

TERMS AND CONDITIONS OF SALE

Terms and Conditions of Sale

This agreement set out the terms under which Bruder Australia Pty Ltd ABN 17 662 786 441 (Bruder Australia, 'we', 'our', or 'us') provides goods or services to you (being the individual, company or legal person purchasing such goods or services) (the Customer, 'you', or 'your').

If the Customer orders, accepts or pays for any goods or services after receiving or becoming aware of these terms, or otherwise indicates assent, then the Customer is taken to have accepted these terms.

1 ORDERS

1.1 General

(a) These terms will apply to all the Customer's dealings with Bruder Australia, including being incorporated in all agreements, quotations or orders under which Bruder Australia is to provide ready-made or custom goods (Goods) or services to the Customer (each an Order) together with any additional terms included in such Order (provided such additional terms are recorded in writing).

(b) The Customer may place an Order for Goods with Bruder Australia over the phone, in writing by email, in-person, or via our website for delivery by Bruder Australia or pickup by the Customer.

(c) Bruder Australia reserves the right to accept or reject any Order, or any part of an Order, placed by the Customer at its sole discretion.

(d) While Bruder Australia endeavours to display accurate stock levels and lead times on the website, these stock levels and lead times are estimates only and may be subject to change.

(e) It is the Customer's responsibility to ensure that the Customer's information included in the Order (including the Customer's name, contact number and email address) is correct and to notify Bruder Australia of any changes to such information.

1.2 Online Orders

This clause 1.2 applies to Orders placed via the website.

(a) To submit an Order and/or purchase Goods via our website, you may either place an order as a guest or sign-up, register and receive an account through the website (an Account).

(b) If you place an Order through the website (whether as a guest or through an Account), you may be required to provide certain personal information and details, including your email address, first and last name, billing, postal and physical addresses, mobile phone number, payment or bank account information, and any other information reasonably required to process your Order.

(c) If you choose to register for an Account, you may also be required to provide additional information, such as a preferred username and secure password, and to keep your Account details up to date.

(d) You warrant that any information you provide to us (whether as a guest or as an Account holder) will be accurate, honest, correct and up-to-date.

(e) Where you register for an Account, we may, in our absolute discretion, accept or reject your application for an Account, and may suspend or cancel your Account if you do not comply with these terms or for any other reason on notice to you.

(f) All Orders placed via our website are subject to availability. In the event that a product is out of stock, we will contact you to advise alternative options or an expected delivery date. Placing an Order does not guarantee immediate availability or dispatch of the goods.

2 GOODS

2.1 Product Information

(a) We make all reasonable efforts to ensure that product descriptions, specifications, images, pricing, weights, dimensions, capacities and other details displayed on our website, online store or promotional materials are accurate at the time they are published.

(b) Product colours, finishes and other visual representations may vary slightly from the actual Goods due to photography, digital display settings or manufacturing tolerances.

(c) All weights, dimensions, performance data and capacities are approximate and may vary in normal manufacturing tolerances.

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2.2 Use of Goods

- (a) The Goods are intended for their intended uses only as specified by the manufacturer.
- (b) Customers must use, install, operate and maintain the Goods in accordance with all instructions, safety guidelines and applicable laws.
- (c) Bruder Australia is not responsible for the performance or compatibility of third-party products or accessories used with the Goods unless explicitly stated.
- (d) Custom-built or modified Goods are made to the Customer's specifications. Bruder Australia does not guarantee that these Goods are suitable for any particular purpose beyond the specifications agreed.
- (e) Certain Goods may require professional installation or maintenance. Bruder Australia is not responsible for any damage, injury or loss resulting from improper installation, operation, or maintenance of the Goods.
- (f) Customers must follow all instructions, guidelines, and manuals provided with the Goods. Bruder Australia disclaims liability for any losses or damages resulting from failure to follow these instructions.
- (g) The Goods are intended for use under normal environmental and operational conditions. Bruder Australia is not responsible for damage caused by abnormal conditions, environmental factors, or use outside the intended application

2.3 Inspection and acceptance

- (a) The Customer must, within 7 days of delivery or collection of the Goods:
 - (i) inspect the Goods; and
 - (ii) notify Bruder Australia in writing of any alleged defect, damage, shortfall, or incorrect Goods.
- (b) To the maximum extent permitted by law, if the Customer fails to notify Bruder Australia within this period, the Goods will be deemed accepted and free from defect or damage, except for defects not reasonably discoverable on inspection or rights under the Australia Consumer Law.

