

PYROTEK INCORPORATED

STANDARD SALES TERMS AND CONDITIONS

1. **Terms and Conditions.** The sale of the Goods hereunder is conditioned upon these Terms and Conditions. Except where prohibited by law, these Terms and Conditions shall apply and are incorporated into every sale of Goods made by Company. No other terms or conditions, including, without limitation, Purchaser's standard printed terms and conditions, on Purchaser's purchase order, request for proposal/quote, order acknowledgment or otherwise, will have any application to any purchase between Company and Purchaser and are hereby rejected and objected to unless specifically accepted in writing by Company, with such exception stating that it will apply in place of all or a portion of these Terms and Conditions. All prior proposals, negotiations and representations, if any, are merged herein. Purchaser will be deemed to have assented to all terms and conditions contained herein if any part of the goods are shipped.
2. **Definitions.**
 - a. "Affiliate" of a party means an entity controlling, controlled by, or under common control with, that party.
 - b. "Contract" means the written invoice, purchase order, contract or agreement which attaches, incorporates or otherwise references these Terms and Conditions.
 - c. "Purchaser" means the party designated as such on the face of the purchase order, contract or agreement and includes its successors, permitted assigns and legal representatives.
 - d. "Company" means Pyrotek Incorporated, or its subsidiary(ies) or affiliates(s) supplying the Goods.
 - e. "Goods" means all of the goods, material, products, equipment, services, information, drawings and/or other items furnished or to be furnished by Company under the Contract.
3. **Price.**
 - a. Prices for Goods shall be as set forth in the Contract, subject to correction for any costs omitted or corrections. Price quotations shall be valid for a period of thirty (30) days after they are made, unless otherwise set forth in writing.
 - b. Prices are subject to change at any time prior to Company's acceptance of an order, unless otherwise stated in a writing signed between the parties.
 - c. Unless otherwise specified, prices for the Goods are in US dollars.
4. **Taxes.** Unless otherwise explicitly set forth in the Contract, Purchaser's price shall be exclusive of, and Purchaser will bear and pay any and all applicable taxes, excise, impost or duty of any taxing authority, with the exception of taxes imposed on Company's income.
5. **Payment Terms.** All payment terms shall be set forth in the Contract. If no payment terms are set forth, all payments shall be net thirty (30) days. Company reserves the right to charge interest on all overdue balances, starting with the invoice date, at a rate of one and one-half percent (1.5%) per month compounded until the date payment is received in full. Purchaser agrees to pay, without offset, all invoiced amounts within the time set forth in the payment terms. Company may change payment or credit terms for unfulfilled orders if, in Company's reasonable opinion, Purchaser's financial condition, previous payment record, or relationship with Company merits such change. Company may discontinue performance if Purchaser fails to pay any sum due, or if after ten (10) days written notice Purchaser has not cured any other failure to perform under the Contract or these Terms and Conditions.
6. **Security Interest.** Company retains a security interest in the Goods until payment. Purchaser shall execute any paperwork required by Company to effectuate and perfect any such security interest.
7. **Packaging.** Company 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 Purchaser, provided, however, that the cost of all deviations from Company's standard shipping practices shall be borne by Purchaser.
8. **Shipping and Delivery.** Shipping terms shall be as set forth in the Contract. If no shipping terms are set forth, all shipping shall be *ex works* as that term is defined by *INCOTERMS 2000*. IF THE PARTIES DESIGNATE *FOB* WITH NO ADDITIONAL DESCRIPTOR THAT SHALL MEAN THE EQUIVALENT OF *CPT* COMPANY'S LOCATION UNDER *INCOTERMS 2000*. DELIVERY DATES ARE APPROXIMATE AND NOT OF THE ESSENCE. COMPANY ACCEPTS NO LIABILITY OR RESPONSIBILITY FOR ANY DELAY IN DELIVERY OR FAILURE TO DELIVER.

