

Pyrotek Pty Limited

Terms and Conditions of Trade

1. Definitions

"**Buyer**" means the buyer or any person acting on behalf of and with the authority of the buyer purchasing Goods from Pyrotek, including the Buyer's employees;

"**Conditions**" means these Pyrotek Pty Limited Terms and Conditions of Sale;

"**Contract**" means the written invoice, purchase order, contract or agreement which attaches, incorporates, or otherwise references these terms and conditions;

"**Guarantor**" means the person or persons or entity who agrees herein to be liable for the debts of the Buyer;

"**Goods**" means all products which are supplied by Pyrotek as the Seller to you as the Buyer and described in invoices produced by Pyrotek to the Buyer;

"**PPSA**" means the Personal Property Securities Act, 2009 (Cth);

"**Price**" means the cost of the Goods payable by the Buyer, as agreed and subject to clause 3 of these terms and conditions; and

"**Pyrotek**" means Pyrotek Pty Limited (ACN 001 824 371), its agents and employees acting with Pyrotek's authority.

2. Agreement

Unless specifically agreed in writing to the contrary by Pyrotek, these Conditions, and any attached documents, together set forth the entire agreement between the parties with respect to the subject matter hereof and supersedes all other prior negotiations, commitments, agreements or understandings between the parties in any form.

3. Goods

3.1 Where this is an agreement for the supply of goods internationally, the Buyer irrevocably acknowledges and agrees that the Incoterms 2020 are incorporated into these terms by reference.

3.2 The Goods are as described on the invoices, quotation, order confirmation or any other work commencement forms as provided by Pyrotek to the Buyer.

3.3 Dimensions and specifications issued by Pyrotek are estimates only. Unless otherwise expressly agreed in writing, Pyrotek does not give any warranty that the Goods will correspond precisely with such dimensions and specifications and reasonable tolerances are allowed by the Buyer.

4. Acceptance

4.1 All orders placed by the Buyer with Pyrotek are offers which will be subject to acceptance by Pyrotek. Acceptance may be withheld by Pyrotek, in its absolute and sole discretion. The acceptance of any order by Pyrotek shall be a conditional acceptance of the order and shall be subject to Pyrotek's prior approval of the Buyer's Application for Commercial Credit Account or receipt of payment on a CWO (cash without order) basis.

4.2 It is the Buyer's sole responsibility to inspect all Goods upon delivery and the Buyer shall within five (5) days of such delivery, give written notice to Pyrotek giving clear particulars as to why the

delivered Goods are not in accordance with the order placed by the Buyer. Time is of the essence in relation to such notice. If the Buyer fails to give such notice, the Goods will be deemed in all respects to have been manufactured, produced, and delivered in accordance with the order and the Buyer shall be deemed to have accepted the Goods.

4.3 No Goods are to be returned to Pyrotek without Pyrotek's prior written authorisation.

5. Price and Payment

5.1 The price of the Goods shall be as set out in any Pyrotek price list or quotation that is current at the date of placement of the order.

5.2 Prices given in any quotation are applicable to that quotation only and will not apply to any other circumstances.

5.3 Any price list or other document published by Pyrotek shall not be taken to constitute a representation by Pyrotek that the Goods detailed in such publication are immediately available for supply or delivery.

5.4 Pyrotek does not undertake, warrant, or represent (and the Buyer acknowledges and agrees) that goods supplied to the Buyer will be identical to those previously purchased or advertised, or that the price of those Goods will be the same.

5.5 The Buyer acknowledges that Pyrotek may, at any time and without prior notice, vary the composition, packaging, or pricing of the Goods (or components for the Goods).

5.6 Goods and Services Tax ("GST") in accordance with the *A New Tax System (Goods and Services Taxation) Act (Cth)* (the "**GST Act**") and any other taxes or duties imposed by law on or in respect of the goods or services provided by Pyrotek shall be paid by the Buyer in addition to the purchase price and shall be calculated using the prevailing rates and methods of assessment in force at the time of delivery under the GST Act and charged to the Buyer's account.

5.7 Unless otherwise agreed to by Pyrotek, all goods and services will be supplied by Pyrotek to the Buyer on a CWO (cash with order) basis. Payment of goods or services by the Buyer to Pyrotek shall be made within 30 days of the end of the calendar month in which the goods are supplied and only by Electronic Funds Transfer (EFT) or Telegraphic Transfer (T/T) or as otherwise agreed.

