

# TERMS AND CONDITIONS OF SALE IN AUSTRALIA

F01.03.02

**Hurll Nu-Way Pty Ltd (ACN 000 014 639)**

## Definitions

Company is Hurll Nu-Way Pty Ltd

Purchaser is the organisation buying from Hurll Nu-Way Pty Ltd

## 1. QUOTATION

- 1.1. The acceptance of the Quotation by the Purchaser or acceptance of the Purchaser's order includes the acceptance by both parties of these terms and conditions.
- 1.2. Any variations to these terms and conditions must be expressly agreed by the parties in writing.
- 1.3. Acceptance by the Company of a Purchase order occurs by dispatch of the Company's standard packing slip at which time it is deemed that acceptance of the order has been communicated to the Purchaser.
- 1.4. The Quotation is open for acceptance by the Purchaser, in writing for the time stated on the quotation. If no time is stated then the validity is 30 days. If an acceptance is not received within this time, then the quotation shall thereupon lapse. The Quotation is subject to withdrawal or variation by the Company at any time prior to acceptance.
- 1.5. In respect of the supply of goods, the supply includes only the written and agreed specified services of the Company, and otherwise excludes all services, including, but not limited to, the installation or startup of the goods.

## 2. PRICING AND DELIVERY

- 2.1. The prices and product specifications contained in the Company's price list are subject to change at the absolute discretion of the Company and without notice to the Purchaser.
- 2.2. Prices are in Australian dollars unless stated otherwise.
- 2.3. Prices are exclusive of taxes, duties and which if chargeable are payable by the Purchaser as are any increase in the costs not due to delay by the Company.
- 2.4. Any change order requested by the Purchaser shall give the Company the right to extend the delivery period and shall always allow the Supplier to adjust the price. Any change order must be in writing and signed by both parties.
- 2.5. The Purchaser agrees that the delivery docket signed, whether by any employee of the Purchaser or any other person signing for or on behalf of the Purchaser, shall be conclusive evidence of delivery.
- 2.6. The Company will not deliver FIS (free into store) to the Purchaser, unless expressly agreed by the parties in writing. Therefore, the Company will charge the Purchaser a freight charge. This charge will be calculated with reference to the required mode of freight, along with the required destination.
- 2.7. All orders are subject to Credit Approval and the due completion of the Company's Application for Commercial Credit Account

## 3. ORDERS

- 3.1. An order for Goods constitutes an offer to purchase the Goods by the Purchaser subject to these Terms and Conditions.
- 3.2. Orders accepted by the Company may not be cancelled or altered in whole or in part without the Company's written consent.
- 3.3. The Company may from time to time and at its absolute discretion vary the Terms and Conditions.
- 3.4. The Company may at its absolute discretion decline any order either in whole or in part.
- 3.5. The Company reserves the right to specify the minimum order value that will be accepted from time to time. The Company may at the Company's absolute discretion, supply orders below the specified minimum order value and charge a handling fee, as determined by The Company, on all such orders.

- 3.6. The Company reserves the right to charge a \$15.00 handling fee on orders of less than the value of \$100 (excl. GST).
- 3.7. In placing any order the Purchaser expressly represents that the Purchaser:
  - 3.7.1. Is solvent; and
  - 3.7.2. Has not committed an act of bankruptcy; and
  - 3.7.3. Knows of no circumstances which would entitle any creditor or secured creditor to appoint a receiver or which would entitle any creditor or shareholder to apply to the Court to liquidate the Company or exercise any other rights over or against the Purchasers' assets.

## 4. TERMS OF PAYMENT

- 4.1. Where a Purchaser has been granted a credit account, all invoices are due and payable in full on the net 30 days from the Invoice date, unless otherwise stated by the invoice..
- 4.2. Should the Purchaser fail to pay the Company's invoices by the due date then the Purchaser shall pay all of the Company's costs and expenses (including legal costs determined as between solicitor/own client and mercantile agents fees) which may be incurred in the recovery or attempted recovery of the overdue amounts from the Purchaser.
- 4.3. The Company may set off any amount owed by the Company to the Purchaser from any amount due by the Purchaser to the Company.

