

PYROTEK INCORPORATED
STANDARD PURCHASE ORDER TERMS AND CONDITIONS FOR SUPPLIERS
NORTH AMERICA – REVISION B

1. **Terms and Conditions.** The purchase of the Goods hereunder is conditioned upon these Terms and Conditions. These Terms and Conditions shall apply and are incorporated into every subsequent purchase order issued by Company. No other terms or conditions, including, without limitation, Seller's standard printed terms and conditions, on Seller's proposal, order acknowledgment, invoice or otherwise, will have any application to any purchase between Company and Seller and are hereby rejected and objected to unless specifically accepted in writing by Company, with such exception stating that it will apply in place of all or a portion of these terms and conditions. All prior proposals, negotiations and representations, if any, are merged herein. Seller will be deemed to have assented to all terms and conditions contained herein if any part of the goods are shipped.
2. **Definitions.**
 - a. "Contract" means the written purchase order, contract or agreement which attaches, incorporates or otherwise references these terms and conditions.
 - b. "Seller" means the party designated as such on the face of the Purchase Order and includes its successors, permitted assigns and legal representatives
 - c. "Company" means Pyrotek Incorporated, or its subsidiary(ies) or affiliates(s) executing this Contract.
 - d. "Goods" means all of the goods, material, products, equipment, services, information, drawings and/or other items furnished or to be furnished to Company under this Purchase Order.
3. **Price**
 - a. Seller warrants that the prices set forth in the Contract are complete and that no additional charge of any type will be added without Company's express written consent in advance.
 - b. Payment of specified prices shall constitute full compensation for the Goods.
 - c. Unless otherwise specified, prices for the Goods are in US dollars.
4. **Taxes.**
 - a. Seller's price shall be exclusive of, and Seller will bear and pay any and all applicable taxes, excise, impost or duty of the any state or national government, including political subdivisions of any of them, which are based on or measure by net income, gross income or gross receipts including, without limitation, any withholding taxes levied against Seller for the privilege of doing business in a jurisdiction.
 - b. If Seller is required by law to collect sales and use tax (including any gross receipts tax imposed similar to a sales and use tax) from the Company on behalf of any taxing jurisdiction, Seller will provide to Company invoices which separately state and clearly indicate the amount of tax and Company will remit any such tax to Seller. If applicable, in lieu of payment for any sales and use tax, Seller will accept a properly executed exemption or direct pay certificate from Company. The determination of whether an exemption or direct pay certificate will be submitted to Seller in lieu of payment for any sales and use tax will be made by Company on a location by location basis.
 - c. Seller will have the responsibility of complying with all applicable foreign, national, state or local laws regarding value added tax and sales and use tax or substitutes thereof including registration, collection of taxes and the filing of returns, where applicable.
 - d. Notwithstanding whether Seller must collect sales and use tax from Company, Seller will state on every invoice the taxing jurisdiction (e.g. country, state and local jurisdiction) in which the Goods are provided and all associated registration numbers.
 - e. With the exception of the sales and use tax as described above, all other taxes, however denominated or measured, imposed upon the Seller, or the price or compensation under the Contract, or upon the Goods provided hereunder, shall be the responsibility and liability of the Seller.
5. **Quantity.** Company shall only be required to purchase the quantity of Goods as set forth on the Contract.
6. **Payment Terms.** All payment terms shall be set forth in the Contract. If no payment terms are set forth, all payments shall be net sixty (60) days.
7. **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 Company.
8. **Shipping.** Shipping terms shall be as set forth in the Contract. If no shipping terms are set forth, all shipping shall be *ex works* as that term is defined by *INCOTERMS 2000*. If the parties designate *FOB* with no additional descriptor that shall mean the equivalent of *DDU* destination under *INCOTERMS 2000*. "Due Date" indicated on Purchase Order is the date of delivery to Ship To address, unless otherwise indicated. Seller must consider transit times when determining shipment dates from their facility. Delivery dates provided by Seller shall be fixed and firm. Time is of the essence in the supply of goods and services to Company. Shipments must be transported by freight carriers specified by Company.
9. **Inspection and Acceptance of Goods.**
 - a. All Goods provided hereunder will, before delivery, be subject to inspection, tests and audits by Company or its agent(s) at reasonable times and places. Seller agrees to provide safe, sufficient and proper access for Company to Seller's facilities,

appropriate equipment and assistance, at all reasonable times to complete such inspection, tests and audits, and at no additional cost, to provide all assistance and facilities reasonably necessary to perform the same.

