

# GOLDEN LARCH CONTRACTING LTD

FENCING SPECIALISTS

ROMSEY ROAD, OWER, HAMPSHIRE. SO51 6AF

Telephone: Southampton (023) 80 814448 – Facsimile: (023) 80 813764

## CREDIT ACCOUNT APPLICATION FORM

APPLICANT'S NAME(S): .....

TRADING NAME: .....

TRADING ADDRESS: .....

.....OWNED/RENTED

TEL NO: ..... MOBILE NO: .....

FAX NO: ..... E-MAIL: .....

IF LIMITED COMPANY.

REG ADDRESS: .....

.....REG NO: .....

IF SOLE TRADER/PARTNERSHIP.

PRIVATE NAME(S) & ADDRESSES (ES)

1.....OWNED/RENTED

2.....OWNED/RENTED

3.....OWNED/RENTED

PRINCIPAL ACTIVITIES: .....

DATE BUSINESS COMMENCED: .....ANNUAL TURNOVER: £.....

NUMBER OF EMPLOYEES: (DIRECT).....(SUB-CONTRACT) .....

BANKERS: .....SORT CODE: .....A/C NO: .....

ADDRESS: .....

PRINCIPAL SUPPLIER: .....

ADDRESS: .....

TEL; NO: .....AVGE. VALUE OF CREDIT: £.....

PRINCIPAL SUPPLIER: .....

ADDRESS: .....

TEL; NO: .....AVGE. VALUE OF CREDIT: £.....

DECLARATION BY APPLICANT: I / We hereby make a formal application for a credit account to an estimated monthly credit of £ and agree to abide by the terms and conditions of sale set out overleaf. I / We appreciate that payment of accounts within your stated terms is of the essence of the contract.

SIGNED: ..... POSITION: ..... DATE: .....

**Please Return Completed Application to:**

**Golden Larch Contracting Ltd,**

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### CONDITIONS OF SALE

#### 1. FORMATION

Orders are accepted only subject to the seller's conditions of sale as printed herein. Acceptance of any order from the buyer shall be deemed to incorporate all these conditions. No terms contained in any written or printed document or otherwise, or any qualification or variation of these conditions, shall form part of the contract or any collateral contract between the seller and the buyer, unless the seller has accepted them in writing. No oral statement or representation by or on behalf of the seller forms part of this contract or any collateral contract, unless confirmed by the seller in writing.

#### 2. SAMPLE / DESCRIPTION

(1) Except where the seller and the buyer have expressly agreed, the sale shall not be a sale by samples submitted and description or illustration in trade or the sellers literature or catalogue shall be treated as showing type, class and general characters only, and shall not be treated as importing terms or warranties as to substance, performance, cover, quality or dimension and any failure of the goods to conform with such samples, descriptions or illustrations shall not constitute any breach of contract on the part of the seller.

(2) The buyer must satisfy himself as to the suitability of the goods for the purpose for which the buyer requires them and that they are fit for that purpose.

#### 3. DELIVERY

(1) Unless the contract provides to the contrary, the seller may make delivery by instalments.

(2) Where delivery is to be made by instalments, each instalment shall be treated as a separate contract, and any delay, default or non-delivery in respect of any instalments on the part of the seller shall not entitle the buyer to cancel the remainder of the contract.

(3) Failure by the buyer to pay for any instalment or delivery when payment is due, shall entitle the seller to withhold further delivery.

(4) If the buyer cancels any order for or fails to accept delivery of any goods ordered when tendered, or in the event of any shipment or delivery of goods being delayed at the buyer's request, or in the event of the buyer failing to make any payment when it is due, the buyer shall be liable to the seller for all additional or excess handling, storage or other charges whatsoever, thereby incurred by the seller in relation to any such goods, or to any other goods, delivery of which the seller is then entitled to withhold.

(5) Unless otherwise agreed by the seller, no times quoted, specified or agreed for delivery of the goods by the seller should be of the essence of the contract. The buyer shall nevertheless be bound to accept goods when available. The seller shall not be liable in any way in respect of late despatch or delivery however caused, nor shall such failure to despatch be deemed to be breach of contract. Where drawings, specifications, instructions and materials are to be supplied, it is a term of the contract that the accuracy thereof shall be the responsibility of the buyer and that they will be supplied in reasonable time to enable the seller to despatch such goods within any time stipulated.

(6) The buyer must notify the seller in writing of any shortages of goods delivered or collected within three days of any such delivery or collection.

#### 4. QUOTATIONS, V.A.T. AND VARIATION IN PRICE

(1) Unless previously withdrawn, the seller's quotation expires one month after the date of quotation. No binding contract is created by the buyer acceptance of the quotation, until notice of the acceptance of the order has been given by the seller.

(2) Orders are accepted on condition that goods will be invoiced at the price ruling at the date of dispatch. The seller reserves the right to alter prices without notice to cover any variation in the cost of raw materials, labour, ect, or through the buyer's change of design or for any other reason. If variation in price occurs during the currency of the order, the price of the undespached portion of the order outstanding at the date of such variation in price may be adjusted accordingly. All prices quoted are exclusive of value added tax where applicable.

#### 5. PAYMENT

(1) Buyers with approved credit accounts will be invoiced for goods when they are collected or despatched.

(2) Buyers without approved credit accounts are required to pay for goods when orders are placed with the seller and accepted.

(3) Unless otherwise agreed, invoices and accounts are due for payment on the last day of the month, following the month of delivery or collection. Any discount offered is withdrawn automatically if accounts or invoices or any part thereof, is overdue.

