

Terms and Conditions Sale, Supply and Installation of BORA APAC PTY LTD, Australia



1. AGREEMENT

- 1.1 These Terms and Conditions of Sale (**Terms and Conditions**) apply to all quotations, offers and purchase orders made or accepted by BORA APAC PTY LTD (ABN 71 157 731 390) (**BORA APAC**) and to deliveries of BORA Professional, BORA Classic and BORA Pure / X Pure System products (**Products**) and services supplied by BORA APAC to persons named as customer on the applicable order form (**Customer**).
- 1.2 The agreement between BORA APAC and the Customer comprises the order form (**Order**), the order confirmation issued by BORA APAC (**Order Confirmation**), these Terms and Conditions and any other additional terms which the parties may have agreed in writing (**Agreement**).

2. PRICE

- 2.1 The price payable by the Customer to BORA APAC for the Product/s or services is the price specified in the Order (including Goods and Services Tax) and accepted in the Order Confirmation (Price).

3. PAYMENT

- 3.1 The Customer must make a minimum deposit of 25% of the total price at the point of sale. Full payment of the Price (**Payment**) is required within 90 days prior to delivery of the Product/s in accordance with clause 4.

4. DELIVERY

- 4.1 Subject to clause 4.2, BORA APAC will deliver the Product/s to the delivery location specified in the Order (**Delivery Location**).
- 4.2 BORA APAC has the right to charge a delivery fee (**Delivery Charge**) if delivery is requested by the Customer to a Delivery Location which is located outside a 50km radius from the GPO of Sydney. BORA APAC will advise the Customer of the applicable Delivery Charge (if any) at the time the Order is placed. Where delivery to a Delivery Location requested by a Customer is deemed unreasonable by BORA APAC, BORA APAC may instead notify the Customer at the time of placement of the Order of the location at which the Product/s are available for collection by the Customer or its agent.
- 4.3 Subject to clause 4.4 the delivery date will be the date mutually agreed by the Customer and BORA APAC (**Delivery Date**).
- 4.4 BORA APAC will use reasonable commercial endeavors to deliver the Product/s on the Delivery Date.
- 4.5 If the model of the Product/s is discontinued or superseded and therefore not available for delivery on the Delivery Date, BORA APAC will notify the Customer in writing prior to the Delivery Date if there is no equivalent model available and the Agreement is then terminated with immediate effect. Any amounts previously paid by the Customer to BORA APAC under for the Agreement will be refunded in full.
- 4.6 Subject to clauses 4.2 and 4.3, BORA APAC will deliver the Product/s at the time agreed by BORA APAC and the Customer for such delivery (**Nominated Delivery Time**). If the Customer is not present to accept delivery of the Product/s on the Nominated Delivery Date, the Customer will be liable to pay BORA APAC a further amount equal to the Delivery Charge under clause 4.2 as a result of BORA APAC having to re-deliver the Product/s at a new Nominated Delivery Date (**Re-delivery Charge**). This Re-delivery Charge is payable by the Customer to BORA APAC prior to BORA APAC re-delivering the Product/s at the new Nominated Delivery Date.
- 4.7 Subject to clause 6, if the Customer accepts delivery of the Product/s (or collects the Product/s in accordance with clause 4.2) and subsequently changes their mind about the Product/s the subject of the Order, BORA APAC may at its discretion and on request by the Customer, agree to: (a) accept return of the relevant Product/s from the Customer and provide replacement Product/s to the Customer (Replacement Product/s), or (b) accept return of the relevant Product/s from the Customer and provide a refund of the Payment less a cancellation fee of \$250.00 ("**Cancellation Fee**"). BORA APAC does not accept return of Product/s, if the Product/s are ducting or have a value under \$250.00. If BORA APAC agrees to provide a Replacement Product, the Customer must pay: (i) any difference between the Price of the Product/s being returned and the Price of the Replacement Product/s; and (ii) a re-stocking fee equivalent to 15% of the Price of the returned Products or \$100.00 whichever is the greater (**Re-Stocking Fee**). Unless otherwise specifically agreed in writing, cooktops and extractors must be returned within 30 days and ducting parts within 60 days of BORA APAC having agreed to accept the return of the relevant Products. The Customer acknowledges that the Cancellation Fee and Re-stocking Fee represent the costs incurred by BORA APAC in accepting and repackaging for re-sale the Product/s returned by the Customer. BORA APAC will not charge the Cancellation Fee or the Re-Stocking Fee if the Customer returns a Product in accordance with the Customer's rights under the Australian Consumer Law as set out in Schedule 2 of the Competition and Consumer Act (2010) (ACL).
- 4.8 If BORA APAC is unable to contact the Customer after making reasonable attempts to arrange delivery or collection of the Product/s, BORA APAC may give the Customer 30 days (**Notice Period**) written notice of termination of the Agreement. If the Customer fails to take delivery or collect the Product/s within this Notice Period, the Agreement is terminated on expiry of the Notice Period and BORA APAC has the right to charge the Customer the Re-Stocking Charge.
- 4.9 Delivery is conducted only to ground floor location (no stairs). In case of an apartment location, lift access is required.

