



Standard Terms and Conditions of Sale (Effective March 2010)

These Terms and Conditions are incorporated in all Contracts between **Firequip Pty Ltd ABN 77 003 826 588** and the Customer for the supply of Goods or Services or both by Firequip.

1. DEFINITIONS

In these Terms and Conditions the following words have the meanings shown:

- (a) "Firequip" means Firequip Pty Ltd;
- (b) "Customer" means the person, firm or company placing the Order with Firequip;
- (c) "Application" means the application by the Customer to Firequip for commercial credit;
- (d) "Quotation" means the form of quotation submitted by Firequip to the Customer in which these Terms and Conditions are deemed to be incorporated;
- (e) "Invoice" means the sales invoice issued by Firequip to the Customer in which these Terms and Conditions are deemed to be incorporated.
- (f) "Contract" means the contract formed between Firequip and the Customer by an Order accepted by an Order Acknowledgment;
- (g) "Goods" means any goods, products, services or materials to be supplied by Firequip;
- (h) "Order" is defined in clause 4(a);
- (i) "Order Acknowledgment" is defined in clause 4(b).

2. INTERPRETATION

The singular includes the plural and vice versa. A reference to a person includes a corporation, an association (incorporated or unincorporated) and a statutory or other authority and a reference to a gender includes all other genders.

3. PRICES AND QUOTATIONS

- (a) The price payable for Goods shall be the current price at the date of delivery, including GST, unless otherwise stated and shall be subject to variation by Firequip, at any time, without notice.
- (b) Notwithstanding any provision in the Contract, Firequip may increase the price of Goods after an Order Acknowledgment and prior to delivery of the Goods if the price increase results from an increase in the price of any input, which comprises part of the Goods. Or as the result of the introduction of any legislation, regulation or government policy.
- (c) Unless previously withdrawn, a Quotation is valid for thirty (30) days or such other period as stated therein.
- (d) A Quotation is not to be construed as an obligation on the part of Firequip to sell but merely an invitation to treat and no contractual relationship shall arise until the Customer's Order has been received and an Order Acknowledgment communicated to the Customer by Firequip.
- (e) Prices specified in a Quotation are subject to alteration without notice and are provided on a supply only basis unless otherwise stated. All other costs including commissioning and installation, where applicable, shall be at the Customer's expense.
- (f) The Customer agrees to pay all necessary additional taxes and charges incurred by Firequip in meeting the Customer's order.

4. ORDERS, ORDER ACKNOWLEDGMENT AND CONTRACT

- (a) An order or offer to purchase can be made by the Customer in writing or verbally.
- (b) An order is accepted when the Customer receives from Firequip an Order Acknowledgment in writing or if writing is not received, acknowledgment verbally or delivery, whichever occurs first.
- (c) When an Order is accepted by an Order Acknowledgment the Contract will be wholly documented by any specific term(s) agreed in writing, the Order Acknowledgment and these Terms and Conditions.
- (d) Previous dealings between Firequip and the Customer shall not have any effect on the Contract.
- (e) A Contract constitutes the entire agreement between Firequip and the Customer with respect to the Goods supplied under the Contract. All prior negotiations, proposals and correspondence are superseded by that Contract and these Terms and Conditions will, in all circumstances, prevail over the Customer's terms and conditions of purchase (if any), whether issued before or after the date these Terms and Conditions came into effect.

5. DELIVERY

- (a) Firequip will make all reasonable efforts to have the Goods delivered to the Customer or its designated agent as agreed between the parties.
- (b) If any variation occurs in the quoted delivery of the Goods, Firequip will notify the Customer. Failure by the Customer to object, in writing, within seven (7) days of such notification shall be deemed to constitute acceptance of the revised delivery date.
- (c) A delivery charge will apply to all deliveries unless otherwise agreed by Firequip.
- (d) Delivery may be made in instalments. Each instalment will be treated as a separate delivery with the Price being apportioned in accordance with the proportion of the Goods delivered.
- (e) Where the Goods are for delivery by instalments, any defect in instalment shall not be grounds for cancellation of the remainder of the instalments and the Customer shall be bound to accept delivery thereof.
- (f) All requests for proof of delivery must be made within a period of twenty-one (21) days following the date of the Invoice.

6. ACCEPTANCE

- (a) The Customer shall inspect all Goods upon delivery and must give immediate notice to Firequip on delivery or pick up of Goods of any damage, shortages or anything else not in accordance with the Order. Failure, by the Customer, to provide such notice shall be deemed to constitute acceptance of the delivery.
- (b) If Firequip delivers less than the full quantity of Goods the Customer may reject those delivered but only with the prior consent of Firequip.
- (c) The Customer agrees to keep Goods referred to in this section until Firequip can arrange the inspection of damaged Goods or collection of Goods not in accordance with the Order.



