



STANDARD TERMS AND CONDITIONS OF SALE – 2022

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In these terms and conditions, unless the context otherwise requires:

- (a) "Application" in relation to a Buyer means the application for a commercial credit account signed by the Buyer, which refers to these terms and conditions.
- (b) "Buyer" means the person identified in the relevant Sales Invoice or Purchase Order or Quotation.
- (c) "GST", "GST Law" and other terms defined in the GST Law have the meanings given to those terms in *A New Tax System (Goods and Services Tax) Act 1999* (Cth), except that 'GST Law' must be interpreted as including any applicable rulings issued from time to time by the Commissioner of Taxation.
- (d) "Intellectual Property Rights" means all current and future registered and unregistered rights in respect of copyright, designs, software, domain names, circuit layouts, trade names, trademarks, trade secrets, know-how, confidential information, patents, inventions and discoveries and all other intellectual property as defined in article 2 of the Convention Establishing the World Intellectual Property Organisation 1967 (as amended from time to time) subsisting in Australia, New Zealand or anywhere in the world.
- (e) "Payment" means any amount payable under or in connection with a Quotation or Sales Invoice including any amount payable by any way of indemnity, reimbursement or otherwise (other than a GST Amount) and includes the provision of any non-monetary consideration.
- (f) "Products" means the products described in the Quotation issued by the Carrier to the Buyer.
- (g) "Purchase Price" means the total price for the supply and delivery of the Products set out in the relevant Quotation or Sales Invoice exclusive of GST.
- (h) "Quotation" means a form of quotation submitted by the Carrier to the Buyer (if applicable) in which these terms and conditions are deemed to be incorporated.
- (i) "Sales Invoice" means the sales invoice issued by the Carrier to the Buyer in which these terms and conditions are deemed to be incorporated.
- (k) "Carrier" means the Carrier entity specified on the Purchase Order or Sales Invoice.

(l) "Warranty Period" means the warranty period applicable to the Product(s) as set forth in the Carrier's Return & Warranty Policy as amended from time to time, available from the Carrier's website <https://www.firesecurityproducts.com.au/> or upon request to the Carrier at any time.

1.2 Interpretation

(a) Any special conditions specified on a Quotation or Sales Invoice shall, to the extent they are inconsistent with these terms and conditions, take precedence over these terms and conditions.

(b) Words importing the singular shall include the plural (and vice versa).

(c) A provision of these terms and conditions (including any special conditions) must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the terms and conditions or the inclusion of the provision in the terms and conditions.

(d) No right under these terms and conditions will be deemed to be waived by a party except by notice in writing and signed by each party, and any failure by a party to enforce any clause of herein will not be construed as a waiver of that party's rights hereunder.

2. GOVERNING TERMS AND CONDITIONS

(a) These terms and conditions, together with those otherwise specified in a Quotation or agreed to in writing by the Carrier in the acceptance of an order, constitute the entire agreement between the Buyer and the Carrier and supersede all prior representations, contracts, statements and understandings, whether verbal or in writing.

(b) All other terms and conditions are excluded to the fullest extent permitted by law, and without limiting the foregoing the Buyer acknowledges and agrees that the Carrier shall not be bound by any terms and conditions attached to the Buyer's order or acceptance of a Quotation or otherwise provided by the Buyer to the Carrier, unless such terms and conditions are expressly accepted by an authorized representative of the Carrier in writing.

3. QUOTATIONS AND PRODUCT SUPPLY

(a) A Quotation provided by the Carrier is valid for thirty (30) days from the date of issue, or such other period as stated in such Quotation. A Quotation is not to be construed as an obligation to sell but merely as an invitation to treat and no contractual relationship shall arise from it until the Buyer's order has been accepted in writing by the Carrier.

(b) Every Quotation is subject to and conditional upon obtaining any necessary import, export or other license.

(c) The Carrier (and, if applicable, the manufacturer) reserves the right to:

- (i) alter the specifications or design of any Products or model or version of the Products;
- (ii) suspend, discontinue or limit the manufacture or production of any Product or model or version of the Products; and
- (iii) supply an alternative brand or substitute product when necessary without liability to the Buyer.

(d) Any performance data provided by the Carrier or a manufacturer is an estimate only, and shall be construed accordingly.

