

PURCHASE ORDER TERMS AND CONDITIONS

These Purchase Order Terms and Conditions (Terms), as amended from time to time, apply to all Goods and/or Services provided by any company, person or other party (Supplier) to BUSCH ANZ PTY LTD ACN 006 402 964 (Busch).

1. ORDERING GOODS AND SERVICES

- 1.1 Busch requires the supply of the Goods and/or Services, and the Supplier has represented that it can supply the required Goods and/or Services.
- 1.2 All quotations and tenders received by Busch from the Supplier whether in writing or not, will be deemed to be offers to sell the Goods and/or Services to Busch.
- 1.3 The Supplier is deemed to have accepted a Purchase Order on the earlier of:
 - (a) commencing to manufacture the goods or carry out the Services subject of the Purchase Order;
 - (b) communicating in writing to Busch it accepts the Purchase Order;
 - (c) signing and returning a Purchase Order to Busch; or
 - (d) delivering any of the Goods ordered.
- 1.4 Once the Supplier accepts the Purchase Order, an individual contract comes into existence (**Contract**) comprising:
 - (a) the Purchase Order;
 - (b) these Terms; and
 - (c) any other documents agreed in writing by both parties, which will take precedence in the order listed above.
- 1.5 Unless otherwise set out in a Purchase Order, Busch is not bound to any minimum purchase requirement in relation to the Goods and/or Services.
- 1.6 This agreement shall be governed by and construed in accordance with the unfair contract terms regime under the Australian Consumer Law (**ACL**). Any term in this agreement that is found to be an unfair contract term as defined by the ACL shall be deemed void and unenforceable to the extent of that unfairness, and the remaining provisions shall continue in full force and effect.

2. SUPPLY AND PERFORMANCE

- 2.1 The Supplier must, in accordance with these Terms:
 - (a) supply and deliver the Goods to Busch at the Place of Delivery by the Delivery Date; and
 - (b) perform and complete the Services by the Date for Completion, for the Price.
- 2.2 Busch may vary these Terms upon 30 days written notice to the Supplier. The Terms (as varied) will be deemed to apply to any Purchase Orders placed after the expiration of the period of notice.
- 2.3 The Supplier acknowledges that it has carefully examined all documents and information provided by Busch regarding the supply of the Goods and performance of the Services and has satisfied itself regarding all conditions, risks, contingencies, and circumstances that may affect the supply of the Goods and performance of the Services, including conditions at the Place of Delivery or Place of Pick-up, and has taken these into account in determining the Price.
- 2.4 All Goods supplied, and Services performed, by the Supplier to Busch are supplied under these Terms unless a separate written contract is entered into by Busch and Supplier which expressly excludes these Terms.
- 2.5 These Terms, along with the Contract, constitute the complete agreement between the Supplier and Busch regarding the supply of Goods and performance of Services. All other terms and conditions proposed by the Supplier, whether or not acknowledged by Busch, will be void and unenforceable and will not affect the application of these Term.
- 2.6 The Supplier must, in supplying the Goods or performing the Services, always:
 - (a) Perform the Services in accordance with these Terms;
 - (b) Supply the Goods and provide the Services:
 - (i) Professionally, carefully, skilfully and competently;
 - (ii) In a timely and efficient manner;
 - (iii) In accordance with best practice in the Supplier's industry; and
 - (iv) To the satisfaction of Busch, acting reasonably, in all respects.
 - (c) Maintain and provide suitably skilled and qualified Supplier Personnel, and all other resources required to enable the Supplier to meet its obligations under the Contract;

- (d) Ensure the Supplier Personnel maintain all licences, permits, clearances and other qualifications that they are required under any law or the Contract to have and maintain, and provide copies of same to Busch on request;
- (e) Comply with all reasonable directions of the authorised representatives of Busch;
- (f) Not interfere with any of Busch's activities, or the activities of any other person located on the Site; and
- (g) Not represent or hold out, that it is an agent of Busch or that it has authority to act, or to make any commitment on behalf of Busch, and must not allow any Supplier Personnel to do so.

2.7 Unless the Purchase Order expressly states otherwise, the Supplier must provide, at its own expense, all labour, equipment, consumables, tools, and other items necessary to deliver the Goods and/or perform the Services.

3. WARRANTIES

3.1 The Supplier represents and warrants that when the Goods are delivered to Busch, and on completion of Services, that the Goods and Services will:

- (a) be of acceptable quality and workmanship, new in every respect and in good order and condition;
- (b) comply in all respects with the Purchase Order, including any specifications, descriptions, function, performance, appearance or other requirements included with the Purchase Order, and meeting safety standards and statutory and legislative requirements;
- (c) be fit for the purpose:
 - (i) for which goods or services of that kind are ordinarily used; and
 - (ii) which should reasonably have been inferred by the Supplier having regard to the nature of the Goods, the Services, the Purchase Order and any communications with Busch;
- (d) comply with all applicable Australian Standards;
- (e) comply with the provisions of any law or legislation applicable to them;
- (f) be free from defects;
- (g) be accompanied by documentation that is complete, up-to-date, accurate, and suitable for Busch to operate and maintain the Goods and/or the Services or to enable a third party to continue the Services if the Contract terminates or expires.

