



**KICKINGDYNAMICS**

THE EXPERTS IN AFL KICKING  
AND SKILL DEVELOPMENT

## Terms & Conditions of Trade

as available on the Company's Website at:

<https://www.kickingdynamics.com.au>

### 1 Definitions

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#### 1.1 Definitions

In this document, the following definitions will apply:

**Australian Consumer Law** or **ACL** means Schedule 2 to the *Competition and Consumer Act 2010* (Cth).

**Business Day** means a day other than a Saturday, Sunday or public holiday in Sydney, New South Wales.

**Company** means Schmidt Collective Pty Ltd, ACN 619 485 488 trading as 'Kicking Dynamics'.

**Company Personnel** means the Company's employees, representatives, agents and subcontractors.

**Customer** means a person acquiring Products from the Company.

**GST** has the meaning given to that term in the GST Act.

**GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Indirect Loss** means any one or more of the following:

- (a) economic loss, loss of actual or anticipated profits, loss of revenue, loss of savings, loss of production, loss of business, loss of opportunity, loss of access to markets, loss of goodwill, loss of reputation, loss of credit, loss of publicity, loss of data, loss of use, loss of interest or loss arising from business interruption; and
- (b) any special, indirect, consequential, incidental, punitive, exemplary or unforeseeable loss or any similar loss.

**Insolvency Event** means if a party enters into bankruptcy, provisional liquidation, liquidation, receivership, receiver and managership, voluntary administration or if a controller (as defined in the *Corporations Act 2001* (Cth)) is appointed to a party or if a mortgagee takes possession of any assets of a party whether by itself or by an agent or if a party ceases to trade or is unable to pay its debts as they fall due or if a party makes a compromise with its creditors or enters into a scheme of arrangement.

**Intellectual Property Rights** means all present and future intellectual, industrial or proprietary rights conferred by statute, at common law or in equity anywhere in the world, whether issued or pending, registered or unregistered, including all forms of copyright, patents, trade marks, designs, trade secrets, know-how, confidential information and circuit layouts.

**Order** means a request for the supply of Products made by a Customer by:

- (a) making an up-front payment, whether in part or in full for any Products;
- (b) registering for a place for any Products whether it has paid any money; or
- (c) providing written acceptance of a Quotation whether it has paid any money.

**Products** means the services offered by the Company for coaching, education and skill development in relation to AFL including private 1-on-1 coaching, group clinics, club and school training sessions, coach training and workshops, biomechanics, consultancy and program development and such other related services and goods the Company may offer from time to time that are ordered by the Customer from the Company and supplied by the Company to the Customer.

**Quotation** means a list and specification of Products prepared by the Company together with prices for those Products, either individually or in aggregate.

**Terms** means these Terms & Conditions of Trade.

**Website** means <https://www.kickingdynamics.com.au>.

## 1.2 Interpretation

In this document, unless the context otherwise requires:

- (a) words denoting any gender include all genders;
- (b) headings are for convenience only and do not affect interpretation;
- (c) the singular includes the plural and vice versa;
- (d) any schedule attached to this document forms part of it;
- (e) a reference to a party includes its legal personal representatives, successors and permitted assigns;
- (f) a reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity;
- (g) a reference to a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (a) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this document or any part of it;
- (h) unless expressly stated to be otherwise, the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar inclusive expressions; and
- (i) a reference to this document means this document and includes any variation or replacement of this document.

## 2 Terms of supply

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- 2.1 The Terms apply to the supply of all Products. Terms and conditions, if any, contained in any documentation provided by the Customer are excluded and do not apply.
- 2.2 The Terms may be amended from time to time by the Company by notice to the Customer. The amended Terms will apply to any Order or part of an Order from the date on which the Company notifies the Customer of that change.

- 2.3 Publication of amended Terms on the Website will be deemed to be notice of the amendment to the Terms. The Company may choose, but is not required, to notify the Customer of the existence or content of any amendments to the Terms by any other means.

