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Branch

Class/Rep

Business Type

N&C

Nicholls & Clarke Group

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Essex RM8 1SP
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Application to open a Credit Account

Please complete this form in BLOCK CAPITALS.

Attach a sheet of business stationery and (if available) your latest published accounts.

All applicants must complete the trade references, Section A and either Section B (for unlimited business such as partnership, sole traders or L.L.P.s) or Section C (for Limited Companies)

Section A

To be completed by all applicants.

I am applying for a new credit account ☐ I am reactivating an existing account ☐

1. Company Name/Business Title:

Trading Name:

Trading Address:

Postcode:

Telephone:

Number of Years Trading:

Accounts Contact Name:

Phone:

Email Address (Invoicing):

Email Address (Statements):

Buyers Contact Name*

Phone

Email*

* Required field for product updates, important pricing information and product offers

Do you wish to receive a web login?** Yes ☐ No ☐

**Allows you and selected staff to place orders and manage your account online.

If web contact differs from buyer above - Contact Name:

E-mail:

Please insert a cross in the relevant box if the above trading address is also the:-

Registered Office Address ☐ Invoice Address ☐ Proprietors Home Address ☐ Statement Address ☐

2. Please give a brief description of the **primary** nature of your business (e.g. Tiling Contractors).

Architect	<input type="checkbox"/> General Builder	<input type="checkbox"/> Tile Retailer	<input type="checkbox"/> Plasterer	<input type="checkbox"/>
Interior Designer	<input type="checkbox"/> Tiling Contractor	<input type="checkbox"/> Builders Merchants	<input type="checkbox"/> Decorator	<input type="checkbox"/>
Specifier	<input type="checkbox"/> Bathroom Contractor	<input type="checkbox"/> Occupational Therapist	<input type="checkbox"/> Maintenance Manager	<input type="checkbox"/>
House Builder	<input type="checkbox"/> Plumber	<input type="checkbox"/> Adaptations Company	<input type="checkbox"/> Ironmonger	<input type="checkbox"/>
Local Authority	<input type="checkbox"/> Flooring Contractor	<input type="checkbox"/> Care Home	<input type="checkbox"/> Locksmith	<input type="checkbox"/>
Housing Association	<input type="checkbox"/> Surveyor	<input type="checkbox"/> Home Improvement Agency	<input type="checkbox"/> Kitchen Company	<input type="checkbox"/>
Main Contractor	<input type="checkbox"/> Bathroom Retailer	<input type="checkbox"/> Bathroom Installer	<input type="checkbox"/>	<input type="checkbox"/>
Other - Please Specify				

Estimate of monthly credit limit required £

Total credit limit required £

3. Please state if the directors, partners or proprietors of the business have been involved in insolvency or had CCJ's registered against them within the last five years.

YES ☐ NO ☐

If YES please supply details on a separate sheet of paper.

Section B

To be completed for applicants on behalf of Partnerships, L.L.P.s, Sole Proprietors and other unlimited businesses only.

4. Is the business:-

A Partnership ☐

A Sole Trader ☐

Other ☐

L.L.P. ☐

5. Proprietors name and home address(es) if different from section A.

If there are more than two partners please attach a separate sheet.

(i)

.....

.....

.....

(ii)

.....

.....

.....

Section C

To be completed for applicants on behalf of Limited Companies only.

6. Company Registration No:

Please attach a copy of the latest Company Accounts if available.

Trade References

To be completed by all applicants. Please list names and addresses of two companies who are currently supplying goods and materials on a credit basis to the value of the credit limit required.

Company Name:	
Contact Name:	
Address:	
.....	
Tel:	Mobile:
Current Credit Limit:	
Email:	

Company Name:	
Contact Name:	
Address:	
.....	
Tel:	Mobile:
Current Credit Limit:	
Email:	

Application Declarations must be completed by all applicants

I confirm that the information given above is accurate and that I/we are able to fulfill my/our obligations under this contract with Nicholls & Clarke Group. I authorise Nicholls & Clarke Group to take up bank and trade references now or in the future. I have received and read a copy of the Nicholls & Clarke Terms and Conditions of Sale (printed Overleaf) and agree to trade on those terms. In particular I/we agree to pay all invoices in full within 30 days following the month of supply.

Signed

Position

Print Full Name

Date

Duly authorised for and on behalf of

TERMS AND CONDITIONS OF SALE FOR N & C BUILDING PRODUCTS LIMITED

These terms do not apply if you are a consumer, for this purpose a 'consumer' means any natural person acting for purposes wholly or mainly outside his trade, business or profession. The general terms and conditions of sale below apply to N&C Building Products Limited (company number 00000140), whose registered office is at 41-51 Freshwater Road, Chadwell Heath, Romford, Essex RM8 1SP. Health & safety information about the use of the goods is provided and it is your responsibility to bring this to the attention of the user of the goods.

1. DEFINITIONS

In these Sale Terms:

- "we" and "us" means N&C Building Products Limited and its subsidiary Companies and its employees and agents and "our" shall be construed accordingly
- "you" means the person, firm or company, seeking to purchase Goods from us and "your" shall be construed accordingly
- "the Goods" means the goods and/or services to be supplied by us.
- "the Terms" means these terms and any special terms agreed in writing between you and us.
- "the Contract" means the contract for the supply of Goods incorporating these Terms.

2. THESE TERMS

- 2.1 These terms and conditions apply to all trading between us and you to the exclusion of all other terms (including any which you purport to apply) unless expressly agreed in writing in advance by one of our directors.

