



TERMS AND CONDITIONS OF SALE

All sales are made in accordance with and subject to the following terms and conditions:

- 1. PRICES.** All prices published by Boston Retail Products (BRP) or quoted by BRP's representatives may be changed at any time without notice. Unless otherwise stated, written quotations expire thirty (30) days from the date issued and are subject to, among other things, change or termination by notice during this period. All prices are subject to adjustment due to specifications, quantities, a change in market conditions such as metals/commodities pricing, producer price indices, or other raw material costs; shipment arrangements, or other terms and conditions which are not part of the original price quotation. Prices are exclusive of all excise, sales, use, VAT and other taxes imposed by any federal, state, municipal or other governmental authority, all of which taxes shall be paid by Purchaser. Purchaser is responsible for obtaining and providing to BRP any certificate of exemption or similar document required to exempt any sale from sales, use or similar tax liability. Custom orders may require a non-refundable advance deposit.
- 2. TERMS OF PAYMENT.** Terms of payment are net thirty (30) days from the date of the invoice. BRP reserves the right at any time to require full or partial payment in advance, to withhold shipments, or to revoke any credit previously extended, if in BRP's sole discretion, Purchaser's financial condition does not warrant proceeding on terms previously specified. Purchaser agrees to pay any collection cost and reasonable attorney's fees incurred to collect their unpaid balance. Finance charges may be assessed on past due balances.
- 3. DELIVERY.** Products for which delivery is delayed due to any cause within Purchaser's control may, in BRP's sole discretion, be placed in storage by BRP at Purchaser's risk and for its account. Purchaser shall be liable for all costs and expenses incurred by BRP in holding or storing products for Purchaser or at Purchaser's request. All sales are F.O.B. BRP shipping location and the time of delivery shall be the time when the product is ready for pickup at that location by Purchaser or by a carrier for delivery to Purchaser. Without in any way limiting the generality of Section 11, BRP shall not be liable for any product or business loss, cost, expense or damage, including any loss of sales or profits, resulting from any delay in delivery or failure to deliver which is due to any cause beyond its control, including, without limitation, acts of nature, unavailability of supplies or sources of energy, riots, conflicts, wars, fires, floods, epidemics, lockouts, strikes or slowdowns, delays in delivery by its suppliers, or acts or omissions of Purchaser. In the event of delay due to any such cause, time for delivery shall be extended for a period equal to the duration of the delay and Purchaser shall not be entitled to refuse delivery or otherwise be relieved of any obligations as a result of the delay. If, as a result of any such cause, any scheduled delivery is delayed for a period in excess of 30 days BRP may, at its option, by written notice to Purchaser, cancel that and all future deliveries without further liability or obligation of any kind.
- 4. SHIPMENT.** Unless specific instructions to the contrary are supplied by Purchaser and accepted by BRP, methods and routes of shipment will be selected by BRP, but BRP will not assume liability in connection with shipment nor constitute any carrier as its agent. All shipments shall be insured at Purchaser's expense and shall be made at Purchaser's risk. Purchaser shall be responsible for making claims with carriers, insurers, warehousemen and others for mis-delivery, non-delivery, loss, damage or delay. BRP will make commercially reasonable efforts to comply with the delivery date when confirmed with BRP as set forth in this paragraph 4, but under no circumstances will BRP be liable for any loss, cost, damage or expense incurred by non-compliance with such date.
- 5. FREIGHT TERMS.** Freight charges are the responsibility of Purchaser. All freight is shipped collect or prepaid and bill unless otherwise specified at the time of purchase. Pre-paid shipment may be subject to handling and service charges.
- 6. TITLE AND RISK OF LOSS.** Subject to BRP's right to stop delivery of products in transit, and subject to the terms of payment and delivery set forth in Sections 2 and 3 hereof, title to and risk of loss for products shall pass to Purchaser upon the earlier of delivery to Purchaser or to a carrier for shipment to Purchaser.
- 7. SECURITY INTEREST.** BRP reserves, and Purchaser grants to BRP, a security interest in all products sold and all proceeds received therefrom to secure the full payment and performance by Purchaser or its liabilities and obligations to BRP. Purchaser acknowledges that this document or copies of this document may be filed with the appropriate authorities as a financing statement and agrees to execute and deliver such other documents as BRP may request in order to perfect its security interest.
- 8. REQUESTED DELAYS AND CANCELLATIONS.** Orders for all products, which have been accepted by BRP, may only be delayed or canceled with prior written consent and upon terms that will fully indemnify BRP against loss. For standard product, all orders delayed more than thirty (30) days, or cancelled at anytime after 5 days an order is placed, are subject to a 30% restocking fee. Orders cancelled within fourteen (14) days of the scheduled ship date may be subject to a cancellation fee not to exceed the total value of the shipment. For custom product, all orders delayed more than thirty (30) days are subject to a 30% carrying cost fee; orders delayed more than sixty (60) days is subject to a 100% cancellation charge.
