



**BURRELL MARKETING GROUP AUSTRALIA PTY LTD ABN 46 624 763 524 TERMS AND CONDITIONS OF SALE
(Terms and Conditions)**

These Terms and Conditions, together with any quotation, or invoice to which these terms are attached or in which these Terms and Conditions are referred, together make up a legally binding agreement (**Agreement**) between Burrell Marketing Group Australia Pty Ltd, ABN 46 624 763 524 AND the person(s) or company named as the Customer in the quotation, order or invoice (**Customer**). All other terms and conditions are excluded to the fullest extent permitted by law, including specifically and without limitation, any terms and conditions sought to be imposed by the Customer, whether put forward in the Customer's order, the Customer's specification or otherwise by the Customer.

1. Definitions

1.1 When we refer to the following terms in this Agreement:

- (a) "We/Us/Our" means Burrell Marketing Group Australia Pty Ltd ABN 46 624 763 524.
- (b) "You/Your" refers to the person, firm, organisation, partnership, corporation, trust or other entity purchasing Products from Us, named as Customer in the quotation or invoice, the reference to "You" includes any employees, agents and Contractors of You.
- (c) "Products" refers to goods and/or services purchased by You from Us.

2. Acceptance

2.1 These Terms and Conditions are accepted by doing any of the following:

- (a) Signing these Terms and Conditions; or
- (b) Signing the quotation issued by Us in which the Terms and Conditions were attached or referred to; or
- (c) Placing an order with Us or accepting a quotation; or
- (d) Acceptance of the Products by You including by signing of a manifest, delivery docket, invoice or packaging slip for the Products received by or on Your behalf.

2.2 By accepting this Agreement You have consented to the provision of these Terms and Conditions by means of electronic communication via Our website www.bmgaustralia.com.au. We may, from time to time vary these terms and conditions by giving You notice in writing, or via Our website, which notice will be effective immediately. The Electronic Transactions Act 2000 (NSW) applies to this Agreement.

3. Agreement to Buy and Sell

We will sell, and You will purchase, Products from Us from time to time pursuant to these Terms and Conditions.

4. Ordering Goods

4.1 Any quotation given by Us is a mere invitation to treat and does not constitute a contractual offer. We may vary or withdraw a quotation at any time.

4.2 You may order Products from Us in any manner acceptable to Us (which includes without limitation, purchase orders, the acceptance by You of a quotation, or variation prepared by Us).

4.3 No order, sales agreement or other agreement shall bind Us, unless accepted by Us. We, in Our absolute discretion, may decline to accept any order without providing a reason for doing so.

4.4 No order, sales agreement or other agreement accepted by Us may be cancelled, altered or modified without Our written consent. If we consent to cancellation of an order You must pay to Us 10% of the order value, all return freight costs to Our premises and the cost of repair of all damage to the Products upon re-delivery to Us or replacement as determined by Us.

4.5 If You request, or We deem there to be a variation in the scope of the supply of Products, then We may (but are not obliged to) notify You in writing of the variation, the price variation, associated delays and other information We deem relevant.

4.6 We are not obliged to commence any supply associated with any variation identified in accordance with clause 4.5 unless and until the Customer acknowledges and accepts, in writing, the variation.

4.7 We will not be liable for any loss or damage arising through non-availability of the Products.

5. Pricing, Quotations and Payment

5.1 You must pay to Us without setoff or deduction:

- (a) the price of the Products (current at the time of delivery or completion in \$(AUD)); and
- (b) costs and charges for freight and handling at the point of delivery to You, or Your agent as determined by Us in Our sole discretion and listed on Our corresponding tax invoice provided to You.

5.2 Some Products will require complete payment, or a percentage of the order price to be paid up front by You to Us, some or all of which may be non-refundable. This will be notified to You after the order is placed.

5.3 Unless You have an approved credit account with Us, payment for the Products must be made on or before delivery of the Products by Us. If payment is by cheque, property in the Products will not pass until the cheque has been honoured by Your financial institution.

5.4 If You have an approved credit account with Us, the Products supplied by Us must be paid within 30 days of the date of invoice, or 30 days of the date of delivery, whichever occurs first.

5.5 Time for payment is of the essence. Without prejudice to any other remedy, We may charge interest on any overdue payments calculated at 11% per annum from the due date, until paid.

5.6 We have the sole discretion to apply payments from You to any transaction or invoice notwithstanding that You may have applied the payment to a particular transaction or invoice.

5.7 You indemnify Us on demand against all costs, charges, expenses and legal costs (on a solicitor- client basis) incurred by Us in recovering sums owed by You including commission, if any, charged by a mercantile agent.

5.8 All amounts payable by You under this Agreement are exclusive of GST. If GST is payable on any supply made by a party under this Agreement, the consideration for that supply will be increased by an amount equal to the GST liability incurred by the party making the supply and paid at the same time and in the same manner as the consideration.

