

Beautiful Blinds & Awnings - Terms and Conditions

<p>1. Definitions</p> <p>1.1 "B.B.A." shall mean Beautiful Blinds & Awnings, its successors and assigns or any person acting on behalf of and with the authority of Beautiful Blinds and Awnings.</p> <p>1.2 "Customer" shall mean the Customer (or any person acting on behalf of and with the authority of the Customer) as described on any quotation, work authorisation or other form as provided by B.B.A. to the Customer.</p> <p>1.3 "Guarantor" means that person (or persons) who agrees to be liable for the debts of the Customer on a principal debtor basis.</p> <p>1.4 "Goods" shall mean all Goods supplied by B.B.A. to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by B.B.A. to the Customer.</p> <p>1.5 "Services" shall mean all Services supplied by B.B.A. to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).</p> <p>1.6 "Price" shall mean the Price payable for the Goods as agreed between B.B.A. and the Customer in accordance with clause 4 of this contract.</p> <p>2. The Competition and Consumer Act 2010 ("CCA") and Fair Trading Acts ("FTA")</p> <p>2.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the CCA or the FTA in each of the States and Territories of Australia (including any substitute to those Acts or re-enactment thereof), except to the extent permitted by those Acts where applicable.</p> <p>2.2 Where the Customer buys Goods as a consumer these terms and conditions shall be subject to any laws or legislation governing the rights of consumers and shall not affect the consumer's statutory rights.</p> <p>3. Acceptance</p> <p>3.1 Any instructions received by B.B.A. from the Customer for the supply of Goods/Services and/or the Customer's acceptance of Goods/Services supplied by B.B.A. shall constitute acceptance of the terms and conditions contained herein.</p> <p>3.2 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.</p> <p>3.3 Upon acceptance of these terms and conditions by the Customer the terms and conditions are binding and can only be amended with the written consent of B.B.A.</p> <p>3.4 The Customer shall give B.B.A. not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer or any change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, or business practice). The Customer shall be liable for any loss incurred by B.B.A. as a result of the Customer's failure to comply with this clause.</p> <p>4. Price and Payment</p> <p>4.1 At B.B.A.'s sole discretion the Price shall be either:</p> <p>(a) as indicated on invoices provided by B.B.A. to the Customer in respect of Goods supplied; or</p> <p>(b) B.B.A.'s current price at the date of delivery of the Goods according to B.B.A.'s current Price list; or</p> <p>(c) B.B.A.'s quoted Price (subject to clause 4.2) which shall be binding upon B.B.A. provided that the Customer shall accept B.B.A.'s quotation in writing within thirty (30) days.</p> <p>4.2 B.B.A. reserves the right to change the Price in the event of a variation to B.B.A.'s quotation. Any variation from the plan of scheduled works or specifications (including, but not limited to, any variation as a result of unforeseen circumstances or as a result of increases to B.B.A. in the cost of materials and labour) will be charged for on the basis of B.B.A.'s quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.</p> <p>4.3 At B.B.A.'s sole discretion:</p> <p>(a) a 50% deposit of the Price is required to be paid to B.B.A. prior to placement of an order for the Goods by B.B.A.; and either</p> <p>(b) the balance of 50% of the Price upon delivery by B.B.A. or pick up of the Goods by the Customer where B.B.A. does not undertake installation of the Goods; or</p> <p>(c) the balance of 50% of the Price will be due for payment immediately on completion of the installation of such Goods by B.B.A.</p> <p>4.4 At B.B.A.'s sole discretion payment of the 50% balance as referred to in clause 4.3 (b) or (c) herein for prior approved Customers only shall be due thirty (30) days following the end of the month in which a statement is posted to the Customer's address or addresses for notices.</p> <p>4.5 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by B.B.A. nor shall the Customer be entitled to withhold payment of any part of the Price from B.B.A. in accordance with the terms of paragraph 4.3 herein because any part of that Price is in dispute.</p> <p>4.6 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card (plus a surcharge of up to 2.5% of the Price), or by direct credit/debit, or by any other method as agreed to between the Customer and B.B.A. In the event that the deposit payment has been made by credit card, the Customer authorises B.B.A. to deduct the balance owing to B.B.A. from that credit card upon either the installation of the Goods or delivery of the Goods, where B.B.A. is not installing the goods, or when the Goods are available for installation in accordance with clause 4.8 herein.</p> <p>4.7 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.