

**B&M GENERAL SALES TERMS AUSTRALIA**

**1. FORMATION OF CONTRACTS**

The company BOARDS & MORE, RABACH 1, A-4591 MOLLN, hereinafter referred to as the "Seller", and

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.....,  
hereinafter referred to as the "Buyer",

agree that these General Terms and Conditions of Sale and Payment shall apply to all contracts made and entered into between the Seller and the Buyer.

The terms and conditions below shall apply to this contract and to any follow-up order placed by the Buyer. Deviating conditions of whatsoever kind which the Buyer seeks to impose shall be null and void, unless they are individual stipulations agreed upon. Our terms and conditions shall be deemed to be accepted upon acceptance of the goods by the Buyer at the latest, in particular in case of an order made over the phone. Any amendments hereto shall only be effective if made in writing and signed by both parties. Unless otherwise agreed upon in writing, our offers shall be without engagement regarding design, quantity, price, time of delivery and availability. The tender documents shall remain our property. Our business partners shall waive any right of retention and possession to the offer documents.

Supply contracts shall be deemed to be formed upon our written acknowledgment of order after receiving the written order made by the Buyer or upon delivery. Any oral additional agreements and amendments, including but not limited to agreements and amendments over the phone, shall require our separate written consent. Silence on our part regarding supplementary modifications and/or amendments shall imply refusal. Representatives shall not be entitled to confirm or acknowledge orders nor to collect. Drawings, illustrations, measures and weights, colours or any other performance figures shall only be binding if expressly agreed upon in writing.

**2. PRICES**

The prices for the objects to be sold shall be without cash discount or any other deduction plus value added tax, ex our warehouse or ex any of our branch offices. Additional services, e.g. delivery, shall be charged separately. The prices valid on the day of delivery shall apply.

**3. ACCEPTANCE**

All orders are subject to acceptance by the Seller.

**4. CHANGES IN DESIGN AND MODELS**

The Seller reserves the right to carry out changes in design and models at any time without the Buyer being entitled to rescind the contract for this reason or to claim damages from B&M. However, the Seller shall not be obliged to make such changes to products already delivered.

**5. DELIVERY**

Unless otherwise agreed upon in writing, the dates and deadlines given by the Seller shall not be binding. The Seller shall not be responsible, even in case of binding deadlines and periods of time agreed upon, for any delay in delivery and performance owing to force majeure and/ or events that hinder or prevent the Seller from delivering – including but not limited to subsequent materials purchasing difficulties, plant interruptions, strikes, lockout, shortage of labour or means of transportation, orders by governmental authorities, etc. even if they affect the Seller's suppliers or their subcontractors. Under these circumstances the Seller shall be entitled to either postpone the delivery or performance for the duration of the delay plus a reasonable start-up period or to rescind the contract in whole or in part with regard to the part of contract not yet performed. The Buyer may only require the Seller to declare if he rescind the contract or is willing to deliver within a reasonable period of time. Should the Seller make no statement, the Buyer may only rescind the contract. Any claims for damages by the Buyer shall be excluded.

In case the Seller is not supplied correctly or on schedule by our suppliers, he shall be entitled to rescind the contract in whole or in part without the Buyer being entitled to claim any damages from him.

Only if the delay in delivery is due to gross negligence by the Seller shall the Buyer be entitled to a penalty amounting to 0.5% for each week of delay, nevertheless not exceeding 5% of the whole delivery affected by delay; any further claims for damages or claims of whatsoever kind out of this title shall be excluded. The Seller shall be entitled to part delivery or part performance at any time.

**6. PASSAGE OF RISK**

The risk of damage to or loss of the goods shall pass to the Buyer when being loaded at the Seller's plant, even if delivery has been agreed upon. If shipment is impossible for reasons for which the seller is not at fault, the risk shall pass to the Buyer upon being notified of the readiness for shipment of the goods or upon availability of the goods at the Seller's premises. Should the Seller be entitled to claim damages from the transport contractor, these shall be assigned to the Buyer. Unless otherwise expressly agreed upon in

writing, the transport expenses shall be borne by the Buyer.

## **6. RETENTION OF TITLE AND COLLECTION OF ACCOUNTS RECEIVABLE**

- a) The title to the goods will remain with the Seller.
- b) The risk in the goods will pass to the Buyer on delivery to the Buyer or its agents.
- c) The relationship between the Buyer and the Seller will be fiduciary.
- d) The Buyer will hold the goods as bailee for the Seller and will keep the goods in such a way that they are readily identifiable as goods of the Seller.
- e) The Buyer is at liberty to sell the goods in the ordinary course of the Buyer's business.
- f) The Buyer will not be an agent of the Seller in any sale of the goods by the Buyer.
- g) If the Buyer defaults in paying the whole or any part of moneys due to the Seller or being a company commences to be wound up or is placed in administration or a receiver is appointed or an encumbrancer takes possession of its undertaking or property or any part thereof or being an individual becomes insolvent or bankrupt or commits an act of bankruptcy it will be lawful for the Seller without previous notice to retake possession of the goods and for that purpose to enter upon any premises in occupation of the Buyer or any other place where the goods may be.
- h) In the event of defaults referred to in (g) hereof the Buyer shall on notice from the Seller thereafter keep the goods separate from other goods and the proceeds of any sale by the Buyer thereafter shall be held in a separate account in trust for the Seller and shall not be mingled with other money nor placed into any overdrawn account.
- i) if the Buyer misuses or puts the goods to improper use or if after delivery the Seller learns about an economic setback of the Buyer (suspension of payments, deferral of debt payments, insolvency, inadequate information), the Seller shall be entitled to immediately revoke the Buyer's right to resell the conditional goods pending payment in full and to demand security.
- j) Should the Buyer fail to pay within a period of grace of 14 days despite revocation of the right to resell and/or demand for security and payment, the Seller shall be entitled to rescind the contract. In such case the Buyer shall be obliged to hand over the conditional goods to the Seller without setting up a defense of whatsoever kind.