6. Delivery and Risk

- 6.1** We give or accept delivery dates in a quotation or order in good faith, but do not guarantee those dates. We will not be liable to You for any loss or damage arising from delay in delivery, or failure to deliver the Products either whole or in part.
- 6.2** A Delivery date cannot be varied by You once it has been agreed without Our prior written consent. If We agree to postpone delivery, the Products will be stored at Your risk and We may impose a daily storage charge and the price of the Products can be increased by Us to reflect Our then current price for the Products.
- 6.3** We may make deliveries of the Products in instalments and the contract will be severable as to such instalments. All such instalments when separately invoiced, will be paid by You without regard to the delivery of subsequent instalments.
- 6.4** Risk in the Products will pass to You upon delivery.
- 6.5** You must collect the Products from Us at premises nominated by Us, unless otherwise agreed in writing by Us. If We agree to make delivery at another place, delivery of the Products at that place shall constitute delivery irrespective of whether or not Your representative is present. If Your representative is not present at the time of delivery, the quantities of the Product delivered are those listed on Our delivery docket or invoice. All delivery charges are to be borne by You. Charges quoted by Us for delivery are on the basis of unobstructed access to the delivery site being available. You must pay for any waiting time or time taken in obtaining unobstructed access to the delivery site.
- 6.6** You will examine the Products at the time of delivery to ascertain any incomplete or failed delivery, or shortage of weight or quantity and no claim for these can be made if Your representative does not confirm delivery (by way of signature) upon delivery of the Products.

7. Retention of Title

- 7.1** We retain title to the Products supplied to You until We have received payment in full for the Products and all other Products supplied by Us to You.
- 7.2** Until title passes under clause 7.1 You:
- (a) will hold the Products as bailee and fiduciary for Us and will return the Products to Us if requested and;
 - (b) will keep the Products insured against all risks to full replacement value and will hold on trust for Us in a separate bank account any insurance monies received by You for Products owned by Us; and
 - (c) will store each delivery of Products separately, clearly identified as Our property and in a manner to enable them to be identified and cross referenced to particular invoices where reasonably possible; and
 - (d) will not pledge or allow any lien, charge or other security interest to arise over the Products; and
 - (e) may use or sell the Products in the ordinary course of business but any monies received by the Customer in payment for those Products shall be held by You in a separate account in trust for Us.
- 7.3** Our rights as an unpaid seller are not affected by Us retaining title to the Products supplied until the Products have been paid for in full by You.
- 7.4** Where You have not fully paid Us for Products or You enter into bankruptcy, liquidation, a composition with Your creditors or have a receiver or manager appointed over all or any part of Your assets, enter into administration or become insolvent:
- (a) You may not sell, use or part with possession of the Products; and
 - (b) We are entitled without prejudice to Our remedies to recover and repossess such Products and to enter any premises without notice for this purpose without liability for trespass and any resulting damage.

8. Personal Property Security Act ('PPSA')

- 8.1** You grant to Us a purchase money security interest ('PMSI') in respect to the Products supplied to You by Us arising under any retention of title of the Products. You agree that the collateral which is at any time subject to Our security interest secures its own purchase price, and in addition to the extent possible under PPSA, that all collateral which is any time subject to Our security interest secures as a PMSI the purchase price of all collateral supplied to You. This clause does not limit what other amounts are secured under this Agreement.
- 8.2** You charge all Your real and personal present and after acquired property in favour of Us to secure payment of money owing in respect to the Products supplied to You. You agree that this Agreement constitutes a security interest in all present and after acquired property for the purposes of the PPSA.
- 8.3** We may register Our security interest and may recover from You Our costs (including external service providers cost and registration fees) reasonably incurred in doing so. You must do anything (such as obtaining consents and signing documents) which We require for the purposes of:
- (a) ensuring that Our security interest is enforceable, perfected and otherwise effective under the PPSA; and
 - (b) enabling Us to gain first priority (or any other priority agreed to in writing by Us) for Our security interest; and
 - (c) enabling Us to exercise rights in connection with the security interest.
- 8.4** Our rights under this Agreement are in addition to and not in substitution for Our rights under other laws (including PPSA) and We may choose whether to exercise rights under this Agreement and/or under such other laws as We see fit.
- 8.5** The following provisions of the PPSA do not apply, and for the purposes of Section 115 of the PPSA are contracted out of this Agreement to the extent permitted by the PPSA:
- (a) Sections 95 (notice of removal of accession to the extent it requires Us to give a notice to You) 96 (retention of accession) and 126 (obligation to dispose of or retain collateral);
 - (b) Section 130 (notice of disposal to the extent it requires Us to give a notice to You);
 - (c) Section 132(3)(d)(contents of a statement of account after disposal)
 - (d) Section 132(4)(statement of account if no disposal)
 - (e) Section 135 (notice of retention)
 - (f) Section 142(redemption of collateral)
 - (g) Section 143(reinstatement of security agreement).
- 8.6** For the purposes of Section 14(c) of the PPSA, You and We agree that any payments received from You by Us pursuant to, or in any way connected with, this Agreement will be applied in such order as We deem fit in Our absolute discretion.
- 8.7** Sections 123 (seizing collateral) 126 (apparent possession) 128 (secured party may dispose of collateral) 129 (disposal by purchase) and 134(1) (retention of collateral) of PPSA confers rights on Us. You agree that, in addition to those rights, We shall if there is default by You have the right to seize, purchase, take possession or apparent possession, retain, deal with, or dispose of any Products, not only under those sections but also, as additional and independent rights under this Agreement, You agree that We may do so in any manner We see fit including (in respect of dealing and disposal) by private or public sale, lease or license.
- 8.8** You waive Your rights to receive a verification statement in relation to registration events in respect of commercial property under Section 157 of PPSA.
- 8.9** Solely for the purpose of allowing to Us the benefit of Section 275(6) of PPSA, We and You agree that neither You or Us must disclose information of the kind that can be requested under Section 275(1) of PPSA. We shall not be liable to pay damages or any other compensation or be subject to injunction in respect to any actual or threatened breach by such disclosure.

