

# Bronson & Jacobs (Malaysia) Sdn Bhd

## Conditions of Sale

<p><b>1. DEFINITION</b> In these terms and conditions :  <b>"Goods"</b> means all equipment, products and services agreed to be supplied by Bronson &amp; Jacobs to the Buyer under any contract, arrangement, understanding between Bronson &amp; Jacobs and the Buyer (including pursuant to a quotation or letter of offer accepted by the Buyer);  <b>"Buyer"</b> means the party to whom any quotation is made, any person offering to contract with Bronson &amp; Jacobs these Conditions of Sale and any person who purchases Goods from Bronson &amp; Jacobs;  <b>"Contract"</b> means Bronson &amp; Jacobs' pricing letter or letter of offer to which the supply of the Goods relates, as updated in writing by the mutual agreement of the parties, the attachments (if any) to that letter and these Conditions of Sale;  <b>"Bronson &amp; Jacobs"</b> means Bronson &amp; Jacobs (Malaysia) Sdn Bhd, a company incorporated in Malaysia under registration number 443084-P;</p> <p><b>2. ENTIRE AGREEMENT</b></p> <p>(a) Unless Bronson &amp; Jacobs otherwise agrees in writing, the Contract contains the only terms and conditions of sale to which Bronson &amp; Jacobs will be bound in connection with the supply of Goods to the Buyer.</p> <p>(b) The Buyer agrees that the Conditions of Sale contained in this Contract will in all circumstances prevail over the Buyer's terms and conditions of purchase or supply (if any).</p> <p>(c) These Conditions of Sale supersede and exclude all prior and other discussions, representations (contractual or otherwise) and arrangements relating to the supply of the Goods including, but not limited to, those relating to the performance of the Goods or the results that ought to be expected from using the Goods.</p> <p>(d) Without limiting any other mode of acceptance of this Contract exercised by the Buyer, the Buyer acknowledges that by accepting delivery of the Goods and/or the credit terms offered by Bronson &amp; Jacobs, the Buyer by such conduct agrees to be bound by the Conditions of Sale of this Contract.</p> <p>(e) No amendment or variation of the Contract is valid or binding on a party unless made in writing and executed and sealed on behalf of both parties.</p> <p><b>3. WARRANTIES, GUARANTEES &amp; LIABILITY</b></p> <p>(a) Bronson &amp; Jacobs warrants that the Goods as at the time of delivery accord with the relevant specification contained or referenced in the Contract.</p> <p>(b) Apart from the warranties contained in clause 3(b), to the maximum extent permitted by law, all warranties and guarantees expressed or implied by statute, law, trade, custom or usage or otherwise, in relation to the supply of the Goods, are expressly excluded. Where such exclusion would be illegal, Bronson &amp; Jacobs' liability for breach of such non-excludable warranty or guarantee is limited in the manner set out below in clause 3(c).</p> <p>(c) Subject to clause 3(d), Bronson &amp; Jacobs' liability for its breach of clause 3(a) or a non-excludable warranty or guarantee implied into this Contract by law is limited to any one of the following as determined by Bronson &amp; Jacobs:</p> <p>(i) the prompt retrieval of the non-compliant Goods at Bronson &amp; Jacobs' cost and the replacement of the Goods or the supply of equivalent Goods; or</p> <p>(iii) a refund of the purchase price paid by the Buyer to Bronson &amp; Jacobs for the non-conforming quantity of Goods.</p> <p>(d) Subject to clauses 3(c) and 3(f), and without limiting any other provision in these Conditions of Sale, Bronson &amp; Jacobs' total liability to the Buyer for any claim whatsoever arising in connection with the Contract or the supply of Goods, whether based on contract, tort, statute, equity or any other cause, is limited to 10% of the Contract's price of the Goods to which the claim relates.</p> <p>(e) The Buyer will examine the Goods for defects and shall notify Bronson &amp; Jacobs of any defects in writing within 30 days of delivery. If the Buyer does not notify Bronson &amp; Jacobs within 30 days of delivery the Buyer shall be deemed to have accepted the Goods and it shall no longer be entitled to exercise its rights in clause 3(d) in respect of those particular Goods. For the avoidance of doubt Bronson &amp; Jacobs will not be liable under this clause 3 where the Buyer has failed to store or handle the Goods properly or in accordance with the directions of Bronson &amp; Jacobs or the manufacturer of the Goods.</p> <p>(f) To the extent permitted by law and notwithstanding anything else in the Contract, where the Buyer is not a Consumer, Bronson &amp; Jacobs excludes all liability whatsoever to the Buyer arising out of or in any way connected with a Contract for any loss of profits, loss of business revenue, failure to realise expected profits or savings, overhead costs, loss of goodwill, loss of reputation, loss of value in any intellectual property, damages or liquidated sums payable pursuant to other agreements or in connection with third party claims, other economic losses, or any consequential or indirect losses of any kind whatsoever arising and whether caused by or arising in connection with breach of statute, breach of contract, equity, negligence or other tort.