2.4 No Warranty as to Suitability

- (a) Except for any warranties that cannot be excluded by law (including statutory guarantees under the Australian Consumer Law), all conditions, warranties or representations in relation to the suitability, quality, performance, fitness for purpose or merchantability of the Goods are expressly excluded.
- (b) You are responsible for determining whether the Goods are suitable for your particular requirements prior to purchase.

2.5 Disclaimer

- (a) (Exclusion of certain losses) To the maximum extent permitted by law, Bruder Australia is not liable for any losses relating to crop damage, harvest delays, livestock loss, production loss, or similar agricultural or production losses arising from the use, failure, or malfunction of the Goods, whether caused by defect, misuse, or otherwise.
- (b) (Operator Responsibility) The Customer is responsible for ensuring that:
 - (i) any person operating the Goods is properly trained and competent, and
 - (ii) the Goods are used in accordance with all instructions, manuals, and safety requirements provided by Bruder Australia.

3 PAYMENT

3.1 Deposit

Bruder Australia may require a deposit for certain Orders. To the maximum extent permitted by law, this deposit is non-refundable.

3.2 Payment Obligations

Unless otherwise agreed:

- (a) For online orders placed via our website, payment must be made upfront via credit card or other accepted method.
- (b) If Bruder Australia issues an invoice to the Customer, payment must be made by the time specified on such invoice.
- (c) In all other circumstances, the Customer must pay for all Goods and services on or prior to delivery.
- (d) The Customer must not set off any money alleged to be owing by Bruder Australia against money due by the Customer to Bruder Australia.

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3.3 GST

Unless otherwise indicated, amounts stated in Purchase Orders or in stores do not include GST. In relation to any GST payable for a taxable supply by Bruder Australia, the Customer must pay the GST subject to Bruder Australia providing a tax invoice.

3.4 Card Surcharges

Bruder Australia reserves the right to charge credit card surcharges in the event payments are made using a credit, debit or charge card (including Visa, MasterCard or American Express).

3.5 Online Payment Provider

Bruder Australia may use third-party payment providers (Payment Providers) to collect payments for Goods. Currently, we use WooCommerce as our Payment Provider – a copy of their terms are available [here](#). The processing of payments by the Payment Provider will be, in addition to these terms, subject to the terms, conditions and privacy policies of the Payment Provider and we are not liable for the security or performance of the Payment Provider. We reserve the right to correct, or to instruct our Payment Provider to correct, any errors or mistakes in collecting your payment.

3.6 Credit Terms

- (a) Bruder Australia may, at its sole discretion, allow a Customer to purchase Goods on credit. Any such credit arrangement, including the credit limit, must be agreed in writing between Bruder Australia and the Customer prior to the supply of Goods.
- (b) All amounts owing under a credit arrangement are due by the date specified in writing. If no date is specified, payment must be made within 14 days of invoice.
- (c) The Customer must pay all amounts by electronic funds transfer, credit card, or other method approved by Bruder Australia.
- (d) The Customer may not set off any amounts it alleges to be owing from Bruder Australia against amounts payable under this agreement without Bruder Australia's prior written consent.
- (e) The Customer must reimburse Bruder Australia for all costs and expenses (including debt collection fees, legal costs on a solicitor-client basis, and enforcement costs) incurred in recovering any overdue amounts.
- (f) Bruder Australia may apply any payment received from the Customer in any manner it determines, including to amounts overdue, current invoices, or interest, notwithstanding any prior application.
- (g) If the Customer is in breach of any credit term or any other term of this Agreement, Bruder Australia may withhold further supply of Goods until all amounts owing are paid and/or the breach is remedied
- (h) Bruder Australia may suspend or terminate a Customer's credit facility at any time without notice if the Customer breaches any term of this agreement or any credit obligation.
- (i) Bruder Australia may review the Customer's creditworthiness at any time and adjust or withdraw the credit facility, including reducing the credit limit, at its discretion.
- (j) All Goods supplied under any credit arrangement are subject to the Retention of Title (clause 5) and Security Interest (clause 7) clauses in this agreement.

