

# Bushboard Limited – Terms And Conditions Of Sale

## 1 INTERPRETATION

In these terms and conditions ("Conditions"), the following words shall have the following meanings:

- "Buyer" means the person(s), firm or company who purchases the Goods from the Company
- "Company" means Bushboard Limited
- "Contract" means any contract between the Company and the Buyer for the sale and purchase of the Goods
- "Goods" means the goods to be supplied to the Buyer by the Company.

## 2 ACCEPTANCE OF ORDER

No order shall be deemed accepted until the Company issues a written acknowledgement to the Buyer or the Company delivers the Goods to the Buyer (whichever occurs earlier). The Contract shall be on these Conditions to the exclusion of all other terms and conditions (including any terms and conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document). Any modification of these Conditions and any representations about the Goods must be in writing and signed by a Director of the Company.

The parties acknowledge to each other that they have not relied upon any statement or representation by the other when entering into the Contract unless expressly set out in these Conditions or incorporated pursuant to Condition 2.1.

Each purchase order issued by the Buyer to the Company for Goods and accepted by the Company shall constitute a separate contract.

## 3 PRICES AND DISCOUNTS

All prices are exclusive of VAT and all costs or charges in relation to loading, unloading, carriage and insurance all of which amounts the Buyer will pay in addition when it is due to pay for the Goods. The Company does not offer nor shall be deemed to have offered any prompt payment, trade, main contractors or other discounts unless agreed by a Director of the Company in writing. The prices quoted by the Company are based on the cost of materials, labour hours and general overheads to be incorporated in the Goods specified in the Buyer's original enquiry. The Company reserves the right to revise prices at its sole discretion to take account of any changes in the dimensions, specifications, tolerances or quantities of Goods ordered. The Buyer must ensure that the terms of its order and any applicable specification in respect of the Goods are complete and accurate. Any quotation is valid for a period of 12 weeks only from its date, provided that the Company has not previously withdrawn it.

## 4. PAYMENT

Payment is due in full 30 (thirty) days from date of invoice except where alternative payment terms have been advised by the Company to the Buyer in writing.

If payment is not made in full by the due date:

the Company may, without prejudice to any other rights and remedies at its option, charge the Buyer interest on any payment which has not been made within 30 (thirty) days of the due date, in accordance with the Late Payment of Commercial Debts (Interest) Act 1998;

the Company may cancel the Contract or suspend any further deliveries to the Buyer;

the Company may appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any contract other than the Contract between the Buyer and the Company) as the Company may think fit (notwithstanding any purported appropriation by the Buyer); and

the Buyer shall indemnify and keep indemnified the Company against all liabilities, claims, costs, damages and expenses (including but not limited to legal costs and expenses) incurred or sustained by the Company in recovering sums due or in exercising its rights pursuant to Condition 6, in each case without prejudice to any other rights or remedies available to the Company.

Payment shall be due whether or not property in the Goods has passed to the Buyer by virtue of Condition 6 and the Company shall (without prejudice to any other right or remedy) accordingly be entitled to sue for the price once the same is due even if property in the Goods has not passed.

The Buyer shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement 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.

## 5 DELIVERY AND RISK

All Goods shall be delivered ex works unless otherwise agreed in writing by the Company. The Goods shall be at the risk of the Buyer from time of delivery.

Any delivery period or date given by the Company for delivery of Goods is given as an estimate only and time of delivery shall not be of the essence. The Company shall not be liable for late delivery, howsoever occasioned.

The Company shall not be liable for any non-delivery of the Goods (even if caused by the Company's negligence) unless written notice is given by the Buyer to the Company within 5 business days of the date when the Goods would in the ordinary course of events have been received.

Any liability of the Company for non-delivery of the Goods shall be limited to, at its discretion, replacing the Goods within a reasonable time, issuing a credit note at the pro-rata Contract rate against any invoice raised for such Goods or a refund of the purchase price paid.

The Buyer acknowledges that if the Company accepts any final site dimension changes and/or subsequent drawings or amendments to an order for Goods after that order has been accepted by the Company, such changes and/or amendments may impact on any delivery period set out in the Company's order acknowledgement. The Company will notify the Buyer of any revised delivery schedule as soon as reasonably practicable.

If for any reason the Buyer will not accept delivery of any of the Goods when they are ready for delivery or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations: risk in the Goods will pass to the Buyer (including loss or damage caused by the Company's negligence);

the Goods will be deemed to have been delivered; and

the Company may store the Goods until delivery whereupon the Buyer will be liable for all related costs and expenses (including without limitation storage and insurance).

The Buyer will provide at its expense at the point of delivery adequate and appropriate equipment and manual labour for loading the Goods.

## 6 OWNERSHIP

All 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 the Goods; and
- all other sums which are or which become due to the Company from the Buyer on any account.