## 5. GOODS AND SERVICES TAX ('GST')

- 5.1. All prices will be quoted exclusive of GST. Invoices will be issued in the prescribed form as set out by Section 195-1 of the 'A New Tax System (Goods and Services Tax) Act 1999 (Cth)' and the related imposition Acts of the Commonwealth (The GST Law)'.
- 5.2. Any discounts or other terms agreed between the Purchaser and the Company will be calculated on and applied to the Purchase Price exclusive of GST.
- 5.3. Payment for GST
  - 5.3.1. If GST is imposed on any supply made by the Company pursuant to these Terms and Conditions, the Purchaser must pay to the Company, in addition to any consideration payable, an additional amount for supply calculated by multiplying the prevailing GST rate by the consideration for the relevant supply payable, or provided, (without any deduction or set-off) by the Purchaser under any other clause in these Terms and Conditions. Any amount payable is payable upon demand by the Company whether such demand is by means of any invoice or otherwise.
  - 5.3.2. If any part of the Purchase Price is referable to both a Taxable Supply and anything that is not a Taxable Supply, the GST exclusion portion of the purchase price shall be determined by the Company.
  - 5.3.3. Where the Company determines on reasonable grounds that an adjustment is required to the purchase price, it will promptly issue any 'Adjustment Notes' that are prescribed by the GST law.

## 6. WARRANTY AND DEFECTS LIABILITY PERIOD

- 6.1. This clause is to be read together with any benefits that the Company may provide under statute.
- 6.2. The Goods are guaranteed against defects in material or workmanship subject to fair and proper usage.
- 6.3. All goods (excluding spare parts and consumables) of the Company which, if operated within normal use and service, within a period of twelve (12) months (or any exceptions as specified) from invoice and upon examination by any authorised representative of the Company, are found to be defective in workmanship or material and to be unsuitable for normal service will be repaired free of charge but excluding costs of removal and reinstatement and transport to the Company's service centre. If the daily use of the goods exceeds what is agreed or stipulated by the Company the warranty period shall be reduced proportionately.
- 6.4. Normal usage does not include exposure of products to abnormal stresses or incorrect uses or applications, voltage, frequency, improper load, over speed, misalignment subsequent servicing on site by other parties or damage from improper fitting of ancillary equipment or exposure of the equipment, unprotected to the weather & elements.
- 6.5. The Company's liability for spare parts is limited to defects, which appear within twelve (12) months from delivery. If the daily use of the spare parts exceeds what is agreed or stipulated by the Company, the warranty period shall be reduced proportionately.
- 6.6. In the case of goods not manufactured by the Company, the Purchaser shall be entitled to only such rights as the Company may have under product guarantee received from the manufacturer but in any event liability of the Company shall be no

more than that in Clause 9.1.

- 6.7. If the Purchaser fails to notify the Company in writing within seven (7) days of any defect occurring, the Purchaser shall be deemed to have waived the warranty referred to in Clause 6.3
- 6.8. This warranty shall be void if the Purchaser shall use spare and wear parts that are not supplied by or approved by the Company
- 6.9. Without limiting the above clauses:
  - 6.9.1. The Company's liability under s74 of the Competition and Consumer Act 2010 (CCA) is expressly limited to a liability to pay or credit to the purchaser an amount equal to:
    - 6.9.1.1. the cost of replacing the Goods;
    - 6.9.1.2. the cost of obtaining equivalent Goods; or
    - 6.9.1.3. the cost of having the Goods repaired, whichever is the lowest amount.
  - 6.9.2. Subject to clause 6.9.1, the Company shall not in any circumstances be liable to the Purchaser under or in connection with these Terms and Conditions, or in negligence or any other tort or otherwise howsoever, as a result of any act or omission in the course of or in connection with the performance of these Terms and Conditions, for or in respect of any excluded loss.
  - 6.9.3. Unless otherwise specified, this warranty does not cover:
    - 6.9.3.1. Modified, abused, neglected, accidentally damaged or excessively worn products, or products that have become damaged or defective as a result of improper use;
    - 6.9.3.2. Repairs attempted or made by the Purchaser or a third party;
    - 6.9.3.3. Conditions or malfunctions caused by the reasonable effects of fair wear and tear or the malfunction of normally wearing parts;
    - 6.9.3.4. Products that are not distributed by the Company through an authorised distributor or reseller.
- 6.10. Unless otherwise specified, the process for making a warranty claim on behalf of a Consumer is as follows:
  - 6.10.1. The Company must be informed as soon as the warranty claim arises to obtain a Return Goods Authorisation (pending warranty) and return the goods to the Company workshop;
  - 6.10.2. The original proof of purchase along with the written description of the fault must be provided;
  - 6.10.3. If the warranty claim is accepted, the Company will, at its cost, credit, repair or replace any faulty parts or rectify any faulty workmanship.

