

Boral Building Products Inc.

Terms and Conditions



BORAL
BUILDING PRODUCTS

The following Boral® Building Products Terms and Conditions govern all sales to Buyer from Boral Building Products Inc. (the "Seller") of siding and trim; shutters and accessories; tools; and egress systems (the "Product" or the "Products") manufactured by Seller or an affiliate of Seller.

1. ACCEPTANCE OF THIS PURCHASE AGREEMENT: REJECTION OF CONFLICTING TERMS AND CONDITIONS

Buyer irrevocably accepts these Terms and Conditions upon the earliest of: (i) executing this Purchase Agreement on the reverse side; (ii) placing an order for any Product sold by Seller in writing or orally; (iii) accepting the delivery of any Product furnished hereunder; or (iv) payment of any amount due for Product furnished hereunder. All Product sold by Seller is subject to these Terms and Conditions. Any proposal or purchase order for Product submitted to Seller by Buyer shall be subject to these Terms and Conditions. If any additional or different terms or conditions are contained in Buyer's proposal or purchase order, the Terms and Conditions of this Purchase Agreement shall control regardless of when such purchase order is received by Seller. Any proposal by Buyer for additional or different terms is hereby rejected, and any attempt by Buyer to vary any of these Terms and Conditions shall be ineffective unless Seller agrees in writing to any such additional or different terms or conditions.

2. PRICE

Unless otherwise agreed in writing, all sales shall be made at the Seller's current price for the Product as shown on Seller's current price list package at the time of shipment. Prices for each Product are quoted on the reverse side of this Purchase Agreement, which shall detail any delivery costs (i.e., whether delivery shall be F.O.B. Seller's Facility, freight pre-paid, or otherwise). Competitive price quotations must be referenced at time of order or current price list will be invoiced.

3. PLACING AND FILLING OF ORDERS

(a) If Buyer orally places an order, a written purchase order should be immediately mailed, faxed or sent electronically to Seller by Buyer to confirm current pricing and product style. Seller reserves the right to refuse acceptance of any order. Buyer may not assign any order or any of Buyer's rights or duties under this order without Seller's prior written consent.

(b) Seller may fill Buyer's purchase order from existing inventory meeting the purchase order specifications, and may ship any order in separate or partial deliveries, with each partial shipment standing as a separate order made pursuant to these Terms and Conditions. Buyer may not refuse to accept any partial shipments of Product or refuse to make payment therefor because of Seller's failure to ship or deliver any remaining Product ordered.

4. CANCELLATION OF ORDERS

Buyer has no right to cancel any order without the prior written consent of Seller, which may be granted or withheld at Seller's discretion. If consent to the cancellation of any order is given, Buyer shall pay to Seller, upon receipt of Seller's invoice therefore, all assessed cancellation charges which may include lost profits of Seller and costs, direct expenses, transportation charges, and applicable overhead expenses incurred by Seller in connection with the order, and its cancellation.

5. RETURN OF PRODUCT

All returns by Buyer of any Product must have prior approval from Seller. Returns for all products sold by Seller must be made within 30 days of delivery. Buyer must contact Buyer's local customer contact representative for a return authorization number prior to making any arrangements to return product. All returned product must be in original manufacturer's packaging. All returns require full payment for return freight. Approved returns of product are subject to a standard restocking fee. All piece counts and breakage are subject to inspection and verification by Seller. Made to order custom mixes of Product are not returnable.

6. COLOR VARIATION

BUYER ACKNOWLEDGES THAT ANY PRODUCT THAT IS SUBJECT TO MORE THAN ONE PRODUCTION RUN MAY VARY IN COLOR, INTENSITY, PATTERN AND OTHER CHARACTERISTICS AND BUYER WAIVES ANY CLAIM AGAINST SELLER FOR ANY SUCH VARIATIONS.

7. DELIVERY

(a) Unless otherwise provided on the face of this Purchase Agreement or in Buyer's written purchase order, all delivery to Buyer of Products shall be F.O.B. Seller's Facility. Seller's responsibility for the Product terminates upon delivery to the carrier and title to, liability for and risk of loss of Product passes to Buyer at the time of delivery. Seller shall put the Product in the possession of a carrier, and make reasonable arrangements for its transportation.

