Purchase Order number, the Delivery Date, the Delivery Point, and in the case of Goods, the place from where the Goods were shipped, the name of the carrier and the bill of lading number. Any other specific details that are necessary to identify the Goods or Services should be included accordingly on the invoice.
- (d) Canadian Suppliers shall provide three (3) copies of all invoices.
- (e) All other foreign Suppliers shall forward four (4) properly certified Canada customs invoices on the same day that Shipment is made or Services provided, together with all certificates required by law, and all such invoices shall show the Purchase Order number, Service provided, case or container number and contents of each package separately.
- (f) All payments will be made within the set standard terms of net 30 unless otherwise agreed upon by both the Supplier and ANA.
- (g) ANA will pay the undisputed portion of properly rendered invoices thirty (30) days from the invoice date.
- (h) ANA shall have the right to withhold payment of any invoiced amounts that are disputed in good faith until the parties reach an agreement with respect to such disputed amounts. The withholding of any disputed amounts shall not be deemed a breach of this Agreement nor shall any interest be charged on such amounts.
- (i) Notwithstanding the foregoing, ANA agrees to pay the balance of the undisputed amounts on any invoice that is the subject of any dispute within the time periods specified herein.

## **6. Taxes**

- (a) Unless otherwise stated in a Purchase Order, all prices or other payments stated in the Purchase Order are exclusive of any taxes.
- (b) Supplier shall separately itemize all applicable taxes each on each invoice and indicate on each invoice its applicable tax registration number(s).
- (c) ANA will pay all applicable taxes to Supplier when the applicable invoice is due.
- (d) Supplier will remit all applicable taxes to the applicable government authority as required by applicable laws.
- (e) Notwithstanding any other provision of this Agreement, ANA may withhold from all amounts payable to Supplier all applicable withholding taxes and to remit those taxes to the applicable governmental authorities as required by applicable laws.

## **7. Hazardous Materials**

Supplier agrees to provide, upon and as requested by ANA, to satisfy any applicable laws governing the use of any hazardous substances either of the following: (i) all reasonably necessary documentation to verify the material composition, on a substance by substance basis, including quantity used of each substance, of any Goods, and/or of any process used to make, assemble, use, maintain or repair any Goods; or (ii) all reasonably necessary documentation to verify that any Goods and/or any process used to make, assemble, use, maintain or repair any Goods, do not contain, and the Services do not require the use of, any particular hazardous substances specified by ANA.

## **8. Legal Compliance; Workplace Safety**

In carrying out its obligations under the Agreement and Purchase Order, including the performance of Services, Supplier shall at all times comply with all applicable federal, provincial, and municipal laws, regulations, standards, and codes. Supplier shall maintain its workers' compensation accounts in good standing, and provide ANA with evidence of good standing upon

request. Supplier shall obtain all applicable permits, licenses, exemptions, consents and approvals required for the Supplier to manufacture and deliver the Goods and perform the Services.

## **9. Warranties By Supplier**

- (a) **Product Warranties.** Supplier warrants to ANA that during the Goods Warranty Period all Goods provided hereunder shall be: (i) of merchantable quality; (ii) fit for the purposes intended; (iii) unless otherwise agreed to by ANA, new; (iv) free from defects in design, material and workmanship; (v) in strict compliance with the Specifications; (vi) free from any liens or encumbrances on title whatsoever; (vii) in conformance with any samples provided to ANA; and (viii) compliant with all applicable federal, provincial, and municipal laws, regulations, standards, and codes.
- (b) **Service Warranties.** Supplier shall perform all Services: (i) exercising that degree of professionalism, skill, diligence, care, prudence, judgment, and integrity which would reasonably be expected from a skilled and experienced service provided providing services under the same or similar circumstances as the Services under this Agreement; (ii) in accordance with all Specifications and all ANA policies, guidelines, by-laws and codes of conduct applicable to Supplier; and (iii) using only personnel with the skills, training, expertise, and qualifications necessary to carry out the Services. ANA may object to any of the Supplier's personnel engaged in the performance of Services who, in the reasonable opinion of ANA, are lacking in appropriate skills or qualifications, engage in misconduct, constitute a safety risk or hazard or are incompetent or negligent, and the Supplier shall promptly remove such personnel from the performance of any Services upon receipt of such notice, and shall not re-employ the removed person in connection with the Services without the prior written consent of ANA.
- (c) **Intellectual Property Warranties.** Supplier warrants that it has good and marketable title to the Goods or Services; that neither the supply of any Goods or the performance of any Services provided to ANA nor the use of those Goods or Services by ANA shall constitute an infringement of any Intellectual Property Rights belonging to any third party; and the Supplier shall defend, indemnify and hold ANA harmless from and against any and all claims, liabilities or costs (including legal costs on a substantial indemnity basis) to which ANA is exposed by reason of any such infringement or breach of any kind, including breach of warranty.
- (d) **Manufacturer Warranties.** Supplier shall assign to ANA all manufacturer's warranties for Goods not manufactured by or for Supplier, and shall take all necessary steps as required by such third party manufacturers to effect assignment of such warranties to ANA.

