



OPEN A
**JOHN NICHOLLS
(TRADING) LTD**
CREDIT ACCOUNT



The Independent Choice Since 1965



YOUR DETAILS

Approximate Monthly Credit Requirement: £

BUSINESS TYPE;

☐ LIMITED COMPANY

☐ PLC

☐ NON-LIMITED

☐ PARTNERSHIP

☐ SOLE TRADER

☐ SELF BUILD

☐ PERSONAL ACCOUNT

Company Name:

LTD Co. Registered No:

Registered Address/Trading Address:

Post Code:

Trading Name: (if different)

Time at Present Address: If less than 3 years at current address, please supply previous address on a separate sheet of paper.

Nature of Business:

If Partnership, please supply Full Names, Addresses and Date of Births of All Partners on separate sheet of paper.

CONTACT & FINANCIAL DETAILS

Mobile Number:

Telephone Number:

Fax Number:

Email Address:

Invoice Address: (if different from above)

Post Code:

Account Contact Name:

Contact Telephone Number:

☐ Please tick this box if you are happy to receive your invoices electronically?

REFERENCES - Name, Full Address, Including Post Code with Telephone and Fax Numbers of 2 Principal Suppliers

1.

2.

Please inform us of any special instructions i.e. Order Number required, etc.

Please supply a Password to be used with All Orders, if required.

TELL US ABOUT YOUR BUSINESS

Which one of the following best describes your business

☐ Plumber

☐ Building Contractor

☐ General Builder

☐ Architect/QS

☐ Electrician

☐ (local company)

☐ Plumbing Contractor

☐ Brick Layer

☐ Plasterer

☐ Interior Designer

☐ Painter & Decorator

☐ School/educational

☐ Self-Builder

☐ Landscaper

☐ Developer/
House Builder

☐ Maintenance

☐ Caravan/leisure homes/
Portable Accom

☐ Farming/Agriculture

☐ Shop Fitter

☐ Roofer

☐ Conservatory/Window
Fitters

☐ Care Home

☐ Housing Assoc/
Local facility

☐ Kitchen Fitter

☐ Bathroom Fitter/Installer

☐ Carpenter

☐ DIY

☐ Corporate Customer

Other:

☐ Tiler

☐ Heating Engineer

☐ Ground Worker

DATA PROTECTION / MONEY LAUNDERING ACT - CREDIT REFERENCE AND FRAUD PREVENTION AGENCIES: Before granting credit and in adherence to money laundering laws as well as detecting fraud and confirming identity we may periodically search the files of credit reference agencies and keep a record of that search. We may share details with credit reference agencies and other organisations involved in the detection and prevention of fraud and money laundering. If we are aware or suspect fraud we will record this. It may also be used for tracing and claims assessment.

Information held about you by the Credit Reference Agency may already be linked to records relating to one or more of your partners. For the purpose of this application you may be treated as financially linked and your application will be assessed with reference to any 'associated' records. You have the right or access to your personal records held by credit and fraud agencies. We will supply their names and addresses upon request.

PROJECT DETAILS

Your local JohnNicholls or J&B's branch:

What type of work do you normally undertake? (E.g Plumbing, Bathrooms, Kitchens, Renewables, etc.)

What products do you frequently purchase?

☐ Plumbing Materials

☐ Bathrooms

☐ Renewables

☐ Underfloor Heating

☐ Boiler Spares

☐ Building Materials

☐ Heating Materials

☐ Kitchens

☐ Air Conditioning

☐ Tiles & Flooring

☐ Screws & Fixings

☐ Tools & Electrical

What is your estimated spend on materials per annum?

Do you purchase materials for your job elsewhere online?

If yes, what type of product do you buy online?

TELL US ABOUT YOUR HOBBIES AND INTERESTS

Choose as many that apply to you

☐ Football

☐ Golf

☐ Fishing

☐ Dining out

Other:

☐ Rugby

☐ Horse Racing

☐ Boxing

☐ Travel - UK

☐ Cricket

☐ Motor Sports

☐ Shooting

☐ Travel - Abroad

Which social media sites are you using?