9. Limitation of Liability

- 9.1** Subject to clause 9.2, all guarantees, terms, conditions, warranties, undertakings, inducements or representations whether express or implied, statutory or otherwise, relating to this Agreement or its subject matter are excluded to the maximum extent permitted by law.
- 9.2** We do not exclude, restrict or modify any liability that cannot be excluded restricted or modified or which cannot be excluded, restricted or modified except to a limited extent as between Us and You by law, including under the Competition and Consumer Act 2010 concerning a customer who deals with a consumer or on sells to a consumer. However, where such statutory provisions apply, to the extent to which We are entitled to do so, Our liability will be limited, at Our option to:
- (a) in the case of a supply of goods:
 - (i) the replacement of the goods, or supply of equivalent goods
 - (ii) the payment of the cost of having the goods repaired; or
 - (iii) the repair of the goods;
 - (b) in the case of services:
 - (i) the supply of the services again; or
 - (ii) the payment of the cost of having the services supplied again.
- 9.3** To the extent permitted by law, and subject only to any express exception contained in this Agreement, We will under no circumstances be liable in any way whatsoever to You for any form of loss, damage or expenses (including indirect or consequential loss, loss of goodwill, profits, business or use, or rectification costs) sustained or incurred by You or any other party in consequence of, or resulting directly or indirectly out of, the supply of the Products by Us, the use or performance thereof, any breach by Us of this Agreement or the negligence of Us.
- 9.4** You indemnify Us for any loss or damage suffered by Us arising from or in connection with:
- (a) any breach of this Agreement by, or negligence of, You.
 - (b) any breach of law by You
 - (c) the death or injury to any person, or damage to any property, arising from the performance by You of its obligations in respect of this Agreement.

10. Termination

- 10.1** We reserve the right to immediately terminate or suspend supply of the Products without incurring liability to You in each of the following circumstances:
- (a) You fail to take delivery of, or to pay for the Products by the due date or otherwise breach any other term of this Agreement.
 - (b) You enter into bankruptcy, liquidation, or a composition with Your creditors, has a receiver or manager appointed over all or any of Your assets, enter into administration or become insolvent or commit an act of bankruptcy.
 - (c) there has been a substantial increase in Our cost of manufacture and/or supply of the Products between the date of the contract and the date of delivery beyond Our reasonable control when the contract is for a fixed price.
 - (d) contractual performance by Us is delayed or prevented by a force majeure event being any event outside Our reasonable control including acts of God or the public enemy, power failure, industrial action, default of manufacturers or suppliers or any criminal act.
- 10.2** Termination by Us under clause 10.1 is without prejudice to Our other remedies, and Our right to recover payment from You for Products provided by Us.

11. Your Warranties

- 11.1** The person signing any document which forms part of this Agreement for and on behalf of You warrants that he or she has Your authority to enter into and bind You to this Agreement on Your behalf and grant the security interests in connection with it.
- 11.2** You warrant that:
- (a) Prior to the placement of any order, You have made Your own independent enquiries and satisfied itself as to the size, design, capacity, quality and fitness for purpose of the Products, and to the extent permitted by law, You are not relying on any warranty, promise, representation or inducement in relation to the Products or to enter into this Agreement, either expressly or implied by given by Us.
 - (b) You purchased the Products from Us for the purposes of resupplying them, or using them up, or transforming them in trade or commerce, in the course of a process of production or manufacture, or repairing or treating other goods of fixtures on land.

12. General

- 12.1** You may not without Our prior written consent assign or otherwise transfer any of Your rights or obligations under this Agreement.
- 12.2** All clerical errors are subject to correction and will not bind Us.
- 12.3** If a provision of this Agreement would, but for this clause be unenforceable:
- (a) the provision must be read down to the extent necessary to avoid that result;
 - (b) if the provision cannot be read down to that extent, it must be severed without altering the validity and enforceability of the remainder of the Agreement.
- 12.4** This Agreement is governed by the laws of New South Wales and the parties subject to the jurisdiction of the Court of that state.