5.8 Unless otherwise agreed to by Pyrotek, time for payment for the Goods shall be of the essence and payment shall be due upon a CWO invoice being supplied by Pyrotek to the Buyer. Title in and to all goods delivered shall remain absolutely in Pyrotek until full payment has been received by the Buyer. The Buyer irrevocably and unconditionally agrees that the supply of goods on a retention-of-title basis constitutes a security interest granted by the Buyer (as "grantor") to Pyrotek (as "secured party") under the Personal Property Security Act 2009 in accordance with clause 11 hereof.

5.9 Pyrotek shall charge, and the Buyer shall pay without delay, a restocking fee equal to 20% of Pyrotek's Invoice for goods restocked at Pyrotek's premises as a condition of Pyrotek delivering any goods which are subject to such fee.

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6. Default and Consequences of Default

- 6.1 Interest on overdue invoices shall accrue and be payable as a debt due by the Buyer to Pyrotek from the due date for payment until the date of actual payment is made, calculated at the daily rate of 3% per annum above the lending rate charged by Westpac Banking Corporation Limited (or such other bank as Pyrotek may nominate) from time to time.
- 6.2 Should the Buyer fail to pay any amount to Pyrotek on the due date for payment, the Buyer shall indemnify Pyrotek from and against all of Pyrotek's costs, charges, fees, penalties, economic damages, and disbursements (including legal fees on a solicitor and own client basis). The Buyer's indemnity to Pyrotek extends to all enforcement expenses and costs paid by Pyrotek to preserve, secure, perfect or enforce its rights under the PPSA.
- 6.3 Without prejudice to any other remedies Pyrotek may have, Pyrotek shall be entitled to retake possession of all and any goods supplied in respect of which payment in full has not been made by the Buyer and the Buyer authorises Pyrotek to enter upon the premises where the goods are stored for the purpose of taking possession thereof.
- 6.4 In the event that the Buyer:
- (a) fails to pay any charges when due under, or is otherwise in breach of, this agreement or any other agreement between the Buyer and Pyrotek; or
 - (b) becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors;
 - (c) fails to set aside any creditors' statutory demand for payment of a debt within 21 days from receipt; or
 - (d) an administrator, receiver, receiver and manager, trustee, liquidator (provisional or otherwise) or similar person is appointed in respect of the Buyer or any asset of the Buyer

then without prejudice to Pyrotek's other rights or remedies at law:

- (i) Pyrotek shall be entitled to decline to consider any further orders made by the Buyer and Pyrotek shall have the right forthwith to withhold delivery of goods subject to a pending order; and
- (ii) Pyrotek shall be entitled to terminate the agreement with the Buyer immediately and without the need for written notice; and
- (iii) payment for all Pyrotek charges under these Terms, shall immediately become due and payable.

7. Delivery

- 7.1 Pyrotek shall pack all Goods to protect against damage or deterioration in shipping using its standard shipping practices or, if specified in the Contract, the packaging specifications of the Buyer, provided, however, that the cost of all deviations from Pyrotek's standard shipping practices shall be borne and payable by the Buyer at the same time as payment for the goods is required to be made.

7.2 Any time or date nominated by Pyrotek for delivery is given as an estimate only, and Pyrotek shall not be liable for any damage or loss of the Buyer whether arising directly or indirectly out of the delay in delivery of the goods to the Buyer. The Buyer must supply full, up-to-date, and complete delivery details as are necessary (or required by Pyrotek) to complete delivery in a timely basis.

7.3 Unless otherwise agreed to, all deliveries shall be on an Ex-Works basis.

7.4 Delivery of all goods shall be deemed to be effected, as follows:

- EXW: where the Goods are made available from Pyrotek's premises;
- FCA: where Goods are packed and loaded onto the delivery vehicle;
- FOB: where Goods are packed and loaded onto the delivery vehicle and transported to the nearest shipping port;
- CFR: where Goods are packed and loaded onto the delivery vehicle and either sea or air freighted to a designation port;
- DDP: free into store

7.5 Pyrotek may, where necessary, deliver the goods by instalments and the Buyer agrees to accept the goods delivered by instalments. Pyrotek shall invoice the Buyer and the Buyer shall pay Pyrotek in full, free of all bank fees and charges, for goods delivered and accepted by the Buyer.