</p> <p>4.8 In the event the Goods are ready for delivery and installation and the Customer delays in arranging for a date of installation for a period of more than 21 days, thereafter the balance of the full purchase price will become immediately due and payable by the customer, BBA, at its discretion may waive its rights under this clause.</p> <p>5. Delivery of Goods</p> <p>5.1 At B.B.A.'s sole discretion delivery of the Goods shall take place when:</p> <p>(a) the Customer takes possession of the Goods at B.B.A.'s address; or</p> <p>(a) the Customer takes possession of the Goods at the Customer's nominated address when the goods are installed by BBA or its contractor.</p> <p>5.2 The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery and installation. In the event that the Customer is unable to take delivery of the Goods as arranged then B.B.A. shall be entitled to charge a reasonable fee for redelivery.</p> <p>5.3 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.</p> <p>5.4 B.B.A. may deliver the Goods to the customer for installation by separate instalments. BBA reserves the right to invoice each separate instalment for payment by the customer in accordance with the provisions in these terms and conditions.</p> <p>5.5 The failure of B.B.A. to deliver goods for installation or otherwise within any represented estimated delivery times shall not entitle either party to treat this contract as repudiated. Estimated delivery times are to be regarded as approximate and in no event to be regarded as deadlines.</p> <p>5.6 B.B.A. shall not be liable to the Customer for any loss or damage whatsoever due to failure by B.B.A. to deliver the Goods (or any of them) promptly or at all, where such delay is due to circumstances beyond the control of B.B.A., including but not limited to any freight delays, manufacturing delays and all other events referred to in Clause 15.8 herein.</p> <p>6. Risk</p> <p>6.1 If B.B.A. retains ownership of the Goods nonetheless, all risk for the Goods passes to the Customer on delivery.</p> <p>6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, B.B.A. is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by B.B.A. is sufficient evidence of B.B.A.'s rights to receive the insurance proceeds without the need for any person dealing with B.B.A. to make further enquiries.</p> <p>6.3 Where the Customer expressly requests B.B.A. to leave Goods outside B.B.A.'s premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk and it shall be the Customer's responsibility to ensure the Goods are insured adequately or at all.</p>	<p>7. Title</p> <p>7.1 B.B.A. and the Customer agree that ownership of the Goods shall not pass until:</p> <p>(a) the Customer has paid B.B.A. all amounts owing for the particular Goods; and</p> <p>(b) the Customer has met all other obligations due by the Customer to B.B.A. in respect of all contracts between B.B.A. and the Customer.</p> <p>7.2 Receipt by B.B.A. of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then B.B.A.'s ownership or rights in respect of the Goods shall continue.</p> <p>7.3 It is further agreed that:</p> <p>i. where practicable the Goods shall be kept separate and identifiable until B.B.A. shall have received payment and all other obligations of the Customer are met; and</p> <p>ii. until such time as ownership of the Goods shall pass from B.B.A. to the Customer B.B.A. may give notice in writing to the Customer to return the Goods or any of them to B.B.A. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Goods shall cease; and</p> <p>iii. B.B.A. shall have the right of stopping the Goods in transit whether or not delivery has been made; and</p> <p>iv. if the Customer fails to return the Goods to B.B.A. then B.B.A. or B.B.A.'s agent may (as the invitee of the Customer) enter upon and into land and premises owned, occupied or used by the Customer, or any premises where the Goods are situated and take possession of the Goods; and</p> <p>v. the Customer is only a bailee of the Goods and until such time as B.B.A. has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Customer owes to B.B.A. for the Goods, on trust for B.B.A.; and</p> <p>vi. the Customer shall not deal with the money of B.B.A. in any way which may be adverse to B.B.A.; and</p> <p>vii. the Customer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of B.B.A.; and</p> <p>viii. B.B.A. can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Customer; and</p> <p>8. Personal Property Securities Act 2009 ("PPSA")</p> <p>8.1 In this clause:</p> <p>(a) financing statement has the meaning given to it by the PPSA;</p> <p>(b) financing change statement has the meaning given to it by the PPSA;</p> <p>(c) security agreement means the security agreement under the PPSA created between the Customer and B.B.A. by these terms and conditions; and</p> <p>(d) security interest has the meaning given to it by the PPSA.</p> <p>8.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions:</p> <p>(a) constitute a security agreement for the purposes of the PPSA; and</p> <p>(b) create a security interest in:</p> <p>(i) all Goods previously supplied by B.B.A. to the Customer (if any);</p> <p>(ii) all Goods that will be supplied in the future by B.B.A. to the Customer.