

Fire & Rescue Services Ltd T/A Eastcoast & CHB Fireworks Terms and Conditions of Trade

1. DEFINITIONS

- 1.1 The Company means Fire & Rescue Services Ltd trading as Eastcoast Fireworks/CHB Fireworks.
- 1.2 The Client shall mean the person or company whose name and address appears on the display booking form or quotation whom contracts to purchase in full or part the goods or services of the Company.
- 1.3 Any contract entered into by the Company for the supply of such goods or services is subject to these conditions.
- 1.4 Contract means the agreement by the company to provide all goods and services and the client to pay for such services as listed on the display booking form whether signed for or not or the invoice.
- 1.5 Any writing on, or attached to, any purchase order form document or correspondence, shall not be included or implied unless previously agreed in writing and signed by an authorised officer of the Company whether signed for or not by the client or an authorised person on behalf of the client.
- 1.6 No order for supply arising from a quotation or otherwise shall be deemed to be accepted or constitute a legally enforceable contract with the Company until accepted in writing by the Company or until delivery of the goods which ever shall be the earlier.
- 1.7 The Client shall mean any fireworks, equipment or services referred to on the booking form and quotation more particularly requested by the client, which are the subject of this contract.

2. GENERAL

- 2.1 The following are the sole conditions under which company is prepared to enter into any transaction with client. They are to be read subject to any express provisions of any written contract between client and company signed by duly authorised agent of the company. Insofar as there is any difference from or variation of these conditions by any conditions which would otherwise be implied or which are conditions customary in the trade or which are conditions which the client might in the absence of these conditions impose these conditions shall be paramount. These conditions together with any written contract signed by the company constitute the entire agreement between the company and the client. That bargain may be varied only by a written agreement signed by the company. The company shall not be deemed to accept other conditions nor to waive any of these conditions by:
 - 2.1.1 failing to object to provisions contained in any purchase order or other communication from the client; or
 - 2.1.2 knowledge of client's usual trading conditions;
 - 2.1.3 any concession latitude or waiver allowed by the company at any time; or
 - 2.1.4 by signing any acknowledgement or order or any other form submitted to the company by the client.

3. THE CLIENTS OBLIGATIONS

- 3.1 The client agrees to pay in full the company for the display as detailed on the order form.
- 3.2 In this clause "pay in full" means payment of or crediting by the company of the client with the full price of the display together with all consequential expenses for goods and services which the client is liable including (without limiting the generality of the foregoing) accommodation, meals, transportation, regulatory charges, storage charges, freight charges, customs dues, bankers' charges and expenses in connection with late payments when payment in full has not been made and:
 - 3.2.1 any part of such payment is overdue or
 - 3.2.2 client shall become bankrupt or
 - 3.2.3 (if the client is a limited company) the directors of the client shall resolve to wind up the client or the liquidation of the client shall be commenced or
 - 3.2.4 a receiver is appointed or
 - 3.2.5 the client is involved in any proceedings in which its solvency is involved or impugned or is deemed to be unable to pay its debts or
 - 3.2.6 the client ceases or threatens to cease to trade or serious doubts arise as to the client's solvency.
- 3.3 In the event of the client becoming insolvent the company may at any time thereafter by notice in writing to the trustee or liquidator of the client request monies owing for the administration and labour costs involved in manufacture fusing or setting up of the display before it is fired.

4. QUOTATIONS AND ORDERS

- 4.5 Confirmation of Bookings must be made by returning a signed Quotation, Terms and Conditions form. If confirmation is not received, the Company reserves the right to cancel the booking and allocate the date of the display to another client.
- 4.6 The Company may reject or amend a display order by written notice to the client within 30 days of receipt of the said display order form in which case company has no liability to client other than for any part of the display order which the company is prepared to supply.
- 4.7 In such circumstances as the company reject the display order the deposit paid by the client will be returned within 30 days of receipt.
- 4.8 Unless otherwise specified quotations remain firm for 3 months from the date of issue but may be withdrawn at any time and are subject to confirmation at the time of acceptance.
- 4.9 The acceptance of a quotation whether verbal or written must be accompanied by clear and sufficient information on the booking order form to enable company to proceed immediately with manufacture and/or supply of the display.
- 4.10 The company is not obliged to regard a letter of intent as acceptance of an order and is not obliged to commence manufacturing and/or supply of the display upon receipt of a letter of intent.
- 4.11 The Company accepts no responsibility for any inaccuracy or error in orders given in person or by telephone.

