



CONDITIONS OF SALE

1. Definitions

In these Conditions of Sale:

"Conditions" means these Conditions of Sale.

"Company" means B&R Enclosures Pty Ltd, ABN 97 007 587 082 or its agent B&R Ex Systems Pty Ltd, ABN 18 063 472 640

"Purchaser" means the entity purchasing the Goods.

"Authorised Officer" means a Director or Secretary of the Company or a Commercial Manager as appointed by the Company.

"Goods" means the product and/or service the subject of the contract of purchase between the Purchaser and the Company.

"Guarantor" means the guarantor listed in the Guarantee and Indemnity document if applicable.

2. General

- a) These Conditions will be deemed incorporated in any order placed by the Purchaser and any acceptance of a Purchaser's order by the Company will be deemed subject to these Conditions. These Conditions override and replace any other conditions.
- b) No variation or cancellation of any of these Conditions shall be binding on the Company unless agreed in writing by an Authorised Officer of the Company. No agent or representative of the Company has the authority to waive or alter these terms and conditions.

3. Precedence

In the event of conflict between these Conditions and those which may be included in, or implied by, any document forming part of any enquiry, specification, order or contract then these Conditions shall prevail except insofar as they are expressly varied by the Company in writing. If any condition is contrary to or excluded by law these Conditions shall be modified but only to the extent of excluding that part of the Conditions affected.

4. Quotations

- a) Where a quotation is given, these Conditions shall form part of that quotation.
- b) Any such quotation is not an offer or obligation to sell and the Company reserves the right to accept or reject any orders received.
- c) A quotation includes only such Goods as are specified in it. The Company reserves the right to cancel any sale where Goods offered ex stock have been previously sold or otherwise committed.
- d) Unless otherwise stated quotations are current for a period of 30 days, unless previously withdrawn by the Company, from the date of quotation and thereafter are subject to written confirmation of currency by the Company. If an order is placed in response to a quotation and the delivery date required exceeds a period of sixty (60) clear days then the Company reserves the right to amend the quotation and price to reflect any increase in the cost of materials or labour or increase in the Consumer Price Index. Furthermore in the event of alterations to design or specifications all quotations given are subject to withdrawal or variation at any time prior to acceptance of any order placed in response to the same.
- e) Unless confirmed in writing by the Company any verbal agreement to vary, undertakings, assurances or understandings relevant to the quotation and Conditions shall not be binding.

5. Prices

- a) Prices refer to those effective at the time of the quotation or offer.
- b) All prices quoted in Australian Dollars unless specified to the contrary
- c) All prices are strictly net unless otherwise stated.
- d) Any prices quoted by the Company do not include any freight charges unless specifically stated.
- e) Prices quoted also do not include sales tax, value-added tax, or Goods and Services Tax or other government taxes unless specifically stated.



- f) All prices are subject to change without notice and orders are accepted by the Company on the condition that they will be invoiced at the prices ruling at the date of dispatch. Every endeavor will be made to give notice of any increase to the Purchaser.
- g) All prices shown in published catalogues or price lists are recommended selling prices only and there is no obligation on the part of the Purchaser to maintain such prices.

6. Delivery

- a) The delivery period included in any quotation commences from the date the Company receives sufficient information to proceed with manufacturing without interruption or from the date the Company receives the Purchaser's written order, whichever is the later date.
- b) Quoted delivery dates are subject to confirmation when an order is accepted by the Company.
- c) Delivery occurs when the Goods are made available to the Purchaser or, in the case of shipment, to the Purchaser's nominated carrier or shipping agent.
- d) Where the Purchaser requests the Company to arrange delivery of the Goods to its premises or premises nominated by the Purchaser and the Company agrees to arrange delivery, the deliveries will be dispatched by the Company at the Purchaser's risk. Any complaints for tampering or shortages in materials must be submitted promptly by the recipient to the carrier or shipping agent.
- e) If the Purchaser has not provided instructions for the delivery of the Goods or has not promptly provided for their collection, the Company may store the Goods within its factory, warehouse or nearby locations at a cost to the Purchaser and without any responsibility or liability on the part of the Company for damage to or the condition of the Goods when ultimately delivered or collected as the case may be.
- f) Unless otherwise agreed by the Company in writing, the Company shall not in any event be liable to the Purchaser for any delay in the delivery or any non-delivery of the Goods or any part of them. Such delays may include, but are not necessarily limited to:
 - i. circumstances beyond the reasonable control of the Company, any cause which may delay the manufacturing process, including but not limited to: work interruptions, trade union actions, delays on the part of suppliers, suspension of transportation, deficiencies in electrical supply, fires or accidents.
 - ii. Insufficient, inaccurate or delayed communication on the part of the Purchaser of specifications which are required to complete the order.
 - iii. Delays on the part of the Company and its suppliers in acquiring raw materials.
 - iv. Instructions accepted by the Company to modify after the receipt of the order.
 - v. Default or delay in complying with payment conditions on the part of the Purchaser.
 - vi. The Company production schedules.
 - vii. war, invasion, act of foreign enemy, hostilities (whether war has been declared or not), civil war, rebellion, revolution, insurrection or military or usurped power; or
 - viii. any statute, rules, regulations, order or requisitions issued by any government department, council or other duly constituted authority; or
 - ix. strikes, lockouts, breakdowns of plant or any other causes (whether or not of a like nature) beyond the Company's control.

