

# abrc | terms & conditions of sale

**Price:** All prices shown are suggested retail prices and are subject to change without notice. Taxes are extra. These prices are guaranteed for 30 days from the date of quotation and are firm and final after acceptance of the order.

**Terms:** Initial orders COD, net 30 days thereafter upon approved credit; 2% monthly interest (24% yearly) on past due invoices. All applicable taxes are extra. No orders will be shipped if invoices are past due. Prices do not include installation.

**Orders:** All orders are subject to acceptance by BRC. Any written order is considered final. Order confirmations are binding, and the information received is the customer's responsibility to verify and correct within 24 hours. Any subsequent change is subject to approval by BRC. BRC reserves the right to apply a handling charge of 25% for any change. Any order placed by phone will require a written confirmation within 24 hours, or will not be processed.

**Cancellation:** a) Once BRC has either accepted a Purchaser's Purchase Order or begun activities to satisfy a Purchaser's Purchase Order, such Purchase Order cannot be cancelled, terminated or changed or modified by Purchaser in whole or in part except with BRC's consent in writing and then only upon terms and conditions to be agreed upon between Purchaser and BRC. b) All change requests must be received in writing by BRC either by email or fax. c) BRC reserves the right to apply a minimum handling fee for changes or cancellations of \$150.00 or 25% of the order value whichever is greater. d) In addition to c), BRC reserves the right to charge the customer for that portion of the order which has been completed or changed to the date of cancellation, including a handling charge for disposal. e) Upon the cancellation of any order, the Purchaser will forfeit all amounts or deposits paid to BRC prior to the cancellation of such order as liquidated damages and not as a penalty, to compensate BRC for its costs relating to the order and its cancellation, including the cost of all labor, materials, overhead, charges and expenses.

**Allowance:** BRC makes no price allowance or discount for changes to reduction in door quantity or lineal footage of walls after receipt of signed drawings.

**Union Conditions:** All installation rates are quoted as for non-union sites unless clearly communicated in writing to BRC at the time of quoting by BRC.

**Hold To Measurements:** All work performed by other contractors to a wall job site after time of wall system order and the receipt of signed drawings by BRC must be done under "hold to" conditions. BRC is not liable for any discrepancies or varying wall or floor measurements from those specified at the time of order.

**Floor Levelling:** BRC will be responsible for the following variations from level or grade in slab soffits, ceilings, and beam soffits, measured before removal of supporting shores: 1/4" in any 10'-0" of length; 3/8" in any 20'-0" of length; and 3/4" maximum for entire length of structure. All other variations will be at the responsibility and cost of the customer.

**Ceiling Blocking:** Ceiling blocking is specifically required in the ceiling or plenum above all sliding doors installations and any areas where a wood or steel T-bar or drywall substructure is unavailable to rigidly attach the BRC wall top channel and sliding door channel. It is the responsibility of the customer and/or his contractors to ensure that this blocking is capable of retaining a minimum of 450lbs holding weight and 100lbs lateral force. A rigid blocking structure of fire retardant solid wood, steel or aluminum which has been tied back to the building ceiling structure is recommended. It is recommended that you identify the blocking areas on the drawings provided to you and if possible note any challenges that the General Contractor or the Customer may have when they have to install them. It is further recommended, if possible, that you discuss the blocking requirement with the General Contractor or Customer. Finally, BRC does not recommend or advise simple "wire to the ceiling" types of blocking or support.

**Product Staging Area:** The Customer must provide a product staging area for all wall installations within the same floor of the installation. This area must be clearly identified in writing to BRC prior to commencement of installation. Additional charges will apply if a staging area is not provided.

**Building Access:** Clear and uncluttered access must be provided for all elevators, loading docks, doors, aisles, job site areas, staging areas etc. Additional charges will apply if clear access is not provided and maintained as clear.

**Loading Dock:** All sites must have truck level loading docks unless otherwise agreed upon in writing at the time of the installation or product quotation.