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7. PASSING OF TITLE AND RISK

- (a) Risk in the Goods passes to the Customer upon delivery (including all risks associated with unloading) or upon title in the Goods passing to the Customer, whichever is the earlier.
- (b) The legal and equitable title to the Goods will only be transferred from Firequip to the Customer when the Customer has met and paid all that is owed to Firequip on any account whatsoever.
- (c) The Customer acknowledges that until they have met and paid all that is owed to Firequip, the Customer holds the Goods as bailee for Firequip and shall keep the Goods separate and in good condition clearly showing and documenting Firequips ownership of the Goods.
- (d) If the Customer defaults, in addition to Clause 11(b), Firequip may take possession of the Goods wherever the Goods are located and the Customer agrees that representatives of Firequip may enter upon the Customers premises for that purpose.
- (e) The Customer may sell the Goods to a third party or use the Goods in some manufacturing or construction process of its own or some third party. Provided that where the Customer is paid by that third party, the Customer holds the proceeds, separate from other monies, to the extent of the amount owing by the Customer to Firequip.
- (f) Notwithstanding the above, the Customer is still required to pay Firequip for Goods already delivered and for Goods manufactured or ordered to specification and not yet delivered.

8. MEASURES AND PERFORMANCE DATA

- (a) Any and all statements made by Firequip as to the weight, length, quantity, dimension or performance characteristics of Goods are approximate and should be construed as such by the Customer.
- (b) Unless agreed to the contrary in writing, Firequip reserves the right to supply an alternative brand or substitute product.

9. TERMS OF PAYMENT

- (a) The Customer agrees to pay Firequip in cash or by bank cheque on delivery of the Goods or performance of services unless other arrangements are agreed with the Customer by Firequip.
- (b) If Firequip extends credit to the Customer, payment must be within thirty days of the end of the month in which the Goods are invoiced unless otherwise identified by Firequip on any statement of account or invoice.
- (c) Payment is only received by Firequip when it receives cash or when the proceeds of other methods of payment are credited and cleared to Firequips bank account.
- (d) The Customer may not assert or exercise any right of set-off against monies payable by it to Firequip under this agreement.
- (e) Firequip reserves the right to issue progress invoices for materials and/or labours expended on work in progress. A final invoice will be issued on completion of the Contract.

10. CREDIT

- (a) Firequip may grant credit upon the Terms and Conditions on the basis of the Application and such other documents and information required by Firequip.
- (b) The Customer authorises Firequip, its employees and agents to make such inquiries as it deems necessary to investigate the credit worthiness of the Customer including inquiries with persons nominated as trade referees, bankers or other credit providers (information sources). The Customer authorises the information sources to disclose to Firequip such information concerning the Customer, which is requested by Firequip.
- (c) Until Firequip grants the Customer credit by notice in writing, Firequip will only supply Goods to the Customer on the basis of payment in advance.
- (d) The granting of credit does not oblige Firequip to extend any particular amount of credit to the Customer.
- (e) The Customer must notify Firequip in writing if there is a change in the shareholding or ownership of the Customer or any material change in the Customers financial position.

11. DEFAULT

- (a) The Customer will be in default if:
 - i) the Customer breaches the Terms and Conditions;
 - ii) payment for the Goods has not been received by Firequip by the due date of payment;
 - iii) the Customer, being an individual, commits an act of bankruptcy or becomes an insolvent under administration;
 - iv) the customer being a body corporate becomes an externally administered body corporate or has an application for winding up filed against it;
 - v) Firequip forms the opinion that the Customers credit worthiness or credit standing alters from that indicated in its Application;
- (b) If the Customer defaults, Firequip may:
 - i) charge interest on outstanding amounts at 10% per annum, calculated on a daily basis; and/or
 - i) treat the whole of the Contract and any other Contract with the Customer as repudiated and sue for breach of contract; and/or
 - ii) refuse to supply any Goods to the Customer; and/or
 - iii) claim the return of any Goods in the Customers possession where title has not passed to the Customer; and/or
 - iv) without notice to the Customer withdraw or vary any credit Firequip has provided to the Customer; and/or
 - v) without notice to the Customer make all monies owing by the customer to Firequip on any account due and payable; and/or
 - vi) seek reimbursement for payments made by Firequip for its full cost of recovering or attempting to recover amounts not paid by the Customer when due including, but not limited to, fees paid to a collection agency or legal fees and expenses on a lawyer.



