

1. Definitions

"Buyer" means the buyer or any person acting on behalf of and with the authority of the buyer purchasing Goods from Pyrotek.

"Conditions" means Pyrotek Products Limited Security Agreement and Terms and Conditions of Trade.

"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 and/or installation services which are supplied by the Seller to the Buyer as described in invoices produced by Pyrotek to the Buyer.

"Price" shall mean the cost of the Goods as agreed between Pyrotek and the Buyer subject to clause 3 of these terms and conditions.

"Pyrotek" means Pyrotek Products Limited (NZBN 942 903 987 4146), their agents, employees, or related entities.

2. Agreement

Unless otherwise agreed in writing by Pyrotek, these Conditions, and any Contract or Application which attaches, incorporates, or otherwise references these Conditions, together set forth the entire understanding between the parties with respect to the subject matter hereof and supersede all other prior negotiations, commitments between the parties, understandings, representations, warranties, or statements, or other information provided whether written or oral.

3. Goods

- 3.1. The Goods are as described on the invoices, quotation, order confirmation or any other work commencement forms as provided by Pyrotek to the Buyer.
- 3.2. Dimensions and specifications issued by Pyrotek are estimates only. Unless otherwise expressly agreed in writing, it is not a condition of these Conditions that the Goods will correspond precisely with such dimensions and specifications and reasonable tolerances shall be allowed.

4. Acceptance

- 4.1. All orders placed by the Buyer with Pyrotek are subject to acceptance by Pyrotek. Acceptance may be withheld by Pyrotek, in its absolute 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 providing 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 shall be deemed in all respects to have been delivered in accordance with the order and the Buyer shall be deemed to have accepted the Goods upon delivery.
- 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 in any other instance.
- 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 available to the Buyer and Pyrotek shall not be bound solely by any order for Goods based upon or which refers to such material.
- 5.4. Pyrotek does not undertake, warrant, or represent (and the Buyer acknowledges) that such Goods as supplied to the Buyer will be identical to those previously purchased or advertised, or that the price of those Goods will remain 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") 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 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 basis. Payment of goods or services by the Buyer to Pyrotek shall be by Electronic Funds Transfer (EFT); 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.
- 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, following permitted return of those Goods by the Buyer in an undamaged condition.

6. Default and Consequences of Default

- 6.1. Interest on overdue invoices shall accrue from the due date for payment until the date of payment calculated at the daily rate of 3.0% per annum above the indicator lending rate charged by ASB Bank 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 Pyrotek's costs and disbursements on a solicitor and own client basis and in addition all Pyrotek's nominees' costs of collection. The Buyer's indemnity to Pyrotek extends to administrative, collection and solicitor fees (on a solicitor and own client basis) that are incurred by Pyrotek or will be incurred by Pyrotek in preserving and/or enforcing its rights under the Personal Property Securities Act 1999 ("**PPSA**") and any successor legislation.
- 6.3. Without prejudice to any other remedies Pyrotek may have, Pyrotek shall be entitled to retake possession of all, and any goods supplied (including any Products) 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. If 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 an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - c) 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 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; and
 - iii. payment for all charges, whether due for payment or not, shall become immediately 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 by the Buyer.
- 7.2. Any time or date nominated by Pyrotek for delivery is given as an estimate only, and Pyrotek shall not be liable to make good any damage or loss whether arising directly or indirectly out of delay in delivery to the Buyer. The Buyer shall supply such details as may be necessary (or required by Pyrotek) to complete delivery.
- 7.3. Unless otherwise agreed to, delivery shall be Ex Works.
- 7.4. Delivery of all goods shall be deemed to be completed as follows:
 - EXW**, where the Goods are made available from Pyrotek's premises.
 - FOB**, where Goods are packed and loaded onto the delivery vehicle at Pyrotek's works or store and transported to the nearest shipping port.
 - C&F**, where Goods are packed and loaded onto the delivery vehicle at Pyrotek's works or store and transported to the nearest shipping port and either sea or air freighted to a designation port.
 - CIF**, in accordance with C&F including insurance.
 - FIS**, free into store.
- 7.5. Pyrotek may deliver the Goods by instalments and the Buyer must 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 adequate delivery instructions then, without prejudice to any other rights available to Pyrotek, Pyrotek may in its absolute discretion:
 - a) store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of such storage; and/or
 - b) sell the Goods at the best price readily obtainable and charge the Buyer for any shortfall below the agreed price.