4. DELIVERY

(a) Upon acceptance of a Buyer's order by the Carrier, the Carrier will seek confirmation of the period for shipment or delivery. If any variation has occurred in the quoted period, the Carrier will notify the Buyer. Unless the Buyer objects in writing within seven (7) days of that notification to the Buyer, the period for shipment or delivery notified to the Buyer will be the contractual period for shipment or delivery.

(b) The Carrier shall use reasonable endeavours to deliver the Products by the date or within the period specified in the Quotation

(as may be varied in accordance with paragraph (a) above), or if no such date or period is specified in the Quotation, within a reasonable time.

(c) The Buyer acknowledges that delivery dates or periods quoted by the Carrier are estimates only and are subject to prompt receipt of all information necessary to allow the Carrier to proceed with the delivery of the Products. The Carrier accepts no liability whatsoever for any loss or damage suffered by the Buyer as a consequence of any delay in the delivery of the Products for any reason.

(d) The Carrier reserves the right to make part deliveries of any order, and each part delivery shall constitute a separate sale of Products upon these terms and conditions. A part delivery of an order shall not invalidate the balance of an order.

(e) Risk in the Products shall pass to the Buyer upon delivery of the Products to the Buyer (including an agent of the Buyer). Unless otherwise specified in a Quotation, all deliveries are made on an Ex-Works (EXW Incoterms 2020) Carrier's premises in Melbourne, VIC basis.

(f) Title to and ownership of the Products shall pass to the Buyer upon receipt by the Carrier of payment in full for those Products.

(g) Until the Products have been paid for in full:

(i) the Buyer shall store the Products in a manner which shows clearly that they are the property of the Carrier; and

(ii) the Buyer may onsell the Products, in the ordinary course of its business, as agent for the Carrier and shall account to the Carrier for the proceeds of sale (including any proceeds from insurance claims).

(h) The Buyer irrevocably authorises the Carrier at any time to enter onto any premises upon which:

(i) the Carrier's Products are stored to enable the Carrier to: - inspect the Products; and/or -- if the Buyer has breached these terms and conditions, reclaim the Products; (ii) the Buyer's records pertaining to the Products are held to inspect and copy such records.

(i) The Buyer and the Carrier agree that the provisions of this clause apply notwithstanding any agreement under which the Carrier grants credit to the Buyer.

5. INSPECTION, WARRANTY AND RETURNS

(a) The Buyer shall inspect the Products upon delivery and shall with forty-eight (48) hours of such delivery give notice to the Carrier if any of the Products delivered are not in accordance with the Buyer's order as accepted by the Carrier.

(b) The Carrier will replace or rectify (at the Carrier's option and cost) any Products that are:

(i) not provided in accordance with these terms and conditions, provided that the Buyer has complied with its obligations under paragraph (a) above; or

(ii) faulty or defective, provided that the Buyer has notified the Carrier of the fault or defect in accordance with paragraph (a) above, or, in circumstances where the fault or defect was not identifiable on a reasonable inspection of the Products upon delivery, the fault or defect is notified to the Carrier as soon as possible upon discovery during the Warranty Period, (the 'Warranty').

(When returning the Product under the Warranty, the Buyer shall comply with the instructions provided in the Carrier's Return & Warranty Policy as amended from time to time, available from

the Carrier's website <https://www.firesecurityproducts.com.au/> or upon request to the Carrier at any time.

(c) Where clause 6 (Australian Consumer Law) applies, the Warranty is provided in addition to the guarantees in clause 6.

(d) If the Carrier elects to repair any Products under clause 5(b) or otherwise (including pursuant to clause 6):

(i) Products presented for repair may be replaced by refurbished goods of the same type rather than being repaired. Refurbished parts may be used to repair the Products; and

(ii) if the Products are capable of retaining user-generated data, the repair of the Products may result in the loss of the data.

(e) The Buyer acknowledges that the Warranty does not cover any malfunction, fault or defect arising out of:

(i) normal wear and tear;

(ii) the Buyer's negligence, fault, neglect, abuse, or incorrect use of the Products, including, without limitation and for the avoidance of doubt, the Buyer's failure to maintain the Products in accordance with manufacturer's guidelines and/or any applicable Australian Standards; or

(iii) vandalism, fire, water damage, power surge, lightning, virus or any other circumstances outside of the Carrier's control.

