

1. Background

These Terms and Conditions apply to each contract for the supply of goods and/or services (**Goods**) by or on behalf of, Dynek Pty Ltd ABN 16 007 758 465 of 9 Circuit Drive Hendon SA 5014 (**Dynek**) to any customer (**Customer**).

2. Terms and Conditions

2.1 A contract for the supply and purchase of Goods (**Contract**) will be formed, on these Terms and Conditions, immediately when, after a Customer requests (whether by delivery to Dynek of a purchase order for Goods or otherwise) that Goods be supplied by Dynek (**Order**), Dynek accepts that Order subject to these Terms and Conditions (whether by delivery or otherwise).

2.2 All Orders are to be directed to Dynek Pty Ltd, P.O. Box 2346, Port Adelaide, S.A. 5015, Australia, Toll free within Australia: phone 1800 088 172, Fax 1800 088 254, email sales@dynek.com or phone +61 8268 2033 Fax +61 8 8347 0434.

2.3 No terms and conditions contained in, or deemed to be incorporated by, an Order (if any) will apply, override or amend in any way these Terms and Conditions (unless otherwise agreed to in writing by Dynek Pty Ltd).

2.4 A Customer must not cancel any Contract except:

- (1) with the prior written consent of Dynek; and
- (2) on terms that will indemnify Dynek for all costs, expenses and losses incurred as a result of that cancellation.

3. Non Performance and Shortages

3.1 Dynek will not be responsible for any failure to supply or deliver any Goods in the event of any fact, circumstance, matter or thing beyond the reasonable control of Dynek.

3.2 All Goods described in an Order will be deemed delivered to the Customer if a claim in respect of a shortage has not been lodged with Dynek within seven (7) days from the date of receipt of the Goods by the Customer (unless otherwise agreed to in writing by Dynek Pty Ltd).

4. Delivery and Delays in Delivery

4.1 Goods will be deemed to have been delivered to the Customer by Dynek:

- (a) when the Customer takes possession of the Goods from Dynek's premises; or
- (b) upon completion of loading the Goods onto the relevant transportation vehicle provided by the Customer/or
- (c) upon delivery to a location nominated by the Customer where transportation is arranged or provided by Dynek.

4.2 Dynek will make all reasonable efforts to have Goods delivered to the Customer on the date(s) agreed between the parties but if for any reason whatsoever delivery is not made on the agreed dates, then:

- (a) Dynek will not be liable for any loss, cost, damage or expense suffered or incurred by the Customer as a result of any delay or non-delivery; and
- (b) the Customer will not be entitled to cancel any Order as a consequence of Dynek's failure to deliver Goods on the agreed date(s).

4.3 Force Majeure applies. For further information contact Dynek Pty Ltd.

5. Risk and Ownership of Goods

5.1 Risk of loss, or damage, to the Goods passes to the Customer on delivery.

5.2 Ownership of, and title to, the Goods passes to the Customer **only** upon payment in full by the Customer (without set off) of the total invoiced price for the Goods and any other amounts due by the Customer to Dynek.

5.3 Until payment (in full) of the invoiced price for the Goods:

- (a) Dynek retains full legal title to the Goods;
- (b) if the Goods are in the Customer's possession, the Customer will hold the Goods as trustee for Dynek and must store the Goods so that they are clearly identifiable as the property of Dynek;
- (c) Dynek may call for, and recover possession of, the Goods (for which purposes Dynek's employees, agents or distributors may enter the Customer's premises and take possession of the Goods without liability) and the Customer must deliver the Goods to Dynek if requested to do so by Dynek; and
- (d) the Customer may, in the ordinary course of the Customer's business, sell the Goods to a third party, provided that the Customer holds the proceeds of sale on trust for Dynek, and accounts to Dynek for those sums if requested to do so by Dynek.

6. Price and Payment

6.1 Unless otherwise stated, all prices quoted by Dynek, and all prices set out in an invoice for Goods supplied or to be supplied to the Customer (**Invoice**), are exclusive of GST. If GST is or becomes payable in respect of any supply made by Dynek to the Customer, the payment for that supply will be increased by an amount equal to the GST payable. Words or expressions used in this clause 6.1 have the same meaning as defined in the *A New Tax System (Goods and Services Tax) Act 1999(Cth)*.