## 7. OTHER CLAIMS

- 7.1. Any claims by the Purchaser for short or wrongful delivery of the Goods must be notified to the Company in writing within seven days after delivery of the Goods to the Purchaser and any claim which the Purchaser does not notify within the time aforesaid (time being of the essence) shall be deemed to have been absolutely waived.
- 7.2. Any other claims for adjustment to any invoice for any reason whatsoever must be made in writing within the prescribed time periods provided by law.

## 8. RETURN OF GOODS

- 8.1. The Company will not accept returns for credit without prior authorization.
- 8.2. Any Goods which the Purchaser returns for credit, other than defective Goods and warranty claims will only be accepted if they are in the original packaging and in as new saleable order and condition.
- 8.3. If the Company authorises the return a Return of Goods Authorisation (RGA) will be raised and the RGA number must be quoted by the Purchaser on or with any claim documentation sent with the Goods, which must be sent freight pre-paid or otherwise, if approved by the Company, carried by the Company's nominated carrier.
- 8.4. The Company reserves the right, except for credits for defective Goods, to charge a restocking fee equal to 30% of the credit value and to deduct this fee from the credit amount.

## 9. IMPLIED TERMS

- 9.1. It is hereby acknowledged by the Purchaser that, under the Australian Consumer Law, certain conditions and warranties

may be implied in the contract between the Company and the Purchaser and rights and remedies conferred upon the Purchaser and other parties in relation to Goods or services which cannot be excluded, restricted or modified by agreement (“Non-excludable Rights”). The limitations below are subject to these Non-excludable Rights.

- 9.2. Subject to clause 8.1, the Company disclaims all conditions and warranties expressed or implied, and rights and remedies conferred on the Purchaser or other parties, by statute the common law, equity, trade, custom or usage or otherwise howsoever and all such conditions and warranties and such rights and remedies are hereby expressly excluded other than any Non-excludable Rights.
- 9.3. Where so permitted the liability of the Company for a breach of a Non-excludable Right is limited, at the Company’s option, in the case of Goods, to the replacement or repair of the Goods or the supply of equivalent Goods or the cost of replacing or repairing the Goods or of acquiring equivalent Goods and, in the case of services, to the supplying of the services again or the payment of the cost of having the services supplied again.
- 9.4. Accordingly, subject to Clause 9.1, in no event shall the Company be liable (whether before or after discharge of the contract or otherwise) for any loss or damage to the Purchaser howsoever arising including any loss or damage arising from or caused or contributed to by negligence of the Company, its servants or agents, nor shall the Company be liable for special, incidental, indirect or consequential loss or damage suffered by the Purchaser as a result of a breach by the Company of its obligations or otherwise including but not limited to economic or moral loss, loss of profits or revenue or costs arising from such breach.

## 10. INDEMNITY

- 10.1. Subject to Clause 9, the Purchaser shall indemnify and keep indemnified and hold the Company harmless from and against all liabilities, losses, damages, costs or expenses incurred or suffered by the Company, and from and against all actions, proceedings, claims or demands made against the Company, arising from one or more of the following:
  - 10.1.1. As a result of the Purchaser’s failure to comply with any laws, rules, standards or regulations applicable in relation to the Goods or the use of the Goods;
  - 10.1.2. As a result of any other negligence or other breach of duty by the Purchaser; or
  - 10.1.3. As a result of any compliance or adherence by the Company with any instructions of the Purchaser in relation to the Goods or their manner of fabrication.