3.2 The Supplier represents and warrants to Busch that at all times the Supplier will:

- (a) have the necessary skills, ability, capacity and experience to perform the Services and provide the Goods properly and in compliance with the Contract;
- (b) ensure that the use of the Goods, Services or any goods comprised in the Services will not infringe the intellectual property rights of another person;
- (c) as at the date of the Purchase Order, have no actions, claims or legal proceeds, actual or threatened, that would or may materially hinder or prevent the Supplier from making good its warranties or otherwise performing its obligations under the Contract;
- (d) provide Busch clear, complete and unencumbered possession of the Goods and any goods comprised in the Services;
- (e) always during the provision of the Goods and/or Services hold and comply with the terms of all licences, authorisations, registration, approvals and consents which it is required to hold and comply with for the lawful supply of the Goods in Australia and/or provision of its Services under the Contract;
- (f) allow Busch to have an enjoy quiet possession of the Goods;
- (g) have the Goods supported by repair facilities and spare parts;
- (h) at the time of delivery ensure the Goods will be new and of merchantable and acceptable quality;
- (i) as soon as reasonably possible notify Busch if it becomes aware of any fact, circumstance or thing that is inconsistent with any of its warranties in this clause 3 and
- (j) indemnify Busch in full for reimbursement of any damages or costs associated with the failure and re-supply of the Goods and/or Services to Busch.

3.3 The Supplier will indemnify Busch, along with its servants, agents, invitees or licensees, and keep them indemnified at all times, against all loss, liability, damage, costs, actions, demands and suits of whatsoever kind of nature arising out of:

- (a) any claim for injury or death of any person, loss or damage caused in whole or in part by any act or omission whatsoever by the Supplier, its servants and agents whilst executing a Purchase Order or making a delivery hereunder, and the Goods and Services the Supplier supplies;

- (b) any claim with respect to the Goods and Services arising out of any latent or inherent defect in any of the Goods or Services;
 - (c) any litigation or arbitration from any claim referred to above;
 - (d) any Goods, Services or goods comprised in the Services received which do not meet specifications and/or requirements; and
 - (e) any liability or damage suffered by Busch as a result of a claim for failure of a statutory guarantee under the ACL that was caused or contributed to by the Supplier or relates to the Goods and Services as supplied by the Supplier.
- 3.4 The warranties in clause 3.1 and 3.2 are in addition to any warranties which are or may be implied under any legislation, including but not limited to the ACL, and which have not been expressly excluded in this Contract.
- 3.5 Each of the warranties is separate and independent and shall not be limited or restricted by any other warranty or provision of the Contract.
- 3.6 During the Contract, the Supplier must:
- (a) Provide such back up support and information in relation to the Goods and/or Services as may reasonably be required by Busch; and
 - (b) Respond to any queries concerning the Goods and/or Services and their use or application within 5 Business Days, or lesser a time period if reasonable in the context, of receipt of the query from Busch.

4. PRICE

- 4.1 Subject to the supply of Goods and Services in conformance with this Contract and their acceptance by Busch, Busch will pay the Price to the Supplier.
- 4.2 The Price is fixed and will not be subject to adjustment for rise and fall, exchange rate variations, or any changes in general or market-specific economic conditions.
- 4.3 Except as expressly provided in the Contract, the Price includes all taxes, duties, levies, and fees payable in relation to the supply and delivery of the Goods and performance of the Services. The Supplier must pay such taxes, duties, levies, and fees and is responsible for ensuring their compliance.
- 4.4 The Price will not be varied for any reason except where expressly agreed in writing by both parties and signed by an authorised representative of Busch.
- 4.5 Upon Delivery of the Goods, and in respect of the Services at the times set out in the Contract, the Supplier must invoice Busch for the Goods and/or Services. Unless otherwise agreed in writing, the Supplier must not invoice Busch for Goods which have not been delivered or Services not performed. All invoices must be itemised and be in a form which clearly indicates any GST component for which Busch is entitled to claim an input credit. If GST is payable and included in the Price, the invoice must be in a form which meets all the requirements of a valid tax invoice for GST Law purposes, and must include the following details:
- (a) Reference to Busch's Purchase Order and the relevant contract, if any;
 - (b) A detailed description of the delivered Goods or performed Services entitling the Supplier to claim payment, including the date of delivery and/or period of Services and the relevant quantity of the Goods and/or Services;
 - (c) An individual reference number for Busch to quote with remittance of payment;
 - (d) The Price relating to each of the Goods and/or Services to reflect the same Price components on the Purchase Order or Contract, including the amount of any applicable GST; and
 - (e) Busch's office, Site and Busch contact name.
- 4.6 Busch will pay the Supplier the Price for the Goods which are delivered, and Services which are performed, at the date of the invoice provided under clause 4 within 30 days after the end of the month in which an invoice for those Goods or Services is received at the invoicing address, except where Busch:
- (a) Is required by Law to pay within a shorter time frame, in which case Busch must pay within that time frame;
 - (b) Exercises any right to retain, withhold, reduce or set-off any amount due to the Supplier;
 - (c) Disputes the Supplier's claim for payment of the invoice, in which case:
 - (i) To the extent permitted by Law, Busch may withhold payment of the disputed part only of the Supplier's claim for payment pending resolution of the dispute; and
 - (ii) If the resolution of the dispute determines that Busch must pay an amount to the Supplier, Busch must pay that amount as soon as reasonably possible upon resolution of that dispute; or
 - (d) Is otherwise required by Law to withhold a portion of payment for Services rendered.

- 4.7 If Busch requests, the Supplier must provide Busch with all relevant records to calculate and verify the amount set out in any claim for payment or on an invoice within five business days of the request.
- 4.8 Payment is not evidence of the value of the Goods or Services, or an admission of liability or that the Goods or Services are satisfactory but is a payment on account only.
- 4.9 Busch may reduce any payment due to the Supplier under the Contract by any amounts legitimately owed to Busch, including costs, charges, damages, expenses, and any debts owed by the Supplier to Busch on any account whatsoever. This does not limit Busch's right to recover those amounts through other means.