## **10. Warranty Remedies**

- (a) In the event of breach of any of the warranties in Section 9, and without prejudice to any other right or remedy available to ANA (including Buyer's indemnification rights hereunder), Supplier will, at ANA's option and Supplier's expense, refund the purchase price for, or correct or replace the affected Goods, or re-perform the affected Services, within 10 day(s) after notice by ANA to Supplier of warranty breach. All associated costs, including costs of re-performance, costs to inspect the Goods and/or Services, transport the Goods from ANA to Supplier, and return shipment to ANA, and costs resulting from supply chain interruptions, will be borne by Supplier. If Goods are corrected or replaced or Services are re-performed, the warranties in Section 9 will continue as to the corrected or replaced Goods/Services for a further Goods Warranty Period commencing on the date of acceptance of the corrected or replaced Goods/Services by ANA. If Supplier fails to repair or replace the Goods/Services within the time periods required above, ANA may repair or replace the Goods/Services at Supplier's expense.
- (b) In the event that any Goods provided by Supplier to ANA are subject to a claim or allegation of infringement of Intellectual Property Rights of a third party, Supplier shall, at its own option and expense, without prejudice to any other right or remedy of ANA (including

ANA's indemnification rights hereunder), promptly provide ANA with a commercially reasonable alternative, including the procurement for ANA of the right to continue using the Goods/Services in question, the replacement of such Goods/Services with a non-infringing alternative satisfactory to ANA, or the modification of such Goods/Services (without affecting functionality) to render them non-infringing.

#### **11. Supplier's Intellectual Property**

All Intellectual Property Rights in and to all Goods and/or Services shall vest in ANA free and clear of all liens and encumbrances on receipt of payment by Supplier. To the extent that any Goods and/or Services contain any intellectual property of Supplier, Supplier hereby grants to ANA a worldwide, royalty-free, non-exclusive, perpetual license to use, copy, modify and distribute such intellectual property as part of the Goods and/or Services delivered. Supplier agrees to provide to ANA all assistance reasonably requested by ANA to perfect the rights described herein, including obtaining all assignments and waivers of moral rights necessary or appropriate to vest the entire right, title and interest in such materials in ANA and its successors and assigns.

#### **12. Force Majeure**

- (a) Neither ANA nor the Supplier shall be responsible for delays in respect of this Purchase Order that result from any occurrence or event which could not have been reasonably avoided including but not limited to fire, explosion, war (whether or not declared), act of terrorism, riot, strike, walk out, lockout or other labor controversy or shortage, flood, insurrection, natural catastrophe or other act of God demand or requirement of law or of the Government of either Party or any other competent governmental authority whose decision adversely affects the performance of either Party ("Force Majeure").
- (b) The party claiming relief under Force Majeure should make reasonable efforts to remove or overcome the effects of such occurrence or event as soon as it is reasonably practicable.
- (c) If either ANA or the Supplier is unable or fails to perform any or all of its duties and obligations by reason of Force Majeure, then the party claiming relief (the "claiming party") will not be liable to the other party during the period of Force Majeure and to the extent of its inability or failure.
- (d) The claiming party whose performance is affected by an occurrence of Force Majeure shall immediately notify the other non-claiming party in writing of the onset of such occurrence or event and shall subsequently advise said non-claiming party of the cessation of such occurrence or event and resume performance hereunder as soon as reasonably possible.
- (e) In the event that the Force Majeure event continues for a period of ninety (90) days from the date the claiming party provided notice, the non-claiming party shall have the right to terminate this Agreement by furnishing written notice to the party claiming Force Majeure relief.

