

**B&N Glass and Aluminium Pty Ltd**  
Head Office: 18McCulloch Street, North Mackay QLD 4740  
NQ Office: 32 Blakey Street, Garbutt Townsville QLD 4814  
Phone: (07) 49 577 477 (Mackay) | (07) 4774 7331 (Townsville)  
ABN: 67 101 116 367  
[www.bnglass.com.au](http://www.bnglass.com.au)

# CONDITIONS OF SALE

## B & N GLASS ALUMINIUM (ABN 67 101 116 376)

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18 McCulloch Street, North  
Mackay Q 4740 PO Box 8963  
Mount Pleasant Q 4740

If you require any assistance or have any questions regarding this form, please phone our office on (07) 4957 7477

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**Agreement Specifics**

<b>CUSTOMER DETAILS:</b>	<input type="checkbox"/> Commercial Premises <input type="checkbox"/> Domestic Premises		
Name/Trading Name:		Phone:	
Legal Name:		ABN:	
Address:			
Billing Address:			
Email:			
<b>SERVICES TO BE PROVIDED:</b>	See attached quote ..... ..... .....		
<b>PRODUCTS TO BE INSTALLED/FIXED:</b>	See attached quote ..... ..... .....		
<b>CHARGES: -</b>			
Charges (excluding GST)	\$	.....	
GST	\$	.....	
Total Charges	\$	.....	
Deposit Received	\$	.....	
<b>Balance Due (upon issue of Invoice)</b>	\$	.....	
<b>Payment by:</b>	<input type="checkbox"/> Direct Debit <input type="checkbox"/> Credit Card <input type="checkbox"/> Invoice <input type="checkbox"/> Other:		

**I/We acknowledge that I/We have read and understood the terms and conditions of this Conditions of Sale.**

<b>Name:</b>		<b>Position:</b>	
<b>Signature:</b>		<b>Date:</b>	
<b>Witness Name:</b>		<b>Witness Signature:</b>	
<b>Witness Address:</b>			

<b>Name:</b>		<b>Position:</b>	
<b>Signature:</b>		<b>Date:</b>	
<b>Witness Name:</b>		<b>Witness Signature:</b>	
<b>Witness Address:</b>			

## **CONDITIONS OF SALE**

### **1. DEFINITIONS AND INTERPRETATION**

#### **1.1 Definitions**

In this agreement (including the recitals) unless the contrary intention appears:

**Balance due** means the amount outstanding after receipt of the Deposit or part payments received to your account.

**Bank** has the same meaning as in the *Banking Act 1959 (Cth)*.

**Business day** means, in respect of each payment or other transaction or calculation which needs to be made or done under this agreement or for the purposes of this agreement, a day on which business by and between banks may be carried on in Mackay.

**Default interest** means a rate of at a rate of 17.5% per annum from the invoice date until the payment of the debt.

**Deposit** means Fifty Per centum (50%) of the Total Charges.

**Event of default** means any of the events, omissions or occurrences specified in cl 8.1

**GST** has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

**Related body corporate** means, in relation to **You**, a corporation, wherever incorporated or registered, which is related, as defined in s 50 of the *Corporations Act 2001 (Cth)*, to **You**.

**Produce** includes all products and services supplied by B & N to the Customer.

**Us/We/Our** means B & N Glass & Aluminium Pty Ltd (ABN 67 101 116 376), its employees and agents.

**You/Your** means the Customer.

### **2. WE RETAIN TITLE OF PRODUCT**

#### **2.1 We retain full title to the Product notwithstanding:**

- (a) the delivery of the Product to **You**;
- (b) the possession and use of the Product by **You**; and
- (c) any temporary installation/attachment of the Product to any land or buildings to facilitate use of the Product;
- (d) until monies owing to Us by You is paid in full.