5. GOODS AND SERVICES TAX

- 5.1 Unless specifically described in the Purchase Order as 'GST inclusive', the Price does not include any amount on account of GST.
- 5.2 Where any supply to be made by the Supplier under the Contract is subject to GST:
 - (a) the consideration payable for that supply but for the application of this clause 5 (**GST Exclusive Consideration**) shall be increased by, and Busch shall pay to the Supplier, an amount equal to the GST payable by the Supplier in respect of that supply (**GST Amount**); and
 - (b) Busch must pay the GST Amount to the Supplier at the same time and in the same manner as the GST Exclusive Consideration is payable or to be provided for that supply.
- 5.3 Notwithstanding any other provision of the Contract, Busch need not make any payment for a taxable supply made by the Supplier under or in accordance with the Contract until the Supplier has given Busch a tax invoice in respect of that taxable supply.
- 5.4 Unless the contrary intention appears, a word or expression used in this clause 5 which is defined in the GST Law has the same meaning in this clause 5.

6. VARIATION

- 6.1 Busch may, at any time, by giving written notice, direct the Supplier to add, delete, omit or change the nature, quality, method for delivery, time for delivery or quantity of the Goods and/or Services under the Contract (**Variation**).
- 6.2 Within 10 business days of Busch issuing a notice under clause 6.1, the Supplier must advise Busch how the Variation will:
 - (a) effect the Delivery Date; and
 - (b) effect the Cost, including all additional time-related costs, if any
- 6.3 If Busch accepts the terms of the Variation proposed by the Supplier in accordance with clause 6.2, the Supplier must proceed with the Variation.
- 6.4 Any Price decrease caused by the Variation shall automatically become effective upon implementation of the Variation.
- 6.5 Any Price increase must be directly related to increased costs to the Supplier caused by the change in Goods or Services, as the case may be. Busch must approve in writing any Price increase before the Variation is implemented. If the Supplier does not advise under clause 6.2 of a Price increase arising from the proposed Variation, the Price of the affected Goods or Services, as the case may be, shall not be increased as a result of the change. If Busch does not agree to the Price increase as a result of the Variation, the original Contract will continue without change.
- 6.6 The Parties shall negotiate in good faith regarding the time period in which a Variation will be implemented; provided, however, if a modification relates to a safety issue, then the Supplier agrees to implement the requested Variation as quickly as reasonably possible.
- 6.7 The Supplier may request Busch to direct a Variation for the convenience of the Supplier and Busch may do so in its sole and absolute discretion. Any change in the Goods or Services and any resulting Price increase or decrease must be approved in writing by Busch prior to implementation.

7. GENERAL DELIVERY OBLIGATIONS

- 7.1 The Supplier must at its own cost package, mark and label the Goods before Delivery to Busch in accordance with any specification for packaging, marking or labelling or otherwise in a manner reasonably expected of the Supplier having regard to the nature of the Goods.
- 7.2 Busch, acting reasonably, may refuse to accept Delivery at any time if the Goods do not comply with the relevant Contract.
- 7.3 Goods and Services must be delivered in accordance with the Delivery Date. Time is of the essence.
- 7.4 Busch reserves the right to alter the Delivery Date or suspend the delivery of the Goods and/or Services, at any time before the Delivery Date by written notice to the Supplier, with a minimum notice period of 10 Business Days.

- 7.5 The Supplier is to provide detailed delivery dockets with every Delivery. The Supplier acknowledges that failure to comply with the delivery docket requirements may delay or preclude acceptance and payment for the Goods.
- 7.6 The Supplier undertakes not to interrupt, delay, abandon, or withhold delivery of Goods or performance of Services for any reason, including but not limited to a dispute between the parties. The parties agree to resolve any disputes in good faith to prevent delivery interruptions.
- 7.7 The Supplier is liable for any loss or damage of any kind caused to or suffered by Busch, either directly or indirectly by the Supplier's delay or failure in delivery of the Goods and/or Services.
- 7.8 The Supplier must comply with all Federal, State and local shipping, road and rail transport laws and regulations in delivering the Goods, and is responsible for obtaining all necessary approvals, consents, and permits for delivery and supplying copies of such approvals, consents, and permits to Busch upon request.

8. EXTENTIONS TO TIME FOR DELIVERY AND PERFORMANCE OF THE SERVICES

- 8.1 If the Supplier reasonably believes that the Goods or Services, or part thereof, will not be delivered by the Delivery Date, or performed and completed by the Date for Completion, the Supplier must give Busch immediate notice of that fact.
- 8.2 If the Supplier gives notice under clause 8.1 Busch may, acting reasonably, and without limiting its rights at law:
- (a) extend the time for Delivery of the Goods or the Date for Completion, by notifying the Supplier of a later Delivery Date or Date for Completion;
 - (b) refuse to take Delivery of the Goods; or
 - (c) cancel the relevant Purchase Order(s) without liability to Busch.
- 8.3 Busch may, at any time and for any reason whatsoever, by providing written notice to the Supplier with a minimum notice period of 10 Business Days, extend the time for Delivery of the Goods or the Date for Completion.
- 8.4 The Supplier must take all reasonable steps necessary to minimise the effect of any delay on the supply of Goods and performance of the Services.