6.2 Prices are those set out in each Invoice and may be increased by any additional transportation, freight, storage, handling, insurance charges, and any government, statutory or regulatory charges that relate to the supply of the Goods (if any).

6.3 The Customer must pay each Invoice within 30 days of the Invoice date unless otherwise agreed in writing by Dynek.

6.4 If the Customer fails to pay any Invoice (in full) on or before the due date, Dynek may (in its discretion and without prejudice to any other rights or remedies that it may have) suspend any further deliveries to the Customer or terminate any Contract in relation to undelivered Goods.

6.5 The Customer must pay to Dynek any costs, expenses or losses incurred by Dynek as a result of the Customer's failure to pay all amounts due to Dynek by the relevant due date including, without limitation, any debt collection and legal costs incurred on a full indemnity basis.

7. Insolvency

7.1 If the Customer becomes, or resolves to become, subject to any form of insolvency administration, then:

- (a) all amounts outstanding by the Customer to Dynek will immediately become due and payable; and
- (b) the Customer's right to possession of any Goods supplied by Dynek which have not been paid for in full by the Customer ceases, and Dynek will be entitled to recover possession of those Goods under clause 5.3.

7.2 The Customer must notify Dynek immediately if any of the events set out in clause 7.1 occur.

8. Warranties, Exclusions and Limitation of Liability

8.1 In addition to any written express warranty that may be given by Dynek in relation to the Goods, Dynek acknowledges that Australian State and Federal legislation implies certain conditions and warranties into agreements for the supply of goods and services which cannot be excluded, restricted or modified (**Non-Excludable Warranties**). Dynek does not exclude, restrict or modify the Non-Excludable Warranties.

8.2 To the extent permissible by law, the liability of Dynek under any of the Non-Excludable Warranties is limited to, at Dynek's discretion:

- (a) in the case of goods, replacing the goods, repairing the goods or payment for the cost of replacing or repairing the goods; and
- (b) in the case of services, re-supplying the services, having the services re-supplied or payment for the cost of having the services re-supplied.

8.3 Except for the Non-Excludable Warranties, Dynek excludes all other conditions and warranties implied by custom, the general law or statute.

8.4 To the extent permissible by law, Dynek will not be liable for any loss, damages or expense (**Loss**) suffered or incurred by the Customer, and the Customer indemnifies Dynek against any claim against Dynek by a third party for Loss suffered or incurred by the third party, arising from any use of the Goods, irrespective of cause of action and whether or not Dynek contributed to the Loss, whether by negligence or otherwise.

8.5 To the extent that the Goods are, or any component part of the Goods is, supplied to Dynek by a third party, any warranty offered by Dynek in relation to the Goods or component part of the Goods will be limited to Dynek's right of redress (if any) against the third party vendor arising out of any alleged fault/defect in the Goods.

8.6 The parties agree that the provisions of the United Nations Convention on Contracts for the International Sale of Goods are expressly excluded from all Contracts.

9. Returned Goods Due to Customer Error

9.1 Dynek is under no obligation to accept the return of goods due to an error of the Customer (e.g., wrong product ordered). If Dynek accepts the return of goods, it will do so on terms specified in writing to the Customer. Due to the complexities of processing and assessing returned goods:

- (a) returned goods must be received unopened, unmarked, in their original state and not more than 3 months from date of delivery to the Customer.
- (b) a "Re-Stocking Fee" may apply that is either (whichever is the greater) AUD 100.00 (+ GST) or 30% of invoiced price of the goods for return.
- (c) returns for goods produced under special order basis (e.g., non-stocked goods, special discounted orders) may not be accepted.
- (d) invoiced freight charges may not be refunded.
- (e) Customer may be responsible for arranging and paying return freight.

10. Recommended Storage and Usage Conditions

10.1 All Goods should be stored:

- (a) in a clean, dust free environment with no exposure to direct sunlight; and
- (b) at temperatures of 25°C and at 50% relative humidity.

10.2 All Goods are 'SINGLE USE DEVICES' and must not be re-sterilized.

10.3 All sterile sutures have a shelf life as indicated on the primary and/or box label.

11. Miscellaneous

11.1 All Contracts are governed by the law applicable in the State of South Australia and each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of South Australia.

11.2 Dynek may vary these Terms and Conditions at any time.

11.3 If any term or part of a term of these Terms and Conditions is illegal or unenforceable it may be severed from these Terms and Conditions and the remaining terms or parts will continue in force.