### **3 Orders and acceptance**

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- 3.1 Once a Customer places an Order it:
- (a) is not deemed to be accepted by, or binding on, the Company until the Company accepts the Order in whole or in part by written notice to the Customer; and
  - (b) may not be cancelled once the Order is accepted by the Company unless otherwise agreed to by the Company in writing or otherwise set out in these Terms.
- 3.2 The Company may reject an Order for any reason, including the unavailability of sporting grounds and facilities, hazardous weather conditions and poor air quality, insufficient participant numbers, an error in the description of the Products on the Website, social media sites, its other advertisements, or an error in the Order.
- 3.3 Regarding an Order made by a Customer for another individual who is a minor under eighteen (18), the Customer:
- (a) acknowledges they are acting as guardian of that minor for the purposes of these Terms;
  - (b) as guardian, they freely consent to the minor's participation in the Products and freely waive all rights and accept all obligations and risks as outlined under these Terms in respect of the minor as if that minor was an adult; and
  - (c) agree to indemnify the Company and the Company Personnel in the same manner and to the same extent, as if the minor were an adult.
- 3.4 Accepted Orders may not be varied or cancelled by the Customer without the Company's written consent and, subject to clauses 8.2 and 11.1, there is no right of a refund.

### **4 Prices**

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- 4.1 Prices are as shown on the Website but may be changed at any time by the Company at its discretion.
- 4.2 Unless otherwise indicated and agreed upon by the Company:
- (a) All Order prices are in Australian dollars (inclusive of GST); and
  - (b) unless otherwise agreed by the Company in writing, full payment is required at the time a Customer makes an Order.
- 4.3 Prices in Quotations are indicative only and are based on prices current at the date of the Quotation and are valid for 30 days only. Where there are any changes in instruction by the Customer, a new Quotation may be issued by the Company.
- 4.4 A service fee sufficient to cover the Company's administration and banking costs:
- (a) may be added by the Company to the price:
    - (i) where payment by the Customer is made by way of credit card; or
    - (ii) where any payment is dishonoured for any reason by the relevant financial institution; or
  - (b) of 10% may, be deducted from any refunds provided by the Company.
- 4.5 Any discount or rebate is at the Company's sole discretion and will only apply if agreed by the Company in writing.

## **5 Disputed charges and complaints**

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- 5.1 If the Customer disputes any amount charged to them, the Customer must notify the Company in writing within [14] days after the date the relevant charge was processed by the Company.
- 5.2 The Company will investigate all disputed charges and general complaints. Specifically:
- (a) if the disputed amount is found by the Company to be payable (in whole or in part), the Customer must pay the due amount within 7 days after receiving notice of the amount payable by the Customer (including the basis of the Company's decision) from the Company; or
  - (b) charged amounts that are not disputed in writing within 14 days after the date the relevant charge was processed by the Company, will be deemed to be correctly charged and accepted by the Customer.
- 5.3 If the Customer has any complaints or concerns about the safety or suitability of the Products, they must bring these concerns to the attention of the Company Personnel immediately. If a Customer or individual accepts Products, if the circumstances so require, they agree to cease their participation in the Products, until such time as otherwise notified by the Company Personnel.
- 5.4 For all complaints handling enquiries please contact the Company directly on [0434 402 748] or at [tim@kickingdynamics.com.au](mailto:tim@kickingdynamics.com.au).

## **6 Late payments and defaults**

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- 6.1 The Company may charge interest on all amounts not paid by the Customer by the due date at a rate of [1.5]% per calendar month calculated from the due date and accruing monthly until the date of payment. Accrued interest is payable on demand.
- 6.2 If the Customer is in default of these Terms, the Customer must reimburse and indemnify the Company for and against all expenses, costs and disbursements incurred by the Company in pursuing the debt or a claim under these Terms including the fees charged to the Company by any mercantile agency.
- 6.3 If the Customer fails to pay any amount due under these Terms by the due date, the Company may at its sole discretion:
- (a) commence legal proceedings against the Customer (and any guarantors) for all outstanding amounts, interest and costs; and
  - (b) decline to supply Products to the Customer and terminate any other agreement with the Customer.
- 6.4 A certificate of debt signed by a representative of the Company will be prima facie evidence and proof of money owing by the Customer to the Company at the time of certificate.

## **7 Supply of Products**

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- 7.1 **Inability of Company to provide Products**
- (a) The Products are offered subject to the absence of any government imposed public health orders and restrictions, the availability of appropriate sports grounds and facilities, safe weather conditions and air quality, sufficient participant numbers and the Company's Personnel as listed on the Company's Website and Order confirmation.
  - (b) Customers acknowledge that:

- (i) the supply of Products may have to be cancelled, postponed or changed (including at short notice) for reasons outside the Company's reasonable control; and
  - (ii) the Company is not liable or to be in breach of these Terms by reason of any delay in performing, or any failure to perform any of the Company's obligations in relation to the Products, if the delay or failure was due to any cause beyond the Company's reasonable control.
- (c) Where the Company cancels the supply of Products, Customers may be eligible for a make-up session, credit or refund in accordance with clause 8.2.