7. Freight

- a) Unless otherwise agreed to by the Company,
 - i. For deliveries outside Australia, all freight costs will be charged to the Purchaser.
 - ii. For deliveries within Australia:
 - a) within Australian Capital City metropolitan areas, the costs of freight will be to the account of the Company.
 - b) outside Australian Capital City metropolitan areas, all freight costs will be charged to the Purchaser. Where the Purchaser requires freight to be prepaid, all expenses will be to the Purchaser's account.
- b) For all orders less than \$500, the Purchaser must nominate its preferred freight method and be responsible for all freight charges.
- c) Freight cost on return of any Goods which are not in accordance with the Purchaser's order will only be paid by the Company if returned by the Company's nominated carrier.

8. Packing

Unless stated otherwise in the relevant quotation the price quoted includes packing in accordance with the Company's standard practice. Any other packing requested by the Purchaser or deemed necessary by the Company will be charged in addition to the price quoted.



9. Payment

- a) If the Company has accepted the Purchaser's application for credit, each account is payable within 30 days of the end of the month of dispatch or collection of the Goods unless otherwise agreed in writing. The Company is not obliged to continue to supply Goods to the Purchaser on credit and may at any time give notice to the Purchaser requiring any order for Goods delivered after such notice to be paid for on delivery or prior to dispatch of the Goods.
- b) If a credit application has not been accepted, Goods must be paid for prior to dispatch.
- c) The Purchaser acknowledges that the Company may
 - i. refuse to grant credit to the Purchaser;
 - ii. withdraw or vary credit facilities at the Company's absolute discretion without prior notice; or
 - iii. withhold supply irrespective of whether an order has been accepted or not if for any reason the Company determines in its absolute discretion that no further credit is to be extended to the Purchaser.
- d) For delivery of goods outside of Australia, at the absolute discretion of the Company, the Company may accept an irrevocable letter of credit payable at sight.
- e) If payment for Goods is not made when due, the Purchaser must:
 - i. pay interest at the rate of two (2) per cent per annum above the rate charged from time to time to the Company by its bank for overdraft accommodation during the period any amount remains unpaid, calculated on a daily basis. A certificate signed by a manager of the Company's bank will be conclusive evidence of the rate charged by the bank to the Company for overdraft accommodation; and
 - ii. reimburse the Company for all costs (including legal costs on a full indemnity basis) incurred by the Company in collecting any late payments.
- f) The imposition of interest charges pursuant to this clause will not be regarded as allowing any time for payment of any amount owing. All overdue amounts will remain immediately due and payable to the Company and the Company may take legal proceedings at any time for recovery of any overdue amounts and all costs in doing so are recoverable from the Purchaser on an indemnity basis.

10. Acceptance

Without limiting the Purchaser's obligations under 6 (d) the Purchaser must inspect the Goods immediately upon delivery and must within seven (7) days from the date of inspection give written notice to the Company of any alleged defect in the Goods, or other alleged breach of contract by the Company. The Purchaser waives any claim for shortage of any Goods delivered if a claim in respect of short delivery has not been lodged with the Company within 7 days from the date of receipt of the Goods by the Purchaser.

