

SICK NZ LIMITED
TERMS AND CONDITIONS OF SALE

1. GENERAL

- 1.1 These Terms and Conditions of Sale apply to all goods supplied by the Company to the Customer.
- 1.2 The only contractual terms which are binding upon the Company are those set out in these Terms and Conditions of Sale or otherwise agreed to in writing by the Company and those, if any, which are imposed by law and which cannot be excluded by these Terms and Conditions of Sale.
- 1.3 All previous negotiations, representations, warranties, arrangements and statements (if any) whether expressed or implied, including any collateral agreement or warranty between the Customer and the Company, are excluded and cancelled.
- 1.4 A reference to any legislation or to any provision of any legislation (including regulations and orders) includes that legislation or provision as from time to time amended, re-enacted or substituted and any statutory instruments, regulations and orders issued under any such legislation or provision.
- 1.5 The Company may by written notice to the Customer alter or replace these Terms and Conditions of Sale from time to time. All orders placed subsequently by the Customer shall be upon the altered or replaced Terms and Conditions of Sale.

2. DEFINITIONS

In these Terms and Conditions of Sale:

- 2.1 "Agreement" means the agreement between the Company and the Customer for the supply of goods and related services (if any) of which these Terms and Conditions of Sale form part.
- 2.2 "Company" means SICK NZ Limited.
- 2.3 "Customer" means the person or entity purchasing the goods and/or services the subject of these Terms and Conditions of Sale.
- 2.4 "GST" means any goods and services tax imposed pursuant to the Goods and Services Tax Act 1985.
- 2.5 "Intellectual Property" includes but is not limited to, ideas, patents, registered and unregistered design rights, registered and unregistered trademarks, drawings, inventions and any copyright subsisting in any work, documents or other items and all other intellectual and industrial property rights (without limitation) and similar or analogous rights existing under the laws of any country and all rights to apply to or register such rights.
- 2.6 "PPSA" means the Personal Property Securities Act 1999.
- 2.7 "Safety Equipment" means a device which is used in a safety control circuit.

3. PRICING

- 3.1 All prices are quoted in New Zealand Dollars (\$NZ), unless otherwise specified in writing, and are exclusive of GST if applicable.
- 3.2 All quotations are based on current costs of production and are subject to amendment without notice before or after acceptance to meet any cost variation between the date of the quotation and the date of completion of the order.
- 3.3 Quoted prices are subject to the Customer's order being for the whole quantity stated in the quotation.
- 3.4 Unless stated otherwise, prices quoted do not include any tax or duty that may be payable by the Customer. The Customer must pay the price of the goods plus any applicable GST.
- 3.5 Transport charges, insurance premiums and all other costs, duties and taxes which affect the goods must be paid for by the Customer.

4. ORDERS

- 4.1 Orders must be in writing.
- 4.2 No order shall be binding on the Company until accepted in writing by the Company.
- 4.3 Should the Customer cancel an order for any reason, the Customer must pay the Company in full for any goods which were especially procured for it, custom ordered, imported, manufactured or made to order by the Company or which were of a particular nature not normally stocked by the Company. In all other cases, the Customer will pay a reasonable charge for the work completed and materials used.
- 4.4 The Company may cancel or suspend all or any part of an order if amounts owing by the Customer are overdue or if the Customer enters into any form of compromise, voluntary administration, receivership or liquidation or becomes unable to pay its debts within the meaning of the Companies Act 1993.
- 4.5 The Company will not be bound by clerical errors or omissions whether in computation or otherwise in any quotation, acknowledgment or invoice, which shall be subject to correction.

5. PAYMENT

- 5.1 Unless otherwise agreed in writing, all accounts are payable without deduction or set off within 30 days from the date on which the goods are invoiced in New Zealand dollars by electronic transfer to the Company's nominated bank account.
- 5.2 The Company is not obliged to sell goods to the Customer if:
- (a) the Customer defaults in its payment obligations under the Agreement; and/or
 - (b) the Customer becomes bankrupt or goes into liquidation or goes into voluntary administration or is unable to pay its debts as they fall due.
- 5.3 Without prejudice to any other remedies of the Company at law or under the Agreement, and unless otherwise expressly agreed by the Company in writing, the Customer shall pay to the Company upon demand:
- (a) interest on any amount that is not paid on the due date at the then current overdraft interest rate charged by the Company's bank plus 2.5% per month calculated on a daily basis from the date when the payment is due until the date when payment is actually made; and
 - (b) any costs (including legal costs on a solicitor/client basis) incurred by the Company in enforcing its rights under the agreement together with interest thereon calculated in accordance with clause 5.3(a) if not paid within 7 days of demand having been made.

