

## **SALES TERMS & CONDITIONS**

In these Sales Terms and Conditions (**Sales Terms**) "we", "us" or "our" mean R Cartlidge and J.L Cottell trading as Huracan Fabrication, its successors and assignees, (referred to as "**we**", "**us**" or "**our**") and you, the person, organisation or entity that purchases products or related services from us (referred to as "**you**" or "**your**"), and collectively the Parties. These Sales Terms apply to all sales made by us to you. These Sales Terms are available at [www.huracanfabrication.com](http://www.huracanfabrication.com) (**Site**).

**These Sales Terms form the agreement under which we will supply products and related services to you. Please read these Sales Terms carefully.** If you have any questions, please contact us using the contact details below, before you purchase products or related services from us.

You accept our Sales Terms by making a purchase from us. Your purchase from us indicates that you have had sufficient opportunity to access these Sales Terms and contact us, that you have read, accepted and will comply with these Sales Terms, and that you are 18 years or older, or have the consent of a legal guardian who is 18 years or older. You must not order products or services from us if you are under 18 years of age or do not have the consent of a legal guardian who is 18 years or older. If you do not agree to these Sales Terms, you should not purchase from us.

Our Website Terms of Use set out the terms and conditions for using the Site and is available on the Site.

### **1. Products, Services and Orders:**

- a. You may order from us as set out on the Site. We may at our discretion accept or reject an order depending on factors including availability of products or services and our ability to validate payment for the products or services.
- b. It is your responsibility to check the order details, including product and pricing, before you complete your order on the Site.
- c. We will provide you with order details, which may include an order number, the shipping and billing addresses and a description of what was ordered, when you order and pay on the Site and your payment has been validated.

d. A binding agreement comes into existence between you and us once we have given you an order number. No changes to these Sales Terms will be effective unless we both agree to the changes in writing.

e. You can cancel your order at any time prior to acceptance of the delivery. If the product has already been shipped then you must pay for the costs incurred including return shipping and re-stocking. We will inform you of these costs.

### **2. Price and Payments:**

a. You agree to pay the purchase price specified on the Site at the time that you place your order for the purchase of a product/service, plus any applicable delivery and insurance charges based on the delivery options selected by you. All amounts are stated in Australian dollars. All purchase prices include Australian GST (where applicable). Any delivery and insurance charges will be separately shown.

b. You must pay for the product or services by one of the methods set out on the Site. Your payment will be processed upon receipt of your order. You must not pay, or attempt to pay, for an order through any fraudulent or unlawful means. If your payment is not able to be successfully processed then your order may be cancelled.

c. We may charge interest at the rate of 2% per month on any amounts unpaid. If you do not pay by the due date, we have the right to engage debt collection services for the collection of unpaid and undisputed debt, and the right to commence legal proceedings for any outstanding amounts owed to us.

### **3. Availability and Cancellation:**

- a. All purchases made with us are subject to availability. We do our best to keep in stock most products, ensure that services supplied by us are made readily available to you, and to keep the Site up to date with availability of products or services.
- b. If there is a considerable delay in dispatching your order or supplying services to you, or if for any reason we cannot supply a product you have ordered, we will contact you using the contact details provided by you when you placed the order. You can choose a refund, store credit or to put your order on backorder. If you choose a

refund or store credit, any delivery costs you have paid for the product will be refunded to you. If you choose to put your order on backorder, we will contact you to arrange for supply/delivery once the product or service is available (as the case may be).

#### **4. Delivery:**

**a. Location:** We deliver Australia wide. At this stage we do not deliver internationally unless separately agreed. If you are not in Australia please contact us to discuss delivery options.

**b. Cost:** We offer free delivery for some products to some areas, as set out on the Site. If free delivery does not apply, a delivery fee will apply, as set out on the Site.

**c. Timing:** We will normally dispatch the product within 1 business day from the receipt of your order, unless otherwise noted on the Site. Any delivery periods displayed on the Site are estimates only, based on the information provided by the delivery company. We will deliver the product to the place of delivery you specify when making your order.

**d. Change:** If you need to change a delivery date or the delivery address, please contact us as soon as possible to see if this is possible.

**e. Method:** We may deliver the products via a range of delivery methods.

**f. Title and Risk:** Title in the products will not pass to you until the later of delivery, or your payment has been processed or otherwise received by us. If your payment is declined for any reason we reserve the right to reclaim the products from your possession, custody or control even if they have been delivered to you or moved from the delivery address. We reserve the right to keep or sell the products. Risk of loss, damage or deterioration to any products will pass to you once the product is sent by us.

#### **5. Discount Codes and Promotions:**

We may from time to time offer promotional discount codes, which may be applicable to products or services on the Site, and must be entered at the time of submitting your order. The conditions of use relating to any discount code will be specified at the time that it is issued.

