

Terms and Conditions

TERMS AND CONDITIONS OF SALE Busch (Malaysia) Sdn. Bhd.(466693 X)

1. DEFINITIONS

In these Terms and Conditions the following expressions shall have the following respective meanings

The Company : BUSCH MALAYSIA [Co.No.466693-X] and includes the company's successors and assigns.

The Contract : The agreement between the Company and the Purchaser for the sale and purchase of the Goods comprising the Term and Conditions here of and such specifications, drawings and documents which the parties agree shall be included.

The Goods : The goods contracted to be supplied by the company and ordered by the Purchaser.

The Specification : The specification contained in the Company's quotation (or as subsequently amended by agreement in writing).

The Purchaser : The person, firm or company to whom this document is addressed and who also has agreed to purchase the Good and includes the Purchaser's successors, assigns and nominees (as the case maybe).

The Purchaser's Order : The Order in writing placed with the Company by the Purchaser for the Goods.

2. APPLICATION OF TERMS AND CONDITIONS

- 2.1. The terms and conditions as herein contained shall apply to the Contract unless otherwise agreed by the parties.
- 2.2. No variation of or addition to these Term and Conditions by the Purchaser (whether contained in the Purchaser's Order or otherwise) shall from part of the Contract unless accepted in writing by the Company.
- 2.3. The Terms and Conditions herein contained are deemed to have been agreed and accepted by the purchaser when the Purchaser issues the Purchaser's Order to the Company. It is hereby expressly agreed that only the Terms and Conditions herein contained shall govern the sale and purchase of the Goods and it is further agreed that the Term and Conditions herein contained shall prevail over any other terms and conditions of sale (if any) contained or stipulated in the Purchaser's order or other documents from the Purchaser.

3. QUOTATION AND ORDERS

- 3.1. Quotations issued by the Company to the Purchaser shall remain valid for the period therein stated or if no such period is stated then it shall remain valid for a period of 30 days from the date of the Quotation.
- 3.2. The Company is not bound to deliver and goods or render any services to the Purchaser until the Purchaser's Order has been accepted by the Company in Writing.

4. CANCELLATION OR VARIATION ORDER

- 4.1. No cancellation by the Purchaser of an accepted Purchaser's Order shall be valid and effective unless agreed by the Company in writing and such an agreement will only be given on terms which compensate the Company for all loss and damage suffered by the company. The company shall at its sole option impose cancellation charges of 30% of the total purchase price of the Goods in the event of the Purchaser canceling the Purchaser's Order 1 week or less from the date of the Purchaser's Order. However, should cancellation be made after the expiry of 1 week from the date of the Purchaser's Order, the cancellation charges to be imposed shall then be 100% of the total purchase price of the Goods.
- 4.2. If at any time during the period of the Contract the Purchaser wishes to make any modifications, additions or variations to any part of the contract he/it shall only be permitted to do so after obtaining the written consent of the Company and after the Company has agreed to any variation in the price of the Goods (if any) and a revised delivery date as determined by the Company.
- 4.3. Any extra cost or liability incurred by the Company due to suspension of work arising out of the Purchaser's instructions or lack of or mistaken instructions from the Purchaser or to any interruptions or delays attributable to the Purchaser shall be added to the price of the Goods and shall be paid for accordingly by the Purchaser.

5. DISPATCH AND DELIVERY

- 5.1. The time and/or date quoted on the Company's quotation is an estimate only and will start to run from the date of acceptance by the Company of the Purchase's order.
- 5.2. Whilst the Company will use all reasonable endeavors to deliver the Goods within the stated delivery date, it accepts no liability for any loss of damage whatsoever which the Purchaser may suffer resulting from any delay in delivery of the Goods for whatever reason.

- 5.3. At the written request of the Purchaser, the company may agree to deliver the Goods elsewhere than the address stated in the Purchaser's Order provided the Company shall be entitled to charge the Purchaser for any extra costs and expenses incurred thereby and the Company shall not be liable for any delay loss or damage arising by reason of the Company complying with the written request of the Purchaser.
- 5.4. Delivery to a third party (s) nominated by the Purchaser may be made at the sole discretion of the Company and any such delivery made shall be deemed to be good and effectual delivery to the Purchaser.
- 5.5. If the Goods are to be delivered by installments, each delivery of any one installment under the Contract shall be considered as a separate and divisible Contract and any default in delivery of any installment thereof (if any) shall not entitle the Purchaser to treat the whole of the Contract as repudiated.
- 5.6. In the event the Purchaser fails or neglects to take or accept delivery of the Goods within 7 days after it is due, the Company shall give notice in writing to the Purchaser to collect the Goods within a period that shall be determined at the sole discretion of the Company. Should the Purchaser still fail to take delivery of the goods within such period, the Company shall (without prejudice to its legal rights in relation to failure by the Purchaser to accept the delivery of the Goods) immediately after the said period as stipulated, be at liberty to charge the Purchaser for storage at a rate to be determined by the Company, and the Purchaser shall be liable to pay the Company inter alia the said storage charges as well as the price of the Goods. Further, the company shall at its sole option repudiate the contract and then to take reasonable steps to sell off the Goods (or part thereof) in order to mitigate the loss arising from the failure, refusal and/or neglect of the Purchaser to take or accept delivery of the Goods.
- 5.7. In the event the company in its sole opinion forms the view that the project(s) in which the Goods is/are involved is likely to be or has been suspended or terminated then the Company may at its sole option repudiate the contract and thereafter to take reasonable steps to sell off the Goods (or part thereof) in order to mitigate the loss, and the Company shall not be liable to the Purchaser for the non-delivery of the balance quantity of the Goods (if any).

