

# EASTCOAST FIREWORKS – TERMS AND CONDITIONS OF TRADE

## 1.0 CONTRACT

- 1.1 Any order placed by you or Quotation given by us shall not constitute a binding contract. The Contract is only formed when we issue an acceptance of order in writing to you.
- 1.2 On booking a display, Rural Fire Service Limited (**trading as** Eastcoast Fireworks) will provide a spectacular firework display on the given date and time at the given location.
- 1.3 In return Eastcoast Fireworks shall receive payment from the client at the rate agreed in the form of either a deposit and balance arrangement or full payment, either way with full payment prior to the display date (unless otherwise agreed in writing beforehand). Safety is of the utmost concern for both parties and comes above any other consideration.
- 1.4 This "Contract" is made by and between Eastcoast Fireworks and the client. Whereas, Eastcoast Fireworks is desirous of providing the Client with a display on the agreed date for Clients benefit under such terms and conditions as provided herein.
- 1.5 These Conditions (including any documents referred to within them) contain all the terms on which we supply the Display to you. They supersede any prior promises, representations, undertakings or implications made. These Conditions can only be modified as set out in these Conditions or by a variation in writing signed by a director of us.
- 1.6 These Conditions do not create any right enforceable by a person not a party to them.

## 2.0 AGREEMENT

- 2.1 When you complete and submit this booking form, you are making us an offer to proceed with the implementation of and/or preparation for the work outlined above based on the Terms and Conditions of business contained herein.
- 2.2 Subject to these Conditions and to you performing your obligations under them, the Display will be held on the date specified on our Booking Form/Email/Invoice.
- 2.3 The precise content of the Display and fireworks used in it will be as determined by us taking into account your budget, the nature of the event in question and the situation and circumstances of the event as per the risk assessment we will carry out prior to the Display. Whilst we will endeavour to take account of any specific requests made by you we reserve the right to alter the precise content of the Display in our absolute discretion without notice to you (for instance due to availability or safety factors) subject to remaining within the price agreed.

## 3.0 QUOTATIONS AND ORDERS

- 3.1 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.
- 3.2 In such circumstances as the company reject the display order the deposit paid by the client will be returned within 30 days of receipt.
- 3.3 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.
- 3.4 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.
- 3.5 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.

## 4.0 BOOKING YOUR DISPLAY

4.1 We advise booking early to avoid disappointment, as we need to plan for each event and obtain a number of written consents and Government approvals to conduct an outdoor pyrotechnic display. For these reasons, it is important to arrange and book displays allowing sufficient time for these requirements to be met. The nature of this will depend upon the type of display you are staging.

## 5.0 BUDGET

5.1 We are Merchants of Thrill, not Merchants of Time. There is a tendency to try to spread a small budget much too far in the mistaken belief that "times equals value". It is important to realise that there is no direct relationship between cost and duration. Every fireworks display is unique. As a guide, the average display falls around \$1000 - \$2000 per minute. Anything below this will reduce the very thing a Fireworks Displays is supposed to provide...IMPACT! We have a strong background for developing new ideas and concepts and you can be assured of having a stunning display whatever your budget.

## 6.0 DURATION

6.1 Regardless of what your budget may be, fireworks displays are best appreciated if the firing is brisk without blank pauses. It's not duration that counts, but how spectacular the display is. Fireworks displays are composed of three parts: Opening, Body, and Grand Finale. However, changes in the manufacturing processes can lead to a variation of timings and effects.

6.2 All timings and information on fireworks are given in good faith and should only be used as a guide.

## 7.0 WHAT YOU GET

7.1 As a minimum you will receive a customised design and professionally fired fireworks display within the limits of the venue and the available budget.

7.2 All standard professionally fired firework displays include:

- Fireworks (The provision of professional display fireworks);
- Site survey (Survey the site and make recommendations on spectator locations, size and type of fireworks);
- Risk assessment (To minimize the possible risks to public, crew and property that a firework display may cause); Method statement (To inform the client on our working practices by providing a written work method statement);
- Consents & Notifications (Organise consents and approvals, coordination with Landowner, Government Authorities, Police, Fire and Emergency New Zealand, Council, CAA, EPA and Worksafe);
- Transport (The transport of fireworks, materials and equipment to and from display site);
- Labour costs (includes wage cost plus other costs); Materials and Equipment (Provide all materials and equipment to enable the safe firing of the display ordered);
- Site set-up (The safe set up of pyrotechnics; execute the fireworks display in a safe, yet spectacular manner); Safety Services (basic tidy up the firework site, sweep the area for any unfired pyrotechnics); and
- Insurance (Public liability insurance to the sum of \$5,000,000. Where greater cover is required the customer must specify this, no later than 30 days prior to the display. Eastcoast Fireworks reserves the right to invoice additional costs incurred by any such increase).