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12. CANCELLATION AND RETURNS

- (a) The Customer shall at no time cancel the whole or part of any Order without Firequip's prior approval;
- (b) The Customer must not return goods without Firequip's prior approval;
- (c) Firequip will accept the return of Goods and provide a credit against such returns to the Customer to the extent that the goods do not comply with the quantity or description of the Customer's purchase order provided that:
 - i) the Customer has inspected the Goods promptly on delivery; and
 - ii) within seven (7) business days of delivery of such goods to it the Customer gives written notice to Firequip of a request for credit which details all alleged non-compliances and obtains from Firequip a Return Authorisation Number (RAN); This request must also specify the original purchase order and/or invoice number as proof of purchase; and
 - iii) Firequip is then satisfied as to the accuracy of the claim in that notice;
- (d) Firequip will accept the return of Goods and provide the customer with a credit for them where the reason for their return is customer error in:
 - i) ordering the type/style/model of the Goods; or
 - ii) selection of the Goods for their suitability to applications; or
 - iii) the quantity of the Goods ordered; provided that
 - iv) a Return Authorisation Number (RAN) is obtained from Firequip;
 - v) the Customer returns the goods to Firequip within seven (7) business days of the delivery in an unused condition and in original undamaged packaging and;
 - vi) the request for the return of Goods specifies the original purchase order and/or invoice number in respect of those Goods; and
 - vii) the Customer pays a minimum restocking fee of 20% of the credit claim for the Goods to be returned; and
 - i) freight and transport charges are paid by the Customer unless otherwise agreed by Firequip. If not prepaid by the Customer they will be deducted from any credit.
- (e) The Customer is not entitled to return any Goods for credit where the goods have been:
 - i) custom made, custom cut, custom processed, modified or imported for the Customer; or
 - ii) the Goods have been altered in any way; or
 - iii) damaged due to installation contrary to the manufacturers instructions;

13. WARRANTIES AND LIABILITIES

- (a) Subject to clause 13(c), all Goods supplied by Firequip are covered by such warranty as is specified by the manufacturer and supplied subject to the product standards detailed by the manufacturer.
- (b) The Customer shall notify Firequip, in writing, of any defect in the Goods supplied. The Customer shall not carry out any remedial work to the alleged defective Goods without first obtaining the written consent of Firequip to do so.
- (c) If under any law any terms which apply to the sale of Goods or Services under this agreement cannot be legally excluded, restricted or modified then those terms apply to the extent required by law.
- (d) All terms, which would otherwise be implied, are excluded except as stated here.
- (e) To the extent permitted by law, Firequips sole liability for any breach of any term is limited to and will be completely discharged by any one of the following as determined by Firequip:
 - i) the replacement of the Goods or the supply of equivalent Goods;
 - ii) the repair of the Goods;
 - iii) the payment of the cost of having the Goods repaired;
 - iv) the payment of the cost of replacing the Goods or of acquiring the Goods.
- (f) Except as expressly provided herein and to the extent permitted by law:
 - i) Firequip is not liable to the Customer (and any party claiming through the Customer against Firequip) for any claim made in connection with the Contract, tort, under statute, in equity or otherwise in respect of defects in delivered Goods or for loss or damage to person or property arising from or caused by such defects;
 - ii) Firequip shall not be liable for any indirect, special or consequential loss or damage of any nature whatsoever resulting from or caused in any way by the Goods;
 - iii) "indirect, special or consequential loss or damage" includes: (A) any loss of income, profit or business; (B) any loss of goodwill or reputation;
 - iv) the Customer indemnifies Firequip against any liability to or action by a third party for infringement of a patent, registration, design, trademark or copyright in respect of Goods manufactured to the Customers specification;
 - v) all Goods are supplied in accordance with industry standards and Firequip shall not be liable to the Customer for the condition or quality of Goods that comply with these standards.

14. FORCE MAJEURE

- (a) Firequip is not liable for failure to perform the Contract to the extent and for so long as its performance is prevented or delayed because of:
 - i) circumstances outside of Firequip's control;
 - ii) failure of Firequips machinery; or
 - iii) failure of a supplier to Firequip.
- (b) Firequip shall be entitled to delay or cancel delivery or reduce the amount of Goods delivered if it is prevented from fulfilling the contract by events beyond the company's control.

15. GOVERNING LAW

This document is governed by the law of the State or Territory in which Firequip accepts the Order. Both Firequip and the Customer submit to the jurisdiction of the courts of that State or Territory to settle and resolve any disputes that may arise out of or in connection with the Contract of which these Terms and Conditions form a part.

16. VARIANCE

Firequip may vary these Terms and Conditions without notice to the Customer.