



36 Stennett Road, Ingleburn NSW 2565

A.B.N. 59 626 279 972

## TERMS AND CONDITIONS OF TRADE

These Terms apply to all Products supplied by the Company.

### 1. DEFINITIONS

- 1.1. **"Accepted Order"** means an Order accepted by the Company on these Terms.
- 1.2. **"Australian Consumer Law"** means the Australian Consumer Law set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).
- 1.3. **"Business Days"** means a day which is not a Saturday, Sunday or public holiday in New South Wales.
- 1.4. **"Claim"** means any claim, including a notice, demand, debt, account, action, expense, damage, loss, cost, lien, liability, proceeding, litigation (including reasonable legal costs), investigation or judgment of any nature, whether known or unknown.
- 1.5. **"Company"** means Fire Fab Australia Pty. Limited ACN 626 279 972.
- 1.6. **"Consumer Guarantee"** means a consumer Guarantee as it applies to supplies made under this Contract, as set out in Part 3-2, Division 1 of the Australian Consumer Law.
- 1.7. **"Contract"** means the agreement between the Company and the Customer constituted by these Terms and the Accepted Order.
- 1.8. **"Customer"** means the person or entity with whom the Company has contracted under the Contract, as set out in a Accepted Order, Invoice or any other document which the Company presents to the Customer, including his, her or its successors and assigns.
- 1.9. **"Delivery Address"** means the delivery address described in an Accepted Order, Invoice or any other documents which the Company presents to the Customer.
- 1.10. **"Delivery Date"** means a date the Company will deliver the Products to the Delivery Address or Site, as soon as practicable after an Accepted Order.
- 1.11. **"Event of Default"** means an event of default described in clause 10.
- 1.12. **"Fair Wear and Tear"** means minor damage, in the reasonable opinion of the Company, caused by ordinary day-to-day use of the Products.
- 1.13. **"Force Majeure Event"** means an act of God, fire, lightning, earthquake, explosions, flood, subsidence, insurrection or civil disorder or military operations or act of terrorism, expropriation, strikes, lock-outs or other industrial disputes of any kind not relating solely to the party affected, and any other event which is not within the reasonable control of the party affected but does not include any act or omission of the other party.
- 1.14. **"GST"** has the meaning given in GST Law.
- 1.15. **"GST Law"** has the same meaning given in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- 1.16. **"Invoice"** means an invoice issued by the Company to the Customer following an Accepted Order.
- 1.17. **"Insolvency Event"** means the happening of any one or more of the following events:
  - a) in relation to a natural person:
    - (1) that person being unable to pay his or her debts as and when they fall due;
    - (2) an application and filing for bankruptcy being made in respect of that person; or
    - (3) a receiver, or receiver and manager, trustee for creditors or trustee in bankruptcy or analogous person

being appointed over that person's assets or undertakings or any of them; or

- b) in relation to a body corporate:
  - (1) that body corporate being unable to pay its debts as and when they fall due;
  - (2) a receiver, receiver and manager, administrator or liquidator being appointed over that body corporate's assets or undertakings or any of them;
  - (3) an application for winding up or other process seeking orders which, if granted, would render that body corporate an externally-administered body corporate being filed and not being withdrawn within 20 Business Days;
  - (4) that body corporate being or becoming the subject of an order, or a resolution being passed, for the winding up or dissolution of that body corporate; or
  - (5) that body corporate entering into, or resolving to enter into, a deed of company arrangement or an arrangement, composition or compromise with, or proceedings being commenced to sanction such a deed of company arrangement or arrangement, composition or compromise, other than for the purposes of a bona fide scheme of solvent reconstruction or amalgamation.

- 1.18. **"Loss"** means any damage, loss, liability, expense or cost whether direct or indirect, consequential or incidental.
- 1.19. **"Order"** means any demand to purchase any Products made by a Customer by telephone or email to the Company on these Terms.
- 1.20. **"Products"** means all products described in the Accepted Order or Invoice or supplied by the Company from time to time.
- 1.21. **"PPSA"** means the *Personal Property Securities Act 2009* (Cth).
- 1.22. **"PPSR"** means the Personal Properties Securities Register.
- 1.23. **"Quote"** means the tender or quotation for Products issued by the Company to the Customer or otherwise as communicated by the Company to the Customer.
- 1.24. **"Security Interest"** has the meaning given in the PPSA.
- 1.25. **"Sites"** means sites specified by the Customer from which it will use or operate the Products.
- 1.26. **"Terms"** means these terms and conditions of trade.