☐ Facebook

☐ LinkedIn

☐ Pintrest

☐ Tik Tok

☐ Twitter

☐ Instagram

☐ Houzz

☐ WhatsApp

Other:

HOW WE COMMUNICATE WITH YOU

From time-to-time John Nicholls (Trading) will contact you with news, special offers and information relating to your account

If you would like to receive information from us/continue to receive information from us please tick the box. ☐

We take data protection very seriously - if you want to know more about our data protection policy, please see our Privacy Policy <http://www.johnnichollstrade.co.uk/privacy-policy/>

BEFORE YOU SEND YOUR APPLICATION, PLEASE MAKE SURE

- All mandatory sections are complete and signed
- You have attached photographic ID (Driving license or passport) and proof of address (utility bill or bank statement less than 3 months old)
- Please also supply a copy of your company letterhead giving registration number and registered address, if applicable
- Please return your completed application form by post or hand it in to the branch of your choice

YOUR SIGNATURE

Please note In the case of an Incorporated business this form must be signed by a Director. By signing this agreement you accept that:
a) You have read and understood our Terms & Conditions as detailed on the back of this form and agree to respect the credit terms stated. These may be varied by us from time to time. **b)** The information given by you is correct and we may rely on it. **c)** You are authorised to bind the Account Holder to this agreement by signing it. **d)** You authorise us to apply to either or both of the above supplied Trade References and any Credit Reference or Fraud Prevention Agencies as allowed by the Data Protection Acts. **e)** We reserve the right to decline applications and amend or withdraw credit accounts subject to status and I or company policy.

I,a Director/Sole Trader/Partner, agree to guarantee performance of all financial obligations of the company and its subsidiaries to John Nicholls (Trading) Ltd and its subsidiaries.

Signature:

Date:

Name (please print)

Date of Birth: / /

Position in Company

What happens next?

After processing you'll receive your welcome card along with confirmation of your account details and payment terms.

FOR OFFICE USE ONLY

Limit Set: £

Authorised by:

Rep:

Date Opened:

Account No

Photo ID checked: ☐

Conditions of Sale

- 1. DEFINITIONS**
- 1.1 Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.
- 1.2 Buyer: the person or firm who purchases the Goods from the Seller.
- 1.3 Conditions: the terms and conditions set out in this document as amended from time to time in accordance with Condition 17.4.
- 1.4 Contract: the contract between the Buyer for the sale and purchase of the Goods in accordance with these Conditions.
- 1.5 Force Majeure Event: has the meaning set out in Condition 15.2.
- 1.6 Goods: the goods (or any part of them) set out in the Order.
- 1.7 Order: the Buyer's order for the Goods, as set out in the Buyer's purchase order form or in the Buyer's written acceptance of the Seller's quotation or overleaf as the case may be.
- 1.8 Specification: any specification for the Goods, including any related plans and drawings, that is agreed by the Buyer and the Seller.
- 1.9 Seller: John Nicholls (Trading) Limited (registered in England and Wales with company number 00840103).
- 2. BASIS OF CONTRACT**
- 2.1 These Conditions apply to all sales of Goods by the Seller to the Buyer and shall prevail over any other terms or conditions contained or referred to in the Order or in correspondence or elsewhere or implied by trade custom, practice or course of dealing unless such other terms or conditions are specifically agreed to by the Seller. The Seller's agent shall not have authority to enlarge, vary or exclude any of these Conditions. Any purported enlargement, variation or exclusion thereof shall be without effect unless specifically agreed to in writing by the Seller and the Buyer in accordance with Condition 17.4.
- 2.2 No terms or conditions of any main building contract or sub-contract shall affect these Conditions whether or not the Seller has notice thereof.
- 2.3 The headings appearing above each Condition are included for reference purposes only and shall not affect or limit the interpretation and effect of these Conditions.
- 2.4 The Order constitutes an offer by the Buyer to purchase the Goods in accordance with these Conditions.
- 2.5 The Buyer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.
- 2.6 The Order shall only be deemed accepted when the Seller issues a written acceptance of the Order, at which point As Contract shall only come into existence when the Seller accepts the Order.
- 2.7 Any samples, drawings, descriptive matter or advertising produced by the Seller and any descriptions or illustrations contained in the Seller's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.
- 2.8 The Seller may in its sole discretion accept or reject the cancellation of any Order once such order has been accepted by the Seller. The Seller will in no circumstances accept the cancellation of an Order for Goods which are to be specially made or obtained once such an Order has been accepted by the Seller nor will any allowance be made in respect of such goods where they are subsequently returned. If the Buyer amends or cancels an order, it shall indemnify the Seller against all costs reasonably incurred by the Seller in fulfilling the Order up until the date of deemed receipt of the amendment or cancellation, unless the amendment or cancellation results from the Seller failure to comply with its obligations under the Contract.
- 3. QUOTATIONS**
- A quotation for the Goods given by the Seller shall not constitute an offer. A quotation shall only be valid for the period stated therein.
- 4. ESTIMATES OF QUANTITIES AND ADVICE AS TO FITNESS FOR PURPOSE**
- Any estimates in respect of quantities needed or advice as to the suitability or fitness of any goods for any particular purpose given by the Seller or its servants or agents will be treated as without obligation or responsibility on the part of the Seller and the Buyer will be entirely responsible for ascertaining the quantities required and the suitability and fitness of the goods for their purpose.
- 5. GOODS**
- 5.1 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Buyer, the Buyer shall indemnify the Seller against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Seller in connection with any claim made against the Seller for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Seller's use of the Specification. This Condition 5 shall survive termination of the Contract.
- 5.2 The Seller reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.
- 6. PRICE**
- 6.1 Where a price is not specified in the Seller's acceptance of the Order, this Condition 6 shall apply. Subject to Condition 6.2, the price payable for the Goods sold shall be that contained in the Seller's current price list at the time of despatch, notwithstanding that this may differ from the price stated in any quotation by the Seller, unless the price quoted was a list price current at the time of the quotation.
- 6.2 The Seller reserves the right to make such alterations to its price list as it thinks fit.
- 6.3 Subject to Condition 6.4) hereof, if there is no list price for the Goods sold, or if the price quoted was not a list price current at the time of quotation, then the price to be paid shall be the price specified in the quotation, provided that the Order has been accepted within the period specified in the quotation.
- 6.4 In addition to having the right reserved by Condition 6.2, the Seller shall have the right at any time and without notice to revise the price payable for the goods sold to take account of increases in the cost of the Goods that is due to:
- (a) any factor beyond the Seller's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (b) any request by the Buyer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
- (c) any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate or accurate information or instructions.
- 6.5 Unless otherwise agreed by the Seller in writing all prices shall be deemed to be exclusive of Value Added Tax which shall be payable in addition by the Buyer at the rate prevailing at the tax point.
