

## **Hollowick, Inc.**

### **Terms and Conditions of Sale**

1. **Applicability.** These Terms and Conditions of Sale (the “Terms”) are the exclusive terms that apply to the sale of products (“Products”) by Hollowick, Inc. (“Hollowick”) to each (“Buyer”). These Terms are incorporated by reference into all quotations and offers made by, and all purchase orders accepted by, Hollowick. Notwithstanding anything herein to the contrary, if a written contract signed by Hollowick and Buyer is in existence covering the sale of the Products covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms. These Terms, together with Hollowick’s invoice, comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any terms and conditions contained in or referenced in Buyer’s purchase order or any other document issued by Buyer in connection with any order (the “Buyer Documents”) regardless whether or when Buyer has submitted any such Buyer Document. Any and all terms and conditions contained in or referenced in any Buyer Documents that are additional to or different from those contained in these Terms shall be deemed objected to and rejected by Hollowick without need of further notice of objection and shall be of no effect and not binding on Hollowick unless accepted by Hollowick in writing. Fulfillment of Buyer’s order does not constitute acceptance of any of Buyer’s terms and conditions and does not serve to modify or amend these Terms.

2. **Order Acceptance.** An order submitted by Buyer is an offer to buy, under these Terms, all Products listed in the order. All orders are subject to acceptance by Hollowick, and Hollowick shall not be required to accept any order from Buyer.

3. **Regulatory Requirements.** Buyer acknowledges it is Buyers sole responsibility to comply with all applicable laws, rules and regulations relating to and associated with the Products, Product information, Product descriptions, Product packaging, Product labeling and any other related Product announcement. Buyer understands that certain Products are designed, packaged and intended for use in the commercial foodservice and hospitality industries only, and the sale of those certain Products to **Home Consumers** for household use may violate certain laws and regulations. Those certain Products are marketed to be sold as “For Commercial Food Service or Commercial Use Only. Federal Law Prohibits Sale to Consumers”. Additionally, certain other Hollowick Products must comply with DOT shipping regulations for hazardous goods (see paragraph 12, Department of Transportation (DOT) Regulations). The detail listing of those certain Products is included in the document “Information You Should Know (Part 1, Labeling and Packaging for Home Consumer Sale and Part 2, DOT Shipping Regulations for Hazardous Goods)” on Hollowick’s website at <http://www.hollowick.com/>. Buyer acknowledges and agrees that Buyer will not market or sell those certain Products to Home Consumers or any customers outside of the commercial foodservice or hospitality industries. Buyer further acknowledges and agrees that Buyer will comply with and ensure that the restrictions contained in this Paragraph are included in the Product information, Product descriptions, Product packaging, Product labeling and any other related Product announcement available on its website, on any ecommerce website and any and all other materials prepared by Buyer which are used to market and/or sell those certain Products.

4. **Price.** Buyer shall purchase the Products from Hollowick based on the list prices set forth in Hollowick's published list prices document which is subject to change at any time without notice. Prices charged will be those in effect at the time of order. Prices are exclusive of any sales, use, excise and value-added taxes and any other similar taxes, duties and charges of any kind imposed by any governmental authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs and taxes. Buyer also acknowledges that the Products must be maintained in their original packaging and the Product packaging cannot be broken down and resized. Product is not packaged for individual sale, unless expressly implied.

5. **Internet Consumer Protection Policy and Minimum Advertised Pricing.** Hollowick has an Internet Consumer Protection Policy covering the following: 1) Consumer Marketplace Restrictions, 2) Consumer Marketplace Private Label Minimum Advertised Pricing ("MAP") Policy, 3) Consumer Protection Paraffin Policy, and 4) Private Label Consumer Protection Paraffin Policy. This Policy covers Products sold on consumer-facing ecommerce platforms (defined as: an online platform that makes purchasing Products openly accessible to any consumer, or a platform that does not restrict consumer purchase with a protected commercial log-in wall). This Policy applies to all Buyers, including catalogs and internet retailers. Hollowick greatly values the efforts of all Buyers to distribute our products and support our mutual customers. Buyer agrees to abide by and comply with the Internet Consumer Protection Policy, including related Schedules. Buyer further agrees to abide by and comply with any and all MAP Policy(s), including related Schedules.