- b. Neither the inspection, testing or auditing of any Goods, nor the failure to do so, shall constitute acceptance of any Products, or relieve Seller from exclusive responsibility for furnishing Goods in strict conformance with the Company's specifications. Nor shall any inspection, test, delay or failure to inspect or test, or failure to discover any defect or noncompliance relieve Seller of its obligations under the Contract or impair Company's right to reject defective or nonconforming Goods or any other right of remedy of Company, even if Company knew of the defect or nonconformity, its substantiality or the ease of its discovery.
- c. Seller warrants that it has and will maintain an adequate quality control/assurance program with respect to the production and delivery of Goods and that it creates and maintains adequate quality control/assurance reports, certificates, affidavits and other such records relating to the Goods.
- d. Seller agrees that, upon request and at no additional charge, it will promptly furnish authenticated copies thereof, as well as applicable certificates of conformance and/or compliance acceptable to the Company, at the time of, or promptly after, delivery
- e. At minimum, Company shall have thirty (30) days from the date of receipt of Goods in which to perform any inspection and determine whether it desires to accept or reject the goods. The parties may mutually agree upon a longer inspection time.
- f. Notification of any changes from previously approved samples or prior shipments, including but not limited to changes in manufacturing process, product formula or product design, or supply availability that may affect form, fit or function of the product by Company or its end users must be made by Seller to Company prior to order fulfillment. Failure to do so may result in damages including, but not limited to, direct costs and/or liquidated damages resulting from such change.

10. Rejection.

- a. Company may reject, refuse acceptance or revoke acceptance of any Goods, or any tender thereof, which does not strictly comply with the requirements of the Contract.
- b. In the event of rejection of Goods, in addition to any other rights or remedies the Company may have, Company may, in its sole discretion: (1) return any or all nonconforming Goods to Seller for reimbursement, credit, replacement or repair as Company may direct; (2) retain any or all nonconforming Goods without correction (3) correct, rework, and/or repair the Goods with all costs associated therewith to be charged to and paid by Seller; or (4) hold any or all nonconforming Goods, at Seller's risk and expense, for disposal or correction according to Seller's instructions.
- c. Any Goods rejected by Company and returned to Seller will be returned, at Seller's risk and expense, with the cost of packaging, handling, inspection, examination, transportation and any other costs incidental thereto to be charged to and paid by Seller by price reduction, credit, offset, invoice or otherwise. In addition, should Company elect to keep any or all nonconforming Goods without correction, Company shall be entitled to recover from Seller via price reduction, credit, offset, invoice or otherwise by an equitable amount for the diminished value of any non-complying, uncorrected Goods and all costs and expenses incurred by Company in connection with such Goods. Diminished value shall be equal to the actual production cost of the non-complying goods as evidenced by Seller's records or fifty percent (50%) of the price paid by Company for such non-conforming Goods, or such other amount as negotiated by the parties.
- d. Any returned nonconforming Goods will not thereafter be tendered to Company for acceptance unless the Company is notified, in writing, of the previous rejection of the Goods and the corrective measures undertaken. All such nonconforming Goods that are remedied by Seller will have the same warranty as stated in Section 11 commencing on the date of re-delivery.