- 6.6 Unless otherwise agreed by the Seller in writing the Seller reserves the right to charge the Buyer the cost of transportation of the goods to the destination requested by the Buyer.
- 7. TERMS OF PAYMENT**
- 7.1 If payment terms are not set out in the Seller's acceptance of the Order, this Condition 7 will apply. Credit accounts may be opened, subject to satisfactory credit references being obtained, in the Seller's sole discretion. Payment for goods supplied on a credit account shall become due and payable not later than the last day of the month following the month of delivery of the goods. In the event of there being any default by the Buyer in making payment as aforesaid the entire balance of the said account shall be payable immediately and the Seller shall be entitled to charge interest thereon in accordance with Condition 7.4.
- 7.2 For all other transactions, quotations shall be for payment shall become due and payable cash with the Order. If cash is not paid payment is not made with the Order, the Seller shall have the right to require cash payment on delivery.
- 7.3 Time for payment is of the essence.
- 7.4 If the Buyer fails to make any payment due to the Seller under the Contract by the due date for payment, then the Seller shall pay interest on the overdue amount at the rate of 4% per annum above (FULL NAME OF BANK'S) base rate from time to time. Such interest shall accrue on a daily basis from the due date until payment of the overdue amount, whether before or after judgment. The Buyer shall pay the interest together with the overdue amount.
- 7.5 The Buyer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Seller may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Buyer against any amount payable by the Buyer to the Buyer.
- 7.6 At any time the Buyer (being an existing credit account customer) being a company shall after its constitution or being a sole trader or partnership shall become incorporated or amalgamated with others it shall be the duty of the Buyer to give prior written notice to the Seller of the intended change (should the Buyer wish to continue credit account facilities following any intended change). Continuance of trading with the amalgamated entity or commencement of trading with a new entity shall be in the sole discretion and only deemed undertaken by the Seller if a written acknowledgement and acceptance is issued by the Seller's Credit Controller or Sales Director or Company Secretary.
- 8. DELIVERY**
- 8.1 For the purposes of this Condition 8, "Delivery Location" means:
- (a) Where the Seller delivers the Goods, the location set out in the Order or such other location as the parties may agree;
- (b) Where the Buyer collects the Goods, the Seller's premises or such other location as the parties may agree; and
- (c) Where the Seller uses a third party carrier to deliver the Goods, the carrier's premises.
- 8.2 Delivery is completed:
- (a) where the Seller delivers the Goods, on the completion of unloading of the Goods at the Delivery Location;
- (b) where the Buyer collects the Goods, on the completion of loading of the Goods at the Delivery Location; and
- (c) where the Seller uses a third party carrier to deliver the Goods, when the Goods on the completion of unloading of the Goods at the Delivery Location.
- 8.3 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence.
- 8.4 If the Seller fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Buyer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods.
- 8.5 The Seller shall not be liable for any failure to deliver or delay in delivery of the Goods that is caused by a Force Majeure Event or the Buyer's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 8.6 Claims in respect of incomplete or incorrect delivery or of Goods damaged in transit must be notified in writing to the Seller as soon as possible and in any event within [NUMBER] Business Days of delivery or in the case of non-delivery within [NUMBER] Business Days of the Buyer's receipt of the Seller's invoice.
- 8.7 Where fine or special tolerances are required in the Goods supplied beyond those generally accepted in the building trade, no liability will attach to the Seller unless such fine tolerances are notified in writing to the Seller at the time of order and the Seller has acknowledged in writing that it is prepared to accept such order.
- 8.8 Where delivery of the Goods in satisfactory condition is undertaken by the Seller it is on the understanding that there is a suitable road to the point on the site where delivery is requested. If no such road exists delivery will be made to the nearest point to which in the reasonable opinion of the Seller's driver motor lorries can safely proceed and unload.
- 8.9 All necessary labour and equipment required to unload materials promptly shall be supplied by the Buyer and the Seller's drivers shall not be responsible for unloading.
- 8.10 If the Buyer refuses or fails to take delivery of Goods tendered in accordance with the Contract the Seller shall be entitled to immediate payment in full for the Goods so tendered. The Seller shall be entitled to store at the risk of the Buyer any goods of which the Buyer refuses or fails to take delivery and the Buyer shall in addition to the purchase price pay all costs and expenses (including insurance) of such storage and any additional cost or carriage incurred as a result of such refusal or failure.
- 8.11 The Seller may deliver the Goods by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Buyer to cancel any other instalment.
- 9. MEASURES**
- The Seller shall have the option to supply all or any of the Goods in either metric or imperial sizes in the nearest equivalent measure and goods may be changed in metric measure allowing for conversion.
- 10. PACKAGING**
- 10.1 A charge will be made by the Seller for packaging to cover the cost of labour and materials.