9. SUPPLY OF GOODS BY SUPPLIER

- 9.1 If the Supplier is responsible for Delivery to the Place of Delivery (Supplier Delivery):
- (a) the Supplier must deliver the Goods to the Place of Delivery by the Delivery Date and during the Delivery Hours; and
 - (b) the cost of delivery of the Goods to the Place of Delivery, including all transport costs and reasonable insurance cover, and all packing, loading and unloading costs.
- 9.2 If the Supplier is responsible for making the Goods available for collection at the Place of Delivery (Busch Pick-up), the Supplier must make the Goods available for Busch, or its nominated agent, to collect at the Place of Delivery by the Delivery Date.
- 9.3 If the Goods are not delivered, or not made available for collection at the Place of Delivery, by the Delivery Date, as the case may be, the Supplier will be in breach of this Contract and:
- (a) the Supplier must pay, as a debt immediately due and payable, liquidated damages at the rates specified in the Purchase Orders, from the Delivery Date to the date of Delivery of the Goods;
 - (b) where liquidated damages are not specified in the Purchase Order or are unenforceable for any reason, the Supplier will be liable to Busch for all loss, cost, expense and damage suffered by Busch arising out of or in connection with such breach; and
 - (c) Busch may, without prejudice to its other rights, terminate the whole or part of the relevant Purchase Order(s).
- 9.4 The Supplier must comply with all safety requirements of Busch relating to the Supplier's conduct at the Place of Delivery and otherwise comply with all laws and regulations relating to health, safety and the environment.

10. PERFORMANCE OF SERVICES

- 10.1 If the Services are not performed and completed by the Date for Completion, the Supplier will be in breach of this Contract and:
- (a) the Supplier must pay, as a debt immediately due and payable, liquidated damages at the rates specified in the Purchase Order, from the Date for Completion to the date that the Services are performed and completed; and
 - (b) where liquidated damages are not specified in the Purchase Order or are unenforceable for any reason, the Supplier will be liable to Busch for all loss, cost, expense and damage suffered by Busch arising out of or in connection with such breach;
 - (c) Busch may, without prejudice to its other rights, terminate the whole or part of the relevant Purchase Order(s).

11. RISK AND TITLE

- 11.1 The Supplier warrants that it has clear, unencumbered ownership of the Goods and any goods included in the Services, free of any liens, charges, or encumbrances, and that Busch will have clear and complete possession of these Goods upon delivery.
- 11.2 The Supplier bears all risk of loss and damage to the Goods and any goods included in the Services until they have been delivered to Busch at the Site and have not been rejected under clause 13.
- 11.3 Title and risk in the Goods and any goods included in the Services will pass to Busch upon delivery of the Goods or performance of the Services.

12. QUALITY OF GOODS AND SERVICES

- 12.1 The Goods must:
- (a) be free from any defects in design, materials or workmanship and be fit for the purpose for which they are intended;
 - (b) match the description, including any technical or performance specifications, set out in the Purchase Order or otherwise represented by the Supplier;
 - (c) comply with any product standards or industry standards that are relevant to the manufacturing, operation and use of the Goods, and any standards otherwise represented by the Supplier;
 - (d) meet all safety and performance requirements described in the Purchase Order or otherwise represented by the Supplier; and
 - (e) be supplied with adequate and detailed documentation, packaged, labelled and delivered to meet Busch's quality assurance requirements made known to the Supplier from time to time.
- 12.2 The Services must be:
- (a) supplied in accordance with the Supplier's obligations under the Contract;
 - (b) tools, plant, equipment and materials used or supplied in connection with the Services will be of good quality and fit for the purpose for which they are used; and
 - (c) any sub-contractors engaged by the Supplier will hold the relevant licences and/or certificates.
- 12.3 The Supplier is responsible for procuring all necessary licences to any intellectual property rights included as part of the Goods, Services or goods comprised in the Services to the extent required for Busch to own and use the Goods, Services or goods comprised in the Services as described in the Contract.
- 12.4 If the Goods fail to comply with the conditions set out in clause 12, Busch will notify the Supplier of such failure or non-compliance and may, at Busch's election:
- (a) cancel the Purchase Order for those Goods or Services, in whole or in part, without penalty and require the Supplier to collect any Goods already delivered to Site and repay to Busch all moneys paid to the Supplier for those Goods and/or related Services, whether delivered or not; and/or
 - (b) require the Supplier to repair, modify or replace the Goods or re-supply compliant Services within 5 Business Days, or such other reasonable period as may be agreed between the parties in writing.
- 12.5 If the Supplier delivers Busch a quantity of goods exceeding the quantity of Goods specified in the Order, the excess goods must be collected at the Supplier's own risk and expense as soon as reasonably possible.

13. ACCEPTANCE OR REJECTION OF GOODS

- 13.1 Busch is not obliged to accept early Delivery of the Goods. If Busch does not accept early Delivery of the Goods, the Supplier must, at its cost, hold the Goods in store until the Delivery Date. Busch is not obliged to accept any Goods in excess of the quantity specified in the Purchase Order.
- 13.2 If Busch or any of its representatives signs a delivery docket or other document required by the Supplier to acknowledge delivery, Busch will not be taken to have accepted the Goods as being in accordance with the Purchase Order, whether as to quality or quantity. This applies notwithstanding any terms and conditions appearing on any such acknowledgment of delivery.
- 13.3 On request, the Supplier must keep Busch fully informed on all aspects of the delivery of the Goods and/or the performance and supply of any Services and goods comprised in the Service.
- 13.4 The Supplier must provide to Busch on request progress reports setting out, in such detail as is reasonably requested, the different stages of design, manufacture or delivery of the Goods and/or performance and supply of the Services and goods comprised in the Services.
- 13.5 Busch may direct the Supplier that the whole or any part of the Goods and/or Services be tested, examined, inspected or reviewed prior to Delivery or promptly following Delivery. The Supplier and Busch shall co-operate with each other

to arrange a time and place for such inspection and to ensure such parts or samples of the Goods are accessible by Busch, or its representatives as may be reasonably required.

- 13.6 The Supplier must deliver all applicable material safety data sheets (MSDS) and Operation and Maintenance Documents with the Goods.