(b) UNLESS THIS AGREEMENT OR BUYER'S WRITTEN PURCHASE ORDER (ACCEPTED IN WRITING BY SELLER) PROVIDES FOR DELIVERY TO BE F.O.B. DESTINATION, BUYER AGREES THAT ITS SOLE REMEDY FOR CLAIMS OR PROBLEMS RELATED TO SHIPMENT OR DELIVERY SHALL BE AGAINST THE CARRIER AND HEREBY RELEASES SELLER FROM ANY CLAIMS FOR LOSS OR DAMAGE CAUSED BY MISDELIVERY, FAILURE TO DELIVER, OR DAMAGE TO THE PRODUCT DURING SHIPMENT. REGARDLESS OF THE SHIPPING ARRANGEMENT, SELLER SHALL NOT BE LIABLE FOR ANY INCONVENIENCE, DAMAGE OR LOSS, WHETHER DIRECT, INCIDENTAL, CONSEQUENTIAL, ECONOMIC OR OTHERWISE, RESULTING FROM OR ARISING AFTER THE PRODUCT IS PLACED IN THE POSSESSION OF THE CARRIER FOR SHIPMENT, INCLUDING, BUT NOT LIMITED TO: SCHEDULING, DELIVERY, DELAY, STANDBY TIME, DEMURRAGE, FREIGHT INCREASES, TRANSPORTATION FUEL SURCHARGES, INADVERTENT PLACEMENT OF THE PRODUCT INTO AN IMPROPER STORAGE VESSEL, OR COSTS ASSOCIATED WITH DIVERSION OF THE PRODUCT TO ANOTHER LOCATION. IF BUYER REQUESTS THAT ANY PRODUCT BE DIVERTED OR DELIVERED TO A SITE OTHER THAN THAT SHOWN ON THE FACE OF THIS PURCHASE AGREEMENT, BUYER SHALL BE RESPONSIBLE FOR ANY DIVERSION FEES OR OTHER CHARGES ASSESSED BY THE CARRIER.

(c) Buyer shall furnish facilities reasonably suited for the receipt of the Products, and Buyer shall pay all additional fuel charges or mileage charges assessed by the carrier. Buyer acknowledges that Seller has no duty or obligation to assure that the Products are placed or stored in any particular storage vessel or location. Buyer shall direct the carrier as to the delivery or placement of the Products, and carrier shall be entitled to rely upon Buyer's instructions regarding same, whether written or oral.

8. PRODUCT AVAILABILITY

The Products sold hereunder are currently available in the quantity requested. If a Product becomes unavailable for any reason, including, without limitation, production source outage, insufficient quantity, weather, transportation problems, change in production source fuels, noncompliance, quality, equipment, compliance with environmental or other regulations, the Seller may, at its option, either: (1) terminate this Purchase Agreement with no further obligations of any kind to Buyer, (2) suspend or postpone any step in fulfillment of this Purchase Agreement, or (3) furnish product that is substantially similar to the Product described on the face of this Purchase Agreement if, at Seller's discretion, it can be obtained by the Seller at a reasonable cost. UNDER NO CIRCUMSTANCES SHALL THE SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS, INCONVENIENCE, OR DAMAGE, WHETHER DIRECT, INCIDENTAL, CONSEQUENTIAL, ECONOMIC, OR OTHERWISE WHICH RESULTS, WHETHER DIRECTLY OR INDIRECTLY, FROM PRODUCT UNAVAILABILITY.

9. CONDITIONS OF SALE: TERMINATION OF PURCHASE AGREEMENT

All sales pursuant to this Purchase Agreement shall be subject to credit approval by the Seller. Seller reserves the right to require Buyer to make payment of the purchase price in cash or cash equivalent, or to provide adequate security for such payment, prior to any delivery of any Product. If Buyer fails to comply with such requirement or any other provision of the Purchase Agreement or fails to make payments in accordance with this Purchase Agreement, Seller may, at its option, defer further shipments or, without waiving any other rights it may have, terminate this Purchase Agreement. In the event of such termination, Buyer shall remain obligated to pay all amounts owed to Seller for Products furnished prior to the termination of this Purchase Agreement, including the cancellation charges described in Section 4 of this Purchase Agreement.

