

General Terms and Conditions of Purchase of SICK NZ Ltd (GTCP SICK)

Effective as of 01 November, 2016

These General Terms and Conditions of Purchase apply to all Goods and Services supplied, or to be supplied, by the Supplier to the Purchaser, except to the extent varied by written agreement between the Purchaser and the Supplier. The Supplier's commencement of work on the Goods or Services constitutes acceptance of these terms and conditions.

1. Definitions

In this Agreement, unless the context otherwise requires:

Agreement means the agreement between the Purchaser and the Supplier for the purchase of Goods and/or Services by the Purchaser from the Supplier of which these General Terms and Conditions of Purchase and the relevant Purchase Order form part.

Contract Price means the price payable by the Purchaser to the Supplier for Goods and/or Services as set out in a Purchase Order or as otherwise agreed in writing between the Purchaser and the Supplier.

Corrupt Act means any of the conduct referred to in clause 18.

Delivery Date means the scheduled date of delivery specified in a Purchase Order or as otherwise agreed in writing between the Purchaser and the Supplier.

Delivery Point means the location to which the Goods are to be delivered or at which the Services are to be provided as set out in a Purchase Order or as otherwise agreed between the Purchaser and the Supplier.

FTA means the *Fair Trading Act 1986* as amended from time to time.

Goods means the goods described in any Purchase Order submitted by the Purchaser to the Supplier which is accepted by the Supplier or otherwise purchased by the Purchaser from the Supplier.

Insolvency Event means, in respect of a party, any one or more of the following events or circumstances: (a) a winding up, dissolution, liquidation, provisional liquidation, administration or bankruptcy; (b) having an administrator or analogous person appointed to it or any of its property; (c) being unable to pay any of its debts as and when due and payable or being deemed to be insolvent under any provision of the *Companies Act 1993* or any other law; (d) seeking protection from its creditors under any law, entering into a compromise, moratorium, assignment, composition or arrangement with, or for the benefit of, any of its members or creditors; (e) any analogous event or circumstance to those described in paragraphs (a) to (d) under any law; or (f) taking any step or being the subject of any action that is preparatory to, or reasonably likely to result in, any of the above, unless such event or circumstance occurs as part of a solvent reconstruction, amalgamation, compromise, arrangement, merger or consolidation approved by the other party.

Intellectual Property means all intellectual and industrial property rights in any form now in existence or developed in the future including, without limitation, rights in the nature of any patent, trade mark or service mark, copyright, visual image right, plant breeder's rights, design, business name or trade secret or confidential information, semi-conductor or circuit layout rights, whether or not registered or registrable, whether created by legislation or common law.

Laws includes (without limitation) common law and any constitution, decree, legislation, order, ordinance, regulation, by-law, statute, treaty or other legislative measure.

Loss means any claim, action, damage, loss, liability, cost (including, but not limited to, legal costs and expenses on an indemnity basis), charge, expense, outgoing or payment.

NZ Standards has the meaning set out in clause 11. **PPSA** means the *Personal Property Securities Act 1999*.

Purchase Order means each purchase order for the supply and delivery of the Goods or acquisition of Services issued by the Purchaser to the Supplier.

Purchaser means SICK NZ Limited.

Services means the services described in any Purchase Order submitted by the Purchaser to the Supplier which is accepted by the Supplier or otherwise purchased by the Purchaser from the Supplier.

Specifications means the technical specifications for the Goods or Services set out in or accompanying any Purchase Order, or as otherwise advised by the Purchaser from time to time.

Supplier means the entity from which the Purchaser has agreed to acquire Goods or Services.

Warranty Period means the period of 12 months from the date of delivery of the Goods or completion of supply of the Services or such other term agreed in writing between the Purchaser and the Supplier.

