

BUSCH AUSTRALIA PTY. LTD.
STANDARD TERMS AND CONDITIONS OF SALE

1. **TERMS OF SALE**
- 1.1 **BUSCH AUSTRALIA PTY. LTD.** will contract to sell and supply the Goods to the Buyer on the following standard terms and conditions. These terms and conditions may not be varied except as agreed in writing by the Company. These terms and conditions of sale (as varied by written agreement) shall constitute the entire contract of sale between the Buyer and the Company. These terms and conditions override any terms contained in any other document issued by the Buyer, including any purchase order. If a party does not exercise a right or remedy fully or at a given time, the party may still exercise it later.
2. **DEFINITIONS**
- 2.1 The “**Company**” is Busch Australia Pty Ltd (ABN 38 006 402 964 / ACN 006 402 964)
- 2.2 The “**Buyer**” is the company, firm, person, corporation or public authority who places an order which is accepted by the Company and includes its successors or personal representatives.
- 2.3 “**Goods**” means the goods to be sold and purchased, and the services agreed to be provided.
- 2.4 “**GST**” has the meaning it has in the *A New Tax System (Goods and Services Tax) Act 1999*, as amended from time to time.
- 2.5 “**Price**” means the purchase Price referred to as the purchase Price in the order as accepted by the Company plus or minus any variations thereto calculated pursuant to these terms and conditions.
3. **ORDERS**
- 3.1 Orders are subject to acceptance by the Company.
- 3.2 A quotation is not an offer to sell. The Company reserves the right to revise a quotation within 30 days of issue. The Buyer may place an order by signing a quotation and returning it to the Company which is subject to acceptance by the Company.
- 3.3 The Buyer acknowledges that the Company will incur obligations and costs once the Buyer places or confirms an order which is accepted by the Company. Therefore, the Buyer may only cancel or vary an order, once it has been placed or confirmed, with the consent of the Company. Where consent is granted the Buyer agrees to pay reasonable and proper compensation to the Company for the loss caused by the cancellation or changes. Where a variation is agreed to by the Company, the Company shall be entitled to a reasonable extension of time to complete the manufacture and/or delivery of the Goods.
4. **PRICE**
- 4.1 All Prices are in accordance with the Company’s established Price schedules and are subject to change without prior notice to the Buyer. Unless otherwise specified, all Prices are excluding GST.
- 4.2 All Prices are ex works unless otherwise agreed to in writing. Minimum invoice charge per order is \$50.00 net.
- 4.3 Goods warehoused beyond the specified delivery date for the convenience of the Buyer will be subject to additional charges for warehousing and other incidental expenses incurred by the Company which will be invoiced on delivery.
- 4.4 Quotations given by the Company are based on current rates of labour, overhead, materials, freight, cartage, insurance, foreign exchange, custom duty, primage and landing charges, and current quotations from suppliers of component parts. The Company reserves its right to add any increases in the Price of these items and any other costs incurred by the Company occurring after the date of quotation to the quotation Price.
- 4.5 The Company reserves the right to pass on to the Buyer, any changes in estimated Prices which arise from circumstances beyond the Company’s control.
5. **PAYMENT**
- 5.1 The Buyer must pay the Price indicated on the invoice, order form or other document or statement issued by the Company by the due date. Time is of the essence in respect of the Buyer’s obligation to make payment for the Goods.
- 5.2 Payment is due as follows, unless the Company otherwise agrees in writing:
 - a. on delivery; or
 - b. if a credit arrangement has been agreed to and confirmed in writing by the Company, within the agreed credit period.
- 5.3 Payment shall be deemed to have been made:
 - a. if cash is tendered on the date it is tendered;
 - b. if funds are transferred electronically on the date the funds are credited to the Company’s bank account; and
 - c. if a cheque (bank cheque or otherwise) or other negotiable instrument is tendered on the date upon which such cheque or negotiable instrument is negotiated and cleared by the Company’s bank.
- 5.4 If the Company at any time deems the credit risk profile of the Buyer to be unsatisfactory, it may require security for payment and may suspend performance of its obligations under the contract until sufficient security has been obtained.
- 5.5 All costs and expenses of or incurred by the Company as a result of such suspension and any recommencement shall be payable by the Buyer upon demand.
- 5.6 The Company may charge interest on any amount owing commencing on the due date to the date of payment in full. The interest rate will be the overdraft interest rate charged by the Company’s trading bank plus 4% per annum.
- 5.7 The Buyer agrees to pay on demand all costs (including commission and legal fees as between solicitor and own client and any other costs) incurred by the Company or the Company’s agents relating to the recovery of any amounts payable by the Buyer to the Company.
- 5.8 All payments by the Buyer must be made in full and without any deduction or right of set-off or counterclaim. If any part of an invoice is in dispute, the balance will remain payable and must be paid when due.