11. Credits

- a) Goods which are not defective may not be returned to the Company for credit unless prior consent has been given by the Company and then will only be accepted under the following conditions:
 - i. freight and packing are prepaid and a packing list is enclosed with the returned Goods; and
 - ii. the Goods are in new condition and are approved as such, on receipt, by the Company's quality controller.
 - iii. the Goods can only be returned accompanied by a GRA (Goods Return Authorisation) provided by the Company
- b) Credit will only be allowed on the original invoiced price (less any applicable discount) less a restocking fee of fifteen (15) per cent of the net price.
- c) No credit will be allowed for non-standard or specifically procured Goods.

12. Damage or Loss In-Transit

Where carriage is the responsibility of the Company, the Company will repair or may replace free of charge Goods lost or damaged in transit to the point of delivery provided written notice of such loss or damage is given to the Company within three days of delivery or expected delivery, or within such times as will enable the Company to comply with the carrier's conditions of carriage relating to loss or damage in transit (whichever is the earlier).

13. Cancellation or Variation

An order may be varied or cancelled only if the Company gives its consent in writing. The Purchaser indemnifies the Company in respect of any loss or damage arising from any such variation or cancellation.



14. Purchaser's Specification

The Company will not be deemed to have agreed to comply with any specifications and/or drawings referred to in any order unless the specifications and/or drawings have been produced to the Company prior to the acceptance of an order and are signed or otherwise acknowledged by the Company.

15. Product Design

The Company engages in a policy of continuous development and improvement of its products. Therefore, the Company reserves the right to alter the design and/or specifications of any product or equipment without notice and without incurring liability.

16. Liability

- a) The only conditions and warranties which are binding on the Company in respect of the state, quality or condition of the Goods supplied to the Purchaser are those described in clause 17 and those imposed and required to be binding by statute (including the Competition and Consumer Act 2010)
- b) The Purchaser warrants that the Goods are purchased for the purposes of on-selling to its own customers and, accordingly, that Part 3-2 of Schedule 2 of the Australian Consumer Law does not apply to the supply of the Goods.
- c) Except as set out in clause 17 the Company will not be liable to the Purchaser for any liability, (including liability in negligence) loss or damage of whatever nature, consequential or otherwise, however suffered or incurred by the Purchaser, caused by or resulting directly or indirectly from the supply or manufacture of the Goods.

17. Warranty

- a) Goods which are the Company's own are guaranteed against faulty workmanship, materials or design, for a period of twelve (12) months from the date of delivery, after which all liability on the part of the Company ceases. The guarantee does not apply in the following cases:-
 - i. defect arising from materials supplied by the Purchaser or from a design requested by the Purchaser:
 - ii. replacements or repairs resulting from normal wear of units and machinery, corrosive atmosphere, damage or injury caused by lack of care, insufficient inspection or maintenance, or improper use of the Goods:
 - iii. defects arising from an event outside of our control such as fire, flood, earthquake or other natural calamity, motor vehicle or other accident, strike, civil unrest, terrorism or war.
- b) The guarantee consists of repairing, modifying or replacing the parts or units recognised as defective within the shortest reasonable time at the Company's expense, inclusive of parts and labour, but exclusive of transport and/or travelling expense each of which shall be at the cost of the Purchaser.
- c) Subject to the above, the Company's liability and that of its resellers is wholly limited to the original cost of the product sold. Any unauthorised repairs of or alterations to the Goods shall invalidate this warranty.
- d) The Purchaser must contact the Company's office from which the Goods were purchased and provide details of the Purchaser's order to which the Goods related and a detailed description of the fault and how and when it arose.
- e) In the case of Goods not of the manufacture of the Company or its principals, the Company undertakes that it will, if requested in writing by the Purchaser, make all reasonable endeavors in assisting the Purchaser to obtain from the manufacturer the benefit of any guarantee or warranty which the manufacturer may have expressly given as to the quality or fitness for any purpose of the Goods, except as may otherwise be provided for by law.
- f) The fulfilment of this undertaking shall constitute the Company's sole liability in respect of any faulty Goods not of the manufacture of the Company or its principals.
- g) The Company shall not be liable for any injury, damages, expense, or loss of profit, direct or consequential, arising out of the use or installation of products supplied by the Company all of which are supplied at the sole risk of the Purchaser.