### **3. INSTALLATION AND LOCATION OF PRODUCT**

#### **3.1 No unauthorised removal from location**

**You** must not, until all amounts owing to us have been paid in full:

- (a) uninstall the Product and remove the Product from the location where **We** first installed the Product; and
- (b) in any event, remove the Product from any location

### **4. CHARGES**

#### **4.1 Amounts Payable by You:**

**You** must pay:

- (a) **Deposit**: on the date requested by Us by cash, cheque, or direct debit; and
- (b) **Balance Due**: on the date specified in Our invoice by cash, cheque, or direct debit.

#### **4.2 Interest on overdue payments**

Where any, or any part of any, amount payable by **You** under this agreement is not paid to **Us** on or before its due date for payment default interest will be payable on the outstanding amount from the date following the due date for payment of the outstanding amount up to and including the date of its payment.

#### **4.3 Set-Off**

**You** acknowledge that payments will not be subject to any abatement, reduction, set-off, defence, counterclaim, or recoupment of any kind whatsoever.

### **5. USE OF PRODUCT**

#### **5.1 Use of Product**

**You** must only operate and maintain the Product for its intended purpose. **You** must comply in all respects with the instructions and recommendations of **Us** and to its use, where any failure in compliance would limit the obligations of **You** to **Us** under any statute, agreement or otherwise.

### **6. PRODUCT AS FIXTURES TO LAND**

#### **6.1 Product as fixtures to land**

Subject to any applicable law to the contrary, the Product is deemed not to be a fixture. In those circumstances:

- (a) the Product may be removed by **Us** at any time if you have not paid any monies payable under this agreement when due and owing.
- (b) **We** will be entitled to enter upon the location at any time for the purpose of removing the Product and will not be liable in respect of loss or damage arising from such entry or from the removal of the Product.

#### **6.2 Notification of Our ownership of the Product**

If you have not paid all amounts owing to Us with respect to the Product, **you** must notify any person seizing the Product of the ownership by **Us** and must give immediate written notice to **Us** of such seizure.

### **7. NO DEALINGS WITH PRODUCT**

#### **7.1 No dealings with Product**

**You** must not, until all monies due and owing to us in respect of the Product has been paid for in full: -

- (a) agree, attempt, offer or purport to sell, assign, sublet, lend, pledge, mortgage, let on hire or otherwise part with or attempt to part with the personal possession of or otherwise deal with the Product or
- (b) conceal or alter the Product or make any addition to the Product.

#### **7.2 Liens**

**You** must not without **Our** prior written consent, suffer any encumbrance, charge or lien of any kind to arise or remain on the Product, unless and until you have paid all amounts due and owing to us in respect of the Product.

## 8. DEFAULT AND TERMINATION BY US

### 8.1 Events of default

Each of the following events is an event of default, namely:

- (a) if **You** fail to pay monies payable under this agreement on the due date for payment and such failure continues for more than one (1) business day.
- (b) if an application for the winding up or bankruptcy of **You** is presented
- (c) if a receiver or provisional liquidator of the undertaking or any part of the undertaking of **You** is appointed.
- (d) if without **Our** prior written consent, you suspend payment generally or cease to carry on **Your** business or is unable to pay **Your** debts within the meaning of s 460 of the *Corporations Act 2001 (Cth)*.
- (e) if **You** appoint an administrator to **You** or begin any process to do so or if an inspector is appointed to investigate **Your** affairs.
- (f) if the Product is abandoned or condemned or is seized or appropriated by any lawful authority and not released within twenty-one (21) days or is attached, sequestrated, impounded or restrained upon and not released within twenty-one (21) days.

### 8.2 Consequences of default

If an event of default occurs, **We** at **Our** option may:

- (a) **Enforce performance**: by proceeding by appropriate court action, either at law or in equity, enforce performance by **You** of the applicable terms and provisions of this agreement or recover damages for the breach concerned; or
- (b) **Demand Payment**: terminate this agreement and demand payment of the balance due under this agreement by notice in writing to **You**. Upon service of such notice all **Your** rights to or in the use of the Product will terminate and **We** may, directly or by **Our** agent, take possession of the Product. **You** agree that if **You** are in default of this agreement, **we** will demand from **You** and **You** will pay to **Us** the balance due under this agreement.