</p> <p><b>4. ADVICES</b> The Buyer hereby acknowledges that:</p> <p>(i) it has not relied on any service involving skill or judgement, or on any advice, recommendation, information or assistance provided by Bronson &amp; Jacobs in relation to the Goods or their use or application; and</p> <p>(ii) it is responsible for ensuring that Goods that comply with the warranties in clause 3(a) are fit and suitable for its purposes, requirements, processes, plant and equipment.</p> <p><b>5. DELIVERY &amp; RESPONSIBILITY TO PURCHASE</b></p> <p>(a) Bronson &amp; Jacobs will make all reasonable efforts to have the Goods delivered to the Buyer on or about the date or within the timeframe forming part of the Contract.</p> <p>(b) Bronson &amp; Jacobs shall not be liable for any failure to deliver or delay in delivery for any reason.</p> <p>(c) The Buyer will be contractually obligated to take delivery of and pay for all Goods ordered by it from Bronson &amp; Jacobs, and which Bronson &amp; Jacobs supplies or makes available to the Buyer in accordance with the Contract.</p> <p>(d) The Buyer warrants to Bronson &amp; Jacobs that it is the end user of the Goods and that it will not resupply or resell the Goods except where they are subsumed or incorporated in other products in the ordinary course of the Buyer's operations.</p> <p><b>6. RISK</b></p> <p>(a) Unless otherwise agreed in writing, all risk in and to the Goods purchased shall pass to the Buyer upon the unloading of the Goods at the Buyer's premises or such other delivery point agreed in writing by the parties.</p> <p>(b) Without in any way limiting the operation of the foregoing, upon delivery of the Goods to the Buyer or his agent or to a carrier commissioned by the Buyer, the Buyer covenants and warrants to Bronson &amp; Jacobs that, in the storage and handling of the Goods, the Buyer and his agents and carriers shall comply with all relevant environmental laws and regulations, and comply with all necessary and/or relevant permits or licences pertaining to the storing and handling of the Goods, and the Buyer shall ensure that the Buyer and his agents and carriers are familiar with and adhere to all the necessary and appropriate precautions and safety measures relating to the storing and handling of the Goods.</p> <p>(c) If Bronson &amp; Jacobs does not receive forwarding instructions sufficient to enable it to despatch the Goods within 14 days of notification to the Buyer that they are ready, the Buyer shall be deemed to have taken delivery of the Goods from such date. The Buyer shall thereafter be liable for reasonable storage charges payable monthly on demand.</p>	<p><b>7. TITLE</b></p> <p>(a) Title in and to the Goods shall not pass to the Buyer until payment in full for all Goods is made.</p> <p>(b) Until title in and to the Goods passes to the Buyer in accordance with this clause the Buyer shall store the Goods separately and in such a manner that they are clearly identified as the property of Bronson &amp; Jacobs.</p> <p>(c) The Buyer acknowledges that if it sells or otherwise deals with the Goods or products incorporating the Goods before title in and to the Goods has passed to the Buyer in accordance with this clause, it shall hold the proceeds of sale or such dealing on trust for Bronson &amp; Jacobs in a separate account.</p> <p><b>8. PRICE</b> Unless otherwise agreed in writing, the price charged for the Goods shall be determined and adjusted in accordance with Bronson &amp; Jacobs' final pricing letter or offer forming part of the Contract. Without limiting its rights in clause 10, Bronson &amp; Jacobs may in its sole discretion charge interest on overdue invoiced amounts at the rate of 1.5% per calendar month (pro-rated to part of a month), compounding monthly and commencing from the date on which the invoiced amount becomes overdue.</p> <p><b>9. FORCE MAJEURE</b> Deliveries of Goods may be totally or partially suspended by Bronson &amp; Jacobs during any period in which Bronson &amp; Jacobs may be prevented or hindered from manufacture, delivery or supply through any circumstances outside Bronson &amp; Jacobs' reasonable control or where such manufacture, delivery or supply is rendered materially more expensive by such circumstances. Circumstances beyond Bronson &amp; Jacobs' reasonable control shall include, without limitation, natural events, weather events, strikes, lockouts or other labour difficulty, changes in laws or sanctions, imposition of new laws or sanctions, inability to obtain any Goods or any necessary materials, packaging, inputs, equipment, facilities or services on usual terms, power or water shortage, accidents or breakdowns of plant, machinery, software, hardware or communication network. Bronson &amp; Jacobs shall not incur any liability to the Buyer in respect of such suspension.</p> <p><b>10. PAYMENT AND DEFAULT</b></p> <p>(a) Subject to sub-clause 10(c) hereof, and unless otherwise agreed in writing all accounts shall be payable within 30 days of delivery, or as otherwise identified on any statement of account issued by Bronson &amp; Jacobs.</p> <p>(b) If any of the events set out below in this clause 10(b) occur, Bronson &amp; Jacobs may at its option and absolute discretion withhold further deliveries of Goods or cancel the Contract without notice to the Buyer or alter payment terms, and without prejudice to any other action or remedy which Bronson &amp; Jacobs has or might otherwise have had, and/or open a new trading account for the Buyer with cash on delivery payment terms.