



# TERMS AND CONDITIONS

These Terms and Conditions of Sale are for Greene Fire Pty Limited (ABN: 50 122 435 081) ("Company"). Except as otherwise expressly agreed upon in writing between a duly authorised officer of the Company and the Customer, these Terms and Conditions will apply notwithstanding any provisions to the contrary which may appear on any Order or other document issued by any Customer, unless specifically agreed in writing by the Company.

## General

1. The Company may issue quotations for the supply of Goods to Customers. Quotations are valid for a period of 30 calendar days from the date of issue, after which time prices may vary in the absolute discretion of the Company. A quotation is not an offer, and no binding contract shall be formed on the issue of a quotation.
2. All Orders placed with the Company are subject to these Terms and Conditions and the Company may, at any time and from time to time, vary or alter these Terms and Conditions. Any such variation to these Terms and Conditions will apply upon notification by the Company to the Customer.
3. If a Customer cancels or alters any Order or part Order for Goods at any time after the Company has received the Order, then the Company reserves the right to charge to the Customer the cost of the Goods already acquired for the Order together with cost of the labour and tooling expended to the date of such cancellation or alteration.
4. Commencement of provision of Goods based on a quotation is subject to approval by the Company of the Customer's Credit Application.
5. Any representation, warranty, condition or undertaking that would be implied into these Terms and Conditions by legislation, common law, equity, trade, custom or usage is excluded to the maximum extent permitted by law. Nothing in these Terms and Conditions excludes, restricts or modifies any condition, warranty, right or remedy conferred on a party by the Competition and Consumer Act 2010 or any other applicable Australian law that cannot be excluded, restricted or modified by agreement.
6. Where the Customer has more than one proprietor, or where there is more than one Applicant under a Credit Application, the liability of those applicants or proprietors under these Terms and Conditions will be Joint and Several.
7. "Customer" means both the Customer in these Terms and Conditions and the Applicant under the Credit Application.
8. These Terms and Conditions together with the quotation and the Order constitute the entire agreement between the Customer and the Company. They supersede any previous (written or oral) arrangements, correspondence, tenders, representations, proposals, understandings and communications. If there is any ambiguity, inconsistency or conflict between these Terms and Conditions and any other (written or oral) arrangements, correspondence, tenders, representations, proposals, understandings and communications, these Terms and Conditions take precedence unless otherwise stated. If any provision of these Terms and Conditions is voidable or unenforceable that provision will be severed and the rest of these Terms and Conditions will remain in full force and effect.
9. The Customer must comply with Change in Law affecting the Goods and services or these Terms and Conditions. "Change in Law" is a new Law (other than common law, equity or an Approval) which takes effect after the Effective Date, which could not reasonably have been anticipated by a competent supplier of the Goods and services, and:
  - a. directly affects and necessitates a physical change to the Goods and services; And,
  - b. directly increases or decreases the Company's cost of supplying the Goods and services, but excludes a change in income tax, GST or indirect tax.
10. These Terms and Conditions apply to all Goods and services supplied by the Company irrespective of whether those Goods and services were supplied prior to the date these Terms and Conditions were notified to the Customer.

## Order

11. The Customer must place an order for the Goods with the Company on an order form ("Order"). This Order is then binding on the Customer.
12. The Customer must provide the dimensions of the goods required on the Order, and must clearly state whether the dimensions provided are for the size of the Goods or the size of the site into which the Goods are to be installed.
13. All dimensions submitted by the Customer on the Order for the Goods shall be the sole responsibility of the Buyer. If the Goods are not suitable for the site as a result of incorrect dimensions being provided by the Customer, the Customer will remain liable for the full cost of the Goods.

## Pricing

14. If there is any error or omission in a quotation, the Company reserves the right to amend the quotation price. This clause applies even if the quotation has been accepted by the Customer.
15. Unless otherwise stated, all prices quoted are GST exclusive. GST will be payable in addition to the price and will be added in relation to delivery, supply and installation of all goods and services.