14. DEFECTIVE GOODS AND SERVICES

- 14.1 If the Goods or Services are or become defective in any way, Busch may, without limiting Busch's rights under the Purchase Order or otherwise at law, by notice to the Supplier, require the Supplier to replace or repair the Defective Goods or Defective Services, or re-perform the Defective Services, at the Supplier's cost and within a reasonable period, including if necessary uninstalling or removing the Defective Goods.
- 14.2 If the defects are not rectified under clause 14.1 to Busch's reasonable standards, or repairs made within a reasonable time, then Busch may, by notice to the Supplier:
- (a) replace or repair the Defective Goods; or
 - (b) engage a third party to replace or repair the Defective Goods, or re-perform the Defective Services, and in either case, the reasonably incurred costs of doing so will be a debt immediately due and payable by the Supplier to Busch;
 - (c) uninstall or remove the Defective Goods or engage a third party to uninstall or remove the Defective Goods and in either case, the reasonably incurred costs of doing so will be a debt immediately due and payable by the Supplier to Busch; or
 - (d) reject and/or return the Defective Goods or reject the Defective Services and Busch will be immediately entitled to a full refund of any amounts paid for the Defective Goods or Defective Services.

15. LIABILITY AND INDEMNITIES

- 15.1 The Supplier agrees to indemnify and compensate Busch against all reasonable and foreseeable liabilities, losses, damages, costs and expenses that Busch may sustain or incur, directly or indirectly, due to:
- (a) the provision of, or omission or failure to provide, or error or defect in, the Goods or Services;
 - (b) any breach of the warranties given by the Supplier under the Contract or any other breach of the Contract by the Supplier, including a breach in respect of which Busch exercises an express right to terminate the Contract;
 - (c) any wilful, unlawful, dishonest or negligent act or omission of the Supplier or the Supplier Personnel;
 - (d) any loss of or damage to any property or injury to or death of any person caused or contributed to by the Supplier or the Supplier Personnel; and
 - (e) any claim that the use or supply of the Goods, deliverables, Materials or the results of the Services infringes the intellectual property rights of any person.
- 15.2 Each indemnity described in this clause 15 is a continuing obligation separate and independent from the Supplier's other obligations and survives termination of the Contract for a period of 24 months.
- 15.3 To the maximum extent permitted at law, the Customer indemnifies Busch from and against any actions, claims, costs, damages, demands, expenses, fees, liabilities or losses of whatever kind incurred by or claimed against Busch, arising from:
- (a) the Customer's acts or omissions; or
 - (b) the Customer's breach of these Terms.
- 15.4 Nothing in the Terms is interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the Supplier's supply of the Goods and Services which cannot be so excluded, restricted or modified.
- 15.5 Neither party will be liable to the other party for any consequential, indirect or incidental loss, loss of profits, lost production, loss of anticipated savings and loss of opportunity arising from or about the performance or non-performance of that party's obligations under the Contract howsoever arising.

16. INSURANCE AND INDEMNITY

- 16.1 Unless Busch expressly agrees otherwise in writing, the Supplier must procure and maintain appropriate Insurances, as necessary for the supply of any Goods or Services, including but not limited to:
- (a) Workers compensation insurance as required by law;
 - (b) Public and Product liability of at least \$10 million;
 - (c) Transport, theft, loss and damage; and
 - (d) Professional indemnity and Contractor's Risk, if applicable

- 16.2 The Supplier indemnifies Busch from and against any liability, subject to the limitations set forth in the Contract, in respect of:
- (a) loss, destruction or damage to or of any real or personal property;
 - (b) personal injury, illness, sickness or death; and
 - (c) any claim for infringement or alleged infringement of intellectual property rights or confidentiality by the Supplier,
- in each case arising out of or in connection with the supply of the Goods or Services.
- 16.3 However, the Supplier's liability to indemnify Busch under clause 16.2 is reduced proportionally to the extent that the act or omission of Busch, its employees or agents, caused or contributed to the action, liability, costs, damages or expenses.
- 16.4 The insurance obtained above must include contractual liability endorsement in respect of the Supplier's obligation to indemnify Busch under these Terms.
- 16.5 The Supplier is liable for any insurance premium excess payments directly caused by the Supplier and claimed by Busch against its own insurance policy.
- 16.6 Upon request, the Supplier must provide to Busch within 10 business days a certificate of currency and statement of insurance, including the date of the policy, for any of the policies referred to in this clause 16 which are held by the Supplier.

17. DESIGN

- 17.1 Where the Supplier is required to undertake any design obligations as part of the Contract, the Supplier must:
- (a) deliver the design to Busch for review within a reasonable timeframe; and
 - (b) allow reasonable time for review of the design prior to the commencement of any work in respect of the design.
- 17.2 The Supplier warrants that:
- (a) the completed design will comply with Busch's intended purpose set out in the Purchase Order;
 - (b) all design obligations will be carried out by qualified, experienced and competent professionals;
 - (c) all Materials comply with all legislative and statutory requirements and that of the Purchase Order and, in each case, are suitable and appropriate for their respective functions and purposes;
 - (d) construction in accordance with that design will satisfy the requirements of the Contract and that on completion the provision of the Goods and/or Services (as applicable) will be fit for their intended purpose; and
 - (e) the Materials, including the design, address the work, health and safety issues involved in the execution of the Goods, Services and any goods comprised in the Services.
- 17.3 The Supplier will remain responsible for all design and construction means, methods, techniques, sequences and procedures in the Materials and employed by the Supplier in supply of the Goods, Services and any goods comprised in the Services, as applicable.

18. DRAWINGS AND TOOLS

All tools, patterns, Materials, drawings, specifications and other data provided by Busch in connection with the Purchase Order:

- (a) remain the property of Busch;
- (b) must be used solely for the purpose of the Purchase Order, provided the Supplier may retain copies for its records;
- (c) must not be passed to or divulged to any third party except with the express consent of Busch in writing, or as required by law; and
- (d) must be returned by the Supplier to Busch on completion of the Purchase Order, in good condition subject to fair wear and tear.

