

BUSCH ANZ PTY. LTD.

STANDARD TERMS AND CONDITIONS OF SALE

1. TERMS OF SALE:
 - 1.1 By executing these Terms, **BUSCH ANZ PTY LTD** and **the Buyer** have agreed that all contracts for the sale of goods by the Company to the Buyer will be exclusively governed by these Terms.
 - 1.2 These Terms may not be varied except by an agreement in writing and signed on behalf of the Buyer and the Company which expressly states that it is intended to alter these Terms. These Terms otherwise prevail to the extent of any inconsistency with any other representation, agreement or document, whether before or after the date of the execution of these Terms.
2. DEFINITIONS:
 - 2.1 The **"Company"** is Busch ANZ Pty Ltd (ABN 38 006 402 964 / AC 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.
 - 2.6 **"PPSA"** means the *Personal Property Securities Act 2009* (Cth), as amended from time to time.
3. ORDERS:
 - 3.1 A quotation issued by the Company is not an offer to sell. The Company reserves the right to revise a quotation at any time prior to accepting an order placed by the buyer.
 - 3.2 The Buyer may place an order, which shall constitute an offer to purchase goods from the Company on these Terms, by signing a quotation and returning it to the Company. Any offer to purchase Goods shall be deemed to incorporate these Terms, and is subject to acceptance by the Company.
 - 3.3 When the Buyer places an order it acknowledges that it has not in any way relied on the skill and judgment of the Company in choosing the Goods that it has ordered, but has made its own enquiries as to the fitness for purpose of the Goods to be supplied.
 - 3.4 The Company may accept an order for the purchase of goods by the Buyer by notifying the Buyer using any means of communication, including post, facsimile transmission, telephone, email or oral confirmation. Any acceptance communicated by post, facsimile transmission or email shall be deemed to have been effectively communicated at the time of sending.
 - 3.5 The Buyer acknowledges that the Company will incur obligations and costs once the Buyer places an order which is accepted by the Company. Therefore, the Buyer may only cancel or vary an order that has been accepted, by obtaining the written consent of the Company. Where consent is granted the Buyer agrees to pay fair compensation to the Company for any 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 Unless otherwise specified, all Prices exclude GST. Tax invoices rendered will include added GST where applicable.
 - 4.2 All Prices are ex works unless otherwise agreed to in writing. Minimum invoice charge per order is \$50.00 net. The Buyer agrees that if it places an order for a total Price of less than \$50.00 net, the Company may accept the offer and will be entitled to charge \$50.00 plus any applicable fees, charges and taxes for that supply.
 - 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 All Prices are, as at the date of the quotation, 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 may increase the Price agreed between the Buyer and Company to pass on to the Buyer any increase in the price of these items and any other like costs incurred by the Company in supplying the Goods, which increases and costs occur after the quotation is given.
5. PAYMENT:
 - 5.1 The Company will provide a tax invoice in respect of the Goods supplied.
 - 5.2 The Buyer must pay the Price indicated on the tax invoice when due, in accordance with paragraph 5.3 below. Time is of the essence in respect of the Buyer's obligation to make payment for the Goods.
 - 5.3 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.

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Commonwealth Bank of Australia (CBA) | BSB 063-893 | Account-No. 10046328 | SWIFT: CTBAU25
National Australia Bank (NAB) | BSB 083-363 | Account-No. 155822068 | SWIFT: NATAU3303M

Argentina Australia Austria Bangladesh Belgium Brazil Canada Chile China Colombia Czech Republic Denmark Estonia Finland France Germany Hungary India Ireland Israel Italy Japan Korea Malaysia Mexico Netherlands New Zealand Norway Peru Poland Portugal Romania Russia Singapore South Africa Spain Sweden Switzerland Taiwan Thailand Turkey United Arab Emirates United Kingdom USA