5. PRODUCT ASSEMBLY

- 5.1 Subject to clause 5.2, on request by the Customer, BORA APAC may arrange for the assembly of the Products through its authorized installers (Authorized Installers). The costs for such installation will be directly quoted and charged to the Customer by the Authorized Installer.
- 5.2 Assembly which may be arranged by BORA APAC under clause 5.1 does not include any plumbing, electrical, carpentry or gas work and the Customers must (if required) make their own arrangements in this respect.
- 5.3 The Products must be installed in accordance with the installation instructions that accompany each Product (**Instructions**) to ensure safe and efficient use of the Products. A request by the Customer for inspection to rectify the installation of a Product by third parties may incur charges if the fault is attributed to the incorrect installation by a third person other than an Authorized Installer (**Rectification Charge**). The Authorized Installer will inform the Customer of the amount of the Rectification Charge (if any) once the cause of the fault has been determined.
- 5.4 BORA APAC is not liable for any loss or damage to Product/s which occurs through installation/service of the Product/s by parties other than BORA APAC or an Authorized Installer.
- 5.5 BORA Cooktop extractor fans can only be purchased in combination with BORA cooktops
- 5.6 The installation process does not include: structural or flooring work, plumbing or electrical works, reducer valves, removal or installation of panels and doors, modification of cabinetry and other interventions not directly connected with the installation of BORA appliances.

6. OWNERSHIP AND RISK

- 6.1 The risk or loss or damage to the Product/s passes to the Customer on delivery in accordance with clause 4.
- 6.2 Notwithstanding that risk passes to the Customer under clause 6.1, legal and beneficial title (**Ownership**) in the Products will remain with BORA APAC until the Price for the Products as well as any other amounts the Customer may owe BORA APAC have been paid in full.
- 6.3 BORA APAC is entitled at any time while any debt remains outstanding by the Customer to notify the Customer of its intention to take possession of the Products and for this purpose the Customer irrevocably authorizes and licenses BORA APAC and its servants and agents to enter on the land and buildings of the Customer with all necessary equipment to take possession of the Products. BORA APAC is not liable for damage or injury to any premises caused by BORA APAC exercising its rights under this clause.
- 6.4 Until such time as Ownership in the Products passes to BORA APAC to the Customer, the Customer: (a) grants a security interest in the Products and/or their proceeds, (b) will be in a fiduciary relationship with BORA APAC; (c) must store the Products in a manner which makes them readily identifiable as the property of BORA APAC; (d) holds the Products as bailee of BORA APAC; (e) must keep the Products insured against theft, damage and destruction.
- 6.5 The Customer acknowledges that as long as BORA APAC has a security interest in the Products and/or their proceeds for the purposes of the Personal Property Securities Act 2009 (Cth) ("PPSA"), BORA APAC may register its security interest in the Products and their proceeds on the personal property security register created under the PPSA and the Customer in accordance with section 157 (3) (b) of the PPSA waives the right to receive notice of such registration. The Customer also undertakes, at its own expense, to promptly do anything (such as supplying information) which BORA APAC requests and reasonably requires the Customer to do for the purposes of ensuring that the security interest is enforceable, perfected or otherwise effective
- 6.6 The Customer must give immediate notice to BORA APAC of: (a) the Customer becomes insolvent under administration as defined in Section 9 of the Corporations Act 2001;(b) any step is taken (including without limitation, any application made, proceedings commenced, or resolution passed or proposed in a notice of meeting) for the winding up or dissolution of the Customer or for the appointment of an administrator, receiver, receiver and manager or liquidator to the party or any of its assets; (c) the Customer resolves to enter into or enters into a scheme of arrangement or composition with, or assignment for the benefit of all or any class of its creditors or proposes a reorganization, moratorium or other administration involving any of them; (d) proceedings are commenced to make the Customer bankrupt or the Customer becomes bankrupt;(e) an event analogous to any of those set out in this clause occurs.
- 6.7 On receipt of notice from BORA APAC or on happening of any of the events set out in clause 6.6, the following applies: (a) BORA APAC may withhold delivering further Products and all invoices issued by BORA APAC to the Customer become due and payable immediately, and (b) the Customer must immediately deliver to BORA APAC all Products which are in the Ownership of BORA APAC.

