



Doors & Openers[®]

THERE'S SO MUCH MORE BEHIND A B&D DOOR

B & D Australia Pty Ltd
ABN: 25 010 473 971

TERMS AND CONDITIONS OF SALE

1. Unless otherwise agreed in writing by the Seller, the Buyer agrees that it will be bound by these terms and conditions if the Buyer places an order with the Seller and it is accepted by the Seller. The Seller is not bound by any terms and conditions contained in any document issued by the Buyer.
2. Once an order has been accepted by the Seller, it cannot be cancelled by the Buyer. The supply of goods or services is subject to availability. The Seller reserves the right to suspend or discontinue the supply of goods or services to the Buyer. If the Seller is unable to supply all of the Buyer's order, these terms and conditions continue to apply to any part of the order supplied.
3. Where a written quotation has been given by the Seller, the selling price is the price specified in the quotation. In any other case, the Seller's selling price is the price specified in the price list as at the date of despatch. Unless otherwise stated, the selling price does not include GST. The Seller may at any time change its price list to reflect, among other things, changes in exchange rates or the imposition of any duties, levies or other taxes and the Buyer is bound by those changes. The Seller may charge a reasonable handling fee for all orders delivered to the Buyer.
4. Unless otherwise agreed in writing by the Seller, delivery of goods is at the Seller's premises. If a delivery date is specified, that date is an estimate only and the Seller is not liable for any delay in delivery of goods. Time is not of the essence in relation to delivery and the Buyer must accept delivery and pay for the goods delivered including transport costs, if applicable, even if they are delivered before or after any specified delivery date.
5. The Buyer must inspect the goods or services immediately following delivery or completion of the services (as the case may be). Subject to any rights of the Buyer under any non-excludable statutory guarantees (if any), the Buyer may only return goods with the prior approval of the Seller. The goods must be returned within 21 days of the date of delivery in an unsoiled, undamaged and resaleable condition and, where appropriate, in the original packaging. A reasonable handling fee for any returned goods will be charged to the Buyer.

Subject to any rights of the Buyer under any non-excludable statutory guarantees (if any), any claim that the goods or services are not in accordance with these terms and conditions (including if they are defective, damaged during delivery, are short delivered or services not as per contract) must be made at the time of delivery/services provided or in writing to the Seller within 48 hours after delivery of the goods/completion of the services to the Buyer. If the Buyer fails to make a claim then, to the extent permitted by law, the goods or services are deemed to have been accepted by the Buyer and the Buyer must pay for the goods or services in accordance with these terms and conditions.

6. If the Buyer resells goods or services, then it and its contractors must:
- (a) provide to the purchaser (i) any instructions or information about the use or care of the goods or services; (ii) information about repairs; and (iii) any express warranties intended for the purchaser, which are provided by the Seller to the Buyer for the purpose of being provided to the purchaser;
 - (b) not make any statement or representation about the goods or services which is not consistent with information provided by the Seller or make any representation on behalf of the Seller;
 - (c) not make any misleading or deceptive statements about the goods, services or the Seller or which disparages them or the Seller;
 - (d) if the Buyer or its contractors also provide related installation or other services, perform those services in accordance with any instructions and guidelines provided by the Seller;
 - (e) promptly notify the Seller of any claims that the goods or services do not comply with the mandatory guarantees under the Australian Consumer Law or which involve safety issues or serious injury or death, and then co-operate with the Seller in relation to the handling of those claims;
 - (f) comply with its obligations under the Australian Consumer Law in relation to mandatory guarantees; and
 - (g) not tamper with, alter, obscure or remove any trade marks which appear on the goods or alter the labels or packaging in which they are intended to be offered to purchasers.

The Buyer agrees to indemnify the Seller against all liability, loss, costs, damages or expense (including legal costs and expenses) incurred or suffered by the purchaser on a full compensation basis to the extent that it arises from a breach of this clause 6 by the Buyer or its contractors.