19. CONFIDENTIAL INFORMATION

- 19.1 Each party must keep the Confidential Information of the other party secret and confidential and may only use Confidential Information for the purposes of the Contract. A party must as soon as reasonably possible notify the other party of any suspected or actual unauthorised use, copying or disclosure of Confidential Information.
- 19.2 A party may disclose the Confidential Information of the other party:
- (a) to its personnel who have a need to know for the purposes of the Contract, and only to the extent that each has a need to know, and before disclosure, have been directed by the other party to keep confidential all Confidential Information of the other party; or
 - (b) where it is required by law to do so. The party must before doing so notify the other party and give them a reasonable opportunity to take any steps that it considers necessary to protect the confidentiality of that information, and notify the third person that the information is Confidential Information of that party.

20. INTELLECTUAL PROPERTY RIGHTS

- 20.1 During the Contract, Busch authorises the Supplier to use the Intellectual Property for the sole purpose of undertaking and complying with its obligations under this Contract and the sale of the Goods and Services to Busch.
- 20.2 The Supplier warrants that it has all Intellectual Property Rights necessary to supply the Goods and perform the Services in accordance with the Contract and indemnifies Busch against any Loss suffered or incurred by Busch as a consequence of any claim by a third party that it has a right to any property or Intellectual Property Right in the Goods or the Services.
- 20.3 The Supplier grants Busch a perpetual, non- transferable, royalty-free licence of any Intellectual Property Rights required in order to use, consume or sell the Goods or Services in the manner reasonably intended by Busch at the Date of the Purchase Order.
- 20.4 The Supplier acknowledges Busch's title to the Intellectual Property and must not:
- (a) Claim any right, title or interest in the Intellectual Property or any part of it;
 - (b) Register or record or attempt to register or record anywhere in the world any of the Intellectual Property or any derivations, improvements, or variations to it, nor aid or abet anyone else to do so; or
 - (c) Manufacture or have manufactured or sell or have sold any Goods and/or Services using or taking advantage of the Intellectual Property.
- 20.5 The Supplier indemnifies Busch against any and all liability, loss, damages and expenses arising out of any claim in respect of infringement or alleged infringement of any patent, trademark or design, copyright or any other form of Intellectual Property whether in Australia or overseas, relating to the Goods and Services.

21. Personal Property Securities Act 2009 (Cth) (PPSA)

- 21.1 If title to the Goods has passed to Busch but the Goods are in the possession or control of the Supplier for any reason whatsoever, then the Supplier acknowledges and agrees that:
- (a) the Supplier holds the Goods as bailee for Busch and a fiduciary relationship exists between Busch and the Supplier for this purpose;
 - (b) the Supplier grants to Busch a security interest in the Goods, and any proceeds thereof;
 - (c) for section 109(1) of the PPSA, the security interest created under this clause constitutes a PPS lease that does not secure payment or performance of an obligation;
 - (d) Busch may register a financing statement on the Personal Property Securities Register (**PPS Register**) concerning the Supplier and the Goods; and
 - (e) the Supplier waives its right to receive any verification statement, or notice of any verification statement, in respect of any financing statement or financing change statement relating to any security interest created under this Contract.
- 21.2 If the Supplier has any security interest in the Goods, the Supplier acknowledges and agrees that any financing statement it registers against Busch in respect of that security interest on the PPS Register must:
- (a) reflect that any such security interest is a specific security interest;
 - (b) not be registered in either of the 'all present and after acquired property no exceptions' or 'all present and after acquired property with exceptions' collateral classes; and
 - (c) be removed from the PPS Register within 5 Business Days of the secured obligations of Busch to the Supplier being satisfied and/or the security interest otherwise being released.
- 21.3 A word or expression used in this clause which is defined in the PPSA has the same meaning in this clause unless the context otherwise requires.

22. MODERN SLAVERY

- 22.1 In this clause, 'Secondary Subcontractor' means any of the Supplier's consultants, contractors, suppliers, service providers and any other person engaged by or on behalf of the Supplier in connection with this Contract.
- 22.2 The Supplier must take, and must ensure that each of its Secondary Subcontractors take all reasonable steps to ensure that no modern slavery, human trafficking, servitude, forced labour, bonded labour, child labour, slavery or forced marriage or deceptive recruiting for labour or services (Modern Slavery) is present in the Supplier's, or its Secondary Subcontractors', supply chains, or in any part of their businesses.
- 22.3 The Supplier warrants that neither it nor any of its officers, employees or Secondary Subcontractors has been convicted of, or has been or is, the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any form of Modern Slavery.
- 22.4 The Supplier must implement a system to a standard that is consistent with good industry practices to assess, monitor, evaluate and remediate the risks of Modern Slavery in its, and its Secondary Subcontractors', supply chains and in any part of their businesses
- 22.5 The Supplier must promptly notify Busch as soon as it becomes aware of any actual or suspected Modern Slavery in its or any of its Secondary Subcontractors' supply chain which is connected to this Contract (Suspected Slavery).
- 22.6 The Supplier must maintain records evidencing its compliance with this clause, and on request from Busch from time to time, provide all assistance and information reasonably necessary for Busch to prepare a modern slavery statement and otherwise comply with its obligations at law, including giving Busch access to the Supplier's records.