7. WARRANTIES

- 7.1 In addition to any other rights and remedies which may be available to the Customer under the consumer guarantees contained in the ACL, BORA APAC provides a warranty as set out below.
- 7.2 If the Customer requires BORA APAC to remedy a failure of the Products which is not major (as defined in section 260 ACL), BORA APAC may comply with the requirement by choosing to: (a) provide a refund; (b) replace the Products; (c) repair the Products; or (d) cure any defect in title (if applicable).

8. PRIVACY

- 8.1 BORA APAC will collect and deal with the Customer's personal information (including name, address, telephone contact or personal and credit card details) for the purpose of selling, supplying and installing the Products only in accordance with the Privacy Act 1988 (Act).
- 8.2 The Customer acknowledges that the Customer's personal information is likely to be disclosed to recipients located in Australia such as sub-contractors and service providers and in Germany and Austria, being the location of the parent company of BORA APAC. The Customer expressly consents to BORA APAC disclosing the Customer's personal information to third parties located within and outside Australia whereby a) BORA APAC will not be accountable under the Act, b) the Customer will not be able to seek redress under the Act, c) the overseas recipient may not be subject to any privacy obligations or to any principles similar to the Australian Privacy Principles, d) the Customer may not be able to seek redress in the overseas jurisdiction; and e) the overseas recipient may be subject to a foreign law that could compel the disclosure of personal information to a third party, such as an overseas authority.

9. GOVERNING LAW

- 9.1 This Agreement is governed by and construed in accordance with the laws of the State of NSW, Australia and the Parties irrevocably submit to the exclusive jurisdiction of the courts of or in that State.

WARRANTY

Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure. The warranty period for new Products is 2 years and for second hand or demonstrator Products is 1 year from the date of purchase. What BORA APAC must do under the warranty: If a Product is found to be defective during the warranty period as a result of a fault in the material or manufacturing process of the Product, BORA APAC will replace the faulty Product with a new Product. The warranty does not cover damage to the glass ceramic cooktop or consumables such as filters. Contact details of BORA APAC for warranty claims: BORA APAC Pty Ltd, 100 Victoria Road, Drummoyne NSW 2047, Tel: +61 2 97 19 23 50, E-Mail: support@boraapac.com.au

What the Customer must do to claim under the warranty: To be entitled to claim under this warranty, the Customer must ensure that: the Product has not been altered in any way and has not been subjected to misuse or unauthorized repair; the Product has been properly installed, erected or connected; any instructions issued by BORA APAC have been complied with, including without limitation any operating and maintenance requirements relating to the Product, and the Customer has paid the total price for the Product by the due date.

In order to claim under the warranty, the Customer must contact BORA APAC in writing by email or post at the address set out above. When making the claim, Customer must provide BORA APAC with: details of the problem which the Customer experiences with the Product, and evidence that the Product was purchased less than 2 years before the date of the claim. Expenses: BORA APAC will be responsible for any expenses associated with any claim which meets the terms of this warranty. By accepting delivery the customer confirms that he has received and accepted these Terms and Conditions of BORA APAC Pty Ltd.