6. DELIVERY AND RISK

- 6.1 Risk in the Goods shall pass to the Buyer upon delivery of the Goods in good order.
- 6.2 Delivery is deemed to be made:
- a. when the Buyer or the Buyer's agent is given possession of the Goods at the Company's warehouse or elsewhere (loading is then at the Buyer's risk); or
 - b. when the Goods are handed over to the carrier at the Company's warehouse or elsewhere, unless otherwise agreed in writing;
- whichever is the earlier.
- 6.3 Proof of Delivery is the Delivery Docket signed by
- a. In the event of 6.2 a., the Buyer or the Buyer's agent; or
 - b. In the event of 6.2 b., the carrier's driver or other representative of the carrier
- 6.4 The Company does not guarantee the delivery of the Goods at or to the destination specified in the order, and shall not be responsible for loss, damage, breakages or delay after having received "in good order" receipts from the carrier. Any such claim must be made by the Buyer against the carrier.
- 6.5 In the absence of shipping instructions in the order, the Company reserves the right to choose the carrier and the method of transport which the Company deems satisfactory at the Buyer's expense.
- 6.6 The Company may choose to deliver by instalments and may treat each delivery as a separate contract. Should the Company fail to deliver or make defective delivery of one or more instalments this shall not entitle the Buyer to repudiate the main contract.
- 6.7 The Company may charge a reasonable handling fee for all deliveries.
- 6.8 Any delivery date agreed by the Company is approximate only. The Company shall use its best endeavours that the delivery requirements of the Buyer are met.

7. TITLE

- 7.1 Legal Title in the Goods delivered by the Company to the Buyer does not pass (and the Buyer is a bailee only in respect of those Goods) until payment is made in full for the Goods supplied by the Company to the Buyer.
- 7.2 Until the Buyer has paid the Company in full for all Goods supplied, the Buyer shall store the Goods in such a way that they are clearly identifiable as the property of the Company. The Buyer shall, however, be at liberty to sell the Goods in the ordinary course of business as fiduciary agent for the Company and shall account to the Company for the proceeds of the sale.
- 7.3 If payment for any of the Goods is overdue then the Company shall be entitled to enter upon the premises upon which the Goods are stored without notice and without prejudice to any of its other rights and remedies and repossess the Goods. The Buyer will indemnify the Company on demand in respect of any costs or liabilities incurred by the Company in exercising its rights under this clause.

8. EXPRESS WARRANTY

- 8.1 The Company warrants that all non-consumable Goods are fit for their purpose and of merchantable quality. This warranty remains in force for a period of 12 months immediately following delivery (the Warranty Period).
- 8.2 No claim may be made by the Buyer under this warranty unless:
- a. The claim is received by the Company within 7 days after the end of the Warranty Period, or 7 days of the defect complained of becoming apparent, whichever is the earlier;
 - b. The claim is confirmed in writing; and
 - c. The Company is given a reasonable opportunity to inspect the Goods and verify the claim at the Company's premises. Shipment of the Goods to such premises shall be at the Buyer's cost and risk
- 8.3 The liability of the Company under this warranty is, in all cases, limited to the amount of the contract Price of the Goods in respect of which the warranty is given. The Company may perform this warranty by doing any one of the following at its discretion:
- a. replace the Goods, or supply equivalent Goods; or
 - b. repair the Goods or, in case of services, supply the services again; or
 - c. pay the reasonable costs of replacing or repairing the Goods, or re-supplying the services; or
 - d. give a credit for or refund the purchase Price.
- 8.4 The Company may choose to give a specific written warranty in addition or substitution to the warranty in this clause.
- 8.5 The warranty in this clause does not cover:
- a. any defect caused or contributed to by the Buyer;
 - b. if any attempt to repair the defective Goods is made by any person or persons not authorised by the Company to make repairs;
 - c. normal wear and tear of the Goods.
- 8.6 Should the Company elect to replace any defective Goods, such replacement shall be effected at the Company's premises; shipment of the defective Goods to such premises shall be at the Buyer's cost and risk.
- 8.7 No Goods shall be returned by the Buyer to the Company without the prior written consent of the Company. The Company reserves the right to charge a reasonable handling fee (restocking fee) for the return of Goods that do not fall under a claim for warranty under this clause 8. Returning of Goods to the Company's premises shall be at the Buyer's cost and risk.

