

Pains Fireworks & Pains SFX Terms & Conditions of Sale

Professional Outdoor Firework Displays:

1. In these conditions Pains Fireworks Ltd or Pains SFX Ltd is called 'The Company' and the party for which the display services are undertaken is called 'The Organiser'.
2. The conditions shall govern all contracts for display services supplied and fired by The Company. No quotation shall be binding on The Company and a contract shall come into existence when the Company makes written acknowledgement thereof and supplies The Organiser with the appropriate sales order confirmation.
3. These Terms and Conditions of Sale, together with written confirmation in the form of a booking form, email or purchase order, from The Organisers form the contract. The contract applies to the purchase and sale of any services and goods between The Company and The Organiser, to the exclusion of any other terms that you try to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
4. Prices quoted by The Company include those services or goods stated in the quotation or sales order confirmation. All other facilities and services such as the cost of ensuring the safety of the site itself are The Organiser's responsibility.
5. It is the responsibility of The Organiser to ensure that all necessary safety precautions are taken. The Company will at its own expense, provide advice on safety matters if The Organisers so request, but it shall be the responsibility of The Organisers to act upon such advice at its own expense. The Company shall have no liability for claims arising in consequence of any injury or damage to persons or property unless caused by the negligence of The Company.
6. The Company reserves the right to substitute any reasonably comparable items for those contained in its sales order confirmation in the event of quoted items not being available at the time of the display.
7. The Company shall not be liable for any failure to perform any or all of its obligations under this Agreement if that failure is caused by circumstances beyond its reasonable control.
8. If The Company considers that the firing of the display is in any way dangerous or unsafe or if The Organiser fails to provide a safe and secure firing area as set out in the pre-event risk assessment, it shall have the right in its absolute discretion to cancel, postpone or alter all or any part of the display. Safety measures such as adequate barrier provision and suitable security or marshalling must be in place and provided by The Organisers.
9. The cancellation, postponement or alteration of the display under clauses 6-8 above, shall be without prejudice to any of The Company's rights under this Agreement, and in particular The Company shall be entitled to payment for all expenditure incurred by it in connection with the performance of its obligations.
10. In the event of cancellation, postponement or alteration of the display by The Organiser, The Company shall make a charge as follows, unless otherwise agreed in writing:

Postponement

Where the display is rescheduled to be fired within 26 weeks of the original date: 15% of the order value.

Cancellation

Within 2 weeks of the due date: 75% of the order value.

Within 6 weeks of the due date: 50% of the order value.

Within 12 weeks of the due date: 25% of the order value.

In the event of cancellation by The Company for reasons concerning the health and/or safety of the public or property, the company shall make a charge of the reasonable costs incurred.

11. Unless expressly agreed in writing beforehand, standard payment terms will apply as set out below:
 - a. For all new customers or those not on account, full payment must be received prior to the date of the display.
 - b. Account customers must pay the full balance 30 days after the invoice date.
12. If The Organiser does not pay within the period set out above, we may reserve the right to cancel or postpone the display or any future displays until payment is received.
13. Both parties must pay all amounts due under these Terms and Conditions in full without any deduction or withholding except as required by law and neither party is entitled to assert any credit, set-off or counterclaim against the other in order to justify withholding payment of any such amount in whole or in part.
14. The Company will not be liable (whether caused by our employees, agents or otherwise) for the following:
 - a. any loss of profits; loss of anticipated profits; loss of business; loss of data; loss of reputation or goodwill; business interruption; or, other third party claims; and/or
 - b. any failure to perform any of our obligations if such delay or failure is due to any cause beyond our reasonable control; and/or
 - c. any losses caused directly or indirectly by any failure or breach by you in relation to your obligations.
15. When providing services or goods to The Organiser, The Company may gain access to and/or acquire the ability to transfer, store or process personal data of employees of The Organiser.
16. The parties agree that where such processing of personal data takes place, The Organiser shall be 'data controller' and The Company shall be the 'data processor' as defined in the General Data Protection Regulation (GDPR).
17. The Company shall only Process Personal Data to the extent reasonably required to enable it to provide the services or goods as mentioned in these terms and conditions or as requested by and agreed with The Organiser. The Company shall not retain any Personal Data longer than necessary for Processing the services or goods and will refrain from Processing any Personal Data for its own or for any third party's purposes.
18. The Company shall not disclose Personal Data to any third parties other than employees, directors, agents, subcontractors or advisors on a strict "need-to-know" basis and only under the same (or more extensive) conditions as set out in these terms and conditions or to the extent required by applicable legislation and/or regulations.