**Service Elevator:** All sites must have regular hour, clear access, working service elevators for floor access. This service area must be of adequate size to load glass sheets exceeding 4' x 9'6" and aluminum extrusions exceeding 14'. Any and all charges associated with floor lifting or non-elevator access will be at the expense of the Customer.

**Critical Path Variations:** Any variations from the critical path timeline provided by BRC at the time of order will result in additional costs applied to the Customer.

**Weekend and Overtime Work:** Extra charges will apply for all weekend or overtime work unless clearly agreed to in writing at the time of installation quoting.

**Progressive Billing and Retainage:** BRC reserves the right to conduct progressive completion billing. For each progressive completion, inspection, punch list and subsequent remediation will be conducted upon which BRC will invoice for retainage amounts prorate to the progressive completion.

**Shipping/Claims:** a) All freight prices quoted are based on dock to dock shipment F.O.B. Georgetown Ontario, Canada. Any pre-paid freight is based on established minimum order amounts. Where order minimums are not met, drop charges will apply. Any special delivery arrangements including, but not limited to site delivery, specific delivery time or date, use of tailgate, blanket wrap, inside delivery will require additional costs to be paid by the customer. b) Merchandise is carefully packed and thoroughly inspected before leaving the BRC warehouse. BRC will choose the carrier, unless otherwise indicated on customer's order. Shipments will be handed over to the carrier in good condition and BRC liability ceases at this point. The carrier, upon acceptance of the shipment, assumes responsibility for its safe delivery. Claims for loss or damage sustained in transit must therefore be made upon the carrier as follows. c) Claims for damages or shortages must adhere to the following processes: i) All damages or shortages must be claimed from the carrier within 48 hours of receipt, ii) All damages or shortages must be noted directly on the original delivery slip, iii) Photos of shipping damage must be forwarded to the carrier and BRC to properly process the claim, iv) All packaging materials must be retained until a freight inspection has been made and authorized by the carrier. Caution: Failure to note damages or shortages on the delivery slip or to retain packaging will make claims impossible. d) Concealed loss or damage: i) Concealed loss or damage means loss or damage that does not become apparent until the merchandise has been unpacked. The carton contents may be damaged in transit due to rough handling even though the carton may not show external damage. The receiver of the merchandise must file for concealed damage with the carrier within 48 hours of receipt. ii) Photos of concealed damage must accompany the claim to the carrier, and must also be forwarded to BRC customer service to coordinate repair or replacement of goods. Failure to do so will make claims impossible. e) Visible loss or damage: Any external evidence of loss or damage must be noted on the freight bill or delivery receipt and signed by the carrier's agent. Failure to adequately describe such external evidence of loss or damage may result in the carrier refusing to honor a damage claim. The form required to file such claim will be supplied by the carrier. f) If the order is shipped directly to your customer, any claims should be handled through you using the procedure described in d), e) and f) above g). No allowance is given for orders picked up at the factory. h) Customer carrier: When the client chooses a carrier, all charges remain the responsibility of the client. BRC assumes no responsibility for insurance, standby, loss, damage, waiting, unloading, packing, haulage, or any other charges whatsoever associated with this carrier. i) Backorders: Freight for all backorders will be the responsibility of the customer and will be billed at the time of the backorder shipment. j) Customers may be subject to any and all extra freight costs including but not limited to freight charges for missed pickups or deliveries, extended wait times or unloading times,

unauthorized use of freight or handling equipment, etc., k) BRC will not accept any claim for damages associated with cross-docked shipments by any carrier or customer.

BRC specifically declines any liability for loss of time, inconvenience, commercial loss or incidental or consequential damage for any reason including but not limited to ship dates, delivery or timing of shipments.