3. THE CONTRACT

- 3.1 All orders are accepted by us only under these Terms and they may not be altered without our written agreement. Any contrary or additional terms unless so agreed are excluded.
- 3.2 Each order or acceptance of a quotation for Goods by you shall be deemed to be an offer by you to buy Goods subject to these Terms. No order or acceptance of a quotation by you shall be deemed to be accepted by us until we confirm and process your order. We shall be entitled to withdraw any quotation at any time (whether or not already accepted by you).
- 3.3 Quotations shall lapse 30 days from issue.
- 3.4 You shall be responsible to us for ensuring the accuracy of the terms of any order including any applicable design, drawing or specification provided by you and for giving us any necessary information relating to the Goods within a sufficient time to enable us to perform the Contract in accordance with its Terms.
- 3.5 We shall not be liable in respect of any misrepresentation made by us to you as to the condition of the Goods their fitness for any purpose or as to quantity or measurements unless the representation is:
 - 3.5.1. made or confirmed in writing by us; and/or
 - 3.5.2. fraudulent.
- 3.6 Without prejudice to clause 3.5 of these Terms, while we take every precaution in the preparation of our catalogues, technical circulars, price lists, website and other literature, these documents are intended for your general guidance only and statements made therein (in the absence of fraud on our part) shall not constitute representations by us and we shall not be bound by them. If you require advice in relation to the Goods please make a specific request for advice. Only advice given in writing in response to such a request shall amount to a representation.
- 3.7 No cancellation of the whole or any part of any order is permitted except where expressly agreed by us in writing. In the event of such agreed cancellation you shall indemnify us against all expenses incurred as a result of such cancellation. In any case in which we are required to place a deposit with a manufacturer or supplier in respect of your order then we may require you to reimburse us with this sum in the event of your cancellation of the order or any part thereof. Where cancellation involves Goods designed, made or ordered specially for you then you will be liable for any costs incurred by us in respect of such cancellation.

4. MATERIALS AND SAMPLES

- 4.1. There are a number of characteristics of the products we sell which you should be aware of and which should be fully considered prior to purchase including:
 - 4.1.1. It is recognised that a degree of shading and crazing to varying degrees as well as marginal size differences is inherent in all tiles and natural materials such as wood or slate (in fact this variability is often a key attraction of the product) and for this reason:
 - 4.1.1.1. fixing or installation should not be undertaken unless an acceptable blend of shades can be obtained
 - 4.1.1.2. it is recommended that the contents of a number of boxes be mixed to achieve a random blend
 - 4.1.1.3. we would stress the importance of satisfying yourself as to the shading / crazing / appearance of the products supplied prior to fixing or fitting as once fixed or fitted they will not be in returnable, saleable condition.
 - 4.1.1.4. we draw your attention that shading and crazing differences may arise between the Goods supplied and any sample you have viewed when placing your order. This is due to tiles, stone, wood and slate being natural products. You must satisfy yourself as to the quality, shading and crazing of the Goods supplied before they are fixed or fitted as once they are fixed or fitted they will not be in returnable, saleable condition and you will be deemed to have accepted them.
 - 4.1.2. A number of decorated tiles now have silver metallic or gold fired into the glaze and being soft precious metals will not stand abrasion therefore special care should be taken when grouting or cleaning.
 - 4.1.3. The Classification of Glazed Tiles according to their Abrasion Resistance is based on BS EN 14411:2012 and ISO 10545-7:1996 and is available in our showrooms. This is valid for the given applications in normal conditions. Consideration should be given to the footwear, type of foot traffic and cleaning methods expected and the floor should be adequately protected against scratching dirt at entrances by appropriate footmats or entrance matting. Ceramic floor tiles are attractive and hard-wearing but as with other floor coverings they are vulnerable to impact and damage if objects are dropped on them.
- 4.2. We recommend that all ceramic wall and floor tiles along with natural stone products are fixed using only the Nicobond range of adhesives grouts and screeds.

- 4.2.1. Instructions for use and full specifications of all Nicobond products are available within the latest technical literature which is available on request.
- 4.2.2. If you have any doubts about fixing please speak to one of our sales staff and/or ask for a copy of the latest technical literature
- 4.2.3. Before any grout is used we recommend that a trial be carried out to ensure that staining of the tile or the tile edges does not occur as we will not be responsible for staining
- 4.2.4. There are several products within the Nicobond range of coloured grouts and other ranges which have the same or similar names but it must be noted that there may be some differences in actual colour because they contain different raw materials
- 4.3. We recommend that all tiles and natural materials are installed according to the fixing methods issued by British Standards or EN Standards and cannot be responsible for problems occurring because of fixing by other means or methods.

5. PRICE

- 5.1. The price of the Goods shall be as published in our price list current at the date of delivery of the Goods. The price is exclusive of VAT which shall be due at the rate ruling on the date of the VAT invoice.
- 5.2. Prices quoted are applicable to the quantity, specification, delivery dates and information provided by you. If the order placed varies or delay is caused by your instructions or lack of instructions we shall be entitled to adjust the price.

6. PAYMENT

- 6.1. Payment for Goods supplied on a credit account shall be due not later than the last day of the month following the month of delivery or deemed delivery of the Goods. If you default on payment the entire balance of the account shall be payable immediately and we may charge interest, together with costs and expenses.
- 6.2. For non credit account purchases, payment shall be with the order or, at our discretion, on delivery or deemed delivery.
- 6.3. Time for payment shall be of the essence of the Contract. You shall make all payments in pounds sterling and in full without any deduction.
- 6.4. We reserve the right to refuse to execute any order or contract or dispatch relevant products if the arrangements for payment are or your credit is not satisfactory to us and in our sole discretion we may require payment for each consignment when it is available and before it is despatched in which case delivery will not be made until we are in receipt of cleared funds.
- 6.5. You may not withhold payment of any invoice or other amount due to us by reason of any right of set off or counterclaim which you may have or allege to have for any reason whatever.
- 6.6. We shall be entitled at all times to set off any debt or claim of whatever nature which we may have against you against any sums due from us to you.
- 6.7. When there is a query/dispute on an invoice, such query/dispute must be notified to us, in writing before the date on which payment becomes due.
- 6.8. If you or your consignee break bulk on delivery or unload the whole or part of a consignment of Goods then you are deemed to have accepted delivery.

