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Pyroworks Ltd Terms and Conditions v1.1

The customer's attention is drawn in particular to **Clauses 3 (Legal Requirements), 4 (Goods) and 10 (Limitation of Liability)**.

1. INTERPRETATION

1.1 Definitions:

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Category F4 Fireworks: fireworks within the definition provided at Sch.1 para.4 to the 2015 Regulations.

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 12.3.

Contract: the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

Customer: the person or business who purchases the Goods from the Supplier.

Force Majeure Event: an event or circumstance beyond a party's reasonable control, including without limitation:

- (a) Delayed receipt or non-receipt of the Goods by the Supplier;
- (b) Receipt by the Supplier of defective Goods or Goods which do not correspond to the description of the Goods ordered by the Supplier from its own third party suppliers;
- (c) Accidental damage or destruction of the Goods whether in the Supplier's possession or that of any third party carrier instructed to deliver the Goods; and
- (d) Alterations in the law pursuant to which performance of the Contract is rendered illegal.

Goods: the goods (or any part of them) set out in the Order.

Insurance Policy: insurance of the Goods against all risks for their full price in accordance with good trade practice and any and all legal requirements (which insurance shall be maintained on behalf of the Supplier where these Conditions so require);

Licence: a valid firework storage licence in the name of the Customer suitable in all the circumstances and granted pursuant to the 2014 Regulations.

Order: the Customer's order for the Goods, as set out in the Customer's purchase order form.

Person with Specialist Knowledge: a person who satisfies the criteria at Sch.4 para.1 to the 2015 Regulations.

2014 Regulations: the Explosives Regulations 2014/1638.

2015 Regulations: the Pyrotechnic Articles (Safety) Regulations 2015/1553

Representative: the duly authorised adult (at least 18 years of age) representative of the Customer who may lawfully accept delivery of the Goods.

Specification: any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Customer and the Supplier.

Supplier: Pyroworks Ltd trading as Total FX Fireworks (Company Number 09597334)

Pyroworks Ltd trading as Total FX Fireworks

Office 9, Dalton House, Windsor Avenue, London, United Kingdom, SW19 2RR

Company No. 09597334

VAT No. 381 2337 08

1.2 Interpretation:

- (a) a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (b) any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- (c) a reference to **writing** or **written** includes faxes and emails.

2. BASIS OF CONTRACT

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order submitted by the Customer and any applicable Specification are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order, at which point the Contract shall come into existence.
- 2.4 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.
- 2.5 Any samples, drawings or advertising produced by the Supplier are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.
- 2.6 A quotation for the Goods given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 20 Business Days from its date of issue.

3. LEGAL REQUIREMENTS

- 3.1 It is a condition of the Contract that the Customer does and continues to:

- (a) hold a Licence and comply with the terms of the Licence;
- (b) have the benefit of an Insurance Policy and comply with all recommendations and requirements of the Insurance Policy;
- (c) satisfy the definition of a Person with Specialist Knowledge (where the Goods include Category F4 Fireworks); and
- (d) comply fully with any and all legal requirements in force at the date of the Contract and during its continuation in respect of its acquisition storage supply and use of the Goods.

- 3.2 By placing the Order the Customer confirms that it:

- (a) complies with the terms of clause 3.1 and will continue to do so; and
- (b) knows and understands the legal requirements applicable to its acquisition storage supply and use of the Goods and undertakes to ensure that its knowledge and understanding remain current.

- 3.3 It is a condition of the Contract that the Customer shall provide all documentary evidence to demonstrate that it satisfies the criteria at clause 3.1(a) to (d) within 7 days of receiving the Supplier's written acceptance of the Order including but not limited to:

- (a) the Licence;
- (b) the Insurance Policy; and
- (c) where the Goods include Category F4 Fireworks, all documents required pursuant to the Supplier's obligation to carry out all reasonable steps and exercise all due diligence in accordance with the 2015 Regulations to confirm that the

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Customer is a Person with Specialist Knowledge.

3.4 It is a condition of the Contract that the Customer shall use best endeavours to assist the Supplier in complying with regulation 9(1)(b) of the 2014 Regulations and with regulation 32 of the 2015 Regulations and, if necessary, will cooperate fully with the Supplier in establishing the Supplier's entitlement to rely on the defence provided at regulation 64 of the 2015 Regulations.