23. CANCELLATION

- 23.1 Busch may cancel any Purchase Order, or part of it, at any time prior to delivery of the Goods or performance of the Services, by providing 10 Business Days written notice to the Supplier, and upon such termination, Busch's total liability is limited to payment to the Supplier for:
- (a) any Goods and Services already delivered or performed; and
 - (b) work in progress, subject to the work in progress being related to the Goods and Services already ordered by Busch.
- 23.2 Busch may cancel any Purchase Order, or part of it, at any time prior to delivery of the Goods or performance of the Services, without any liability or penalty, provided it gives reasonable justification for such cancellation, by written notice to the Supplier if:
- (a) the Supplier fails or is unable to comply with these Terms;
 - (b) the Supplier, in Busch's reasonable opinion, fails to act so as not to endanger timely and proper supply of the Goods or Services;
 - (c) the Supplier's business, or part of its business that provides the Goods and Services, is sold, or is about to be sold to a third party under a sale agreement, or the control of the Supplier changes to the extent that the original owner of the Supplier loses control or is about to lose control under a sale agreement; or
 - (d) subject to any applicable statutory stay of proceedings, where the Supplier becomes bankrupt or insolvent or enters into any scheme of arrangement with or for the benefit of its creditors, or has a receiver or similar functionary appointed in respect of its assets, or becomes subject to an application for winding up, or ceases to carry on business.
- 23.3 Cancellation as a result of the Supplier's failure to fulfil any part of this Contract will not prejudice any claim that Busch may have against the Supplier resulting from the Supplier's failure

24. TERMINATION

- 24.1 Either party may terminate the Purchase Order immediately by notice in writing to the other part if the other party:
- (a) commits a material breach of the Contract and does not remedy the breach within 10 business days of being required to do so by the other party, or any longer period as the parties may agree in writing; or
 - (b) commits an Insolvent Event; or
 - (c) the terms of the Contract otherwise permit a party to terminate.
- 24.2 Busch may terminate the Purchase Order immediately if the Supplier is in breach of clause 22.1, or a Suspected Slavery occurs, provided such termination is given by Busch acting reasonably.
- 24.3 Busch may terminate the Purchase Order at any time and for any reason by giving notice in writing to the Supplier. Subject to any rights Busch may have of set off or deduction, upon termination Busch's only obligation will be to pay the Supplier for Goods which have been Delivered, and Services which have been performed, in accordance with the

Purchase Order prior to the date of termination, plus the reasonable costs actually incurred by the Supplier directly as a result of the termination.

- 24.4 Termination of this Contract shall not relieve a party of its liability to the other party in respect of the rights or remedies of the other party which have accrued prior to termination.

25. FORCE MAJEURE EVENT

- 25.1 Subject to clause 25.2, neither party will be liable in any way howsoever arising under this Contract to the extent it is prevented from acting by a Force Majeure Event.
- 25.2 If a Force Majeure Event prevents a party (**Affected party**) from performing its obligations under the Contract:
- (a) the Affected party must promptly notify the other party of the obligations which will be affected by the Force Majeure Event;
 - (b) those obligations of the Affected party will be suspended for the time the Force Majeure Event continues;
 - (c) the Affected party must use its best endeavours to mitigate the effect of the Force Majeure Event; and
 - (d) neither party will be liable to the other party for any liabilities, losses, damages, costs or expenses the other party suffers or incurs because of that Force Majeure Event.
- 25.3 If the either party is prevented from performing its obligations for more than 30 Business Days because of a Force Majeure Event, either party may terminate the Contract with immediate effect by giving written notice to the other party.

26. MISCELLANEOUS

- 26.1 In this Contract:
- (a) headings are for convenience only and do not affect the interpretation of this Contract;
 - (b) the singular includes the plural and vice versa;
 - (c) "includes" means includes without limitation;
 - (d) Another grammatical form of a defined word or expression has a corresponding meaning;
 - (e) a reference to a party to this Contract includes that party's successors, executors, administrators and permitted assigns and substitutes;
 - (f) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
 - (g) a reference to legislation, ordinance, code or other law includes regulations and other instruments and any amendment to that legislation, any consolidation or replacement of it, and any subordinate legislation made under it;
 - (h) if a day on or by which an obligation must be performed, or an event must occur is not a Business Day, the obligation must be performed, or the event must occur on or by the next Business Day;
 - (i) the meaning of general words is not limited by specific examples introduced by including, for example, or similar expressions; and
 - (j) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it.
- 26.2 An amendment or change to these Terms is only effective once it is made in writing and executed by all parties.
- 26.3 A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.
- 26.4 The relationship between the parties is as independent contractors, and does not involve any relationship of agency, fiduciary, employment, partnership, joint venture or association.
- 26.5 The Contract is governed by the law applicable in Victoria, Australia., Each party irrevocably submits to the non-exclusive jurisdiction of the courts of this jurisdiction and any courts which have jurisdiction to hear appeals from any of those courts. A party must not object to the jurisdiction of a court merely because the forum is inconvenient.
- 26.6 If any provision or part of any provision, of the Contract is invalid or otherwise unenforceable that provision or that part of the provision will be read down so that it can be enforceable, and if it cannot be so read down, the term, or part of it, must be severed from the Contract and the remainder of the Contract will continue to be effective and valid notwithstanding such severance.

- 26.7 The Supplier must not, without the prior written approval of Busch, which must not be unreasonably withheld, assign, or deal with its interest under the Contract to a third party. Any such approval will not relieve the Supplier of its obligations under this Contract.
- 26.8 The Supplier does not have any right or authority to assume, create or incur any commitment, liability or obligation of any kind against, or in the name of, or on behalf of, Busch except as expressly provided in this Contract.
- 26.9 The Contract constitutes the entire Contract between the parties as to its subject matter and supersedes all other representations and Contracts about the subject matter of the Contract.
- 26.10 Any of the Supplier's obligations which are of a continuing nature, or which are not fully satisfied and discharged will not merge upon expiration or termination of this Contract, for whatever reason, but will continue in Busch's favour and remain in full force for so long as necessary to give effect to the terms of this Contract.
- 26.11 A notice must be in writing and handed personally or sent by email or prepaid mail to the last known address of the addressee. Notices sent by prepaid post are deemed to be received two Business Days subsequent to posting. Notices sent by email are deemed received upon confirmation of successful transmission.
- 26.12 The Purchase Order may be executed in any number of counterparts and all counterparts when exchanged will be taken to constitute one document.

