



Fire Products & Solutions

Terms & Conditions of Sale

1. GENERAL

- 1.1 These Terms and Conditions apply to the sale of Products by Brooks Australia Pty ABN 84 000 469 910 of 4 Pike Street, Rydalmere NSW 2116, (T) (02) 8820 1300 (the "Seller") to a purchaser of Products ("Buyer"). 'Products' is defined as any goods or services offered for sale by the Seller.
- 1.2 The Seller agrees to supply and sell to the Buyer and the Buyer agrees to buy from the Seller such Products that as ordered by the Buyer. These Terms and Conditions apply to all orders made by the Buyer in relation to the Products, unless varied, amended or cancelled in writing and signed by an officer or other duly authorised representative of the Seller.
- 1.3 The Buyer is deemed to have accepted these Terms and Conditions by placing an Order with the Seller.
- 1.4 If there is any inconsistency between these Terms and Conditions and any term and/or condition of any particular communication between the Buyer and the Seller, these Terms and Conditions shall prevail to the extent of the inconsistency.
- 1.5 The Seller's failure to object to any term and/or condition contained in any communication from the Buyer, whether written or oral, shall not be deemed a waiver of these Terms and Conditions (and any term and/condition contained herein).

2. QUOTES BY THE SELLER

Subject to clause 4.2, a quotation provided by the Seller for the supply of the Products to the Buyer shall remain valid for a period of sixty (60) days from the date of the quotation, unless otherwise specified by the Seller in writing at the time of providing such quotation. Following the expiration of this period, the Seller may confirm or amend such quotation in its sole discretion.

3. ORDERS

- 3.1 All orders for the Products ("Order") shall be submitted by the Buyer to the Seller in writing. The Seller may in its sole discretion accept or reject any Order. Upon acceptance of any Order, the Seller will fulfil the Order received and deliver the Products to the Buyer subject to clause 7 of these Terms and Conditions.
- 3.2 The Seller does not warrant, whether expressed or implied, as to the availability of stock of any Products.

4. PRICES

- 4.1 Subject to clause 4.2, and unless otherwise agreed by the parties in writing or varied by quotation or offer, the purchase price for the Products (the "Product Price") shall be the price as set out in the Seller's product price list in effect as at the date of the Seller's acceptance of an Order placed by the Buyer.
- 4.2 The Buyer acknowledges and agrees that:
- (a) in the event that any Product Price quoted by the Seller is calculated on the basis of a per unit price or is based on minimum or specific quantities, the Seller may amend that Product Price if there is any variation in the total quantity of Product ordered;
- (b) all quoted Product Prices of imported Products are based upon the freight on board price of the Seller's supplier and the rates of exchange, freight, insurance and customs or duties (the "Price Factors") as at the date of quotation. The Seller may from time to time adjust any quoted price in its discretion by the same percentage amount by which the Seller's actual costs of satisfying an Order vary as a result of any variation in the Price Factors. In the case of a variation in the rate of exchange, the Seller reserves the right to increase its quoted Product Price by the same percentage as the percentage of devaluation (if any) of the Australian dollar against the currency in which payment for the relevant Product is required to be made by the Seller to its supplier from the date of quotation by the Seller to the date of invoice, calculated using the Westpac Banking Corporation selling rate in the relevant period.
- 4.3 In addition to the Product Price, standard packaging and handling charges shall be payable by the Buyer. The Seller shall be entitled to also charge separately for packing or packaging which is not in accordance with the Seller's customary standard of packing or packaging.

5. GST

The Parties agree that:

- (a) All pricing or charges relating to the application of clause 4 are exclusive of GST;
- 5.1 Each Party will comply with its obligations under applicable law when calculating any GST liability as it relates to the Product Price for Products supplied. All payments will be adjusted accordingly.
- 5.2 If the whole or any part of any payment made by the Buyer is consideration for a Taxable Supply for which the Buyer is liable to GST, the Buyer must pay to the Seller an additional amount equal to the GST Amount.