Professional Special Effect and/or Pyrotechnic Displays:

1. In these conditions Pains Fireworks Ltd or Pains SFX Ltd is called 'The Company' and the party for which the display services are undertaken is called 'The Organiser'.
2. The conditions shall govern all contracts for display services supplied and fired by The Company. No quotation shall be binding on The Company and a contract shall come into existence when the Company makes written acknowledgement thereof and supplies The Organiser with the appropriate confirmation.
3. These Terms and Conditions of Sale, together with written confirmation in the form of an email or purchase order from The Organisers, form the contract. The contract applies to the purchase and sale of any services and goods between The Company and The Organiser, to the exclusion of any other terms that you try to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
4. Prices quoted by The Company include those services or goods stated in the quotation or written acknowledgement. All other facilities and services are The Organiser's responsibility.
5. It is the responsibility of The Organiser to ensure that all necessary safety and logistical requests are adhered too. The Company shall have no liability for claims arising in consequence of any injury or damage to persons or property unless caused by the negligence of The Company.
6. The Company shall not be liable for any failure to perform any or all of its obligations under this Agreement if that failure is caused by circumstances beyond its reasonable control.
7. If The Company considers that the firing of any elements of the display is in any way dangerous or unsafe it shall have the right in its absolute discretion to cancel, postpone or alter all or any part of the display. The Company will not be liable if the desired effect is not achieved by the display.
8. The cancellation or alteration of the display under clauses 6-7 above, shall be without prejudice to any of The Company's rights under this Agreement, and in particular The Company shall be entitled to payment for all expenditure incurred by it in connection with the performance of its obligations.

9. In the event of cancellation or alteration of the display by The Organiser, The Company shall make a charge as follows, unless otherwise agreed in writing:

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| Cancellation | |
| On or after the first day of works on site | 100% of the order value. |
| Within 1 weeks of the due date: | 75% of the order value. |
| Within 2 weeks of the due date: | 50% of the order value. |
| Greater than 2 weeks from the due date | 25% of the order value. |

In the event of cancellation by The Company for reasons concerning the health and/or safety of the public or property, the company shall make a charge of the reasonable costs incurred.

10. Unless expressly agreed in writing beforehand, standard payment terms will apply as set out below:
- For all new customers or those not on account, full payment must be received prior to the date of the display.
 - Account customers must pay the full balance 30 days after the invoice date.
11. If The Organiser does not pay within the period set out above, we may reserve the right to cancel or postpone the display or any future displays until payment is received.
12. Both parties must pay all amounts due under these Terms and Conditions in full without any deduction or withholding except as required by law and neither party is entitled to assert any credit, set-off or counterclaim against the other in order to justify withholding payment of any such amount in whole or in part.
13. The Company will not be liable (whether caused by our employees, agents or otherwise) for the following:
- any loss of profits; loss of anticipated profits; loss of business; loss of data; loss of reputation or goodwill; business interruption; or, other third party claims; and/or
 - any failure to perform any of our obligations if such delay or failure is due to any cause beyond our reasonable control; and/or
 - any losses caused directly or indirectly by any failure or breach by you in relation to your obligations.
14. When providing services or goods to The Organiser, The Company may gain access to and/or acquire the ability to transfer, store or process personal data of employees of The Organiser.
15. The parties agree that where such processing of personal data takes place, The Organiser shall be 'data controller' and The Company shall be the 'data processor' as defined in the General Data Protection Regulation (GDPR).
16. The Company shall only Process Personal Data to the extent reasonably required to enable it to provide the services or goods as mentioned in these terms and conditions or as requested by and agreed with The Organiser. The Company shall not retain any Personal Data longer than necessary for Processing the services or goods and will refrain from Processing any Personal Data for its own or for any third party's purposes.
17. The Company shall not disclose Personal Data to any third parties other than employees, directors, agents, subcontractors or advisors on a strict "need-to-know" basis and only under the same (or more extensive) conditions as set out in these terms and conditions or to the extent required by applicable legislation and/or regulations.