7. DELIVERY

- 7.1. Our liability for delivery ends at the tailboard of our vehicle or the premises of our suppliers when the Goods are delivered direct from suppliers to you or where Goods are delivered by an independent carrier by delivery to that carrier.
- 7.2. Delivery dates are given in good faith but are estimates only and should not be relied on in relation to your commitments to third parties.
- 7.3. Unless otherwise agreed in writing time for delivery shall not be of the essence of the Contract.
- 7.4. As delivery dates are estimates only, we cannot accept liability for any loss damages costs or expenses of any kind whatsoever whether direct or indirect (including for the avoidance of doubt any liability to any third party) resulting from actual delivery dates being different.
- 7.5. We are not responsible for delays outside our control. If delivery of the Goods is delayed by an event outside our control then we will contact you as soon as possible to let you know and we will take steps to minimise the effect of the delay. Provided we do this we will not be liable for delays caused by the event, but if there is a risk of substantial delay you may contact us to end the contract and receive a refund for any products you have paid for but not received.
- 7.6. If we fail to deliver the Goods our entire liability shall be limited to the excess (if any) over the price of the Goods, of the cost to you (purchasing in the cheapest market reasonably available to you) of similar Goods to replace those not delivered.
- 7.7. If you fail to take or make arrangements to accept delivery or collect the Goods or if we are unable to deliver because of inadequate access or instructions delivery shall be deemed to have taken place and we may do any one or more of the following (without prejudice to any other right or remedy we may have):
 - a) make additional charges for failed delivery
 - b) store the Goods at your risk and costs
 - c) invoice you for the Goods
 - d) terminate this Contract without liability on our part
 - e) recover from you all costs and losses incurred by us
- 7.8. Unless otherwise stated all quotations and estimates assume delivery in full loads. We reserve the right to levy additional charges for deliveries by instalments where requested by you.
- 7.9. We reserve the right to make delivery by instalments and tender a separate invoice in respect of each instalment. Any claim you may have in respect of one instalment shall not affect your liability in respect on any other instalment.
- 7.10. The price agreed for delivery includes the cost of delivery on week days during normal working hours. An additional charge will be made if we agree to your request to deliver outside normal working hours, Saturdays, Sundays and/or Bank Holidays.
- 7.11. We shall deliver the Goods as near as possible to the delivery address as a safe hard road permits. If a vehicle delivers or collects Goods to or from a place off the public road you shall be solely responsible for any accident or damage resulting. You shall provide free of charge any labour or machinery necessary for unloading the Goods when delivered and our driver's responsibility is limited to handling Goods off the vehicle. If our vehicle is kept on site for an unreasonable time or has to return to the depot without completing delivery through lack of assistance or if additional staff have to accompany our driver, an

those of third parties and yourself properly stored, protected and insured and identified as Our property. Until that time You shall be entitled to resell or use the goods in the ordinary course of business, but shall account to Us for the proceeds of sale or otherwise of the goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any moneys or other property of Yours and third parties and, in the case of tangible proceeds, properly stored, protected and insured.

- (c) Until such time as the property in the goods passes to You (and provided the goods are still in existence and have not been resold), We shall be entitled at any time to require You to deliver up the goods to Us and, if you fail to do so forthwith, to enter upon any premises of Yours or any third party where the goods are stored and repossess the goods.
- (d) You shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the goods which remain Our property, but if You do so all moneys owing to Us shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.
- (e) In the event that goods are supplied on different dates, and covered by separate invoices, some of which have been paid for and some of which have not, it shall be presumed that You have used the goods which have been paid for before the goods for which payment has not been made.

6. DELIVERY AND RISK

- (a) Delivery shall unless otherwise agreed, be at Your normal place of business. We reserve the right to choose the form of transport for the goods and the composition of the consignment load.
- (b) Any time specified for delivery is given as an estimate only and shall not constitute a contractual obligation. No loss or damage shall be attributed to any delivery that has not been affected by any such date.
- (c) Where You fail or decline to take delivery of goods on the date specified for delivery or if no date is specified when goods are ready and available for delivery, then We may give 7 days notice to You upon expiration of which the goods shall be deemed to have been despatched and delivered for the purpose of clause 4(a), 4(b) and 5(g) and We may additionally charge You for any reasonable storage or additional transport costs which result.
- (d) If You consider that goods have been damaged in transit or that the consignment of goods is incorrect and You have given Us written notification (other than on the carrier's delivery document) of such damage or shortage within 72 hours of delivery, then We shall be permitted a reasonable opportunity to inspect any consignment and if appropriate (acting reasonably) will credit or replace such goods, with any replacement being invoiced and the damaged goods credited upon return if so requested by Us.
- (e) Where delivery is to be made by transport other than Our own carrier the failure of goods to arrive within 14 days of receipt by You of the advice note, must be reported to Us within the above period of 14 days failing which, We shall have no liability for non-delivery.
- (f) Except as provided in Clause 6(d), We shall have no liability to You arising out of or in connection with damage to, or incomplete, or incorrect consignments of goods.
- (g) When the goods or any number of them (whether or not being in the actual quantity ordered) are either collected by You from Our premises or are free of all vehicle transit restraints and ready for unloading by You at the agreed delivery address, delivery in relation to those goods is complete and the risk in them shall pass to You.
- (h) On arrival of the goods at the place of delivery You shall promptly provide unloading facilities and when the goods are ready to be unloaded shall unload the goods promptly. We shall be entitled to recover from You all and any costs and expenses incurred as a result of Your failure so to do. Any assistance given in respect of any unloading and any unloading carried out by Us or Our agents' (including the positioning of goods on Your storage equipment) is entirely at Your own risk. The use of distribution equipment within or outside Your premises following unloading is at Your risk.
- (i) We shall have no liability for any loss or damage to goods in transit when You have signed the delivery note or other delivery documents as received in good condition.
- (j) Pallets, frames and all other distribution equipment are Our property and must be returned to Us on demand. Should You fail to return any distribution equipment within 7 days following such demand, a charge at the rate of 50 plus VAT per week for each item of distribution equipment retained thereafter will be incurred. Use of distribution equipment for any purpose other than carriage and storage of glass supplied by Us is prohibited.
- (k) You shall not be entitled to reject any goods on the grounds that they have been delivered in incomplete quantities.