- 10.2 Crates and cases will be charged for but charges will be credited in full when returnables empties are returned to the Seller carriage paid and in good condition.
- 10.3 Pallets will be charged for but charges will be credited in full if returned to the Seller carriage paid in good condition within seven days of delivery. A charge may be made if damaged or retained for more than seven days.
- 10.4 Polythene sacks will be non-returnable.
- 11. RETURN OF GOODS**
- The Seller may in its sole discretion accept or reject the return of any Goods which have been incorrectly ordered. In the event that the Seller decides to accept the return of such Goods, such acceptance shall be upon such terms as the Seller may determine and in particular the Seller reserves the right to charge for the carriage and handling of such Goods.
- 12. TITLE AND RISK**
- 12.1 The risk in the Goods shall pass to the Buyer on completion of delivery.
- 12.2 Title to the Goods shall not pass to the Buyer until the earlier of the date on which:
- (a) The Seller receives payment in full (in cash or cleared funds) for the Goods and any other payments that the Seller has supplied to the Buyer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums; and
- (b) The Buyer receives the Goods, in which case title to the Goods shall pass to the Buyer at the time specified in Condition 12.4.
- 12.3 Until title to the Goods has passed to the Buyer, the Buyer shall:
- (a) Store the Goods separately from all other goods held by the Buyer so that they remain readily identifiable as the Seller's property;
- (b) Not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) Maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- (d) Notify the Seller immediately if it becomes subject to any of the events listed in Conditions 16.1(b) to 16.1(d); and
- (e) Give the Seller such information relating to the Goods as the Seller may require from time to time.
- 12.4 Subject to Condition 12.5, the Buyer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Seller receives payment for the Goods. However, if the Buyer resells the Goods before that time:
- (a) It does so as principal and not as the Seller's agent; and
- (b) Title to the Goods shall pass from the Seller to the Buyer immediately before the time at which resale by the Buyer occurs.
- 12.5 If before title to the Goods passes to the Buyer the Buyer becomes subject to any of the events listed in Conditions 16.1(b) to 16.1(d), then, without limiting any other right or remedy the Seller may have:
- (a) The Buyer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and
- (b) The Seller may at any time:
- (i) Require the Buyer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product; and
- (ii) If the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Goods are stored in order to recover them
- 13. QUALITY**
- 13.1 The Seller warrants that on delivery the Goods [, and for a period of [12] months from the date of delivery ("Warranty Period")] shall:
- (a) Conform in all material respects with their description and any applicable Specification; and
- (b) be free from material defects in design, material and workmanship.
- 13.2 Subject to Condition 13.3, if:
- (a) The Buyer gives notice in writing to the Seller [during the Warranty Period] within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in Condition 13.1;
- (b) The Seller is given a reasonable opportunity of examining such Goods; and
- (c) The Buyer (if asked to do so by the Seller and where reasonably practicable) returns such Goods to the Seller's place of business at the (Seller's OR Buyer's) cost, the Seller shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 13.3 The Seller shall not be liable for the Goods' failure to comply with the warranty set out in Condition 13.1 in any of the following events:
- (a) The Buyer makes any further use of such Goods after giving notice in accordance with Condition13.2;
- (b) The Buyer makes any use or application of the Goods after any "use by" date specified by the Seller or indicated on the Goods or their packaging;
- (c) The defect arises because the Buyer failed to follow the Seller's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or if there are none] good trade practice regarding the same;
- (d) The defect arises as a result of the Seller following any drawing, design or Specification supplied by the Buyer;
- (e) The Buyer alters or repairs such Goods without the written consent of the Seller;
- (f) The defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- (g) The Goods differ from their description and/or any Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 13.4 If any Goods, during their recommended service life, and if fitted to or installed in a structure in accordance with the Seller's instructions or (if there are none) good trade practice, are found to be defective then in addition to replacing the Goods or refunding their price, the Seller will compensate the Buyer for any damage directly caused by the Goods to the structure in which they are fitted, provided that the Seller shall not be liable to pay any sum in excess of the value of the relevant structure in satisfactory condition;
- 13.5 The Seller shall endeavour to pass on to the Customer the benefit of any manufacturer's guarantee or warranty given to the Seller.
- 13.6 Except as provided in this Condition 13, the Seller shall have no liability to the Buyer in respect of the Goods' failure to comply with the warranty set out in clause 13.1.
- 13.7 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, other than the fullest extent permitted by law, excluded from the Contract.
- 13.8 These Conditions shall apply to any repaired or replacement Goods supplied by the Seller.
- 14. LIMITATION OF LIABILITY**
- 14.1 Nothing in these Conditions shall limit or exclude the Seller's liability for:
- (a) Death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- (b) Fraud or fraudulent misrepresentation;
- (c) Breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- (d) Defective products under the Consumer Protection Act 1987; or