**Shipping/Title:** Unless otherwise mutually agreed upon in writing, shipping dates or times are approximate and are based upon prompt receipt of all necessary information and payments to BRC. BRC shall use commercially reasonable efforts to ship Products within the time quoted for shipment. BRC reserves the right to ship items in single or multiple shipments. Unless otherwise agreed, BRC, shall, in its sole discretion, determine the best way to ship, route and common carrier to be utilized. BRC is responsible for obtaining all insurance the Purchaser deems necessary or desirable in connection with the Product from the time shipment. Unless otherwise agreed, shipments will be packed in accordance with BRC's commercial standards. Delayed or delinquent delivery will not constitute grounds for chargeback, set off, or other damages or claims of damages against BRC. The Product shall become the property of Purchaser upon receipt of the payment in full of the Purchase Price, except for any Confidential Information delivered to the Purchaser under license, which shall remain the property of BRC or its licensor's, as applicable. Purchaser assumes all risk and liability for loss, damage or destruction including the results of any use or misuse by third parties who may acquire or use the Product illicitly after BRC's delivery of the Product to the Purchaser's carrier or to the Purchaser's customer. Any loss occasioned by damage in transit will be for Purchaser's account and claims for such loss shall be made solely against the carrier. Except as otherwise agreed in writing by BRC, BRC retains a continuing security interest and, as applicable, purchase money security interest (as defined in the Personal Property Security Act (Ontario) or such other similar interest as defined in other applicable legislation) in all Products until the related invoice is paid in full and BRC is in receipt of the funds. Purchaser shall promptly execute and deliver to BRC any and all instruments and other documentation necessary to effect the attachment, perfection and enforcement of this security interest.

Prior to full payment of each invoice, Purchaser shall not, without BRC's prior written consent, (a) sell, lease or otherwise transfer the related Product, (b) permit any mortgage, lien, security interest or other encumbrance to attach to the Product (other than BRC's security interest) or (c) remove the Product from the original installation site. Purchaser irrevocably appoints, in case the Purchaser neglects or refuses or is unable to execute or deliver any document required to be executed or delivered in connection with the security interest, each officer, from time to time, of BRC as its lawful attorney-in-fact, with full power of substitution, in the name of, at the expense of, the Purchaser, to execute and deliver all such documents, deeds, transfers, assignments and assurances required to be provided by the Purchaser in connection with the security interest hereby granted, and such execution and delivery shall be valid and effectual for all purposes as though it had been executed and delivered by the Purchaser. This appointment, being coupled with an interest, is irrevocable by the Purchaser and shall not be revoked by the insolvency, bankruptcy, dissolution, liquidation or other termination of the existence of the Purchaser and the Purchaser agrees to ratify and confirm all that such attorney may do or cause to be done pursuant to the foregoing.

**Installation, Verification and Inspection:** If BRC performs any installation Services for any Product, BRC will perform those Services in a workmanlike manner and substantially in accordance with BRC's specifications therefore in effect on the date of completion. If BRC performs installation Services as part of the Product, then, upon completion of the installation, BRC shall perform its standard verification tests for the Product. Purchaser may witness these verification tests. When BRC has completed all of its verification tests for any Product to the satisfaction of BRC and Purchaser, then BRC shall deliver to Purchaser a delivery and verification certificate. Upon receipt of this certificate, (a) the Product shall be deemed to have been accepted by Purchaser, and (b) any failure by BRC to perform the related installation Services in accordance with this Agreement shall be deemed to have been waived. If Purchaser undertakes any commercially beneficial use of any Product prior to the completion of BRC's verification tests, then (a) the Product shall be deemed to have been accepted by Purchaser, and (b) the failure by BRC to perform the related installation Services in accordance with this Agreement shall be deemed to have been waived.

**Fitness for Use:** Purchaser is solely responsible for determining whether the Product is fit for its intended purpose and if it is suitable for Purchaser's method of application. Accordingly, BRC is not responsible for the results or consequences of use, misuse or application of its Product by any person or entity.