## Terms of Payment

16. All payments due to the Company are to be made, without retention, within fourteen (14) calendar days of the date of the invoice. Payment will be considered to be made when the funds are cleared in the Company's nominated bank account.
17. If the Customer fails to make payment in accordance with the terms of clause 17, the Company will be entitled to:

- a. charge default interest at the rate of 12% per annum on all overdue amounts (including late payment charges and amounts other than the price) calculated daily on and from the due date for payment and the parties agree that any amount so calculated is not a penalty but rather an accurate pre-estimate of the damage to be incurred by the Company. Payments received from the Customer will be credited first against any default interest, then in payment of services and then against payment of any goods, and all such charges will be payable on demand;
  - b. claim from the Customer, all costs relating to any action taken by the Company to recover money due from the Customer including any legal costs and disbursements on a solicitor-client basis;
  - c. cease all work remaining to be performed by the Company under the quotation and terminate any agreement in relation to delivery of Goods that have not been delivered prior to the Customer's default; and
  - d. require the payment of cash upon delivery of any further Goods.
18. The Company may set-off or deduct from payments from the Company to the Customer (under any other arrangement):
    - a. money paid by the Customer to the Company;
    - b. amounts wrongly paid to the Customer;
    - c. amounts due and owing by the Customer to its employees, consultants, contractors or agents that have been paid directly by the Company.

## Delivery & Inspection

19. Any date or time for delivery quoted by the Company is an estimate only and the Company will endeavour to meet that estimate, but failure to do so will not confer on the Customer any right of cancellation on the Customer's part or render the Company liable for any loss or damages directly or indirectly sustained by the Customer as a result thereof.
20. The Company's obligation to deliver will be discharged on arrival of the Goods at the Customers nominated delivery destination, nominated transport company, nominated agent or the address appearing on the quotation.
21. Unless specifically agreed otherwise in writing, the Customer is responsible for all costs and charges in respect of delivery and transport of the Goods, including insurance.
22. The Customer is responsible for the unloading of the Goods upon delivery. The Company is not liable for any damage caused to the Goods during unloading, or any other loss or damage occasioned in that regard.
23. The Customer will examine the Goods immediately after delivery and the Company will not be liable for any mis-delivery, shortage, defect or damage unless the Company receives details in writing from the Customer within 7 calendar days of the date of delivery of the Goods. Property and Risk
24. Subject to Clauses 32 and 33, notwithstanding delivery of Goods, title in any Goods supplied and/or installed will remain with the Company until the Customer has paid and discharged any and all indebtedness to the Company on any account whatsoever including all applicable sales taxes and other taxes, levies and duties. Any payment made by or on behalf of a Customer that is later avoided by the application of any Statutory Provision will be deemed not to discharge the Customer's indebtedness and in such an event the parties are to be restored to rights each respectively would have had if the payment had not been made.
25. The risk in any Goods supplied and/or installed will pass to the Customer upon delivery (actual or constructive) to the Customer.
26. The Customer acknowledges that if the Customer is in possession of any Goods supplied and/or installed, the Goods are held by the Customer solely as a fiduciary bailee for the Company until payment has been made in full to the Company as described in clause 17.
27. The use operation and maintenance by the Customer of any Goods supplied must be in accordance with the Company's directions (whether written or otherwise) and the manufacturer's advice.
28. Should any item of equipment supplied by the Company be modified by or for the Customer without the written approval of the Company, any warranty on the modified item or equipment will cease.
29. The Customer acknowledges that it has informed itself as far as practically possible as to the nature and scope of the works, the extent to which it may be affected by the nature and location of the site and to have taken account of all information available. The Customer warrants that all information given by it to the Company is correct and the Company accepts no responsibility for problems arising from inaccurate information.
30. The Customer acknowledges that the Goods quoted is to the specification set out in the Company's quotation
31. The Company may provide maintenance services for the Goods supplied by it at an additional cost.
32. To the extent permitted at law, the Company will not be liable to the Customer or any third party for liquidated damages in any form, any delay costs, consequential loss including (without limitation) any loss of profits, loss of revenue, loss of production, loss of business opportunity, loss of goodwill, loss of business reputation, economic loss or any indirect, remote and/or unforeseeable loss.
33. The aggregate liability of the Company in damages (however arising) in respect of any act or omission of the Company in connection with its obligations under these Terms and Conditions will not exceed the amount of one hundred dollars (AUD\$100), even if the Company has been advised by the Customer as to the possibility of such loss being incurred.