3.7 Late Payment Interest

If payment is not made in accordance with this clause 3, Bruder Australia at its entire discretion may require the Customer to pay Bruder Australia interest on all outstanding monies from the due date until the date of payment at the rate of 15% per annum accruing daily, subject to change from time to time by written notice to the Customer at the absolute discretion of Bruder Australia. However, before applying this interest, Bruder Australia will provide the Customer with a written notice giving an additional 7 days to complete the payment. If payment is still not received by the end of this 7-day grace period, interest will accrue from the expiration of that period until the date the full payment is received by Bruder Australia. The obligation to pay interest survives termination of this agreement.

4 DELIVERY & PICKUP

4.1 Delivery

- (a) For Goods to be delivered, Bruder Australia may charge the Customer for delivery at any time (notwithstanding that it may not have previously done so).

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(b) Where prices are stated as inclusive of delivery, delivery is to the delivery point specifically accepted by Bruder Australia.

4.2 Pickup

In some circumstances, the Customer may arrange to collect the Goods from our premises or other location as advised by us. Pickup must be arranged in advance and is subject to confirmation by Bruder Australia.

4.3 Storage and late collection

(a) If the Customer fails to collect or accept delivery of the Goods within 14 days after notification that the Goods are ready, Bruder Australia may charge reasonable storage fees and insurance costs until the Goods are collected or delivered.

(b) If the delay continues beyond 30 days, Bruder Australia may treat the Order as cancelled and dispose of or resell the Goods. Amounts paid may be retained to cover reasonable costs incurred, including storage, insurance, and handling, with any remaining balance refunded to the Customer.

5 TITLE AND RISK

(a) Until the price of Goods is paid in full (including under any credit arrangement), title in those goods is retained by Bruder Australia.

(b) Risk in the Goods will pass on delivery or pickup to the Customer. Delivery may not be refused by the Customer.

(c) If the Customer does not pay for any Goods on the due date for payment, the Customer authorises Bruder Australia, its employees and agents to enter any premises occupied by the Customer or any other place where the Goods are located and use reasonable force to retake possession of the Goods without liability for trespass or damage.

(d) Bruder Australia may at its option keep or resell Goods retaken from the Customer.

(e) If the Customer sells the Goods or sells items into which the Goods are incorporated before payment in full to Bruder Australia, the Customer acknowledges that such sale is made by the Customer as bailee for and on behalf of Bruder Australia, to hold the proceeds of sale on trust for Bruder Australia, in an account in the name of Bruder Australia, and must pay that amount to Bruder Australia on demand.

6 RETURNS, defective goods and limited warranty

6.1 Limited warranty

(a) Bruder Australia offers a limited warranty against defects in materials and workmanship in the Goods. The exact warranty period for a particular product is as stated in its marketing, labelling, or documentation.

(b) If a defect covered by this warranty arises within the warranty period, Bruder Australia may, at its discretion:

- (i) repair the defective Goods or component;
- (ii) replace the defective Goods or component; or
- (iii) provide a refund for the defective Goods.

(c) This warranty does not cover normal wear and tear, misuse, improper installation or operation, unauthorised modification or repair, or damage caused by external factors including impact, environmental conditions or use outside the intended purpose of the Goods.

(d) To make a claim under this warranty, the Customer must notify Bruder Australia in writing as soon as reasonably practicable after becoming aware of the issue and provide reasonable details of the alleged defect, including proof of purchase and photographs or videos where reasonably requested. Bruder Australia may require the Goods to be returned for inspection before determining the validity of the claim.

