

B&W WINDOWS (RESIDENTIAL) PTY LTD

ACN 164 323 380 | ABN 36 164 323 380 | Contractor Licence 262813C | 02 9540 2500 | www.bwwindows.com.au

TERMS OF TRADE | SUPPLY AND INSTALL | CONTRACT PRICE OVER \$20,000.00 INCLUDING GST

1. DEFINITIONS AND PARTIES

- 1.1 "B&W" means B&W Windows (Residential) Pty Ltd ACN 164 323 380, Contractor Licence 262813C.
- 1.2 "Client" means the person or persons named in the quotation. Where there is more than one, each is jointly and severally liable.
- 1.3 "Goods" means the windows, doors, glass, screens, hardware and materials supplied by B&W, and "Work" means their supply and installation as described in the quotation. "Contract Price" means the quoted price, as varied under clause 10.

2. CONTRACT DOCUMENTS

- 2.1 The contract consists of, in order of priority: the Home Building Contract signed by the parties; the production drawings signed by the Client; the quotation; and these Terms of Trade.
- 2.2 Measurements in the signed production drawings prevail over the quotation.

3. PRICE AND PAYMENT

- 3.1 The Client must pay the Contract Price as follows:
 - (a) 10% deposit on signing the Home Building Contract and provision of the Certificate of Insurance;
 - (b) 40% on completion of the check measure and signing of the production drawings, before the job is put into production;
 - (c) 47.5% on delivery, before the Goods are unloaded; and
 - (d) 2.5% on completion of installation.
- 3.2 Where the Work is carried out in stages, clause 3.1 applies to each stage, and each stage must be paid in full before B&W proceeds to the next.
- 3.3 Payment may be made by EFT, bank cheque, cash, or Visa, Mastercard or eftpos card, with no card surcharge. B&W does not accept American Express. EFT and cheque payments must be cleared funds before delivery or installation.
- 3.4 Where cover plates are required, the Client may retain an amount agreed in writing, not exceeding 50% of the cover plate cost, until the cover plates are fitted.

4. LATE PAYMENT

- 4.1 Any amount not paid by its due date bears interest at 18% per annum, calculated daily from the due date until paid.
- 4.2 B&W may charge an administration fee, as determined by B&W, for each overdue notice issued.
- 4.3 While any amount is overdue, B&W may suspend delivery, installation, production and any other work by written notice, and is not liable for any resulting delay.
- 4.4 The Client must pay all of B&W's costs of recovering any overdue amount, including collection agency commissions and legal costs on an indemnity basis. Overdue accounts may be referred to a debt collection agency.

5. OWNERSHIP AND RISK

- 5.1 Ownership of the Goods remains with B&W until the Contract Price and all other amounts owing to B&W are paid in full, whether or not the Goods have been delivered or installed.
- 5.2 If any payment is overdue, the Client irrevocably authorises B&W to enter the site to recover the Goods, and releases B&W from any claim for damage reasonably caused in doing so. The cost of recovery is added to the amount owing.
- 5.3 Risk in the Goods passes to the Client on delivery to site, except for damage caused by B&W or its installers while handling or installing the Goods. All risk passes to the Client on installation.
- 5.4 Keys, compliance certificates and warranty documents are released only on full payment.

6. CHECK MEASURE, DRAWINGS AND PRODUCTION

- 6.1 The quotation is subject to check measure and site inspection for access and safety.
- 6.2 The Client is responsible for checking the production drawings for sizes, configuration, opening direction, glass and colour, and for signing them. B&W is not responsible for any error in drawings signed by the Client.
- 6.3 The quotation assumes the openings and surrounding structure are sound, compliant, free of hazardous materials and suitable to receive the Goods. B&W does not inspect or assess the structure when quoting. If any condition of any kind needs rectification, including but not limited to rot, termite damage, structural defects, asbestos or other hazardous materials, whether found before or during the Work, B&W may suspend the Work until the Client has it tested, rectified or removed by a suitably licensed person at the Client's cost, unless that work is expressly included in the quotation. Any additional work by B&W is a variation, the cost of the suspension is charged under clause 16, and suspension under this clause is not a breach by B&W.

7. SITE AND INSTALLATION

- 7.1 The Client must give B&W clear and free access to the site at all times, with the openings prepared so that installation can proceed without delay, and with sensitive items removed or covered. B&W is not responsible for damage to items not removed or covered.
- 7.2 Level hobs and waterproofing membranes to sills are to be provided by the Client or the Client's builder. B&W does not flash openings.
- 7.3 Removing existing frames may disturb surrounding render, plaster, paint, tiles or finishes. B&W takes care but is not responsible for that damage unless caused by its negligence, and does not patch, render, plaster, paint or otherwise make good. Making good is the Client's responsibility.
- 7.4 B&W provides horizontal lifting only. Vertical lifting, scaffolding, craneage and specialised lifting are not included and, if required, are to be supplied by the Client. B&W leaves the site neat and tidy using drop sheets only. Vacuuming and cleaning are not included.
- 7.6 Unless stated in the quotation, the following are not included: keying of any kind; extra keys (keys are as supplied by the hardware manufacturer); shop drawings and rights to them; testing; and protection of windows and doors.
- 7.7 The Client must remove blinds, curtains, shutters and other window furnishings before installation. If B&W removes any of them, it does so at the Client's risk and as additional work charged under clause 16, and B&W is not responsible for their damage, refitting or working condition. In replacement work, new frames are made smaller than the existing frames to allow for installation clearances, so window furnishings fitted within the reveals or to the existing frames may not fit the new frames. Altering, refitting or replacing them is the Client's responsibility and cost.

