

Fire Protection Technologies

Standard Terms and Conditions of Purchase

The following Terms and Conditions apply to Fire Protection Technologies and all its subsidiaries and associated companies / businesses.

1. Agreement

- 1.1 In consideration of payment of the Price by the Company, the Supplier must supply to the Company the Goods and/or perform the Services in accordance with the Purchase Order (which includes these Standard Terms and Conditions of Purchase).
- 1.2 To the extent the Supplier's terms and conditions are supplied with the Goods or Services (including as printed on consignment notes or other documents), those terms and conditions will be of no legal effect and will not constitute part of the Purchase Order (even if any of representative of the Company signs those terms and conditions or annexes the terms and conditions to the Purchase Order).
- 1.3 Where the Purchase Order relates to Goods and/or Services the subject of a contract between the Supplier and the Company, the terms of that contract apply to the extent of any inconsistency with these Purchase Order Terms and Conditions.
- 1.4 The Supplier must, in supplying the Goods or performing the Services:
 - (a) not unduly interfere with the Company's activities or the activities of any other person at the Delivery Address;
 - (b) be aware of and comply with and ensure that the Supplier's employees, agents and contractors are aware of and comply with:
 - i. all applicable Laws;
 - ii. all site standards, rules and procedures, to the extent that they are applicable to the supply of the Goods or the performance of the Services by the Supplier; and
 - iii. all lawful directions and orders given by the Company's representative or any person authorised by Law to give directions to the Supplier;
 - (c) ensure that the Supplier's employees, agents and contractors entering the Company's premises perform in a safe manner and are properly qualified for, and skilled in, the performance of their tasks and are of such character as not to prejudice:
 - i. safe working practices;
 - ii. safety and care of property; and
 - iii. continuity of work;
 - (d) provide all such information and assistance as the Company reasonably requires in connection with any statutory or HSEC investigation in connection with the supply of the Goods or the performance of the Services;
 - (e) on request by the Company, provide to the Company and its employees, agents and consultants any information and assistance required to identify, evaluate, implement and report on any matter required by Law, including:
 - iv. producing written reports;
 - v. recommending efficiency opportunities;
 - vi. collecting data; and
 - vii. monitoring or metering,
 in respect of anything used, produced or created in connection with the performance of the Supplier's obligations under this Agreement.

2. Delivery

- 2.1 The Supplier must deliver the Goods to the Delivery Address.
- 2.2 The Supplier must ensure that the Goods are suitably packed to avoid damage in transit or in storage.
- 2.3 Packages must be accompanied by a delivery note specifying the Purchase Order number, item number, destination, contents, quantity and date.

3. Time for Performance

- 3.1 The Supplier must complete the delivery of the Goods to the Delivery Address, or complete the performance of the Services, by the Date for Completion.
- 3.2 Unless otherwise expressly agreed in writing by the Company, time shall be strictly of the essence in relation to performance of the Purchase Order by the Supplier.

4. Title and Risk

- 4.1 Title in Goods passes to the Company upon payment of the Price by the Company.
- 4.2 Risk in the Goods passes to the Company when the Goods are delivered to the Delivery Address.
- 4.3 Effective upon part or full payment of the Price prior to the delivery of the Goods to the Delivery Address, right title and interest in the Goods passes to the Company.
- 4.4 Notwithstanding title in the Goods has or has not passed to the Company, the Company and the Supplier agrees:
 - (a) a part payment of the Goods gives rise to a Security Interest in the Goods; and
 - (b) the Company may register a Security Interest under the PPSA in respect of the Goods to be supplied and the Supplier agrees to do all things reasonably required to assist the Company effect such registration.
- 4.5 Effective upon delivery of the Goods to the Delivery Address and notwithstanding title in the Goods has or has not passed to the Company, the Company and the Supplier agree:
 - (a) the supply of the Goods may give rise to a Security Interest in the Goods; and
 - (b) at the Supplier's cost the Supplier may register a Security Interest under the PPSA solely in respect of the Goods supplied and the Company agrees to do all things reasonably required by the Supplier to assist the Supplier effect such registration.
- 4.6 Neither party may disclose information of the kind referred to in section 275(1) of the PPSA and this clause constitutes a confidentiality agreement within the meaning of s. 275(6) the PPSA. Each party waives any right it may have, or but for this clause may have had, under section 275(7) (c) of the PPSA to authorise the disclosure of information of the kind referred to in section 275(1) of the PPSA.