7. WARRANTIES, LIABILITIES AND STANDARDS

- (a) We warrant to You that goods shall conform to appropriate product published by the European Committee for Standardization or British Standards Institute (where applicable), or otherwise to recognised industry standards defined and published by the Glass and Glazing Federation.
- (b) Our Standard Warranty in the format current at the date of the relevant Contract shall apply to insulating glass units.
- (c) Save as expressly provided by these Conditions, or as expressly provided in any specific written warranty issued by Us, or as otherwise specifically agreed in writing by Us, our representations and statements (whether express or implied) and all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- (d) Goods represented by You to be defective shall not, save as expressly provided for in these Conditions, or in any specific written warranty issued by Us, form the subject of any claim for injury, loss, damage or any expense howsoever incurred whether arising directly or indirectly from such alleged defects other than death or personal injury resulting from Our negligence; but such goods, if demonstrated by You to be in breach of Our warranties set out in clause 7(a), will at Our discretion, be replaced free of charge, with the replacement being invoiced and the original credited to Your account on return, if so requested by Us, but We will have no further liability to You.
- (e) Except in respect of death or personal injury caused by our negligence We shall not be liable to You for any indirect, special or consequential loss or damage (whether for loss of profit or otherwise) which arise in connection with the supply of goods or their use or resale by You.

- (f) Optical, dimensional, other physical properties and colour of the goods are subject to Our manufacturing specifications, tolerances and/or standards, details of which are available in request.
- (g) Specification of the correct glass in accordance with British Standard 952 Glass for glazing Parts 1 and 2 and British Standard Code of Practice BS 6262 (Glazing for buildings), the relevant harmonized European Product standard and/or other statutory requirements is Your responsibility. Where the goods ordered appear to contravene a relevant Code of Practice or British Standard We reserve the right to substitute goods which meet the requirements and charge accordingly.
- (h) You shall be responsible for the correct use and/or installation of the goods and indemnify Us in respect thereof. We accept no liability for loss or damage resulting from failure to adhere to recommendations and guidelines laid down in its current technical literature and/or that of the said Glass and Glazing Federation.
- (i) Our warranties in clauses 7(a) and 7(b) are subject to Us receiving payment in full for the goods on or before the due date. In the event that such payment is not received by such time said warranties shall be null and void unless and except to the extent that We, at Our absolute discretion, may otherwise expressly permit in writing.

8. FORCE MAJEURE

- (a) If the performance of any Contract or any obligation thereunder is prevented by force majeure, We shall be excused performance, provided that We shall use reasonable endeavours to remove such cause(s) of non-performance, and shall continue performance thereunder without delay whenever such cause(s) are removed.
- (b) For the purposes of these Conditions, the term "Force Majeure" includes, without limitation, acts of God, strikes, lock-outs, other industrial action, fire, accident, lightning, earthquakes, storms, floods, explosion, war and any other circumstances, whether similar or dissimilar, beyond Our reasonable control.

9. TERMINATION

- If You
- (a) make default in any payment, or
 - (b) commit any breach of the terms and conditions of any relevant Contract, or
 - (c) suffer distress or execution, or becomes insolvent as set out in section 123 of the Insolvency Act 1986 or
 - (d) are (or are deemed to be) unable to or admits inability to pay Your debts as they fall due or take steps to obtain a moratorium, or commit an act of bankruptcy, or
 - (e) enter into any arrangement or composition with Your creditors or proceedings are commenced in relation to You under any law regulation or procedure relating to reconstruction or adjustment of debts or
 - (f) go or are put into liquidation (other than solely for amalgamation or reconstruction), or pass a resolution for winding up (otherwise than for the purposes of a bona fide scheme of solvent amalgamation or reconstruction) or a petition is presented (other than a petition which in Our opinion is frivolous or vexatious and which is withdrawn or stayed within 14 days) or any order is made by any competent court for the winding up, dissolution or appointment of a liquidator of You, or if an administrative receiver or administrator is appointed over the whole or any part of Your business, or if a petition or other form of application for an administration order is presented or made to the Court or notice of intention to appoint such an administrator is given or filed at court or
 - (g) cease or threaten to cease to carry on the whole or a substantial part of Your business or
 - (h) die or are dissolved or You suffer any analogous proceedings to those set out in this clause, Then We may, without prejudice to any rights which may have accrued or which may accrue to Us, at Our option;
 - (i) require payment in advance for all or any prior, existing and/or further deliveries; and/or
 - (ii) suspend any further deliveries until such default or breach, if capable or rectification, is rectified, and/or
 - (iii) terminate the relevant Contract; and/or
 - (iv) terminate any other Contracts so far as any goods remain to be delivered thereunder.