6. RETENTION OF TITLE

- 6.1 Title in and ownership of the goods will only pass to the Customer on payment of the full price for the goods and all amounts owing by the Customer to the Company under these Terms and Conditions of Sale.
- 6.2 Until such time, the Customer will hold the goods and any other goods manufactured from the goods supplied by the Company as trustee for the

Company and the Company shall have a continuing security interest in those goods.

- 6.3 The Customer may, in the ordinary course of the Customer's business:
- (a) cause the goods supplied by the Company to become part of, be installed in or be affixed to, other goods; or
 - (b) sell the goods supplied by the Company, or goods manufactured from those goods supplied,
- for which the Customer has not paid the Company, but the Company has, and continues to have, a security interest in the goods in which the goods supplied by the Company are installed, become a part of or affixed to, and in the proceeds of their sale.
- 6.4 If the Customer:
- (a) fails to pay the price in full on the due date for payment; or
 - (b) prior to payment of the price deals with the goods in a manner inconsistent with the rights granted by sub-clause 5.3;
- then
- (c) the Customer's right to sell the goods in the ordinary course of business and any other rights of the Customer in respect of the goods immediately cease; and
 - (d) the Customer must immediately deliver or remit to the Company at its place of business in New Zealand all goods supplied by the Company and proceeds of the goods in which the Company has a security interest.
- 6.5 The Customer will allow the Company and its agents to enter upon any premises on which the Company believes its goods are located to recover its goods or otherwise exercise its rights under the PPSA. The Customer indemnifies the Company and its agents against, and discharges the Company from, any liability it may otherwise be under to the Customer or any third party, resulting from damage occasioned by the Company or its agents in gaining entry to those premises for this purpose.
- 6.6 The Company may bring an action for the price of the goods even where ownership of the goods may not have passed to the Customer.
- 7. DELIVERY**
- 7.1 The Company will deliver the goods to the place specified in the Customer's order unless otherwise agreed.
- 7.2 If the Customer fails or refuses (or indicates to the Company that the Customer will fail or refuse) to take or accept delivery, then the goods shall be deemed to have been delivered when the Company was willing and able to deliver them.
- 7.3 Any quotations of delivery times by the Company are made in good faith but are estimates only. The Company will use its best endeavours to deliver the goods at the time requested or stated but will not be responsible for any loss or damage arising from any delay in the delivery of the goods from any cause whatsoever nor shall any delay entitle the Customer to cancel any order or refuse to accept delivery at any time or refuse or delay payment for the goods.
- 7.4 Risk in the goods passes to the Customer immediately upon delivery to the Customer (or to a third party at the request of the Customer) when the goods are in the Customer's custody or when the goods are within the Customer's direction or control (whichever is the first to occur), including while in transit to the Customer. The Customer will insure and keep insured all goods supplied by the Company that are in the Customer's possession or control from time to time against risk or damage by hazards normally insured against.
- 7.5 The Customer shall be liable for all freight and delivery charges in relation to goods unless otherwise agreed in writing.
- 7.6 If the Company is unable to supply the Customer's total order these Terms and Conditions of Sale will apply to the supply of all or part of the order.
- 8. WARRANTIES AND LIABILITIES**
- 8.1 The goods manufactured by the Company are warranted for workmanship and materials for a period of 12 months from the date of delivery of the goods to the Customer. Any repairs to or replacement of goods carried out by the Company during this warranty period are subject to all terms of the Agreement and, in respect of the repaired or replaced part of the goods, the warranty period is 6 months.
- 8.2 To be entitled to claim the warranty in clause 8.1, the Customer must ensure that the following conditions are complied with:
- (a) the Customer must comply in all respects with these Terms and Conditions of Sale;
 - (b) the goods must not receive maltreatment, interference or inattention;
 - (c) the goods must be correctly installed and maintained;
 - (d) the goods must have been used for the purpose for which they were intended and are suitable; and
 - (e) the goods which are defective must be promptly returned when the defect becomes apparent at the expense of the Customer.
- 8.3 To make a claim under the warranty in clause 8.1, the Customer must:
- (a) stop using the goods and make a claim as soon as possible, and at any rate before the end of the warranty period; and
 - (b) make the claim by requesting a repair return authorisation number prior to returning the goods to the Company.
- 8.4 Proof of purchase and purchase date may be required by the Company.
- 8.5 The Company warrants that any Safety Equipment provided by the Company complies with the relevant New Zealand Standard. It is the responsibility of the Customer to ensure that:
- (a) the equipment's safety category is appropriate for the assessed risks; and
 - (b) there is compliance with all New Zealand Standard requirements and Government regulations pertaining to the installation, maintenance and use of such safety equipment.
- 8.6 Subject to clauses 8.1 and 8.11, to the extent permitted by the laws governing these Terms and Conditions of Sale all guarantees, conditions and warranties expressed or implied by statute, the common law, equity, trade, custom or otherwise are expressly excluded.
- 8.7 The liability of the Company for breach of any warranty or express or implied condition of the Agreement, to the extent permitted by law, will be limited, at the option of the Company, to the replacement of the goods, the supply of equivalent goods or the payment of the cost of those goods.
- 8.8 To the extent permitted by law, in no circumstances will the Company's liability extend to indirect or consequential loss or damage.