- 5.4 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.
- 5.5 If the Company, acting reasonably, 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.
- 5.6 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.
- 5.7 The Company may charge interest on any amount owing, from the due date to the date of payment in full. The interest rate will be 10% per annum.
- 5.8 The Buyer agrees to pay on demand all costs and disbursements (including commission and legal fees on a full indemnity basis 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.
- 5.9 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—
- whichever is the earlier.
- 6.3 Proof of Delivery is:
- (a) in the event of 6.2(a), the Delivery Docket signed by the Buyer or the Buyer's agent;
 - (b) in the event of 6.2(b):
 - (i) the Delivery Docket signed by the carrier's driver or other representative of the carrier; or
 - (ii) the electronic record of a scanned consignment note.
- 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 may 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 terminate the any other 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 to meet the delivery requirements of the Buyer but will be under no obligation to deliver by the delivery date.
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 prior notice and without prejudice to any of its other rights and remedies and repossess the Goods. The Buyer will indemnify the Company for costs (including legal costs on a full indemnity basis) or liabilities incurred by the Company in exercising its rights under this clause 7.
- 7.4 If a term used in this clause 7 has a particular meaning in the PPSA, it has the same meaning in this clause 7.
- 7.5 The Buyer hereby acknowledges that these Terms constitute a security agreement which creates a security interest in favour of the Company in respect of the future supply by the Company to the Buyer of all Goods, being vacuum pumps, blowers, compressors, systems and accessories (including spare parts and motors), in order to secure the payment of the Buyer's obligations to the Company from time to time, including future advances.
- 7.6 The Company may register a security agreement before or after supply of Goods to the Buyer.
- 7.7 The Buyer waives its right under section 157 of the PPSA to receive notice of any verification of the registration.

- 7.8 If the Buyer defaults in the performance of any obligation owed to the Company under these Conditions or any other agreement for the Company to supply Goods to the Buyer, the Company may enforce its security interest in any Goods by exercising all or any of its rights under these Terms or the PPSA. To the maximum extent permitted by law, the Buyer and the Company agree that the following provisions of the PPSA do not apply to the enforcement by the Company of its security interest in the Goods: sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143.
- 7.9 The Buyer and the Company agree not to disclose information of the kind mentioned in s 275(1) of the PPSA, except in circumstances required by sections 275(7)(b)-(e) of the PPSA.
- 7.10 The Buyer must promptly do anything required by the Company to ensure that the Company's security interest is a perfected security interest and has priority over all other security interests in the Goods.
- 7.11 Nothing in this clause 7 is limited by any other provision of these Terms or any other agreement between the parties.
8. EXPRESS WARRANTY:
- 8.1 The Company warrants that all non-consumable Goods are defect free and fit for the purpose for which they would ordinarily be used. 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 made 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 the Company's premises shall be at the Buyer's cost and risk.
- 8.3 The Company may meet its obligations under 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 resupplying the services; or
 - (d) give a credit for or refund the purchase Price of the Goods.
- 8.4 The Company may choose to give a specific written warranty in addition or substitution for 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. If the Buyer wishes to have replacement Goods shipped, such shipment 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.
- 8.8 Notwithstanding anything to the contrary in these Terms, if the Buyer is a Consumer within the meaning given in the *Australian Consumer Law*:
- (a) clause 4.4 of these Terms does not apply;
 - (b) the Goods come with guarantees that cannot be excluded under the *Australian Consumer Law*. The Buyer is entitled to a replacement or refund for a major failure and to compensation for any other reasonably foreseeable loss or damage. The Buyer is entitled to have the Goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure;
 - (c) The guarantees under the *Australian Consumer Law* are given by the Company;
 - (d) If the Buyer believes the goods do not comply with the statutory guarantees, they must contact the Supplier and the parties may make arrangements for the return of the goods. Any returned goods must be accompanied by proof of purchase. If the Supplier agrees that the goods do not comply with the statutory guarantee the Supplier will refund the costs of returning the goods to the Supplier and, in all other respects, act in accordance with its obligations under the Australian Consumer Law; and
 - (e) The benefits given to the Buyer under this warranty against defects are in addition to other rights and remedies of the Buyer under any law in relation to the goods or services to which the warranty relates.
9. LIMITATION OF LIABILITY:
- 9.1 The Company has given the express warranty set out in the previous clause (Express Warranty). To the extent permissible at law, 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 maximum potential liability of the Company for any reason, arising out of the supply of Goods under these Terms is, in all cases, limited to the amount of the contract Price of the Goods.
10. DEFAULT AND REMEDY:
- 10.1 If the Buyer defaults in any payment due to the Company or breaches any of these Terms 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 with the Buyer's irrevocable consent, 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; and
 - (f) 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 a full 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 or the Company that the Goods, their methods of manufacture or their design infringe any patent, registered design or confidence.
- 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, trademarks, 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 accordance with the law of any jurisdiction either in whole or part for any reason 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:
14. 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 right provided by these Terms 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.
- 15.5 The natural persons signing these Terms warrant that they have the authority to bind the party on whose behalf they have signed the Terms.

16. NOTICES:
- 16.1 Any communication to the Buyer required or permitted under this agreement may be made by the following methods:
- Telephone:
- Post:
- Facsimile:
- Email:

Executed by the parties on (insert date)

Executed for the Buyer.....by:
[Name of Buyer]

.....
[Name of person signing]

Executed by BUSCH ANZ PTY LTD by:

.....
[Name of person signing]