5. NOTIFICATION OF LOSS OR DAMAGE AT A DISPLAY

- 5.1 Notification by the client or any third party of any alleged damage to any person or property either directly or indirectly caused by the actions omissions or effects of the company must be made immediately following the display and before the Pyrotechnician (Approved Handler) departs from the display site.
- 5.2 Failure to make a claim within such time limits and of which time limits shall be of the essence except where client or third party is reasonably unable to so comply shall constitute unqualified acceptance of display and waiver by client or third party of all claims relating to loss or damage.
- 5.3 Should any person read or see any injury alleged caused either directly or indirectly by the actions omissions or effects of the company these must be made immediately following the display and before the Pyrotechnician (Approved Handler) departs from the display site by the person concerned or if not able to do so by a qualified person in authority to report such an incident.

6. VARIATIONS IN QUANTITY OR EFFECTS

- 6.1 All orders are by the client and accepted by the company on the understanding that the company can only provide such effects as described in the show plan or schedule subject to availability of such stock.
- 6.2 Company shall not be responsible to client in any respect if company is unable to deliver due to unavailability of stock or due to its allocation to other customers.

7. SUSPENSION OR CANCELLATION OF THE DISPLAY BY THE COMPANY

- 7.1 Upon the happening of the relevant event as defined in clause 3 hereof the company shall immediately become entitled (without prejudice to its other claims and rights) to suspend further performance of contracts for such time as it shall in its reasonable discretion think fit or if company reasonably so considers to treat all or any contracts as wrongfully repudiated by the client and forthwith terminate all or any contracts. Company will notify client in writing of the exercise of its option to suspend or terminate contracts as the case may be.
- 7.2 The Pyrotechnician (Approved Handler) on site holds all responsibility on behalf of the company with regards to the safe firing of the display. If in his opinion it is not safe for whatever reason to fire all or part or any specific effect he will suspend or cancel that part or all of the display. In such circumstances the company reserves the right to charge the client the full amount of the display or credit part of the display costs as the circumstances dictate.
- 7.3 If due to poor weather conditions the display is cancelled by the company after consultation with the client the company reserves the right to charge the client the full amount of the display or credit part of the display costs as the circumstances dictate.
- 7.4 The Pyrotechnician (Approved Handler) will make his decision on firing a display based on the safety of the pyrotechnic crew the public and property involved. His decision is final and binding and will not be swayed by financial gains or losses by the client or company set against the safety of the persons involved either directly or indirectly.

8. QUALITY

- 8.1 Fireworks displays are composed of three parts: Opening, Body, and Grand Finale, with an average length of 1 - 6 minutes; however, changes in the manufacturing processes can lead to a variation of timings and effects.
- 8.2 All timings and information on fireworks are given in good faith and should only be used as a guide.
- 8.3 Displays supplied are warranted to be within normal and excepted limits of the industry quality for such a display. All other warranties or conditions as to quality or description (statutory or otherwise) are excluded.
- 8.4 The liability of company for breach of this warranty (or for any other claim based on any defect in the display) is limited to giving the client a reasonable credit or allowance in respect of the display but in no circumstances will company's maximum liability exceed the net invoice value of the defective display.
- 8.5 Complaints as to quality can be considered only if written notice is given to company within 24 hours of the display. No liability shall attach to company hereunder unless and until this procedure has been strictly carried out.