</p> <p>8.3 The Customer undertakes to:</p> <p>(a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which B.B.A. may reasonably require to:</p> <p>i. register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;</p> <p>ii. register any other document required to be registered by the PPSA; or</p> <p>iii. correct a defect in a statement referred to in clause 8.3(a)(i).</p> <p>(b) indemnify and upon demand reimburse B.B.A. for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;</p> <p>(c) not register a financing change statement in respect of a security interest without the prior written consent of B.B.A.;</p> <p>(d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of B.B.A.; and</p> <p>(e) immediately advise B.B.A. of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.</p> <p>8.4 B.B.A. and the Customer agree that sections 96, 115, 125 of the PPSA do not apply to the security agreement created by these terms and conditions.</p> <p>8.5 The Customer hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.</p> <p>8.6 The Customer waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA in respect of the Goods within a reasonable time following installation if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage or failure to comply with description or specification or quote.</p> <p>8.7 For defective Goods, which B.B.A. has agreed in writing that the Customer is entitled to reject, B.B.A.'s liability is limited to either (at B.B.A.'s discretion) replacing the Goods or repairing the Goods except where the Customer has acquired Goods as a consumer within the meaning of the <i>Competition and Consumer Act 2010 (Cwlth)</i> or the <i>Fair Trading Acts</i> of the relevant state of price of the Goods, or repair of the Goods, or replacement of the Goods; and B.B.A. will not be accepted for return other than in accordance with 10.1 above.</p> <p>8.8 The Customer acknowledges that he/she/it is responsible to check all Goods specifications and detail of the Goods prior to making an Order for any Goods with B.B.A. and the Customer acknowledges that B.B.A. is not responsible for the cost of any rectification on reworks on Goods due to:</p> <p>(a) Variation to that detailed on the accepted written Goods specification quotation that are requested by the Customer;</p> <p>(b) The Customer ordering a product from B.B.A. that is not fit for the purposes set out in the written Goods specification quotation or is against a recommendation of B.B.A. because it is not fit for the purpose for which such Goods are intended;</p> <p>(c) The appearance of the Goods if supplied in accordance with the written Goods specification quotation as accepted by the Customer in accordance with clause 10.1 herein.</p>	<p>11. BBA Warranty</p> <p>11.1 Subject to the conditions of warranty set out in clause 11.2, B.B.A. warrants that if any defect in any workmanship of B.B.A. becomes apparent and is reported to B.B.A. if a residential or commercial installation within ONE (1) year of the date of delivery or installation (not 12 months for any motorised components and/or batteries (time being of the essence) then B.B.A. will either (at B.B.A.'s sole discretion) replace or remedy the workmanship.</p> <p>11.2 The conditions applicable to the warranty given by clause 11.1 are:</p> <p>(a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:</p> <p>i. failure on the part of the Customer to properly maintain or operate any Goods in accord with any operating instructions provided to the Customer either verbally or in writing; or</p> <p>ii. failure on the part of the Customer to follow any instructions or guidelines provided by B.B.A., including but not limited to:</p> <p>Operation of any strings, cords or operating mechanisms attached to the blinds or awnings; and retracting external awnings in the event of high winds; or</p> <p>any use of any Goods otherwise than for any application specified on a quote order for the continued use of any Goods after any defect becomes apparent or have become apparent to a reasonably prudent operator or user; or</p> <p>iv. failure or movement of supporting structures, falling objects or impact from external, separate causes during or after installation; or</p> <p>v. fair wear and tear including shrinkage, stretching and distortions of PVC and mesh fabrics, any accident or act of God; or</p> <p>vi. measurements provided by the customer, or installation undertaken by the customer; or</p> <p>vii. salt spray, contact with corrosive or hazardous chemicals, or any gases, liquids or solids reacting with the purchased product.</p> <p>(b) the warranty shall cease and B.B.A. shall hereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without B.B.A.'s written consent or any part of the full Price involved remains unpaid by the Customer;</p> <p>(c) in respect of all claims, B.B.A. shall not be liable to compensate the Customer for any delay in either replacing or remedying the workmanship or in properly assessing the Customer's claim.