(f) If the Buyer wants to return a Product for credit (for a reason other than as set out in clause 5(b)), the Buyer must:

(i) not return a Product without the prior agreement of the Carrier;

(ii) ensure that the Product to be returned is in a saleable condition and properly packaged so that no damage occurs during transit;

(iii) include the original or a copy of the proof of purchase with the returned Products;

(iv) if requested by the Carrier, pay the Carrier a handling and restocking fee equal to twenty percent (20%) of the Purchase Price of the Products returned; and

(v) pre-pay all postage, freight and packaging costs for the return of the Product (unless otherwise approved by the Carrier in writing).

(g) Products specifically purchased, designed, manufactured, machined or cut to size for the Buyer or to the Buyer's specification are not returnable under clause 5(f).

6. AUSTRALIAN CONSUMER LAW

(a) Nothing in this Agreement is intended to exclude, restrict or modify the application of the provisions of any statute, including the *Competition and Consumer Act 2010* (Cth), where to do so would contravene that statute or cause any part of these terms and conditions to be void.

(b) If the Buyer is a "consumer" as defined in the Australian Consumer Law, the following additional provisions apply:

(i) The Carrier's goods and services come with guarantees that cannot be excluded under the *Australian Consumer Law*. For major failures with the services, the Buyer is entitled:

(1) to cancel the agreement with the Carrier; and

(2) to a refund for the unused portion, or to compensation for its reduced value.

(ii) The Buyer is also entitled to choose a refund or replacement for a major failure with goods. If a failure with the goods or a service does not amount to a major failure, the Buyer is entitled to have the failure rectified in a reasonable time. If this is not

done, the Buyer is entitled to a refund for the goods and to cancel the agreement for the service and obtain a refund of any unused portion. The Buyer is also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or services.

(c) The benefits to the Buyer given by the Carrier hereunder are in addition to any other rights and remedies of the Buyer may have under these terms and conditions or otherwise at law.

7. TERMS OF PAYMENT

(a) For performing its obligations under these terms and conditions, the Carrier is entitled to be paid the Purchase Price by the Buyer.

(b) Unless specifically agreed in writing by the Carrier, the following is not included in the Purchase Price:

(i) installation and commissioning of the Products;

(ii) freight, insurance, custom and import duties (if any), landing, storage and delivery charges and all other charges in connection with shipment and delivery of the Products;

(iii) any charge, duty, impost, sales tax or other expenditure which is not applicable at the date of Quotation or Sales Invoice but which is subsequently levied upon the Carrier in relation to a Quotation or Sales Invoice as a result of the introduction of any legislation, regulation or government policy; or

(iv) where Products are imported into Australia, any variation in the Purchase Price which adversely impacts the Carrier, arising from fluctuation in exchange rates between the date of the Buyer's order and the date of payment by the Carrier.

Any amount payable in relation to the provision of the items described in paragraphs (i), (ii), (iii) and (iv) above shall be solely to the Buyer's account.

(c) The Buyer shall pay the Carrier the Purchase Price and any other amount due to the Carrier hereunder within thirty (30) days of the date of the Sales Invoice without set-off, deduction or discount of any kind.

(d) The Buyer acknowledges and agrees that this clause 7 creates a security interest in the Products and in all proceeds of those Products as security for the Payment of all moneys owing by the Buyer to the Carrier.

(e) The Buyer agrees at the Carrier's request to promptly sign any documents, provide all necessary information (which information the Buyer warrants to be complete, accurate and up-to-date in all respects) and do anything else reasonably required by the Carrier to ensure that any security interest constitutes a perfected "Purchase Money Security Interest" for the purposes of the *Personal Property Securities Act 2009* (Cth).

(f) Without prejudice to the Carrier's other remedies hereunder or at law, if the Buyer fails to make Payment by the due date for Payment in accordance with this clause, the Carrier may suspend performance of its obligations hereunder, and the Buyer will pay interest calculated daily on the overdue amount at the rate of ten percent (10%) per annum calculated on a daily basis from the day such amount falls due, until the day payment in full is received by the Carrier.

(g) The Buyer will be liable for the payment of all expenses reasonably incurred by the Carrier in the recovery of any Payment, including administrative costs, debt collector's fees and legal costs on a solicitor and own client basis to the full extent permitted by law.

8. GST

Unless otherwise specified in writing by the Carrier, any consideration payable or to be provided for a supply made under or in connection with these terms and conditions, does not include any amount on account of GST. If GST is payable on any supply made under or in connection with these terms and conditions, the recipient of the supply must pay to the supplier, an additional amount equal to the GST payable on the supply (**GST Amount**). The GST Amount is payable at the same time as the GST exclusive consideration is paid or provided, subject to the supplier issuing the recipient with a tax invoice for the supply to which the payment relates.