2. Interpretation

Any reference in this Agreement to the singular includes the plural, to any gender includes all genders, to any Act or statute includes any Act or statute which supersedes, replaces or modifies any earlier Act or statute, to persons includes all bodies and associations both incorporated and unincorporated and vice versa, paragraph headings are for reference purposes only, to \$ is to New Zealand currency unless expressed otherwise and to "including" (or any other similar word) is to be read as if followed by the words "without limitation".

3. Orders

The Supplier agrees to supply and deliver the Goods and/or Services to the Purchaser in accordance with any relevant Purchase Order and this Agreement. Purchase Orders will only be binding if placed in writing. The Purchaser has the right to make changes to a Purchase Order at any time and the Supplier agrees to accept such changes. In the event such changes result in additional costs, the Purchaser will make an equitable adjustment in the Contract Price under the Purchase Order provided such additional costs are reasonable and are itemised for the Purchaser by the Supplier within 14 days of the notice of the change.

4. Delivery

The Supplier must deliver the Goods to, and/or perform the Services at, the Delivery Point on the Delivery Date. Unless explicitly agreed otherwise, the Goods must be delivered DDP (according to Incoterms 2010) to the site notified by the Purchaser. Each delivery must be accompanied by a delivery note listing all order details, including the correct order reference number. Deliveries must be made in accordance with the Purchaser's instructions (including any written instructions or any directions set out in the Purchase Order).

The Supplier must promptly notify the Purchaser if delivery is likely to be delayed (giving reasons for the delay) and apply in writing for an extension of the Delivery Date. The Purchaser may grant or refuse an extension to the Delivery Date in its absolute discretion. If the Supplier fails to fully deliver the Goods or fully supply the Services by the Delivery Date, the Purchaser may cancel the Purchase Order for the Goods and/or Services (without penalty or cost to the Purchaser) and purchase substitute goods or services from another supplier and the Supplier must pay the Purchaser the additional cost or expense incurred by the Purchaser in purchasing substitute goods or services. Where the Purchaser has paid any part of the Contract Price for the Goods or Services then the Supplier must refund that part of the Contract Price to the Purchaser.

The Supplier must bear the cost of all packaging, freight, pallet charges, warehousing, fuel surcharges, insurance and other charges in connection with the delivery of the Goods. The Supplier must ensure that the Goods are packed and labelled in accordance with all applicable Laws and New Zealand Standards.

5. Acceptance of Goods and Services

The acceptance of delivery of the Goods by the Supplier is subject to inspection by the Purchaser. The Purchaser is entitled to reject any Goods, which are: (i) not delivered at the agreed time; (ii) not delivered in the agreed volume and/or quantity; (iii) in inappropriate or damaged packaging; (iv) unfit for the Purchaser's purpose or defective; or

(v) not in compliance with the Purchase Order or Specifications. Rejected Goods are at the risk and account of the Supplier and without prejudice to the Purchaser's right to compensation for the Loss suffered as a result of the Supplier's non-compliance.

Inspection, testing, acceptance or payment does not release the Supplier from its obligations under this Agreement or from any warranties or indemnities given under this Agreement.

Only written confirmation of acceptance will constitute acceptance of the Services performed by the Supplier.

6. Title and risk in Goods and PPSA

Risk in the Goods passes to the Purchaser upon acceptance of delivery under clause 5.

Legal title in the Goods is retained by the Supplier and passes to the Purchaser when the Purchaser has paid all amounts owing for those Goods to the Supplier. Notwithstanding that title in the Goods is retained by the Supplier, the Purchaser is authorised to use and dispose of the Goods in the ordinary course of business. The parties acknowledge and agree that a security interest (as defined in the PPSA) arises under this Agreement in all present and future Goods delivered by the Supplier to the Purchaser until the Purchaser has paid all amounts owing for those Goods and all proceeds of the sale of the Goods.