9. CANCELLATION OR NON PAYMENT BY THE CLIENT

- 9.1 Deposits are fully refundable provided, at least six (6) weeks' written notice is given before the display date. This does not apply when displays are booked with less than six (6) weeks to display date.
- 9.2 Should the Client cancel the booked display for any reason (within 4 weeks of the display date), the Company shall have the right to retain 10% of any payments received (90% will be refunded) or levy 10% of the contract value + GST + Collection and Legal costs to cover costs incurred by the Company.
- 9.3 Should the Client cancel the booked display for any reason (within 3 weeks of the display date), the Company shall have the right to retain 25% of any payments received (75% will be refunded) or levy 25% of the contract value + GST + Collection and Legal costs to cover costs incurred by the Company.
- 9.4 Should the Client cancel the booked display for any reason (within 2 weeks of the display date), the Company shall have the right to retain 50% of any payments received (50% will be refunded) or levy 50% of the contract value + GST + Collection and Legal costs to cover costs incurred by the Company.
- 9.5 Should the Client cancel the booked display for any reason (within 48 hours of the display date), the Company shall have the right to retain 100% of any payments received or levy 100% of the contract value + GST + Collection and Legal costs to cover costs incurred by the Company.
- 9.6 If Client purports to cancel a contract or refuses to accept delivery of the display on the date of the event the client is liable to company for a sum equal to the total value of the of the contract + GST + Collection and Legal cost. This includes the cancellation due to adverse weather conditions. An extra charge will be made for any fireworks placed in situ prior to cancellation.

10. CANCELLATION BY THE COMPANY

- 10.1 The Company reserves the right to cancel without compensation on the grounds of safety.
- 10.2 The Approved Handler has sole responsibility for this decision. Reasons for cancellation include inadequate safety distance, poor crowd control and/or lack of fire wardens/stewards, inadequate or non-existent safety line/fence, values/ livestock in close proximity to the display site, adverse weather conditions such as high winds, severe rain, extreme fire weather conditions, communication equipment in close proximity to the display site, lightning or drought conditions, force majeure.

11. DELIVERY AND DURATION

- 11.1 Delivery date means the date upon which the goods and services are required on the booking form.
- 11.2 The service is provided in full when all if any fireworks are delivered to or placed in situ at the venue.
- 11.3 The Duration means that the proposed display will bring you the best combination of fireworks for the cost, lasting for approximately between 1 to 6 minutes, however, changes in the manufacturing processes can lead to a variation of timings and effects. All timings and information on fireworks are given in good faith and should only be used as a guide as the manufacturing processes can lead to a variation of timings and effects.

12. PAYMENT

- 12.1 Time of payment shall be of the essence. Unless otherwise stated in writing by company all accounts are payable in two sections the first payment equal to 80% of the total display cost including GST is payable with the booking form. Full and final payment, less any deposit, is due upon 7 days prior to the display being fired.
- 12.2 All displays booked within 4 weeks of the event are required to pay the full amount when sending in the booking form. Please note funds must be cleared funds for the display to proceed.
- 12.3 Should the client have a writing credit agreement with the company all accounts are then payable within 30 days of invoice date and are not subject to discounts save such discounts agreed between company and client and stated on the order form.
- 12.4 All discounts are conditional on the invoice being paid in full on the due date. If payment is not so made then no discount shall apply and the full amount of the display shall be payable.
- 12.5 The Client shall settle any invoice (less any Settlement or Trade Discount as is applicable but otherwise without deduction) by the Payment Date determined on the invoice.
- 12.6 In the events that payments are not made as indicated, the Company shall deem the display to be cancelled by the Client and the relevant cancellation charges applied. Cheque and Electronic Funds Transfer payments shall be deemed received only when our bankers have cleared the amount into the company account.
- 12.7 Should the company not receive full payment before the due time of firing the display the company reserves the right to not continue with the display but to charge the Client the full amount.
- 12.8 If the Client fails to pay an invoice on the due date then the Company shall be entitled to:
 - 12.8.1 Cancel the Trade Discount and the Settlement Discount such that the Full Catalogue Price for the Goods and Services shall then immediately become payable by the Client;
 - 12.8.2 Charge Interest to the Client on the amount outstanding from time to time until payment in full is made. Interest being calculated monthly and part of a month being treated as a full month for the purposes of calculation of interest;
 - 12.8.3 Charge to the Client the Companies reasonable legal and other costs in the recovery of the overdue amounts;
 - 12.8.4 Take such further actions against the Client as the Company shall think fit including but not limited to the immediate commencement of debt recovery and/or insolvency and/or winding up proceedings against the Client;
 - 12.8.5 Charge to the Client Interest (both before and after any judgement) on the amount unpaid at 12% per annum above the official dealing rate from the date of payment;
 - 12.8.6 Charge to the Client an administration fee of \$100 per month or part month from the date of the invoice until the date of payment;
 - 12.8.7 Charge to the Client all costs, expenses or disbursements whatsoever (including late payment fees, legal costs and debt collection agents fees) which may be incurred in the recovery or attempted recovery of the overdue amounts from the client. If this occurs all cost associated with debt collection will be added to the debt owed to the company;
 - 12.8.8 Charge to the Client the cost of time spent pursuing payment and any travelling expenses incurred and the amount of all legal costs incurred by company in connection with recovery of the whole or any part of the monies due to the company (on a full indemnity basis) whether or not proceedings are commenced or costs can be awarded by the court.

