

## TERMS AND CONDITIONS OF SALE

3/01/2023

Sidek Manufacturing Pty Ltd ACN 116 049 211 (Sidek)

### Introduction

- 1. These terms:** These terms apply to each contract for Sidek to supply Goods to a customer unless Sidek agrees in writing otherwise and prevail over any terms a customer may issue. A customer's failure to acknowledge these terms is not evidence that these terms do not apply.
- 2. Definitions:** In these terms: **Consumer Law** means the law as set out in Schedule 2 of the *Competition and Consumer Act 2010*; **contract** means a contract that forms between Sidek and the customer for the supply of Goods; **customer** means the other party or parties to a contract; **Goods** means all goods and services supplied by Sidek to the customer under these terms; **GST** and **tax invoice** have their meaning in *A New Tax System (Goods and Services Tax Act) 1999*; **order confirmation** means a written acceptance of the customer's order confirming the type of Goods, the price and other terms; **working day** means a day Sidek is open to trade; **writing** or **written** include an upload of information to Sidek's website or an email received at the recipient's designated email address.
- 3. Quotations:** Unless otherwise stated, any quotation to supply Goods expires after 30 days. Sidek may vary / withdraw its quotation before a contract forms.
- 4. Contract formation:** A contract forms only if and when the customer places an order with Sidek and Sidek accepts that order.
- 5. Orders:** The customer may place an order orally or in writing – if Sidek so requires, an oral order is not effective until confirmed in writing by the customer. An order is effective even if the customer is yet to specify a delivery date or method.
- 6. Acceptance of orders:** A customer's order is subject to Sidek's acceptance, and Sidek may decline an order in full or in part. Sidek accepts an order (in full or in part) either by providing an order confirmation or by executing the order. After Sidek accepts an order, the customer may not modify, delay or cancel the order unless Sidek agrees in writing.
- 7. Price:** Unless stated otherwise: (a) prices are set out in a quotation or in an order confirmation; (b) prices are Ex Works (Adelaide, South Australia) and therefore do not include any costs associated with delivery or transport to the customer; (c) prices are exclusive of GST and (c) prices are quoted based on Sidek's hourly rates and material costs applying at the time of quotation. Sidek reserves the right to amend the price if Sidek's labour or material costs increase, if variations are requested by the customer, if Goods become unavailable from third party suppliers or manufacturers and where additional services are required due to the discovery of hidden or unidentifiable difficulties.
- 8. Testing:** If Sidek has been requested by the customer to diagnose a fault that requires disassembly and/or testing, all costs involved will be charged to the customer irrespective of whether or not the repair goes ahead. Sidek or its employees may carry out tests on the Goods at Sidek's discretion and Sidek will not be liable for (and the customer indemnifies Sidek against) any damages caused to, or by the Goods during such tests unless it arises from the recklessness or wilful misconduct of Sidek or its employees.
- 9. Insurance Claims:** In the event that the Goods provided by Sidek are the subject of an insurance claim that the customer has made, then the customer shall be responsible for the payment of any monies payable to the insurance company and agrees to honour their obligation for payment for such transactions invoiced by Sidek and shall ensure payment is made by the due date irrespective of whether the insurance claim is successful.
- 10. GST:** Sidek may recover from the customer any GST for which Sidek becomes liable by its supply of Goods to the customer.
- 11. Tax invoice:** On or as soon as practicable after a supply of Goods, Sidek will issue a tax invoice for that transaction. The customer waives its right to dispute anything on an invoice not notified in writing (giving reasonable details) to Sidek within 10 working days after the customer's receipt of that invoice.
- 12. Time for payment:** The customer must pay for the Goods in accordance with the arrangements outlined in the quotation or order confirmation (or if no quotation or order confirmation is provided, on the date of delivery unless Sidek has agreed to provide credit, in which case payment must be made by the date specified in an invoice provided by Sidek).
- 13. Payments in gross:** Unless Sidek agrees in writing, the customer may not deduct from an invoice amount any set off, counterclaim or rebates asserted by the customer or other sum (including taxes and charges).
- 14. Payment method:** Unless otherwise outlined in the quotation or order confirmation (or if no quotation or order confirmation is provided, in an accepted order or invoice provided by Sidek), Sidek requires payment of invoices by electronic transfer in clear funds to a bank account specified in the quotation or order confirmation or as last nominated by Sidek in writing. Payment by cheque is not made until the cheque clears.
- 15. Late payment:** If an invoice is not paid within time, Sidek may: (a) recover from the customer interest at 10% per annum on the unpaid amount calculated on a daily basis from the due date until the date payment is made in full (plus accrued late payment interest) to Sidek; (b) without liability, cancel or suspend supply of other Goods not fully paid for and yet to be supplied under any contract; and / or (c) exercise any other rights it has in relation to the default.
- 16. Lien:** Sidek shall have a general lien over the Goods and any other property of the customer that comes into Sidek's possession until payment for the Goods is made in full.
- 17. Credit account:** If Sidek extends credit to the customer, it does so based on written information last provided to Sidek by or for the customer. If at any time that information changes materially and adversely, within 2 working days the customer must advise the change in writing (giving reasonable details) to Sidek. A credit account is personal to the customer, and not transferable to a third party. If Sidek is extending credit to the customer, at any time and without giving reason, Sidek may reduce, suspend or terminate the credit account by so advising the customer. Such advice may be oral or written. A credit account terminates automatically if the customer does not trade with Sidek for 12 months or becomes insolvent. Within 5 working

