

Fire Protection Technologies / Energy Conservation Technologies - Standard Terms and Conditions of Supply

These Standard Terms and Conditions apply to Fire Protection Technologies Pty Ltd ACN 634 309 461, Fire Protection Technologies Limited NZCN 7585736, Fire Protection Technologies Asia Pacific Pte Ltd UEN 201924421M, Energy Conservation Technologies Pty Ltd ACN 634 309 292 and Energy Conservation Technologies Pte Ltd UEN 201924425R.

These terms and conditions will govern the supply of all Goods and Services that the above companies (**we, us, our**) agrees to supply to you. We may refuse in our sole discretion to make subsequent supplies of Goods or Services unless you sign and return this agreement.

Please read this agreement carefully.

1. Definitions

- (a) **Customer** and **you** means the person we state as 'Customer' on any Purchase Order or Quotation.
- (b) **Goods** means the products we supply you under a Purchase Order.
- (c) **Intellectual Property Rights** means any intellectual or industrial property rights, whether protected by statute, at common law or in equity, including any trade mark, patent, invention, copyright, or design right, in any design, specification, process, technique, software, know how, trade secret, technical information, financial information, business method or confidential information.
- (d) **Loss** means any loss, liability, damage, cost or expense, including legal costs on a full indemnity basis, of whatever kind and however it arises.
- (e) **Mixed Goods** means a product:
 - (i) made from the Goods, whether finished or not;
 - (ii) that results from Goods being mixed or otherwise commingled with other articles, goods or products; or
 - (iii) that results from Goods becoming part of another product.
- (f) **PPSA** means the Personal Property Securities Act 2009 (Cth).
- (g) **Price** means the price payable for the Goods and Services the subject of a Purchase Order in accordance with clause 4.
- (h) **Purchase Order** means any purchase order, work order, work authorisation or any other form of request for us to supply either or both Goods and

Services to you, whether such order is made orally or in written form.

- (i) **Quotation** means any quotation we provide you to supply either or both Goods and Services.
- (j) **Services** means the services we will provide to you, as stated in a Purchase Order or Quotation.

2. Agreement

- (a) This agreement governs the supply of all Goods and Services by us to you.
- (b) All Purchase Orders are subject to our acceptance, which we may accept or decline in our absolute discretion.
- (c) If we provide you with a Quotation, we provide it subject to this agreement. If we subsequently accept a Purchase Order, a separate contract of sale will arise that is also subject to this agreement.
- (d) Any additional or other terms and conditions you provide to us, whether forming part of a Purchase Order or otherwise, will not be effective or binding on us unless we expressly agree in writing.
- (e) If there is any inconsistency between the terms set out in this agreement and the terms set out in any Quotation, this agreement will prevail to the extent of any inconsistency.

3. Specifications

- (a) We will supply the Goods and Services to you in a timely manner and in accordance with this agreement.
- (b) Where possible, we will supply the Goods and Services to you in accordance with any specifications stated in the Purchase Order. Where the Purchase Order does not contain any specifications, or where the specifications are ambiguous or unclear, we will supply the Goods and Services in accordance with the specifications stated in the Quotation.

4. Price and Payment

- (a) You must pay us the amount set out in any Quotation for the Goods and Services (**Price**) in accordance with this agreement.
- (b) You must pay the Price to us:
 - (i) within 30 days of receipt of a validly issued invoice; and
 - (ii) without withholding, deduction, counter claim or set-off.