5. Price

- 5.1 The Company must pay the Supplier the Price for the Goods and/or Services.
- 5.2 The Price is inclusive of all costs incurred by the Supplier in the supply of the Goods and/or performance of the Services including all charges for packing, insurance and delivery of the Goods and the cost of any items used or supplied in the performance of the Services.
- 5.3 The Price cannot be varied unless agreed by the parties in writing.
- 5.4 The Price is inclusive of all taxes and duties, except GST.

6. GST and other Taxes

- 6.1 If GST is imposed on any supply made by the Supplier under or in connection with this Purchase Order, the Supplier may recover from the Company, in addition to the Price, an amount equal to the GST payable in respect of that Supply.
- 6.2 The Supplier must first provide the Company with a valid tax invoice before the Company will pay the GST amount to the Supplier.

7. Invoicing / Payment

- 7.1 Upon delivery of the Goods and/or completion of the Services, the Supplier must provide to the Company a valid tax invoice which must include the information set out in clause 7.2.
- 7.2 The Supplier's tax invoice must include the following details:
 - (a) a reference to the Purchase Order;
 - (b) a detailed description of the delivered Goods or performed Services, including the date of delivery and/or period of Services in respect of which the invoice relates and the relevant quantity;
 - (c) an individual reference number for the Company to quote with remittance of payment;
 - (d) the Price relating to the Goods and/or Services, broken down to reflect the same Price components on the Purchase Order; and
 - (e) the amount of any applicable GST.
- 7.3 The Company will pay all tax invoices that comply with clause 7.2 within 60 days from the end of month in which the Supplier's invoice is received, except where the Company disputes the invoice in which case:
 - (a) the Company may withhold payment of the disputed amount pending resolution of the dispute; and
 - (b) if the resolution of the dispute determines that the Company must pay an amount to the Supplier, the Company must pay that amount upon resolution of that dispute.
- 7.4 The Company may reduce any payment due to the Supplier under this Agreement by any amount which the Supplier must pay the Company, including costs, charges, damages and expenses and any debts owed by the Supplier to the Company on any account whatsoever. This does not limit the Company's right to recover those amounts in other ways.

8. Quality

- 8.1 The Goods and/or Services must match the description referred to in the Purchase Order.
- 8.2 If the Supplier gave the Company a sample of the Goods or a demonstration of the Services, the Goods and/or Services must be of the same nature and quality as the sample or demonstration given.
- 8.3 The Goods and/or Services must be fit for the purpose for which goods and/or services of the same kind are commonly supplied or bought and for any other purpose the Company expressly specifies in the Purchase Order.
- 8.4 The Goods must be of acceptable quality, safe and free from defects, acceptable in appearance and finish, do all things that the Goods are ordinarily used for, and unless otherwise specified in the Purchase Order, must be new.

9. Warranty Period

- 9.1 If, during the Warranty Period, any of the Goods or Services are found to be Defective, the Company may:
 - (a) return the Defective Goods to the Supplier;
 - (b) reject the Defective Services;
 - (c) repair or make good the Defective Goods; or
 - (d) re-perform or make good the Defective Services.
- 9.2 The Supplier must:
 - (a) repair or replace the Defective Goods;
 - (b) re-perform or make good the Defective Services; or
 - (c) reimburse the Company for any direct expenses incurred in repairing, re-performing or making good (as the case may be) any Defective Goods or Services should the Supplier decline or fail in its obligations to do so, at the Supplier's cost, if requested to do so by the Company.
- 9.3 The provisions relating to any Warranty Period or Defective Goods and/or Services specified under this Agreement shall be in addition to and without limiting any conditions or warranty expressed or implied by statute or common law or otherwise howsoever and in particular, without limiting the generality of the forgoing, the Supplier's liability under this Agreement shall be in addition to any condition or warranty in the Company's favour implied by statute or common law as to the quality or the fitness for any particular purpose of the works and each part thereof.