10. MISCELLANEOUS

- (a) Any quotation given by Us is not an offer.
- (b) If material or goods are ordered to be supplied to a template and the template dimensions differ to those specified in associated documents or correspondence, the order will be executed to the dimensions of the template. Templates must always be of a rigid material.
- (c) In accordance with trade custom, Your glass is handled, stored and processed at the Your own risk.
- (d) Information and illustrations in Our printed literature are approximate representations not binding in detail. We reserve the right to change specifications and other information in Our literature and You must satisfy Yourself that the current stocks of goods are as depicted in any literature.
- (e) Any Contract or order to which these Conditions relate is between Us and You as principals and is not assignable by You without Our express written consent.
- (f) Unless expressly agreed otherwise in writing,
 - (i) Any Contract or order may be assigned by Us to any of Our associated companies and/or
 - (ii) We may manufacture the goods at any of our works or plants and/or
 - (iii) We may sub-contract the manufacture and/or supply of the goods.
 For the purpose of this sub-clause our associated companies shall mean a company which is a subsidiary company of Nicholls & Clarke Limited.
- (g) We may assign Our right to receive any payments from You.
- (h) Where goods are manufactured and/or processed by Us in accordance with Your specification You shall indemnify Us in respect of any liability incurred by Us in respect of any infringement or alleged infringement of any patent, design, copyright, trademark, or other intellectual property of any third party.

11. GOVERNING LAW

These Conditions and any Contract arising hereunder shall in all respects be construed in accordance with English Law and You agree to submit to the non-exclusive jurisdiction of the English Courts.

12. GENERAL

The completion or termination of any relevant Contract shall not affect the continuing operation of Clauses 5, 6 (j) and 11.

N&C 05/14

13. NON-PAYMENT/INSOLVENCY

- 13.1. "Insolvent" means you becoming unable to pay your debts within the meaning of Section 123 (Company) or Section 268 (Individual) of the Insolvency Act 1986; the levying or the threat of execution of distress on any of your property; notice of intention to appoint or the appointment of a receiver, administrative receiver or administrator over all or any part of your property; a proposal for a voluntary arrangement or compromise between you and your creditors whether pursuant to the Insolvency Act 1986 or otherwise; the passing of a resolution for voluntary winding-up or summoning a meeting to pass such a resolution otherwise than for the purposes of a bona fide amalgamation or reconstruction; the presentation of a petition for your winding-up (Company) or bankruptcy (Individual) or for an administration order in relation to you; if you suffer any analogous step or proceedings under foreign law or you ceasing to pay your debts in the ordinary course of business or ceasing or threatening to cease to carry on your business.
- 13.2. If you fail to pay any invoice or any sum due to us under any contract on the due date or you become insolvent or if there is a material change in your constitution or you commit a material breach of this Contract (and, if remediable, you fail to remedy that breach within 7 days of notice to do so) all sums outstanding between you and us shall become immediately due and payable and we shall be entitled to do any one or more of the following (without prejudice to any other right or remedy we may have):
- 13.2.1. require payment in cleared funds in advance of further deliveries;
 - 13.2.2. claim interest and compensation on the sums outstanding pursuant to the Late Payment of Commercial Debts (Interest) Act 1998 from the due date until payment is received after as well as before judgment;
 - 13.2.3. cancel or suspend any further deliveries to you under this or any other contract without liability on our part;
 - 13.2.4. without prejudice to the generality of Clause 10 of these Terms exercise any of our rights pursuant to that clause; and/or
 - 13.2.5. terminate this or any other contract with you without liability on our part.
- 13.3. You shall reimburse our costs including legal costs on an indemnity basis which we incur in enforcing these Terms including but not limited to recovery of any sums due. Such sums shall be in addition to statutory compensation payable.

14. DATA PROTECTION

- 14.1 If you are an individual or a group of individuals you agree that we may:
- 14.1.1 Seek, hold and process any information obtained about you as a result of applications you have made to us for credit and/or in connection with this or any other contractor agreement you may have with us.
 - 14.1.2 Use this information for credit assessment purposes and to administer and operate the credit account granted to you and to monitor and analyse the conduct of that credit account and to assess your credit limit.
- 14.2 We will not disclose any information we hold about you except to licensed credit reference agencies, other suppliers and creditors to help us and others make credit decisions, to help prevent or detect fraud or other crimes and to trace debtors, on a confidential basis to our agents and sub-contractors, to insurance companies for the purposes connected with insurance products that relate or might relate to your credit account, to any person to whom we propose to transfer our rights and/or responsibilities under this Contract and to the extent we are required or permitted to do so by law.

15. COMPLIANCE WITH BRIBERY LEGISLATION

- 15.1 You agree that you will not, in connection with the Goods or services to be supplied under this contract, bribe or attempt to bribe us, or any of our employees, agents or affiliates nor engage in any activity which is in violation of any applicable bribery or anti money laundering laws. We may terminate the contract in the event of your breach of this clause. You shall indemnify us against all liabilities, costs, expenses, damages, claims, demands and losses suffered or incurred by us arising out of or in connection with any breach of this clause, whether or not the contract has been terminated.