Sale of Goods: Application and entire agreement

- These Terms and Conditions will apply to the purchase of the goods detailed in our quotation or sales order (**Goods**) by the "Buyer" from Pains Fireworks Ltd, "the Company", registered in England and Wales under number 01467177, whose registered office is at Quay House, Old Brickyard Road, Sandheath, Fordingbridge, SP6 1SY.
- The person or company agreeing/signing this document is therefore confirming to purchase equipment, products or services from the Company. The power to make, vary, ratify or discharge this contract may be exercised by an individual acting with a limited company's express or implied authority and on behalf of the company, but this must be clearly stated. The individual confirming this order and signing this Agreement directly and expressly warrants that he/she has been given and has received and accepted authority to sign and execute the documents and confirm orders on behalf of the Party for whom it is indicated he/she has signed, and further has been expressly given and received and accepted authority to enter into a binding agreement on behalf of such Party with respect to the matters concerned herein and as stated herein
- These Terms and Conditions will be deemed to have been accepted by you when you accept them or the quotation or from the date of any delivery of the Goods (whichever happens earlier) and will constitute the entire agreement between the Company and the Buyer.
- These Terms and Conditions and the quotation (together, the Contract) apply to the purchase and sale of any Goods between us and you, to the exclusion of any other terms that you try to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

The placing of a purchase confirms acceptance of these terms and conditions of sale.

Interpretation

- A "business day" means any day other than a Saturday, Sunday or bank holiday in England and Wales.
- The headings in these Terms and Conditions are for convenience only and will not affect their interpretation.
- Words imparting the singular number include the plural and vice-versa.

Goods

- The description of the Goods is set out in our sales documentation, unless expressly changed in our quotation. In accepting the quotation, you acknowledge that you have not relied upon any statement, promise or other representations about the Goods by us. Descriptions of the Goods set out in our sales documentation are intended as a guide only.
- We can make any changes to the specification of the Goods which are required to conform to any applicable safety or other statutory or regulatory requirements.

Price

- All price lists, brochures and other information we provide with our quotations are presented by us as accurately as possible. They are only binding to us if we have expressly confirmed them in writing.
- The Price of the Goods is set out in our quotation or price list current at the date of your order or such other price as we may agree in writing.
- If the cost of the Goods to us increases due to any factor beyond our control including, but not limited to, material costs, labour costs, alteration of exchange rates or duties, or changes to delivery rates, we can increase the Price prior to delivery.
- Any increase in the Price under the clause above will only take place after we have told you about it.
- You may be entitled to discounts. Any and all discounts will be at our discretion.
- The Price is exclusive of any applicable VAT and other taxes or levies which are imposed or charged by any competent authority.

Cancellation and alteration

- Details of the Goods as described in the clause above and set out in our sales documentation are subject to alteration without notice and are not a contractual offer to sell the Goods which is capable of acceptance.
- If during the execution of the contract it becomes apparent that it is necessary to make amendments or additions to the contract so that it can be correctly executed, the parties shall adapt or amend the contract under consultation. If the addition or amendment affects the time of implementation, we shall inform the other party as such as soon as possible.
- We are not obliged to carry out a change to the order until we have confirmed that change in writing, and the other party will reimburse all additional costs that we incur as a result of that change.

19. Quotations (including any non-standard price negotiated in accordance with the clause on Price) is valid for a period of 30 days only from the date shown in it unless expressly withdrawn by us at an earlier time.