- (c) Without prejudice to any other right or remedy we may have:
 - (i) if any amount due for payment under this clause 4 is not paid on the due date, we may charge, and you must pay, interest on the outstanding sum at the Reserve Bank of Australia cash rate plus five percent per annum, calculated daily from the due date until the date of payment; and
 - (ii) we may suspend supplying you the Goods and Services the subject of a Quotation until payment has been made in full.
- (d) You indemnify us from and against all Loss we incur in pursuing any overdue amounts you owe us.
- (e) We may require you to pay a deposit or pre-payment on account of the Price.
- (f) We may charge you for any additional costs and fees we incur in connection with any delay caused as a result of us following your instructions or you not fulfilling your obligations under this agreement.
- (g) Unless we specifically state otherwise in a Quotation, the Price is exclusive of any goods and services tax, value added tax or other similar taxes or levies and all costs or charges.
- (ii) you grant us an irrevocable license to enter your premises and retrieve the Goods; and
- (iii) you must not sell or dispose of any of the Goods or any interest in the Goods without our prior written consent.
- (d) Subject to the provisions of the PPSA, we may, in addition to any other rights we might have, retake possession of all Goods in your possession to clear any outstanding indebtedness you owe us. In doing so, we might choose not to distinguish between Goods that have and have not been paid for.
- (e) If we consent to the sale of Goods in accordance with clause 6(c)(iii):
 - (i) you must inform any person to whom you propose to sell or dispose of the Goods (**Acquirer**) of our interest in the Goods;
 - (ii) you must ensure that the terms of the sale or disposal of Goods to the Acquirer includes a term that is identical in substance to this clause 6;
 - (iii) notwithstanding that payment of the Price for the Goods may not be due, you must pay us the Price for the Goods as soon as you receive payment for the Goods from the Acquirer;
 - (iv) you will hold on trust for us all your rights against the Acquirer and, to the extent necessary to discharge all debts owing to us in respect of the supply of Goods, any moneys you receive from the Acquirer;
 - (v) we may trace all and any monies from any sale or disposal of the Goods until you pay us the Price in full for the Goods; and
 - (vi) you must, at our request, assign your claims against the Acquirer and irrevocably appoint us and each of our officers as your attorney to give effect to and complete such assignment.
- (f) Where Goods become Mixed Goods and you have not paid us in full for the Goods, ownership of the Mixed Goods immediately passes to us.
- (g) Where you have not paid us in accordance with this agreement:
 - (i) you must keep any Mixed Goods as a fiduciary for us and, unless we consent otherwise, separately store the Mixed Goods in such a way that makes it clear they are our property; and
 - (ii) you grant us a security interest in the Mixed Goods as security for any sums due by you

5. GST

If goods and services tax or any similar value added tax (**GST**) is levied or imposed on or in respect of a supply made under or in connection with this agreement, the recipient of that supply must pay to the supplier, in addition to any consideration provided for under this agreement such amount as is necessary to ensure that the supplier (after payment of any GST which is imposed or levied in respect of the supply) is in the same financial position it would have been in had the GST not been imposed or levied.

6. Property and Risk

- (a) Risk of loss and damage to, and liability for, Goods passes to you on delivery of the Goods to the delivery address stated in a Quotation.
- (b) Legal and beneficial ownership in the Goods will not pass to you until you have paid us the Price in full for the Goods. Until you have paid us in full for the Goods, we will remain the sole and absolute owner of the Goods.
- (c) Subject to the provisions of the PPSA, until we receive payment of the Price in full for the Goods:
 - (i) you hold the Goods as bailee for us and must separately store the Goods in such a way that makes it clear they are our property;

to us.

7. Delivery

- (a) Any timeframes stated by us in a Quotation for delivery of Goods and Services are estimates only. We will use our reasonable endeavours to supply the Goods and Services in the quantity, manner and time frame stated in the Quotation.
- (b) We will not be liable for any Loss suffered by you as a result of any delay or failure by us to deliver the Goods and Services (or any part of them) or any failure by us to deliver the requested quantities.
- (c) Where we agree to deliver Goods, delivery costs will be in addition to the Price.
- (d) If we fail to deliver some or all the Goods under a Purchase Order by the estimated deliver date, you must not cancel that Purchase Order. Unless you give us written notice of a shortage in delivery or of non-confirming Goods within 14 days after receipt of the Products at the delivery destination, we may refuse any claims for shortages of deliveries or non-confirming Goods.
- (e) We may refuse to deliver Goods to you if you owe us any money.
- (f) Unless we agree otherwise, we will ship all Goods 'Ex Works'. In these circumstances, you must arrange for collection of Goods from our premises.