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## **7. PAYMENTS**

Invoices shall be made out on the day of delivery and/or availability of the goods. Unless otherwise agreed upon, payment is due in advance. A cash discount shall only be granted if the Buyer's account is in balance. Only the invoiced value of the goods without taking into account freight or any other additional expenses may be subject to a cash discount. Payments shall always be used to settle the oldest debts due plus interest on arrears and any other expenses accrued.

Checks shall not be accepted in lieu of performance, but only on account of performance. In case of delay in payment and after demand for payment, interest on arrears in the amount of 1.3% per month shall be payable. In case of delay in payment or in case the Seller learns about a deterioration of the Buyer's economic position, in particular deferral of debt payments or insolvency, the Seller shall be entitled to assert forthwith all debt claims not yet due arising out of these business relations. The Buyer shall not be entitled to withhold any payments if claim and counterclaim do not correspond to the same contractual relationship.

A setting-off of counterclaims by the Buyer shall be excluded unless these counterclaims are indisputable or legally enforceable.

If taken in payment, bills of exchange shall only be accepted against reimbursement of all and any banking, discount and collection charges. Unless otherwise agreed upon, bills of exchange with a maturity exceeding 3 months shall not be accepted.

## **8. WARRANTY**

If the Seller has not manufactured the goods delivered to the Buyer, but purchased the same from third parties, the Seller shall be obliged to assign to the Buyer any warranty claims he may have against such third parties. The Buyer shall accept such assignment in settlement of all claims it might have against B&M.

The Seller warrants that the products are free of any manufacturing or material defect. The warranty period for boards and accessories shall be 24 months. The warranty period for defects that can be discovered by the Buyer shall start as of the date of delivery. For any other defect the warranty period shall commence upon delivery of the goods to the end user.

The Buyer shall be obliged to inspect the goods immediately after their arrival at the point of destination. Delivery shall be deemed accepted if the Seller does not receive a written notice of defect within 6 working days, in case of hidden defects within 3 months, after arrival of the goods at the point of destination.

When reselling the goods, the Buyer engages to fill out the certificate of guarantee enclosed with the goods, and in particular to enter the date of sale. Furthermore

the Buyer engages to point out to the end user that the Seller's warranty shall apply only if the certificate of guarantee is filled out correctly and completely. Any claims for damages or rights of recourse arising out of a violation of this obligation shall be borne by the Buyer. The Buyer shall notify the Seller forthwith and in writing of any defects discovered, however at the latest **within 6 working days** after delivery or notification by the end user.

In case the operating and assembly instructions given by the Seller are not complied with, the products are changed or altered, parts thereof are replaced or materials are used which do not meet the original specifications, any warranty claims shall be forfeited. Warranty shall not cover any parts subject to normal wear and tear.

Should the notice of defect be legitimate, the Seller may demand at its option:

a) that the goods be returned freight prepaid to the Seller for repair, the costs of return shipment to the Buyer being borne by the Seller; or

b) that the Buyer keeps the goods ready for repair by a representative of the Seller.

If the defect cannot be remedied, the Buyer may, at its option, demand a reduction of the purchase price or rescind the contract. Non-conforming goods shall be returned to us, with the original delivery note or a copy thereof and the certificate of guarantee enclosed. Boards and/or sails without serial number shall be excluded from any warranty claims. The above provisions shall be the exclusive warranty given by the Seller for its products and exclude any further warranty claims of whatsoever kind.

## **9. LIABILITY**

The Seller shall only be liable for his own faults and the faults of his auxiliary staff, for any reason whatsoever, including but not limited to culpa in contrahendo, positive breach of contract, unlawful act, product liability etc., and only in case of intention or gross

negligence. Liability for property damage due to a defective product incurred by the Buyer as an entrepreneur shall be excluded. Claims for reimbursement by the Buyer asserted against the Seller owing to the defective condition of the goods shall be limited to intention and gross negligence. The Buyer shall be obliged to bind this limitation-of-liability clause over to its customers, in the Sellers favour and in the same wording; otherwise it shall be under an obligation to pay damages. The limitation of product liability shall apply to goods as well as packing materials.

## **10. RETURNS**

Goods will not be accepted for return, credit or exchange.

## **11. GOVERNING LAW – JURISDICTION - SEVERABILITY**

These terms and conditions and all legal relations between the Buyer and the Seller shall be governed by and construed in accordance with the laws of Australia; the application of the UN Convention on the International Sale of Goods shall be included. All disputes arising out of or in connection with these terms and conditions and all contracts made and entered into between the Buyer and the Seller shall be subject to the exclusive jurisdiction of the competent courts at the domicile of the Buyer; nevertheless, the Seller shall have the right to take proceedings in any other court of competent jurisdiction.

Should any provision of these terms and conditions or any other provision contained in any other agreement be or become invalid, this shall not affect the validity of any of the other provisions or agreements. The invalid provision shall be replaced by a provision serving the purpose of these terms and conditions as closely as possible.