6. LOSS OR DAMAGE IN TRANSIT

- 6.1. Where the Company has agreed to deliver the Goods to a the Purchaser and the Goods are lost or there was a short fall or damage in transit or does not fit the order or are not so delivered then : i.In the case of damage to the Goods or where there was a short fall or where the Goods does not fit the Order the Purchaser shall give written notice to the Company and to the carrier within seven (7) days of the delivery OR
 - ii. In the case of loss or non-delivery of the whole of the Goods the purchaser shall give written notice to the Company of the said loss or non-delivery within fourteen (14) days of the Company's written advice of despatch.
- 6.2. In the case of 6.1(i) a claim must be made within fifteen (15) days of receipt of the Goods and in the case of 6.1(ii) a claim must be made within fifteen (15) days of the Company's written advice of despatch to the Purchaser, upon which the Company may at its sole option satisfy the Purchaser's claim but only to such extent the Company is satisfied that such claim is genuine and arose due exclusively to the fault of the company.
- 6.3. The company shall be under no liability under this Clause if the Purchaser fails to give such a notice or lodge to its claim in accordance with the time period and conditions as stipulated under Clauses 6.1 and 6.2 above.

7. GOODS SOLD FOR F.O.B

Where the Goods are sold F.O.B the responsibility of the Company shall cease immediately when the Goods are placed on board carrier and the Company shall be under no obligation to give the Purchaser the notice specified in Section 39(3) of the Sale of Goods Act 1957 [Act 382].

8. RETURN OF GOODS

Goods once sold and delivered cannot thereafter be returned but the Company reserve the right to entertain the return of the goods at the Company's sole discretion provided the Goods are in the sole opinion of the Company still in a state of good condition and have not been used and upon such terms and conditions as the company may impose and subject to a maximum refund of 70% of the purchase price. All cost and expenses, incurred in packing transport and other delivery charges shall be borne entirely by the purchaser.

9. DEFECTS IN GOODS

No liability shall attach to the Company either in contract or in tort for loss injury or damage sustained by the Purchaser or to any third party by reason of any defect in the Goods (if any), defective workmanship or third party liability, weather such defect be latent or otherwise.

10. QUALITY DESCRIPTION

No condition is to be made or to be implied nor is any warranty given or to be implied as to the life or wear of the goods supplied or that they will be suitable for any particular purpose or for use under any specific conditions, not with standing that such purpose or conditions may be known or made known to the Company.

11. PAYMENT TERMS

- 11.1. Unless otherwise agreed by the Company in writing, payment of the price shall be made on or before the due date.
- 11.2. If payment has not been made on the due date then not withstanding any terms and conditions hereof and without prejudice to the legal right and remedies of the Company, the Company shall be entitled to
 - i. Charge interest at 2% per month (calculated on a daily rest basis) on the outstanding balance from the date delivery to the date of actual payment. Provided however that the right of the Company to charge interest as aforesaid shall not be construed to imply that the Purchaser shall

be entitled to delay payment of the Goods.

ii. Suspend deliveries or stop maintenance without liability to the Purchaser in respect of the Goods or any other order placed by the Purchaser from time to time.

11.3. If the Purchaser for any reason fails, neglects or refuses to accept delivery of the Goods within fourteen (14) days of any attempt by the Company to effect such delivery, the Company shall invoice the Purchaser for the full amount of the Goods thereof and Clause 5(f), 11(a) and 11(b) shall inter alia apply accordingly.

11.4. Payment of the full purchase price shall be made by means of crossed cheque(s) payable to BUSCH MALAYSIA SDN BHD, cash or in any other manner acceptable to the Company.

11.5. All transactions shall be made in Ringgit Malaysia. In the event there is a fluctuation in currency exchange involving the Goods (by virtue of import), then all currency exchange loss arising out of the Purchaser's delay in accepting delivery of the Goods shall be solely borne by the Purchaser.

11.6. Payment of any duties involving the Goods shall be borne solely by the Purchaser. However, the company may at its sole option incorporate the duty into the price of the Goods upon such request by the Purchaser.

11.7. The currency exchange rate involving the Goods (by virtue of import) shall be fixed at the rate prevailing at the date of order from our Supplier / Manufacturer overseas. Should the rate of exchange be increased when the payment is due from Company to its Supplier / manufacture, the increase shall be strictly to the Purchaser's account.