delivering engineered solutions

34. Despite Clause 29, the Customer is obliged to inform the Company as to the possibility of any loss to the Company being incurred and to mitigate all such loss.
35. The Customer unconditionally and irrevocably indemnifies the Company against all losses, damages, costs, charges, liabilities and expenses of whatsoever kind which the Company may at any time and from time to time suffer or incur due to any act or omission of the Customer in connection with its obligations under these Terms and Conditions so long as such losses, damages, costs, charges, liabilities and expenses are not caused by the negligent or fraudulent act of the Company.
36. As security for payment, the Customer (and where applicable each Guarantor) agrees to grant the Company a Security Interest (as defined in the Personal Property Securities Act 2009 (Cth) ("PPSA") in the outstanding payments and all after acquired property and an irrevocable right to register this interest against it or its property (as the case may be) on the Personal Property Securities Register established under Chapter 5 of the PPSA ("Register") including (without limitation) where applicable, as a purchase money security interest. The Customer grants the Company an irrevocable right to search the Register from time to time in relation to it or its property. The Customer agrees for the purposes of the PPSA and to the extent permitted by law, Sections 95, 121(4) 128, 129, 130, 132(3)(d), 132(4), 135 and 143 of the PPSA have no application to these arrangements and the Company is not required to give notice under section 135 of the PPSA. If the Company receives any notice in relation to the Customer under section 64 of the PPSA, all outstanding payments will become immediately due and payable. The Customer agrees to pass such resolutions, execute and sign any documents or forms, as required from time to time to formalise, affirm or perfect the said Security Interest.
37. All claims for payment issued by Greene Fire are issued in accordance with the relevant Payment Act. For the purposes of this clause, "Payment Act" means: where the relevant site is in NSW - the Building and Construction Industry Security of Payment Act 1999 (NSW); where the relevant site is in NSW - the Building and Construction Industry Security of Payment Act 1999 (NSW); where the relevant site is in Victoria - the Building and Construction Industry Security of Payment Act 2002 (Vic); where the relevant site is in Queensland - the Building and Construction Industry Payments Act 2004 (Qld); where the relevant site is in the Australian Capital Territory - the Building and Construction Industry (Security of Payment) Act 2009 (ACT); and where the relevant site is in Western Australia - the Construction Contracts Act 2004 (WA).
38. The customer hereby irrevocably grants to the Company, its agents and servants, an unrestricted licence, without notice, to enter premises occupied by the customer to identify and remove any of the Goods the property of the Company or which the Company has a Security Interest in, in accordance with these Terms and Conditions of Quotation and Sale without in any way being liable to the customer or any person claiming through the customer. The Company will have the right to sell or dispose of any such Goods removed or otherwise in its sole discretion and will not be liable for any loss occasioned thereby.

**Consumer Law**

39. The Goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure. The term "major failure" has a defined meaning under the Australian Consumer Law.
40. No additional express warranty for defects or otherwise are provided for our Goods. Consumers may rely upon their statutory rights and remedies under the Australian Consumer Law.
41. The Company can be contacted in relation to claims as follows:
  - a. Telephone Number: (02) 9526 3100
  - b. Email Address: accounts@greenefire.com.au
  - c. Mailing address: PO Box 688, Caringbah NSW 1495
42. Any cost incurred in contacting us or delivering the Goods to us will be borne by you.

**Force Majeure**

43. The Company will not be liable for any failure or delay in supply, delivery or installation where such failure or delay is wholly or partly due to any cause or circumstances whatsoever outside the reasonable control of the Company including, but not limited to war, strikes, lockouts, industrial disputes or unrest, government restrictions or intervention, transport delays, fire, act of God, breakdown of plant, shortage of supplies or labour, storms or tempest, vandalism or riot, civil commotions or accidents of any kind (each an "Event of Force Majeure"). The Company's obligations will be suspended until the Event of Force Majeure ceases to cause the failure or delay (as the case may be). The Customer will not be relieved of any obligation to make payment to the Company regardless of any party being affected by an Event of Force Majeure. If the Company is prevented from complying with their obligations due to an Event of Force Majeure, the Company may at its option at any time cancel the contract.
44. The Customer acknowledges and agrees that the Company relies upon the performance of its suppliers, manufacturers and subcontractors to comply with its obligations under these Terms and Conditions. The Customer agrees that a written notice from the Company of delay on the behalf of its suppliers, manufacturers and subcontractors will be conclusive evidence of delay under clause 39.

**Confidentiality**

45. The Customer shall not (and shall procure that its subcontractors, officers, employees and agents do not), without the Company's prior written consent, disclose Confidential Information to others or use Confidential Information for purposes other than as permitted under these Terms and Conditions. "Confidential Information" means
  - a. made available to the public at large, otherwise than as a result of a breach of these Terms and Conditions;
  - b. already known to the Customer prior to being furnished to the Customer; or
  - c. made available on a non-confidential basis by a third party who is not prohibited from providing the information to the Customer.