## 9. DAMAGE TO PRODUCTS

### 9.1 Where damage is Your fault

If the Product or any of its parts is damaged not as a result of **Our** negligence, act, failure to act, or because of an act out of **our** control then additional charges will be incurred by **You** for the repair, maintenance and/or replacement of the Product by **Us**. The additional charges to be incurred by **You** in **Our** undertaking to repair and/ or replace the Product will be quoted to **You** in writing prior to **Us** undertaking such works.

### 9.2 Where damage is Our fault

If the Product or any of its parts is damaged as a result of **Our** negligence, act or failure to act then additional charges will not be incurred by **You** for the repair, maintenance and/or replacement of the Product by **Us**.

## 10. INDEMNITIES

### 10.1 Product used at Your risk

**You** agree to use, operate, and possess the Product at **Your** risk. **You** agree that **We** will have no responsibility or liability for any loss or damage to any property of **You**. To the full extent permitted by law **You** release and discharges **Us** and **Our** agents and employees from:

- (a) all claims and demands on **Us**; and

- (a) any loss or damage whatsoever and whenever caused to **You** or its agents or employees whether arising directly or indirectly (including, without limitation damages for loss of business, business interruption, loss of business information, loss of Product and/or personal items and/or other indirect or consequential loss) for the performances or non-performance of the Product, or its use or mis-use, or any breach by **Us** of any of **Our** obligations under this agreement.

### 10.2 Competition and Consumer Act 2010

It is acknowledged by **Us** and **You** that the Competition and Consumer Act and other laws imply certain conditions or warranties in certain contracts and gives parties to those contracts' certain other rights against suppliers of products and services. The extent that such conditions, warranties or other rights are implied or given by force of law in respect of the agreement and it is not lawful to exclude or otherwise limit their operation, then such conditions, warranties and other rights shall (but only to the extent permitted by law) apply to the agreement and all other conditions, warranties or rights which might be implied are expressly excluded.

### 10.3 Not of kind ordinarily acquired for domestic use

Where the Product are not of a kind ordinarily acquired for person, domestic or household use or consumption, **Our** liability for any breach of a condition or warranty implied in the Competition and Consumer Act shall be limited to any one or more of the following, at **Our**, sole discretion:

- (a) In respect of Product:
  - The cost of having the Product repaired,
  - The cost of obtaining equivalent Product; or
  - The cost of replace of the Product
- (b) In respect of **Our** services:
  - The supply of the services again; or
  - The payment of the cost of having the services supplied.

## 11. PPS LAW

**11.1** This clause applies to the extent that the *Personal Property Securities Act 2009 (Cth)* ("PPS Law") operates in relation to any "security interest" (as defined in PPS Law) under this agreement. This document constitutes a security agreement in writing covering the Product for the purposes of PPS Law.

**11.2** The Product referred to in this agreement, is a security interest and a "purchase money security interest" ("PMSI") to the extent that it can be under section 14 of the PPS Law.

**11.3** **You** agree to do anything (such as obtaining consents and signing documents) which **We** require for the purposes of:

- (a) ensuring that **Our** security interest is enforceable, perfected, and otherwise effective under the PPS Law.
- (b) enabling **Us** to gain first priority (or any other priority agreed to by **Us** in writing) for our security interest; and
- (c) enabling **Us** to exercise rights in connection with the security interest.