7. Contract Prices, Invoicing and Payment

Contract Prices quoted in the Purchase Order are binding. All quoted Contract Prices must comprise delivery DDP including packaging. Invoices must be submitted in duplicate upon delivery. The Purchase Order reference number must be stated on the invoice. Unless otherwise agreed in writing, payments will be made within a period of 60 days after receipt of a valid tax invoice and acceptance of the Goods and/or Services by the Purchaser. The Supplier must, upon request, provide to the Purchaser certificates of origin, Supplier's declarations as well as any other documents in accordance with Laws. Payment for Goods delivered or Services provided under this Agreement does not constitute acceptance of such Goods or Services. The Purchaser may withhold payment of any amount that it disputes in good faith until the dispute has been resolved. The Purchaser reserves the right to set-off from any amount due to the Supplier under this Agreement any amount due to the Purchaser under this Agreement or any other agreement.

8. Packaging

The Supplier must use appropriate packaging to ensure the Goods are safely transported and delivered to the Delivery Point.

9. Documentation

The Supplier must carry out Purchase Orders according to the instructions, drawings, standards, Specifications and other instructions of the Purchaser. All such information constitutes Confidential Information in accordance with clause 21.

10. Models and Tools

Models and tools produced by the Supplier at the Purchaser's cost will become the sole and exclusive property of the Purchaser upon payment of such cost. The Supplier agrees to use all models and tools solely and exclusively for the purpose of producing the Goods or providing the Services in accordance with this Agreement. All such models and tools constitute Intellectual Property in accordance with clause 22. The Supplier further undertakes to insure the Purchaser's models and tools against damage caused by fire, water and theft at its own cost and at reinstatement value.

11. Quality of Goods

All Goods supplied by the Supplier must conform to the Specifications and, if none are provided, to the Supplier's specifications. The Goods must comply with the applicable standards of Standards New Zealand (**NZ Standards**). All Goods must: (a) be fit for any specific purpose of the Purchaser made known to the Supplier or for any other purpose of the Purchaser for which Supplier should have reasonably been aware; (b) be of acceptable quality and, subject to sub-paragraph (a), fit for any purpose for which the Goods are commonly supplied; (c) be safe and free from material defects in design, material and workmanship; and (d) comply with all applicable product safety laws. If before the Goods are delivered or within 12 months after delivery to the Purchaser the Supplier is required to report to a government agency in relation to a product or safety incident or event under the product services safety provisions of the FTA, then the Supplier must notify the Purchaser in writing immediately of such incident or event.

12. Quality of Services

All Services supplied by the Supplier must be performed efficiently, safely, competently and in conformity with any applicable industry code of practice by suitably qualified and experienced personnel, and must be of the highest quality which reasonably would be expected from a skilled and experienced operator providing a similar type of service in similar circumstances.

13. Supplier's Other Obligations

The Supplier must: (a) comply with applicable policies and procedures of the Purchaser, as reasonably directed by the Purchaser to the Supplier; (b) comply with all Laws applicable to the performance of its obligations under this Agreement; (c) obtain and maintain at its cost all necessary permits, licences and registrations required to perform its obligations under this Agreement; and (d) not use any name, mark, brand or other property of the Purchaser except as authorised in writing by the Purchaser.

14. Warranties in relation to Goods

The Supplier warrants that the Goods will: (a) function properly; (b) conform with the Specifications; (c) be unused; (d) be of good materials and workmanship; (e) be free from any and all defects; (f) be suitable for the intended purpose. These warranties will not operate to exclude guarantees, warranties and/or other rights that the Purchaser may have or obtain by Law and will extend to the Purchaser and its customers.

The Supplier must, during the Warranty Period, rectify at its own cost (including any costs of removal, re-installation, freight and insurance), any defects in the Goods that arise from faulty materials, design, workmanship or installation (if the Goods are installed by the Supplier). Nothing in this clause limits the application of any express warranties provided by the Supplier in connection with the Goods. Repaired or replaced Goods or parts will be warranted for the remaining duration of the Warranty Period or for a period of six months from date of the repair or replacement, whichever is greater. If requested, the Supplier must as far as possible leave these Goods in free use with the user until the Supplier has delivered replacement goods. The Warranty Period will be extended by any period(s) during which the Goods have been out of operation.