#### **13. Confidentiality**

Supplier shall safeguard and keep confidential any and all information relating to ANA obtained by it or provided to it by ANA in connection with this Agreement, and shall use such information only for the purposes of carrying out its obligations under this Agreement.

#### **14. Insurance**

Supplier represents and warrants to ANA that it has in place with reputable insurers such insurance policies in coverage amounts that would be maintained by a prudent supplier of goods and services similar to the Goods and Services provided hereunder, including, as applicable, professional errors and omissions liability insurance and comprehensive commercial general liability insurance (including product liability coverage, all-risk contractors' equipment insurance, and automobile liability insurance). In addition, Supplier will take out and maintain, at its own cost, such insurance policies and coverages as may be reasonably required by ANA from time to

time. Supplier will promptly deliver to ANA, as and when requested, written proof of such insurance. If requested, ANA will be named as an additional insured under any such policies. If requested by ANA, such insurance will provide that it cannot be cancelled, or materially changed so as to affect the coverage provided under this Agreement, without the insurer providing at least 30 days prior written notice to ANA.

#### **15. Indemnities**

Supplier shall indemnify, defend and hold harmless ANA, its Affiliates, and their respective officers, directors, employees, consultants, and agents (the “ANA Indemnified Parties”) from and against any claims, fines, losses, actions, damages, expenses, legal fees and all other liabilities brought against or incurred by the ANA Indemnified Parties or any of them arising out of: (a) death, bodily injury, or loss or damage to real or tangible personal property resulting from the use of or any actual or alleged defect in the Goods or Services, or from the failure of the Goods or Services to comply with the warranties hereunder; (b) any claim that the Goods or Services infringe or violate the Intellectual Property Rights or other rights of any person; (c) any intentional, wrongful or negligent act or omission of Supplier or any of its Affiliates or subcontractors; (d) Supplier’s breach of any of its obligations under this Agreement; or (e) any liens or encumbrances relating to any Goods or Services.

#### **16. Limitation of Liability**

EXCEPT FOR SUPPLIER’S OBLIGATIONS UNDER SECTION 15, AND EXCEPT FOR DAMAGES THAT ARE THE RESULT OF THE GROSS NEGLIGENCE OR WILFUL MISCONDUCT OF A PARTY, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY OTHER PERSON FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING ANY LOST PROFITS, DATA, GOODWILL, OR BUSINESS OPPORTUNITY FOR ANY MATTER RELATING TO THIS AGREEMENT.

#### **17. Independent Contractors**

Supplier will perform its obligations under the Agreement as an independent contractor and in no way will Supplier or its employees be considered employees, agents, partners, fiduciaries, or joint venturers of ANA. Supplier and its employees will have no authority to represent ANA or its Affiliates or bind ANA or its Affiliates in any way, and neither Supplier nor its employees will hold themselves out as having authority to act for ANA or its Affiliates.

#### **18. Severability**

If any provision of this Agreement is determined to be unenforceable or invalid for any reason whatsoever, in whole or in part, such invalidity or unenforceability shall attach only to such provision or part thereof and the remaining part thereof and all other provisions shall continue in full force and effect.

#### **19. Waiver**

No waiver of any provision of this Agreement shall be enforceable against that party unless it is in writing and signed by that party.

#### **20. Amendment**

No modifications of, or additions to, the provisions or conditions of a Purchase Order will become part of it unless accepted in writing by ANA.

#### **21. Assignment**

A Purchase Order may not be assigned, sub-contracted or otherwise transferred in whole or in part to any other supplier, except with the prior written consent of ANA.

**22. Jurisdiction**

This Purchase Order shall be construed and governed by the laws of the Georgia, USA applicable therein.