6. TERMS OF PAYMENT

- 6.1 Upon the Seller accepting an Order from the Buyer, the Seller shall provide to the Buyer a Tax Invoice which shall include a description of the Products ordered and the amount payable by the Buyer for the Order.
- 6.2 Unless otherwise agreed between the parties:
- (a) all Tax Invoices shall be paid in full by the Buyer within thirty (30) days from the date of the Tax Invoice, unless otherwise agreed by the Seller. Time shall be of the essence in this regard.
- (b) the Buyer shall pay to the Seller the amount specified in the Tax Invoice prior to delivery of the Products to the Buyer.
- 6.3 In the event that the Buyer fails to make any payment to the Seller when payment falls due:
- (a) the Seller shall have the right, without prejudice to any other right or remedy to which the Seller may be entitled, to charge interest on the overdue amount at the rate of three per cent (3%) per annum in excess of the interest rate prescribed by the Westpac Overdraft Business Rate, calculated from the date of invoice to the date on which full payment is received by the Seller. Any payment by the Buyer shall be credited first against any interest so accrued and the balance of the payment, if any, shall be applied in reduction of the outstanding balance of the overdue amount;
- (b) the Buyer shall, in addition to any other remedy the Seller shall have at law or under these Terms and Conditions, be liable for the Seller's damages and costs, including without the Seller's costs of collections, legal fees and other expenses,
- 6.4 The Seller may extend credit facilities to the Buyer in its absolute discretion and on such terms as it sees fit, and such credit facilities are subject to confirmation on the receipt of each Order by the Buyer. In any event the Seller retains the right to withdraw credit facilities at any time prior to delivery of Products.



6.5 In the event that the Buyer is unable to fulfil its payment obligations under these Terms and Conditions, the Buyer shall notify the Seller immediately. In the event that the Buyer's financial condition is unsatisfactory to the Seller, the Seller may in its sole discretion, exercise any or all of the following options without limiting any other rights or remedies it has herein or under law:

- a) demand immediate payment from the Buyer;
- b) suspend (permanently or otherwise) all further deliveries of Products to the Buyer.

7. DELIVERY OF PRODUCTS

7.1 After receiving an Order for Products from the Buyer, the Seller shall notify the Buyer when such Order is ready for delivery.

7.2 The Seller will use its best endeavours to meet all quoted delivery or consignment dates, however the Seller shall not be liable to the Buyer for any delay in delivery caused by industrial disputes, including strikes and lockouts, circumstances such as fire, war, mobilization or any other cause beyond the reasonable control of the Seller. In such circumstances, the Seller may extend the quoted delivery or consignment dates for either the whole or part of any Order. Where the period is extended beyond three (3) calendar months from the date of the Order then either party may cancel the Order without penalty, however where the Buyer cancels the Order within three (3) calendar months from the date of the Order, the Buyer shall not be relieved of its obligation with respect to payment for the Order or any part thereof.

7.3 The Seller shall use its own designated carrier for all deliveries. If the Buyer wishes to use another carrier, the Buyer shall arrange for collection of the Products by such other carrier from the Seller and the Buyer shall pay all costs including, without limitation, freight and insurance costs. The Buyer shall indemnify the Seller from and against all actions, suits, proceedings, claims for demands and all losses, expenses and liabilities, howsoever arising from the transportation or delivery of the Products by the Buyer's chosen carrier.

7.4 Time for delivery shall not be of the essence unless previously agreed by the parties in writing.

8. PASSING OF PROPERTY AND RISK

8.1 Risk in the Products shall pass to the Buyer:

- (a) immediately upon delivery of the Products to the address specified by the Buyer for delivery, whether the Buyer's premises or otherwise;
- (b) in the event that the Buyer requests the Products be held at the Seller's premises, at the time when the Seller notifies the Buyer that the Products are ready for delivery; or
- (c) in the event that the Buyer is unable to or fails to accept delivery of the Products, the time when the Seller attempted to make delivery.

8.2 Notwithstanding delivery and passing of risk, the property in the Products supplied by the Seller under an Order shall remain with the Seller until the Buyer has paid all monies owed by it to the Seller, including, without limitation, where there has been part payment in respect of an Order.