15. Warranties in relation to Services

The Supplier warrants the quality and the results of the Services. The Supplier warrants that it will perform the Services in accordance with the requirements and Specifications of the Purchaser, observing due skill and care, using proper and well maintained materials and employing suitably qualified and experienced staff. The Supplier must at its own cost during the Warranty Period, re-supply any Services or rectify any defects in the Services that arise from faulty materials, design, workmanship or installation (if Goods are installed by the Supplier as part of its Services). Nothing in this clause limits the application of any express warranties provided by the Supplier in connection with the Services. Re-supplied or rectified Services will be warranted for the remaining duration of the Warranty Period or for a period of six months from date of the re-supply or rectification, whichever is greater.

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16. Supplier's Other Warranties

The Supplier represents and warrants that: (a) it is (or will be, at the date of delivery of the Goods) the legal and beneficial owner of the Goods; (b) there is no encumbrance over the Goods (other than the Security Interest in favour of the Supplier under clause 6); (c) it has full power and authority to enter into and perform its obligations under this Agreement; (d) its entry into and performance of this Agreement will not violate any Laws; (e) the Goods and Services and any design, documents or methods of working provided by the Supplier will not infringe any intellectual property rights of any person; and (f) repairs and spare parts are reasonably available in respect of the Goods and will be during the Warranty Period.

17. Health and Safety

The Supplier, as a person conducting a business or undertaking (a PCBU), must comply with the duties and requirements of the *Health and Safety at Work Act 2015*. In addition, when delivering the Goods or providing the Services, the Supplier must comply with all health and safety policies and requirements of the Purchaser, as notified to the Supplier from time to time.

18. Bribery and Corruption

The Supplier will not, directly or indirectly, either in private business dealings or in dealings with the public sector, offer, give or agree to offer or give (either itself or in agreement with others) any payments, gifts, or other advantages with respect to any matters which are the subject of this Agreement which: (a) would violate any anti-corruption laws or regulations applicable to the Supplier (or which apply if for these purposes the Supplier was assumed to be in the USA, Canada, European Union or United Kingdom, a person or incorporated Purchaser) or to the Purchaser; (b) are intended to, or do, influence or reward any person for acting in breach of an expectation of good faith, impartiality or trust, or which it would otherwise be improper for the recipient to accept; (c) are made to or for a public official with the intention of influencing them and obtaining or retaining an advantage in the conduct of business, or (d) which a reasonable person would otherwise consider to be unethical, illegal or improper (**Corrupt Act**).

For the purpose of this Agreement, to the best of the Supplier's knowledge and belief, the Supplier has not at any time: (a) been found by a court in any jurisdiction to have engaged in any Corrupt Act (or similar conduct); (b) admitted to having engaged in any Corrupt Act (or similar conduct); or (c) been investigated or been suspected in any jurisdiction of having engaged in any Corrupt Act (or similar conduct).

The Supplier represents and warrants that it and its associated parties have not engaged in any Corrupt Act prior to the date of this Agreement. Save as disclosed by the Supplier in writing to the Purchaser (whether prior to the date of this Agreement or during its term), neither the Supplier nor any of its associated parties are: (a) public officials; or (b) persons who might otherwise assert a corrupt or illegal influence on behalf of either party.

19. Indemnity

The Supplier is liable and will hold the Purchaser and its directors, officers and employees (**Indemnified Parties**) harmless from, and indemnify them and keep them indemnified against, any and all Loss (including but not exclusively any and all actual or contingent damage, loss, injury/death, costs or claims suffered by or brought against Indemnified Parties) resulting from or connected with this Agreement, the use and/or sale of the Supplier's Goods by Indemnified Parties or any third party or the performance of the Services and the deployment of the Supplier's Services by Indemnified Parties or any third party, except to the extent that such loss is caused by the Purchaser's willful misconduct or gross negligence.