9. LIMITATION OF LIABILITY

- 9.1 The Company has given the express warranty set out in the previous clause (Express Warranty). The Company excludes all other representations, warranties (whether express or implied) and liabilities.
- 9.2 The Company will not be liable for any loss or damage caused to the Buyer, or to any other person, by any delay in delivery however that delay is caused.

- 9.3 The Company will not be liable to the Buyer, or to any other person, in respect of any loss or damage arising directly or indirectly from the Goods or their use, any services provided by the Company, or any breach by the Company of any of its obligations under this contract.
- 9.4 The Company shall not be liable for any consequential, indirect or special damages or loss of any kind of the Buyer or of any other person under this contract.
- 9.5 The liability of the Company is in any case and under all circumstances limited to the contracted value.
- 9.6 The terms and conditions set out in these terms and conditions of sale are in addition to, and in no way purport to derogate from, any conditions and warranties expressly given by the *Trade Practices Act 1974 (Cth)* and corresponding State and Territory legislation.
- 9.7 Subject to this, however, all terms and conditions implied by law are expressly excluded from the terms and conditions of this contract.
- 10. DEFAULT AND REMEDY**
- 10.1 If the Buyer defaults in any payment due to the Company or breaches any of these terms and conditions of sale or an insolvency event in respect of the Buyer arises or is reasonably suspected by the Company, the Company may, in its absolute discretion and without limiting any other right or claim it may have against the Buyer, do any or all of the following:
- a. Vary or withdraw any approved credit limit and/or terms of trade;
 - b. Cancel or suspend any unfilled order;
 - c. Terminate any other contracts between the Company and the Buyer and demand immediate payment of any moneys due and outstanding under those contracts;
 - d. Cancel any rebate, discount or allowance due or payable by the Company as at the date of the event;
 - e. Enter (at any time) any premises in which the Company's Goods are stored, to enable the Company to inspect the Goods and to reclaim possession of the Goods without liability for the tort of trespass, negligence or payment of any compensation to the Buyer whatsoever;
 - f. Lodge a caveat or similar instrument over any property of the Buyer;
 - g. Institute any recovery process the Company considers appropriate in its discretion, at the Buyer's cost and expense, including all legal costs incurred by the Company on an indemnity basis.
- 11. FORCE MAJEURE**
- 11.1 The Company shall not be liable for any loss, detention, delay or any failure to perform or comply with any of these terms and conditions if that loss, detention, delay or failure arises from any circumstances beyond the reasonable control of the Company including, without limiting the foregoing, war, accidents, lockouts, strikes and other labour disturbances, acts of God, earthquake, storm, tempest, fire affecting the Company's operations or the operations of the Company's suppliers, lightning, unavailability of insurance at reasonable cost and non-delivery of material from the usual sources of supply of the Company.
- 12. DESIGN AND INTELLECTUAL PROPERTY**
- 12.1 Where the design of the Goods is provided by the Buyer or its nominee, or is provided by the Company in accordance with the Buyer's specifications, the Buyer shall accept sole responsibility for the design and shall satisfy itself that the Goods are suitable in all respects for the purposes for which they are acquired.
- 12.2 The Buyer shall indemnify and shall keep the Company indemnified against all damages, losses and expenses which the Company may incur arising out of any claims made against the Buyer of the Company that the Goods, their method of manufacture or their design infringe any patent or registered design.
- 12.3 All intellectual property rights of the Company, including, but not limited to, current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trade marks, trade secrets, know-how, confidential information and patents in respect of the Goods remain the property of the Company at all times.
- 13. SEVERABILITY**
- 13.1 Should any provisions of these terms and conditions of sale become unenforceable or be held void in any jurisdiction either in whole or part for any reason then that provision shall be deemed to be deleted from the contract in respect of that jurisdiction alone without in any way affecting the validity or enforceability of any other provision or that provision in any other jurisdiction.
- 14. JURISDICTION AND ARBITRATION**
- 14.1 The law of the State of Victoria shall be the proper law of the contract under these terms and conditions of sale and the parties accept and submit to the jurisdiction of the courts of Victoria.
- 15. GENERAL**
- 15.1 To be effective, any waiver of any or all of these terms and conditions by the Company must be in writing.
- 15.2 The rules and regulations contained in the *A New Tax System (Goods and Services Tax) Act 1999*, as amended from time to time, apply to these Terms and Conditions.
- 15.3 The Buyer may not assign all or any of their rights or obligations under the contract without the prior written consent of the Company.
- 15.4 The Company is not bound by any error or omission on any invoice, order form or other document or statement issued by the Company.