### 2. AGREEMENT TO SUPPLY

- 2.1. The Company agrees to supply the Products to the Customer on the Delivery Date in accordance with the Contract.

### 3. ORDERS

- 3.1. Each Order constitutes an offer by the Customer to purchase the Products specified in that Order on the Terms, unless otherwise expressly agreed in writing.
- 3.2. The Company may, in its sole discretion decline an Order.
- 3.3. No Orders are binding on the Company unless accepted in writing.
- 3.4. If the Company accepts an Order, it will issue the Customer with an Invoice, specifying the Products to be supplied.
- 3.5. No Accepted Order may be cancelled, modified or deferred without the prior written consent of the Company which may withheld in the Company's sole discretion.

### 4. FREIGHT AND INSURANCE

4.1. Unless otherwise agreed in writing the Company will arrange freight (including freight insurance) of the Products to the Delivery Address (or Sites as required), at the Customers cost (which is in addition to the price for the products and must be paid on the terms of the Invoice and in accordance with clause 7).

## 5. DELIVERY

5.1. The Company will deliver the Products to the Delivery Address or such other Sites as agreed between the parties.

5.2. The Company will endeavour to deliver the Products as soon as practicable following an Accepted Order however any proposed delivery date is an estimate only and the Company is not liable for any failure to deliver Products within an estimated delivery time.

5.3. The Company reserves the right to charge the Customer reasonable storage and/or waiting costs if the Products are unable to be delivered, for any reason not caused by the Company, to the Customer on the Delivery Date.

## 6. INSPECTION AND ACCEPTANCE OF PRODUCTS

6.1. On delivery of the Products to the Customer, the Customer must immediately inspect the Products for their quality and condition.

6.2. Subject to clause 11, the Customer will be deemed to have:

- a) accepted the Products received from the Company;
- b) acknowledged that the Products are in good order and condition and are fit for purpose; and
- c) acknowledged that the Products comply with any relevant specifications or descriptions,

unless it gives the Company written notice setting out the nature of any alleged defects within 7 days of delivery of the Products to the Customer.

## 7. QUOTES, PRICES AND PAYMENT

7.1. Prices are as set out in the Quote or as determined by the price list current at the time of Order.

7.2. The Company will Invoice the Customer for Products supplied in accordance with this Contract following an Accepted Order.

7.3. Invoices are payable on the terms set out in the Invoice.

7.4. The price of the Products as set out in the Invoice is exclusive of GST. The Customer is responsible for the payment of GST in addition to the price of the Products.

7.5. The Customer must pay all amounts due to the Company (whether under this Contract or otherwise):

- a) without set-off, deductions counter-claims or conditions; and
- b) in available cleared funds to the Company's bank account.

7.6. If the Customer owes any amount to the Company (whether under this Contract or otherwise), the Company may, in its sole discretion and without prejudice to any of its other rights, do one or more of the following:

- a) withhold all supplies of Products until that amount has been paid in full; or
- b) set-off that amount against any amount owing by the Company to the Customer.

## 8. TITLE AND RISK

8.1. Risk in the Products passes to the Customer upon delivery of the Products from the Company or its agent or representatives, to the Delivery Address or any Sites.

8.2. Until the Company has received payment in full for all Products supplied by the Company under this Contract:

- a) title to the Products shall remain with the Company;
- b) the Customer holds the Products as bailee for the Company; and
- c) the Products shall, so far as practicable, be kept separate from other goods of the Customer, so as to be readily identifiable as the property of the Company.

8.3. Upon default of the Customer of the due performance or observance of any obligation under this Contract, including an Insolvency Event, the Company may by notice in writing to the Customer enter upon the Customer's premises, the Delivery Address or any Site to remove any of the Products to which the Company has retained title and for this

purpose the Customer shall afford the Company all reasonable assistance to locate and take possession of the Products.

8.4. The Customer acknowledges that by virtue of clause 8.2, the Company has or will have a Security Interest in the Products, the proceeds from the sale of the Products and the proceeds of any insurance policy for the purposes of the PPSA.

8.5. The Customer acknowledges that the Company may do anything reasonably necessary, including but not limited to registering its Security Interest on the personal property securities register established under the PPSA in order to perfect this Security Interest and comply with the requirements of the PPSA. The Customer agrees to do all things reasonably necessary to assist the Company to achieve perfection of this Security Interest under the PPSA.