13. LOSS IN RATES OF EXCHANGE AND PRICE VARIATION

- 13.1 If a contract is entered into at a price in any currency other than New Zealand Dollars and any decline in the value of such currency as compared with New Zealand Dollars takes place between the date when the contract is made and the date or dates upon which the payments are due client shall pay to company an additional amount equivalent to any exchange loss incurred by company by reason of such decline
- 13.2 Goods and Services tax and any other taxes applicable will be charged in accordance with legislation in force at the appropriate time
- 13.3 Until an order has become binding on company by the receipt of a signed booking form (contract) all prices are subject to change without prior notice.

14. REFUNDS

- 14.1 All deposits are non-refundable.
- 14.2 Any refund or reallocation of fireworks display fees is solely at the discretion of the company.
- 14.3 Refunds will only be made for any pyrotechnics, which were found to be defective upon detonation.
- 14.4 In respect of Section 13 (3) above, a percentage, refund is available but only pyrotechnics, which were not detonated.
- 14.5 If the Pyrotechnician falls ill during a display, the full fee is still payable. No litigation will be taken by the client if a subsequent Pyrotechnician cannot be found within reasonable time during the performance (i.e. within 1 hour).
- 14.6 No fee will be payable if a Pyrotechnician does not arrive at the venue due to accident or illness. In this situation, the deposit will be refunded in full.

15. CLIENTS RESPONSIBILITIES

- 15.1 It is the responsibility of the client to provide adequate protection for all company equipment to prevent unauthorised interference or removal of any equipment during the time that the company arrives at and departs from the venue. The booking is not deemed to be completed in full until the removal of equipment, within a reasonable time, by the company.
- 15.2 The client is responsible for monitoring the behaviour of all patrons at the venue.
- 15.3 The client shall be responsible for crowd control at all times and are to ensure that all emergency exits and egress areas are clear.
- 15.4 The client shall ensure that the following safety procedures apply during the set up, firing and completion of the display operations:
 - 15.4.1 all persons not directly involved in operating the display are to be monitored for behaviour and kept out of the exclusion zones by the client until the Approved Handler conducting the display has cleared the site as being safe;
 - 15.4.2 no stalls, carts, trailers, caravans, tents or canvas shelters are to be within the display site or within 30 (thirty) meters, whichever is the greater distance, of a firing point;
 - 15.4.3 there is to be no smoking of cigarettes, cigars or pipes, and no naked flames within 30 (thirty) metres of any fireworks;
 - 15.4.4 no vehicles, other than those necessary for the conduct of the pyrotechnic display, are to be located within the display site;
 - 15.4.5 no combustible materials are to be located within the display site;
 - 15.4.6 no ignition sources are to be positioned within 30 (thirty) metres of any pyrotechnics;
 - 15.4.7 no communication equipment (cordless phones, mobile telephones and cordless microphones) are not to be used within the display site or within 30 (thirty) metres of any pyrotechnics;
- 15.5 The client shall be responsible for being aware of and applying the above pyrotechnic safety distances.
- 15.6 In the event that the property being subject of this Hire Agreement is in any way damaged or destroyed due to negligence during the duration of this agreement, the client undertakes to pay in full all costs of repair or replacement in respect to that property as determined by the company.
- 15.7 The client is responsible for notifying the New Zealand Fire Service or isolation of the appropriate zone on a Fire Indicator Panel prior to the demonstration (refer to Section 15.4(b) (e) & (g) below).
- 15.8 In the case of the venue being more than 100 km from Waipukurau, the client is responsible to pay for overnight Motel accommodation for all Pyrotechnicians and road crew.