10. Confidentiality

- 10.1 Each party must not, and must ensure that its subcontractors do not, divulge to third parties any information relating to the Goods and/or Services (including Intellectual Property), the other party or the supply to the Company by the Supplier, unless and until such information is within the public domain (other than by a breach of this clause) or express written consent has been given by the relevant party.
- 10.2 Each party shall indemnify the other and keep the other party indemnified from and against all liabilities, losses, damages, actions, suits, proceedings, claims, costs (including legal costs) and expenses arising from any breach of this clause 10 by the indemnifying party whatsoever.

11. Intellectual Property

- 11.1 The specifications, drawings, technical instructions or any other documentation whatsoever issued to the Supplier by the Company during tendering and at the time of establishing this Agreement will remain the exclusive property of the Company and are to be kept strictly confidential.
- 11.2 The Supplier warrants that:
 - (a) the Goods supplied and/or Services performed by the Supplier and the license granted by it to the Company do not infringe any intellectual property rights of any third party; and
 - (b) the Goods supplied and/or Services performed are not subject to any intellectual property rights of any third party that in any way restrict the rights of the Company or its clients to use or sell the same.
- 11.3 The Supplier agrees that title in all (present and future) intellectual property created, discovered or coming into existence as a result of, for the purposes of or in connection with the supply of the Goods and/or performance of the Services under the Purchase Order (other than any improvements, modifications or additions to any pre-existing Supplier intellectual property) shall vest exclusively in the Company upon its creation (Company IP).

- 11.4 The Company acknowledges that the Supplier remains the owner of all intellectual property created, discovered or coming into existence other than as a result of, for the purposes of or in connection with the supply of the Goods and/or performance of the Services under the Purchase Order (Supplier IP).
- 11.5 The Supplier grants the Company a non-exclusive, royalty free licence to use all Supplier IP to the extent necessary to enable the Company to exercise its rights in the Company IP under the Purchase Order.

12. Indemnity

- 12.1 The Supplier will indemnify the Company and keep the Company indemnified from and against all liabilities, losses, damages, actions, suits, proceedings, claims, costs and expenses arising from or in connection with:
- (a) injury to (including illness or disability), or death, of any persons; and
 - (b) loss or destruction of or damage to or loss of use of any property, caused or contributed to by the act or omission of the Supplier or its directors,
- officers, employees, agents or contractors or by any breach of this Agreement by the Supplier (including any breach of a warranty), except to the extent and the proportion that it has been caused or contributed to by the willful default or unlawful or negligent act or omission of the Company.

13. Force Majeure

- 13.1 Notice of Force Majeure
A party will not be liable for any delay or failure to perform any of its obligations under the Purchase Order (other than an obligation to pay money) if as soon as possible after the beginning of the Force Majeure affecting the ability of the Party to perform any of its obligations under the Purchase Order, it gives a notice to the other party that complies with Clause 13.2.
- 13.2 The Purchase Order will suspend in the event and for the period of the Force Majeure, provided that each parties' respective obligations contained in this clause 13 are complied with.
- 13.3 Force Majeure Notice
- (a) A notice given under clause 13.1 must:
 - (b) specify the obligations the Party cannot perform;
 - (c) fully describe the Force Majeure;
 - (d) estimate the time during which the Force Majeure will continue; and
 - (e) specify the measures proposed to be adopted to remedy or abate the Force Majeure.
- 13.4 No compensation
Any amendment to the Date for Completion is the Supplier's sole remedy for any delays resulting from Force Majeure where the Supplier is the affected party and the Supplier is not entitled to any increase in the Price or any damages, costs or expenses in connection with the Force Majeure.