- (e) Any matter in respect of which it would be unlawful for the Seller to exclude or restrict liability.
- 14.2 Subject to Condition 14.1:
- (a) The Seller shall under no circumstances whatsoever be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- (b) The Seller's total liability to the Buyer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed [£1.5 million][AMOUNT] OR [NUMBER]% of the price of the Goods.
- 14.3 WITHOUT PREJUDICE TO THE GENERALITY OF THE FOREGOING, NOTHING HEREIN CONTAINED SHALL OPERATE TO EXCLUDE ANY WARRANTY OR CONDITION IMPLIED BY STATUTE IN THE EVENT OF THE BUYER DEALING AS A "CONSUMER" AS DEFINED BY SECTION 2 OF THE CONSUMER RIGHTS ACT 2015. IN SUCH A CASE THE BUYER'S STATUTORY RIGHTS ARE UNAFFECTED BY THESE CONDITIONS.
- 14.4 The Buyer accepts as reasonable that the Seller's total liability for defective Goods and delivery of the Goods shall be as set out in these Conditions; in being that limit the Company has had regard to the contract price of the Goods, the nature of the Goods, the use they will receive, and the resources available to each party including insurance cover, to meet any liability.
- 14.5 If any provision or part-provision of this Condition 14 is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Condition 14 shall not affect the validity and enforceability of the rest of this Condition 14.
- 15. FORCE MAJEURE**
- 15.1 The Seller shall not be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from a Force Majeure Event.
- 15.2 For the purposes of these Conditions, "Force Majeure Event" means any circumstance not within the Seller's reasonable control including, without limitation: acts of God; flood, drought, earthquake or other natural disaster; epidemic or pandemic; terrorist attack; civil war; civil commotion or riots; war; threat of or preparation for war; armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition; collapse of buildings, fire, explosion or accident; any labour or trade dispute, strikes, industrial action or lockouts (other than by the Seller or companies in the same group as the Seller); and interruption or failure of utility service.
- 16. TERMINATION**
- 16.1 Without limiting its other rights or remedies, the Seller may terminate this Contract with immediate effect by giving written notice to the Buyer if:
- (a) The Buyer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14] days of that party being notified in writing to do so;
- (b) The Buyer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (c) The Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) The Buyer's financial position deteriorates to such an extent that in the Seller's opinion the Buyer's capability to adequately fulfil its obligations under the Contract is seriously impaired in a material or permanent way;
- 16.2 Without limiting its other rights or remedies, the Seller may suspend provision of the Goods under the Contract or any other contract between the Buyer and the Seller if the Buyer becomes subject to any of the events listed in clause 16.1(a) to clause 16.1(d), or the Seller reasonably believes that the Buyer is about to become subject to any of them, or if the Buyer fails to pay any amount due under the Contract on the due date for payment.
- 16.3 Without limiting its other rights or remedies, the Seller may terminate the Contract with immediate effect by giving written notice to the Buyer if the Buyer fails to pay any amount due under the Contract on the due date for payment.
- 16.4 On termination of the Contract for any reason or suspension or provision of Goods under Condition 16.2, the Seller shall immediately pay to the Seller all of the Seller's outstanding unpaid invoices and interest.
- 16.5 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.
- 16.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.
- 17. GENERAL**
- 17.1 Assignment and other dealings
- (a) The Seller may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Buyer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Seller.
- 17.2 Confidentiality
- (a) Each party undertakes that it shall not at any time during the Contract, and for a period of two years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the Group to which the other party belongs, except as permitted by Condition 17.2(b). For the purposes of this Condition 17.2(a) "Group" means, in relation to a party, that party, any subsidiary or holding company from time to time of that party, and any subsidiary from time to time of a holding company of that party.
- (b) Each party may disclose the other party's confidential information:
- (i) To its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this Condition 17.2(b); and
- (ii) As may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use the party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.
- 17.3 Entire agreement
- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this agreement.
- 17.4 Variation
- No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives)
- 17.5 Waiver
- No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 17.6 Severance
- If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 17.7 Notices
- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, or email.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in Condition 17.7(a) sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one Business Day after transmission.
- (c) The provisions of this Condition 17.7 shall not apply to the service of any proceedings or other documents in any legal action.
- 17.8 Third party rights
- No one other than a party to the Contract and its permitted assignees shall have any right to enforce any of its terms.
- 17.9 Entirely for the Seller
- The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.
- 17.10 Jurisdiction
- Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute the claim (including non contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.