

BUSCH (UK) LIMITED
TERMS AND CONDITIONS OF SALE "A" DOC104 / ISSUE 4 / January 2019



1. INTERPRETATION

1.1 In these terms and conditions the following words have the following meanings:

"**Business Day**" means a day other than a Saturday, Sunday or public holiday when banks in London are open for business.

"**Buyer**" the person(s) or company whose order for Goods and/or Services is accepted by the Company.

"**Company**" Busch (UK) Limited (company number 01007314) of 30-35 Hortonwood, Telford, TF1 7YB.

"**Conditions**" the terms and conditions set out in this document

"**Contract**" any contract between the Company and the Buyer for the sale and purchase of the Goods and/or the supply of Services in accordance with these Conditions.

"**Delivery Point**" the place where delivery of Good and / or Services is to take place under condition 4.

"**Goods**" any goods which the Company is to supply to the Buyer (including any of them or any part of them) as set out in the Order Acknowledgement.

"**Intellectual Property Rights**" copyright, patents, registered and unregistered design rights, database rights, trade marks, trade names, know-how or other intellectual or industrial property rights, whether or not registered or capable of registration and whether subsisting in the UK or any other part of the world, together with any goodwill relating thereto.

"**Order**" the Buyer's order for the Goods and / or Services.

"**Order Acknowledgement**" the Company's written acceptance of an Order.

"**Services**" any services which the Company is to provide to the Buyer (including any of them or any part of them) as set out in the Order Acknowledgement.

"**Site**" the site on which the Company performs the Services.

1.2 The headings in these terms and conditions are for convenience only and shall not affect their interpretation.

2. FORMATION AND INCORPORATION

2.1 Subject to any variation under condition 2.4, the Contract will be on these terms and conditions set out below to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order or similar document).

2.2 Each Order shall be deemed to be an offer by the Buyer to purchase Goods and / or Services subject to these terms and conditions.

2.3 No terms or conditions endorsed upon, delivered with or contained in the Buyer's purchase order, specification or similar document will form part of this Contract simply as a result of a reference to such document being made in this Contract.

2.4 Any variation to these terms and conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by a Director of the Company.

2.5 Acceptance of delivery of the Goods or the provision of the Services shall be deemed to be conclusive evidence of the Buyer's acceptance of these terms and conditions.

2.6 The Buyer must ensure that the terms of its Order and any applicable specification are complete and accurate.

2.7 Any quotation is given on the basis that no Contract will come into existence until the Company despatches an Order Acknowledgement to the Buyer. Any quotation is valid for a period of 30 days only from its date provided the Company has not previously withdrawn it.

2.8 Subject to condition 4.4 no Order which the Company has accepted may be cancelled by the Buyer except with the written agreement of the Company and on terms that the Buyer shall indemnify the Company in full against all losses (including loss of profit), costs, damages, charges and expenses suffered or incurred by the Company as a result of such cancellation.

2.9 Following the receipt of the Order Acknowledgement, the Buyer shall forthwith supply all information, drawings and specifications as the Company may reasonably require to enable it to supply the Goods and/or Services.

3. DESCRIPTION AND TESTING

3.1 The description of the Goods and Services shall be as set out in the Order Acknowledgement.

3.2 All drawings, descriptive matter, and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods and/or services described in them. They will not form part of the Contract.

3.3 The Company may make any changes to the specification, design, materials or finishes of the Goods and/or services which are required to conform with any applicable safety or other statutory requirements.

3.4 Where the Company considers it necessary or where stated in the Order Acknowledgement, the Company shall carry out testing on the Goods and/or Services. If the Buyer requires any additional testing not specified in the Order Acknowledgement the Company may charge the Buyer for such tests.

3.5 Where the tests pursuant to condition 3.4 are to be carried out away from the Company's premises the Buyer shall provide free or charge such labour, materials electricity, fuel, stores and apparatus as the Company may reasonably require.

4. DELIVERY

4.1 Delivery of the Goods shall be made at the Delivery Point in accordance with the Incoterms 2010 as stated in the Order Acknowledgement.