3.5 If the Customer breaches any or all of the requirements taken separately under clauses 3.1 to 3.4 inclusive or, in the Supplier's reasonable opinion, grounds exist to suggest that a breach subsists or is to be anticipated:

(a) the Customer will notify the Supplier immediately in writing;

(b) the Supplier may terminate the Contract by notice in writing with immediate effect (without prejudice to the right of the Supplier to require the Customer to make payment pursuant to an invoice); and

(c) any obligation that may have arisen on the part of the Supplier to deliver the Goods shall cease and determine without notice and with immediate effect and no such obligation shall arise until such time as the Customer is compliant with the conditions at 3.1(a) to (c) above and the Customer provides all reasonable documentary evidence to this effect requested by the Supplier.

3.6 The Customer is responsible for compliance with all legal requirements applying to its acquisition storage supply and use of the Goods and the Supplier shall not be liable in respect of any non-compliance by the Customer in respect of the same, nor shall the Customer be entitled to rely on any opinion formed by the Supplier for the purpose of the Contract as to whether or not the Customer is compliant with any and all legal requirements.

4. GOODS

4.1 The Goods are described in the Supplier's catalogue as modified by any applicable Specification.

4.2 The Supplier reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements.

5. DELIVERY

5.1 No obligation whatever shall arise on the part of the Supplier to deliver the Goods unless or until the Customer complies fully with clause 3 of the Contract above.

5.5 The Customer's Representative shall accept delivery of the Goods and the Supplier shall not be obliged to make delivery in any case where the Representative is under the age of 18 years or fails to provide valid identification evidence to prove that they are aged 18 or over.

5.6 The Supplier shall ensure that each delivery of the Goods is accompanied by a delivery note that shows the date of the Order, all relevant Customer and Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered.

5.7 The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time during the period selected in the Order.

5.8 Delivery is completed on the completion of unloading or loading (as the case may be) of the Goods at the Delivery Location.

5.9 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by:

(a) a Force Majeure Event; or

(b) the Customer's failure to provide the Supplier with adequate delivery instructions (or any other instructions that are relevant to the supply of the Goods); or

(c) the absence of the Customer's Representative when the Supplier attempts delivery; or

(d) the Customer's failure to comply with clause 3 above; or

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(e) the Customer's failure to make any payment invoiced and required in advance of delivery in accordance with clause 8.4.

5.10 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for failure to deliver the Goods to the extent that such failure is caused by any of the events listed at clause 5.9.

5.11 If the Customer fails to accept delivery of the Goods, or the Supplier is reasonably unable to deliver the Goods due to any of the events listed at clause 5.9, within three Business Days of the day on which the Supplier first attempted delivery, then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract:

(a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the fourth Business Day after the day on which the Supplier first attempted delivery; and

(b) the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

5.12 If ten Business Days after the day on which the Supplier first attempted delivery the Customer has not accepted delivery of the Goods, the Supplier may resell or otherwise dispose of part or all of the same.

6. QUALITY

6.1 The Supplier warrants that on delivery and for a period of 12 months from the date of delivery (warranty period) the Goods shall:

(a) conform in all material respects with their description and any applicable Specification; and

(b) be free from material defects in design, material and workmanship; and

(c) be fit for any purpose held out by the Supplier.

6.2 Subject to clause 6.3, if:

(a) the Customer gives notice in writing to the Supplier during the warranty period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 6.1;

(b) the Supplier is given a reasonable opportunity of examining such Goods; and

(c) the Customer (at the Supplier's reasonable request) returns such Goods to the Supplier's place of business at the Supplier's cost,

the Supplier shall, at its option, replace the defective Goods or refund the price of the defective Goods in full.

6.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in Clause 6.1 in any of the following events:

(a) the Customer makes any further use of such Goods after giving notice in accordance with Clause 6.2;

(b) the defect arises because the Customer failed to follow the Supplier's or the manufacturer's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;

(c) the Customer alters or repairs such Goods without the written consent of the Supplier;

(d) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions;

(e) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements; or

(f) the Goods differ from their description as a result of the Supplier making reasonable substitutions where the Supplier, for reasons outside its control (including but not limited to fault on the part of its own third party suppliers), is unable to

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complete the Order from stock.