8. Force Majeure

- (a) Neither party will be liable for any delay in or for any failure to perform its obligations under this agreement or any Purchase Order or Quotation to the extent that the party is able to demonstrate that such delay or failure has been caused by events, circumstances or causes beyond the party's control (**Force Majeure Event**).
- (b) If a Force Majeure Event occurs, the party prevented from performing any of its obligations must:
 - (i) notify the other party in writing as soon as practicable;
 - (ii) continue to perform all unaffected obligations in accordance with this agreement or any Purchase Order or Quotation;
 - (iii) use reasonable endeavours to overcome the effects of the Force Majeure Event as soon as reasonably possible.
- (c) On providing the notice in clause 8(b), the obligations which cannot be performed because of the Force Majeure Event will be suspended.

- (d) If a party is prevented from performing any of its obligations under this agreement as a result of a Force Majeure Event for a period of one month either party may terminate this agreement by giving 30 days' notice to the other party, without prejudice to any of the rights of either party that accrued prior to the date of termination.

9. Security

- (a) Unless the context requires otherwise, terms used in this clause 9 have the meanings given to them in, or by virtue of, PPSA.
- (b) You grant to us a security interest in all Goods to which we retain title to under these terms and conditions.
- (c) You consent to us creating and maintaining a registration on the Personal Property Securities Register (**Register**) in any required form, in relation to any security interest contemplated or created by this agreement, including a security interest.
- (d) You agree to sign any necessary documents and provide all reasonable assistance and information to facilitate the registration and maintenance of a security interest on the Register. We reserve the right to register a financing statement or financing change statement in respect of any security interest and you waive the right to receive notice of a verification statement in accordance with section 157 of the PPSA.
- (e) You undertake to do any and all acts that we reasonably require you to do to:
 - (i) allow us to create and maintain a perfected security interest (including a purchase money security interest) in respect of any Goods we supply you and any and all proceeds of those Goods;
 - (ii) allow us to register a financing statement or financing change statement;
 - (iii) ensure that we maintain our secured position under the PPSA;
 - (iv) not register a financing statement or financing change statement without our prior written consent;
 - (v) not register or commit to the register of a financial statement or financing change statement in respect of the Goods, in favour of a third party, without our prior written consent.
- (f) You waive your rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), and 135 of the PPSA and your rights as a grantor and a debtor under sections 142 and 143 of the

PPSA and you agree that sections 96 and 125 of the PPSA do not apply to the security agreement created by this agreement.

- (g) We may apply amounts received from you in connection with the sale of Goods to satisfy obligations secured by security interests at our absolute discretion.

10. Insurance

We will effect and maintain for the duration of this agreement the following insurances:

- (a) those which the law requires us to hold; and
- (b) public and product liability insurance for an amount of at least \$20,000,000 in the aggregate.

11. Limitation of Liability

- (a) Nothing in this agreement or any Purchase Order or Quotation limits or excludes any guarantees, warranties, representations or conditions implied or imposed by law, including the Australian Consumer Law contained in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) (**ACL**) (or any liability under them) which by law may not be limited or excluded.
- (b) To the fullest extent permitted by law and subject to clause 11(a), you acknowledge and agree that all terms, guarantees, warranties, representations or conditions that are not expressly stated in this agreement are excluded.
- (c) To the fullest extent permitted by law and subject to clause 11(a), our maximum aggregate liability to you for our failure to comply with any part of this agreement is an amount equal to the Price allocable to the Goods and Services that gave rise to the relevant claim.
- (d) To the fullest extent permitted by law and subject to clause 11(a), we will not be liable for any claim in connection with this agreement or a Purchase Order or Quotation unless you have given us notice of the claim on or before the date:
 - (i) in respect of Goods, 12 months following the date of delivery of the Goods to which the claim relates; and
 - (ii) in respect of Services, 12 months after the day we complete the Services to which the claim relates.
- (e) To the fullest extent permitted by law and subject to clause 11(a), we will not be liable for any consequential, indirect or special losses or damages of any kind (including, loss of profit, loss or corruption of data, business interruption or indirect costs) suffered by you or any third party.

12. Intellectual Property

- (a) Unless otherwise agreed between the parties in respect of particular Services we provide you, all Intellectual Property Rights in or arising out of or in connection with the provision of the Services (other than intellectual property rights in any materials provided by you) will be owned by us.
- (b) We agree to grant you a non-exclusive, perpetual, royalty-free licence to use Intellectual Property which is used by us in connection with the performance Services for the purpose of receiving and using the Services.
- (c) You agree to provide to us, and you grant us a non-exclusive, royalty-free, non-transferable licence to use, any materials reasonably requested and necessary for us to provide you Goods and Services.