#### **6. Intellectual Property Rights**

a. Intellectual Property Rights mean all present and future rights in or to any patent, copyright, database rights, registered design or other design right, utility model, trade mark (whether

registered or not and including any rights in get up or trade dress), brand name, service mark, trade name, eligible layout right, chip topography right and any other rights of a proprietary nature in or to the results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields, whether registrable or not, including all renewals, extensions and revivals of, and all rights to apply for, any of the foregoing rights (**Intellectual Property Rights**).

b. We own all Intellectual Property Rights in the Site, business, products, services and branding, as between us and you. The products contain material which is owned by or licensed to us and is protected by Australian and international laws (**Materials**). We own the copyright which subsists in all creative and literary works incorporated into our Materials.

c. You must not breach our Intellectual Property Rights by, including but not limited to altering or modifying any of the Materials, creating derivative works from the Materials or using our Materials for commercial purposes such as onsale to third parties.

#### **7. Dispute**

Your feedback is important to us. We seek to resolve your concerns quickly and effectively. If you have any feedback or questions about our products or services, please contact us. If there is a dispute between the Parties in relation to these Sale Terms, the Parties agree to the following dispute resolution procedure:

a. The complainant must tell the respondent in writing the nature of the dispute, what outcome the complainant wants and what action the complainant thinks will settle the dispute. The Parties agree to meet in good faith to seek to resolve the dispute by agreement between them (**Initial Meeting**).

b. If the Parties cannot agree how to resolve the dispute at the Initial Meeting, any Party may refer the matter to a mediator. If the Parties cannot agree on who the mediator should be, the complainant will ask the Law Society of Victoria to appoint a mediator. The mediator will decide the time and place for mediation. The Parties must attend the mediation in good faith, to seek to resolve the dispute.

Any attempts made by the Parties to resolve a dispute pursuant to this clause are without prejudice to other rights or entitlements of the

Parties under these Sales Terms, by law or in equity.

## **8. Consumer Law, Return, Refund and Exchange Policy**

**a. ACL:** Certain legislation including the Australian Consumer Law (**ACL**) in the *Competition and Consumer Act 2010* (Cth) and similar consumer protection laws and regulations may confer you with rights, warranties, guarantees and remedies relating to the provision of services by us to you which cannot be excluded, restricted or modified (**Statutory Rights**).

**b. Goods & Services:** If you are a consumer as defined in the ACL, the following notice applies to you: "Our goods and services come with warranties and guarantees that cannot be excluded under the Australian Consumer Law (**Consumer Guarantees**). You are entitled to a replacement or a refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure. You are also entitled to have services remedied if they are not rendered with due care and skill or they are not fit for purpose and the failure does not amount to a major failure."

Nothing in these Sales Terms excludes your Statutory Rights as a consumer under the ACL. You agree that our liability for goods provided to a person or entity defined as a "consumer" under the ACL is governed solely by the ACL and these Sales Terms. We exclude all conditions and warranties implied by custom, law or statute except for your Statutory Rights.

**c. Warranties:** We guarantee to you the structural integrity of the steel used in our goods for the life of the original vehicle on which the goods are installed.

**d. Repair, replacement or a refund:** If you wish to seek repair, resupply, replacement or a refund for a product or service, please contact us and we will explain the requirements to you. This may include you providing proof of purchase and evidence of the faulty product to us.

**e. Refund:** If you are entitled to a refund, we will only give you the refund once evidence of faulty product is received by us and inspected it and assessed whether it is eligible for a refund under these Sales Terms. Any refund we make will be by the same payment method used to purchase the product or service.

**f. Installed:** Subject to this clause, we will not accept or return any product that has been used, connected, installed, attempted to be connected or installed, or if your product is custom-made or is a special buy product.

**g. Packaging:** You must adequately package any product you are returning for our collection to ensure that it is not damaged during return delivery to us.

**h. Duty of care:** You have a duty of care for the product while it is in your possession. If you damage products, then subsequently return the products, you may be liable to pay to repair the product to its original condition. In these circumstances, where a repair is not economically viable, no refund will be made.

## **9. Limitation of Liability and Disclaimers:**

a. While the information and material contained on the Site is believed to be accurate and current, it is provided by us in good faith on an "as is" basis, and we and our directors, officers, employees, contractors and agents accept no responsibility for and make no representations or warranties to you or to any other person as to the reliability, accuracy or completeness of the information contained on the Site.

b. Certain legislation including the ACL and similar consumer protection laws and regulations may confer you with rights, warranties, guarantees and remedies relating to the provision of goods or services to you by us via the Site which cannot be excluded, restricted or modified. Our liability is governed solely by the ACL and these Sales Terms.

c. The installation of our goods on a vehicle will require certification by an approved engineer and issuance of a certificate of modification and modification plate by an approved person. The requirements relating to modifications of vehicles vary depending on the location in which your vehicle is registered. You should speak with a licensed certifier before installing our goods onto your vehicle, to make sure you are aware of the requirements for certification and you should check the requirements with your local authorities.

d. We recommend that our goods be installed by competent and experienced people only. We recommend that you follow the instructions we provide with the delivery of our goods and that you use the materials and tools which we advise to complete the installation of the goods.

e. Your vehicle registration and insurance could be void if you don't have the modifications on your vehicle assessed and certified as compliant with the appropriate standards.

f. We take no responsibility and will have no liability in relation to the matters in subsections (c) to (e) above.