46. The Customer may disclose Confidential Information:
  - a. as required by Law, provided the Customer has notified the Company before doing so and the Company has had a reasonably opportunity to take steps that the Company considers necessary to protect the confidentiality of that information;
  - b. to legal advisers, accountants, auditors, financial advisers or other advisers under a duty of confidentiality; or
  - c. for related bodies corporate, employees, agents or contractors of the Customer who have a need to know for the purposes of these Terms and Conditions (and only to the extent that each has a need to know) provided they have been directed by the Customer to keep confidential all Confidential Information.
47. The Customer shall not disclose any Confidential Information through any media communication without the Company's prior written consent. The Customer shall refer to the Company any media enquiries it receives concerning the Company's operations or these Terms and Conditions.

**Protection of Intellectual Property, Know-How and Proprietary Information**

48. The Customer shall not cause or permit anything which may damage or endanger the Company's Intellectual Property (including all patents, trade marks, copyright, designs, drawings, test reports, regulatory and industry approvals and certificates, technical data pertaining to the Company's Goods and services, and also includes the use of the words "Greene Fire" and product names) or other intellectual property licensed to the Company or the Company's title to it), moral rights, Know-How (any practical information, formula, process, business method, pattern, device or compilation of information which is used by the Company, howsoever described or communicated to the Customer), or Proprietary Information (confidential or private information in the Company's ownership, control or possession which is capable of commercial exploitation) or to cause or permit anything which may allow third parties to do so.
49. The Customer may only make use of the Confidential Information, Intellectual Property, moral rights, Know-How and Proprietary Information for the purposes authorised in these Terms and Conditions.
50. The Customer must:
  - a. comply with all regulations and practices in force or use in the New South Wales and Australia to safeguard the Company's rights in the Intellectual Property, Confidential Information, moral rights Know-How and Proprietary Rights;
  - b. notify the Company of any suspected infringement of clause 44; and
  - c. indemnify the Company for any damages caused to third parties against all losses, damages, costs, charges, liabilities and expenses of whatsoever kind caused by any breach of clause 44 by the Customer.

**Termination**

51. If the Customer fails to comply with any of these Terms and Conditions or the Credit Application Terms (if applicable) being a natural person or persons commits any act of bankruptcy or being a corporation passes a resolution for winding up or liquidation (other than for the purpose of reorganisation or reconstruction) or enters into any composition or arrangement with creditors or if a receiver, manager, receiver manager or administrator is appointed for any property or assets of the Customer or becomes liable to be wound up by reason of insolvency or if any petition is presented for its winding up, or if a Liquidator or Provisional Liquidator is appointed, the Company may, in addition to exercising all or any of its rights against the Customer, suspend any further deliveries and immediately enter premises occupied by the Customer to recover possession of any Goods not paid for in accordance with these Terms and Conditions without in any way being liable to the Customer or any person claiming through the Customer.
52. The obligations under clauses 41 to 46 are continuing and shall survive the expiration or termination of these Terms and Conditions.
53. On the expiry or termination of these Terms and Conditions, the Customer must forthwith cease to use the Company's Confidential Information, Know-How, Intellectual Property and Proprietary Information save as expressly authorised by the Company in writing

**Installation**

54. The Company licences the customer to install the Goods if appropriate. If the Goods are affixed to other materials the totality thereof will be the sole and exclusive property of the Company until payment as defined in Clause 17 has been made in full to the Company unless the other materials or part thereof are or is the property of a party or parties other than the customers in which case the totality thereof will be deemed to be owned as tenants in common with such other party or parties in shares corresponding to the respective amounts paid or payable by the customer in respect of such other party or parties.
55. The Customer must ensure that the working conditions on the site are reasonable and must comply with their Obligations under the Work Health and Safety Act. The Customer must also ensure that a suitable electrical power supply, scaffolding and staging, secure storage, parking, unloading and hoisting facilities are provided to the company free of charge.
56. It is the responsibility of the customer to ensure that installation can be completed without interruption on the mutually agreed date. The Company reserves the right to charge the customer any extra costs incurred by the Company by virtue of interruption, including travel costs.
57. The customer will be fully responsible for site conditions and prepared surfaces, and the Company bears no liability for any defect in site conditions or prepared surfaces.

**Governing Law & Jurisdiction**

58. The Customer agrees that these Terms and Conditions will be construed according to the Laws of the State of New South Wales and consents to any proceedings being instituted and heard in the State of New South Wales applying the Laws of New South Wales.

**I/we understand and accept the above terms and conditions,**

NAME: ..... SIGNATURE: ..... DATE: ...../...../.....  
 NAME: ..... SIGNATURE: ..... DATE: ...../...../.....

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