</p> <p>11.3 For Goods not manufactured by B.B.A., the warranty shall be the current warranty provided by the manufacturer of the Goods. B.B.A. shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.</p> <p>11.4 B.B.A.'s liability under this warranty is limited to repair or replacement of the products and specifically excludes shipping charges, costs of removing, disassembling and re-installing the product. B.B.A. reserves the right to discharge its obligations under this warranty by refunding the original purchase price of any such product in full.</p> <p>12. Default and Consequences of Default</p> <p>12.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month after as well as before any judgment.</p> <p>12.2 In the event that the Customer's payment is dishonoured for any reason the Customer shall be liable for any dishonour fees incurred by B.B.A.</p> <p>12.3 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify B.B.A. from and against all costs and disbursements incurred by B.B.A. in pursuing the debt including legal costs on a solicitor and own client basis and B.B.A.'s collection agency costs.</p> <p>12.4 Without prejudice to any other remedies B.B.A. may have, if at any time the Customer is in breach of any obligation (including those relating to payment) B.B.A. may suspend or terminate the supply of Goods to the Customer and any of its other obligations under the terms and conditions.</p> <p>12.5 If any account remains overdue after thirty (30) days then an amount of ten dollars (\$10.00) per month shall be levied thereafter for administration fees which sum shall become immediately due and payable. (This fee is incremental to any interest payable by virtue of clause 12.1.)</p> <p>12.6 Without prejudice to B.B.A.'s other remedies at law B.B.A. shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to B.B.A. shall, whether or not due for payment, become immediately payable in the event that:</p> <p>(a) any money payable to B.B.A. becomes overdue, or in B.B.A.'s opinion the Customer will be unable to meet its payments as they fall due; or</p> <p>(b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or</p> <p>(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.</p> <p>13. Cancellation</p> <p>13.1 Cancellation of orders for Goods made to the Customer's specifications or non-stocklist items will not be accepted once production of the Goods has commenced and any cancellation of an Order for Goods shall be at the discretion of B.B.A. who shall have discretion to charge the Customer 10% of the Price as a cancellation of order fee.</p> <p>14. Unpaid Seller's Rights</p> <p>14.1 Where the Customer has left any item with B.B.A. for repair, modification, exchange or for B.B.A. to perform any other Service in relation to the item and B.B.A. has not received or been tendered the whole of the Price, or the payment has been dishonoured, B.B.A. shall have:</p> <p>(a) a lien on the item;</p> <p>(b) the right to retain the item for the Price while B.B.A. is in possession of the item;</p> <p>(c) a right to sell the item.</p> <p>14.2 The lien of B.B.A. shall continue despite the commencement of proceedings, or judgment for the Price having been obtained.</p> <p>15. General</p> <p>15.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.</p> <p>15.2 If any provisions of these terms and conditions are inconsistent with the PPSA, the PPSA shall prevail to the extent of that inconsistency.</p> <p>15.3 These terms and conditions and any contract to which they apply shall be governed by the laws of Tasmania and are subject to the jurisdiction of the courts of Tasmania.</p> <p>15.4 B.B.A. shall be under no liability whatsoever to the Customer for any indirect or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by B.B.A. of these terms and conditions.</p> <p>15.5 In the event of any breach of this contract by B.B.A. the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price of the Goods.</p> <p>15.6 B.B.A. may lease or sub-contract all or any part of its rights and obligations without the Customer's consent.</p> <p>15.7 The Customer agrees that B.B.A. may review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which B.B.A. notifies the Customer of such change. The Customer shall be under no obligation to accept such changes except where B.B.A. supplies further Goods to the Customer and the Customer accepts such Goods.</p> <p>15.8 Neither party shall be liable in damages or compensation from the other for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, theft, breakdown, difficulties in obtaining production from suppliers, power failure or breakdown of machinery or other event beyond the reasonable control of either party.</p> <p>15.9 The failure by B.B.A. to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect B.B.A.'s right to subsequently enforce that provision.</p> <p>15.10 No statement, description or recommendation contained in any catalogue, price list advertisement or communication, or website page made by an agent or employee of B.B.A. shall be interpreted so as to vary or override any of these terms and conditions.</p>
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