10. FORCE MAJEURE

Seller shall not be liable for any delay in the production or delivery of any Products due to any circumstances beyond its reasonable control, including, without limitation, any act of nature or the public enemy, accident, explosion, fire, storm, any casualty, strikes, lockouts, labor troubles, riots, embargo, war, civil commotion, governmental laws, regulations, orders or decrees, any unforeseen manufacturing or shipping delays, production or engineering difficulties, or inability to obtain or shortage of raw materials, parts, equipment, or transportation. Seller may delay the production or delivery of any Products resulting from any such Force Majeure event. If such delay exists beyond a period of forty-five (45) days, Seller may cancel this Purchase Agreement, in whole or in part, or suspend performance under this Purchase Agreement for the duration of the delay and extend the shipment or delivery schedule accordingly. In the event the distribution of any products becomes impractical by reasons of unavailability, unreasonable cost (as determined by the Seller in its sole discretion) or shortages from suppliers or by reason of compliance with any applicable law, whether or not such laws should later be held invalid, the Seller shall be relieved of all obligations with respect to the Product so affected. During any period of shortage, Seller may allocate products among its buyers, including Buyer, as it deems appropriate in its discretion. Any non-performance as a result of the occurrence of any event described in this Section 10 shall not place Seller in default in relation to the affected order. SELLER'S SOLE AND EXCLUSIVE LIABILITY TO BUYER FOR FAILURE TO DELIVER ANY PRODUCT DUE TO ANY EVENT OF FORCE MAJURE SHALL BE LIMITED TO THE RETURN OF THE PURCHASE PRICE FOR THE PRODUCT IF PREVIOUSLY PAID BY BUYER.

11. COMPLIANCE WITH LAWS AND INDEMNIFICATION

Buyer's acceptance of this Purchase Agreement constitutes a warranty and representation that Buyer will comply with all applicable federal, state, and local laws, rules, and regulations now in effect or hereafter enacted or issued relating to the use, handling, transportation, or disposal of the Product. BUYER AGREES TO INDEMNIFY AND TO HOLD SELLER HARMLESS FROM, AND TO REIMBURSE SELLER FOR, ALL LIABILITIES, CLAIMS, SUITS, JUDGMENTS, COSTS AND EXPENSES, INCLUDING REASONABLE ATTORNEYS' FEES, ARISING OUT OF OR RELATING TO ANY ALLEGED FAILURE OF BUYER TO COMPLY WITH ANY SUCH LAWS, RULES, OR REGULATIONS.

12. LIMITED WARRANTY

Seller provides the following LIMITED WARRANTIES:

(a) **Terms of Warranty:** Subject to the conditions and limitations stated below, and commencing as of the date of sale, Seller warrants the Products pursuant to those written warranties provided and available on Seller's website(s) in effect as of the date of delivery of such Products.

(b) **Notice and Investigation:** Proper notice must be given to preserve warranty rights. Buyer shall notify Seller in writing within thirty (30) days of the date Buyer first knows or is first put on inquiry notice that there might be a warranty issue with the Products. Written notice shall explain the basis of the claim and must be documented with proof of the date of installation. Written notice must be documented with the date the Product was purchased by Buyer. Any claimed damage for which notice is not received by Seller within the applicable warranty period is not covered by these limited warranties. After receipt of the notice of alleged defect, Seller shall have a reasonable period of time to investigate the claim and examine, test or inspect the material alleged to be defective.

(c) **Remedies for Warranty Claims:** If any Product is found by Seller not to comply with Seller's written warranty as set forth in Section 12(a), then, at Seller's election, it shall have the option of (i) repairing the Product, (ii) replacing the Product, or (iii) refunding the purchase price of the Product. This limited warranty specifically excludes any obligation to pay any labor costs associated with the repair, replacement or re-installation of any Product. If any Product is found not to comply with Seller's written warranty, the remedies for such warranty claim can be found at www.BoralBuildingProducts.com in the applicable express written warranty.

(d) **General Provisions and Limitations:** THESE LIMITED WARRANTIES ARE SUBJECT TO THE FOLLOWING PROVISIONS AND LIMITATIONS:

These limited warranties are effective only if the Product has been properly stored, handled, installed and maintained in accordance with Seller's written instructions and packaging literature.