days after being advised of a reduction / suspension / termination of the credit account, the customer must pay to Sidek any amount owing to Sidek in excess of the current credit limit.

18. **Set off:** In addition to rights of set off under the general law, Sidek may set off any debt or liability the customer (alone or with others) owes to Sidek on any account against any debt or liability Sidek owes to the customer on any account. If a liability is unliquidated or otherwise unascertained, Sidek may set off an amount estimated by Sidek in good faith on account of such liability, without prejudice to the obligation of the parties to account for any shortfall or excess.
19. **Delivery:** (a) The delivery times made known to the customer are estimates only and Sidek is not liable for late delivery or non-delivery and under no circumstances is Sidek liable for any loss, damage or delay occasioned to the customer or its customers arising from the late or non-delivery of the Goods; (b) Sidek's delivery and service records are prima facie proof of delivery of the Goods in good order to the customer and of good quality and description stated and are also evidence of receipt by the customer despite the absence of any representative of the customer at the delivery site; (c) the customer must nominate the manner of delivery of Goods and failing nomination must accept delivery by a carrier appointed by Sidek. All costs of delivery and insurance in transit must be met by the customer upon receipt of the Goods; and (d) it is the customer's responsibility to provide adequate signs and directions to enable the carrier to effect delivery of the Goods and failure to do so will render the customer liable for any additional cartage charges incurred.
20. **Taking Away:** If the customer is to arrange transport of Goods, it must do so within 7 days of being notified the Goods are first ready for transport (or such later date as agreed in writing) – in default, Sidek may recover from the customer any additional storage charges for which Sidek becomes liable after that period.
21. **Risk of loss:** Risk of loss / damage / deterioration in Goods passes from Sidek to the customer when the Goods are delivered. The customer must insure the Goods from the time of delivery. Sidek is not responsible for any loss or damage to the Goods in transit. Sidek will provide the customer with reasonable assistance necessary to press claims on carriers provided the customer has immediately notified Sidek and the carriers in writing of discovery of the loss or damage of the Goods and lodges a claim on the carrier within 3 working days of the receipt of the Goods.
22. **Ownership:** Ownership of Goods passes from Sidek to the customer only when those particular Goods are paid for in full. Sidek has a purchase money security interest under the *Personal Property Securities Act 2009 (PPSA)* for Goods supplied to the customer but not yet paid for.
23. **Warranties & Liabilities:** Subject to the Consumer Law, Sidek does not give any warranty, condition or guarantee in connection with its supply of Goods.
24. **Returns:** The customer may not return any Goods (not defective for reasons that are Sidek's responsibility) except with Sidek's prior written consent and at the customer's cost. In that case, Sidek would credit a return only where Goods are received back in the same condition and packaging as in the original shipment. Any credit given will be at Sidek's discretion after deduction of any cartage costs borne or handling fee charged by Sidek.
25. **Defective Goods:** Subject to applicable laws, a claim that any Goods are defective for reasons that are Sidek's responsibility is not valid unless advised in writing (with reasonable details) to Sidek within 7 days after delivery. If a claim for defective Goods is found or admitted to be without merit, the customer is to pay all reasonable costs Sidek incurs investigating the claim.
26. **Out-of-time claims:** A claim for defective Goods not within time is barred for all purposes.
27. **Sidek's liability:** Subject to the Consumer Law, if the Goods are defective for reasons that are Sidek's responsibility, Sidek's total liability for any claim is limited to (at Sidek's option): (a) in the case of goods; the replacement of the goods or the supply of equivalent goods, the repair of the goods, the payment of the cost of replacing the goods or of acquiring equivalent goods or the payment of having the goods repaired; and (b) in the case of services; the supply of the services again or the payment of the cost of having the services supplied again. In no case is Sidek liable for any loss of revenue / profits / goodwill or any incidental, consequential or punitive damages as a result of any claim in connection with its supply of Goods.
28. **Sidek's rights:** In addition to Sidek's other rights, Sidek may suspend or cancel a contract and retake possession of Goods not paid for if Sidek reasonably believes the customer to be insolvent or to have ceased to trade, or if the customer is in default under any contract with Sidek or a related entity of Sidek.
29. **Costs:** The customer is liable to pay all reasonable costs or expenses Sidek incurs in recovering or attempting recovery of moneys owing by the customer or in otherwise enforcing Sidek's rights under a contract. Such costs may include legal costs on a solicitor / client basis.
30. **PPSA:** If at any time the customer grants in favour of Sidek a security interest over any collateral (all within the meaning of the PPSA): (a) at any time, without prior notice to the customer but at the customer's cost, Sidek may register in relation to such security interest/s one or more financing statements / financing change statements on the register maintained under the PPSA; (b) to any extent Sidek at any time requests, within 2 working days the customer must do all things necessary to assist such registration/s and / or ensure the security interest/s priority over any other security interest (present or future) over the same collateral granted by the customer to a third party; and (c) the customer waives its right to receive a copy of any financing statement or financing change statement and irrevocably contracts out of those provisions of the PPSA that the PPSA allows to be contracted out of by the customer.
31. **Force majeure:** A party is not liable for a failure to perform a contract to the extent its performance is prevented by a circumstance not within that party's reasonable control.
32. **Intellectual Property:**
  - 32.1 *Where Sidek has designed, drawn or developed Goods for the customer, then the copyright in any designs and drawings and documents shall remain the property of Sidek. Under no circumstances may such designs, drawings and documents be used without the express written approval of Sidek.*
  - 32.2 *The customer warrants that all designs, specifications or instructions given to Sidek will not cause Sidek to infringe any patent, registered design or trademark in the execution of the customer's order and the customer agrees to indemnify Sidek against any action taken by a third party against Sidek in respect of any such infringement.*
33. **Dispute resolution:** Except as this clause allows, any dispute in connection with a supply of Goods must not be the subject of litigation or arbitration pending the party raising the dispute notifying the other party as to the nature of the dispute (with reasonable details), what action the party giving notice thinks will resolve the dispute, and inviting the other party to a meeting of the parties' respective agents at some convenient location with a view to resolving the dispute. At such meeting each party must send to the meeting an agent with authority to resolve the dispute, and at the meeting make a good faith attempt to resolve the dispute. This term does not prejudice the right of a party to seek a Court order to prevent immediate and irreparable harm, or to suspend or terminate a supply of Goods where the basis for doing so is not in dispute.

