



Tel: (02) 9638 1300

Fax: (02) 9638 0731

Sales E-mail: sales@firequip.com.au  
Accounts E-mail: accounts@firequip.com.au

## **Terms and Conditions of Sale**

These Terms and Conditions (Terms), as amended or replaced from time to time, apply to any goods or services supplied or to be supplied to the Customer, or any third person on the Customer's behalf. Any reference to the Customer also includes its respective successors or permitted assigns. The singular includes the plural and the converse. If the Customer constitutes more than one person or entity, the Terms bind each of them jointly and severally.

### **1. Payment:**

- a) Unless alternate arrangements have been advised by authorised Firequip employees in writing, the customer must pay the invoiced amount within 30 days of statement, free of any set off, counterclaim or any other deduction. Firequip Pty Ltd may allocate payments in any manner it chooses. Payment by credit card is limited to Visa and MasterCard, and a surcharge will apply.
- b) The price of all goods is exclusive of GST except where the price is expressed to be inclusive of GST.
- c) The Customer will pay interest on any overdue amount calculated on a daily basis until paid in full at the rate prescribed by the Penalty Interest Rates Act 1983 (Vic).

### **2. Risk and Title:**

- a) Risk in any goods passes to the Customer on delivery.
- b) Title remains with Firequip Pty Ltd until the Customer has paid Firequip Pty Ltd for all goods supplied in full and in cleared funds. Until title passes to the Customer, the Customer will hold them on trust and as bailee for Firequip Pty Ltd.
- c) The Customer must store any goods belonging to Firequip Pty Ltd separately from other goods in its possession, prevent any deterioration to them and clearly mark them as Firequip Pty Ltd's goods.

### **3. Prices and Quotations**

- a) Unless previously withdrawn, a Quotation is valid for thirty (30) days or such other period as stated therein.
- b) 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 Acknowledgement communicated to the customer by Firequip.
- c) Each order by a Customer will constitute an offer only, by the Customer to Firequip Pty Ltd.
- d) Firequip Pty Ltd reserves the right to vary any prices quoted by Firequip Pty Ltd, prior to any order being accepted.



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### **4. Delivery and returns**

- a) Firequip Pty Ltd will not be responsible for any failure to fulfil any part of any such order, nor be obliged to entitle the Customer to cancel or vary any such order.
- b) Delivery to the Customer will be at Firequip Pty Ltd's premises or as requested by the Customer. If the Customer has not collected goods from Firequip Pty Ltd after 14 days of any nominated delivery date, the Customer must pay all storage costs.
- c) Firequip Pty Ltd will not be liable for any delays. All expenses relating to the delivery, insurance, transit or storage of goods after delivery to the Customer will be at the Customers cost.
- d) Firequip Pty Ltd may stop goods in transit whether or not delivery has been made if the Customer is in default at any time.
- e) Firequip Pty Ltd may in its absolute discretion unload goods at any premises that the Customer nominates for delivery. If the Customer is not in attendance at any nominated premises, Firequip Pty Ltd may leave any goods and Firequip Pty Ltd shall not be responsible for any claims, damages, costs, or expenses arising or resulting there from including any claim that the goods were not delivered.
- f) Delivered goods may not be returned unless defective or damaged in transit or otherwise by prior approval by Firequip. Claims for defective or damaged goods must be notified in writing within 28 days of invoice date. Firequip Pty Ltd will not be liable for any claim advised after that time. Claims are subject to inspection and a 20% (or as agreed) restocking fee will be levied where the reason for the return is customer error.
- g) Custom made goods or special orders may not be cancelled or returned, and will be billed to the customer.
- h) The customer irrevocably authorises Firequip Pty Ltd and any of its lawful agents, at any reasonable time, to enter the Customer's premises or any premises occupied by the Customer or its agents and re-take any goods and then re-sell those goods and retain the proceeds of the sale without prejudice to Firequip Pty Ltd's rights to claim the balance of all moneys due. The customer indemnifies Firequip Pty Ltd in respect of any such entry. The provisions of this clause survive the termination of any security agreement that arises in respect of these Terms.

### **5. Security Agreement**

The Customer agrees that these Terms, including any order and invoice covering any goods ordered by the Customer, constitute a security agreement for the purposes of the PPSA.