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- 11.4 **Our** rights under this document are in addition to and not in substitution for the **Our** rights under other law (including PPS Law) and **We** may choose whether to exercise rights under this agreement, or under such other law, as it chooses.
- 11.5 The following provisions of the PPS Law do not apply and, for the purposes of section 115 are "contracted out" of this document in respect of Product that are not used predominately for personal, domestic, or household purposes:
- (a) sections 95 (notice of removal of accession to the extent it requires the Owner to give a notice to the Hirer), 96 (retention of accession), 125 (Obligations to dispose of or retain collateral); section 130 (notice of disposal to the extent it requires the Owner to give a notice to the Hirer); section 132(3)(d) (contents of statement of account after disposal); section 132(4) (statement of account if no disposal); section 135 (notice of retention); section 142 (redemption of collateral); and section 143 (re-instatement of security of security agreement); and
- (b) in relation to section 128 (secured party may dispose of collateral), section 129 (disposal by purchase) and 134(1) (retention of collateral) **You** agree that in addition to **Your** rights under PPS Law **We** shall have the power to retain, deal with or dispose of any Product in the manner specified in those sections but also under this agreement in any other manner it deems fit.
- 11.6 **You** waive your rights to receive a verification statement in relation to registration events in respect of commercial property under section 157 of the PPS Law.
- 11.7 Solely for the purpose of allowing to **Us** the benefit of section 275(6) of the PPS Law, **We** and **You** agree that neither party must disclose information of the kind that can be requested under section 275(1) of the PPS Law.
- 12. CREDIT CHECK**
- 12.1 If requested by **Us**, **you** will supply without delay all information necessary to check the worthiness of **Your** credit rating, including financials, if requested.
- 12.2 If **We** consider it relevant to assessing this application, **you** agree to **Us** obtaining from a credit reporting agency a credit report containing personal information about **You** and/or commercial references for commercial clients.
- 12.3 **You** agree that **We** may give to and seek from only credit providers named in any credit report issued by a Credit Reporting Agency or in **Our** Application for Credit form, including **Your** credit arrangements. **You** acknowledge and understand that such information may include any information regarding **Your** credit worthiness, credit history or credit capacity that credit providers can give to or receive from other credit providers under the Privacy Act.
- 12.4 **You** acknowledge and understand that any default in payment to **Us** may affect **Your** credit rating.
- 13. GENERAL**
- 13.1 **Joint and several liability**  
Where **You** comprise more than one person, the covenants and agreements on their part contained or implied in this agreement bind **You** jointly and each of **You** separately.
- 13.2 **Quiet enjoyment**  
If **You** pay all monies owing under this agreement when due and owing and duly and punctually performs all of **Your** other obligations under this agreement, **You** may peaceably possess and enjoy the Product without any interruption or disturbance from **Us** or any other person or persons lawfully claiming by, from or under **Us**.
- 13.3 **Discretion on consent**  
In any case where, under or pursuant to this agreement, the doing or execution of any act, matter or thing by **You** is dependent upon the consent or approval of **Us**, such consent or approval may be given conditionally or unconditionally or may be withheld by **Us** in **Our** absolute uncontrolled discretion, unless this agreement otherwise expressly provides.
- 13.4 **Your risk**  
Whenever **You** are obliged or required under this agreement to do or effect any act, matter or thing, then the doing of such act, matter or thing will, unless this agreement otherwise expressly provides, be at the sole risk and expense of **You**.
- 13.5 **Statutes not to abrogate lease**  
Unless application is mandatory by law, no statute, ordinance, proclamation, order, regulation or moratorium present or future will apply to this agreement so as to abrogate, extinguish, impair, diminish, fetter, delay or otherwise prejudicially affect any rights, powers, remedies or discretions given or accruing to the owner under this agreement.
- 13.6 **Assignments**  
**We** may at any time assign, charge or otherwise deal with the Product or its right, title, and interest pursuant to this agreement. **You** must not assign or charge this agreement or any of its rights or obligations under this agreement without the prior written consent of **Us**.
- 13.7 **Severability and survival of covenants**  
If any provision of this agreement is or at any time becomes void or unenforceable the remaining provisions will continue in full force and effect. Any void or unenforceable provision will be replaced forthwith by a lawful and enforceable provision which so far as possible achieves the same economic benefit or burden for **Us** and **You** as the unlawful or unenforceable provision was intended to achieve. All obligations of **You** under this agreement will survive the expiration or termination of this agreement to the extent required for their full observance and performance.
- 13.8 **No waiver**  
Time is of the essence of this agreement. However, no failure or delay on the part of **Us** to exercise any power or right under this agreement will operate as a waiver of that power or right. Nor will any single or partial exercise of any power or right under this agreement preclude any other or further exercise of that power or right. **We** will only be taken to have waived any power or right under this agreement, including (without limitation) any right in respect of any event of default, to the extent that the right or power has been expressly waived in writing by a director, secretary or other officer of the owner whose title includes the word "manager", irrespective of any previous waiver of any other breach of the same or any other covenant or provision of this agreement or any other agreement.
- 13.9 **Your omissions**  
If **You** omit or neglect or fail to pay any money or to perform any of **Your** obligations under this agreement then on each occasion **We** may at **Our** discretion pay such money or perform such obligation (but without prejudice to any other right or remedy of the owner by reason of such neglect or failure) as if it were **You**. For that purpose, **you** may enter any location and may remain there for the purpose of performing the relevant obligation. Without prejudice to the rights, powers and remedies of the owner otherwise under this agreement, **You** must on demand reimburse the owner all moneys, costs, charges and expenses paid or incurred by **Us** in connection with the making of such payment or the performance of such obligation.
- 13.10 **Further assurances**  
**You** must at **Your** expense do any further act and execute any further documents which **We** may reasonably request to protect the **Our** title to the Product and **Our** rights, powers, and remedies under this agreement.
- 13.11 **Notices**  
Any notice or demand to be given under or in relation to this agreement will be deemed to be duly given or made if it is in writing and in the case of **You** left or sent by prepaid post addressed to **You** at **Your** address or business last known to the officer sending such notice or demand or at the registered office of the hirer being a company and in the case of the owner if it is in writing and left at or sent by prepaid post to the owner at its address set out in this agreement or at the registered office of the owner. Any notice or demand sent by post will be deemed to have been received by the party to whom it is addressed on the day which in the normal course of post it would have been delivered.