12. LEGAL AND BENEFICIAL OWNERSHIP OF THE GOODS

The ownership of and property in the Goods passes from the Company to the Purchaser only upon payment of the full purchase price of the Goods. Until the purchase price of the Goods and all sums owing by the Purchaser to the Company have been paid in full, the legal and beneficial ownership of and property in the Goods shall not be transferred to the Purchaser but shall remain vested in the Company. Notwithstanding the a foregoing, the Goods shall be at the Purchaser's risk upon delivery of the same to the Purchaser. If such payment is overdue in whole or in part, the Company may recover or re-sell any or all of the Goods without prejudice to any other rights of the Company and the Purchaser hereby agrees to grant the Company, the Company's servants or agents the right and/or license and permit the Company, its servants or agents to enter the Purchaser's premises and/or any other premises in which the Goods are stored for the purpose of re-possessing the Goods.

13. DEFAULT

13.1. In the event the purchaser shall make default in or commit a breach of the Contract or of any other obligations to the Company, or if any distress or execution shall be levied upon the Purchaser's property or assets or the Purchaser shall enter into liquidation, or enter into any agreement or composition or commit any act of bankruptcy or if the Purchaser is a limited company any resolution or petition to wind up such company's business shall be passed or presented or if a receiver of the Purchaser's undertaking property or assets or any part thereof is appointed or if the Purchaser shall allow any judgments against the Purchaser to remain unsatisfied for a period of twenty-one (21) days, then in any such cases all sums of money owing under the Contract shall immediately become due and payable to the Company, and the company shall be at liberty to pursue all legitimate means at its disposal to forthwith recover the Goods and/or the price of the Goods without any notification to the Purchaser.

13.2. If the purchaser shall fail or neglect to fully settle all sums of moneys owing to the Company within seven (7) days from the date of seizure, retention and/or recovery of the Goods by the Company, the company shall be entitled to dispose of the Goods (or part thereof) in any manner it deems fit and to utilize the proceeds thereof to settle all sums of moneys owing whether due or otherwise to the company, and all costs and expenses incurred thereto in disposing of the Goods (or part thereof).

13.3. If the amount realized by the company on the sale of the Goods is less than the amount owing to the Company by the Purchaser, the purchaser shall pay to the Company on demand inter alia the difference between the amount owing and the amount so realized.

14. INFRINGEMENT OF LETTERS, PATENTS ETC

The Purchaser shall fully indemnify the Company against all damages penalties costs and expenses to which the Company may become liable as a result of work done in accordance with the Purchaser's specifications which involves the infringement of any trademarks, copyright, patents or industrial design or other type of Intellectual Properties.

15. FORCE MAJEURE

15.1. The company shall not be liable to the Purchaser by reason of its failure to perform any part of this Contract resulting from any breakdown of plant or apparatus, fire, explosion, Act of God, natural disaster or outbreak of hostilities (whether war is declared or not) in which Malaysia is involved, or national emergency, industrial dispute, strikes, interruptions in the availability of labour, energy or raw materials which could not reasonably have been foreseen or any other causes or events beyond the control of the Company.

15.2. If any of the events or causes specified in paragraph (a) of this clause shall occur, then the period for delivery shall be extended by the period during which such event or cause continues or the Company may by notice to the purchaser make partial deliveries only or the Company may determine the Contract without prejudice in any case to right accrued in respect of deliveries already made.

16. WAIVER

No admission, act or omission made by the Company shall during the continuance of the Contract constitute a waiver of or release the Purchaser from any liability hereunder.

17. ENTIRE CONTRACT

These terms and conditions constitute the entire agreement between the Company and the Purchaser with respect to the sale and purchase of the Goods and supersedes all prior agreements or arrangements (whether oral or written) between the said parties with respect thereto.

18. NOTICES

Any notice to be given to either party to the other hereto shall be in writing and be deemed to be have been duly sent or served 5 working days after the notice is sent or served and such service shall only be valid provided it is by hand or pre-paid registered post to the other party's address as shown in the contact [or the last known address].

19. PROPER LAW

The Contact and these Terms and Conditions shall be construed and have effect in all respect in accordance with Malaysian Law.

20. LICENSES

- 20.1. The Purchaser shall at its own costs and expense obtain any necessary operating licenses for the Goods from the appropriate authority.
- 20.2. The Company accepts no liability arising from the Purchaser's delay in or failure to obtain such licenses.

21. LEGAL PROCEEDINGS

In the event that the Company deem it necessary to institute legal proceedings against the Purchaser for any purpose or reason whatsoever, the purchaser hereby covenants and agrees to submit to jurisdiction of the Malaysian Courts.

22. TIME

Time whether mentioned herein or in the Contract shall be of essence.

23. HEADINGS

The headings herein are inserted for reference / convenience only and shall not affect the construction of the contents of this Agreement.