7. Unless otherwise agreed, if the Buyer has an approved credit account with the Seller, the Buyer must pay for goods or services ordered by the Buyer within 30 days from the end of the month of invoicing or earlier if the approved credit limit is exceeded. The Seller may charge an administration fee for any payments by credit card. Time is of the essence in respect of the Buyer's obligation to make payment for goods or services supplied by the Seller to the Buyer.
8. If the Buyer does not make any payment by the due date, exceeds its credit limit at any time, commits any other material breach of these terms and conditions or an insolvency event in respect of the Buyer arises or is reasonably suspected by the Seller, the Seller may (without limiting any other right or claim it may have against the Buyer) do any or all of the following:
- (a) charge the Buyer interest calculated on a daily basis on any portion of the Buyer's account that is overdue at the Australian & New Zealand Banking Group's reference rate for business loans, available to prime commercial customers plus 5% calculated from the date the payment was due until the date payment is made (both dates inclusive);
 - (b) vary or withdraw any approved credit limit and/or terms of trade;
 - (c) cancel or suspend any unfilled orders or cease providing the services;
 - (d) terminate any contracts between the Seller and the Buyer and demand immediate payment of any moneys due and outstanding under those contracts;
 - (e) cancel any rebate, discount or allowance due or payable by the Seller as at the date of the event;
 - (f) enter (at any time) any premises in which the Seller's goods (including any merchandising materials) are stored, to enable the Seller to inspect the goods and to reclaim possession of the goods without liability for the tort of trespass, negligence or payment of any compensation to the Buyer whatsoever;
 - (g) lodge a caveat or other similar instrument over any property of the Buyer; or
 - (h) institute any recovery process as the Seller in its discretion decides at the Buyer's cost and expense.

9. The Buyer creates a security interest in favour of the Seller by way of charging all of the Buyer's rights, property and undertaking of whatever kind and wherever situated and whether present or future for the purpose of securing payment of all amounts that, at any time and for any reason or circumstance and whether at law or otherwise and whether or not of a type within the contemplation of the parties at the date of this Agreement, are payable, are owing but not currently payable, are contingently owing, or remain unpaid by the Buyer to the Seller. If the Buyer fails to pay any amount owing to the Seller by the due date, the Seller may appoint one or more receivers to the Buyer's property and undertaking, and any such receiver may do anything that a receiver could do under law. The Buyer agrees that if demand is made by the Seller, the Buyer receiving such a demand will immediately execute a real property mortgage or other instrument of security, or consent to caveat, as required, and against the event that the Buyer fails to do so within a reasonable time of being so requested, the Buyer irrevocably and by way of security, appoints any credit manager or solicitor engaged by the Seller to be its true and lawful attorney to execute and register such instruments.
10. If any part of an invoice is in dispute, the balance will remain payable and must be paid when due. The Buyer has no right to set-off any claim against the Seller from moneys owing to the Seller.
11. Goods supplied by the Seller to the Buyer are at the Buyer's risk immediately on the earlier of delivery to the Buyer or into the Buyer's custody, including its carrier or forwarder. The Buyer must insure the goods at its cost from delivery of the goods until they are paid for in fully against such risks as are usual or common to insure against in a business of a similar nature to the Buyer.
12. Property in the goods supplied by the Seller to the Buyer does not pass to the Buyer until those goods have been paid for in full. The Buyer may take repossession of, and the Seller will return to the Buyer, any goods for which it has not been paid for in full in accordance with these terms and conditions. In the meantime, the Buyer takes custody of the goods and retains them only as fiduciary agent and bailee of the Seller. Until goods have been paid for in full:
 - (a) to the extent possible, the Buyer must store the goods in a manner that shows clearly they are the property of the Seller, maintain records relating to the goods, secure the goods from risk, damage and theft and ensure that the goods are kept in good and serviceable condition;
 - (b) the Buyer may sell the goods, in the ordinary course of its business, but only as fiduciary agent of the Seller. The Buyer must not represent to any third party that the Buyer is acting in any capacity for or on behalf of the Seller and the Buyer has no authority to bind the Seller to any contract or otherwise assume any liability for or on behalf of the Seller. The Seller also has a security interest in all proceeds of the goods, and the Buyer receives all proceeds in trust for the Seller and must keep the proceeds in a separate bank account (which is not subject to any security interest in favour of another person) until all liability to the Seller is discharged;
 - (c) if the Buyer uses the goods in some manufacturing or construction process of its own or of a third party, the Seller also has a security interest in all proceeds of the goods, and the Buyer must hold in trust for the Seller that part of the proceeds of the manufacturing or construction process as is equal to the amount owing by the Buyer to the Seller at the time of receipt of the proceeds.
13. The Seller may register any security interest created under clause 8, clause 10 or otherwise in these terms and conditions, and may give any notification in connection with a security interest. The Buyer must do anything the Seller asks and considers necessary for the purposes of ensuring that a security interest created under these terms and conditions is registrable, enforceable, perfected and otherwise effective (such as providing information, obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed).
14. The Seller need not give any notice under the Personal Property Securities Act 2009 ("PPSA") (including a notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded. The Seller need not comply with any of the provisions of the PPSA that would otherwise apply to the extent the law permits them to be excluded. The Buyer may not exercise rights under section 143 (reinstatement of security interest) of the PPSA to the extent the law permits them to be excluded.