- 8.9 The Customer acknowledges and agrees with the Company that:
- the manner of use of the goods supplied to the Customer is beyond the control of the Company;
 - any advice, recommendation, information or services provided by the Company, its employees, contractors or agents regarding the goods sold and their use shall not be construed as contractual conditions or warranties and is provided to the Customer at the Customer's own risk; and
 - the Company shall not be liable to the Customer for any loss or damage sustained by the Customer as a consequence of any incorrect advice, recommendation, information or services provided by the Company, its employees, contractors or agents regarding the goods sold or the methods or conditions of application and use of the goods sold whether such loss was caused by the negligence or recklessness of the Customer or any breach of any duty of care which may be owed to the Customer by the Company, its employees, contractors or agents.
- 8.10 Where the goods that the Customer acquires from the Company are not of a kind ordinarily acquired for personal, household or domestic use or consumption, or where the Customer acquires, or holds itself out as acquiring the goods for the purposes of a business, the provisions of the Consumer Guarantees Act 1993 (CGA) will not apply and are excluded from these Terms and Conditions of Sale. The warranties or guarantees implied by the Contract and Commercial Law Act 2017 or by common law are excluded from these Terms and Conditions of Sale.
- 8.11 Subject to clause 8.10, nothing in these Terms and Conditions of Sale shall affect any rights a consumer (as defined in the CGA) may have under the CGA.
- 8.12 If the Customer acquires any goods from the Company for the purposes of re-supplying them in trade or consuming them in the course of a process of production or manufacture or incorporation in or with any other goods, the Customer warrants that:
- if the Customer supplies the goods to any person it will do so using terms and conditions of supply which exclude liability for any claims under the CGA; and
 - if the person supplied by the Customer acquires any goods for re-supply, that person and each person in the supply chain will exclude liability in its contracts for supply for any claims under the CGA;
- but in each case only where the end user/consumer acquires the goods for business purposes.
- 8.13 The Customer indemnifies the Company against any loss, costs, damages or liabilities which the Company may incur or be liable to pay arising out of:
- any failure by the Customer, or persons supplied by the Customer or any other person in the Customer's distribution chain to properly contract out of liability to business end users under the CGA; and
 - any act or default or omission of the Customer, or persons supplied by the Customer or any other person in the Customer's distribution chain making or purporting to make any guarantee, representation or warranty in respect of any goods beyond terms of the warranty contained in clause 8.1.
- 8.14 The parties acknowledge and agree for the purposes of section 5D of the Fair Trading Act 1986 (FTA) that:
- They are contracting out of sections 9, 12A and 13 of the FTA; and
 - They have each been fully able to negotiate the terms of the Agreement and it is fair and reasonable that they are bound by this clause.
- 9. ACCEPTANCE AND CLAIMS**
- 9.1 The Customer must inspect the goods upon delivery and must within seven (7) days from the date of delivery give written notice to the Company of any matter or thing by reason whereof the Customer alleges that the goods are not in accordance with the Agreement. If the Customer fails to give such notice then to the extent permitted by law the goods shall be deemed to have been accepted by the Customer and the Customer shall pay for the goods in accordance with the Agreement.
- 9.2 Should the Customer consider that it has any claim arising from the sale of goods to it by the Company it must:
- immediately upon becoming aware of the circumstances giving rise to such a claim, notify the Company of the nature of the claim; and
 - allow the Company, its contractors or agents full and free access to the goods in relation to which the claim is made (or the place where the goods have been applied or used) for the purpose of conducting such tests and examinations as the Company may in its absolute discretion consider necessary to determine whether the claim is justified or not.
- 9.3 Where goods are especially procured for the Customer, custom ordered, imported, manufactured or made to order by the Company or are of a particular nature not normally stocked by the Company, no return of goods will be accepted. Where the Customer considers that it has a claim arising from the sale of goods that are the subject of this clause 9.3, the claim, if accepted by the Company, will be for compensation only.
- 9.4 In all other cases, no return of goods will be accepted unless notified to the Company within 7 days of receipt unless approved by the Company in writing. Authorised returns must be freight prepaid by the Customer. The Company will credit returned goods only if they are in saleable condition. If the Company accepts the return of saleable goods from the Customer a handling fee will be imposed in accordance with Company handling charges set from time to time unless the return of such goods is due to the error of the Company.
- 10. INTELLECTUAL PROPERTY**
- 10.1 The Customer acknowledges and agrees that:
- all Intellectual Property and rights in the goods are the sole property of the Company;
 - it does not have the right to modify, adapt, reverse assemble or reverse compile the goods; and
 - it must not do anything that may interfere with or diminish the Company's ownership of, or the value of the Intellectual Property.
- 11. MISCELLANEOUS**
- 11.1 The failure by the Company to insist upon observance by the Customer of any term of the Agreement will not be deemed a waiver nor amount to a waiver of any subsequent breach.
- 11.2 If any of these terms is held to be invalid, void, unenforceable or illegal for any reason, the Agreement will otherwise remain in full force and effect apart from such provision which shall be deemed to be deleted or modified to overcome that objection.
- 11.3 Variations of the Agreement will be effective only if agreed to by the Company in writing.
- 11.4 The Agreement shall be governed by and construed in accordance with the laws of New Zealand and the parties submit to the exclusive jurisdiction of the New Zealand courts.
- 12. PRIVACY ACT**
- 12.1 The Customer irrevocably authorises the Company, its employees, contractors and agents to make such enquiries as it deems necessary to investigate the credit worthiness of the Customer from time to time including (but without limiting the generality of the foregoing) the making of enquiries of persons nominated as trade referees, the bankers of the Purchaser or any other credit providers (collectively "the information sources") and the Customer authorises the information sources to disclose to the Company such information concerning the Customer which is within their possession and which is requested by the Company.
- 12.2 The Customer acknowledges that the Customer does not have to provide the Company with any information but that if the Customer does not, it may affect the Company's decision whether or not to give or continue supplying goods to the Customer (whether on credit terms or without credit).
- 12.3 The Customer understands that it has certain rights under the relevant privacy laws, to access and correct any information the Company holds about the Customer.
- 13. VIENNA SALES CONVENTION**
- 13.1 The United Nations Convention on Contracts for the International Sale of Goods (Vienna 1980) known as the Vienna Sales Convention (in force in New Zealand pursuant to section 345(1)(j) of the Contract and Commercial Law Act 2017) does not apply to goods supplied by the Company to the Customer under any agreement nor do any terms or conditions express or implied by the Vienna Sales Convention form part of the Agreement.
- 14. PERSONAL PROPERTY SECURITIES ACT**
- 14.1 The Customer acknowledges and agrees that these Terms and Conditions of Sale give rise to and create a security interest in all goods supplied by the Company to the Customer and the proceeds from the sale of such goods as continuing security for payment of the full purchase price of the goods (plus GST) owing by the Customer to the Company from time to time and constitutes a security agreement for the purposes of the PPSA.
- 14.2 The Customer undertakes to:
- sign any further documents and/or provide any further information, such information to be complete, accurate and up-to-date in all respects, which the Company may reasonably require to perfect and maintain a security interest in the goods and register a financing statement on the Personal Property Securities Register; and
 - give the Company not less than 14 days' prior written notice of any proposed change in the Customer's name and/or any other change in the Customer's details.
- 14.3 Despite any statement to the contrary by the Customer, every payment to the Company in respect of the goods must be taken as a payment:
- first, of the amounts held by the Customer in trust for the Company or subject to a security interest in favour of the Company, to the extent that the trust or security interest is not a purchase money security interest under the PPSA;
 - secondly, of the amounts held by the Customer in trust for the Company or subject to a security interest in favour of the Company, to the extent that the trust or security interest is a purchase money security interest under the PPSA;
 - thirdly, for any goods that the Customer has sold but for which it has not received the proceeds; and
 - fourthly, for whatever goods the Customer has not sold as the Company elects.
- 14.4 The Customer waives any rights to receive notice of any verification statement issued under the PPSA.
- 14.5 Nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these Terms and Conditions of Sale, or the security interest under these Terms and Conditions of Sale. The Company and the Customer contract out of the Customer's rights under sections 116, 120(2), 121, 125, 129 and 131 of the PPSA.
- 15. DECLARATION**
- I declare that I have carefully read and fully understand these Terms and Conditions of Sale.
- I agree that these Terms and Conditions of Sale (as varied by the Company from time to time by written notice to the Customer) are incorporated into every contract for supply of goods by the Company to the Customer, notwithstanding any other agreement or provision to the contrary and override any such other provision.
- If I am signing this for and on behalf of a firm, company or other organisation, I confirm that I am authorised to do so.

Signature:	
Name and title:	
Full name of customer and company number:	
Date:	
Witness signature:	
Witness name:	