## **8.0 PAYMENT TERMS**

- 8.1 Unless otherwise stated in writing by company a non-refundable 35% deposit of the total display cost including GST is required at the time of making the booking along with your booking form to secure you booking with us.
- 8.2 Receipt of a deposit constitutes a confirmation of your booking and is bound to the terms and conditions on this page.
- 8.3 Payment of the remaining balance (Full and final payment), less any deposit, is due no later than thirty days prior to the display date in full by Electronic Funds Transfer payment inclusive of GST, within seven days of receipt of a duly authorised tax invoice into the following bank account (Bank & Branch: Westpac, Waipukurau - Account Name: Rural Fire Service Ltd - Account Number: 03-1509-0062102-000.
- 8.4 All prices shown, quotes given and invoices issued are valued in New Zealand Dollars and include GST @ 15%.
- 8.5 If the balance has not been received by that date, Eastcoast Fireworks shall be entitled at its discretion to treat your reservation as cancelled and consequently you shall forfeit the deposit. Deposits are NOT refundable under ANY circumstances.
- 8.6 If the client fails to pay an invoice on the due date then company may charge in addition to the amount shown on the invoice:
  - 8.6.1 An administration fee of \$50 per month or part month from the date of the invoice until the date of payment
  - 8.6.2 the cost of time spent pursuing payment and any travelling expenses incurred and the amount of all expenses, costs, fees, debt collection agency fees, court fees, solicitor costs legal costs and disbursements incurred by the company in connection with recovery of the whole or any part of the monies due to company (on a full indemnity basis) whether or not proceedings are commenced or costs can be awarded by the court.

## **9.0 THE CLIENTS OBLIGATIONS**

- 9.1 The client agrees to pay in full the company for the display as detailed on the order form.
- 9.2 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 which the client is liable including (without limiting the generality of the foregoing) storage charges freight charges customs dues bankers' charges and expenses in connection with late payments when payment in full has not been made; and any part of such payment is overdue; or client shall become bankrupt; or (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 a receiver is appointed; or 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 the client ceases or threatens to cease to trade or serious doubts arise as to the client's solvency.
- 9.3 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.

## **10.0 CLIENT RESPONSIBILITIES**

- 10.1 It is the responsibility of the client to provide adequate protection for all company equipment so as 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 until the removal of equipment, within a reasonable time, by the company.

## Eastcoast Fireworks - Terms and Conditions of Sale of Firework Display Services

- 10.2 The client is responsible for monitoring the behaviour of all patrons at the venue.
- 10.3 The client is responsible for providing an evening meal and refreshments for all crewmembers on the night of the display;
- 10.4 In the case of the venue being more than 100km from Ongaonga, Central Hawke's Bay, the client is responsible to pay for the actual and reasonable overnight Motel accommodation and meals for all members of our Pyrotechnic Crew.
- 10.5 Costs associated in providing additional fireworks, consents, permits, vessels, and 100% clean-up of firing site if required, will be charged out at the actual and reasonable rates.

### 11.0 CANCELLATION OR NON-PAYMENT BY THE CLIENT

- 11.4 Cancellations must be received by Eastcoast Fireworks in writing by email.
- 11.5 Cancellation by client in excess of 35 days' notice - We will retain your full deposit to cover our costs to cover our admin, and travelling expenses to and from the venue for the site visit and cost of 3rd party notifications.
- 11.6 Cancellation by Client, giving 7 - 34 day's written notice by email - 30% of the total show value will be invoiced.
- 11.7 Cancellation by Client, giving less than 14 day's written notice by email - 50% of the total show value will be invoiced,
- 11.8 Cancellation by Client, giving less than 7 day's written notice by email –100% of the total show value will be invoiced.
- 11.9 Where payment terms have been provided to corporate/government clients, and no deposit has been paid the above rates will apply.
- 11.10 If a Test Certificate cannot be obtained, or the show is not allowed to go ahead or cancelled by the landowner, Council or regulatory authority for any reason outside of Eastcoast Fireworks control, then the same conditions apply above as for a Client Cancellation.