8. DELIVERY AND STORAGE

- 8.1 The Contract Price includes the number of deliveries stated in the quotation. Each additional delivery, whether at the Client's request, in stages, or because the site or the Client's program is not ready, is charged under clause 16.

- 8.2 If the delivery payment is not received, or the Client does not accept delivery on the scheduled date, B&W may hold the Goods at the Client's risk and charge storage of 1% of the Contract Price per week or part week from the scheduled delivery date, together with redelivery charges under clause 16.

9. LEAD TIMES

- 9.1 Lead times are estimates only and are not guaranteed. The average lead time is 6 to 8 weeks from the later of signing of the production drawings and receipt of the 40% payment.
- 9.2 B&W is not liable for any loss, cost or damage caused by delay, and delay does not entitle the Client to cancel the contract or withhold any payment.
- 9.3 Jobs are not processed in stages unless agreed at acceptance. Staged jobs incur additional charges under clause 16 and may affect lead times, and any stage supplied more than 3 months after acceptance is charged at B&W's current prices.

10. VARIATIONS

- 10.1 Any variation must be in writing and signed by the Client and B&W, together with the agreed increase or reduction in the Contract Price.
- 10.2 Any change after signing of the production drawings is charged under clause 16 and may extend the lead time.

11. WARRANTY

- 11.1 The statutory warranties under the Home Building Act 1989 (NSW) apply to residential building work: 6 years for a major defect and 2 years otherwise.
- 11.2 Glass breakage, including spontaneous breakage of toughened glass, is not covered by B&W's warranty. All glass is taken to be free of cracks, chips and breakage at completion of installation unless the Client notifies B&W in writing within 7 days under clause 13.1.
- 11.3 Glass is fitted on setting blocks with edge and face clearance in accordance with AS 1288. That clearance is part of the design and is not a defect.
- 11.4 B&W is responsible for the waterproofing of its own windows and doors only, and is not responsible for water entry caused by flashing, waterproofing or structure provided by others.
- 11.5 B&W is not responsible for slight variations in powder coat colour, any variation in anodising, or rust or tea staining of stainless steel hardware in coastal areas.
- 11.6 B&W's warranty is void for any window or door that has been altered, repaired, adjusted, reglazed, removed or reinstalled by anyone other than B&W. B&W is not responsible for any work carried out by others or its effect on the Goods.

12. WARRANTY SERVICE AND PAYMENT

- 12.1 B&W will not attend, inspect or carry out any warranty, maintenance or service work while any amount owing to B&W is unpaid.
- 12.2 Any amount owing to B&W, including interest and recovery costs, is deducted from the value of any warranty claim before B&W carries out any work or pays anything.
- 12.3 If B&W attends a warranty request and the cause is found not to be a defect in B&W's work, the attendance is charged under clause 16.

13. DEFECTS

- 13.1 The Client must inspect the Work on installation and notify B&W in writing of any alleged defect, damage or non compliance within 7 days of installation.
- 13.2 The Client must notify B&W in writing as soon as it becomes aware of any later suspected defect, and must give B&W a reasonable opportunity to inspect before the item is removed, repaired or disturbed. B&W is not responsible for any loss that earlier notice would have avoided.

14. LIABILITY

- 14.1 To the extent permitted by law, B&W's liability is limited to repairing or replacing the Goods, and B&W is not liable for any indirect or consequential loss, including cleaning, removal of debris, or repair or repainting of surrounding finishes.
- 14.2 Nothing in these Terms of Trade excludes, restricts or modifies any right or remedy under the Home Building Act 1989 (NSW), the Australian Consumer Law or any other law that cannot lawfully be excluded, restricted or modified. Any clause that would otherwise have that effect applies only to the extent the law permits.

15. CANCELLATION

- 15.1 The deposit is non refundable and is forfeited if the Client cancels.
- 15.2 If the Client cancels after the check measure, the Client must also pay the value of the work done, the cost of materials ordered or committed, and B&W's loss of profit on the balance of the Contract Price, to the extent these exceed the deposit.
- 15.3 If the Client cancels after manufacture is complete, the Client must pay the Contract Price less the cost of installation not performed.

16. ADDITIONAL CHARGES

- 16.1 The Client agrees to pay B&W's additional charges, as determined by B&W, for:
 - (a) additional deliveries and redelivery;
 - (b) installation bookings cancelled or rescheduled by the Client, or a site not ready on arrival, including lost productivity, administration and the rescheduling of other work;
 - (c) changes after signing of the production drawings, including materials already cut or ordered;
 - (d) clearing the site or removing window furnishings to gain access;
 - (e) staged jobs;
 - (f) warranty attendance where the cause is not a defect in B&W's work; and
 - (g) any other cost B&W incurs because of the Client's delay, default or request.
- 16.2 Additional charges and storage are payable on invoice.

17. INSURANCE

- 17.1 B&W will take out insurance under the Home Building Compensation Fund for the Work and give the Client the certificate of insurance before requesting or receiving any payment.

18. GENERAL

- 18.1 These Terms of Trade form part of the Home Building Contract. The Client accepts them by signing the quotation, the Home Building Contract or these Terms of Trade, or by paying the deposit, whichever occurs first. They can only be amended with the written consent of B&W.
- 18.2 Notices may be given by email to the addresses in the quotation.
- 18.3 Before commencing proceedings, other than to recover an overdue amount, a party must give the other written notice of the dispute and 10 business days to resolve it.
- 18.4 These Terms of Trade are governed by the laws of New South Wales. If any clause is void or unenforceable, it is severed and the remaining clauses continue in force.

ACCEPTANCE The Client has read and accepts these Terms of Trade.

Client name

Signature

Date