4.2 Any dates specified by the Company for delivery of the Goods or provision of the Services are approximate only and may not be made of the essence by notice. If no dates are so specified, delivery will be within a reasonable time.

4.3 If the Company fails to deliver the Goods or complete its performance of the Services (through no fault of the Buyer) within 14 days after the agreed dates specified in the Contract the Company shall be liable to pay the Buyer liquidated damages of 0.5% of the price of the Goods and/or Services (or part thereof) which have not been delivered and/or performed, for each week by which the Goods or Services are performed or delivered late (calculated starting from 14 days after the agreed dates).

The liquidated damages in respect of any Contract shall not exceed 5% of the price of the Goods and/or Services (or part thereof) which have not been delivered and/or performed. These liquidated damages are accepted by the parties as a genuine pre-estimate of the net losses likely to be suffered by the Buyer. The amount of liquidated damages payable is in full and final settlement of any damages for late delivery or non-delivery of the Goods or late or non-performance of the Services.

4.4 If the Buyer fails to take delivery of any of the Goods when they are ready for delivery or to provide any instructions, documents, licences or authorisations required to enable the Goods to be delivered on time (except because of the Company's fault) the Goods will be deemed to have been delivered and (without prejudice to its other rights) the Company may:

4.4.1 store or arrange for the storage of the Goods until actual delivery or sale and charge the Buyer for all related costs and expenses (including, without limitation, storage and insurance); and/or

4.4.2 at any time after 10 Business Days following the date the Goods are ready for delivery and upon written notice to the Buyer, sell any of the Goods at the best price reasonably obtainable in the circumstances and charge the Buyer for any shortfall below the price under the Contract.

5. NON-DELIVERY

5.1 The Company shall not be liable for any non-delivery of Goods and/or Services pursuant to **condition 4.3** (even if caused by the Company's negligence) unless written notice is given to the Company within 14 days of the date when the Goods would in the ordinary course of events have been received.

5.2 Any liability of the Company for the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

5.3 A signature of qualified acceptance on a carrier's delivery note shall not be written notice to the Company for the purpose of these terms and conditions and in particular condition 5.1.

6. FORCE MAJEURE

6.1 Neither the Company nor the Buyer shall be liable to the other in any manner or be deemed to be in breach of this Contract (subject to condition 11) because of any delay in performing or any failure to perform its obligations under this Contract if the delay or failure was due to any cause beyond its reasonable control.

6.2 Without prejudice to the generality of condition 6.1 the following shall be included as causes beyond either party's reasonable control:

6.2.1 government actions, war or threat of war, national emergency, riot, civil disturbance, sabotage or requisition;

6.2.2 Act of God, fire, explosion, flood, epidemic or accident;

6.2.3 import or export regulations or embargoes;

6.2.4 labour disputes not including disputes involving the affected party's work-force; or

6.2.5 inability to obtain or delay in obtaining supplies of adequate or suitable material, fuel, parts, machinery or labour

7. RISK/OWNERSHIP

7.1 Risk of damage to or loss of the Goods shall pass to the Buyer upon delivery.

7.2 Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:

7.2.1 the Goods; and

7.2.2 all other sums which are or which become due to the Company from the Buyer on any account

7.3 Until ownership of the Goods has passed to the Buyer, the Buyer must:

7.3.1 hold the Goods on a fiduciary basis as the Company's bailee;

7.3.2 store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;

7.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;

7.3.4 maintain the Goods in satisfactory condition insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company; and

7.3.5 hold the proceeds of the insurance referred to in condition 7.3.4 on trust for the Company and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.

7.4 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:

7.4.1 Any sale shall be effected in the ordinary course of the Buyer's business at full market value and the Buyer shall account to the Company accordingly; and

7.4.2 any such sale shall be a sale of the Company's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.

7.5 Where the Company is unable to determine whether any goods are the Goods, the Buyer shall be deemed to have sold all goods of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buyer.

7.6 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.