14. Breach and Termination

- 14.1 The Company may terminate the Purchase Order:
- (a) in its absolute discretion by giving the Supplier seven (7) days written notice; or
 - (b) in the event the Supplier is in material default of any of the terms of this Agreement for any reason (including insolvency) by written notice with immediate effect:
 - i. where the default is not capable of remedy; or
 - ii. where the default is capable of remedy but the Supplier fails to remedy such default, within fourteen (14) days of a written notice from the Company (or such other time as the Company may agree at its absolute discretion which time shall not be less than fourteen (14) days).
- 14.2 In the event that the Company terminates the Purchase Order then subject to any other rights of the Company under this Agreement the Company must:
- (a) pay for the Goods delivered or Services provided by the Supplier in accordance with the Purchase Order prior to the date of termination; and
 - (b) reimburse the Supplier for the cost of materials the Supplier reasonably ordered prior to the date of termination for the purpose of providing the Goods and or performing the Services and which the Supplier is legally liable to accept and cannot otherwise utilise, but only if the materials are delivered to the Delivery Address and become the Company's property upon payment;
 - (c) any other costs that the Supplier actually and reasonably incurred prior to the date of termination in the expectation of providing the Goods and or performing the Services, and which costs were not included in any previous payment by the Company, and the Supplier shall not otherwise be entitled to any compensation whether by way of damages, profit, loss or expense, including without limitation anticipated profits, incurred as a result of a termination of the Purchase Order under this clause.
- 14.3 Notwithstanding any other clause of this Agreement, if the Company terminates the Purchase Order pursuant to clause 14.1(b) the provisions of clause 14.2(b) and (c) shall not apply.

15. Insurances

- 15.1 The Supplier must at all times during the performance of the Purchase Order effect and maintain the following insurances:
- (a) Public liability insurance for at least \$20 million for any one event and unlimited in the aggregate and products liability insurance for at least \$10 million for any one event and in the aggregate, which shall contain a principal's indemnity extension in favour of the Company for liability to any third party arising out of the performance of this Purchase Order by the Supplier;
 - (b) where the Purchase Order provides for the provision of professional services, professional indemnity insurance;
 - (c) where the Purchase Order provides for the provision of Services, workers' compensation insurance as required by Law which shall contain a principal's indemnity extension for both statutory liability and common law liability in favour of the Company and its respective officers and employees, and shall further contain a waiver of subrogation in favour of the Company and its respective officers and employees; and
 - (d) any other insurances required by Law.
- 15.2 When requested, the Supplier shall provide copies of certificates of currency of the above insurances.

16. Limitation of Liability

- 16.1 Despite any other provision of these Standard Terms and Conditions of Purchase but subject to clauses 16.2 and 16.3, and to the maximum extent permitted by Law a party's overall liability:
- a. under, or arising out of, or in connection with these Standard Terms and Conditions of Purchase;
 - b. otherwise at law or in equity including:
 - i. by statute to the extent permitted by law; or
 - ii. in tort for negligence or otherwise;
 - c. on any other basis whatsoever,
- shall not exceed 100% of the contract Price.
- 16.2 Notwithstanding any other clause of this Agreement but subject always to clause 17.3 neither party shall be in any way be liable to the other party, including by way of indemnity, for Consequential Loss.
- 16.3 The limitation of liability referred to in clause 16.1 and 16.2 does not apply to liability for:

- (a) loss caused or contributed to by the Supplier, its directors, employees, or sub-contractors that is:
 - i. covered by a policy of insurance under which the Supplier is an insured and which it is required to effect under this Agreement; or
 - ii. which, but for an act or omission of the Supplier (including in respect of its disclosure obligations to any insurer), would have been covered by a policy of insurance under which the Supplier is an insured which it is required to effect under this Agreement.
- (b) loss arising from the death of or personal injury to any person, or loss or damage to any property, caused or contributed to by the Supplier, its directors, employees or subcontractors;
- (c) loss arising from any criminal acts, willful misconduct or fraud by the by the Supplier, its directors, employees or subcontractors or by any person for whose acts or omissions the Supplier is vicariously liable;
- (d) loss arising from conduct of the Supplier which is repudiatory of the Agreement as a whole;
- (e) loss arising from liability which, by law, the Supplier cannot contract out of; or
- (f) loss arising from a breach of confidentiality or intellectual property.