6. **Payment Terms.** Buyer shall pay all invoiced amounts due to Hollowick within thirty (30) days from the date of Hollowick's invoice. Buyer shall make all payments hereunder by check, bank ACH or wire in US dollars. Buyer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Hollowick for all costs incurred in collecting any late payments, including, without limitation, reasonable attorneys' fees.

7. **Delivery.** Delivery shall be made FOB origin. Title and risk of loss passes to Buyer upon tender of the Products to the carrier. Claims for Products damaged or lost in transit after risk of loss has transferred are to be made by Buyer directly with the carrier. The carrier, not Hollowick, is legally responsible for any damage or loss during shipment. All shipping dates are approximate. Hollowick shall not be liable for any delays, loss or damage in transit. Buyer agrees that it will not offset or take a deduction on the shipped invoice for loss or damages.

8. **Inspection.** Buyer shall have five (5) days after receipt of a Product (the "Inspection Period") to inspect such Product. If Buyer determines that any Product is defective or otherwise not in conformity with the applicable accepted order, or if the quantity of Products delivered is more or less than the quantity set forth in the applicable accepted order, Buyer may reject such Product(s) by notifying Hollowick in writing of such rejection and the basis for such rejection (a "Rejection Notice"). Any Products not rejected by a Rejection Notice before the expiration of the Inspection Period will be deemed to have been accepted.

9. **Warranty.** HOLLOWICK MAKES NO WARRANTIES TO BUYER, AND EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, (A) WARRANTY OF MERCHANTABILITY; (B) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; AND (C) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY.

10. **Limitation of Liability.** IN NO EVENT SHALL HOLLOWICK BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, LOSS OF USE OR LOSS OF GOOD WILL, IN ANY WAY ARISING OUT OF THESE TERMS OR THE PURCHASE OF ANY PRODUCT FROM HOLLOWICK, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT BUYER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL HOLLOWICK'S TOTAL LIABILITY ARISING OUT OF OR RELATING TO THESE TERMS OR THE SALE OF PRODUCTS TO BUYER, WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE (INCLUDING CLAIMS BASED UPON BREACH OF WARRANTY), EXCEED THE TOTAL AMOUNT PAID BY BUYER AND ACTUALLY RECEIVED BY HOLLOWICK FOR THE PRODUCTS OUT OF WHICH THE CLAIM AROSE.

11. **Returns.** Products may not be returned without Hollowick's prior written authorization. Returns will be allowed for up to thirty (30) days after Buyer's receipt of the Products. If authorized, Products must be returned within thirty (30) days of authorization date, freight prepaid, and will be subject to handling charges of \$25.00 or 25% of the price of the Products returned, whichever is greater. Buyer bears the risk of loss during shipment. All Products returned must be in like-new, re-saleable condition.

12. **Department of Transportation ("DOT") Regulations.** Hollowick Liquid Candles and Liquid Wax, Liquid Wick Chafing Fuels, and TIKI Brand BiteFighter Torch Fuel, are classified as "Nonhazardous" by the DOT. Blue, Green, and Pink Gel Heat Chafing Fuels are DOT classified as "ORM-D." Hollowick Butane Fuel is DOT classified as a "Hazardous Material" (HAZMAT). With a proper shipping name of "Liquefied Petroleum Gas," Hazard Class 2.1 Blue, Green, and Pink Gel Heat and TIKI Citronella Torch Fuel CANNOT ship via air freight.