7.7 The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.

7.8 Any samples of Goods supplied by the Company shall remain the property of the Company and the Company shall return the samples within the time limit specified by the Company or if no limit is specified, within 30 days of the date of receipt by the Buyer. The samples are held by the Buyer from the date of delivery until returned to the Company at the Buyer's own risk

8. PRICE

8.1 The price for the Goods and/or Services shall be the price as stated in the Order Acknowledgement.

8.2 The price for the Goods and/or Services is exclusive of any value-added tax or any other applicable tax which the Buyer shall pay in addition when it is due to pay for the Goods and/or Services.

8.3 Where the Delivery Point is other than at the Company's premises the Buyer shall (if demanded by the Company) pay the Company's charges for packaging, loading, unloading and insurance in addition when it is due to pay for the Goods. The price of the Goods shall include carriage by standard carrier to the Delivery Point (provided it is on the UK mainland), unless stated otherwise in the Order Acknowledgement.

8.4 The Company reserves the right to increase or decrease the price of the Goods and/or Services if the cost to the Company of supplying the Goods and/or Services increases or decreases as a result of any change in legislation. This could include but is not limited to changes in taxes, duties, tariffs, regulations or statutory order, together with costs incurred to implement such changes.

8.5 Orders cancelled or goods returned will be subject to a cancellation or re-stocking fee. A minimum charge of 15% will be applied to standard goods. Special materials for non-stock items are charged at a minimum of 30% of original sales value.

9. PAYMENT

9.1 The Company may invoice the Buyer for the Goods at any time after delivery and for the Services at any time after they have been provided.