9. LIABILITY OF CARRIER

(a) To the full extent permitted by law and subject to the consumer guarantees and other provisions of the Australian Consumer Law (if applicable), the Buyer acknowledges and agrees that the Carrier will have no liability for any statements, representations, guarantees, conditions or warranties that are not expressly contained herein.

(b) To the full extent permitted by law, where the Carrier breaches its obligations hereunder, the liability of the Carrier arising from the breach shall be limited to, at the Carrier's option:

(i) the replacement or resupply of the defective Products by the Carrier; or

(ii) the repair of the defective Products; or

(iii) the refund or credit of the Purchase Price and any other amount paid by the Buyer to the Carrier for the defective Products; or

(iv) the payment of the cost of replacement or of repair of the defective Products.

(c) To the full extent permitted by law, the Carrier's total liability to the Buyer under these terms and conditions, whether in contract, tort (including negligence), by way of indemnity or otherwise at law, in equity or under statute, will be limited to the Purchase Price.

(d) Notwithstanding anything else in these terms and conditions and to the full extent permitted by law, the Carrier will not be liable to the Buyer for:

(i) any indirect, incidental or special or economic loss, cost, liability, damage or expense howsoever arising; or

(ii) any loss of profit, loss of use, loss of income, loss of rental or other benefit, loss of production, loss of contract, loss of actual or potential business opportunity or loss of reputation.

(e) The Buyer acknowledges and agrees that it is reasonable for the Carrier to limit its liability hereunder and that the Purchase Price charged is based solely on the value of the Products supplied.

10. PERSONAL INFORMATION

(a) The Buyer agrees that for purposes of supplying the Products hereunder the Carrier may collect and use the Buyer's personal information in accordance with the Carrier's privacy policy which may be viewed at <https://www.firesecurityproducts.com.au/>.

(b) Without limiting paragraph (a) above, if the Buyer has applied to the Carrier for credit, the Buyer acknowledges and agrees that for purposes of these terms and conditions, the Carrier may collect, use, store, give, obtain and exchange personal information about the Buyer's creditworthiness, credit history or credit capacity on terms

which attract the operation of the *Privacy Act 1988* (Cth), and the Buyer authorises the Carrier to do so in accordance with the Carrier's privacy policy.

11. INTELLECTUAL PROPERTY

The Carrier is the owner or authorized licensee of all Intellectual Property Rights in the Products and any documentation provided or associated with the Products. The Carrier retains all rights, title and interest subsisting in such Intellectual Property Rights. The Carrier grants to the Buyer a royalty-free, non-exclusive, non-transferrable, revocable licence to use the Intellectual Property Rights solely to the extent necessary for the purpose of using the Products in accordance with these terms and conditions. The Buyer must not in any way copy, modify, adapt or reverse-engineer the Products.

12. DEFAULT AND TERMINATION

(a) If a party is in material or persistent breach of its obligations under these terms and conditions, or if the Buyer is in breach of clause 7(c)**Error! Reference source not found.**, the other party shall provide a written notice to the party in breach specifying the alleged material or persistent breach and, where the breach is capable of remedy, provide the party with a reasonable period to remedy the breach.

(b) A party may terminate an order by a further written notice to the party who committed the breach after expiry of the period stated in the notice given under clause 12(a).

(c) If either party becomes insolvent as defined by the *Corporations Act 2001* (Cth), or commits an act of bankruptcy as defined by the *Bankruptcy Act 1966* (Cth), the other party may terminate an order upon written notice.

(d) Subject to paragraph (e) below, either party may terminate an order at any time for convenience by giving sixty (60) days prior written notice to the other party.

(e) The Buyer may not cancel or terminate an order for Products where Products are specifically purchased, designed, manufactured, machined or cut to size by the Carrier for the Buyer or to the Buyer's specification.

(f) If the Buyer terminates in accordance with paragraph (b) or (d) above, the Buyer must pay the Carrier for:

- (i) all work performed by the Carrier up to the date of termination; and
- (ii) the cost (including freight and storage charges) of products and materials ordered by the Carrier for purposes of supplying and delivering the Products to the Buyer.