</p> <p>(i) The Buyer makes default in any payments or is unable or states that it is unable to pay its debts as and when they fall due.</p> <p>(ii) The Buyer becomes insolvent, commences being wound up, or commits an act of bankruptcy or has a controller, administrator or trustee appointed in respect of any part of the Buyer's estate, property or assets.</p> <p>In such circumstances all moneys owing and outstanding to Bronson &amp; Jacobs on any account whatsoever and irrespective of whether the due date on any statement of account has occurred or passed shall become immediately due and payable.</p> <p><b>11. WAIVER AND ELECTION</b> No failure to exercise nor any delay or omission in exercising any right, power or remedy by Bronson &amp; Jacobs operates as or constitutes a waiver or an election. A single or partial exercise by Bronson &amp; Jacobs of any right, power or remedy does not preclude any other or further exercise by it of that or any other right, power or remedy. A waiver or election is not valid or binding on Bronson &amp; Jacobs unless made in writing.</p> <p><b>12. GOVERNING LAW</b> The supply of Goods under these Conditions of Sale is governed by the laws of Malaysia and Bronson &amp; Jacobs and the Buyer submit to the non-exclusive jurisdiction of the courts in that Country in connection with the Contract and any matter or dispute arising out of the Contract.</p> <p><b>13. TRANSACTION TAX</b> Where a transaction tax, including a value added tax and any transaction taxes that come into existence or is altered after the date of these Conditions of Sale, applies to any supply made under these Conditions of Sale, Bronson &amp; Jacobs may recover from the Buyer an additional amount on account of that transaction tax in accordance with clause 10.</p> <p><b>14. CHANGE OF LAWS</b> Without limiting clause 16, if any of Bronson &amp; Jacobs' costs of:</p> <p>(a) manufacturing, importing, supplying or transporting the Goods; or</p> <p>(b) procuring raw materials, services or inputs directly related to the activities in (a), increase as a result of compliance by Bronson &amp; Jacobs, Bronson &amp; Jacobs' affiliates and related bodies corporate, or third parties, with the introduction of, taking or coming into effect of, or any change (including a change in interpretation) in any federal, state, local or other law or regulation or order, including any introduction of or a change in a tax or excise, then Bronson &amp; Jacobs may, by notice to the Buyer, increase the Price for the Goods to the extent required to pass through such increased costs. Such cost increase shall take effect immediately from the date such notice is provided.</p> <p><b>15. MISCELLANEOUS</b></p> <p>(a) Additional terms relating to price, delivery date/time frame, place(s) of delivery, delivery quantities, purchasing deadlines Incoterms, documents and Goods specifications and other commercial matters are as indicated in the pricing letter or letter of offer to which the supply of the Goods relates, as updated in writing by the mutual agreement of the parties.</p> <p>(b) Without limiting clause 9, Bronson &amp; Jacobs may terminate the Contract where it reasonably believes that the supply or ongoing supply of any of the Goods to the Buyer may result in a breach of an existing or proposed law or trade sanction that has application in Malaysia, Australia or the United States of America.</p> <p><b>16. HARDSHIP</b> For the purposes of this clause, "Hardship Event" means:</p> <p>(A) any changes in raw material inputs outside of the manufacturer's control which leads to increased costs to Ixom in sourcing the Goods from a manufacturer in China or any country outside China, including but not restricted to increases in fuel prices, energy costs, raw material cost or freight and transport costs; and/or</p> <p>(B) any changes to or introduction of new national, central or regional laws, regulations or policies in China or in any country outside China, which leads to increased costs to Ixom in sourcing the Goods from a manufacturer or supplier in that country, including but not restricted to increases in government charges, taxes, excises, or any other duties or charges, or any change or re-valuation in the medium or long term exchange rate between the local currency in the relevant country and the US dollar.</p> <p>If, at any time during the term of this Agreement, a Hardship Event occurs, Bronson &amp; Jacobs may notify the Buyer of such occurrence, and request a meeting to discuss appropriate changes to the terms of supply of the Goods or adjustments to the price in light of such Hardship Event (such notice, a "Hardship Notice").</p> <p>The Buyer is not obliged to agree to any change to the terms of supply of the Goods or the supply price of the Goods as a result of a Hardship Event, however, if the parties are unable to reach agreement on appropriate changes to the price of supply of the Goods or other terms of supply within 14 days of the date of the Hardship Notice from Bronson &amp; Jacobs, and Bronson &amp; Jacobs is not prepared to continue supplying the Goods, then Bronson &amp; Jacobs may suspend supply of the Goods for an indefinite period.</p>
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