Until such time as ownership of the Goods has passed to the Buyer, the Buyer must:

- 6.2.1 hold the Goods on a fiduciary basis as the Company's bailee;
- 6.2.2 where physically possible (but not so as to prevent or restrict the use of the Goods by the Buyer) keep the Goods separately stored and identified as the Company's property;
- 6.2.3 not destroy, deface or obscure any identifying mark on or relating to the Goods;
- 6.2.4 maintain the Goods in satisfactory condition and keep them 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
- 6.2.5 hold the proceeds of sale of the insurance referred to in Condition 6.2.4 on trust for the Company and not mix them with any other money nor pay the proceeds into an overdraft bank account.

The Buyer's right to possession of the Goods shall terminate immediately if:

- 6.3.1 the Buyer (being an individual) has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision 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 and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 of the Insolvency Act 1986), 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 in any jurisdiction; or

6.3.2 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/perform any of his/its obligations 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; or

6.3.3 the Buyer encumbers or in any way charges any of the Goods; or

6.3.4 anything analogous to the foregoing occurs in any other jurisdiction.

6.4 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.

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

## 7 TOLERANCES AND SPECIFICATION

The description of the Goods shall be as set out in the Company's quotation, if any.

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

7.3 Unless otherwise agreed by the Company in writing, if the Company delivers to the Buyer Goods which have dimensions within 5mm of the dimensions agreed by the Company for the Goods, the Buyer shall not be entitled to object to or to reject the Goods or any of them.

7.4 Where the Company agrees to manufacture to the Goods to the exact dimensions set out in the Company's acknowledgement of order, the dimensions will conform to the tolerances ruling under BS 4965, copies of which can be obtained from the British Standards Institution.

7.5 Where the decorative laminates and core materials used to produce the Goods permit, the Goods will comply generally with the quality specification of BS 4965. The Company does not warrant that decorative laminates will either adhere to a particular shade of colour nor be consistent with a particular colour or pattern. The Company shall not be liable for the distortion or bowing of Goods due to the Buyer's transport, storage, site or installation conditions.

7.6 The Buyer acknowledges that the Goods are intended for use in a temperate climate only, unless the Company has agreed in writing to manufacture the Goods in order to meet extremes of temperature and/or humidity either in situ or in transit.

7.7 The Buyer shall indemnify and keep indemnified the Company against all liabilities, claims, costs, damages and expenses (including but not limited to legal costs and expenses) incurred or sustained by the Company as a result of the Company supplying Goods to the Buyer to the extent that such liabilities, claims, costs, damages and expenses arise as a result of the Buyer supplying Goods in accordance with any specification supplied to the Company by the Buyer.

## 8 INTELLECTUAL PROPERTY

All intellectual property rights in the Goods shall remain the exclusive property of the Company and/or its licensors, unless otherwise agreed in writing by the Company. Subject to the Buyer paying all monies due to the Company under the terms of the Contract and any other contract between the Company and the Buyer, the Company hereby grants to the Buyer a non-exclusive, royalty free, non-transferable licence of such intellectual property rights for the purpose of utilising the Goods in its normal course of business.

## 9 QUALITY

9.1 Where the Company is not the manufacturer of the Goods, the Company shall use its reasonable endeavours to transfer to the Buyer the benefit of any warranty or guarantee given to the Company in respect of these Goods.

9.2 The Company warrants that (subject to the other provisions of these Conditions) upon delivery and for a period of 12 months from the date of delivery the Goods will:

9.2.1 be of satisfactory quality within the meaning of the Sale of Goods Act 1979 (as amended); and

9.2.2 comply with any agreed specification.

9.3 The Company shall not be liable for a breach of any of the warranties in Condition 9.2 unless:

9.3.1 the Buyer gives written notice of the defect to the Company, and (if the defect is as a result of damage in transit) to the carrier, within 30 days of the time when the Buyer discovers or ought to have discovered the defect; and

9.3.2 the Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Buyer's cost for the examination to take place there.

9.4 If any of the Goods or any part thereof do not conform with any of the warranties in Condition 9.2 ("Defective Goods") the Company shall at its option repair or replace such Defective Goods or refund the price of such Defective Goods at the pro rata Contract rate provided that, if the Company so requests, the Buyer shall, at the Buyer's expense, return the Defective Goods to the Company.

9.5 The Company shall not be liable for a breach of any of the warranties in Condition 9.2 if:

9.5.1 the Buyer makes any further use of such Goods after giving such notice; or

9.5.2 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 (if there are none) good trade practice; or

9.5.3 the Buyer alters or repairs such Goods without the written consent of the Company; or

9.5.4 that attributable to fair wear or tear, abuse, improper use or use in an environment or for a purpose for which the Goods were not designed or intended by the Company; or

9.5.5 the defect arises as a result of the Company following the Buyer's instructions.

9.6 If the Company complies with Condition 9.4 it shall have no further liability for a breach of any of the warranties in Condition 9.2 in respect of such Goods.

9.7 Any Goods or parts thereof replaced will belong to the Company and any repaired or replacement Goods will be guaranteed on these terms for the unexpired portion of the 12 month period.