## 11. RIGHTS IN RELATION TO THE GOODS

- 11.1. In connection with the Goods while they remain the property of the Company, the Purchaser agrees with the Company that:
  - 11.1.1. The Purchaser has no right or claim to any interest in the Goods to secure any liquidated or un-liquidated debt or obligation the Company owes to the Purchaser;
  - 11.1.2. The Purchaser cannot claim any lien over the Goods;
  - 11.1.3. The Purchaser will not create any absolute or defeasible interest in the Goods in relation to any third party except as may be authorised by the Company;
  - 11.1.4. Where the Purchaser is in actual or constructive possession of the Goods:
    - 11.1.4.1. The Purchaser will not deliver them or any document of title to the Goods to any person except as directed by the Company; and
    - 11.1.4.2. It is in possession of the Goods as a bailee of those Goods and owes the Company the duties and liabilities of a bailee.
- 11.2. In connection with the Goods, the Company states to the Purchaser that:
  - 11.2.1. The Company has the right to supply the Goods to the Purchaser;
  - 11.2.2. The activities of the Purchaser in supplying the Goods do not infringe the rights of the owner of the Goods (where the Company is not the owner of the Goods); and
  - 11.2.3. If the Goods are not owned by the Company, that the Company is authorised to supply the Goods to the Purchaser.
- 11.3. The Company and the Purchaser agree that:
  - 11.3.1. All risk of loss in respect of the Goods transfers to the Purchaser upon completion of the Company’s delivery obligations;
  - 11.3.2. The property of the Company in the Goods remains with the Company until the Company has been paid in full for the Goods under all individual contracts for the supply of the Goods between the Company and the Purchaser;

11.3.3. The Purchaser is a bailee of the Goods until such time as property in them passes to the Purchaser and that this bailment continues in relation to each of the Goods until the price of the Goods has been paid in full;

11.3.4. Pending payment in full for the Goods, the Purchaser:

11.3.4.1. Must not supply any of the Goods to any person outside of its ordinary or usual course of business;

11.3.4.2. Must not allow any person to have or acquire any security interest in the Goods;

11.3.4.3. Must insure the Goods for their full insurable or replacement value (whichever is the higher) with an insurer licensed or authorised to conduct the business of insurance in the place where the Purchaser carries on business and;

11.3.4.4. Must not remove, deface or obliterate any identifying plate, mark or number on any of the Goods.

## 12. WITHHOLDING SUPPLY

12.1. The Company reserves the right, irrespective of whether or not an order has been accepted and without notice to the Purchaser, to withhold supply to the Purchaser and the Company will not be liable for loss or damage resulting directly or indirectly from such action where:

12.1.1. The Company has insufficient Goods to fill the order;

12.1.2. The Goods ordered have been discontinued; or

12.1.3. The Company has determined in the Company's absolute discretion that credit should no longer be extended to the Purchaser.

## 13. MODIFICATIONS OF LABELS

13.1. The Purchaser may not, without the Company's written consent, alter, remove, or obliterate any labels which the Company attaches to the Goods.

## 14. PERFORMANCE AND REPRESENTATIONS

14.1. The Purchaser acknowledges that neither the Company nor any person purporting to act on its behalf has made any representation or given any promise or undertaking which is not expressly set out in writing whether as to the fitness of the Goods for any particular purpose or any other matter.

## 15. DEFAULT IN PAYMENT

15.1. The Company will treat any default by the Purchaser in payment of any monies due to the Company as a breach of these Terms and Conditions. The Company reserves the right thereupon to cease work on the relevant order and all other orders placed by the Purchaser and hold all the Purchaser's work until the due payment or payments on all moneys owed are made. Recurring payments default may, at the Company's discretion, lead to the Purchaser's account with the Company being closed and any further order placed by the Purchaser and accepted by the Company will only be processed when prepaid at the Company's absolute discretion.

## 16. WAIVER

16.1. Failure by the Company to insist upon strict performance of any term, warranty or condition of these Terms and Conditions shall not be deemed as a waiver thereof or of any rights the Company may have and no express waiver shall be deemed a waiver of any subsequent breach of any term warranty or condition.

## 17. PURCHASER'S ACKNOWLEDGMENT

17.1. The Purchaser acknowledges that the Goods are not of a kind ordinarily acquired for private use or consumption but are acquired for business purposes, except in the case of the portable patio heaters

## 18. INTELLECTUAL PROPERTY RIGHTS

18.1. The Purchaser warrants that any design or instruction furnished to the Company shall not be such as will cause the Company to infringe any intellectual property rights (including patents, registered designs, trademarks, copyright,

confidential information and the like) in the execution of the Purchaser's order and the Purchaser agrees to indemnify the Company against any infringement or unauthorised use of the intellectual property rights arising out of the manufacture or use of the Goods and it is especially agreed that the sale and purchase of Goods does not confer on the Purchaser any licence or rights under any intellectual property rights which is the property of the Company.