9. **Warranty.**

- a. **COMPANY PROVIDES NO WARRANTY OF GOODS OTHER THAN THAT SET FORTH IN THE CONTRACT.** Such warranty, if set forth in the Contract, is exclusive and in lieu of all other warranties. All other warranties are disclaimed pursuant to the Warranty Disclaimer set forth in Section 9.b., below. Notwithstanding anything herein or in the Contract to the contrary, any warranty provided by Company is contingent upon the proper use of the Goods by Purchaser and does not cover any part of the Goods which has been modified without Company's prior written consent nor will the warranty apply to any part of the Goods that are damaged as a result of causes other than those in the ordinary course of business including, without limitation, accident, abuse, misuse, misapplication, neglect, alteration, failure or fluctuation of electrical power, air conditioning, humidity control or other environmental conditions. If no warranty is set forth in the Contract, then Company disclaims all warranties pursuant to the Warranty Disclaimer set forth in Section 9.b., below. All warranties provided hereunder extend only to the Purchaser and no other person or entity.
- b. **WARRANTY DISCLAIMER: EXCEPT AS OTHERWISE SET FORTH HEREIN, COMPANY MAKES NO EXPRESS OR IMPLIED WARRANTIES AND HEREBY DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES, WHETHER IMPLIED BY OPERATION OF LAW OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS OR FITNESS FOR A PARTICULAR PURPOSES. UNDER NO CIRCUMSTANCES AND IN NO EVENT WILL COMPANY BE LIABLE FOR PERSONAL INJURY OR PROPERTY DAMAGE OR ANY OTHER LOSS, DAMAGE COST OF REPAIRS OR INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL, MULTIPLIED CONSEQUENTIAL OR LIQUIDATED DAMAGES OF ANY KIND, WHETHER BASED UPON WARRANTY, CONTRACT, STRICT LIABILITY, NEGLIGENCE OR ANY OTHER CAUSE OF ACTION ARISING IN CONNECTION WITH THE DESIGN, MANUFACTURE, SALE, TRANSPORTATION, INSTALLATION, USE OR REPAIR OF THE GOODS , OR OF ANY COMPONENTS INCORPORATED INTO THE GOODS FOR WHICH COMPANY IS NOT THE MANUFACTURER OF THE COMPONENTS. PURCHASER HEREBY ACKNOWLEDGES AND AGREES THAT UNDER NO CIRCUMSTANCES, AND IN NO EVENT, SHALL COMPANY'S LIABILITY, IF ANY, EXCEED THE NET SALES PRICE OF THE GOODS AS SET FORTH IN THE CONTRACT.**

10. **Remedies and Limitations on Warranties.** Purchaser agrees to provide Company with written notice of any material breach of warranty within thirty (30) days after Purchaser discovers, or should have discovered, the alleged breach. Time is of the essence and Purchaser's failure to provide written notice of any alleged breach within the required time will release and discharge Company from any obligation or liability for the breach of warranty. Provided Purchaser has provided timely notice of the alleged breach of warranty, Company will, in its sole option, either (a) credit Purchaser's account for the purchase price paid for the goods, excluding any taxes paid, (b) repair any defective goods or (c) furnish replacement goods. The remedies set forth herein shall be the sole and exclusive remedies available to Purchaser. If required by Company, the Goods alleged to be defective will be returned to Company, at its direction and expense, for examination. If Company discovers that any goods so returned are not covered by warranty, Company reserves the right to charge Buyer for all transportation costs and expenses incurred by Company if examining, processing or handling such Goods. Any controversy or claim arising out of or relating to the Contract or any breach thereof must be commenced within one (1) year after the cause of action has accrued.
11. **Default or Delay.** Company will not be liable for any default or delay in the production or delivery of any Goods when such default or delay results either directly or indirectly from: (a) accidents to, or breakdowns or mechanical failure of, Company's plant machinery or equipment; strikes or other labor troubles or labor shortages; fire; flood; war; acts of the public enemy; acts of God; delays by any supplier; difficulties in obtaining raw materials; delays in transport or lack of transportation facilities; embargoes; shortages of, or reductions in, energy sources; priorities, allocations, limitations, restrictions or other acts required or requested by Federal, Provincial/State or local governments, or any subdivision, bureau or agency thereof; or (b) any other cause beyond the control of Company. Company shall not be liable for any loss, cost, penalty or any consequential, incidental or other damages of any kind occasioned by or arising or resulting from any default or delay in delivery by Company, whether or not said loss, cost, penalty or damage was reasonably foreseeable.
12. **Returns of Goods.** No Goods are to be returned to Company without Company's prior written authorization.
13. **Purchaser's Agreement to Defend.** To the extent that any Goods are manufactured or provided by Company to meet Purchaser's specifications, instructions or any other requirements and such Goods, Purchaser agrees to defend, indemnify and hold Company harmless from and against any and all loss, cost, damage, liability or expense (including, without limitation, any penalties or punitive damages, attorneys' fees and expenses and costs of suit) arising out of the manufacture, sale or use of such Goods, including, without limitation, claims of actual or alleged infringement on any patent or copyright, or any actual or alleged unfair competition resulting from similarity in design, trademark or appearance.