17. Dispute Resolution

17.1 Procedure for resolving disputes.

- (a) The parties agree that all disputes relating to or arising out of this Agreement must be resolved in accordance with this clause 17.
- (b) If a dispute arises then either party may give notice to the other party that must:
 - i. be in writing;
 - ii. state that it is a notice under this sub-clause 17.1; and
 - iii. include or be accompanied by reasonable particulars of the dispute.
- (c) If a notice is given under sub-clause 17.1(b), then a senior management representative or equivalent of each of the parties (who must be capable of binding each party) must meet at least once within five (5) Business Days of receipt of the notice under sub-clause 17.1(b) (or such other time as the parties may agree) and use reasonable endeavours acting in good faith to resolve the dispute.
- (d) If the dispute is not resolved by the senior management representatives within the period referred to in sub-clause 17.1(c), either party may commence proceedings for the resolution of the dispute.

17.2 Continue to perform

Notwithstanding the existence of a dispute, each party must continue to perform its obligations under this Agreement.

18. Definitions

Agreement means this agreement, comprising (a) the Purchase Order; (b) these Standard Terms and Conditions of Purchase; and (c) any attachments or annexure specifically referred to in the Purchase Order.

Company means the Fire Protection Technologies entity named in the Purchaser Order.

Consequential Loss means (a) loss of profits and revenue; and (b) loss of production.

Supplier means the party identified as such in the Purchase Order.

Defective means Goods and/or Services (or any aspect of them) which are not in accordance with the Purchase Order or which are damaged, deficient, faulty, inadequate or incomplete.

Delivery Address means the place for delivery specified on the Purchase Order.

Date for Completion means the date specified on the Purchase Order by which the Goods are to be delivered to the Delivery Address or the Services are to be completed.

Force Majeure means any event or circumstance (or combination of events and circumstances) which:

- (a) is beyond the control of the party affected by that event or circumstance or both which could not reasonably have been foreseen at the time of entering into this Agreement and which could not reasonably have been provided against or prevented by the party affected including but not limited to an act of God, war declared or undeclared, blockage, revolution, riot, insurrection, civil commotion, sabotage, lightning, fire, earthquake, storm or flood on the Site, plague and explosion, governmental or governmental agency restraint, expropriation, prohibition, intervention or embargo;
- (b) causes delay in, or prevention of, the performance by the affected party of any of its obligations under the Agreement; and
- (c) cannot be prevented, overcome or remedied by the exercise by the affected party of a standard of care and diligence consistent with that of a prudent and competent company, including a strike or industrial dispute which:
 - (d) has national or state-wide application and is not confined to the Supplier's workforce;
 - (e) affects the execution of the Services at the site; and
 - (f) lasts for more than seven (7) consecutive days,

but does not include:

- (g) other industrial-related disputes including strikes, lockouts, industrial difficulties, labour difficulties, work bans, blockades or picketing;
- (h) wet or otherwise inclement weather not connected to a named cyclone;
- (i) lack of or inability to use funds for any reason;
- (j) any occurrence which results from the wrongful act or wrongful omission of the affected party or the failure by the affected party to act in a prudent and proper manner and in accordance with good and accepted industry practices;
- (k) any failure by the affected party to reach agreement with any third party necessary to enable the affected party to perform its obligations under this Agreement;
- (l) an event or circumstance, where the event or circumstance or its effects on the affected party or the resulting inability of the affected party to perform its obligations could have been prevented, overcome or remedied by the exercise by the affected party of the standard of care and diligence consistent with that of a reasonable and prudent operator; or
- (m) breakdown of any plant or equipment.

Goods means the goods, if any, described on the Purchase Order.

GST has the meaning given to that term under the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

HSEC means health, safety, environment and community.

Law means: (a) Commonwealth, State and local government legislation including regulations, by-laws, orders, awards and proclamations; (b) common law and equity; (c) Authority requirements and consents, certificates, licences, permits and approvals (including conditions in respect of those consents, certificates, licences, permits and approvals); and (d) guidelines of Authorities with which the Supplier is legally required to comply.

PPSA means the Personal Property Securities Act 2009 (Cth).

Purchase Order means the purchase order for Goods and/or Services issued by the Company to the Supplier from time to time containing, amongst other things, a description of the Goods and/or Services.

Price means the price set out in the Purchase Order which is exclusive of GST but is inclusive of all other costs and charges.

Security Interest has the meaning given to it in the PPSA.

Services means the services, if any, described on the Purchase Order.

Warranty Period means the period of 24 months commencing on the date of delivery of the Goods and/or 18 months from the date on which the Service is performed.