34. **About the customer:** If in a contract the customer is more than 1 person, that contract binds each of them jointly and severally, and each of them is taken to have authority to bind the other/s in connection with the contract, including that a notice to / from any such person is notice to / from all of them.
35. **About the contract:** These terms and the relevant order together are the whole contract between the parties about Sidek's supply of the Goods to the customer. That contract can be amended only by written agreement of the parties. To be valid, a waiver under that contract must be in writing signed by the party granting the waiver. Time is of the essence of any date or period under that contract. A contract may only be modified or cancelled as the parties agree in writing.
36. **Governing law:** The laws of South Australia and, where applicable the Commonwealth of Australia, govern the contract and the customer submits to the non-exclusive jurisdiction of the courts of South Australia. **Sidek** shall have exclusive right to nominate the Court in which any legal action is to be commenced and conducted.
37. **Notices:**
- 37.1 *The customer hereby consents to receiving any notice(s) required under these terms by email.*
- 37.2 *Notices given by Sidek will be deemed to be received: (a) if given by email, on being sent, provided the notice is sent to the email address of an officer or employee of the customer responsible for placing or administering orders for the Goods and no "out of office" or other automated reply is received indicating that the message has not been or will not be received or read by the intended recipient; (b) if given by facsimile transmission to a facsimile number shown in the application for credit (or any other number provided by the customer) by production by Sidek of a copy of the facsimile transmission bearing the time and date of dispatch, on that date and at that time; and (c) if given by post, on the 5<sup>th</sup> working day after posting.*
- 37.3 *The customer agrees to regularly check the Sidek's website for any notices of changes to these terms.*