27. DEFINITIONS

In these terms and conditions unless the context otherwise required:

ACL means the Australian Consumer Law Schedule of the *Competition and Consumer Act*;

Australian Standards means any Australian Standard, as amended or replaced, issued by Standards Australia applying directly or indirectly to the Goods or the Services;

Business Day means a day that is not a Saturday, Sunday or public holiday in Melbourne, Victoria.

Confidential Information means all information disclosed to or otherwise acquired by a party to the Contract which is marked as confidential, treated by the disclosing party as confidential or otherwise by its nature confidential, including any information or records, or copies of information or records relating to the business, business associates, financial affairs, products, services, suppliers or clients of the disclosing party, but excluding information that:

- (a) a party creates, whether alone or jointly with any third person, independently of the other party; or
- (b) is public knowledge otherwise than as a result of a breach of confidentiality by the recipient or any of its Personnel.

Contract means all Purchase Orders, these Terms and any other documents exchanged between the parties that are agreed in writing by both parties that they are intended to comprise a contract document, that make up this agreement.

Date for Completion means date specified in the Purchase Order as the date by which the Supplier must perform and complete the Services;

Defective Goods or Defective Services means Goods or Services which are not in conformity with the Purchase Order or are otherwise defective in design, performance, workmanship or makeup;

Delivery means the physical receipt of possession and control of the Goods from the Supplier by Busch, or an agent nominated by Busch, whether by way of Supplier Delivery or Busch Pick-Up, in satisfaction of the Supplier's obligations under the Purchase Order, and Deliver and Delivered have corresponding meanings;

Delivery Date means the date specified in the Purchase Order as the date by which the Supplier must deliver the Goods to the Delivery Place (for Supplier Delivery) or make the Goods available for pick-up by Busch (for Busch Pick-Up), as applicable;

Busch means the party identified as such in the Purchase Order;

Busch Pick-up means that Busch or its nominated agent is responsible for taking Delivery of the Goods from the Supplier as specified in the Purchase Order;

Force Majeure Event means anything outside the reasonable control of the parties including, without limitation, accident, breakdown, act of God, act or threat of terrorism or war, epidemic, pandemic, freight or travel restrictions, industrial dispute, lockout or strike, provided that a strike by employees of the party or employees of a subcontractor of the party, or both, is not a Force Majeure Event unless the strike is part of an industry wide campaign that does not arise out of the dispute between that party or that subcontractor and one or more of its employees.

Goods means the goods described in the Purchase Order and includes all manuals, spare parts and operating instructions needed by the Busch for the proper use of the Goods and identified in the Purchase Order and any services incidental to the supply of the goods, and all other things which can reasonably be inferred from the description of the Goods in the Purchase Order;

GST Law means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth)

Insolvent Event means any one of the following circumstances where the Supplier:

- (a) ceases to carry on a business;
- (b) ceases to be able to pay its debts as they fall due;
- (c) the party disposes of the whole or any substantial part of its assets, operations or business, other than in the case of a solvent reconstruction or reorganisation;
- (d) is, or states that it is, an insolvent under administration or insolvent (each defined under the Corporations Act 2001 (Cth));
- (e) is in liquidation, provisional liquidation, under administration or wound up or has had a controller appointed to its property;
- (f) is subject to any arrangement, assignment, moratorium or composition, protected from creditors under statute or dissolved;
- (g) has an application or order has been made, resolution passed, proposal put forward, or any other action is taken which is preparatory to or could result in any of (a), (b) or (c) above;
- (h) is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act 2001 (Cth); or
- (i) something having a substantially similar effect to (a) to (e) happens under the law of any jurisdiction in relation to the Supplier which Busch reasonably believes may prejudice the Supplier's ability to supply Goods, perform the Services, or to pass title in Goods to Busch;

Intellectual Property Rights means all present and future rights conferred by statute, common law or equity in or in relation to copyright, trademarks, designs, patents, inventions and other results of intellectual activity in any field whether or not registrable, registered or patentable;

Materials means blueprints, drawings, data, samples, other technical information and documentation including but not limited to finished Goods and other confidential information of Busch;

Place of Delivery means the place specified by Busch in the Purchase Order;

PPSA means the *Personal Property Securities Act 2009* (Cth)

Price means the amount, rates or measures contained in the Purchase Order for the sale of Goods and/or provision of Services;

Purchase Order means the written notice from Busch to the Supplier specifying the Goods and identified by a unique identifier;

Services means the services described in the Purchase Order and any goods and services incidental to the performance of the services, and all other things which can reasonably be inferred from the description of the Services in the Purchase Order;

Site means the location(s) specified in the Purchase Order, where the Goods are to be delivered and/or the Services performed.

Supplier means the party identified as such in the Purchase Order;

Supplier Delivery means that the Supplier is responsible for Delivery of the Goods to Busch at the Place of Delivery as specified in the Details;

Supplier Personnel means those employees or contractors of the Supplier used to provide the Goods and/or Services;

Terms means these Terms and Conditions of Purchase.

Variation means:

- (a) the inclusion of other goods as Goods to be supplied, or other services as Services to be performed, by the Supplier under the Purchase Order;
- (b) a change in the character or quality of the Goods to be supplied or Services to be performed under the Purchase Order; or
- (c) an increase or decrease in the quantity or volume of Goods to be supplied or Services to be performed under the Purchase Order