15. To the extent permitted by law, these terms and conditions exclude all other conditions, warranties, liabilities or representations in relation to the goods and /or services. Where legislation provides the Buyer with statutory guarantees as a “consumer” that cannot be excluded or modified, the liability of the Seller for a breach of any such guarantee is limited at the Seller’s option to any one or more of the following:
- (a) In the case of goods:
 - (i) replacement of the goods or the supply of equivalent goods;
 - (ii) repair of the goods;
 - (iii) payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (iv) payment of the cost of repairing the goods.
 - (b) In the case of services, by supplying the services again or payment of the cost of having the services supplied again.
16. Subject to clause 15 and to any remedies available to the Buyer under any non-excludable statutory guarantees and under any non-excludable indemnity provided under the Australian Consumer Law:
- (a) the Seller is not liable for any indirect or consequential loss, loss of profit, loss of revenue, loss of contract, loss of goodwill or increased cost of workings arising out of or in connection with the supply of goods or services; and
 - (b) the total amount of the Seller’s liability for any breach of these terms, under contract, in tort (including negligence) or otherwise in relation to any goods or services acquired under these terms is limited to the amount paid by the Buyer to the Seller in respect of the goods or services at issue.
17. Buyer and Seller may not disclose information provided by the other party in connection with the supply of goods or services that is not publicly available (including the existence of or contents of any agreement for the sale of goods) except to any person in connection with an exercise of rights under an agreement for the sale of goods or a transfer or other dealing with rights or obligations under an agreement for the sale of goods, or to officers, employees, agent, contractors, legal and other advisors and auditors of the party (provided the recipient agrees to act consistently with this paragraph), or with the consent of the other party (such consent not to be unreasonably withheld) or as required by any law (other than section 275(1) of the PPSA unless section 275(7) of the PPSA applies), or stock exchange, rating agency or subject to the Seller’s privacy policy.
18. The application of the United Nations Convention on Contracts for the International Sale of Goods (known as the *Vienna Sales Convention 1980*) is excluded.
19. If any provision of these terms or conditions is unenforceable, illegal or void, that provision is severed and the other provisions of these terms and conditions remain in force.
20. The Seller may amend or vary these terms and conditions by notifying the Buyer in writing of the amendment or variation.
21. These terms and conditions, and any account opened in the name of the Buyer, will be governed by the laws of the State of Queensland. The parties submit to the jurisdiction of the Courts of Queensland in respect of claims, proceedings and matters arising out of or in respect of these terms and conditions or the account.
22. The exemptions, limitations, terms and conditions in these terms and conditions shall apply whether or not any loss or damage is caused by negligence or actions constituting fundamental breach of contract.

PRIVACY NOTICE AND CONSENT

The information that you provide to us under and in relation to this Application may contain information or an opinion about an individual whose identity is apparent, or can reasonably be ascertained, from the information ("**Personal Information**"). By signing where indicated below, you:

1. provide consent or, if the Personal Information is not information about you, must obtain consent, to our collection, use and disclosure of the Personal Information in accordance with our privacy policy as set out at www.bnd.com.au and in particular, to the collection, use and disclosure of the Personal Information for the purpose of:
 - (a) assessing this Application and any subsequent application for a commercial credit account;
 - (b) providing you with our goods and services and processing your transactions and account, including disclosure to third parties necessary to process such transactions (including legal and other professional advisers, credit reporting and collection agencies, print services providers, call centres, mail houses, service providers and contractors);
 - (c) allowing members of the Alesco Group to contact the relevant individuals by telephone, mail, electronically or otherwise to provide the relevant individuals with marketing or other information about goods and services which may interest them (unless or until they tell us not to); and
 - (d) allowing market research agencies to contact the relevant individuals by telephone, mail, electronically or otherwise to conduct market research in relation to products and services you have acquired from or are offered by the Alesco Group and related matters (unless or until they tell us not to); and
 - (e) allowing us to exercise any rights we may under the terms and conditions of sale or to recover any monies due and payable by you;
2. consent to us collecting information about you, your directors and your employees from trade references named in this or any previous application with us, and from any credit reporting agency;
3. acknowledge that if you do not disclose all the information requested in this Application, we may not be in a position to provide you with credit or provide you with the products or services you require;
4. agree, in the event that you resell our goods and services, to obtain all necessary consents from the purchaser to allow us and other members of the Alesco Group to contact purchasers of our goods and services by telephone, mail, electronically or otherwise in order to provide them with marketing or other information about goods and services which may interest them;
5. agree to take reasonable steps to ensure that each individual referred to in the Personal Information is aware of that fact that we have received that individual's information, and that we will treat the information in accordance with our privacy policy as set out at www.bnd.com.au; and
6. acknowledge that, subject to certain exceptions allowed by law, you are able to gain access to Personal Information we hold about you.

. end .