(4) If the buyer shall fail to pay any amount when due, or if the buyer shall fail or refuse to accept delivery of any goods or give delivery instructions in relation thereto when they are ready for collection or despatch, or otherwise fail to perform any of the obligations on the part of the buyer contained herein, or in the event of death, incapacity, bankruptcy or any act of insolvency of the buyer, or if the buyer is a limited company or in the event of liquidation or at the appointment of a receiver, then the price of all orders invoiced or despatched by the seller shall be come immediately due and payable by the buyer whether previously demanded or not, and the seller shall forthwith be entitled without notice to the buyer, to treat as cancelled every contract made between the seller and the buyer, or at the sellers option to suspend or to continue the delivery of goods there under, without prejudice to any other rights of the seller.

(5) Interest shall accrue on all sums due and outstanding at the rate of 2% above the current base rate of the seller's bank.

(6) The buyer shall not be entitled by any reason of any dispute relating to the goods or any claim made by the buyer under this or any contract, to withhold payment or any amount which is due to the seller hereunder or to set off against any such sum or sums for which the seller does not admit liability.

(7) The seller reserves the right to refuse to execute any order or contract, if the arrangements or credit of the buyer appears to the seller to be or to become unsatisfactory.

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### 6 RISK & RESERVATION OF TITLE

- (1) When any parcel of goods is ready for collection and notice thereof, is given to the buyer, the risk in those goods shall pass to the buyer 14 days after the date of such notification or when collected if earlier. In the case of delivered goods, the risk in those goods shall pass to the buyer on delivery.
- (2) until full payment has been received by the seller for all goods supplied or services rendered (and full payment means that all cheques, bills or other instruments or payments, have been honoured in accordance with the terms) the following conditions shall apply:-
- (a) The title to the goods shall remain with the seller.
- (b) Should the goods be converted or assembled into a product for conversion or assembly it shall be deemed to have been affected on behalf of the seller, who shall have beneficial ownership of the products but without accepting liability in respect of such goods
- (c) Subject to (d) and (e) below, the buyer shall be free to sell the goods and products referred to in (b) above, in the ordinary course of business, on the strict condition that the proceeds thereof shall belong to the seller until the seller receives full payment.
- (ci)

- (d) The seller may at any time, revoke the buyer's power to sell by notice to the buyer provided that such notice shall be based upon reasonable grounds
- (e) The buyers power to sell shall automatically cease in the event of the buyer's bankruptcy, receivership, liquidation or entry into any compositions or arrangements with the buyers creditors or if any judgement, distress or levy is raised against the buyer's goods
- (f) upon the determination of the buyer's power to sell under (d) and (e) above, the buyer shall place the goods and any product into which they have been incorporated at the disposal of the seller, who shall be entitled to enter upon premises of the buyer for the purpose of removing such goods and products and shall be allowed to remove such goods and products from the premises.
- (g) The buyer agrees to store and record such goods in such a way that they are readily identifiable as the property of the sellers at all times. While such goods or products are in the procession or control or under the authority of the buyer, the buyer accepts that they are a bailee of such goods on behalf of the seller.
- (h) in the event of any sale or disposition of any of the goods or of the product by the buyer, the buyer shall hold upon the trust for the seller (i) so much of the proceeds of the sale as are equal to the invoice price of the goods to which any unpaid invoice of the seller relates. (ii) the buyer, or if the buyer shall be a company, the directors thereof are personally under a duty to retain such monies at all time in an account which is separate in identity from any normal trading account or whatever nature, usually operated by the buyer.

### 7 GUARANTEE / DEFECTIVE GOODS

- (1) Any part or parts of goods manufactured by the seller which are proved to be defective through faulty materials or workmanship will at the sellers option be either replaced or repaired free of charge subject to the following conditions:-
- (a) Notice in writing of the defect has been given to the seller within twelve months after dispatch of the goods
- (b) The defective parts are returned to the seller carriage paid together with full particulars of defect and the original invoice number
- (c) In the event that it is impracticable for the seller either to replace or repair the goods the seller will repay to the buyer the full price of the goods
- (2) the guarantee contained in x (1) of these conditions will be invalidated if without the sellers consent the buyer makes or causes or allows any alteration of repair to be made to the goods or if any defect in or breakdown of the goods is due to improper handling or negligence on the part of the buyer its servants, agents or contractors or to any other cause outside the sellers control
- (3) Nothing herein is intended to restrict the buyer's rights under statute in common law
- (4) the seller shall in the event not be liable to the buyer for loss or waste of storage, warehousing, shipping, processing, manufacture or any other space or facility or labour, time and effort expended of any nature or any other direct or indirect loss
- (5) without prejudice to the operation of any other condition hereof, where any goods are delivered that do not comply with the contract and any liability of the sellers to the buyer for any loss or expense of whatever nature there be occasioned, shall be limited to and shall not exceed a sum equal to that of the cost of the goods in respect of which default has been made.

### 8 LIMITATION OF LIABILITY

- (1) Without Prejudice to the effect or operation of any other clause herein contained the aggregate liability of the seller to the buyer for any loss or damage whatsoever nature arising out of any breaches of this contract shall be limited and shall not exceed a sum equal to the total price of the goods
- (2) insofar as it may appear to any court, arbitrator or tribunal that any term or these conditions which seeks to impose any restrictions or limitation of liability on the part of the seller to any specified sum or multiple of the price of the goods and to which the unfair contracts terms act 1977 applies, does not satisfy the requirements of reasonableness, such restriction or limitation shall not be disregarded or treated as null and void or as having no application but shall be constructed as if there were substituted therein, such greater minimum specified sum or multiple of the price of the goods as would be in the opinion of the court, arbitrator tribunal be reasonable and shall be given effect accordingly

### GENERAL

These terms and conditions are to be referred to as dated 2008 and shall supersede any other previous terms and conditions in issue. The construction validity and performance of this contract shall be governed by the law of England