

# NICHOLS PLC TERMS AND CONDITIONS OF SALE



Nichols Plc (Company Number 00238303)  
Laurel House, Woodlands Park, Ashton Road  
Newton Le Willows, WA12 0HH

## 1. Definitions

1.1. In these Terms and Conditions of Sale all references to "the Company" are to Nichols Plc, all references to "the Buyer" are to the person firm or company by whom an order is given to the Company and all references to "Goods" are to the goods which are the subject of the order.

## 2. General

2.1. All contracts for the sale of Goods by the Company shall be deemed to incorporate these Terms and Conditions of Sale except where otherwise specifically agreed in writing by the Company. These Terms and Conditions of Sale shall override any terms and conditions stipulated incorporated or referred to by the Buyer in any order, correspondence, negotiations, or in any other way.

## 3. Offer and Acceptance

3.1. The Company's price lists and quotations do not constitute offers by the Company.

3.2. No order is binding on the Company until accepted by the Company's issue of an official order acknowledgement or invoice.

3.3. Acceptance of the Buyer's order is subject to the Goods being available and unsold.

3.4. After an order has been accepted by the Company, the order can only be cancelled with the Company's written consent.

## 4. Prices

4.1. All Goods will be supplied at the Company's prices in force at the date of order.

4.2. All prices and quotations are subject to variation or withdrawal by the Company at any time without notice.

4.3. Any duty or tax, present or future, levied or imposed in any country or territory in respect of the sale or delivery of the Goods is payable by the Buyer.

## 5. Payment Terms

5.1. Unless otherwise specifically stated in writing payment in full is due by the 20th day of the month following delivery. Time of payment shall be of the essence of all contracts for the sale of Goods by the Company. Without prejudice to the foregoing, the Company reserves the right to charge the Buyer compound interest at the rate of two percent per month above Bank of England base rate on the amount of any part of the price which is overdue in respect of the period from the date on which payment is due until payment is received in full (interest being calculated at calendar monthly intervals from the due date of payment).

## 6. Delivery

6.1. While the Company will endeavour to meet quoted delivery dates, it will not be liable for any delay in delivery however caused or for any loss or damage consequential or otherwise arising therefrom, nor shall any delay entitle the Buyer to cancel any contract.

6.2. If a contract provides for delivery by instalments, each instalment shall be deemed to be the subject of a separate contract. Non-delivery or delay in delivery of any instalment shall not affect the contract as regards other instalments.

6.3. Goods are not supplied on a sale or return basis and a full signature for Goods received must be given at the time of each delivery, signature of the delivery document being conclusive proof of delivery. No Goods may be returned without the written permission of the Company. The Company shall not be under any liability whatsoever for Goods returned by the Buyer without permission.

## 7. Damaged or Deficient Goods

7.1. In the event of Goods reaching the Buyer in a damaged or deficient condition the Buyer should:-

- 7.1.1. notify the carrier and the Company immediately;
- 7.1.2. endorse the relevant proof of delivery document accordingly;
- 7.1.3. submit to the Company's Registered Office written particulars of the claim within three days of receipt of the Goods.

7.2. Claims for total or partial loss of consignment must be received at the Company's Registered Office within seven days of the date of the relevant invoice.

7.3. The Company cannot accept claims received in respect of Goods signed for in good condition.

## 8. Title to Goods

8.1. The property in Goods agreed to be sold by the Company shall not pass to the Buyer until the agreed price has been duly received in cash by the Company but the Buyer shall be entitled to sell the Goods in the ordinary course of its business as principal and for its own account unless and until the Buyer shall fail to pay any amount whatsoever due to the Company upon the due date or the Company shall cancel or terminate any contract with the Buyer for any reason. The Company shall thereupon have the right at any time thereafter to remove the Goods or so much thereof as it, in its sole discretion may determine from any premises where they may be. If the Buyer resells the Goods before the property in them has passed in accordance with this Condition the Buyer shall not give any warranty or representation on behalf of the Company regarding the Goods.

## 9. Risk and Insurance

9.1. The risk in Goods agreed to be sold by the Company shall unless the Goods are forwarded by sea, pass on delivery of the Goods to the Buyer. The Company shall be entitled to treat the risk as having passed if the Buyer fails to require or accept delivery of the Goods (as the case may be) when delivery falls due.

9.2. Goods forwarded by sea are at the Buyer's risk, unless the Company is specifically instructed to insure on the Buyer's behalf. The Company is not required to give any notice to the Buyer to enable the Buyer to insure the Goods during their sea passage. The Company accepts no responsibility for short landed Goods if a clean receipt is given to the carrier.