9.2 Time for payment shall be of the essence.

9.3 The Buyer shall pay the price for the Goods and Services within 30 days following the date of the Company's invoice.

9.4 No payment shall be deemed to have been received until the Company has received cleared funds.

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- 9.5 All payments payable to the Company under this Contract shall become due immediately upon termination of this Contract despite any other provision.
- 9.6 The Buyer shall make all payments due under this Contract without any deduction whether by way of set-off, counterclaim or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.
- 9.7 The Company may appropriate any payment made by the Buyer to the Company to such of the Goods as the Company thinks fit despite any purported appropriation by the Buyer.
- 9.8 If the Buyer fails to make any payment under this Contract on the due date then (without prejudice to its other rights and remedies) the Company may charge the Buyer interest (both before and after judgement) on the amount unpaid at the annual rate of 4% above Barclays Bank PLC's base rate from time to time until payment is made in full (a part of a month being treated as a full month for the purpose of calculating interest).
- 10. QUALITY**
- 10.1 Where the Company is not the manufacturer of the Goods the Company will endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to the Company.
- 10.2 The Company warrants that (subject to the other provisions of these terms and conditions) upon delivery the Goods will, and for a period until the expiry of 12 months from their first use by the Buyer or 18 months from the date of delivery, whichever is the sooner (**Warranty Period**), be of satisfactory quality within the meaning of the Sale and Supply of Goods Act 1994.
- 10.3 The Company warrants that (subject to the other provisions of these terms and conditions) it will perform the services with reasonable skill and care.
- 10.4 The Company shall not be liable for a breach of the warranty in condition 10.2 or 10.3 unless:
- 10.4.1 the Buyer gives written notice of details of the alleged breach of warranty to the Company (and if there is a defect in the Goods as a result of damage in transit, to the carrier as well) within 7 days of:
- 10.4.1.1 (where the defect or other breach of warranty would be apparent to the Buyer upon a reasonable inspection) the date of delivery of the Goods or in the case of the Services, the date of completion of the Services; or
- 10.4.1.2 (where the defect or other breach of warranty would not be apparent to the Buyer upon a reasonable inspection) the date when the Buyer knew or ought reasonably to have known of the breach of warranty; and
- 10.4.2 the Company is given a reasonable opportunity after receiving the notice of examining such Goods or Services and in the case of the Goods the Buyer (if asked to do so by the Company) returns such Goods to the Company for the examination to take place there.
- 10.5 The Company shall not be liable for breach of the warranties in conditions 10.2 or 10.3 if:
- 10.5.1 the defect arises because the Buyer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or Services or (if there are none) good trade practice; or
- 10.5.2 the Buyer alters or repairs such Goods or alters or re-performs the Services without the written consent of the Company; or
- 10.5.3 the defect in such Goods or Services arises from any design defect in any drawing, design or specification supplied or approved by the Buyer.
- 10.6 If the Buyer makes a valid claim against the Company for breach of the warranties in conditions 10.2 or 10.3 the Company shall at its option:
- 10.6.1 repair or replace such Goods as are defective and/or re-perform the Services (or the relevant part); or
- 10.6.2 refund the price of such Goods and/or Services at the pro-rata Contract rate; provided that, in the case of the Goods if the Company so requests, the Buyer shall, at the Buyer's expense, return the Goods or the part of the Goods which are defective to the Company.
- 10.7 If the Company complies with condition 10.6 it shall have no further liability for a breach of the warranties in condition 10.2 and 10.3 in respect of the quality of such Goods and Services.
- 10.8 Any Goods replaced will belong to the Company and any repaired or replacement Goods will be guaranteed on these terms and conditions for the unexpired portion of the Warranty Period referred to in condition 10.2.
- 11. LIMITATION OF LIABILITY**
- 11.1 The following provisions and the provisions of condition 10 set out the entire liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:
- 11.1.1 any breach of these Conditions; and
- 11.1.2 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 11.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are excluded from the Contract.
- 11.3 Nothing in these Conditions excludes or limits the liability of the Company for death or personal injury caused by the Company's negligence or for fraudulent misrepresentation.
- THE BUYER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CONDITIONS 11.4 & 11.5**
- 11.4 Subject to conditions 11.2 and 11.3, the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of this Contract shall be limited to the Contract price.
- 11.5 Subject to conditions 11.2 and 11.3, the Company shall not be liable to the Buyer by reason of any representation or any implied warranty, condition or other term or any duty at law or under the express terms of this Contract for:
- 11.5.1 any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation; and
- 13.1 any direct loss of profit, loss of business or depletion of goodwill;
- (whether or not caused by the negligence of the Company, its employees, agents or sub-contractors) which arises out of or in connection with the contract.
- 12. INTELLECTUAL PROPERTY RIGHTS**
- 12.1 The Buyer shall indemnify and keep indemnified the Company in full from and against all direct, indirect or consequential liability, losses, damages, costs and expenses (including legal expenses) awarded against or incurred or paid by the Company as a result of any claim that any specification, drawing, design or other information supplied by the Buyer infringes any Intellectual Property Rights or that the Goods or Services infringe any Intellectual Property Rights as a result of any specification, drawing or design supplied by the Buyer.
- 12.2 All Intellectual Property Rights in the Goods, Services, designs, drawings and specifications supplied by the Company shall vest and remain vested in the Company (or, where applicable, its supplier) and the Buyer shall do or procure the doing of any acts and execute any documents as may be required to confirm this.