- 9. RETURNS.** All products returned must be approved in advanced by BRP for return and must be accompanied by a return authorization number (RMA). Return product must be insured and freight prepaid by Purchaser. BRP reserves the right to refuse a shipment without either prior approval or if the shipment does not include a RMA document issued by BRP. A re-stocking fee may be charged for all returns. Returned product must be in new and unused condition and additional charges may apply for damaged, missing product and re-packaging, at BRP discretion. No credit will be issued for product until it has been received and inspected accordingly. Credit will be issued within thirty (30) days of receipt. Custom orders cannot be returned for credit.
- 10. INSTALLATION.** BRP assumes no obligation to install any products sold or to place them in working order at purchaser's premises.
- 11. SPECIFICATIONS.** All products are subject to BRP's standard tolerances for specification. BRP reserves the right to make substitutions and modifications in the specifications of any products provided that such substitutions or modifications do not materially affect the performance of the products or the purpose for which they can be used.
- 12. WARRANTY STATEMENT.** BRP warrants that all new hardware products manufactured by BRP (except normal wear on casters, finishes, and wheels) will, for a period of twelve (12) months from the date of shipment, be free from defect in material and workmanship when properly installed to local codes and standards, with no field modifications, and when given normal, proper, and intended usage during the warranty period, conform substantially to any agreed upon specifications, and are fit for the particular purpose for which they were intended. OEM equipment and other equipment purchased and resold by BRP shall carry only the warranty given by the original manufacturer. For all hardware products, BRP agrees, during the applicable warranty period, to repair or replace, at its option, all defective products with the same or equivalent product within a reasonable and practical time period after date of return or Company acknowledgement, and without cost to buyer. Failure analysis by BRP shall be conclusive and binding on all parties affected thereby. THE FOREGOING WARRANTY EXTENDS TO THE PURCHASER ONLY AND SHALL NOT BE APPLICABLE TO ANY OTHER PERSON OR ENTITY INCLUDING, WITHOUT LIMITATION, CUSTOMERS OF THE PURCHASER.
BRP MAKES NO OTHER WARRANTY, WHETHER EXPRESS OR IMPLIED, WRITTEN OR ORAL, AND HEREBY DISCLAIMS ALL WARRANTIES INCLUDING, BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE. BRP'S LIABILITY ARISING OUT OF THE MANUFACTURE, SALE OR SUPPLYING OF ITS PRODUCTS OR THEIR USE OR DISPOSITION, WHETHER BASED UPON WARRANTY, CONTRACT, TORT, OR OTHERWISE, SHALL NOT EXCEED THE ACTUAL PURCHASE PRICE PAID BY THE PURCHASER FOR SUCH PRODUCTS. IN NO EVENT SHALL BRP PRODUCTS BE LIABLE TO PURCHASER OR ANY OTHER PERSON OR ENTITY FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, LOSS OF DATA OR LOSS OF USE DAMAGES) ARISING OUT OF THE MANUFACTURE, SALE OR SUPPLYING OF THE PRODUCTS.
- 13. INTELLECTUAL PROPERTY.** BRP assumes no obligation or liability of any kind with respect to infringements or alleged infringements of United States or foreign patents, copyrights, trademarks or other intellectual property or proprietary rights arising out of Purchaser's purchase, use, possessions, sale or delivery of any products sold hereunder. Purchaser shall indemnify and hold BRP harmless from any and all claims, liabilities, damages or expenses resulting from infringements or alleged infringements of United States or foreign patents, copyrights, trademarks or other proprietary rights arising from compliance by BRP with any designs or specifications provided by Purchaser. No sale of any product shall be construed as granting to Purchaser any license or other right in or to any patent, copyright, trademark or other proprietary right applicable to the product.
- 14. ASSIGNMENT.** Purchaser shall not delegate any duties nor assign any rights or claims under these Terms and Conditions of Sale without BRP's prior written consent and any such attempted delegation or assignment shall be null and void.
- 15. COMPLIANCE WITH LAWS.** Purchaser shall carry out the transactions contemplated by this sale and shall otherwise deal with the products sold in conformity with all applicable laws, rules, and regulations of all governmental authorities, including, without limitations, the Export Administration Act, and shall obtain all permits and licenses required in connection with the purchase, installation, sale, shipment or use of any of the products.
- 16. GOVERNING LAW.** These Terms and Conditions of Sale shall be governed by and interpreted, construed and enforced in accordance with the laws of The Commonwealth of Massachusetts, USA.
- 17. ADDITIONAL OR INCONSISTENT TERMS.** Terms and conditions set forth in any document provided by Purchaser which differ from, conflict with or are not included in the terms and conditions set forth in this document shall not become a part of any agreement between BRP Products and Purchaser unless such terms and conditions are specifically accepted by BRP in writing. To the extent that this document may constitute an acceptance, such acceptance is expressly conditioned on Purchaser's assent to any additional or inconsistent terms and conditions set forth in this document.