## 10. Liability

10.1. The Company's liability hereunder shall be limited to replacing defective, damaged or non-delivered Goods. The Company shall have no liability for any loss or damage (direct, indirect or consequential) caused thereby. Save as aforesaid all warranties and conditions express or implied, statutory or otherwise, except the implied conditions as to title in Sale of Goods Act 1979 (as amended) are hereby expressly excluded.

10.2. Subject to Condition 10.1, the Company's total liability in contract, tort (including negligence or breach of statutory duty) misrepresentation, restitution or otherwise, arising in conjunction with the performance or contemplated performance of the contract shall be limited in aggregate to all sums paid by the Buyer to the Company in the 12 month period immediately preceding the event that gave rise to the claim; and the Company shall not be liable to the Buyer for any indirect or inconsequential loss or damage or loss of profit, loss of business, depletion of goodwill, or otherwise or costs or expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the contract.

10.3. Nothing in these Terms and Conditions excludes or limits the liability of the Company for death or personal injury caused by the Company's negligence or fraudulent misrepresentation or any other liability to the extent such liability may not be excluded or limited as a matter of law.

## 11. Consumer Protection Act 1987

11.1. If the Company incurs any liability under the Consumer Protection Act 1987 (or any statutory modification or re-enactment thereof) to any person by virtue of a defect or defects in Goods the Buyer shall indemnify and keep indemnified the Company in respect of such liability to the extent that the said liability shall have arisen due to any act, omission or default on the part of the Buyer.

## 12. Rights and Remedies of Company

12.1. Each right or remedy of the Company under these Terms and Conditions is without prejudice to any other right or remedy of the Company whether under the contract or not.

## 13. Severance

13.1. 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 Condition shall not affect the validity and enforceability of the rest of the Contract

## 14. Waiver

14.1. 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.

14.2. 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.

## 15. Rights of Third Parties

15.1. The parties to the contract do not intend that any term of this contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

## 16. Force Majeure

16.1. The Company shall not incur any liability or be responsible for any loss or damage sustained by the Buyer arising out of or in consequence of any interruption in the source of supplies, holding up or delay in shipment or deliveries, any prohibition of import or export, the seizure or stoppage of or requisition of ships or vessels, Act of God, outbreak of hostilities (whether or not war is declared), insurrection, riot, Civil disturbance, Government act or regulation, fire, flood, explosion, accident, theft, climatic conditions, strike, lock-out or trade dispute (whether of the Company's employees or some other parties) shortage or unavailability of Goods, labour or power, or caused by or resulting from any other event or circumstances (whether or not the same or similar kind to those listed) beyond the Company's control.

16.2. Without prejudice to the generality of paragraph (a) of this condition, the Company shall have the right to cancel or delay delivery or reduce the amount delivered (without any liability on the Company for any loss or damage consequential or otherwise arising therefrom), if the Company is unable to fulfil its contractual obligations by reason of any cause beyond the Company's control.

## 17. Financial Risk

17.1. If the Company considers in its absolute discretion that the financial circumstances of the Buyer do not justify payment on the credit terms or any other arrangements previously agreed or the Buyer fails to pay for any Goods or to comply with any other material requirement under any contract with the Company, then in either such event the Company may at its option, without prejudice to any of its other rights or remedies, either require payment in cash before despatch of Goods remaining to be delivered or may cancel all or any contracts with the Buyer and in the case of contracts where delivery is to be made by instalments cancel all or any of such contracts as regards undelivered instalments.

## 18. Warranty

18.1. All Goods are guaranteed to conform in every respect with the requirements of the Food Safety Acts and of all regulations relating to foodstuffs now in force in the United Kingdom.

## 19. Alterations and Amendments

19.1. The Company reserves the right to alter or amend these Terms and Conditions of Sale generally or for any particular class of Goods or customer.

## 20. Assignment and Other Dealings

20.1. The Company 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.

20.2. 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 Company.

## 21. Notices

21.1. 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 Condition, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service or commercial courier.

21.2. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in Condition 21.1; if 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.

21.3. The provisions of this Condition shall not apply to the service of any proceedings or other documents in any legal action.

## 22. Credit Referencing

22.1. The Company will monitor and record information relating to the Buyer's trade performance and such records will be made available to credit reference agencies, who will share that information with other businesses in assessing application for credit and fraud prevention.

## 23. Data Protection

23.1. The Company is registered as a Data Controller under the Data Protection Act 2018. The Company undertakes only to use personal data in accordance with the Data Protection Principles.

## 24. Entire Agreement

24.1. This 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.

24.2. 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 or negligent misstatement based on any statement in this agreement.

## 25. Governing Law

25.1. These Terms and Conditions of Sale and all contracts for the supply of goods by the Company shall be governed by and construed in accordance with English Law and the Company and the Buyer agree that the English Courts shall have exclusive jurisdiction to determine any dispute arising from or connected with this Agreement.