18. Determination of Damages

- a) If:
 - i. any distress, execution or other legal process is levied upon any of the Purchaser's assets; or
 - ii. the Purchaser enters into any arrangement or composition with its creditors, commits any act of bankruptcy or being a company, a controller (as defined in the Corporations Act) is appointed to the



- whole or any part of its assets, enters into liquidation or voluntary administration or has a winding up petition presented against it or calls a meeting of its creditors; or
- iii. payment for Goods is not made when due; or
 - iv. the Purchaser breaches any material provision of the contract,
- b) Then, without prejudice to its rights under any other clause or at law, the Company may (but is not bound to do so):
- i. terminate the contract; and/or
 - ii. suspend delivery to the Purchaser of all or any outstanding orders; and/or
 - iii. require payment on delivery for all Goods delivered or to be delivered after the relevant event; and/or
 - iv. require immediate payment for any Goods delivered and not paid for by the Purchaser prior to the event.

19. Passing of Risk, Retention of Title and PPS

- a) For the purpose of this clause 19:
 - i. "Excluded Interest" means any mortgage, charge or other encumbrance over real property or personal property (tangible or intangible) that is not a Security Interest, including non-consensual liens and mortgages over real property;
 - ii. "PPSA" means the Personal Properties Securities Act 2009 (Cth); "PPS Register" means the Personal Property Securities Register;
 - iii. "Purchase Money Security Interest" has the same meaning as under the PPSA; and "Security Interest" has the same meaning as under the PPSA.
- b) The Goods supplied by the Company are at the Purchaser's risk immediately on delivery to the Purchaser or into the custody of the carrier or anyone acting on the Purchaser's behalf whichever is the sooner.
- c) Whilst the risk in the Goods passes on delivery, legal and equitable title remains with the Company until payment in full for all debts accrued or owed by the Purchaser to the Company is received by the Company. Payment will not be deemed to be made until any cheque (or other form of payment) has been honored or cleared.
- d) Until the Company has received payment for the Goods in full it reserves the following rights:
 - i. legal and equitable ownership of the Goods;
 - ii. the right to enter the Purchaser's premises and retake possession of the Goods;
 - iii. the right to keep or resell any Goods repossessed under clause v; and
 - iv. any other rights it may have at law or under the PPSA.
- e) Until the Company has received payment for the Goods in full, the Purchaser acknowledges that the Company has a Purchase Money Security Interest which attaches over the Goods and their proceeds and a Security Interest in relation to other amounts owed by the Purchaser to the Company.
- f) For the avoidance of doubt, the Company may register its Purchase Money Security Interest and Security Interest on the PPS Register established by the PPSA and, where necessary, amend the registration.
- g) The Purchaser must not grant any other person a Security Interest in respect of the Goods or their proceeds.
- h) The Purchaser must not allow an Excluded Interest to exist over the Goods.
- i) The Purchaser agrees to do anything (such as obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed) which the Company asks and considers necessary for the purpose of:
 - i. ensuring that a Security Interest created under this contract is enforceable, perfected and otherwise effective; and
 - ii. enabling the Company to apply for any registration, or give any notification, in connection with a Security Interest created under this contract so that the Security Interest has the priority required by the Company, including anything the Company reasonably asks the Purchaser to do in connection with the PPSA.
- j) The Company and the Purchaser agree that sections 96 and 125 of the PPSA do not apply to the Security Interest created by these terms and conditions
- k) To the extent permitted by law, if the PPSA applies, the Purchaser irrevocably waives any rights the Purchaser may have to:
 - i. receive notices or statements under sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4) and 135 of the PPSA;
 - ii. redeem the Goods under section 142 of the PPSA;
 - iii. reinstate the contract under section 143 of the PPSA; and
 - iv. receive a verification statement (as defined in the PPSA).
- l) Nothing in this clause prevents the Company from taking action against the Purchaser for the purchase price of the Goods.