Payment

20. We will invoice you for the Price either:
- on or at any time after the acceptance of the quote/receipt of order; or
 - on or at any time after delivery of the Goods; or
 - where the Goods are to be collected by the Buyer or where the Buyer wrongfully does not take delivery of the Goods, at any time after we have notified the Buyer that the Goods are ready for collection or we have tried to deliver them.
21. Account customers must pay the Price within 30 days of the date of our invoice or otherwise according to any credit terms agreed between us.
22. New customers, or those not on account must pay the Price before the order will be dispatched
23. You must make payment even if delivery has not taken place and / or that the title in the Goods has not passed to the Buyer.
24. If the Buyer does not pay within the period set out above, we will suspend any further deliveries to the Buyer and without limiting any of our other rights or remedies for statutory interest, charge the Buyer interest at the rate of 5% per annum above the base rate of the Bank of England from time to time on the amount outstanding until the Buyer pays in full.
25. Time for payment will be of the essence of the Contract between the Company and you.
26. All payments must be made in Pound Sterling.
27. Both parties must pay all amounts due under these Terms and Conditions in full without any deduction or withholding except as required by law and neither party is entitled to assert any credit, set-off or counterclaim against the other in order to justify withholding payment of any such amount in whole or in part.

Delivery

28. We will arrange for the delivery of the Goods to the address specified in the quotation, or on the order or to another location we agree in writing.
29. If the Buyer does not specify a delivery address or if we both agree, the Buyer must collect the Goods from our premises.
30. Subject to the specific terms of any special delivery service, delivery can take place at any time of the day and must be accepted at any time between 8 am to 8 pm.
31. If you do not take delivery of the Goods we may, at our discretion and without prejudice to any other rights:
- store the Goods and will charge you for all associated costs and expenses including, but not limited to, transportation, storage and insurance; and / or
 - make arrangements for the redelivery of the Goods and will charge you for the costs of such redelivery; and/or
 - after 10 business days, resell the Goods.
32. If redelivery is not possible as set out above, the Buyer must collect the Goods from our premises and will be notified of this.
33. Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. We will not be liable for any delay in delivery of the Goods that is caused by a circumstance beyond our control or your failure to provide us with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
34. We can deliver the Goods by instalments, which will be invoiced and paid for separately. Each instalment is a separate contract. Any delay in delivery or defect in an instalment will not entitle you to cancel any other instalment.

Inspection and acceptance of Goods and cancellation

35. The Buyer must inspect the Goods on delivery or collection.
36. If the Buyer identifies any damages or shortages, the Buyer must inform us in writing within 1 day of delivery, providing details.
37. Other than by agreement, we will only accept returned Goods if we are satisfied that those Goods are defective and if required, have carried out an inspection.
38. Subject to the Buyers compliance with this clause and/or our agreement, the Buyer may return the Goods and we will, as appropriate, repair, or replace, or refund the Goods or part of them.
39. We will be under no liability or further obligation in relation to the Goods if:
- The Buyer fails to provide notice as set above; and/or
 - makes any further use of such Goods after giving notice under the clause above relating to damages and shortages; and/or
 - the defect arises because the Buyer did not follow our oral or written instructions about the storage, installation, use and maintenance of the Goods; and/or
 - the defect arises from normal wear and tear of the Goods; and/or
 - the defect arises from misuse or alteration of the Goods, negligence, wilful damage or any other act by the Buyer, their employees or agents or any third parties.
40. The Buyer will bear the risk and cost of returning the Goods.
41. Acceptance of the Goods will be deemed to be upon inspection of them by you and in any event within 2 days after delivery.
42. Upon receipt of your Goods you have a period of 14 days to cancel the order and return your items in the same condition to which you received them. If we are notified of your cancellation after 14 days from the date of delivery your return will not be accepted.

