

PYROTEK INCORPORATED
STANDARD SALES TERMS AND CONDITIONS

1. **Applicability of Terms and Conditions.** Except where prohibited by applicable law, these Terms and Conditions apply and are incorporated into every sale of Goods made by Seller to Buyer. These Terms and Conditions prevail over Buyer's terms of purchase which are hereby rejected unless accepted in writing by Seller's authorized representative. Buyer will be deemed to have assented to all terms and conditions contained herein upon issuance of a purchase order, payment for any part of the Goods, or Seller's issuance of an order acknowledgment, commencement of performance or shipment of all or any portion of the Goods.
2. **Definitions.**
 - a. "Affiliate" of a party means an entity controlling, controlled by, or under common control with, that party.
 - b. "Contract" means these Terms and Conditions, together with the written invoice, purchase order, contract or agreement which attaches, incorporates or otherwise references these Terms and Conditions.
 - c. "Buyer" 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. "Seller" 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 Seller under the Contract.
3. **Price**
 - a. Prices for Goods shall be as set forth on Seller's price list in effect on the date of the Contract or as mutually agreed upon by the Parties, subject to correction for any omissions or other reasonable adjustments. If Seller increases prices before transfer of the Goods to a carrier for shipment to Buyer, the Contract shall be construed as if the increased prices were originally incorporated therein, and Buyer shall be billed accordingly.
 - b. Seller may adjust the prices on ten (10) days prior written notice to Buyer. Such adjusted prices shall apply to all purchase orders submitted after the adjustment's effective date. Seller reserves the right to adjust prices at any time to account for of any increase in costs due to change in the laws affecting the Goods or the Seller, including but not limited to new tariffs, duties, or similar government-imposed charges, or the judicial or official governmental interpretation of such laws, rules, regulations, or orders.
 - c. All prices are exclusive of taxes, duties, and charges of any kind imposed by any governmental authority which are Buyer's responsibility, except for any taxes imposed on, or with respect to, Seller's income or property. Unless otherwise specified, prices for the Goods are in US dollars.
4. **Payment Terms.** Buyer shall pay the price of the Goods and all other invoiced amounts without offset, on net thirty (30) day terms, unless otherwise agreed by the Parties in writing. Seller 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. Seller may change payment or credit terms for unfulfilled orders if, in Seller's reasonable opinion, Buyer's financial condition, or payment record merits such change. Seller may suspend or discontinue performance, without liability or penalty, if Buyer fails to pay any sum due, or if after five (5) days written notice Buyer has not cured any other failure to perform. Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller.
5. **Security Interest.** Seller retains a security interest in the Goods until payment. Buyer shall execute any paperwork required by Seller to effectuate and perfect any such security interest.
6. **Packaging.** Seller 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 Buyer, provided, however, that the cost of all deviations from Seller's standard shipping practices shall be borne by Buyer.
7. **Shipping and Delivery.** Unless mutually agreed by the Parties in an express writing addressing shipping and delivery, all shipping shall be *ex works* (EXW) as defined by *INCOTERMS 2020*, unless Seller completes certain export procedures, in which case all shipments shall be FCA Seller's facility. Delivery dates given by Seller are estimates only and not binding. Delivery dates are further subject to shipping variations and requirements. Seller accepts no liability or responsibility for any delay in delivery, failure to deliver or any delays, loss, or damage in transit. Seller may, without any liability or penalty, make partial shipments of Goods. Each partial shipment will constitute a separate sale and Buyer shall pay for Goods shipped. If delays occur due to Buyer's request or failure to accept delivery or provide appropriate instructions, documents, licenses or authorizations for the goods, then: (a) risk of loss to the Goods shall pass to the Buyer; (b) the Goods shall be deemed to have been delivered; and (c) Seller may store or arrange for storage of the Goods at Buyer's expense.