13. **Indemnification.** Buyer shall indemnify, defend, and hold Hollowick and its officers, directors, employees, agents, contractors, representatives, successors and assigns harmless from and against any and all damages, liabilities, costs, and expenses, including reasonable attorneys' fees and expenses, that Hollowick may incur which in any way arise out of, relate to, or are in connection (a) a breach of these Terms by Buyer or Buyer's principals, officers, directors, employees, agents, contractors and/or representatives, successors and assigns or (b) the intentional or negligent act or omission of Buyer or Buyer's principals, officers, directors, employees, agents, contractors and/or representatives, successors and assigns.

14. **Force Majeure.** Hollowick shall not be liable for any failure or delay in the performance of any of its obligations under these Terms or otherwise, including, but not limited to, delay in shipment, or any damages resulting therefrom, if such delay or failure is caused in whole or in part by act of nature, embargo, governmental regulation, fire, strike or other labor strife, war, riot, terrorism (or threat thereof), equipment failure, epidemic or pandemic, national or regional emergency, delay in transportation, shortage and/or unexpected or unreasonable increase in prices of raw materials or supplies, supplier closure or abandonment, changes in laws, or any other cause beyond the reasonable control of Hollowick.

15. **Fair Labor Standards Act.** Hollowick certifies that the Products are produced and furnished in compliance with the Fair Labor Standards Act.

16. **Limitations on Actions.** Buyer agrees, to the maximum extent permitted by applicable law, that any claim Buyer may have against Hollowick must be filed within one (1) year of the date on which the claim arose. If Buyer fails to file a claim within this time period, Buyer shall be deemed to have waived its right to file a claim or to otherwise seek recourse against Hollowick.

17. **Intellectual Property.** The sale of the Products to Buyer shall not be construed as granting Buyer any license under any patent, trademark, service mark, trade name, copyright, or other intellectual property right of Hollowick or in or to the Products.

18. **Right to Offset.** Hollowick shall be entitled to offset any amounts owed by it to Buyer against any payment or compensation that is owing and unpaid by Buyer to Hollowick under any order by Buyer under these Terms, under any other contract or agreement between Hollowick and Buyer, or otherwise.

19. **Notices.** All notices or other communications required to be given under these Terms shall be in writing and shall be deemed to have been given upon personal delivery, certified or registered mail, return receipt requested, or by overnight courier with proof of delivery to the parties at the addresses set forth in an accepted order, unless a different address is designated in writing.

20. **Relationship of the Parties.** The relationship between the parties is that of independent contractors. Nothing contained in these Terms shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

21. **Assignment.** Buyer shall not assign any of its rights or delegate any of its obligations under these Terms without the prior written consent of Hollowick. Any purported assignment or delegation in violation of this Paragraph is null and void. No assignment or delegation relieves Buyer of any of its obligations under these Terms.

22. **Waiver.** No waiver, alteration, or modification of any of the provisions of these Terms shall be binding unless in writing and signed by an authorized representative of Hollowick. No delay or failure on Hollowick's part in exercising any right, privilege, remedy or option hereunder shall operate as a waiver of such right, privilege, remedy or option.

23. **Severability.** If any provision of these Terms shall be determined to be invalid or unenforceable, such provision shall be invalid or unenforceable only to the minimum extent required, and all other provisions shall remain in full force and effect.

24. **Governing Law.** All matters arising out of or relating to these Terms is governed by and construed in accordance with the internal laws of the State of New York without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of New York.

25. **Submission to Jurisdiction.** Any legal suit, action or proceeding arising out of or relating to these Terms shall be instituted in the U.S. District Court for the Northern District of New York located in Onondaga County, State of New York or New York State Supreme Court, Onondaga County, State of New York, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

26. **No Third Party Beneficiaries.** These Terms are for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

27. **Modification.** Hollowick reserves the right to change these Terms from time to time and at any time by publishing revised Terms on Hollowick's website at <http://www.hollowick.com/>. Buyer is advised to review the website and these Terms regularly. The revised Terms shall immediately become effective for all orders received after publication.

28. **Survival.** Paragraphs 9, 10, 13, 16, 24, 25, 28 and any other provisions that survive by their terms, will survive any expiration or termination of any quote, or any termination, cancelation or completion of any order.