### 12.0 ADVERSE CONDITIONS

- 12.1 **Adverse Safety Conditions** - If your booked fireworks display is cancelled by Eastcoast Fireworks for safety reasons (weather forecast, heavy rain, extreme wind, unsafe conditions, etc.), then we will carry your deposit/payments forward and your booked fireworks display will be moved to a more appropriate day, time, or location during the same year with no penalties. No refunds will be given if these conditions arise.
- 12.2 **Extreme Fire Weather Conditions** – If a restricted fire season or total fire ban has been declared and we cannot obtain a Test Certificate or a Fire Permit leading up to the day of your booked display from the Rural Fire Authority or the New Zealand Fire Service to enable your display to proceed, then we will carry your deposit/payments forward and your booked fireworks display will be moved to a more appropriate day, time, or location during the same year with no penalties. No refunds will be given if these conditions arise.

### 13.0 POSTPONEMENT

- 13.1 In the event that adverse conditions are such that Eastcoast Fireworks, in its sole and absolute discretion, determines that the Fireworks Display would be impossible, impractical or would unnecessarily increase the risk of damage or danger to person and/or property, the parties agree to immediately hold a postponement meeting at which time an attempt to reschedule the Fireworks Display shall be discussed with a view toward reaching a mutually satisfactory postponement time and/or date,

13.2 In the event the mutually satisfactory postponement time and/or date is beyond the day following the scheduled Fireworks Display and it is impracticable for the personnel and equipment of Eastcoast Fireworks to remain at the Client location until the rescheduled Fireworks Display date, then Client may be required to pay the actual expenses incurred by Eastcoast Fireworks related to the postponement, which shall not exceed forty percent (40%) of the Contract Price. Actual expenses Include, but are not limited to, expenses for travel, lodging, labour, meals, rentals, permit fees, set-up and/or dismantling of display, additional permit fees, or any other additional expenses that incurred prior to and/or as a result of the postponement or cancellation.

### **14.0 SUSPENSION OR CANCELLATION OF THE DISPLAY BY THE COMPANY**

14.1 The display will be cancelled by the company if payments are not made in accordance with the terms of payment above.

14.2 If a display is cancelled or suspended by the client on arrival or after the display has been set up on the site then it will be considered to be presented and the client shall be liable to company for a sum equal to 100% the total value quoted.

14.3 The Approved Handler on site holds all responsibility on behalf of the company with regards to the safe firing of the display. The 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.

14.5 If the Approved Handler determines the display cannot proceed due to unsafe conditions (inclement weather, rain, high winds or extreme fire weather) conditions, he will suspend, delay or postpone the fireworks display. In such circumstances, Eastcoast Fireworks will then carry your deposit/payments forward and your booked fireworks display will be moved to a more appropriate day, time, or location during the same year with no penalties. No refunds will be given if these conditions arise.

14.6 Should a guest's behaviour on the night of the display pose a safety risk to representatives of Eastcoast Fireworks, other guests or person or property, then we reserve the right to cancel the display. In such an event, Eastcoast Fireworks shall charge the client 100% of the amount quoted/contract value and No refund will be given if this condition arises.

14.7 Eastcoast Fireworks reserves the right to delay, terminate or cancel the display if at any time it considers that any person or property may be in or at any risk of injury or damage during detonation. In such an event, Eastcoast Fireworks shall charge the client 100% of the amount quoted/contract value and No refund will be given if this condition arises.

14.8 Except as set out above, we do not accept liability for any failure or cancellations due to circumstances beyond our reasonable control. Non-exhaustive illustrations of such circumstances are adverse weather conditions, Acts of God, fire, floods, strikes, Government action or regulations, delays by suppliers, accidents, shortage of materials, labour or manufacturing facilities.

14.9 Eastcoast Fireworks cannot accept responsibility for any consequential losses

### **15.0 NOTIFICATION OF LOSS OR DAMAGE AT A DISPLAY**

15.1 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 senior firer departs from the display site.

15.2 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 a waiver by client or third party of all claims relating to loss or damage.

15.3 Should any person receive 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 senior firer 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.

## **16.0 VARIATIONS IN QUANTITY OR EFFECTS**

16.1 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.

16.2 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.

## **17.0 NOTIFYING THE RELEVANT AUTHORITIES/NEIGHBOURS**

17.1 Eastcoast Fireworks undertakes notification to all properties. The cost of this notification is included in your show cost. The client/promoter will place a newspaper Public Notices advertisement at least two weeks before the display date. Eastcoast Fireworks do not take any responsibility for any distress caused to local residents or livestock as a direct result of one of our displays. We also notify the Landowner, Environmental Protection Authority, Department of Labour, Council, Rural Fire Authority, New Zealand Fire Service, CAA, and Police.

17.2 Ingress/Egress: Eastcoast Fireworks require that all gates/boom-gates/barriers be unlocked and opened on the night of the display for ingress/egress of our vehicles and/or crew. All roads/tracks must be navigable to the display site by van/car.