8. **Inspection.** Buyer shall inspect Goods within five (5) calendar days of receipt (“Inspection Period”). Buyer is deemed to have accepted all Goods unless it notifies Seller, in writing, of any Goods that fail to materially conform to Buyer’s purchase order (“Nonconforming Goods”) during the Inspection Period and furnishes written evidence or other documentation requested by Seller to support the assertion of nonconformity. If Buyer timely notifies Seller of any Nonconforming Goods, Seller may, in its sole discretion, (i) replace such Nonconforming Goods, or (ii) permit return of the Nonconforming Goods for a credit or refund including reasonable shipping costs incurred in the return. If Seller elects to replace Nonconforming Goods, Seller shall, after receiving Buyer’s shipment of Nonconforming Goods, ship the replacement Goods to Buyer, subject to the shipping terms set forth in these Terms and Conditions. **Buyer acknowledges and agrees that the remedies set forth in this section are Buyer’s exclusive remedies for Nonconforming Goods.** Except as provided herein, all sales of Goods to Buyer are final and Buyer has no right to return Goods.
9. **Limited Warranty.**
- a. **SELLER PROVIDES NO WARRANTY OF GOODS OTHER THAN THAT MUTUALLY AGREED BY THE PARTIES 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 below. Notwithstanding anything herein or in the Contract to the contrary, any warranty provided by Seller is contingent upon the proper use of the Goods by Buyer and excludes any part of the Goods modified without Seller’s prior written consent or 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. No warranty shall apply if Buyer fails to follow Seller’s oral or written instructions regarding storage, installation, commissioning, use or maintenance. **If no warranty is set forth in the Contract, then Seller disclaims all warranties pursuant to the Warranty Disclaimer.** All warranties provided hereunder extend only to the Buyer and no other person or entity.
- b. **WARRANTY DISCLAIMER: EXCEPT AS SET FORTH HEREIN, SELLER MAKES NO EXPRESS OR IMPLIED WARRANTIES AND HEREBY DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES, OBLIGATIONS, CONDITIONS, REPRESENTATIONS OR LIABILITIES, WHETHER IMPLIED BY OPERATION OF LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**
10. **Remedies and Limitations on Warranties.**
- a. Seller is not liable for a breach of warranty unless such breach is material and (i) Buyer provides written notice of the claimed breach of warranty within ten (10) days after Buyer discovers, or should have discovered, the alleged breach; (ii) Buyer cooperates with Seller to give Seller a reasonable opportunity to inspect the Goods and assess the claimed breach and (iii) Seller reasonably verifies Buyer’s claim that the Goods fail to meet the warranty provided. Time is of the essence and Buyer’s failure to provide notice within the required time releases Seller from any obligation or liability. Seller shall not be liable for breach of warranty if Buyer uses the Goods after giving notice.
- b. If the conditions of subsection 10a are satisfied, Seller may either (a) credit Buyer’s account for the purchase price, excluding any taxes paid; or (b) repair or replace any defective Goods. If required by Seller, the Goods alleged to be defective will be returned to Seller, at its direction and expense, for examination. If Goods so returned are not covered by warranty, Seller reserves the right to charge Buyer for all transportation costs and expenses. These remedies are the Buyer’s sole and exclusive remedy and Seller’s entire liability for any breach of the limited warranty set forth in Section 9.
- c. Buyer has no right to return for repair, replacement, credit, or refund any Goods except as set forth in this Section 10. Buyer shall not reconstruct, repair, alter, or replace any Goods, in whole or in part, either itself or by or through any third party and any warranty provided by Seller shall no longer apply if Buyer is in violation of this Section 10(c).
11. **Limitation of Liability** Under no circumstances and in no event will Seller be liable to Buyer or any third party for indirect, incidental, punitive, special, exemplary, multiplied, consequential, or liquidated damages of any kind, including without limitation any loss of use, profits, revenue or production or diminution in value, whether based upon warranty, contract, strict liability, tort (including negligence) or any other cause of action, regardless of foreseeability and whether or not Seller had been advised of the possibility of such damages, and notwithstanding the failure of any agreed or other remedy of its essential purpose. Further, under no circumstances and in no event will Seller be liable for any claims related to design, manufacture, sale, transportation, installation, use or repair of any components not manufactured by Seller. Buyer hereby acknowledges and agrees that under no circumstances, and in no event, shall Seller’s aggregate liability arising out of or related to the Contract, including any renewal terms, if any, exceed the amounts paid to Seller for the Goods, or \$1,000,000, whichever is less.