Seller shall have no liability for, and these limited warranties do not apply to:

(i) Damage to the interior or exterior of the structure or to any property damage or personal injury;

(ii) Damage caused by lightning, hurricane, tornado, fire, earthquake, and impact of foreign objects, or damage due to settlement, distortion, failure or cracking of the roof, walls, or foundations of the structure to which it is applied; or any defect or failure of material used as a base over which the Product is installed, or damage by abusive traffic on the roof; or damage from any cause other than a manufacturing defect.

(iii) Defects or damages resulting from or connected with misuse, abuse, improper installation, lack of normal maintenance, attachments or other causes beyond Seller's control.

(e) **No Warranty for Product Not Manufactured by Seller or Seller's Affiliate:** Seller makes no warranties of any type regarding any Product Seller or an affiliate of Seller does not manufacture. Buyer waives any claims against Seller for any defects or deficiencies with any Product purchased from Seller, but not manufactured by Seller or an affiliate of Seller (except for Wellcraft® window wells), and Buyer agrees to look solely to the manufacturer of any such Product for satisfaction of any claims pertaining thereto, including any warranty claims.

(f) **Disclaimer of Implied Warranties and Limitation of Remedies:** THESE LIMITED WARRANTIES STATE THE ENTIRE LIABILITY OF SELLER WITH RESPECT TO THE COVERED PRODUCT. SELLER MAKES NO WARRANTIES EXCEPT AS EXPRESSLY STATED HEREIN AND SELLER MAKES NO EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO ANY PRODUCT SOLD TO BUYER. SELLER, WHETHER AS A MANUFACTURER OR CARRIER, SHALL NOT BE LIABLE FOR ANY COMMERCIAL LOSSES, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES, OR FOR ANY LOSS, DAMAGE OR EXPENSE ARISING UNDER OR IN CONNECTION WITH ANY SALE OF PRODUCT. SELLER'S LIABILITY FOR DAMAGES OF ANY KIND, SHALL IN NO EVENT EXCEED THE PURCHASE PRICE OF THE PARTICULAR ORDER, LOT OR SHIPMENT WITH RESPECT TO WHICH A CLAIM IS ASSERTED. IN PARTICULAR, SELLER SHALL NOT BE LIABLE FOR LOSS OF SALES, REVENUES OR PROFITS OR CLAIMS OF ANY THIRD PARTIES. NO PERSON IS AUTHORIZED TO MAKE ANY REPRESENTATIONS ON BEHALF OF SELLER EXCEPT AS EXPRESSLY STATED ABOVE, AND ANY ORAL STATEMENTS CONCERNING THE PRODUCT OR ANY STATEMENTS CONTAINED IN SELLER'S GENERAL ADVERTISING PAMPHLETS OR OTHER PRINTED MATERIALS DO NOT CONSTITUTE A WARRANTY, AND SHALL NOT BE BINDING ON SELLER.

The foregoing disclaimer of implied warranties shall not be applicable to sales subject to the Magnuson-Moss warranty act, in which case the duration of any implied warranty shall be limited to the extent permitted under applicable state law.

(g) **Legal Rights:** Some states do not allow varying the duration of implied warranties from the duration provided by law, so the above limitations may not apply to you. Some states do not allow the exclusion or limitation of incidental or consequential damages, so that limitation or exclusion may not apply to you. These limited warranties give Buyer specific legal rights, and Buyer may have other rights which vary from state to state. If the laws of a particular state require terms other than or in addition to those contained in these limited warranties, these limited warranties shall be deemed modified so as to comply with the appropriate laws of such state, but only to the extent necessary to prevent the invalidity of these limited warranties or any provision of these limited warranties, or to prevent the imposition of fines, penalties or any liability upon Seller.

13. REMEDIES: LIMITATION OF LIABILITIES

The remedies set forth above in Section 12 of this Purchase Agreement are Buyer's sole and exclusive remedies. BUYER AND SELLER HAVE SPECIFICALLY AGREED TO ALLOCATE THE RISKS ASSOCIATED WITH THIS TRANSACTION SO THAT SELLER SHALL NOT BE LIABLE TO BUYER OR ANY THIRD PARTY EXCEPT AS SET FORTH IN SECTION 12.