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### **6. Security Interest**

The customer gives Firequip Pty Ltd a security interest in:

- a) All goods Firequip Pty Ltd supplies to the Customer that are described in any invoice, delivery or shipping documents of Firequip Pty Ltd's and/or documents that the Customer gives Firequip Pty Ltd; and
- b) All present and future property of the Customer including real property. The Customer agrees that Firequip Pty Ltd may lodge a caveat against any of its real property and agrees to give Firequip Pty Ltd a mortgage in respect of the relevant property in registrable form if required by Firequip Pty Ltd. The security interest given by the Customer is given as beneficial owner. If the Customer is trustee of any trust, the Customer acknowledges that the security interest given by it applies to the assets of the trust and its personal assets. The Customer irrevocably appoints Firequip Pty Ltd as its attorney by way of security for the purposes of this clause and in respect of any enforcement powers.
- c) Any security interest that arises in respect of these Terms is a continuing security interest and in respect of any goods and their proceeds. It is not extinguished or in any way diminished even if the goods or any part of them is processed or commingled with or becomes part of a product or a mass as part of a manufacturing, assembling or commingling process.
- d) Any security interest arising secures the due and punctual payment of all moneys payable by the Customer under the Terms. Any account arising by virtue of any sale of any goods supplied to the Customer takes effect as a transfer.
- e) Firequip Pty Ltd may register a financing statement including any financing change statement on the PPSR. The Customer will reimburse Firequip Pty Ltd for any costs and expenses and other charges incurred by Firequip Pty Ltd in registering them. The Customer irrevocably waives any rights to receive a copy of any verification statement.
- f) The Customer acknowledges that until it has paid for all goods it is not the owner of those goods and, as such, if chapter 4 of the PPSA applies to these Terms, then the Customer contracts out of the enforcement provisions in s 115(1) except sections 120 and 121.

### **7. Enforcement**

- a) If an Event of Default occurs or is continuing, Firequip Pty Ltd may immediately enforce these Terms. Without limitation this includes:
- b) Retaking possession of any goods not paid for by the Customer.
- c) Suspending delivery of any goods on order and/or refusing to process any unfulfilled order.



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- d) Enforcing any security interest.
- e) Requiring payment of any proceeds held by the Customer in a separate account or otherwise.
- f) Appointing a receiver and manager of any of the Customers real or personal property. The Customer agrees that any such receiver has the powers conferred by the Corporations Act.
- g) The powers exercisable by Firequip Pty Ltd are those given by these Terms including by statute, at law or in equity.
- h) In the event that the Customer has not been paid for the sale of Firequip Pty Ltd's goods by any of its own customers, at Firequip Pty Ltd's option, Firequip Pty Ltd may in addition to the powers in s 120 of the PPSA, collect that account on giving, to that customer, notice in writing to that effect. Firequip Pty Ltd will be entitled to issue proceedings in the Customers name against its customer for recovery of that account for Firequip Pty Ltd's benefit. The Customer appoints Firequip Pty Ltd as its attorney for that purpose. The Customer indemnifies Firequip Pty Ltd in respect of any such action and proceedings. For the purposes of this clause, the Customer must keep proper records and accounts in respect of such unpaid sales, including the dates of sale, price, amount and identify of such customer and Firequip Pty Ltd's goods.
- i) Firequip Pty Ltd may in its discretion despite s 14(6) of the PPSA apply any moneys received in respect of any PMSI obligations of the Customer on a pro rata basis.
- j) The customer will pay Firequip Pty Ltd for its expenses, including mercantile agents fees and any fees and commission paid to mercantile agents engaged by Firequip Pty Ltd in relation to the actual or contemplated enforcement of the supply agreement including legal costs and expenses on a full indemnity basis.

#### **8. Negative Pledge**

The Customer agrees not to grant:

- a) Any security interest over any of its personal property except in the ordinary course of business; or
- b) A security interest in any account as original collateral under s 64 of the PPSA.

#### **9. Force Majeure**

Firequip Pty Ltd is not liable for any delay or the failure to perform any obligation in the Customers favour arising as a result of any event beyond Firequip Pty Ltd's control.



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### **10. Confidentiality**

Any security agreement that arises under these Terms is confidential. Despite this, the Customer agrees that Firequip Pty Ltd may disclose any information concerning it to any interested person under s 275(6) of the PPSA.

### **11. General**

- a) The Customer will advise Firequip Pty Ltd in writing, if it changes its name, its structure or officers or management, its registered office, become a trustee of any trust or if the constitution of any partnership of which it is a member changes.
- b) Any certificate signed by Firequip Pty Ltd, any director or any person authorised by Firequip Pty Ltd as to the amount due and payable by the Customer or as to the delivery of goods is conclusive evidence of such matters as at the date of any such certificate unless proven wrong.
- c) If any provision of these Terms is unenforceable for any reason, it will not invalidate any other provision which will remain in full force and effect despite that invalidity.
- d) These Terms contain the entire agreement in respect of the supply of goods or services to the Customer.
- e) Firequip Pty Ltd may at any time set off any amount Firequip Pty Ltd owes the Customer against any amount payable by the Customer to Firequip Pty Ltd whether or not the amount owed to Firequip Pty Ltd is due and payable or actually or contingently payable by the Customer.

### **12. Governing Law**

These Terms are governed by the laws 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.