## 19. NOTICES

19.1. Any notice to be given by the Purchaser to the Company shall be sent to the Company's address. No notice shall be deemed to have been given until it is actually received at such address.

## 20. SEVERANCE

20.1. It is agreed that if any provision of these terms and conditions should be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision hereof and each such other provision shall remain in full force and effect.

## 21. GOVERNING LAW

21.1. These Terms and Conditions shall be governed by and construed in accordance with the laws of Victoria. The Purchaser and the Company agree to submit to the non-exclusive jurisdiction of Victoria and the Federal Court of Australia.

## 22. ENTIRE AGREEMENT

22.1. These Terms and Conditions contain all the terms of the agreement between the parties and supersede all prior discussions and arrangements. In the event that there is any conflict between the provisions of these Terms and Conditions and the provisions of a Purchase Order or any record of any other agreement that the Company may have with the Purchaser, then the provisions of these Terms and Conditions shall prevail. The only exception being a signed Trading Terms agreement (if applicable) that will prevail in relation to specific clauses relating to Pricing, Minimum Order Values and Delivery Terms.

## 23. CLERICAL ERRORS

23.1. The Company reserves the right to correct clerical errors without notification.

## 24. PERSONAL PROPERTIES SECURITIES ACT 2009

24.1. The Purchaser hereby acknowledges that these Terms and Conditions constitute a security agreement which creates a security interest in favour of the Company in all Goods previously supplied by the Company to the Purchaser (if any) and all after acquired Goods supplied by the Company to the Purchaser (or for the Purchaser's account) to secure the payment from time to time and at a time, including future advances. The Purchaser agrees to grant a "Purchase Money Security Interest" to the Company.

24.2. The Purchaser acknowledges and agrees that by assenting to these terms the Purchaser grants a security interest (by virtue of the retention of title clause in these Terms and Conditions) to the Company and all Goods previously supplied by the Company to the Purchaser (or for the Purchaser's account) and these terms shall apply notwithstanding anything express or implied to the contrary contained in the Purchaser's purchase order.

24.3. The Purchaser undertakes to:

24.3.1. sign any further documents and/or provide any further information (which information the Purchaser warrants to be complete, accurate and up-to-date in all respects) which the Company may reasonably require to enable registration of a financing statement or financing change statement on the Personal Property Securities Register ("PPSR");

24.3.2. not register a financing change statement as defined in section 10 of the PPSA or make a demand to alter the financing statement pursuant to section 178 of the PPSA in respect of the Goods without the prior written consent of the Company;

24.3.3. give the Company not less than 14 days' written notice of any proposed change in the Purchaser's name and/or any other changes in the Purchaser's details (including by not limited to changes in the Purchaser's address, facsimile number, email address, trading name or business practice);

24.3.4. pay all costs incurred by the Company in registering and maintaining a financing statement (including registering a financing change statement) on the PPSR and/or enforcing or attempting to enforce the security interest created by

these Terms and Conditions including executing subordination agreements;

24.3.5. be responsible for the full costs incurred by the Company (including actual legal fees and disbursements on a solicitor and client basis) in obtaining an order pursuant to section 182 of the PPSA; and

24.3.6. the Purchaser waives any rights it may have under sections 115 of the PPSA upon enforcement.

24.4. Pursuant to section 157 of the PPSA, unless otherwise agreed to in writing by the Company, the Purchaser waives the right to receive the verification statement in respect of any financing statement or financing change statement relating to the security interest.

24.5. The Purchaser agrees that immediately on request by the Company the Purchaser will procure from any persons considered by the Company to be relevant to its security position such agreement and waivers as the Company may at any time require.

24.6. The Purchaser gives the Company a Security Interest in all of the Purchaser's present and after-acquired property in which Goods or materials supplied or financed by the Company have been attached or incorporated.

## 25. SECURITY INTEREST

25.1. The Purchaser gives the Company a Security Interest in all of the Purchaser's present and after-acquired property in which Goods or materials supplied or financed by the Company have been attached or incorporated.