14. CREDIT POLICY: LATE PAYMENTS: COLLECTION COSTS: NO WAIVER

The payment of amounts due by Buyer for the purchase of Products are governed by the Seller's credit policy. The credit policy includes the requirement that all Product must be paid for by the date specified on invoice. All amounts not paid by the due date on the invoice following delivery shall be assessed a finance charge of 1 ½% per month (effective percentage rate of 18% per annum), or the highest legal rate, whichever is lower. Seller reserves the right to require payment for any Product in cash prior to delivery. Buyer also hereby grants to Seller a security interest in the Product subject to this Purchase Agreement as security for the performance of Buyer's payment obligations. This security interest shall remain in effect as long as the Product remains in an identifiable state. If Buyer fails to make any payment in accordance with these Terms and Conditions, or fails to comply with any of the terms hereof, Seller may, at its option, cancel any open order for Buyer, whether this order or any other order, and may refuse to deliver any undelivered Product to Buyer, whether on this order or any other order. In such event, all unpaid amounts owed by Buyer to Seller for the purchase of Product, including any cancellation charges referenced in Section 4 above, whether on this order or any other order, shall be immediately due and payable. ADDITIONALLY, BUYER SHALL INDEMNIFY AND HOLD SELLER HARMLESS FROM AND AGAINST ANY AND ALL COSTS OR EXPENSES, INCLUDING REASONABLE ATTORNEYS' FEES, INCURRED BY SELLER AS A RESULT OF ANY BREACH OF THE TERMS OF THIS PURCHASE AGREEMENT BY BUYER, INCLUDING BUYER'S FAILURE TO PAY ITS ACCOUNT WHEN DUE.

15. BUYER INSOLVENCY

If Buyer (i) becomes insolvent, or institutes or has instituted against it insolvency proceedings, or admits in writing its inability to pay its debts generally, or any proceeding is instituted by or against Buyer seeking adjustment, protection or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee or other similar official for it or for any substantial part of its property, or (ii) fails to comply with any of the Terms and Conditions hereof or any other contract or Purchase Agreement with Seller, then the same shall constitute a breach hereof and a default hereunder. In the event of such breach or default, Seller shall be entitled to cancel any unfilled part of this Purchase Agreement without any liability whatsoever, and shall have such other rights and remedies afforded to Seller for breach of contract under the Uniform Commercial Code as enacted in the State of Georgia or under any applicable law, including, but not limited to, the remedies of incidental and consequential damages, and in such an event, Buyer shall also be responsible to Seller for all cancellation charges as described in Section 4 of this Purchase Agreement.

16. SELLER'S RIGHTS CUMULATIVE

The rights and remedies provided Seller herein are cumulative and in addition to any other rights and remedies provided at law or in equity.

17. NO AGENCY

Nothing contained herein shall be construed to create any partnership or agency between Buyer and Seller.

18. SALES TAXES

All sales taxes applicable to the sale of the Products are in addition to the purchase price. If Buyer is exempt from sales taxes, it must furnish Seller a duly certified exemption certificate. Buyer hereby agrees to indemnify and hold Seller harmless from any liability arising out of the sale of the Products to Buyer on a tax-free basis, including, but not limited to, any penalties or interest imposed by any taxing authority.

19. ENTIRE AGREEMENT

This Purchase Agreement constitutes the complete and entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous negotiations or agreements, whether written or oral. No agreements, understandings, warranties or representations other than those set forth in this Purchase Agreement shall apply.

20. MISCELLANEOUS

(a) No waiver of any provision of or default under this Purchase Agreement shall affect Seller's rights thereafter to enforce such provision. No waiver shall in any event be effective unless in writing and signed by Seller.

(b) None of the terms and conditions contained in this Purchase Agreement may be amended, supplemented, superseded, or otherwise altered except by a written instrument signed by Seller.

(c) This Purchase Agreement shall be governed by and construed in accordance with the laws of the State of Georgia.

(d) Buyer agrees that any litigation with respect to this Purchase Agreement shall be brought solely in the courts of the State of Georgia and, by execution of this Purchase Agreement, Buyer irrevocably submits and consents to the personal jurisdiction of such courts.