12. **Default or Delay.** Seller will not be liable for any default or delay in the production or delivery of any Goods resulting either directly or indirectly from: (a) accidents to, or breakdowns or mechanical failure of, Seller’s plant machinery or equipment; strikes or other labor troubles or labor shortages; fire; flood; war; acts of the public enemy; acts of God; epidemics, pandemics,

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 Seller. Seller shall not be liable for any loss, cost, penalty or any consequential, incidental or other damages of any kind from any default or delay in delivery by Seller, whether or not said loss, cost, penalty or damage was reasonably foreseeable.

13. **Buyer's Agreement to Defend.** To the extent that any Goods are manufactured or provided by Seller to meet Buyer's specifications, instructions or any other requirements, Buyer agrees to defend, indemnify and hold Seller, its employees, officers, directors and agents 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. **Sanctions Status.** Buyer represents and warrants that neither Buyer nor any of its subsidiaries, owners, directors, officers, employees, agents, or contractors (collectively "Buyer Entities") are (i) the target of any executive orders or sanctions regulations administered by the United States Department of the Treasury's Office of Foreign Assets Control ("OFAC"), or any decree, ordinance or legally binding order, rule or requirement of the United Nations or under the laws of the European Union ("EU"), or EU member State and any other state and/or authority related to trade sanctions, trade embargoes and other foreign trade controls, export controls, non-proliferation, anti-terrorism and similar laws (collectively, "Sanctions Regulations"); or (ii) included on any suspended, denied, debarred, or otherwise ineligible list published by the US or other applicable jurisdiction (collectively, the "Sanctions List"). If Seller becomes aware that Buyer or its parent company or owner is included on any Sanctions List or is the target of any Sanctions Regulations, Seller may terminate this Contract, or take any other action Seller considers appropriate to remain compliant with applicable Sanctions Regulations. In the event of such termination or other action, Seller will be relieved of all liability and obligations of any kind hereunder, including but not limited to performance, shipment, reimbursement, credit, service or repair. Buyer shall indemnify Seller, its affiliates, shareholders, directors, officers, employees, agents and assigns (collectively "Seller Indemnitees") against all liabilities, costs, expenses, damages, and losses (including, without limitation, any penalties, attorneys' fees and expenses and costs of suit) suffered or incurred by Seller Indemnitees arising out of a breach of this Section 14 or Seller's termination of the Contract due to such breach.
15. **Termination.** In addition to all other remedies, Seller may terminate the Contract, without penalty or liability, with immediate effect upon written notice if: (i) Buyer becomes insolvent; (ii) Buyer files an involuntary petition of bankruptcy; (iii) an involuntary bankruptcy petition is filed against Buyer; (iv) a receiver or trustee is appointed for Buyer; (v) Buyer assigns assets for the benefit of creditors; or (vi) Buyer fails to perform, or breaches any of the terms of the Contract. Buyer shall be liable for Seller's damages in connection with such breach or failure to perform including consequential damages reasonably foreseeable by Buyer or of which Buyer was apprised by Seller, provided, however, the Buyer shall not be responsible for delays or defaults occasioned by fires, Acts of God, wars, riots, but in the event of such occurrence, Seller may cancel the Contract without liability.
16. **Intellectual Property Rights.** Unless otherwise agreed in writing by Seller, all drawings, techniques, processes, inventions, patents, patent applications and other intellectual property (i) now owned by Seller, (ii) created hereafter by Seller outside the scope of the Contract, or (iii) created by Seller or created jointly by Seller and Buyer in connection with the Contract (collectively, "Seller's Intellectual Property") shall be and remain Seller's property. Seller grants no license or other right to Buyer in Seller's Intellectual Property, whether now owned or hereafter created. Unless otherwise specifically agreed to in writing by Buyer, all drawings, techniques, processes, inventions, patents, patent applications and other intellectual property owned by Buyer on the effective date of the Contract ("Buyer's Intellectual Property") shall be and remain the property of Buyer.
17. **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.** Except for Buyer's obligations to make payments when due, neither Party will be liable to the other Party or any third party for any claimed damage, loss or penalty arising from or relating to any failure or delay in any performance of any contractual obligations, including notice of delay, if such delay or failure is due, in whole or in part, to any acts or circumstances beyond the reasonable control of one Party including, without limitation: the elements, acts of nature, acts of God, acts or omissions of the other Party, acts of any civil or military authority, civil unrest, war, invasion or hostilities, terrorist threats or acts, riots, national emergency, revolution, insurrection, epidemic, pandemic, order or action by any governmental authority or requirements of law, concerted labor action, labor difficulties, default or failure of any lower tier supplier, unavailability of supplies or sources of energy, any communication or power failure, or restraints or delays in transportation. 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. No assignment or delegation relieves Buyer of any of its obligations under the Contract.