16. EXCLUSION/DISCLAIMER

- 16.1 The company will not be held responsible or liable in any way, form or manner whatsoever:
 - (a) as a result of any cleaning fees prior to or after the pyrotechnics demonstration;
 - (b) as a result of any unforeseen and/or any unauthorised human intervention;
 - (c) as a result of any unforeseen natural disasters or so called acts of God;
 - (d) if a fire breaks out at the firing site that results in the New Zealand Fire Service or Rural Fire Authority or any other Emergency Service or Agent not being called out;
 - (e) for false alarms and any cost arising due to the New Zealand Fire Service or Rural Fire Authority or any other Emergency Service or Agent being called out;
 - (f) if an appropriate zone on a Fire Indicator Panel has been isolated and a fire breaks out within the building that results in the New Zealand Fire Service or any other Emergency Service or Alarm Agent not being called out;
 - (g) for false alarms on a Fire Indicator Panel and any cost arising due to the New Zealand Fire Service or any other Emergency Service or Alarm Agent being called out;
 - (h) for any and all loss or damage and any claim or demand, therefore on account of any circumstances including premature ignition detonation misfires or hang-ups of the fireworks, or injury to person or property, or resulting in death, arising out of or related to the event, for the acts, omissions or default, whether caused by the negligence or otherwise, prior to, during or after the pyrotechnics display or demonstration.

17. LIMITATION OF SELLERS LIABILITY

- 17.1 Except as provided in these conditions or otherwise agreed by the seller in writing and except where death or personal injury has been caused by the sellers negligence, no warranty, conditions, representation, undertaking or obligation, expressed or implied, imposed by statute, common law, custom, course of dealing or otherwise on the part of the seller shall apply in respect of the goods.
- 17.2 Where the goods or any part thereof, are supplied, designed or manufactured other than by the seller, the sellers obligations to the buyer shall not exceed those owed to the seller by the relevant supplier, manufacturer or designer.

18. FORCE MAJEURE

- 18.1 The Company shall be relieved of its obligations wherever and to the extent to which fulfillment is prevented, frustrated or impeded as a consequence of any cause outside the reasonable control of the Company including (but not limited to) premature ignition detonation misfires or hang-ups of the fireworks, acts of God, fire, floods, war or civil disturbance or riot, Acts of Government, currency restriction or fluctuation, labour disputes, strikes, unavailability of materials or failure of supplier or subcontractor to deliver on time for any reason whatsoever beyond the reasonable control of the company

19. PROPER LAW AND JURISDICTION

- 19.1 All disputes arising out of or in connection with the contract shall be governed by New Zealand law and client accepts the jurisdiction of such court whether in New Zealand or elsewhere as company may nominate

20. NOTICES

- 20.1 Any notice shall be in writing and may be served by prepaid first class letter post delivery or facsimile to the last known address of the appropriate party. Services shall be deemed effective 24 hours after delivery by post, upon written receipt after delivery and instantaneously by facsimile or e-mail.

These terms and conditions supersede all previous terms and conditions issued.

(Version 25 Oct. 07)