11. Warranty.

- a. Seller warrants that all Goods (1) will conform to all applicable plans, specifications, drawings, instructions, data, samples, standards and/or regulations; (2) will be free from defects, latent or patent, in title, workmanship and material; (3) will be free from defects in design – except to the extent that such Goods comply with designs provided by Company; (4) will be merchantable, as described and advertised, of good and suitable quality, if no quality is specified; (5) will contain materials, components, parts and all other incorporated pieces that are new [non-refurbished] and of the most suitable quality for their intended purpose; (6) will be free from all liens and encumbrances and (7) the Goods shall conform to all requirements of this Purchase Order. These warranties are in addition to all other warranties, express, implied or statutory, which may be applicable.
- b. Limitations on Company's remedies (or disclaimer of warranties) in documents of Seller, or otherwise, will not be effective and are hereby objected to and rejected.
- c. All warranties and other provisions of this paragraph will survive inspection, or acceptance of, payment for, and use of the Goods and completion, termination or cancellation of this Purchase Order, and will run to the Company, its customers, successors and assigns and to users of the Goods.

- 12. Insurance.** Seller shall provide and maintain throughout the term of this Agreement, inclusive of any warranty obligations, the following insurance: (a) Workers' Compensation: Statutory in accordance with the state or jurisdiction in which the services are being performed; (b) Employers' Liability in the amount of \$1,000,000 each occurrence; (c) Commercial Grade Liability with limits of \$1,000,000 each occurrence, \$2,000,000 aggregate, for bodily injury and property damage combined. Policy will include the following coverage features (1) blanket contractual liability, (2) Products and (3) independent contractors coverage; (d) Automobile Liability with limits of \$2,000,000 each occurrence for bodily injury and property damage combined. Coverage

will include “owned”, “hired” and “non-owned” automobiles; and (e) Umbrella or Excess Liability with limits of \$5,000,000 each occurrence and aggregate for bodily injury and property damage. Policy must be “following form” to all primary policies listed above with the exception of Workers’ Compensation. All insurance required above will be written with insurers rated A or better by the latest “A.M. Best Guide”, or the equivalent international guide. Where allowable under law a waiver of subrogation from Seller (including affiliates and its directors and officers) and its insurers will be provided in favor of Company. Upon request by Company, all policies with the exception of Workers Compensation will identify Company as an additional insured. Seller’s insurance will be primary and noncontributory to that maintained by Company.

13. **Indemnification**

- a. Seller shall indemnify, hold harmless and defend Company, its officers, directors agents, employees, parents, subsidiaries, successors and assigns (collectively the “Indemnitees”) against any claims, demands, suits, actions, legal proceedings, judgments, decrees, awards, damages, royalties, obligation costs or expense, including, without limitation, Company’s costs of testing, inspection, court costs and attorney’s fees, (collectively herein, “Damages”) arising out of any claim or charge for personal injury, death or property damage asserted against Company attributable in whole or in part on any act or omission of Seller, its agents, employees and subcontracts including the manufacture, sale or delivery of the goods or performance of the services. This indemnity shall apply without regard to whether the claim, damage, liability or expense is based on breach of contract, breach of warranty, negligence, strict liability or other tort. This indemnity shall extend to cover any liability, cost or expense associated with any recall, inspection, testing replacement or correction of the goods or any part of the equipment into which the goods are incorporated, which results from or is related to, in whole or in part, a defect or alleged defect in the goods. This indemnity shall survive delivery and acceptance of the goods or services.
- b. Seller warrants that the Goods shall be free of the claim of any person arising from patent, copyright, trademark or trade secret infringement and shall hold Company harmless from and defend Company against any such claim or demand and Damages, whether in law or in equity, arising out of or existing in connection therewith.