9. PERSONAL PROPERTY SECURITIES ACT 2009 (CTH) (PPSA)

9.1 The terms Commercial Consignment, Financing Change Statement, Financing Statement, Proceeds, Purchase Money Security Interest, PPS Lease, PPS Register, Registrar, Security Agreement and Security Interest have the meanings given in the PPSA.

9.2 In the event that the Buyer has not paid the full amount specified in a Tax Invoice for an Order, or for so long as any Products are consigned, rented or leased, the Buyer acknowledges that:

- (a) by virtue of clauses 8 of these Terms and Conditions, the Seller has a Security Interest in the Products and their Proceeds under the PPSA and these Terms constitute a Security Agreement that covers the Products for the purposes of the PPSA;
- (b) the Seller's Security Interest under clause 8 secures all monies owing by the Buyer to the Seller under a relevant Order;
- (c) the Buyer shall hold the Proceeds from the sale of any of the Products on trust for the Seller;
- (d) the Buyer will not grant or seek to grant any Security Interest in the Products adverse to the Security Interest of the Seller;
- (e) to the extent that a Security Interest secures payment of the amounts owing in relation to the Products or is a PPS Lease or a Commercial Consignment, the Seller's Security Interest over the Products and their Proceeds is a Purchase Money Security Interest;
- (f) the Seller's Security Interest attaches to the Products when the Buyer attains possession of the Products;
- (g) the Buyer must keep the Products separate from other goods and maintain the labelling and packaging of the Seller so that the Products are readily identifiable as the property of the Seller;
- (h) failure to comply with the requirements under clause 9.1(g) will not affect the Seller's Security Interest in the Products and the Seller will continue to hold a Security Interest in the Products in accordance with and subject to the PPSA, notwithstanding that the Products may be processed, comingled or become an accession with other goods; and
- (i) the Seller may apply to register a Security Interest in the Products at any time before or after delivery of the Products. To the extent permissible under the PPSA, the Buyer waives its right to receive notice of any verification of the registration.

9.3 In relation to all Security Interests governed by these terms, the Buyer undertakes to:

- (a) execute all documents and provide all information which the Seller may require to register, amend or update a Financing Statement or Financing Change Statement in relation to a Security Interest on the PPS Register;
- (b) indemnify and upon demand reimburse the Seller for all expenses incurred in registering a Financing Statement or Financing Change Statement in relation to Security Interests on the PPS Register or releasing any Security Interests, including any maintenance or other fees the Seller is required by the Registrar to pay under the PPSA;
- (c) not register or permit to be registered a Financing Change Statement in the Products without the prior written consent of the Seller; and
- (d) provide the Seller with not less than seven (7) days prior written notice of any proposed change in the Buyer's name, address, contact numbers, business practice or any other such change in the Buyer's details registered on the PPS Register and to register a Financing Change Statement if required.

9.4 If the Buyer defaults under these Terms and Conditions, the Seller is and will be entitled at any time to demand the return of the Products subject to Security Interests under these Terms and Conditions, and the Buyer must do all things necessary to immediately permit the Seller, without notice and without liability to the Seller, to enter and access any premises occupied by the Buyer in order to search for, locate, identify retrieve and remove those Products in which the Seller has a Security Interest.

9.5 To the extent permitted by the PPSA, the Seller and the Buyer agree that sections 95, 117, 118, 121(4), 123, 125, 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPSA do not apply to the enforcement by the Seller of its Security Interest(s) in the Products.

9.6 In addition, to the extent permitted by the PPSA, if there is any inconsistency between the Seller's rights under this clause 9.4 and its rights under Chapter 4 of the PPSA, clause 9.4 shall prevail.



10. PRODUCT CHANGES

Where the Seller is acting as agent for a manufacturer or supplier of Products, the Seller shall not be liable for any alteration or variation in or to the Products supplied by such manufacturer or supplier.

11. RETURN OF PRODUCT AND CANCELLATIONS OF ORDERS

Return of Products

11.1 The Buyer shall within seven (7) days from the date on which any Products are delivered to the Buyer, notify the Seller in writing of any claim by the Buyer relating to any defect in the quality or condition of the Products or any failure of the Products to correspond with the Buyer's Order.