NOTWITHSTANDING ANY PROVISION OF THESE TERM OR CONDITIONS OR THE BRC PUBLISHED WARRANTY TO THE CONTRARY, THE PROVISIONS OF THIS SECTION AND THE BRC PUBLISHED WARRANTY CONSTITUTE THE PURCHASER'S SOLE REMEDY UNDER THIS AGREEMENT WITH RESPECT TO ANY DEFECTIVE PRODUCT. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS SECTION, BRC MAKES NO REPRESENTATION, WARRANTY, OR CONDITION OF ANY KIND BY STATUTE, USAGE, CUSTOM OF THE TRADE OR OTHERWISE WITH RESPECT TO ANY PRODUCT, AND BRC DISCLAIMS ANY AND ALL IMPLIED WARRANTIES RELATING THERETO, INCLUDING, BUT NOT LIMITED TO ANY AND ALL IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR ANY INTENDED OR PARTICULAR PURPOSE.

BRC SHALL NOT BE LIABLE, AND PURCHASER WAIVES ALL CLAIMS AGAINST BRC, FOR INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, LOST PROFITS OR COMMERCIAL LOSSES, WHETHER OR NOT BASED UPON BRC'S NEGLIGENCE OR BREACH OF WARRANTY OR STRICT LIABILITY IN TORT OR ANY OTHER CAUSE OF ACTION, EVEN IF BRC MAY HAVE BEEN ADVISED OF THE POSSIBILITY THEREOF. BRC WILL NOT BE LIABLE TO PURCHASER FOR ANY LOSS, DAMAGE, OR INJURY TO PERSONS OR PROPERTY RESULTING FROM THE HANDLING, STORAGE, TRANSPORTATION, RESALE, OR USE OF ITS PRODUCTS WHATSOEVER. IN NO EVENT WILL BRC'S LIABILITY UNDER OR IN CONNECTION WITH THE SALE OF PRODUCT BY BRC EXCEED THE LESSER OF THE PURCHASE PRICE OR THE UNDEPRECIATED VALUE OF THE SPECIFIC PRODUCT AS TO WHICH THE CLAIM IS MADE.

The rights and obligations of the Purchaser under this section shall survive the expiration of the term or termination of the Warranty for the duration of the applicable warranty period.

**Purchaser's Information:** Subject to applicable law, unless otherwise expressly agreed to by BRC in writing, any information disclosed by Purchaser to BRC will not be considered to be confidential or proprietary information and BRC may use it free from any restrictions. Purchaser acknowledges that BRC will use and rely on the information furnished to it.

**Confidential Information:** Confidential Information (as defined below) made available by BRC to Purchaser in connection with the Products and this Agreement shall be held in confidence by Purchaser. Purchaser shall not provide any other person with access to or make use of such Confidential Information for the benefit of any person other than BRC without BRC's prior written consent. Notwithstanding the foregoing, the Purchaser may disclose Confidential Information to its directors, officers, employees and contractors to the extent that they have a bona fide need to know such information for purposes relating to the use, maintenance or operation of the Products, or in connection with business in the ordinary course, provided such persons or entities to whom disclosure is made are made aware of the confidential obligations, agree to bound by the confidentiality obligations and the Purchaser shall be liable for any breach of the confidentiality obligations of such persons. Confidential Information means and includes all non-public information regarding BRC or its related or affiliated entities such as technical data, product design and development, sales information, quantity and kind of products sold, prices and methods of pricing, marketing techniques and plans, product returns, unannounced products, product and process information and information of a scientific, business, financial or technical nature, and any other information that, if disclosed to others, might be competitively detrimental to the BRC or that by its nature should be considered confidential and proprietary information of BRC. Confidential Information shall not include information which is part of the public domain as of the date hereof, becomes part of the public domain through no act of Purchaser or its directors, officers, employees or contactors or person or entity to whom the Purchaser discloses such information and which can be shown to have been lawfully in Purchaser's possession prior to its receipt from BRC or is released from the provisions of this Agreement by BRC in writing.

