

# CORDEK, INC.

## Terms and Conditions of Sale

### 1. GENERAL

In these conditions, the "Company" shall mean Cordek, Inc. and the "Customer" shall mean any person, firm or company placing an order with the Company. These conditions shall have precedence over any conditions appearing on the Customer's order form and any other documents emanating from the Customer or any of its agents. Any such Customer conditions shall have no effect whatsoever unless expressly accepted in writing by the Company. These Conditions of Sale shall apply to this order and any future order placed by Customer unless the Company expressly varies these conditions in writing or provides new conditions with a future order.

### 2. PRICE

The price charged will be that ruling on the date of delivery to the carrier or the Customer and will be subject to the appropriate rate of state and local sales taxes, if any, and any other government duty or tax which is applicable at that date. Unless a binding written quotation is given by the Company, the Company reserves the right to alter any prices without notice to reflect fluctuations of costs (including increases of wages and materials and component costs) between the date of the quotation and the date of delivery. Binding quotes will be fixed for the period stated in the quotation, or if no period is stated, for 30 days.

### 3. DELIVERY

Any statement, either written or oral, by the Company of a time of delivery is an estimate only and the Company shall not be liable for any damages resulting from delivery after any stated delivery date. Where circumstances beyond the reasonable control of the Company cause delivery to be impossible or impracticable, the Company shall not be liable for any damages resulting therefrom.

### 4. PAYMENT

Payment is to be made in full not later than 30 days from the date of shipment, unless this condition is expressly varied in writing by the Company. In all cases, the Customer shall make payment within the agreed time. The Company reserves the right to charge interest at the maximum lawful rate on all overdue invoices.

### 5. RISK/OWNERSHIP

- 5.1. Title to the goods sold shall remain with the Company until the Customer pays for them in full and, until that time, the Customer shall have possession of them as a bailee only.
- 5.2. Risk of loss of the goods sold passes to the Customer on delivery notwithstanding that the title and ownership to the goods sold shall not pass to the Customer until payment in full is made.
- 5.3. Until title and ownership of the goods sold has passed from the Company, the Customer shall be liable to the Company for any loss or damage to the goods sold howsoever caused and shall insure the goods sold for fair market value.
- 5.4. The Customer grants the Company and its agents an irrevocable license to enter the Company's premises or any premises over which the Customer is exercising control, with vehicles if necessary, for the purpose of taking possession of the Company's property.

In the event of any resale by the Customer to a third party of the Company's goods, the beneficial entitlement of the Company shall attach to any proceeds received or to be received from the Customer's purchaser and the Customer shall have a fiduciary duty to pay from the proceeds any amount due to the Company. Where proceeds of such a sale are received by the Customer, the Customer shall keep them in a separate account as agent for the Company until the amount due to the Company is paid.

### 6. DAMAGE IN TRANSIT/SHORT DELIVERY

When delivery is included, we will repair or replace goods damaged in transit provided we and our carrier are provided with written notice of such damage within three days. In all other cases, goods shall be at the Customer's risk from the time of dispatch from the Company's or the Company's agent's or supplier's premises, after which time any loss or damage to or deterioration of the goods from whatever cause shall be borne by the Customer. Any acceptance note signed by the Customer, its agent or one of its employees invalidates any claims for damage in transit. Claims for short delivery must be made, in writing, to the Company within 3 days of delivery. In the case of a short delivery, the delivery shall be accepted as part performance and shall not be deemed to be a breach of contract. If for any reason goods are left in our hands or our shipper's hands

after the agreed delivery date, we shall have the right to charge storage and insurance on such goods in addition to invoicing the whole.

### 7. WARRANTY

The Company shall warranty the goods for defects in materials and workmanship for a period of 90 days from the date of purchase. **ALL OTHER WARRANTIES, BOTH EXPRESS OR IMPLIED, ARE EXPRESSLY DISCLAIMED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF FITNESS, MERCHANTABILITY AND SUITABILITY FOR A PARTICULAR PURPOSE.**

The Customer has the sole responsibility to determine whether the goods are safe and suitable for a particular application.

The Customer acknowledges that while the Company's marketing materials may depict certain illustrative uses of the goods, the Company has no liability for any damage or loss, whether direct or consequential, from the use of the goods in such an illustrated fashion and that it is the Customer's sole responsibility to test the product to determine that the Customer's use of the product will not cause any damage, illness, injury or loss to any property or persons. Nothing in the Company's brochures or promotional materials shall give rise to any claim of fitness, merchantability or suitability. Any tapes that are to be used with goods, whether or not supplied by the Company, should be thoroughly tested to ensure that such tapes will not cause damage to any finishes or surfaces and the Company makes no warranty regarding the fitness, merchantability or suitability of any tapes it sells to the Customer.

### 8. CONSEQUENTIAL DAMAGES

**THE COMPANY SHALL NOT BE LIABLE FOR ANY DAMAGE, ILLNESS, INJURY OR LOSS OF ANY KIND WHATSOEVER AND HOWSOEVER CAUSED, EITHER DIRECT OR CONSEQUENTIAL, TO ANY PROPERTY OR PERSONS ARISING OUT OF OR IN CONNECTION, WHETHER DIRECTLY OR INDIRECTLY, THE USE OF THE GOODS.**

### 9. RETURNS

The Company disclaims liability for goods returned without the written consent of the Company. For a return of goods to be authorized, the Company must approve any return and provide the Customer with a return authorization number. The risk of loss for any returns shall be with the Customer until the Company has accepted the goods returned. The Company reserves the right to charge a reasonable handling and restocking charge for any returned goods.

### 10. CANCELLATION CHARGE

A cancellation charge will be levied if cancellation instructions are received after the Company has incurred costs related to an order.

### 11. FORCE MAJEURE

The Company shall be entitled to cancel or delay delivery or to reduce the quantity of the Goods delivered if it is delayed, hindered or prevented from delivering the goods by usual means through any circumstances beyond its reasonable control, including, but not limited to, war, fire, flood, act of God, unavailability of raw materials, government restrictions and controls, strikes or lockouts.

### 12. INDEMNITY

- 12.1. The Customer shall indemnify and hold harmless the Company from any claims, demands, suits, damages, penalties, costs and expenses (including attorney's fees) relating to the Company's use or sale of the product (or the Company's customer's use of the product).
- 12.2. The Customer shall indemnify and hold harmless the Company from any claims, demands, suits, damages, penalties, costs and expenses (including attorney's fees) relating to work done at the Customer's direction which involves the infringement or alleged infringement of any patent, trademark copyright or other intellectual property right.

### 13. SET OFF

The Customer shall not be entitled to withhold or set off payment of any amount due to the Company under the terms of any contract whether in respect of any claim of the Customer for defective goods or for any other reason.

### 14. GOVERNING LAW AND SEVERABILITY

These Conditions of Sale shall be construed according to the laws of the state of Texas. If any of the provisions herein are held to be illegal or unenforceable, the remaining provisions shall continue to be in force and effect.