## **7.2 Changes to Products and company's ability to subcontract**

- (a) The Company may at any time without notifying the Customer make any changes to the Products including locations, dates, starting or finishing times, or any other changes which are necessary to comply with any applicable health, safety or other statutory requirements, or which do not materially affect the nature or quality of the Products.
- (b) Should appropriate Company Personnel not be available at the time the Products are scheduled to be provided, the Company reserves the right to subcontract the Products to suitably qualified persons.

## **7.3 Compliance with Company Personnel instructions**

All Customers and individuals who accept or participate in Products must comply with all rules, safety instructions and reasonable directions given from Company Personnel with respect to the Products, including but not limited to the use of sports grounds and facilities, and any property or equipment to be used in connection with the Products.

## **7.4 Liability for injury, death, illness, loss or damage**

- (a) The Company will take all reasonable steps to safeguard the welfare of Customers and individuals who accept Products. Customers:
  - (i) warrant that they, or the individuals for whom an Order was made are in good physical condition and are not suffering from any heart, lung or other bodily ailment and are physically fit to participate in the Products; and
  - (ii) acknowledge that there are inherent risks associated with participation in a physical contact sport such as Australian rules football, including but not limited to various forms of injury, permanent disability, paralysis or even death, and fully accept and agree to bear those risks whether known or unknown.
- (b) Customers and individuals who accept Products, grant Company Personnel permission to transport Customers or individuals (as the context requires) to a hospital, administer first aid or call an ambulance at the cost of the Customer, in the event of an illness or injury that manifests during the supply of Products. Customers agree to inform the Company of any injuries or illnesses that they themselves or the individuals for whom an Order was made, have recently suffered from before the supply of Products.
- (c) The Company will not be responsible or liable for any matters related to:
  - (i) damage to sports grounds and facilities;
  - (ii) any damage or loss to property and equipment; or
  - (iii) any resultant injury, incapacity, death or illness,

caused by Customers or individuals who accept Products, to themselves or others in connection with their participation of the Products.

- (d) The Company will pass on any incurred costs to the Customer as a result of any damage or loss caused by the Customer, or the individual(s) for whom the Customer has made an Order.
- (e) Customers and individuals who accept Products are responsible for the use and security of their equipment, belongings and other personal articles and the Company is not responsible for any loss or damage to such items brought to the location where Products are supplied. The Company reserves the right to discard of any lost items that remain unclaimed after 10 Business Days.

#### **7.5 Photography and video for promotional and advertising purposes**

- (a) Customers acknowledge and accept that Company Personnel may from time to time take photographs or videos of those individuals who accept Products. Pictures and photographs are used for the Company's publicity, promotional and advertising purposes.
- (b) By accepting these Terms, Customers acknowledge that Intellectual Property Rights in any pictures or videos is owned by the Company and it may use, reproduce, publish, communicate, adapt and sub-licence (on a worldwide basis) any visual or audio content of individuals who accept Products, for any purpose without the need for approval or payment of any compensation.
- (c) If a Customer or anyone who accepts products does not want to be photographed or recorded on film, the Company requires confirmation of this in writing. Customers may wish to email the Company at [tim@kickingdynamics.com.au] before any Products are supplied. Whilst the Company will use its best efforts, it cannot guarantee that a Customer or an individual who accepts Products will not be featured in promotional and advertising material.

### **8 Cancellations and refunds policy**

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- 8.1 Unless otherwise expressed to the contrary in the Terms, to the extent permitted by law, and without limiting the application of the Australian Consumer Law and the Consumer Guarantees, Orders are non-refundable.

#### **8.2 Cancellation by the Company**

- (a) If the Company is unable to provide any Products ordered for the time and place specified in the Order, it will provide reasonable notice to the Customer to that effect. Upon such notice the Customer may in their discretion:
  - (i) accept an offer for an equivalent make-up session at the new expected date, time and location for the Products (provided sufficient space is available in a make-up session for any given period of time);
  - (ii) accept a pro rata credit for any Products not supplied, to be used within [12] months of when the Products were scheduled to be supplied; or
  - (iii) request a full refund for the Products under a particular Order.
- (b) Orders cannot be on-sold to another party or third party for re-sale and will be cancelled without refund if used by anyone else.