(e) This warranty is provided in addition to any rights or remedies available to the Customer under the Australian Consumer Law.

6.2 Return of Goods

Bruder Australia will only accept returns of Goods if:

- (a) the Goods are defective and the Customer complies with the provisions of this clause 6; or
- (b) Bruder Australia agrees in writing to accept return the Goods.

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If the Customer fails to comply with the provisions of this clause 6 in respect of defective Goods, the Customer may, in its discretion, issue only a partial refund or no refund in respect of such defective Goods, provided that nothing in this clause 6 is intended to limit the operation of any manufacturers' warranties which the Customer may be entitled to or any rights of the Customer which cannot be excluded under applicable law.

6.3 Defective Goods

Where the Customer considers that any Goods provided by Bruder Australia are defective, the Customer must promptly inform Bruder Australia of that fact by either coming into a store of Bruder Australia, by phone or by email. If Bruder Australia agrees that the Goods are defective, Bruder Australia may issue a "Return Authorisation Number" for the defective Goods.

6.4 Refunds

In order to obtain a refund, the Customer must (unless otherwise directed by Bruder Australia):

- (a) affix the Return Authorisation Number issued by Bruder Australia to the defective Goods;
- (b) pack the relevant Goods in their original packaging including any accessories, manuals, documentation or registration shipped with the goods; and
- (c) return the Goods to Bruder Australia via courier or other shipping method as required by Bruder Australia.

6.5 Other Warranties

- (a) To the maximum extent permitted by applicable law, all express or implied representations and warranties not expressly stated in this agreement are excluded.
- (b) Nothing in this agreement is intended to limit the operation of the Australian Consumer Law contained in the Competition and Consumer Act 2010 (Cth) (ACL). Under the ACL, the Customer may be entitled to certain remedies (like a refund, replacement or repair) if there is a failure with the goods or services provided.

7 PERSONAL PROPERTY SECURITIES

(a) The Customer acknowledges and agrees that:

- (i) these terms create a security interest in favour of Bruder Australia in the Goods and all proceeds of the Goods for the purposes of the Personal Property Securities Act 2009 (Cth);
- (ii) the security interest is a continuing security interest and applies to all Goods supplied by Bruder Australia to the Customer from time to time;
- (iii) Bruder Australia may register any security interest it has in connection with these terms (including any security interest over the Goods arising out of the application of the PPSA to this Agreement) on the PPS Register;
- (iv) if requested by Bruder Australia, the Customer must immediately sign any documents, provide all necessary information and do anything else required by Bruder Australia to ensure that any security interest created is perfected and to enable Bruder Australia to gain first priority for its security interest;
- (v) Bruder Australia's security interest in the Goods extends to all proceeds, including any amounts received from the sale or disposal of the Goods; and
- (vi) these provisions apply regardless of whether the Customer purchases Goods on credit or by upfront payment.

(b) The Customer agrees to contract out of the application of the following provisions of the PPSA, and these provisions will not apply to this Agreement:

- (i) Section 115(7);
- (ii) Section 117;
- (iii) Section 118;
- (iv) Section 120;
- (v) Section 121(4);
- (vi) Section 130;
- (vii) Section 135; and
- (viii) Section 143.

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(c) Notwithstanding any exclusions in clause 7(b), the Customer acknowledges the application and importance of the following provisions of the PPSA, which shall remain unaffected and continue to apply to these terms:

(i) Section 123;

(ii) Sections 125, 126, 128, and 129; and

(iii) Section 142.

(d) In this clause:

(i) "PPSA" means the Personal Property Securities Act 2009 (Cth) and its regulations as amended and in force from time to time;

(ii) "PPS Register" means the Personal Property Securities Register established under the PPSA; and

(iii) a term used in this clause is taken to have the meaning defined under the PPSA.

8 LIABILITY

8.1 Liability

(a) To the maximum extent permitted by law and subject to clause 8.1(b), the total liability of each party in respect of loss or damage sustained by the other party in connection with this agreement is limited to the amount paid by the Customer to Bruder Australia under the most recent Order.