## 10 LIMITATION OF LIABILITY

10.1 Subject to Conditions 4, 5, 7 and 9, the following provisions set out the entire financial 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:

10.1.1 any breach of these Conditions; and

10.1.2 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

10.2 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, to the fullest extent permitted by law, excluded from the Contract.

10.3 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.

10.4 Subject to Conditions 10.2 and 10.3 the Company's total liability to the Buyer under or connected with these Conditions for: damage to the Buyer's tangible property resulting directly from the Company's negligence or that of its employees shall not exceed £2 million for any one event or series of connected events;

10.4.1 any other loss not covered by Condition 10.4.1 shall not exceed 125% (one hundred and twenty-five per cent) of the price payable for the Goods that are the subject of the claim.

10.4.2 The limits in Condition 10.4 are based on the Company's insurance cover and ability to compensate. The limits may be increased if requested but shall be subject to the Company obtaining suitable cover and may require an adjustment to the price payable for the Goods to reflect any increased premiums.

10.6 Subject to Condition 10.3, the Company shall not be liable to the Buyer for:

10.6.1 any indirect or consequential, special or punitive loss, damage, costs or expenses;

10.6.2 loss of profit;

10.6.3 loss of business;

10.6.4 loss of revenue; or

10.6.5 depletion of goodwill.

## 11 FORCE MAJEURE

11.1 The Company shall not have any liability for any loss or damage if its performance of any obligations under the Contract is delayed, hindered or prevented by any cause beyond its reasonable control, including, without limitation, fire, storm, flood, earthquake, accident, adverse weather conditions, explosions, Acts of God, war, governmental controls, restrictions or prohibitions, strikes, lock-outs, industrial action, employment dispute, protests, traffic congestion, vandalism, interruptions in communications or power supply and mechanical breakdown, failure or malfunction of computer systems. In the event of such delay, hindrance or prevention, the Company shall be entitled to postpone delivery or performance by the duration of interference plus a reasonable start-up time thereafter, or to cancel the Contract in its entirety or partially, insofar as it has not been performed without incurring any liability for non-performance.

## 12 TERMINATION OF CONTRACT

12.1 The Company shall have the right to terminate the Contract at any time by giving at least 7 (seven) days' notice to the Buyer (or immediately as provided in Condition 12.1.2) in any of the following events, which termination shall be effective upon expiry of such notice (or immediately as provided in Condition 12.1.2):

12.1.1 if the Buyer commits a material breach of any of the terms of the Contract and fails to remedy the same within 30 (thirty) days of being notified of the breach;

12.1.2 immediately upon the occurrence of the events in Condition 6.3, or if any material or significant part of the Buyer's undertaking, property, or assets shall be intervened in, expropriated, or confiscated by action of any government.

12.2 The Company may terminate any Contract or suspend further deliveries (without prejudice to the foregoing right of termination) if the Buyer fails to pay any sum as it falls due, unless it is the subject to a bona fide dispute and provided the undisputed amount has been paid.

## 13 CONSEQUENCES OF TERMINATION

13.1 On the termination of the Contract for any reason:

13.1.1 the Company shall not be obliged to supply any Goods ordered by the Buyer unless already paid for; and

13.1.2 all payments payable to the Company under the Contract shall become due immediately upon termination of this Contract despite any other provision.

13.2 The termination of this Contract shall not affect the respective rights and liabilities of each of the parties thereto which accrued prior to such termination nor any provisions which either expressly or impliedly are to remain in operation after termination.

## 14 INTERPRETATION

14.1 The Contract including these Conditions shall be governed by and construed in accordance with English Law and both parties hereby agree to submit to the non-exclusive jurisdiction of the Courts of England and Wales.

## 15 GENERAL

15.1 The Company may sub-contract the manufacture or production of the Goods. The Company agrees that it shall be responsible for the actions or omissions of any sub-contractor used by it in connection with any of the Goods or with satisfying any of the Company's responsibilities under the Contract.

15.2 The Buyer shall not be entitled to assign, transfer or dispose of any right, obligation or interest in or arising out of the Contract or any part of it without the prior written consent of the Company. The Company may assign the Contract or any part of it to any other person, legal entity, firm or organisation.

15.3 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

15.4 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.

15.5 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.

15.6 The parties to this Contract do not intend that any term of this Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

15.7 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

## 16 COMMUNICATIONS

16.1 All communications between the parties about this Contract must be in writing and delivered by hand or sent by pre-paid first class post or sent by facsimile transmission:

16.1.1 (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Buyer by the Company; or

16.1.2 (in the case of the communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) 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.

16.2 Communications shall be deemed to have been received:

16.2.1 if sent by pre-paid first class post, 2 (two) days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting);

16.2.2 if delivered by hand, on the day of delivery;

16.2.3 if sent by facsimile transmission on a working day prior to 4.00 pm at the time of transmission and otherwise on the next working day.

## Bushboard Limited

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