11.2 If the Buyer does not notify the Seller in writing as required by clause 11.1 (including within the time frame specified), then:

(a) the Seller shall not be liable for such defects or failure; and

(b) the Buyer shall be bound to pay the full amount specified in the Tax Invoice relating to the relevant Order of Products.

11.3 If the Buyer notifies the Seller in writing as required by clause 11.1 (including within the time frame specified), and the claim is deemed by the Seller to be valid, the Seller shall in its absolute discretion elect to either:

(a) replace the Products (or the part in question) free of charge; or

(b) refund to the Buyer the price of the Products (or such amount as relates to the part in question); and the Seller shall have no further liability.

11.4 The Buyer shall make payment for and accept delivery of Products which are within accepted trade tolerances in relation to the quality, colour, weight, finish and other relevant standards in relation to the Products.

11.5 Products cannot be returned by the Buyer unless:

(a) the prior written authorisation of the Seller is obtained in the form of a "Return Materials Advice"; and

(b) the Products are returned in their original packing and are unsoiled and undamaged.

11.6 Where Products are returned and are not the subject of a claim pursuant to clause 11.1, the returned Products will be subject to a restocking fee equivalent to twenty per cent (20%) of the value of such Products as set out in the Tax Invoice.

11.7 In the event that the Buyer returns Products otherwise than in accordance with clause 11.5, the Seller shall reassign such Products to the Buyer and the Buyer must pay the Seller's additional packaging and handling charges in doing so.

Cancellation of Orders

11.8 The Buyer shall not cancel any Order without the prior written consent of the Seller, which consent may be withheld in the Seller's sole discretion.

11.9 In the event that the Seller agrees to the cancellation of an Order, the Seller may as a condition of such cancellation, require the payment by Buyer of a cancellation fee of an amount determined by the Seller in its reasonable discretion to compensate it for its loss suffered arising out of the cancellation.

11.10 At the Seller's option, any orders placed by the Buyer may be cancelled by the Seller in the event of the insolvency of the Buyer or in the event of the Buyer being placed in liquidation, whether voluntary or otherwise, or a receiver or a receiver/manager being appointed in respect of the assets or on the undertaking of the Buyer or the Buyer entering into a deed of composition or arrangement with its creditors or in the event that for any reason, in the Seller's reasonable opinion, the Buyer is unlikely to be able to make payment for Products on the date for payment.

12. SPECIFICATIONS AND INFORMATION

12.1 The Buyer acknowledges that any listed performance data for the Products provided to the Buyer is based upon the Seller's experience. The Seller shall not be liable for any variation between such data provided by the Seller and any data obtained by the Buyer otherwise than from the Seller relating to the performance of the Products, unless such data is specifically guaranteed in writing by the Seller. Any variation shall be subject to the recognised accepted trade tolerances and rejection limits applicable to such data. The Buyer shall assume responsibility for the capacity and performance of the Products being sufficient and suitable for the Product's purpose.

12.2 All drawings and printed material prepared by a party other than the Seller (including the manufacturer of the Products) accompanying any quotation before or after acceptance of any Order by the Seller is for the Buyer's information only and the Seller does not provide any warranty as to the accuracy of the information contained therein.

13. FORCE MAJEURE

13.1 The Seller shall not be under any liability whatsoever for the consequences of any failure on its part to perform, or for any delay in performing, any obligation under these Terms and Conditions, whilst and to the extent that such failure or delay is due directly or indirectly to any event of force majeure. Without limiting the generality of the foregoing, this includes any liability whatsoever for any delay in performance, delivery, dispatch, shipment or arrival of the Products. An event of force majeure includes any act of God, war, riots, strikes, lock outs, trade disputes, fires, break downs, mechanical failures, interruptions of transport, Government action or any other cause whatsoever, whether or not of a like nature to those specified above, outside the reasonable control of the Seller.

13.2 If there is an event of force majeure, the Seller will notify the Buyer of the event and the likely impact on its performance under these Terms and Conditions. If the event affects the capacity of the Seller to complete its material obligations under these Terms and Conditions in a timely manner, the Seller may by notice to the Buyer terminate the Seller's obligations under these Terms and Conditions to provide the Products to the Buyer without any liability whatsoever on the Seller's part.