14. **Termination.** Company reserves the right, by written notice to cancel any Contract without liability to Company in the event of (i) insolvency of Purchaser; (ii) the filing of an involuntary petition of bankruptcy by Purchaser; (iii) the filing of an involuntary petition to have Purchaser declared bankrupt; (iv) the appointment of a receiver or trustee for Purchaser; (v) the execution by Purchaser of an assignment for the benefit of creditors; or (vi) in the event that Purchaser fails to perform, or breaches any of the terms of the Contract, Company reserves the right immediately upon such failure of performance or breach, and without liability of Company to cancel the order in whole or in part by written notice to Purchaser. Purchaser shall be liable for Company's damages in connection with such breach or failure to perform including consequential damages reasonably foreseeable by Purchaser or of which Purchaser was apprised by Company, provided, however, the Purchaser shall not be responsible for delays or defaults occasioned by fires, Acts of God, wars, riots, but in the event of such occurrence, Company reserves the right to cancel the Contract without liability.

15. **Miscellaneous Terms.**

- a. **Waiver.** Failure, delay or waiver by either party of any of the terms or conditions herein shall not operate as or be considered to be either a waiver or forfeiture of such rights by such party of any other term of condition hereof, or of any subsequent breach by either party.
- b. **Force Majeure.** Company 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 Purchaser, acts of civil or military authority, civil unrest, war, riots, concerted labor action, labor 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 Company. The anticipated delivery date shall be deemed extended for a period of time equal to the time lost due to any delay excusable by this provision.
- c. **Assignment.** 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.
- d. **Governing Law.** These Terms and Conditions and all Contracts shall be governed by the laws of the State of Washington, without reference to choice of law or conflicts of law. The United Nations Convention on Contracts for the International Sale of Goods is expressly disclaimed and does not apply. Any and all disputes related to the interpretation or enforcement of this agreement will be brought in the state or federal courts located in Spokane, Washington and the parties hereby acknowledge and consent to the jurisdiction of such court. Purchaser hereby waives any and all objections that it might otherwise have as to personal jurisdiction or venue in any of the above tribunals.
- e. **Complete Agreement.** These Terms and Conditions, and any Contract which attaches, incorporates or otherwise references these Terms and 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, whether written or oral. These Terms and Conditions shall apply and constitute a binding obligation on the parties on the earlier of delivery of signed acknowledgment, commencement of performance or shipment according to schedule of all or any portion of the products covered under this Contract, by Company. Purchaser acknowledges that it is not relying upon, and has not been induced by, any representation, warranty, statement made by, or other information provided by Company in connection with its decision to purchase or use the Foods, other than those set forth in this Agreement.
- f. **Amendment.** Neither these Terms and Conditions nor the Contract may be modified without written agreement of the Parties.
- g. **Severability.** If any provision herein or in a Contract is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Terms and Conditions or Contract shall not be affected thereby and shall continue in full force and effect the same as if the invalid or unenforceable provision had not been included in the first instance.
- h. **Successors.** This Agreement shall be binding upon and inure to the benefit of all successors and permitted assigns.