g. To the extent permitted by law, we exclude all conditions and warranties, except for your Statutory Rights including but not limited to:

i. we expressly disclaim any implied or express guarantees, representations or conditions of any kind, which are not stated in these Sales Terms;

ii. we take no responsibility for, and will not be liable for the Site or the products or services being unavailable; and

iii. we will not be liable for any loss, damage, injury, death, costs including legal costs, or expense whether direct, indirect, incidental, special, consequential and/or incidental, including loss of profits, revenue, production, opportunity, access to markets, goodwill, reputation, use or any indirect, remote, abnormal or unforeseeable loss, or any loss or damage relating to business interruption, loss of programs or other data on your information systems or costs of replacement goods, or otherwise, suffered by you or claims made against you, arising out of or in connection with the Site, inability to access or use the Site, the products, the services, the late supply of products or services, or these Sales Terms, even if we were expressly advised of the likelihood of such loss or damage.

h. To the extent permitted by law, our total liability arising out of or in connection with the products, the services or these Sales Terms, however arising, including under contract, tort (including negligence), in equity, under statute or otherwise, will not exceed the total price paid by you for the purchase of products and/or services under these Sales Terms.

i. This clause will survive termination of these Sales Terms.

**10. Amendment:** These Sales Terms may be amended from time to time without notice. Your purchase from us following any such amendments will be deemed to be confirmation that you accept those amendments. We recommend that you check the current Sales Terms before purchasing a product. Our agents, employees and third parties do not have authority to change these Sales Terms.

**11. Indemnity:** You indemnify us from and against all claims, suits, demands, actions, liabilities, costs and expenses (including legal costs and expenses on a full indemnity basis) resulting from your breach of these Sales Terms. You agree to co-operate with us (at your own expense) in the handling of disputes, complaints, investigations or litigation that arise as a result of your use of our products or services including but not limited to disputes, complaints, investigations or litigation that arises out of or relates to incorrect information you have given us. The obligations under this clause will survive termination of these Sales Terms.

## **12. General:**

**a. Privacy:** We agree to comply with the legal requirements of the Australian Privacy Principles as set out in the *Privacy Act 1988* (Cth) and any other applicable legislation or privacy guidelines.

**b. Accuracy:** While we endeavour to keep information up to date and correct, we make no representations, warranties or guarantee, express or implied, about the completeness, accuracy, reliability, suitability or availability of any information, images, products, services, or related graphics contained on the Site for any particular purpose. You hereby acknowledge that such information and materials may contain mistakes, inaccuracies or errors and we expressly exclude any liability for such to the fullest extent permissible by law.

**c. Termination:** We reserve the right to refuse supply of the products ordered by you, terminate our contract with you, and remove or edit content on the Site at our sole discretion, without incurring any liability to you. We may terminate our contract with you, in our sole discretion, without incurring any liability to you, if:

i. you commit a non-remediable breach of these Sales Terms;

ii. you commit a remediable breach of these Sales Terms and do not remedy the breach within 14 days after receiving notice of the breach.

**d. GST:** If and when applicable, GST payable on our services or products will be set out in our invoices. By accepting these Sales Terms you agree to pay us an amount equivalent to the GST imposed on these charges.

**e. Relationship of Parties:** These Sales Terms are not intended to create a relationship between the Parties of partnership, joint venture, or employer-employee.

**f. Force Majeure:** We will not be liable for any delay or failure to perform our obligations under these Sales Terms if such delay is due to any circumstance beyond our reasonable control.

**g. Notice:** Any notice in connection with these Sales Terms will be deemed to have been duly given when made in writing and delivered or sent by email, facsimile or post to the Party to whom such notice is intended to be given or to such other address, email address or facsimile number as may from time to time be notified in writing to the other Party.

**h. Waiver:** Any failure by a Party to insist upon strict performance by the other of any provision in these Sales Terms will not be taken to be a waiver of any existing or future rights in relation to the provision. No waiver by us of any of these Sales Terms shall be effective unless we expressly state it is a waiver and we communicate to you in writing.

**i. Assignment:** You must not assign any rights and obligations under these Sales Terms, whether in whole or in part, without our prior written consent.

**j. Severability:** If any of these Sales Terms are determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such term, condition or provision will to that extent be severed from the remaining terms, conditions and provisions which will continue to be valid to the fullest extent permitted by law.

**k. Jurisdiction and Applicable Law:** Your use of the Site and any dispute arising out of your use of it is subject to the laws of Victoria and the Commonwealth of Australia. These Sales Terms are governed by the laws of Victoria and the Commonwealth of Australia and subject to the exclusive jurisdiction of the courts operating in Victoria. The Site may be accessed throughout Australia and overseas. We make no representation that the Site complies with the laws (including intellectual property laws) of any country outside Australia. If you access the Site from outside Australia, you do so at your own risk and are responsible for complying with the laws in the place where you access the Site.

**l. Entire Agreement:** These Sales Terms and any document expressly referred to in them represent the entire agreement between you and us and supersede any prior agreement, understanding or arrangement between you and us, whether oral or in writing.

**For any questions or notice, please contact us at:**

Huracan Fabrication ABN

admin@huracanfabrication.com

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