14. INTELLECTUAL PROPERTY

14.1 The Buyer acknowledges that all rights in respect of patents, copyrights, design rights, trade marks or other industrial or intellectual property rights ("Intellectual Property Rights") connected with the Products shall not pass to the Buyer and shall at all times remain with the Seller.

14.2 The Buyer shall indemnify the Seller against any and all liabilities, claims and costs incurred by or made against the Seller:

(a) due to a breach of the Seller's Intellectual Property Rights by the Buyer;

(b) as a direct or indirect result of carrying out of any work required to be done on or to the Products in accordance with the requirements or specifications of the Buyer involving any infringement or alleged infringement of any rights of any third party.

14.3 If any action, suit, proceeding, claim or demand is brought or made alleging that the sale, use or any other dealing with the Products infringes the trade mark, trade name, patent, copyright, registered design or any other intellectual or industrial property rights of any third party, the Buyer shall forthwith notify the Seller thereof and give every assistance to the Seller in connection therewith as the Seller may reasonably require and shall not itself handle, deal with or compromise any such action suit proceedings, claim or demand except with the prior written consent of the Seller.



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15. USE OF PRODUCTS

The Buyer warrants that it will not use the Products for any purpose other than that for which the Products were sold to it and it will use the Products strictly in accordance with any instructions or supporting documentation supplied with the Products or as directed by the Seller.

16. WARRANTY AGAINST DEFECTS

16.1 The Seller's Products come with guarantees that cannot be excluded under the Australian Consumer Law. The Buyer is entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. The Buyer is also entitled to have the Products repaired or replaced if the Products fail to be of acceptable quality and the failure does not amount to a major failure.

16.2 Subject to clause 16.3, the Seller provides a warranty against defects in the Products (or part thereof) for a period of twelve (12) months (the "Warranty Period") from the date of delivery, unless otherwise specified (the "Warranty").

16.3 The Warranty applies to defects arising under normal conditions of use and service, and does not include normal wear and tear, incorrect installation by the Buyer or a third party, damage resulting from repairs by the Buyer or a third party, accident, neglect, misuse, unauthorized dismantling, tampering, interference or contamination howsoever caused or where the Products have been subjected to operating or environmental conditions in excess of maximum operating parameters in the applicable Product specifications.

16.4 If the Buyer is relying on the warranty, the Buyer must, within fourteen (14) days of the defect arising, notify the Seller in writing of such defect and provide to the Seller proof of purchase of the Products, such notice to be sent to the Seller at its mailing address at PO Box 7050, Silverwater NSW 1811, or by facsimile to (02) 9684 4146.

16.5 If the Seller determines, in its sole discretion, that the Products have become defective during the Warranty Period and the Warranty applies, the Seller shall repair or replace the Products or part thereof without charge to the Buyer. The Warranty excludes incidental and consequential damages, unless permitted under the Australian Consumer Law.

16.6 To the extent permitted by law, all other warranties, representations, terms and conditions concerning the Products, whether express or implied, are hereby expressly excluded.

16.7 The benefits to the Buyer given by the Warranty are in addition to other rights and remedies of the Buyer under a law in relation to the goods or services to which the Warranty relates.

17. LIMITATION OF LIABILITY

17.1 Unless otherwise provided in these Terms and Conditions, the Seller shall not be liable for, and the Buyer releases the Seller from, any claim, action or liability (included consequential loss or change, removal, reinstallation, loss of use or of profits).

17.2 Neither these Terms and Conditions or any rights hereunder may be assigned by the Buyer without the prior written consent of the Seller.

18. GOVERNING LAW

These Terms and Conditions and any contract including them shall be governed and construed in accordance with the laws of the State of New South Wales and the parties unconditionally and inevitably submit to the non-exclusive jurisdiction of the Courts of that state.

19. ALTERATIONS OF TERMS & CONDITIONS

The Seller may, at any time and from time to time, alter these Terms and Conditions.