Risk and title

43. The risk in the Goods will pass to the Buyer on completion or delivery.
44. Title to the Goods will not pass to the Buyer until we have received payment in full (in cash or cleared funds) for: (a) the Goods and/or (b) any other goods or services that we have supplied in respect of which payment has become due.
45. The Buyer is liable for all losses (including losses resulting from theft, loss or usage) caused to our goods in the period preceding the transfer of ownership. Damage, theft or loss must be reported to us without delay.
46. We reserve the right to keep goods that we have in our possession until all payment obligations are made to us, irrespective of the orders placed for the aforementioned or other goods of the Buyer. We also have the right of retention in the event of the Buyer being declared bankrupt.
47. Until title to the Goods has passed, the Buyer must (a) hold the Goods on a fiduciary basis as our bailee; and/or (b) store the goods separately and not remove, deface or obscure any identifying mark or packaging on or relating to the Goods; and/or (c) keep the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery.
48. As long as the Goods have not been resold, or irreversibly incorporated into another product, and without limiting any other right or remedy we may have, we can at any time ask the Buyer to deliver the Goods and, if failure to do so promptly, enter any of the Buyers premises or of any third party where the Goods are stored in order to recover them.

Termination

49. We can terminate the sale of Goods under the Contract where:
- The Buyer commits a material breach of the obligations under these Terms and Conditions;
 - The Buyer is or becomes or, in our reasonable opinion, is about to become the subject of a bankruptcy order or take advantage of any other statutory provision for the relief of insolvent debtors;
 - The Buyer enters into a voluntary arrangement under Part 1 of the Insolvency Act 1986, or any other scheme or arrangement is made with your creditors; or
 - The Buyer convenes any meeting of their creditors, enter into voluntary or compulsory liquidation, have a receiver, manager, administrator or administrative receiver appointed in respect of your assets or undertakings or any part thereof, any documents are filed with the court for the appointment of an administrator, notice of intention to appoint an administrator is given by you or any of your directors or by a qualifying floating charge holder (as defined in para. 14 of Schedule B1 of the Insolvency Act 1986), a resolution is passed, or petition presented to any court for the winding up of your affairs or for the granting of an administration order, or any proceedings are commenced relating to your insolvency or possible insolvency.

Limitation of liability

50. Our liability under the Contract, and in breach of statutory duty, and in tort, misrepresentation or otherwise will be limited to this clause.
51. Subject to the clauses above on **Inspection and Acceptance** and **Risk and Title**, all warranties, conditions or other terms implied by statute or common law (save for those implied by Section 12 of the Sale of Goods Act 1979) are excluded to the fullest extent permitted by law.
52. We accept no responsibility for equipment that does not work in conjunction with equipment supplied by the Buyer.
53. If we do not deliver the Goods, our liability is limited, subject to the clause below, to the costs and expenses incurred by the Buyer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods.
54. Our total liability will not, in any circumstances, exceed the total amount of the Price payable by you.
55. We will not be liable (whether caused by our employees, agents or otherwise) in connection with the Goods, for:
- any indirect, special or consequential loss, damage, costs or expense; and/or
 - any loss of profits; loss of anticipated profits; loss of business; loss of data; loss of reputation or goodwill; business interruption; or, other third party claims; and/or
 - any failure to perform any of our obligations if such delay or failure is due to any cause beyond our reasonable control; and/or
 - any losses caused directly or indirectly by any failure or breach by you in relation to your obligations; and/or
 - any loss relating to the choice of the Goods and how they will meet your purpose or the use by you of the Goods supplied.
56. The exclusions of liability contained within this clause will not exclude or limit our liability for death or personal injury caused by our negligence; or for any matter for which it would be illegal for us to exclude or limit our liability; and for fraud or fraudulent misrepresentation.

Communications

57. All notices under these Terms and Conditions must be in writing and signed by, or on behalf of, the party giving notice (or a duly authorised officer of that party).
58. Notices will be deemed to have been duly given:
- when delivered, if delivered by courier or other messenger (including registered mail) during the normal business hours of the recipient;
 - when sent, if transmitted by fax or email and a successful transmission report or return receipt is generated;
 - on the fifth business day following mailing, if mailed by national ordinary mail; or
 - on the tenth business day following mailing, if mailed by airmail.
59. All notices under these Terms and Conditions must be addressed to the most recent address, email address or fax number notified to the other party.