#### **8.3 Cancellation by Customer**

- (a) Where a Customer makes an Order and injures themselves, or is unable to attend on any of the scheduled dates on which the Products are to be supplied due to medical reasons, a

medical certificate must be supplied to the Company covering those dates. If a medical certificate is supplied, the Customer will be issued with a pro rated credit to be used within 12 months of when the Products were scheduled to be supplied.

- (b) If a Customer wishes to make changes to their Order, the Company will use its reasonable efforts to accommodate such a request subject to availability and cannot guarantee that an Order can be rescheduled for any other date or time. If an Order cannot be rescheduled, no refunds or credits will be given unless otherwise agreed by the Company.

- 8.4 If the Company agrees to provide any refunds it will use its reasonable endeavours to provide the refund to the Customer within 15 Business Days.

## **9 Product information, photos and images**

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Product information, videos, photos and images supplied by the Company, available on the Website or social media websites, or otherwise contained in price lists, advertising or other printed material of the Company are approximate and for general illustration purposes only, may differ from the actual Products offered and do not form part of the contractual description of the Products unless agreed to in writing by the Company.

## **10 Intellectual property**

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- 10.1 The Customer agrees that:
  - (a) the Company owns and retains, and the Customer must not assert any right of any kind to any Intellectual Property Rights in respect of the Products; and
  - (b) nothing in this document transfers any Intellectual Property Rights to the Customer or confers any licence to use any Intellectual Property Rights.
- 10.2 The Customer indemnifies the Company and keeps the Company indemnified against all claims, demands, loss, costs and expenses incurred by or made against the Company, arising out of any actual or alleged infringements of Intellectual Property Rights relating to any logo, design or other material that the Company uses, prints or reproduces at the Customer's request.

## **11 Limitation of liability**

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- 11.1 Nothing in this document is or should be interpreted as an attempt to modify, limit or exclude any right or remedy, or any guarantee, term, condition, warranty, undertaking, inducement or representation, implied or imposed by legislation which cannot be modified, limited or excluded.
- 11.2 The Company excludes to the extent permitted by law all other guarantees, terms, conditions, warranties, undertakings, inducements or representations whether express or implied, statutory or otherwise, which would otherwise be implied into this document concerning the activities covered by this document.
- 11.3 The Customer agrees that it does not rely on any guarantee, term, condition, warranty, undertaking, inducement or representation made by or on behalf of the Company which is not expressly stated in this document.
- 11.4 Where any legislation implies or imposes a guarantee, term, condition, warranty, undertaking, inducement or representation in relation to this document and the Company is not able to exclude that guarantee, term, condition, warranty, undertaking, inducement or representation (**Non-Excludable Provision**), and the Company is able to limit the remedy of the Customer for a breach of the Non-Excludable Provision, then the Company's liability for breach of the Non-Excludable Provision is limited to (at the Company's election):

- (a) in the case of goods, the repair or replacement of the goods or the supply of equivalent goods (or the payment of the cost of doing so); and
  - (b) in the case of services, the supplying of the services again (or the payment of the cost of doing so).
- 11.5 Subject to the Company's obligations under the Non-Excludable Provisions and clause 11.6, the Company's maximum aggregate liability to the Customer in respect of any one claim or series of connected claims under this document or in connection with its subject matter, whether arising in or for breach of contract, negligence or other tort, breach of statutory duty, or under an indemnity or otherwise is limited to an amount equal to the amount paid by the Customer to the Company for the Products.
- 11.6 Subject to the Company's obligations under the Non-Excludable Provisions, the Company is not liable to the Customer or any third party for any Indirect Loss arising in connection with this document or its subject matter, whether arising in or for breach of contract, negligence or other tort, breach of statutory duty, breach of warranty or guarantee, under an indemnity or otherwise and whether or not that loss was foreseeable, even if the Company has been advised of the possibility of such loss.

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## **12 Set-off and assignment**

- 12.1 The Customer is not entitled to set off against or deduct from the price of Products sold any sums owed or claimed to be owed to the Customer by the Company.
- 12.2 The Customer must not assign any contract for the purchase of Products or its rights or obligations under these Terms (or a connected agreement).
- 12.3 The Company may, at any time, novate, assign or transfer part or all of its rights and obligations under this document to any third party and, to the extent required, the Customer consents to the novation, assignment or transfer.