8. Cancellation

Pyrotek may cancel these Conditions or cancel the supply of the Goods at any time before the Goods are supplied by giving written notice to the Buyer. On giving such notice Pyrotek shall promptly repay to the Buyer any sums paid in respect of the Price for the Goods. Pyrotek shall not be liable for any loss or damage whatever arising from such cancellation.

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 in the Goods 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 and in its reasonable opinion, a breach of warranty has occurred, Pyrotek shall deliver a replacement good.

- 9.2. Such 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.
- 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 or under any other legal or equitable principle for, or in respect of, any direct, indirect or consequential loss (including loss of business, profits or efficiency), damage, expense or injury suffered by the Buyer or any other person howsoever described or 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 wilful 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.
- 9.4. Despite anything else in these Conditions, Pyrotek and the Buyer agree that in respect of the Contract:
 - a) The Goods supplied by Pyrotek are supplied and acquired in trade within the meaning of the Fair Trading Act 1986 ("FTA"), that ss 8, 12A and 13 of the FTA do not apply to this Contract and that it is fair and reasonable to exclude their application; and
 - b) The Consumer Guarantees Act 1993 and any successor legislation does not apply to the supply of the Goods; and
 - c) All warranties, conditions or other terms implied by law, including under the Sale of Goods Act 1908 and any successor legislation, are excluded so that the warranty given in clause 9.1 is the only and exclusive remedy of the Buyer in respect of defective workmanship of the Goods.

10. Risk and Title

- 10.1. Risk of damage to or loss of the 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 to the Buyer, the Buyer shall:
 - a) hold the Goods as bailee of Pyrotek; and
 - b) store the Goods (including any Products) in such a manner that will enable the Goods to be readily identifiable and distinguishable from all other goods in the possession of the Buyer, 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, and
 - c) at all times secure the Goods, including any Products, from risk, loss, damage, and theft, and keep such Goods including any Products fully insured against risk, loss, damage, and theft, and
 - d) upon demand by Pyrotek, deliver up the Goods including any Products forthwith to Pyrotek at the Buyer's sole cost; and
 - e) irrevocably authorise Pyrotek (including if the Goods and any Products have been sold or disposed of to a third party otherwise than in the ordinary course of the Buyer's business) to demand the Buyer pay all monies received from the sale of such Goods (including any Products) into a separate account in trust for Pyrotek.

11. Personal Property Securities Act 1999

- 11.1. The Buyer acknowledges and agrees that these conditions constitute a Security Agreement under the PPSA and any successor legislation, and Pyrotek may, at Pyrotek's cost, register on the Personal Property Securities Register, a security interest in the Goods and 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 Credit Contracts and Consumer Finance Act 2003 and any successor legislation will not apply.
- 11.3. The parties agree to contract-out of the PPSA in accordance with section 107 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, at its cost, 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**") in the Goods.
- 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 Pyrotek 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 intellectual property rights (including but not limited to a parent, registered design, trademark, copyright, or other proprietary right) of any other person. The Buyer indemnifies Pyrotek against any liability to or action 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, 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 equal to the time lost due to any delay excusable by this provision.
- 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 exclusively in accordance with laws of New Zealand and the Buyer submits to the non-exclusive jurisdiction of the courts of New Zealand.

14. Privacy Act

The Buyer authorises Pyrotek, in accordance with the Privacy Act 1993 and any successor legislation, to collect, retain, disclose to any person, and use any information about the Buyer and any personal information about any natural person acting on the Buyer's behalf, for the purpose of assessing the Buyer's creditworthiness, enforcing any rights under these Conditions or marketing the Goods provided by Pyrotek to any other party and do all things specified in the Privacy Act 1993 and any successor legislation. In accordance with the Privacy Act 1993 and any successor legislation, persons will be given access to their personal information on request. The information may be disclosed to Pyrotek's related or associated companies, contractors, other credit providers, risk insurers, debt collectors and credit reporting agencies for those purposes. Any questions or concerns about Pyrotek's privacy policy should be directed to its privacy officer.

ACCEPTANCE OF TERMS

I/WE have read and understood this document and have been advised, and given the opportunity to, seek independent legal advice.

SIGNED ON BEHALF OF THE APPLICANT:

Name		Name	
Position		Position	
Signature		Signature	
Date		Date	
Name		Name	
Position		Position	
Signature		Signature	
Date		Date	
Witness Name		Witness Signature	