Data protection

60. When providing the Goods to the Buyer, the Seller may gain access to and/or acquire the ability to transfer, store or process personal data of employees of the Buyer.
61. The parties agree that where such processing of personal data takes place, the Buyer shall be 'data controller' and the Seller shall be the 'data processor' as defined in the General Data Protection Regulation (**GDPR**) as may be amended, extended and/or re-enacted from time to time.
62. For the avoidance of doubt, 'Personal Data', 'Processing', 'Data Controller', 'Data Processor' and 'Data Subject' shall have the same meaning as in the GDPR.
63. The Seller shall only Process Personal Data to the extent reasonably required to enable it to provide the Goods as mentioned in these terms and conditions or as requested by and agreed with the Buyer, shall not retain any Personal Data longer than necessary for the Processing and refrain from Processing any Personal Data for its own or for any third party's purposes.
64. The Seller shall not disclose Personal Data to any third parties other than employees, directors, agents, subcontractors or advisors on a strict "need-to-know" basis and only under the same (or more extensive) conditions as set out in these terms and conditions or to the extent required by applicable legislation and/or regulations.
65. The Seller shall implement and maintain technical and organisational security measures as are required to protect Personal Data Processed by the Seller on behalf of the Buyer. Further information about the Seller's approach to data protection are specified in its Data Protection Policy, which can be obtained by contacting the Data Protection Officer. For any enquiries or complaints regarding data privacy, you can contact our Data Protection Officer at the following e-mail address: sales@painsfireworks.com
66. The Customer will be responsible for ensuring all relevant regulations, rules and statutory provisions relating to the use of the equipment are complied with during their ownership and shall keep the us indemnified against all liability for any non-compliance with any such regulation or provision.
67. The use of special effects equipment, either indoors or outdoors, is at the sole discretion of the Customer who will have taken full note of the prevailing situation. They are reminded that these devices can sometimes vary in their performance and no guarantee is given that every device will perform exactly the same. This must therefore be borne in mind when siting and firing such devices. Where the Customer is unfamiliar with the equipment, tests should be carried out at a safe time and in a safe place. The writing of risk assessments and method statements is the responsibility of the Customer, and whilst general advice is available, the Seller is unable to provide any specific documentation.

Circumstances beyond the control of either party

68. The Company shall not be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that party. Such causes include, but are not limited to: power failure, internet service provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the party in question. In the event of this, the company shall make a charge of the reasonable costs incurred.

No Waiver

69. No waiver by us of any breach of these Terms and Conditions by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

Severance

70. If one or more of these Terms and Conditions is found to be unlawful, invalid or otherwise unenforceable, that / those provisions shall be deemed severed from the remainder of these Terms and Conditions (which will remain valid and enforceable).

Law and jurisdiction

71. **This Agreement shall be governed by and interpreted according to the law of England and Wales and all disputes arising under the Agreement (including non-contractual disputes or claims) shall be subject to the exclusive jurisdiction of the English and Welsh courts.**

Use of Materials

72. Pains Fireworks Ltd shall reserve all intellectual property rights (the rights which could be protected by the copyright law, the design law, the trademark law and other intellectual property laws) concerning any documents, programs, movies, animations, articles, sketches, drawings, software, databases, trademarks, logos and other materials available on the Web Site (the Information). Except to enable your personal use of the Information available on the Web Site as well as rights granted to you under applicable mandatory law, you are prohibited from reproducing, distributing, modifying displaying, showing, publicly transmitting or otherwise creating derivative products of any of the information, in whole or in part, regardless of medium, without prior written permission from the intellectual property right owner(s)

Declaration

73. By placing a sales order/accepting a sales quotation from Pains Fireworks Ltd; you declare that you have received the Terms and Conditions of Sale of the company Pains Fireworks Ltd and that you accept these for this and all following orders. Place of fulfilment is Whiteparish, Salisbury. Place of jurisdiction is England or the nearest court to this place that is having jurisdiction in the United Kingdom. The only applicable law is the law of England and Wales.