17.3 If on arrival gates are locked, Eastcoast Fireworks Supervisor will call the relevant person nominated as our contact on the night to arrange entry. Eastcoast Fireworks personnel are under strict instructions to remain with our vehicles. It is up to the organiser to arrange unlocking of all gates/barriers.

17.4 Barriers/gates must be kept unlocked until after all crew have departed. Eastcoast Fireworks display operator will phone the nominated person to advise we are leaving the display site. Due to failure to provide access at our nominated times, crew will set up product as time allows, using our Safe Working Conditions Policy. Show will be fired as set up, no refund or compensation will be given to client.

## **17.0 QUALITY**

18.1 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.

18.2 The liability of company for breach of this warranty (or for any other claim based on any defection 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.

18.3 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.

## **19.0 DELIVERY**

19.1 Delivery date means the date upon which the display is required for delivery as quoted on the order form.

19.2 If the company fails to deliver the display for any reason other than beyond company's reasonable control or the client's fault and company is liable to the client, the company's liability is limited to a full refund of monies paid by the client for that particular display and no further compensation for loss of the display or any consequential loss will be considered.

### **20.0 SITE SECURITY**

20.1 It is the responsibility of the client/event organiser to make sure that adequate safety measures are put in place. This includes firing site perimeter security (unless pre-arranged, where we can supply our own fire wardens at additional cost) stopping the public from venturing into the firing site during setup or firing. The Approved Handler (Senior Pyrotechnician) on site has, at any time during the show, the power to stop the show, should the safety of the public and / or the firing crew be compromised.

### **21.0 PROMOTION**

20.1 From time to time, Eastcoast Fireworks may take photos/videos of various displays/events for promotional purposes. Should you not wish your event filmed/photographed then please advise us accordingly in writing.

### **22.0 SITE CLEAN UP**

22.1 It is inevitable that following a show, the firing site used will contain debris from the display itself. Whilst we always perform a thorough clear up following a show, it is very likely there will be some debris remaining. The debris from a fireworks display will only normally be small pieces of paper, small cardboard discs and small pieces of foil (should rain protection be required). This is the same for each and every show, and with each and every other Fireworks Display Company. The cardboard/paper is biodegradable and, if concerned, can easily be dispersed by mowing. If, however you should require a complete and full 100% clean up, then please notify us in plenty of time, so this can be arranged by us having more crew, and additional equipment and we will advise of the fee for this service.

### **23.0 LOSS IN RATES OF EXCHANGE AND PRICE VARIATION**

23.1 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.

23.2 Goods and Services Tax (GST) and any other taxes applicable will be charged in accordance with legislation in force at the appropriate time.

23.3 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.

### **24.0 EXCLUSIONS/DISCLAIMER**

24.1 The company will not be held responsible or liable in any way, form or manner whatsoever any direct, indirect or consequential loss or damage and any claim or demand: - as a result of any delays or changes to the agreed site, location, conditions or security outside of our control; as a result of any cleaning fees prior to or after the fireworks display; as a result of any unforeseen and/or any unauthorised human intervention; as a result of any unforeseen natural disasters or so called acts of God; as a result of any unforeseen premature ignition detonation misfires or hang-ups of the fireworks; and therefore on account of any circumstances including 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.

24.2 In the event of any refund, the limit of the company's liability shall be no greater than the contract value.

## **25.0 FORCE MAJEURE**

25.1 Company may cancel the display totally or partially without any liability to the client for failure to deliver or delay in delivery during any period in which it is prevented from or hindered or delayed in supplying or delivering by normal route or means of delivery the display of the description covered by contract through any circumstances outside the control of company including but not limited to wars fires strikes lockouts accident reductions or governmental action whether within or outside New Zealand or in the event of a reduction or cessation in the availability of the said display products or materials for any reason whatsoever beyond the reasonable control of the company.

## **26.0 PROPER LAW AND JURISDICTION**

26.1 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 in Waipukurau, New Zealand or elsewhere as company may nominate

## **27.0 NOTICES**

27.1 Any notice shall be in writing and may be served by prepaid letter post-delivery or email 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 e-mail.

## **28.0 AGREEMENT WITH THE CONDITIONS**

28.1 Receipt of a deposit from the client is confirmation of booking, and acceptance of the above Terms and Conditions set out above.

28.2 Should you require clarification on any of the points above, and then please contact us by email [simon@fireworks.org.nz](mailto:simon@fireworks.org.nz)

28.3 These terms and conditions supersede all previous terms and conditions issued prior to the Friday, 21 July 2017