16. EXPORT / OVERSEAS CONTRACTS (IF APPLICABLE)

- 16.1 In relation to Goods sold outside the UK, the Channel Islands and the Isle of Man, risk in the Goods shall pass to you when they leave our premises. Shipping and insurance shall be payable by you but will be managed by us unless otherwise agreed. You are responsible at your own expense for obtaining any licence and complying with any export or import regulations in force within the UK and any country for which the Goods are destined. Certain Goods imported from the United States of America by us are subject to specific restrictions. We reserve the right not to supply certain customers or countries and to require from you full details of the end use and final destination of the Goods.
- 16.2 Separate conditions and prices apply to all export orders and contracts.

17. WASTE

- 17.1 You will be responsible for the disposal of any waste arising from the Goods and will comply with all applicable laws, regulations and waste management licences relating to such waste, including the appropriate disposal by you of any Goods marked with a crossed out wheellie bin symbol. You will indemnify us against all costs, claims, liabilities and expenses arising from any breach by you of this provision.

18. MATTERS BEYOND OUR CONTROL

- 18.1 We shall not be liable for any breach of contract delay or failure to perform any of our obligations if the breach delay or failure was due to any cause beyond our reasonable control, including industrial action.
- 18.2 In particular, we may defer the date of delivery, cancel the contract or reduce the volume of the Goods and/or services ordered by you (without liability to you) if we are unable to deliver or supply due to any cause beyond our reasonable control (including the acts or omissions of our suppliers and subcontractors).

19. OTHER IMPORTANT TERMS

- 19.1 This Contract shall be governed and interpreted exclusively according to the Law of England and Wales and you agree to submit to the non exclusive jurisdiction of the English Courts.
- 19.2 The waiver by us of any breach or default of these Terms shall not be construed as a continued waiver of that breach nor as a waiver of any subsequent breach of the same or any other provision.
- 19.3 If any clause or sub-clause of these terms is held by a competent authority to be invalid or unenforceable the validity of the other clauses and sub-clauses of these Terms shall not be affected and they shall remain in full force and effect.
- 19.4 If the Housing Grants, Construction and Regeneration Act 1996 Part II applies to this Contract the Scheme under that Act shall apply and take precedence in the event of conflict between the Scheme and these Terms.
- 19.5 Any reference in these Terms to any Statute, Statutory Provision or Regulation includes a reference to that Statute, Statutory Provision or Regulation as amended extended or re-enacted at the relevant time.
- 19.6 The headings of these Terms are for convenience only and shall not affect their interpretation.
- 19.7 Termination of this Contract shall not affect rights and obligations which have already accrued at the time of termination.
- 19.8 Nothing in these terms or the Contract is intended to or will create any benefit for or right to enforce any of the terms of the Contract to any third party.
- 19.9 We may transfer our rights and obligations under these Terms to another organisation within the Nicholls & Clarke Group of Companies.
- 19.10 This Contract contains the whole agreement between you and us in respect of the supply of Goods to you and supersedes any prior written or oral agreement between you and us relating to it and you confirm that you have not entered into this Contract on the basis of any representations that are not expressly incorporated in this Contract.

Separate conditions and prices apply to all export orders and contracts
Nothing in this Contract purports to exclude liability for any fraudulent statement or act. (01/06)

Nicholls and Clarke Glass

TERMS AND CONDITIONS OF SALE FOR NICHOLLS AND CLARKE GLASS LIMITED

These terms do not apply if you are a consumer and for this purpose a consumer means any natural person acting for purposes outside his trade, business or profession.
Health & Safety information about the use of the goods is provided and it is your responsibility to bring this to the attention of the user of the goods.

1. DEFINITIONS

In these Sale Terms:
"We" and "Us" means Nicholls & Clarke Glass Limited and its employees and agents and "Our" shall be interpreted accordingly
"You" means the person their employees and agents seeking to purchase Goods from Us and "Your" shall be interpreted accordingly
"the Goods" means the goods and/or services to be supplied by Us.
"the Terms" means these terms and any special terms agreed in writing between You and Us
"the Contract" means the contract for the supply of Goods incorporating these Terms.

2. APPLICATION AND VARIATION OF THESE CONDITIONS

Unless otherwise expressly agreed in writing by Us, these Conditions apply to any contract between Nicholls & Clarke Glass Limited (the Seller) and the Buyer for the supplier of goods ("Contract") and supersede any earlier Conditions issued by Us and shall override any terms and conditions of the Buyer. These Conditions are open to negotiation before the Buyer's order is accepted (whether or not in writing) by Us, which negotiation may result in change to any price published or earlier referred to.

3. PRICES

Prices are subject to withdrawal without notice, and unless agreed otherwise in writing, goods will be invoiced at the prices ruling at the date of delivery. There are minimum area and shape charges which vary according to the goods ordered and shall be notified to You as appropriate. Prices quoted are exclusive of VAT. In addition to the price, an energy surcharge shall be payable. The circumstances in which an energy surcharge is payable and the amount thereof can be obtained from Us on request.

4. PAYMENT

- (a) Time of payment shall be of the essence of any Contract. For an account Your payment is due on or before the last day of the month next following the month in which despatch is made unless otherwise agreed. If You make default on payment, payment in respect of all goods delivered but not paid for shall immediately become due and payment in respect of any goods delivered during the continuance of any such default shall become due immediately upon delivery.
- (b) Non account holding Buyers will be required to pay the whole purchase price of the goods before the goods are manufactured and/or delivered.
- (c) Any previously agreed prompt payment discount will only be allowed provided that no payments required of You in respect of any Contract are overdue.
- (d) Interest shall be payable on overdue payments in accordance with the Late Payments of Commercial Debts (Interest) Act 1998.
- (e) No retentions are permissible and You have no right to set off disputed moneys whether or not in respect of goods under any Contract to which these Conditions apply.
- (f) We may at any time suspend the performance of any obligations under any Contract until We are satisfied that You are able to pay, or have given security for payment, for the goods.