13. Privacy

- (a) You consent to us (subject to our obligations under the *Privacy Act 1988* (Cth)) collecting, using and disclosing information about you:
 - (i) which relates to but is not limited to identity, credit history and/or solvency;
 - (ii) for the purposes of assessing your creditworthiness, risk and solvency and enforcing any of our rights; and
 - (iii) by arrangement with any authorised agents, credit providers and reporting services.
- (b) We may refuse to grant credit if any information to which we are entitled is not provided and or if you otherwise refuse to allow us access to such information.

14. Cancellation of a Purchase Order

You may only cancel a Purchase Order prior to supply of the Goods and Services under the Purchase Order by written notice to us. If you cancel a Purchase Order, you must pay us all reasonable costs we incur in relation to such cancellation, together with any reasonable cancellation charges we notify you of from time to time.

15. Termination

- (a) Either party may terminate this agreement by giving 30 days' written notice to the other party.
- (b) Either you or we may terminate this agreement with immediate effect by giving written notice to the other, if the other:
 - (i) fails to pay any amount due under this agreement or a Purchase Order on the due

- date for payment and remains in default not less than five business days after being notified in writing to make such payment;
 - (ii) commits a material breach of any term of this agreement or any Purchase Order or Quotation which breach is irremediable or, if the breach is remediable, fails to remedy that breach within a period of 21 days of receipt of written notice to remedy the breach; or
 - (iii) is insolvent.
- (c) Upon the termination of this agreement for any reason:
 - (i) all existing Purchase Orders and Quotations will terminate automatically;
 - (ii) we will not accept any further Purchase Orders from you;
 - (iii) you must immediately pay in full:
 - (A) all amounts due and payable by you to us; and
 - (B) on a pro-rata basis, any amounts in respect of Goods and Services provided in the period up to the date of termination that have not been invoiced by us; and
 - (iv) clauses 11, 12, 15 and 16 continue in force.
- (d) Termination of this agreement will not affect any accrued rights or liabilities of either of us.
- (e) A word or provision of this agreement must be read down if:
 - (i) this agreement is void, voidable or unenforceable if it is not read down;
 - (ii) this agreement will not be void, voidable or unenforceable if it is read down; and
 - (iii) the provision is capable of being read down.
- (f) Subject to clause 16(e), part or all of any provision of this agreement that is illegal or unenforceable must be severed from this agreement and will not affect the continued operation of the remaining provisions of this agreement.
- (g) You may not assign, novate, transfer, subcontract or deal in any other manner with any or all your rights and obligations under this agreement without our prior written consent.
- (h) Waiver of any power or right under this agreement:
 - (i) must be in writing signed by the party entitled to the benefit of that power or right; and
 - (ii) is effective only to the extent set out in that written waiver.
- (i) Any rights and remedies that a person may have under this agreement are in addition to and do not replace or limit any other rights or remedies that the person may have.
- (j) Each party must do or cause to be done all things necessary or reasonably desirable to give full effect to this agreement.
- (k) This agreement is governed by and construed in accordance with the laws in force in Victoria, Australia and we each submit to the non-exclusive jurisdiction of the courts of that State.

16. General

- (a) To the fullest extent permitted by law, this agreement constitutes the entire agreement between you and us in relation to the supply of any Goods and Services. You acknowledge that all prior discussions, undertakings, agreements, representations, warranties and indemnities in relation to that subject matter are replaced by this agreement and have no further effect.
- (b) The provisions of this agreement will not merge on completion of any transaction contemplated in this agreement and, to the extent any provision has not been fulfilled, will remain in force.
- (c) This agreement may not be amended or varied unless the amendment or variation is in writing signed by both you and us.
- (d) If a dispute arises between you and us in relation to this agreement or any Purchase Order, prior to commencing any proceedings, we must each use best endeavours to negotiate and mediate in good faith with the view to resolving the dispute without the need for commencing formal legal proceedings of any kind.