7.6 If the Buyer fails to take delivery of the Goods or fails to give Pyrotek complete delivery instructions then, without prejudice to any other rights available to Pyrotek, Pyrotek may in its absolute discretion:

- (a) return and store the goods to its nominated premises until actual delivery is effected and completed and the Buyer pays Pyrotek for its restocking fees in full; and/or
- (b) sells the Goods at the price readily obtainable in the market for the goods and the Buyer pays Pyrotek for any shortfall below the price for the goods agreed in or under these Terms.

8. Cancellation

Pyrotek may cancel these Conditions or cancel or terminate (as the case may be) this agreement at any time before any goods are supplied or delivered to the Buyer by giving not less than three months prior written notice to the Buyer and the Buyer agrees that such notice is sufficient. On giving such notice, Pyrotek shall promptly repay to the Buyer any sums paid in respect of the Price for the Goods and the Buyer agrees that in such circumstances, Pyrotek will not be liable to the Buyer for any loss or damage whatsoever arising from such cancellation or termination, nor will the Buyer have any other rights to bring or maintain any claim against Pyrotek, including for breach or repudiation of contract.

9. Warranty

9.1 Subject to the conditions of warranty set out in clause 9.3, Pyrotek warrants that if any defect in any workmanship becomes apparent and is reported in writing within twelve (12) months of the date of delivery (time being of the essence) then Pyrotek shall review the complaint and identify the cause of the defect, and if, at Pyrotek's sole discretion (but acting reasonably), a breach of warranty has occurred, Pyrotek shall deliver a replacement good at a time agreed with the Buyer.

9.2 The notice referred to in clause 9.1 shall stipulate the delivery date, identification of the good(s) as Pyrotek may require, and the nature of the complaint.

