

RESELLER TERMS AND CONDITIONS OF PURCHASE OF GOODS

Agreement

1. You acknowledge and agree that these terms apply to our supply of BenStop GP 20/40 Door Braces ("**Goods**") to you specified on the quote provided on the covering page of this Agreement.
2. Upon acceptance of this Agreement by you, we grant you the non-exclusive right to resell the Goods within Australia to third party businesses in accordance with the terms and conditions of this Agreement.
3. You acknowledge and agree that the quote on the covering page of this Agreement and the pricing it contains is only valid for fourteen (14) days from the date the quote was dated and may vary should the quote and this Agreement is accepted after the fourteen (14) days.
4. In the event that you have pre-ordered the Goods and stock of the Goods is not available within six (6) months from accepting this Agreement, upon your written request, we will provide you with a refund for the monies described in clause 15(a) of this Agreement.

Placement of Orders

5. You must order the Goods from us in writing.
6. You must specify the quantity of Goods that you require us to supply.
7. We reserve the right to decline any orders received within three days of receipt of order by way of written notice.
8. Any order not declined binds the us to this Agreement.

Delivery of Orders

9. We will to our best endeavours deliver your order to the location specified on the quote provided on the covering page this Agreement.
10. Where the Goods are available for delivery and not a pre order (as may be referenced in the quote), we agree to dispatch the Goods to you within fourteen (14) days of full payment of the quote provided on the covering page of this Agreement.
11. You acknowledge and agree that in the event you have pre-ordered the Goods, we will notify you when the Goods are ready for delivery and then request from you payment of the balance of any amounts not paid for the Goods. We agree to dispatch the Goods to you within fourteen (14) days of receiving full payment.
12. We will to our best endeavours deliver your order by a mutually agreed upon date.

Payment of the Fees

13. Price means the amount agreed between us as specified on the quote provided on the covering page this Agreement.
14. In the event the Goods are not a pre-order, you must pay the Price on the payment terms as follows:
 - a. 50% of the Price upon your acceptance of this Agreement; and
 - b. the remainder upon notification that the Good are available for delivery.
15. In the event the Goods are pre-ordered, you must pay the Price on the payment terms as follows:
 - a. 50% of the Price upon your acceptance of this Agreement; and
 - b. the remainder upon notification that the Goods are available.
16. If you must make a payment or do any other thing on or by a day that is not a business day you must make the payment or do the thing on or by the next business day. Your observation of agreed time frames is of primary importance.
17. Unless referenced in the quote provided on the covering page of this Agreement that we agree to payment of the Price in instalments, payment is a condition precedent to delivery of the Goods.

Risk and Title

18. Subject to clause 21, title in the Goods does not pass to you until we have received payment in full.
19. The title to the Goods upon delivery to you, your nominated agent or courier will be free of any encumbrances and all other adverse interests.
20. To protect our security interest in the Goods until payment we may choose to register this agreement under the *Personal Properties Securities Act 2009*. You agree to do all things necessary to facilitate such registration.
21. If we provide to you any materials or deliverables, then risk passes to you at the time we send or deliver to you the materials or deliverables.

Intellectual Property

22. You agree we retain ownership of all intellectual property rights in respect of the Goods including any copyright, patent, trade secrets or trade marks. You agree not to disclose any discovery, design, procedure, invention or improvement in procedure made known to you by us in relation to the Goods.
23. You confirm that at all times it is and was understood and agreed, we would own all rights in respect of the Goods arising under the *Copyright Act 1968*.

24. In consideration for payment of the fee to us, we grant you a non-exclusive, perpetual license to use the Goods for personal or business purposes as agreed.

Exclusive Agreement

25. Notwithstanding any other clause in this Agreement, you agree that you must not engage any other party to provide the Goods, unless agreed by us in writing.

Reseller Prices

26. When setting the price of the Goods for the purposes of selling the Goods to a third party, you agree to consider our recommended resale price, which will be provided separately and may be amended from time to time.
27. You acknowledge and agree that clause 26 does not impose an obligation on you to follow our recommended price and does not breach any provisions of the *Competition and Consumer Act 2010*.
28. You agree to not resell the Goods above AUD\$280 or higher than an amount provided by us in writing from time to time.

Packaging

29. You agree to not repackage, rebrand, or relabel the Goods unless directed by us or as otherwise agreed between the parties.
30. You agree to not tamper with, obscure, damage, remove or otherwise alter any label or of our intellectual property in respect of the Goods as they are applied to the Goods, or cause or authorise this alteration.
31. In the event a third party business whom you had resold the Goods to tamper with, obscure, damage, remove or otherwise alter any label or of our intellectual property in respect of the Goods as they are applied to the Goods, or cause or authorise this alteration, you agree to rectify this conduct immediately and to provide us with written notice with details of this alteration.