14. **Termination and Modification**

- a. *Termination for Convenience*. In addition to any other rights it may have under the Contract, Company reserves the right to cancel all or any part of the Contract for Company’s convenience by written notice to Seller. In the event of such termination, Seller shall immediately stop all work thereunder and shall immediately cause any of its suppliers or subcontractors to cease such work. Upon termination for convenience, Company shall not incur any further cost or liability to Seller except for Goods previously delivered and accepted by Company and for Seller’s costs for reasonable materials and actual work performed up to the time of cancellation for goods not otherwise usable or saleable by Seller, net of salvage value. Company shall not be liable for Seller’s anticipated profits and/or consequential damages.
- b. *Default*. Company reserves the right, by written notice to cancel any order without liability to Company in the event of (i) insolvency of Seller; (ii) the filing of an involuntary petition of bankruptcy by seller; (iii) the filing of an involuntary petition to have Seller declared bankrupt; (iv) the appointment of a receiver or trustee for Seller; (v) the execution by Seller of an assignment for the benefit of creditors; or (vi) in the event that Seller fails to perform, or breaches any of the terms of the Contract, Company reserves the right immediately upon such failure of performance or breach, and without liability of Company, (A) to cancel the order in whole or in part by written notice to Seller or (B) after notifying Seller of such failure or breach and of Company’s intent to exercise such right, to obtain goods from another source, with any excess costs resulting therefore chargeable to Seller. Seller shall be liable for Company’s damages in connection with such breach or failure to perform including consequential damages reasonably foreseeable by Seller or of which Seller was apprised by Company, provided, however, the Seller shall not be responsible for delays or defaults occasioned by fires, Acts of God, wars, riots, but in the event of such occurrence, Company reserves the right to cancel the Contract without liability.

15. **Miscellaneous Terms**

- a. *Remedies*. The rights, remedies and warranties provided herein to the Company are distinct and cumulative and in addition to any other right or remedy in the Contract, or otherwise provided in law or equity or by statute, and may be exercised concurrently, independently or successively
- b. *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.
- 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.
- d. *Hazardous Materials*. Seller warrants: (1) that any chemical substance or mixture delivered to Company pursuant to this Contract is on the Toxic Substances Control Act inventory or that the premanufacture notice requirements thereof have been satisfied and such chemical substance or mixture is lawfully available for sale and use; (2) that chemical substances or mixtures delivered hereunder will be properly packaged with all appropriate warning labels, instructions for use and notices

and that, if such chemical substances or mixtures are supplied in bulk, Seller will provide Company with adequate supply of such warning labels, instructions and notices for use in Company's facilities; (3) that Seller will supply with, or before, delivery, and at any other time upon Company's request, all information known to Seller with respect to potential hazards, including possible toxic or harmful effects, related to the handling, use, storage, disposal or transportation of any chemical substances or mixtures delivered hereunder, and any precautions that should be taken to eliminate or reduce to a minimum such hazards; and (4) that Seller will ascertain and forward all information about Products required by Company to Company with all safety-related laws and regulations including, without limitation, those relating to applicable right-to-know laws and occupational safety and health acts and with laws and regulations regarding composition, ingredients or otherwise including promptly furnishing to Company upon written request a list of all ingredients therein and the amounts thereof and information concerning any changes in such ingredients thereafter. Seller agrees that it will, upon Company's request, accept the return of unused toxic or hazardous chemicals or substances delivered to Company pursuant to this Contract.

- e. Governing Law. These Terms and Conditions and all Contracts shall be governed by the laws of the State of Washington, without reference to choice of law or conflicts of law. The United Nations Convention on Contracts for the International Sale of Goods is expressly disclaimed and does not apply. Any and all disputes related to the interpretation or enforcement of this agreement 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. Seller hereby waives any and all objections that it might otherwise have as to personal jurisdiction or venue in any of the above tribunals.
- f. Compliance with Laws. Seller warrants that it will comply with all applicable foreign, federal, state and local laws and regulations in producing and delivering Goods hereunder. Upon request, Seller will furnish Company with certificates of compliance therewith. Further, Seller is responsible for strict compliance with all legal, regulatory and administrative requirements with any importation or exportation of the Goods, including obtaining any required licenses or approvals and, unless otherwise agreed to by the parties in the Contract, the payment of all associated duties, taxes and fees.
- 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 this Contract, by Seller.
- 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 court of competent jurisdiction to be invalid or unenforceable, the remainder of the Terms and Conditions or Contract shall not be affected thereby and shall continue in full force and affect the same as if the invalid or unenforceable provision had not been included in the first instance.