5. TITLE

- (a) Notwithstanding delivery and the passing of risk in the goods, or any other provision of these Conditions, the property in the goods shall not pass to You until We have received in cash or cleared funds, payment in full of the price of the goods and all other goods agreed to be sold by Us to You for which payment is then due.
- (b) Until such time as the property in the goods passes to You, You shall hold the goods as Our fiduciary agent and bailee, and shall keep the goods separate from

appropriate additional charge will be made. If you do not accept delivery of Goods ordered for any reason costs incurred will be charged. We reserve the right to refuse to deliver the Goods to premises which our driver considers to be unsuitable.

- 7.12. If Goods are to be deposited other than on your private premises you shall be responsible for compliance with all regulations and for all steps which need to be taken for the protection at all times of persons or property and will indemnify us in respect of all losses damages costs and expenses we may incur as a result of such delivery whether on the public highway or elsewhere.
- 7.13. You will indemnify us in respect of all losses damages costs and expenses incurred as a result of delivery in accordance with your instructions. This indemnity will be reduced in proportion to the extent that such losses damages costs or expenses are due to our negligence.
- 7.14. In the event that we are unable to supply the Goods to you for whatever reason, we reserve the right to substitute the Goods for similar products which are of no less quality and you shall be entitled to a refund of any difference in the price if the substitute is cheaper.
- 7.15. Whilst we try to maintain continuity of supply in relation to our product lines, we reserve the right to discontinue any product at any time and we shall be under no obligation to supply you with a discontinued product in the future.
- 7.16. In the case of certain products, variations may arise in the finish of those products where they originate from different factory batches. We shall not be liable for any loss caused by such variation where Goods bought for a specific job or purpose are not purchased at the same time.

8. INSPECTION

- 8.1. You shall inspect the Goods at the place and time of unloading but nothing in these Terms shall require you to break packaging and/or unpack Goods which are intended to be stored before use.
- 8.2. You must give us written notice within 3 working days of unloading of any claim for short delivery.
- 8.3. If you do not give us that notice within that time the Goods will be deemed to have been delivered in the quantities shown in the delivery documents.
- 8.4. You shall not be entitled and irrevocably and unconditionally waive any right to reject the Goods or claim any damages whatsoever for short delivery howsoever caused.
- 8.5. Our liability for short delivery is limited to making good the shortage.
- 8.6. Where it is or would have been apparent on a reasonable inspection that the Goods are not in conformity with the Contract or (where the Contract is a contract for sale by sample) that the bulk does not compare with the sample you must give us written notice within 3 working days.
- 8.7. If you fail to give us that notice within that time the Goods will be deemed to have been accepted and you shall not be entitled and irrevocably and unconditionally waive any right to reject the Goods.

9. DEFECTIVE/FAULTY GOODS

- 9.1. Subject to your compliance with your obligations herein, Goods supplied will be replaced or repaired free of charge, or in our absolute discretion the purchase price refunded if notice of the defect is given to us in writing within 14 days of receipt (or within 3 working days of receipt where clause 8.6 applies) and the Goods are returned to our depot carriage paid, and we are satisfied that the Goods were defective in materials or workmanship on receipt. We do not accept for the cost of taking out, refixing or making good other materials. Subject to clause 12.1, this clause 9.1 sets out our entire obligations and the customer's remedies.
- 9.2. Subject to clauses 9.3 and 12.10, our total liability for all loss or damage which is claimed to result from any breach of our obligations hereunder shall be limited to the contract price actually paid for the Goods (provided that the monetary limit shall not apply to our liability for death or personal injury).
- 9.3. In no event shall we be liable for the loss or damage set out below even if foreseeable by us or in our contemplation:
 - a) economic loss including loss of profits, business revenue, goodwill or anticipated savings;
 - b) damages in respect of special, indirect or consequential loss;
 - c) loss or damage arising from any claim made against the customer by any other party.

10. RETURNS

- 10.1. Requests for the return of Goods must be made to Customer Services at our offices (Tel No 0208 586 4600) and any credit agreed will be subject to a minimum 35% deduction for re-stocking. Drivers have instructions not to accept Goods without prior instructions. In no circumstances can we accept back Goods which have been specially procured or made by us to special instructions or which have deteriorated.
- 10.2. Nothing in clause 10.1 shall oblige us to accept the return of Goods and it will be entirely within our sole and absolute discretion as to whether or not the return is to be accepted and under what circumstances.
- 10.3. All sanitaryware must be returned in original packaging.

11. TITLE AND RISK

- 11.1. The property in Goods sold by us to you shall remain vested in us until all sums owed by you to us on whatsoever grounds shall have been paid. Risk in the Goods shall pass to you when the Goods are delivered.
- 11.2. You shall store Goods sold by us to you in such a way that they are readily capable of being identified as our property. Our labels and markings shall not be removed, obscured or defaced before title shall have passed to you upon payment in full. You shall maintain and safely store the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery. You shall notify us immediately if you become subject to any of the events listed in clause 13.
- 11.3. You grant us a licence to enter at all times, with transport, any premises in your occupation or to which you have access and where the Goods to which title has not passed to you from us may then be situated. We shall have the right to check that the Goods are appropriately stored and labelled and to repossess any Goods sold by you which have not been paid for. We may require you to deliver up all Goods in your possession which have not been resold, or irrevocably incorporated into another product.
- 11.4. You shall not deal with the Goods in any way other than in the normal course of your business. Until such time as payment in full has been made of all sums payable in respect of Goods, you shall not be entitled to sell or otherwise deal in or transfer the property in the Goods (whether or not they have been attached to other products) except on the

condition that as between you and us, you shall be deemed to be acting as our fiduciary agent. However nothing herein contained shall be construed so as to create any privity of contract between us and any person other than you. In the event of any sale or disposal of any of the Goods to a third party whether or not they have been attached to other products:

- a) You shall, if we so require, assign to us any right of action against the third party in respect of money due for such Goods;
 - b) If you receive money for such Goods you shall act as our fiduciary agent and shall hold such monies in a separate account to identify the same as being our property;
 - c) We shall account for any monies received that exceed the sum due from you to us in respect of Goods sold;
 - d) Where the Goods have been sold together with any products to which they have become attached, the price payable by the third party shall be deemed to include a price in respect of the Goods equal to the price payable by you to us.
 - e) In the event that we repossess Goods we shall be absolutely entitled to resell the same or use them in our business as we may think fit. If we resell the same we shall be absolutely entitled to the proceeds of resale.
 - f) If we repossess Goods then your liability in respect of the purchase price shall be extinguished without prejudice to any claim which we may have in respect of transport, storage or handling charges or in respect of damages of any kind
- 11.5. All Goods sold are at your sole risk after their delivery or collection. However, if we repossess Goods risk shall pass to us on delivery to our premises or upon your collection of the Goods.

12. RESPONSIBILITIES

- 12.1. Nothing in these Terms shall exclude or restrict our liability for death or personal injury resulting from our negligence or our liability for fraudulent misrepresentation.
- 12.2. We are willing to undertake liability in addition to that provided by these Terms if a higher selling price for the Goods is agreed and such additional liabilities are agreed by us in writing.
- 12.3. In this clause "Defect" shall mean the condition and/or any attribute of the Goods and/or any condition or other circumstances which but for the effect of these Terms would have entitled you to damages.
- 12.4. Subject to Clauses 12.1 to 12.3 of these Terms we shall not be liable by reason of any misrepresentation (unless fraudulent) or any breach of warranty condition or other term express or implied or any breach of duty (common law or statutory) or negligence for any loss damages costs or expenses of any kind whatsoever. Instead of liability in damages we undertake liability under Clause 12.5 below.
- 12.5. Where but for the effect of Clause 12.4 of these Terms you would have been entitled to damages against us we shall not be liable to pay damages but subject to the conditions set out in Clause 12.6 below shall in our sole discretion either repair the Goods at our own expense or supply replacement Goods free of charge or refund all (or where appropriate part) of the price paid for the relevant Goods.
- 12.6. We will not be liable to you under these Terms:
 - (a) if the Defect would have been apparent on a reasonable inspection under Clause 8.1 of these Terms at the time of unloading unless you give us written notice within the required period from unloading in accordance with clause 9.1;
 - (b) unless the Defect is discovered within 6 months from the date of delivery and we are given written notice of the Defect within 3 working days of it being discovered;
 - (c) if the Defect arises from fair wear and tear;
 - (d) if the Defect arises from your wilful damage negligence abnormal working conditions mis-use alteration or repair of the Goods failure to follow British Standard or EN Standard or industry instructions relevant to the Goods or storage of the Goods in unsuitable conditions; or
 - (e) unless after discovery of the Defect we are given a reasonable opportunity to inspect the Goods before they are used or in any way interfered with. We acknowledge that the costs of suspending works are relevant to the determination of what is a reasonable opportunity and this sub-clause shall not apply to any works affecting the Goods which it may be reasonably necessary to carry out in the interests of safety and/or as emergency measures.
- 12.7. If the Goods are not manufactured by us or have been processed by a third party whether or not at our or your request our liability in respect of any defect in workmanship or materials of the Goods will be limited to such rights against the manufacturer or the third party as we may have in respect of the Goods. We will on written request provide details of our rights against the manufacturer or third party and any other terms and conditions imposed by the manufacturer or the third party and so far as possible will on request assign to you any such rights.
- 12.8. If the Goods are manufactured or processed by us to the design quantity measurement or specification of you then:
 - 12.8.1. Subject to Clauses 12.1 to 12.3 of these Terms we shall not be under any liability for any loss damages costs or expenses of any kind whatsoever or under Clause 12.5 of these Terms as the case may be except in the event of:
 - (a) fraudulent misrepresentation;
 - (b) misrepresentation where the representation was made or confirmed in writing;
 - (c) non-compliance with such design quantity measurement or specification;
 - (d) breach of a written warranty by us that the Goods are fit for that purpose.
 - 12.8.2. You will unconditionally fully and effectively indemnify us against all losses damages costs on an indemnity basis and expenses awarded against or incurred by us in connection with or paid or agreed to be paid by us in settlement of any claim:
 - (a) for infringement of any patents copyright design trademark or any other industrial or intellectual property rights of any other person; and/or
 - (b) arising from any such manufacturing or processing including but not limited to any Defect in the Goods. This indemnity will be reduced in proportion to the extent that such losses damage costs and expenses are due to our negligence.
- 12.9. You will unconditionally fully and effectively indemnify us against all losses damages costs on an indemnity basis and expenses awarded against or incurred by us in connection with or paid or agreed to be paid by us in settlement of any claim by any third party arising from the supply or use of the Goods including loss arising from our negligence. This indemnity will be reduced in proportion to the extent that such losses damages penalties costs and expenses are due to our negligence.
- 12.10. Without prejudice to any other provisions in these Terms in any event our total liability for any one claim or for the total of all claims arising from any one act of default on our part (whether arising from our negligence or otherwise) shall not exceed the contract price actually paid for the relevant Goods or, if lower, such sum as is from time to time the limit of liability laid down by our insurers in respect of such claim.