The parties are in agreement that this indemnity remains enforceable notwithstanding the operation of any Law relating to proportionate liability.

The Supplier is fully liable for the correct and timely payment of all taxes and levies (other than GST as provided in clause 24) owed in connection with the performance of the Agreement and will indemnify and keep indemnified the Indemnified Parties in respect of the same.

20. Insurance

Unless otherwise agreed in writing, the Supplier must effect and maintain during, and for a period of two years following termination of, this Agreement product liability insurance, professional indemnity insurance and public liability insurance, each with coverage of at least NZ\$10 million. If required by the Purchaser, the Supplier must provide a copy of the certificate of currency of any such policy.

21. Confidentiality

Any and all information (whether written or otherwise) provided by or on behalf of the Purchaser to the Supplier or its employees, contractors, agents or representatives must be treated as confidential and may only be used by the Supplier for the purpose of performing its obligations under this Agreement. The Supplier must keep the Purchaser's confidential information confidential and not directly or indirectly disclose, divulge or communicate that confidential information to any other person without the prior written consent of the Purchaser, except: (a) the Supplier may disclose such confidential information to those of its employees who have a need-to-know for the purposes of performing this Agreement; (b) to any legal or financial adviser or auditor of the Supplier who is under an obligation of confidence in respect of such information; (c) to the extent that the information is generally available to the public (other than by reason of a breach of this Agreement); or (d) to the extent that the Supplier is required to disclose the information by law, provided that the Supplier must immediately inform the Purchaser and use all reasonable endeavours to limit the information disclosed. The Supplier must upon demand promptly return all such confidential information to the Purchaser and must not retain a copy thereof. The Supplier must treat the existence and terms of this Agreement as confidential. The Supplier and its employees, contractors, agents or representatives will sign a confidentiality agreement upon request.

22. Intellectual Property

Any and all Intellectual Property disclosed by the Purchaser to the Supplier or its employees, contractors, agents or representatives remains the property of the Purchaser. The Supplier is not entitled to make use of or refer to any Intellectual Property of the Purchaser unless it has obtained the prior written consent of Purchaser, and any such authorised use or reference must be strictly in accordance with the instructions, and for the purposes, specified by the Purchaser.

The Supplier hereby assigns by way of present and future assignment to the Purchaser all rights to Intellectual Property developed by or on behalf of the Supplier specifically for, or on the instructions of, the Purchaser.

All Intellectual Property in software developed specifically for the Purchaser or on the Purchaser's instructions, including source code, sub-software and related documentation, rests with or will be transferred to the Purchaser. Intellectual Property in other software will remain with the Supplier and the Supplier hereby grants to the Purchaser a non-exclusive, non-transferable, irrevocable, perpetual licence (not limited to specific equipment or location) to use such software (including the right to sub-licence such licence).

The Supplier warrants that the Goods and/or Services, alone or in combination, will not result in, or give rise to, any infringement or misappropriation of any Intellectual Property of a third party. The Supplier indemnifies and will keep indemnified the Purchaser against all Loss incurred which arises directly or indirectly out of any actual or alleged infringement or any intellectual property rights or moral rights of any third party in connection with the Goods or Services, except to the extent that such Loss was caused or contributed to by the Purchaser.

The Supplier must execute all documents and do all things necessary to give effect to this clause 22.

23. Termination

The Purchaser may terminate this Agreement or any Purchase Order or any part thereof for its sole convenience by written notice to the Supplier. In that event, the Supplier must immediately cease work in relation to the Goods or Services to which the termination relates, comply with the Purchaser's instructions in relation to any such Goods or Services, and the Supplier will be paid an equitable adjustment for work already performed prior to receipt of the written notice. This Agreement may be immediately terminated by notice in writing: (a) by the Purchaser where the Supplier: (i) commits any dishonest or fraudulent act; (ii) behaves in a manner which in the reasonable opinion of the Purchaser is likely to adversely affect the reputation or public image of the Purchaser; (iii) ceases, or indicates that it is about to cease, carrying on its business; or (b) by either party where the other party: (i) is the subject of an Insolvency Event; or (ii) breaches any material obligation under this Agreement (including any Purchase Order). In the event that the Purchaser improperly terminates this Agreement or any Purchase Order the termination is deemed to be termination for convenience as described above. Other than as set out in this clause 23, the Purchaser is not liable to compensate the Supplier for the Purchaser's termination of this Agreement. Termination of this Agreement or any Purchase Order does not affect the obligations of either party arising prior to termination nor does it affect the obligations in clauses 21 or 22.