6.4 Except as provided in this clause 6, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 6.1.

6.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

6.6 These Conditions shall apply to any replacement Goods supplied by the Supplier.

7. TITLE AND RISK

7.1 Risk in the Goods shall pass to the Customer on completion of delivery.

7.2 Title to the Goods shall not pass to the Customer until the earlier of:

- (a)** the Supplier receives payment in full (in cash or cleared funds) for the Goods; and
- (b)** the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 7.4.

7.3 Until title to the Goods has passed to the Customer, the Customer shall:

- (a)** store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- (b)** not remove, deface or obscure any identifying mark or packaging on or relating to the Goods; and
- (c)** maintain the Goods in satisfactory condition and keep them insured on the Supplier's behalf for their full price against all risks with an insurer that is reasonably acceptable to the Supplier. The Customer shall obtain an endorsement of the Supplier's interest in the Goods on its insurance policy, subject to the insurer being willing to make the endorsement. On request the Customer shall allow the Supplier to inspect the Goods and the insurance policy.

7.4 Subject to clause 7.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time:

- (a)** it does so as principal and not as the Supplier's agent; and
- (b)** title to those Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.

7.5 If before title in the Goods passes to the Customer the circumstances specified at clause 9.1(d) apply, then, without limiting any other right or remedy the Supplier may have:

- (a)** the Customer's right to resell the Goods or use them in the ordinary course of business ceases; and
- (b)** the Supplier may at any time:
 - (i)** require the Customer to deliver up all Goods in its possession that have not been resold, or incorporated into another product; and
 - (ii)** enter any premises of the Customer where the Goods are stored to recover them.

8. PRICE AND PAYMENT

8.1 The price of the Goods shall be the price set out in the Sales Order, or, if no price is quoted, the price set out in the Supplier's brochure in force as at the date of the Order.

8.2 The Supplier may, by giving notice to the Customer at any time up to 14 Business Days before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

- (a)** any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (b)** any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the

Specification; or

(c) any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.

8.3 The price of the Goods:

(a) excludes amounts in respect of value added tax (**VAT**) unless otherwise stated, and the Customer shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice; and

(b) excludes the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.

8.4 The Supplier may invoice the Customer for the Goods on issuing written acceptance of the Order and where the invoice requires payment prior to delivery such payment must be made in advance of delivery.

8.5 The Customer shall pay the invoice in full and in cleared funds on such dates and in such manner as the invoice provides. Payment shall be made to the bank account nominated in writing by the Supplier. Time for payment is of the essence.

8.6 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above the Royal Bank of Scotland Plc base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

8.7 The Supplier and the Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law).

8.8 If at any time following the Supplier's written acceptance of the Order the Customer seeks to cancel the Order, or the Customer fails to accept delivery of the Goods, the balance payable under any invoice (at whatsoever time raised) shall be immediately due and payable and the Supplier may collect any sums owing as a debt.

9. TERMINATION

9.1 In addition to its right at clause 3.5(b) above, and without limiting its other rights or remedies, the Supplier may terminate this Contract with immediate effect by giving written notice to the Customer if:

(a) the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of being notified in writing to do so;

(b) the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;

(c) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;

(d) the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or

9.2 Without limiting its other rights or remedies, the Supplier may suspend provision of the Goods under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in Clause 9.1(a) to Clause 9.1(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

9.3 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.

9.4 On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest.

9.5 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.

9.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

10. LIMITATION OF LIABILITY

10.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- (d) defective products under the Consumer Protection Act 1987; or
- (e) any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.

10.2 Subject to clause 10.1:

- (a) the Supplier shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract;

11. FORCE MAJEURE

Subject to reasonable mitigation by the party affected neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure results from a Force Majeure Event. If the period of delay or non-performance continues for 2 months, the party not affected may terminate this Contract by giving 14 days written notice to the affected party.

12. GENERAL

12.1 Assignment and other dealings

- (a) The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Supplier.

12.2 Entire agreement

- (a) This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

12.3 Variation

No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

12.4 Waiver

No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or

remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

12.5 Severance

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

12.6 Notices

(a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, or fax or email.

(b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in Clause 12.6(a), if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or email, one Business Day after transmission.

(c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

12.7 Third party rights

No one other than a party to this Contract and their permitted assignees shall have any right to enforce any of its terms.

12.8 Governing law

The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.

12.9 Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.