8.6. The Customer and the Company agree that, pursuant to section 115 of the PPSA, the following provisions in the PPSA do not apply in relation to this Security Interest to the extent, if any, mentioned (words in this provision have the same meaning as in the PPSA):

- a) section 117 (obligations secured by interests in personal property and land);
- b) section 118 (enforcing Security Interest in accordance with land law decisions), to the extent that it allows a secured party to give a notice to the grantor;
- c) section 125 (obligation to dispose of or retain collateral);
- d) section 129 (disposal by purchase);
- e) section 130 (notice of disposal), to the extent that it requires the secured party to give a notice to the grantor and other secured parties before disposal;
- f) paragraph 132(3)(d) (contents of statement of account after disposal);
- g) subsection 132(4) (statement of account if no disposal);
- h) section 142 (redemption of collateral); and
- i) section 143 (reinstatement of security agreement).

8.7. The Customer waives its right to receive a verification statement under section 157 of the PPSA.

## 9. RETURN OF PRODUCTS

9.1. The Company will not accept the return of any Products to it by the Customer, unless:

- a) the Company has previously agreed to the return of the Products in writing; and
- b) the Products have been returned to the Company's premises within thirty (30) days from the date of delivery to the Customer.

9.2. If the Company agrees to the return of Products:

- a) the Products must be unsoiled, undamaged and in a resalable condition (if otherwise, the Customer must pay for all costs of replacement or repair);
- b) the Customer must pay for the delivery, freight, customs, duties, levies and/or insurance in respect of the return of the Products to the Company; and
- c) the Customer must bear the risk of loss or damage of the Products in transit until arrival of the Products at the address of the Company as advised by the Company from time to time.

9.3. The Company may allow the Customer credit for returned Products at the Company's sole discretion.

## 10. DEFAULT BY CUSTOMER AND TERMINATION

10.1. Each of the following events is an Event of Default, namely:

- a) if the Customer fails to pay any amount due and payable under this Contract on the due date for payment and such failure continues for more than 5 Business Days;
- b) a form of payment by the Customer to the Company, such as a cheque, has been dishonoured for insufficient funds;
- c) the Customer fails to perform or observe any of the covenants or provisions of these Terms and (if capable of remedy) such default continues for more than 10 Business Days after notice from the Company requiring the Customer remedy the breach;