### **13. Notices**

- a) Any notice required under these Terms may be given by any party, including any director or authorised person of that party.
- b) Any notice may be given at that party's registered address or other address stipulated in any application in connection with these Terms or as notified in writing for the purposes of this clause. Without limitation, this includes any electronic address notified to the other party.

### **14. Time**

For the purposes of any payment obligation under these Terms, time is of the essence.

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### **15. Survival of Indemnities**

- a) Each indemnity and payment obligation of the Customer under these Terms is a continuing obligation, separate and independent from all other obligations, and survives termination of these Terms.
- b) It is not necessary for Firequip Pty Ltd to incur expense or make a payment before enforcing a right of indemnity.

### **16. Warranties and Liability**

The Products may come with guarantees which cannot be excluded pursuant to the Australian Consumer Law. 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.

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. 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. 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;



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- 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.

The Company's liability under this Contract is reduced to the extent that the Customer contributed to any Loss or Claim.

This clause 16 continues to bind the parties after this Contract is terminated or after delivery of the Products.

#### **17. Limitation of Liability**

To the extent permitted by law, Firequip Pty Ltd excludes any liability in contract, tort (including negligence) or otherwise, in connection with the supply of goods and services for any indirect damages or losses, or for any special, punitive or exemplary damages. This includes any liability for a claim that the goods and services for any indirect damages or losses, or for any special, punitive or exemplary damages. This includes any liability for a claim that the goods are not fit for a particular purpose, except where the goods are consumer goods or services in which case Firequip Pty Ltd's liability is limited as under clause 15.

#### **18. Disputes**

If a dispute arises in connection with the supply of any goods or otherwise, the Customer agrees to pay Firequip Pty Ltd as a condition of any dispute the amount of any disputed invoice. Such invoiced amount is to be held by Firequip Pty Ltd in an interest bearing deposit account until resolution of the dispute. To the extent permitted by law, until complied with, the obligation to pay the invoiced amount shall operate as an absolute bar to any defence, claim or action by the customer.

#### **19. Consent**

If the Customer is not a company, the Customer agrees that Firequip Pty Ltd may disclose personal information of the proprietors of the Customer to credit reporting agencies for the purposes of conducting a credit reference check and consents to the collection of personal information about the proprietors from credit reporting agencies and other sources. The Customer also agrees that Firequip Pty Ltd may use the information for direct marketing.

#### **20. Dictionary**

Default means:





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- a) The Customer fails to pay when due any moneys owing to Firequip Pty Ltd under these terms;
- b) The Customer gives any third party security interest in accounts as original collateral in respect of the proceeds of any goods supplied by Firequip Pty Ltd;
- c) An Insolvency Event occurs or is continuing;
- d) The Customer breaches any other provision of these terms; or
- e) Upon any member of Firequip Pty Ltd's Credit Team, posting by ordinary prepaid post, emailing or faxing a letter advising that all money owing to Firequip Pty Ltd is, despite any agreement to the contrary, immediately due and owing.

**Goods** mean any goods Firequip Pty Ltd supplied to the Customer whether on consignment or otherwise under these Terms. They include goods described on any invoice, quotation, work authorisation or any other forms Firequip Pty Ltd provides the Customer or any order the Customer gives Firequip Pty Ltd.

**GST** means any goods and services or similar tax, together with any related interest, penalties, fines or other charge.

**Tax Invoice, Taxable Supply and Value** have the meaning given to them by the GST Law.

**GST LAW** means A New Tax System (Goods and Services Tax) Act 1999 (Cth).

**Guarantor** means that person, or entity, who agrees to be liable for the Customer's debts whether on a principle debtor basis or who is otherwise a surety of the Customer.

#### **Insolvency Event:**

- a) An administrator is appointed to the Customer or any Guarantor.
- b) Except for the purpose of a solvent reconstruction or amalgamation previously approved by Firequip Pty Ltd.
- c) An application or an order is made, proceedings are commenced, a resolution is passed or proposed in a notice of meeting, an application to a court or other steps are taken for.
- d) The Customers winding up, dissolution or administration or of any Guarantor; or
- e) The Customer or any Guarantor entering into an arrangement, compromise or composition with or assignment for the benefit of creditors or a class of them; or The Customer ceases, suspends or threatens to cease or suspend the conduct of all or a material part of its business or dispose of or threaten to dispose of a material part its assets
- f) The Customer or any Guarantor is, or under legislation is presumed or taken to be, insolvent or cease to carry on our business.





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- g) A receiver, receiver and manager, administrative receiver or similar officer is appointed in respect of the Customer or any Guarantor.
- h) Any distress, attachment, execution or other legal process is levied, enforced or sued out on or against all or any material part of the Customers assets or of any Guarantor and is not discharged or stayed within 14 business days.
- i) A security interest becomes enforceable or is enforced.

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