- 13. SERVICES**
- The following provisions shall apply where the Contract includes the provision of Services:
- 13.1 The Company shall only be obliged to carry out the Services during its normal working hours, which are 8.30am to 4.30pm Monday to Friday inclusive, excluding public holidays and any work carried out outside these hours will incur additional charges.
- 13.1 The Buyer shall at its own expense within any period specified by the Company (or where no period is specified, within a reasonable time):
- 13.2.1 provide proper and safe storage and protection of all goods, tools, equipment and materials brought onto the Site by the Company;
- 13.2.2 ensure suitable and safe access to the Site;
- 13.2.3 provide such equipment, craneage, consumable stores, water and power, scaffolding, lighting, heating and guarding as specified in the Contract or as reasonably necessary to enable the Company to perform the Services;
- 13.2.4 provide all facilities and services as are necessary to enable the Services to be performed safely and expeditiously; and
- 13.2.5 check that the civil structure or Site within which the Services will be performed or Goods supplied corresponds to the Company's drawings and designs, prior to the Company attending the Site.
- 13.3 Unless otherwise stated in the Order Acknowledgement or in the Contract, the Company shall not be required to carry out any building, civil engineering or demolition work in connection with performing the Services.
- 14. DISPUTE RESOLUTION**
- 14.1 If any dispute or difference arises between the Company and the Buyer in respect of the Contract the parties shall use reasonable endeavours to discuss the matter in good faith and attempt to resolve the dispute.
- 14.2 If the parties cannot resolve the dispute by discussions pursuant to condition 14.1 within 14 days the parties will attempt to settle it by mediation in accordance with the Centre for Dispute Resolution (CEDR) Model Mediation Procedure.
- 14.3 To initiate mediation under this clause a party must give notice in writing ("ADR notice") to the other party or parties to the dispute requesting a mediation. A copy of the ADR notice shall be sent to CEDR by the party giving it.
- 14.4 The procedure in the Model Procedure will be amended to take account of any relevant provisions in this Agreement and any other additional agreement which the parties may enter into in relation to the conduct of the mediation.
- 14.5 The mediation will start not later than 28 days after the date of any ADR notice.
- 14.6 The commencement of a mediation will not prevent the parties commencing or continuing court proceedings/an arbitration.
- 14.7 Any party which commences court proceedings/an arbitration must serve an ADR notice on the other party or parties to the court proceedings / arbitration within 21 days.
- 15. TERMINATION**
- 15.1 The Contract will terminate immediately upon the happening of any one or more of the following events: the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors or otherwise takes the benefit of any Act for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal) or enters into liquidation (whether voluntary or compulsory), except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver, manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer.
- 15.2 The Contract will terminate immediately upon service of written notice of termination by the Company on the Buyer on the happening of any one or more of the following: the Buyer suffers or allows any execution whether legal or equitable to be levied on his / its property or obtained against him / it, or fails to observe or perform any of his / its obligations or duties under the Contract or any other contract between the Company and the Buyer or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade.
- 15.3 The Buyer's rights contained in condition 7 (but not the Buyer's rights) shall continue beyond the discharge of the Buyer's and the Company's primary obligations under the Contract consequent upon its termination.
- 15.4 The termination of the Contract howsoever arising shall be without prejudice to the rights and duties of either the Buyer or the Company accrued prior to termination.
- 16. GENERAL**
- 16.1 Each right or remedy of a party to this Contract is without prejudice to any other right or remedy of that party whether under this Contract or not.
- 16.2 Any provision of this Contract which is held by any competent authority to be invalid, void, voidable, unenforceable or unreasonable (in whole or in part) shall to the extent of such invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the other provisions of this Contract and the remainder of such provision shall not be affected.
- 16.3 Failure by either party to enforce or partially enforce any provision of this Contract will not be construed as a waiver of any of its rights under this Contract.
- 16.4 The Company may assign, license or sub-contract all or any part of its rights or obligations under this Contract without the Buyers consent.
- 16.5 This Contract is personal to the Buyer who may not assign, licence or sub-contract all or any of its rights or obligations under this Contract without the Company's prior consent.
- 16.6 The parties to this Contract do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.
- 16.7 The formation, construction, performance, validity and all aspects of this Contract are governed by English law and the parties submit to the exclusive jurisdiction of the English Courts.
- 17. COMMUNICATION**
- 17.1 All communications between the parties about this Contract must be in writing and delivered by hand or sent by prepaid first class post or sent by facsimile transmission:-
- 17.1.1 (in case of communications to the Company) to the address for the Company stated in condition 1.1 or such changed address as shall be notified to the Buyer by the Company; or
- 17.1.2 (in the case of the communications to the Buyer) to any address of the Buyer set out in any document which forms part of this Contract or such other address as shall be notified to the Company by the Buyer.
- 17.2 Communications shall be deemed to have been received:-
- 17.2.1 if sent by pre-paid first class post, 2 Business Days after posting (exclusive of the day of posting);
- 17.2.2 if delivered by hand, on the day of delivery;
- 17.2.3 if sent by facsimile transmission on a Business Day prior to 4.00pm, at the time of transmission and otherwise on the next Business Day.