- d) the Customer sells or closes its business or relocates the Products without written notice to the Company;
  - e) the Customer suffers an Insolvency Event;
  - f) where the Customer is a partnership it is dissolved, threatens or resolves to dissolve or is in jeopardy of dissolving;
  - g) the Customer being a natural person dies; or
  - h) the Company or one or more of its directors is or are convicted of a crime of dishonesty.
- 10.2. If an Event of Default occurs the Company may at its option:
- a) suspend or withhold supply under this Contract;
  - b) by proceeding by appropriate court action, either at law or in equity, enforce performance by of the applicable terms and provisions of this Contract or recover damages for the breach concerned; and/or
  - c) terminate this Contract and, the Customer's right to possession of the Products by notice in writing to the Customer.
- 10.3. Where the Company considers that an Event of Default constitutes a breach of a fundamental term of this Contract, in addition to any other rights, the Company may give written notice to the Customer confirming that this Contract have been repudiated by the Customer and the Company may pursue all remedies available to it in connection with such repudiation.
- 10.4. Without prejudice to the Company's right to pursue the Customer for Loss arising from a breach of this Contract, upon the expiry of the Contract or early termination under this clause 11 the Customer must immediately pay the Company all amounts owing under this Contract.
- 11. WARRANTIES AND LIABILITY**
- 11.1. The Products may come with guarantees which cannot be excluded pursuant to the Australian Consumer Law.
- 11.2. The Customer acknowledges and agrees that:
- a) the Customer has determined that the Products are fit for the purpose for which the Customer requires them;
  - b) any pressure ratings stated in respect of Products do not apply to any welds and/or fittings and/or any other modifications to the Products;
  - c) the Customer is responsible for their own pressure testing of Products prior to use and/or installation;
  - d) the Customer has not relied on the Company's skill and judgment in selecting the Products;
  - e) the Company makes no express or implied warranties under this Contract in relation to the Products; and
  - f) the Company is not responsible if the Products do not comply with any applicable safety standard(s) or similar regulation(s), and that the Company is not liable for any Claim resulting from such non-compliance.
- 11.3. To the maximum extent permitted by law, the Company will not be liable for indirect, consequential, special, punitive or exemplary damages including but not limited to loss of profits, loss of business, loss by reason of delay, costs of removal or storage of defective Products or plant or materials or liquidated damages, whether arising in negligence, from breach of contract or otherwise, in connection with this Contract or the Products.
- 11.4. To the maximum extent permitted by law, the Company limits its liability for breach of this Contract in relation to any particular supply of Products, to the Invoice value of the particular Products.
- 11.5. To the maximum extent permitted under the Australian Consumer Law, the Company's liability for breach of a Consumer Guarantee, if the Consumer Guarantees apply at law, is limited to any one or more of the following, at the Company's election:
- a) the replacement of the Products or the supply of equivalent Products;
  - b) the repair of the Products;
  - c) the payment of the cost of replacing the Products or of acquiring equivalent Products; or
  - d) the payment of the cost of having the Products repaired.
- 11.6. The Company's liability under this Contract is reduced to the extent that the Customer contributed to any Loss or Claim.
- 11.7. This clause 12 continues to bind the parties after this Contract is terminated or after delivery of the Products.
- 12. RELEASE AND INDEMNITY**
- 12.1. The Customer agrees to use and possess any Products at its own risk. The Customer agrees that the Company bears no responsibility or liability for any Loss to any of the Customer's property (including the Products).
- 12.2. To the fullest extent permitted by law the Customer releases and discharges the Company and its agents and employees from:
- a) all Claims and demands on the Company; and
  - b) any Loss whatsoever and whenever caused to the Customer or its agents or employees or any third party whether by way of death of, or injury to, any person of any nature or kind, accident or damage to property, delay, financial Loss or otherwise, arising directly or indirectly from or incidental to a breakdown of, or defect in any Products or any accident to or involving any Products or their use, operation, repair, maintenance or storage (whether occasioned by the Company's negligence or otherwise) or which may otherwise be suffered or sustained in, upon or near any Products.
- 12.3. The Customer indemnifies and holds the Company harmless to the full extent permitted by law for any Loss whatsoever arising in connection with the supply of and operation of the Products by the Customer, including any breach of this Contract.
- 13. GENERAL**
- 13.1. The Company will not be liable for any loss incurred as a result of delay or failure to observe any of these Terms due to an event of Force Majeure. The Company's obligations under this Contract will be suspended and will resume as soon as the cause of the Force Majeure has ceased to have effect.
- 13.2. If the Company amends this Contract, then the amended terms will apply thirty (30) days after the date that the Company notifies the Customer of the amendment unless the Customer notifies the Company as otherwise within that time.
- 13.3. This Contract constitutes the entire understanding between the parties and supersedes all prior agreements, understandings and communications, whether written or oral.
- 13.4. This Contract operates as a 'standing agreement' and each Accepted Order and/or Invoice issued shall constitute a separate contract for supply of the Products between the parties and the Company may enforce its rights under these Terms against an Accepted Order and/or Invoice, multiple Accepted Orders and/or Invoices or these Terms as a whole.
- 13.5. Unless the parties enter into a new agreement, these Terms will govern the future supply of Products to the Customer and each order constitutes a separate contract for the sale of the Products and the breach of any one such contract will be deemed a breach of the Contract as a whole and may be enforced jointly or severally at the Company's discretion.
- 13.6. The Customer may not, without the prior written consent of the Company, assign, transfer or grant any Security Interest over, its right, title and interest in or to the agreement to any person (or agree or purport to do so).
- 13.7. If any provision of this Contract is illegal or unenforceable in any relevant jurisdiction, it must be enforced to the maximum extent possible, and if unenforceable may be severed for the purposes of that jurisdiction, without affecting its enforceability in any other jurisdiction or the enforceability of any other part of this Contract.
- 13.8. All waivers must be in writing. A single or partial exercise or waiver by a party of a right relating to this Contract does not prevent any other exercise of that right or the exercise of any other right.

13.9. Except where this Contract expressly states otherwise, it does not create a relationship of employment, trust, agency or partnership between the parties.

13.10. Time is of the essence in respect of all amounts payable pursuant to this Contract.

13.11. Clauses 1, 4, 5, 6, 7, 8, 9, 10, 11, 12 and any indemnities survive termination or expiration of this Contract.

13.12. This Contract is governed by and is to be construed in accordance with the laws applicable in New South Wales, Australia.