**BRC Goodwill:** Purchaser recognizes and acknowledges the great value of the goodwill associated with the name and trade-marks of BRC, and the identification of the Products therewith. Purchaser shall not obscure, effect or permit the removal or alteration of any trademarks, patent numbers, labels, serial numbers or the like affixed to any Product or related materials or packaging. Purchaser shall not, nor shall Purchaser take any action that could reasonably dilute or depreciate the value of the goodwill attached to BRC's trade-marks, use such trade-marks in any manner which may adversely affect the reputation of BRC, or use or permit the use of such trade-marks as part of the business, trade, corporate, partnership or other name of Purchaser or as a trade-mark identifying Purchaser's products or services. All right, title, and interest in and to the designs, models, patterns, specifications, copyrights, patents, trade secrets, trade-marks, know-how,

technical knowledge and other intellectual and industrial property (whether registered or unregistered) and in all documentation and related materials of BRC shall remain vested in BRC or its third party suppliers. Purchaser shall not copy, make extracts from, translate or otherwise modify any of the Products, documentation or related materials provided by BRC. The rights and obligations of Purchaser under this section shall survive the expiration or termination of this Agreement.

**Infringement and Indemnification:** Purchaser agrees to indemnify and undertakes to hold BRC harmless from and against all direct, punitive, indirect, incidental, special exemplary or aggravated damages (including without limitation, BRC's reasonable attorneys and other professional fees and costs of litigation), directly or indirectly, arising out or resulting from any suits, proceedings, claims, demands, investigations or actions of any nature or kind whatsoever (including those for personal injury or death) asserted by other persons or entities against BRC as a result of: (a) the actions or inaction of Purchaser; (b) the negligence, misconduct or violation of any applicable law by Purchaser; (c) the use, misuse or application of the Product by anyone including the use of the Product in a manner and for purposes for which the Product was not intended; (d) any actual or alleged infringement or misappropriation of any intellectual property right, domestic or foreign, that may arise from the making, using or selling of any part or product or the use of any process by Purchaser; and (e) inaccuracies in information disclosed to BRC from Purchaser. BRC agrees to indemnify and hold harmless the Purchaser from and against all direct, punitive, indirect, incidental, special exemplary or aggravated damages (including without limitation, Purchaser's reasonable attorneys and other professional fees and costs of litigation), directly or indirectly, arising out or resulting from any suits, proceedings, claims, demands, investigations or actions of any nature or kind whatsoever (including those for personal injury or death) asserted by other persons against BRC as a result of any infringement or misappropriation of any intellectual property right, domestic or foreign, arising from Purchaser's use of the Product as determined by a court of competent jurisdiction in a final non-appealable decision. BRC's indemnity shall not apply if the Product was developed by a person or entity other than BRC, it is modified in any way by Purchaser or any other party or it is used in a manner other than that intended by BRC. If a claim against BRC results in any injunction or any other order that would prevent BRC from supplying Product or if the result of such a claim would, in the reasonable opinion of BRC, otherwise cause BRC to be unable to supply such Product, BRC shall have the right, at its option, if it so chooses, to: (a) secure an appropriate license to permit BRC to continue supplying such Product to Purchaser; (b) modify the such Product so that it becomes non-infringing, provided that any modification does not cause any material change to the operation or performance of Product; and/or (c) replace the Product with a non-infringing but practically equivalent product.

If any claim is made by a party on the basis of which indemnification may be sought under this section, the party entitled to indemnification shall give notice of such claim to the party liable for such indemnification promptly after the indemnified party has received notice of such claim. The indemnifying party shall have the right to defend and/or settle such claim at its expense, provided that it does so diligently and in good faith. The indemnified party shall cooperate with such defense and/or settlement and shall have the right to participate in (but not to control) such defense and/or settlement at its expense. No settlement shall be entered into unless the indemnified party shall be released from all liability for such claims.

NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, THE PROVISIONS OF THIS ARTICLE CONSTITUTE PURCHASER'S SOLE REMEDY UNDER THIS AGREEMENT WITH RESPECT TO ANY CLAIM OF INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADE SECRET, OR OTHER INTELLECTUAL PROPERTY RIGHT OF ANY THIRD PARTY. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS ARTICLE, BRC MAKES NO REPRESENTATION, WARRANTY OR CONDITION OF ANY KIND WITH RESPECT TO ANY SUCH CLAIM, AND BRC DISCLAIMS ANY AND ALL IMPLIED WARRANTIES RELATING THERETO, INCLUDING BUT NOT LIMITED TO NON-INFRINGEMENT OF ANY RIGHTS OF THIRD PARTIES

**Collection, Use and Disclosure of Information:** BRC may collect information during the course of its relationship with Purchaser from credit bureau, other financial institutions and references Purchaser provides to BRC. BRC may also disclose information to credit bureau and financial institutions. (The term "Information" means financial and financially related information about Purchaser. BRC may use Information to identify Purchaser, protect Purchaser from fraud and error, understand Purchaser's needs and eligibility for products and services and provide ongoing service and to comply with legal and regulatory requirements. BRC may also collect, use and disclose Information for any purpose required or permitted by law.

**Storage:** BRC reserves the right to assess storage charges on all items not accepted by the customer 5 days after the scheduled shipping date. The minimum charge is \$10.00 per skid per day. Note: The invoice for merchandise is dated and issued when the merchandise is ready for shipment.

**Return of Goods:** a) All BRC products are made to order. As such, Catalogued, Non-Catalogued and Customized Items are non - returnable. b) No merchandise may be returned without the written consent of BRC, the issuance of a return authorization number and specific instructions by BRC for shipment. If this procedure is not followed, the merchandise will not be accepted by the factory and will be returned to sender collect without notice. c) Claims for factory defects must be made within ten days of receipt of goods. Merchandise must be returned to the BRC factory within 15 days after receipt of the return authorization from BRC. These conditions will be strictly adhered to. d) Returns of items authorized by BRC are subject to a re-stocking charge of 25%, plus any repair costs deemed necessary. Items must be returned freight prepaid.

**Product Specifications:** BRC reserves the right to modify product specifications, materials, design or accessories without notice. BRC also reserves the right to halt production of any product at any time. The products, accessories, materials and finishes as described in the price list will prevail over the content of brochures or folders. BRC assumes no responsibility for lot changes in paint, material color or finishes. Customers are encouraged to verify specifications with current publications and price lists available on the company website at: [www.brc.group](http://www.brc.group)

**Weight/Volumes:** The weights and volumes shown on the price lists include packaging, are approximate, and are listed per item unskidded. Volumes will vary with skidded shipments. BRC specifically declines any responsibility for weight estimates and liability implications to freight, floor loading, or any matter relating to the weight of the product.

**Customer's Specifications:** Products or projects designed with the customers specifications will require a sign-off of all drawings and specifications and will remain the responsibility of the customer for warranty, compliance or serviceability. BRC specifically declines any warranty or liability for products which use or incorporate the Customer's specifications, Customers specified materials or components.

**Force Majeure:** Except with regard to any provision relating to payment under this Agreement, no party shall be responsible to any other party for non-performance or delay in performance occasioned by any causes beyond its reasonable control including, without limitation, fire, flood, power blackouts and disruptions, accident, riot, sabotage, terrorism, war, acts or omissions of any other party, acts of civil or military authority, strikes, lockouts or other labor disputes, embargoes, insurrections, civil commotion, acts of precedence or priorities granted at the request or for the benefit, directly or indirectly, of any federal, provincial or local government or any subdivision or agency thereof, delays in transportation or lack of transportation facilities, restrictions imposed by federal, provincial or local laws, rules or regulations, or Acts of God. If any such delay occurs, any applicable time period shall be automatically extended for a period reasonably necessary to enable the parties to perform. BRC may, during any period of shortage due to any of the above circumstances, allocate its available supply of Product among itself and its customers in such manner as BRC, in its judgment, deems fair and equitable.

**Limitation of Actions:** Notwithstanding any contrary statute of limitations, any cause of action for any alleged breach of these terms and conditions by STM shall be barred unless commenced by Purchaser within one (1) year from the accrual of such cause or action.