Recalls

32. You agree that we will be responsible for conducting any recall of the Goods and determining the strategy for any recall of the Goods.
33. In the event of a recall of the Goods, you agree to provide all reasonable assistance to us in carrying out such recall including, but not limited to, providing the us with all information regarding batch numbers, location of the remaining Goods under your possession and relevant inventory of the Goods, including the names of all your representatives holding any Goods and the names of any wholesalers or other customers to whom you have supplied the Goods to.
34. Provided that a recall of the Goods is not the result of your breach of this Agreement or of your negligence, we agree to be responsible for the documented out-of-pocket costs of all recalls of the Goods.
35. You agree that we have the sole and absolute discretion whether to recall any Goods.
36. The parties agree that upon the discovery that the Goods may need to be recalled, that party must give the other party immediate notice and, in any event, no more than 24 hours' notice, of such discovery.
37. You agree not to communicate with any the news media, consumers, government, or regulatory authorities in relation to any recall of the Goods without our prior written approval.

Claims

38. If you become aware of any circumstances that might lead to a claim against either you or us (including claims related to a defective Product or any loss, injury, or death resulting from the use of the Goods), or if a product liability claim is made by any customer, you must notify us in writing within 24 hours of becoming aware of those circumstances or receiving that claim. You also agree to furnish us with copies of correspondence regarding the claim and to assist us as reasonably required to comply with all statutory requirements and other obligations associated with the claim.
39. If any legal proceedings are commenced by any customer in relation to a claim (including any product liability claim), we have the right to assume the conduct, care, and control of those proceedings, using legal representation of its own choosing.
40. You agree that you must not admit any liability in relation to any claim or product liability claim except as directed or permitted by us.

Complaints

41. In the event of a customer complaint, regarding the Goods, you must:
 - a. immediately obtain full details of the complainant, the nature and reasons for the complaint;
 - b. promptly obtain the batch number for the Good.
42. You must notify us in writing within 24 hours of receipt of a complaint received by it concerning the Goods and provide us with copies of all correspondence with the customers including the details obtained under clause 41 of this Agreement.

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43. You agree that in the event of a customer complaint, to comply with our procedures and directions in relation to the management of the complaint.
44. You agree to not admit liability in relation to any customer complaint except as directed or permitted by us.

Limitation of Liability

45. We disclaim all and any warranties, not required by law, whether express or implied including but not limited to warranties as to merchantability and fitness for a particular purpose of the Goods.
46. Acceptance of the Goods must take place immediately following delivery and is established if you signify by words or conduct that the Goods are conforming or if you retain them in spite of their nonconformity.
47. You may reject them on good grounds after a reasonable opportunity to inspect them. The rejection must immediately be communicated to us with full particulars of the nonconformity. On acceptance if payment arrangements are in place then they must be honoured. If payment has been made, then it will either be refunded by us or credited towards payment of replacement Goods for the nonconforming Goods.
48. In the event you suffer any loss or damage howsoever arising as a result of the Goods not being fit for purpose, then you agree that our liability is limited to the replacement of the Goods and is not to include economic or consequential damages of any nature.
49. You represent and warrant to us that all information and representations that you, or any person acting on your behalf has given in connection with our transactions are correct and that you have not failed to disclose to us anything relevant to our decision to have dealings with you and that no court proceedings or dispute is current that may have an adverse effect on performing your obligations under this Agreement.
50. By accepting payment of any sum after its due date we do not waive our right either to require payments as they fall due or to suspend or end our arrangements.

Termination

51. Subject to clause 52, this Agreement will terminate upon the delivery of the Goods.
52. You agree that this clause 52 and the clauses, within the following clause headings, survive the termination of this Agreement and remain enforceable:
 - a. Intellectual Property;
 - b. Reseller Prices;
 - c. Packaging;
 - d. Recalls;
 - e. Claims;
 - f. Complaints;
 - g. Limitation of Liability;
 - h. Default; and
 - i. General.
53. Notwithstanding any other clause in this Agreement, we may terminate this Agreement at any time by providing you with 30 days written notice.
54. You agree that we may terminate your licence to resell the Goods to a third party, provided under clause 2 of this Agreement, at any time. Upon the termination of your licence to resell the Goods, at our written request you must return any Goods that have not been sold and we will provide you with a refund for any undamaged Goods returned.

Default

55. You will be in default if you do not pay us when monies are due for payment or fail to comply with any other obligation under our business arrangements.
56. If you are in default under our Agreement, we may send you a default notice. The notice will tell you what the default is and what you are required to do to correct the default. You will have 5 business days to rectify the default.
57. If you do not comply with the default notice, then we may terminate the agreement with immediate effect, and you become immediately liable to pay us all monies owing with interest on that amount from the due date until payment at the rate of 10%.
58. You agree to pay on default all costs and expenses incurred in exercising our rights of recovery from you if any and indemnify us against any losses resulting from the default.

Special Conditions

59. In the event a special condition is agreed upon in writing between the parties, both parties agree that the written special condition takes precedence over any contrary provision in this Agreement.

General

60. This Agreement is not intended to create an agency, partnership, or joint venture relationship between the parties. As such, you agree that you are an independent purchaser and seller of the Goods and our agent, employee, partner, or joint employer. You agree that no provisions in this Agreement provide you or your representatives with the authority to represent us or enter in any contracts or assume any liabilities on our behalf.
61. Notices must be in writing and be sent by Express or Registered Post with delivery confirmation to the address on the quote provided on the covering page of this Agreement or by facsimile transmission or email with receipt confirmation.
62. The law of Western Australia governs this Agreement. We submit to the exclusive jurisdiction of the courts of Western Australia and the Federal Court of Australia.