- d. Compliance with Law. Buyer shall at all times comply with all laws, regulations and ordinances applicable to the operation of its business, the Contract, Buyer's performance of its obligations hereunder, and Buyer's use of the Goods. Without limiting the generality of the foregoing, Buyer shall (a) maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under these Terms and Conditions or the Contract and (b) not engage in any activity or transaction involving the Goods, by way of shipment, use, or otherwise, that violates any law. Buyer shall comply with all export and import laws of all countries involved in the sale of the Goods under these Terms and Conditions or the Contract or any resale of the Goods by Buyer. Buyer assumes all responsibility for shipments of Goods requiring any government import clearance. Seller may terminate these Terms and Conditions or the Contract if any governmental authority imposes antidumping or countervailing duties or any other penalties on Goods.
- e. Confidential Information. All non-public, confidential or proprietary information of Seller, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with these Terms and Conditions or the Contract is confidential, solely for the use of performing these Terms and Conditions or the Contract and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party. This provision shall be in addition to and shall not supersede any existing agreement relating to confidentiality between the Parties. This obligation of confidentiality and nonuse shall survive completion or termination of the Contract.
- f. Governing Law and Dispute Resolution.
- i. The United Nations Convention on Contracts for the International Sale of Goods is expressly disclaimed and does not apply.
 - ii. For sales to Buyers in the United States, these Terms and Conditions and all Contracts shall be governed by the laws of the State of Washington, without giving effect to any choice of law or conflicts of law provision that would result in the application of the laws of a different jurisdiction. Any and all disputes related to the interpretation or enforcement of these Terms and Conditions or the Contract 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. Buyer hereby waives any and all objections that it might otherwise have as to personal jurisdiction or venue in any of the above tribunals.
 - iii. For sales to Buyers located outside of the United States, these Terms and Conditions and all Contracts shall be governed by the International Dispute Resolution Provision located at www.pyrotek.com/legal and incorporated herein by this reference.
 - iv. 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 or it shall be deemed waived.
- g. 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 the Contract by Seller. Buyer acknowledges that it is not relying upon, and has not been induced by, any representation, warranty, statement made by, or other information provided by Seller in connection with its decision to purchase or use the Goods, other than those set forth in these Terms and Conditions or the Contract.
- h. Amendment. Neither these Terms and Conditions nor the Contract may be modified without written agreement of the Parties.
- i. Severability. If any provision herein or in a Contract is held by a decision maker or court of competent jurisdiction to be invalid, illegal 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.
- j. Successors. These Terms and Conditions and any Contract shall be binding upon and inure to the benefit of all successors and permitted assigns.

- k. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in these Terms and Conditions or the Contract shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.
- l. No Third-Party Beneficiaries. These Terms and Conditions and any the Contract is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.
- m. Notices. All notices, request, consents, claims, demands, waivers and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the face of the Sales Confirmation or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in these Terms and Conditions or the Contract, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.
- n. Language and Translation of Documents. All documents related to the Goods, including but not limited to manuals, etc., ("Documents") will be provided to the Buyer in the English language. If Buyer requests the Seller to provide a translation of any of the Documents into another language, Buyer will make such request to Seller in writing. All costs and expenses incurred in connection with the translation of the Documents shall be borne by Buyer.
- o. Regulation (EU) 2023/2854. To the extent that:
- i. the Goods are considered a connected product in accordance with Article 2 (5) of Regulation (EU) 2023/2854 ("Data Act") generating retrievable data about its use or environment; and
 - ii. the Goods are being placed by the Seller for use in the European Union; and
 - iii. the Seller is considered a Data Holder in accordance with Article 2 (13) of the Data Act;
- the access and use of data generated by the use of the Goods shall be governed by EU Data Access and Use Addendum (<https://www.pyrotek.com/assets/Legal/EU-Data-Access-and-Use-Addendum.pdf>).