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**13.12 Governing law and submission to jurisdiction**

This agreement will be construed in accordance with the law of Queensland. The parties submit to the non-exclusive jurisdiction of the courts of Queensland and any courts which may hear appeals therefrom.

**GENERAL WARRANTY**

- No Warranty, condition or term applies to the supply by B & N of products and their components manufactured by it unless it is set out in this Conditions of Sale or is implied by law and cannot be excluded.
- If any term is implied into this Conditions of Sale by law, and it would be illegal for B & N to exclude it, then so far as the law allows, the liability of B & N for breach of that term is limited to the cost of repair or replacement (at B & N's option) of any product or component manufactured by it that B & N determines is defective in materials under normal use and service. B & N is not liable for any other direct or indirect cost, loss or damage to person or property, or for any consequential losses, including cartage and installation.
- While any product or component is in the custody of B & N for investigation or repair it will be at the risk of the Customer and B & N will not be liable for any damage to it.
- B & N is not liable to the Customer unless the Customer notified B & N in writing immediately on it becoming aware of the alleged defect, and in any event no later than 30 days after the date of delivery.
- B & N is not liable for any product or component that is not manufactured by it, but B & N will use its reasonable endeavours to obtain for the Customer the benefit of any applicable manufacturer's warranty.

**We/I acknowledge that We/I have read and understood the terms and conditions of this Conditions of Sale.**

<b>Name:</b>		<b>Position:</b>	
<b>Signature:</b>		<b>Date:</b>	
<b>Witness Name:</b>		<b>Witness Signature:</b>	
<b>Witness Address:</b>			

<b>Name:</b>		<b>Position:</b>	
<b>Signature:</b>		<b>Date:</b>	
<b>Witness Name:</b>		<b>Witness Signature:</b>	
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<b>Name:</b>		<b>Position:</b>	
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<b>Witness Name:</b>		<b>Witness Signature:</b>	
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