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- 9.3 Save as provided in this clause 9, Pyrotek shall not be liable to the Buyer or any person claiming under it in contract or in tort for, or in respect of, any direct, indirect or consequential loss, damage, expense or injury suffered by the Buyer or any other person howsoever occurring and arising out of or relating to the agreement between Pyrotek and the Buyer, its performance or non-performance (including due to the negligence or willful default of Pyrotek), the goods or any error (whether negligent or not) in the information supplied to the Buyer in connection with its subject matter.
10. **Risk and Title**
- 10.1 Risk of damage to or loss of all goods shall pass to the Buyer on delivery or, if the Buyer fails to take delivery, when Pyrotek tenders delivery. At such time, the Buyer shall assume all risk and liability for the goods, and for their use and storage.
- 10.2 No legal or equitable right, title or interest in the Goods shall pass to the Buyer until Pyrotek has received cleared funds from the Buyer in full payment for the goods, as well as payment of all charges for goods previously supplied to the Buyer and due to Pyrotek.
- 10.3 Where the Buyer has mixed, commingled or used the Goods and other materials or goods to create other products (the "**Products**"), right, title and interest in the Products will immediately pass to Pyrotek upon the mixture, commingling or use of the Goods until the Buyer has made payment in full to Pyrotek for the Goods, including any Goods previously supplied to the Buyer.
- 10.4 Until the legal and equitable right, title and interest in the Goods passes, the Buyer shall:
- (a) hold the Goods as bailee of and in trust for Pyrotek;
 - (b) store the Goods (including any Products) separately from the Buyer's other goods in such a manner that will enable the Goods to be readily identifiable and distinguishable and where such other goods include similar Goods previously supplied by Pyrotek to the Buyer (and in respect of which title has passed to the Buyer) then the Buyer shall mark the Goods in respect of which title has not passed using an indelible ink and in such a legible manner as to enable the Goods to be readily identified as Goods held as bailee for Pyrotek;
 - (c) secure the Goods, including any Products from risk, loss, damage, and theft and at all times keep such goods including any Products fully insured against risk, loss, damage and theft;
 - (d) upon demand by Pyrotek, deliver up the Goods including any Products forthwith to Pyrotek at the Buyer's sole cost; and
 - (e) if the Goods including any Products has been sold or disposed of to a third party otherwise than in the ordinary course of the Buyer's business, the Buyer must pay all monies received from the sale of such Goods (including any Products) into a separate account in trust for Pyrotek.
11. **Personal Property Security Act 2009 (PPSA)**
- 11.1 The Customer acknowledges and agrees that these conditions constitute a Security Agreement under the *Personal Property Securities Act 2009* ('PPSA') and Pyrotek may, at Pyrotek's cost, register on the Personal Property Securities Register, a security interest in all and any credit account sales under this agreement, including but not limited to intellectual property and all other present or after-acquired property.
- 11.2 The Buyer warrants that all purchases under this agreement are for commercial purposes only and, accordingly, the provisions of the Consumer Credit Act will not apply.
- 11.3 The parties agree to contract-out of the PPSA in accordance with section 115 of the PPSA to the extent that the section applies for the benefit of and does not impose a burden on Pyrotek. The Buyer waives its right to receive a copy of any Financing Statement or any Financing Change Statement registered by Pyrotek in respect of the security interest created by these terms and conditions.
- 11.4 The Buyer agrees to execute any documents, provide all relevant information, and co-operate fully with Pyrotek to ensure that Pyrotek has a perfected security interest in the personal property charged and, if applicable, a Purchase Money Security Interest (PMSI).
- 11.5 The Buyer agrees to notify Pyrotek of any change in the Buyer's structure or management including any sale or disposition of any part of the business of the Buyer, any change in directorships, shareholders or management or change in partnership or trusteeship ten (10) days prior to any such change taking effect.
- 11.6 The Buyer agrees that, until all monies owing to the Company are paid in full, it shall not sell or grant any other Security Interest in the collateral.
12. **Intellectual Property**
- Where the Goods are manufactured by Pyrotek to the Buyer's specifications, the Buyer hereby warrants that the manufacture and supply of the Goods by Pyrotek will not infringe the intellectual property rights (including but not limited to a patent, registered design, trademark, copyright or other proprietary right) of any other person. The Buyer indemnifies Pyrotek against any liability to or action or claim made by a third party for infringement or alleged infringement of any intellectual property right.
13. **General**
- 13.1 Any indulgence, latitude or extension of time which either party may show towards the other party in relation to any of the provisions of the Agreement or any matter or thing relating to it or arising from it shall not in any way prejudice or interfere with the first party's rights under the Agreement and shall not be claimed to constitute a waiver of it.
- 13.2 If any provision of these Conditions is held by any court or other competent authority to be void or unenforceable in whole or in part, the validity and enforceability of the remaining provisions shall not be affected.
- 13.3 Pyrotek shall not be liable for any damage, loss, or penalty for delay in delivery or failure to give notice of delay when such delay is due, in whole or in part, to the elements, acts of nature, acts of God, epidemic, pandemic, government sanctioned lockdown, acts or omissions of the Buyer, acts of civil or military authority, civil unrest, war, riots, concerted labour action, labour difficulties, unavailability of supplies or sources of energy, any communication or power failure, delays in transportation or any other causes beyond the reasonable control of Pyrotek. The anticipated delivery date shall be deemed extended for a period of time equal to the time lost due to any delay excusable by this provision.

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- 13.4 Neither party may assign, delegate, or otherwise transfer all or any part of its rights or obligations hereunder without the prior written consent of the other party. Any such attempted assignment, delegation or transfer will be null and void.
- 13.5 These Conditions shall be binding upon and inure to the benefit of all successors and permitted assigns.
- 13.6 Neither these Conditions nor the Contract may be modified without written agreement of the parties.
- 13.7 This agreement shall be construed in accordance with laws of the State of New South Wales and, where applicable, The Commonwealth of Australia and the Buyer submits to the non-exclusive jurisdiction of the courts of New South Wales. The Buyer shall have exclusive right to nominate the Court in which any legal action is to be commenced and conducted.

14 Privacy Act

The Buyer authorises Pyrotek to collect, retain, disclose to any person and use any information about the Buyer, for the purpose of assessing the Buyers creditworthiness, enforcing any rights under these Conditions or marketing goods provided by Pyrotek to any other party and do all things specified in the Privacy Act Statement and Acknowledgment signed by the Buyer. At all times, Pyrotek will adhere to and comply with all applicable requirements of the *Privacy Act 1988 (Cth)* (as amended) in terms of the collection, storage and use of the Buyer's personal information.