24. GST

All Consideration payable under this Agreement in relation to any Supply is exclusive of GST (but inclusive of all other taxes that may be payable by the Supplier in respect of the provision of Goods or Services received under this Agreement). To the extent that any Supply constitutes a Taxable Supply, the Consideration will be increased by the applicable amount of GST (**GST Amount**). Any GST Amount must be paid by the Purchaser to the Supplier at the same time and in the same manner as the relevant Consideration is paid under this Agreement, subject to the Supplier providing to the Purchaser at or prior to the time of payment a Tax Invoice.

In this clause: **Consideration** means any consideration payable under this Agreement in return for a Taxable Supply, but does not include any amount on account of GST; **GST Act** means the *Goods and Services Tax Act 1985* (as amended); **GST** has the same meaning given to that term in the GST Act; **Supply** has the same meaning given to that term in the GST Act; **Tax Invoice** has the same meaning given to that term in the GST Act; and **Taxable Supply** has the same meaning given to that term in the GST Act.

25. Miscellaneous

This Agreement and any Purchase Order constitute the entire agreement between the parties in respect of their subject matter and supersede all other communications, negotiations, arrangements and agreements between the parties whether verbal or written. In the event of a conflict between this Agreement and a Purchase Order, the terms of the Purchase Order prevail.

If any provision(s) of this Agreement are or become ineffective or invalid, this Agreement will remain in full force and effect apart from such provision which is deemed to be deleted or modified to overcome that objection.

Failure by either party to require strict performance by the other party of any obligation under this Agreement will in no way affect its right to enforce any obligation, nor will a waiver by either party of any breach be held to be a waiver of any previous or later breach. No waiver will have any effect unless specific, irrevocable and in writing.

The Supplier must not assign or subcontract any right or obligation under this Agreement or any Purchase Order in whole or in part without the Purchaser's written consent. Such consent will not relieve the Supplier from, and will be subject to compliance with, any of the Supplier's obligations under the Agreement. The Purchaser is entitled to assign the Agreement or any part thereof to any person on written notice to the Supplier.

No variation of this Agreement will be legally binding on either party unless in writing and signed by both parties.

Time is of the essence in this Agreement in relation to the Supplier's obligations only.

Nothing in the Agreement will be deemed to constitute either party as the agent of the other or create a partnership, joint venture or employment relationship between the parties. This Agreement is governed by the laws of New Zealand and the parties irrevocably submit to the exclusive jurisdiction of the courts of New Zealand.

The United Nations Convention on Contracts for the International Sale of Goods concluded in Vienna on 11th of April 1980 (**Vienna Sales Convention**) (in force in New Zealand pursuant to the Sale of Goods (United Nations Conventions) Act 1994) does not apply to Goods supplied by the Supplier to the Purchaser under this Agreement, nor do any terms express or implied by the Vienna Sales Convention form part of this Agreement.

This Agreement may be signed in any number of counterparts and all such counterparts taken together are deemed to constitute one and the same document.

If there is a dispute in relation to this Agreement, neither party will be excused from performing any of its obligations under the Agreement, except for obligations directly affected by the dispute.

Expiry, termination or cancellation of this Agreement will not affect any right or obligation, which expressly or by its nature survives such expiry, termination or cancellation, including but not limited to representations, warranties, confidentiality obligations, intellectual property rights and accrued rights.