13. DISPUTE RESOLUTION, APPLICABLE LAW AND JURISDICTION

(a) The Buyer and the Carrier agree that they will initially use all reasonable endeavours to resolve any dispute arising under these terms and conditions amicably and in good faith within ten (10) working days of either party being advised by written notice of such a dispute by the other party. If the parties are unable to resolve the dispute within that time frame, and if the Buyer is a company or other body corporate, they must refer the dispute to an executive officer from each party to resolve. The parties will again use all reasonable endeavours to resolve the dispute within a further ten (10) working days or such other reasonable period agreed between the parties.

(b) If the dispute is not resolved in accordance with clause 13(a) above, the parties may agree to refer the matter to mediation or some

other form of alternative dispute resolution. If the parties cannot agree on a method of alternative dispute resolution, either party may commence legal proceedings.

(c) These terms and conditions, any Quotation and any order agreed hereunder shall be subject to the laws of Victoria, and each party submits to the exclusive jurisdiction of the courts of Victoria .

14. FORCE MAJEURE

If the performance or observance of any obligations (other than an obligation to make payment) of either party (the "affected party") is prevented, restricted or affected by reason of a force majeure event including without limitation strike, lockout, industrial dispute, fire, flood, storm, cyclone, earthquake, acts of God, war, insurrection, vandalism, sabotage, riot, national emergency, piracy, hijack, terrorism, pandemic, epidemic, embargoes or restraints, extreme weather or traffic conditions, temporary closure of roads, changes in legislative requirements, raw material shortage, breakdown of plant, transport or equipment or any other event beyond the control of the affected party, the affected party will, give prompt notice of that event to the other party. The affected party shall be excused from such performance or observance for the full duration of such event.

15. INTERNATIONAL TRADE COMPLIANCE

(a) The Products and/or technical information sold or otherwise provided to the Buyer pursuant to an order under these terms and conditions (regardless of quantity or value) may be subject to export and other foreign trade controls restricting the sale, re-export and/or transfer of such Products or technical information to certain countries or parties, including, but not limited to, licensing requirements under applicable laws and regulations of the United States of America and other jurisdictions.

(b) The Buyer must not sell, re-export or transfer any Product or technical information supplied under these terms and conditions except in full compliance with all applicable governmental requirements, including, but not limited to, applicable economic sanctions and constraints administered by the United States of America's Treasury Department and applicable export control measures administered by the United States of America's Department of Commerce and Department of State, the US Nuclear Regulatory Commission, the Office of Foreign Assets Controls or any other government agencies.

(c) The obligation of the Carrier to supply Products, services or technical information under these terms and conditions is subject to the ability of the Carrier to supply such items consistent with the laws and regulations of the United States of America and other governments and the Carrier is entitled to refuse to provide any Product, service or information hereunder if the Carrier, in its sole discretion, determines that the provision of such Product, services or information to the Buyer would violate any applicable law or regulation of the United States, or any other legal entity.

(d) The Buyer agrees, on request by the Carrier, to provide the Carrier with all information reasonably required by the Carrier (including, but not limited to, information pertaining to the transit and end destination of the Products, the Buyer's customers, carriers, freight forwarders, customs agents, end-users and any other intermediaries) for purposes of compliance with this clause 15.

(e) Any failure to comply with this clause, or any violation, by the Buyer, of the applicable laws or regulations of the United States of America or any other government, shall be deemed a material breach of these terms and conditions and sufficient basis for the Carrier to suspend the provision of the Products or any part thereof, or, at its election, to terminate any order.

16. The Buyer shall comply with (a) all laws governing the performance of its obligations hereunder, and (b) the ethics and compliance policies of Carrier and its parent company Carrier Global Corporation ("Carrier"), including, without limitation, the Carrier Code of Ethics Policy available at <https://www.corporate.carrier.com/corporate-responsibility/governance/ethics-compliance/>.

Buyer acknowledges having read and understood the requirements and principles of Carrier's policies relating to business practices, which are a fundamental part of this Agreement.

17. General

17.1 All clerical errors are subject to corrections and shall not bind Carrier.

17.2 The invalidity or unenforceability of any provision of these terms and conditions shall not affect the validity or enforceability of the remaining provisions.

17.3 Carrier's failure to enforce, at any time or any period of time, any term of any Contract incorporating these terms and conditions shall not constitute waiver of such term and shall in no way affect its right to enforce it.

17.4 Headings are included for ease of reference and do not form parts of or affect the interpretation of these terms and conditions.