(b) Clause 8.1(a) does not apply to the Customer's liability in respect of loss or damage sustained by Bruder Australia arising from the Customer's negligent, wilful, fraudulent or criminal act or omission.

(c) To the maximum extent permitted by law, Bruder Australia is not liable for any loss, damage or expense arising from:

(i) misuse, unauthorised modification, or improper installation or operation of the Goods; or

(ii) use of the Goods outside their intended purpose or in contravention of the manufacturer's instructions, safety guidelines, or applicable law.

8.2 Consequential Loss

To the maximum extent permitted by law, neither party will be liable for any incidental, special or consequential loss or damages, or damages for loss of data, business or business opportunity, goodwill, anticipated savings, profits or revenue in connection with this agreement or any goods or services provided by Bruder Australia, except:

(a) in relation to a party's liability for fraud, personal injury, death or loss or damage to tangible property; or

(b) to the extent this liability cannot be excluded under the Competition and Consumer Act 2010 (Cth).

9 GENERAL

9.1 Governing Law and Jurisdiction

This agreement is governed by the law applying in South Australia, Australia. Each party irrevocably submits to the exclusive jurisdiction of the courts of South Australia, Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with this agreement. Each party irrevocably waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.

9.2 Amendments

This agreement may only be amended in accordance with a written agreement between the parties.

9.3 Waiver

No party to this agreement may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.

9.4 Severance

Any term of this agreement which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity and enforceability of the remainder of this agreement is not limited or otherwise affected.

9.5 Joint and Several Liability

An obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally.

9.6 Assignment

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this agreement without the prior written consent of the other party.

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9.7 Counterparts

This agreement may be executed in any number of counterparts. Each counterpart constitutes an original of this agreement and all together constitute one agreement.

9.8 Costs

Except as otherwise provided in this agreement, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this agreement.

9.9 Entire Agreement

This agreement embodies the entire agreement between the parties and supersedes any prior negotiation, conduct, arrangement, understanding or agreement, express or implied, in relation to the subject matter of this agreement.

9.10 Interpretation

- (a) (singular and plural) words in the singular includes the plural (and vice versa);
- (b) (gender) words indicating a gender includes the corresponding words of any other gender;
- (c) (defined terms) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) (person) a reference to "person" or "you" includes an individual, the estate of an individual, a corporation, an authority, an association, consortium or joint venture (whether incorporated or unincorporated), a partnership, a trust and any other entity;
- (e) (party) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (f) (this agreement) a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure is a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure to or of this agreement, and a reference to this agreement includes all schedules, exhibits, attachments and annexures to it;
- (g) (document) a reference to a document (including this agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (h) (headings) headings and words in bold type are for convenience only and do not affect interpretation;
- (i) (includes) the word "includes" and similar words in any form is not a word of limitation;
- (j) (adverse interpretation) no provision of this agreement will be interpreted adversely to a party because that party was responsible for the preparation of this agreement or that provision; and
- (k) (currency) a reference to \$, or "dollar", is to Australian currency, unless otherwise agreed in writing.

9.11 Force Majeure

- (a) Neither party will be liable for any failure or delay in performing its obligations under this agreement to the extent that such failure or delay is caused or contributed to by a Force Majeure Event.
- (b) A "Force Majeure Event" means any event or circumstance beyond a party's reasonable control, including but not limited to acts of God, natural disasters (such as floods, fires, earthquakes or storms), war, terrorism, civil unrest, strikes or industrial disputes, epidemics or pandemics, government actions or restrictions, failure of utilities or transport networks, supply chain disruptions, or failure of suppliers or subcontractors.
- (c) A party affected by a Force Majeure Event must:
 - (i) promptly notify the other party of the event and its expected duration; and
 - (ii) use reasonable endeavours to minimise the impact of the Force Majeure Event on the performance of its obligations.
- (d) If a Force Majeure Event continues for more than 30 days, either party may terminate the affected Order or this agreement (to the extent it relates to that Order) by written notice to the other party.
- (e) Nothing in this clause limits the Customer's obligation to pay for Goods already supplied.