- m) Until the Company has received payment for the Goods in full:
- i. the Purchaser agrees to take the Goods as bailee for the Company;
 - ii. the Purchaser must insure the Goods against all usual risks to full replacement value until ownership passes to the Purchaser noting on such insurance policy the interest of the Company and any insurance monies received by the Purchaser in respect of Goods owned by the Company, will be received on trust for and paid to the Company;
 - iii. the Purchaser must, where reasonably possible, store each delivery of Goods separately, clearly identified as the Company's property and in a manner to enable the Goods to be identified and cross-referenced to particular invoices;
 - iv. the Purchaser may only sell, use or part with possession of Goods in the ordinary course of its business. Any sale will be as fiduciary agent for the Company and the Purchaser must receive on trust for and account to the Company for that part of the proceeds of sale that equates to the amount owing by the Purchaser to the Company for those Goods, however this agency will only extend to the obligation to account for proceeds, and the Purchaser will not be bound by any contract between the Purchaser and the Purchaser's purchaser; and
 - v. if the Purchaser uses the Goods in a manufacturing or value added process of its own or a third party, then the Purchaser will hold that part of the proceeds of the manufacturing or value added process as relates to the Goods on trust for the Company. Such part will be deemed to equal in dollar terms the amount owing by the Purchaser to the Company for those Goods at the time of the receipt of the proceeds.
- n) Without limiting the generality of the Company's rights in this clause 19, if payment for the Goods is not made by the Purchaser when due or the Company terminates this contract under clause 18, then the Purchaser must return the Goods to the Company on demand. If the Purchaser does not return the Goods to the Company within 48 hours of receipt of the demand, the Company may for the purposes of recovery of possession of the Goods, enter forcibly, if necessary, upon any premises where the Goods are stored or where they are reasonably thought to be stored and may repossess, remove and resell the Goods.
- o) The Purchaser is liable for all costs associated with the exercise by the Company of its rights under this clause 19, which costs are payable on demand.
- p) The Purchaser irrevocably appoints the Company to be its attorney to do such acts and execute such documents as the Purchaser could personally do or execute (including the appointment of a substitute attorney) which in the opinion of the Company (acting reasonably) is necessary or expedient to give effect to any right, power or remedy conferred on the Company by these terms and conditions or the PPSA and to give effect to the matters contemplated by these terms and conditions.
- q) The provisions of this clause 19 will survive termination of these terms and conditions or any other agreement between the Company and the Purchaser for the sale of Goods, for whatever reason.

20. Set Off

The Purchaser may not withhold or set off payment of any amount due to the Company under the contract whether in respect of any claims of the Purchaser in respect of faulty or defective Goods or any other reason.

21. Governing Law

These Conditions shall be governed by the laws of the state of Queensland and the Commonwealth of Australia. The Company and the Purchaser agree that any legal proceedings with respect to a dispute over the contract of purchase between the Company and Purchaser shall be determined within the Courts of Queensland and/or the Federal Court of Australia (Brisbane Registry).

22. Severability

If any provision of this Conditions should be held to be invalid in any way or unenforceable it shall be severed and the remaining provisions shall not in any way be affected or impaired and this Conditions shall be construed so as to most nearly effect to the intent of the Company and the Purchaser.

23. Notices

Any notice, consent or other communication hereunder may be by email or facsimile but must be addressed to the Commercial Manager. The Notice will be deemed to have been received on the next business day after transmission.

24. Competition and Consumer Act 2010 and Fair Trading Act



Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Competition and Consumer Act 2010 or the Fair Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

25. Privacy Act 1998

- a) The Purchaser and the Guarantor agree that the Company may give to, and seek from, any credit providers named in the Account Application Form and any credit providers that may be named in a credit report issued by a credit report agency, information about the Purchaser's and the Guarantor's credit arrangement.
- b) The Purchaser and the Guarantor understand that this information can include details about the Purchaser's or Guarantor's credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to give or receive from each other under the Privacy Act 1998.
- c) The Purchaser and the Guarantor understand that the information may be used for the following purposes;
 - i. To assess an application by the Purchaser for credit
 - ii. To notify other credit providers of a default by the Purchaser
 - iii. To exchange information with other credit providers as to the status of the Purchaser's credit account with the Company when the Purchaser is in default with credit providers; and
 - iv. To assess the Purchaser's and the Guarantor's credit worthiness
- d) The Company may give personal or commercial information about the Purchaser to a credit reporting agency for the following purposes;
 - i. To obtain a credit report about the Purchaser; and/or
 - ii. Allow the credit reporting agency to create or maintain a credit information file containing information the purchaser.

26. Legislation

If as a result of;

- a) Any legislation becoming applicable to the subject matter of this agreement; or
- b) Any changes in legislation or its interpretation by a court of competent jurisdiction or by any authority charged with its administration, the Company becomes liable to pay any tax, duty, excise or levy in respect of the amounts received from the Purchaser, then the Purchaser must pay the Company these additional amounts on demand.

27. Trust

If the Purchaser is a trustee of a trust, the Purchaser warrants that it enters into this agreement in both its capacity as trustee and in its personal capacity, it has the power to execute this agreement on behalf of the trust and it will not retire as trustee, or appoint a new or additional trustee, without advising the Company in writing (in which case the Company may require new Guarantors to sign the guarantee to the Account Credit Application Form).