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## **13 Force majeure**

The Company will have no liability to the Customer in relation to any loss, damage or expense caused by the Company's failure to complete an Order or delivery or contract as a result of a pandemic, fire, flood, tempest, earthquake, riot, civil disturbance, theft, crime, strike, lock out, war, or any other matter beyond the Company's control.

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## **14 Privacy consent**

The Company collects, uses, stores and discloses personal information in accordance with the Company's privacy policy, which the Customer acknowledges it has had an opportunity to read and understand. The Customer can access the current policy from the Company's Website [here](#), or by contacting the Company's privacy officer at [lian@kickingdynamics.com.au](mailto:lian@kickingdynamics.com.au).

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## **15 Release & indemnity**

- 15.1 To the maximum extent permitted by law, the Customer:
  - (a) releases and forever holds harmless the Company and Company Personnel from any liability to the Customer for damages, compensation or loss, whether in tort, contract under statute or at law or in equity or otherwise for any:
    - (i) personal injury, incapacity or death caused to the Customer or anyone else with them; or
    - (ii) damage to, destruction of, theft or unauthorised delivery up of any of the Customer's personal items, property or equipment, whether authorised or not;



- by, in connection with, or arising out of the Customer's involvement with the Products; and
- (b) indemnifies and keeps indemnified the Company in respect of:
- (i) any loss or damage including to property, owned or operated by the Company; and
  - (ii) claim by any other person in respect of an injury, death, loss or damage suffered by them
- in connection with, or arising out of the Customer's failure to comply with any directions from the Company Personnel during the supply of Products.
- 15.2 The release in clause 15.1:
- (a) includes a release for liability caused by the negligence (excluding gross negligence) of the Company and/or any Company Personnel; and
  - (b) is subject to any law which forbids that release or exclusion of liability including the ACL.
- 15.3 Each indemnity in this document:
- (a) is a continuing obligation, separate and independent from the other obligations of the parties;
  - (b) will not be affected by any matter including without limitation, the termination, renewal or extension of this document or any indulgence, waiver or other concession given by a party unless the party benefiting from the indemnity agrees in writing; and
  - (c) includes legal costs and disbursements on a full indemnity basis.
- 15.4 It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this document.
- 15.5 A party must pay on demand any amount it must pay under an indemnity in this document.
- 16 General**
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- 16.1 The Company may serve any notice or court document on the Customer by hand or by prepaid post to the address of the Customer last known to the Company or by email to an email address supplied by the Customer. Any such notice is taken to be duly given and received:
- (a) if delivered by hand, when delivered; or
  - (b) if delivered by prepaid post, two Business Days after being deposited in the mail with postage prepaid; or
  - (c) if delivered by email, on the day of dispatch provided that no notice of non-delivery is received.
- 16.2 This document records the entire agreement between the parties in relation to its subject matter. It supersedes all prior contracts, arrangements, understandings or negotiations by, or between, the parties in relation to the subject matter of this document.
- 16.3 The failure, delay or omission by a party to exercise, or to partially exercise, a right, power or remedy under these Terms (or any connected agreement) does not operate as a waiver of that right, power or remedy. A party which exercises, or partially exercises, a right, power or remedy maintains its right to further exercise the same right, power or remedy or to exercise another right, power or remedy. A party waives a right, power or remedy only by explicitly doing so in a written notice to the other party and the waiver is strictly limited to the matters specified in the notice.

- 16.4 The rights, powers, authorities, discretions and remedies of a party under this document do not exclude any other right, power, authority, discretion or remedy.
- 16.5 If any provision of this document is determined by a court or other competent tribunal or authority to be illegal, invalid or unenforceable then:
- (a) where the offending provision can be read down so as to give it a legal, valid and enforceable operation of a partial nature it must be read down to the extent necessary to achieve that result;
  - (b) where the offending provision cannot be read down then that provision must be severed from the document in which event, the remaining provisions of this document operate as if the severed provision had not been included; and
  - (c) the legality, validity or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction is not affected,
- but only to the extent that is consistent with giving substantial effect to the intentions of the parties under this document.
- 16.6 These Terms can only be amended, supplemented or replaced by another document signed by the parties or as otherwise permitted by these Terms.
- 16.7 This document (and each connected agreement) is governed by the law of New South Wales. Each party submits to the jurisdiction of the courts in New South Wales in connection with matters concerning this document and any connected agreement. If the Local Court has jurisdiction, the parties consent to the exclusive jurisdiction of the Local Court closest to the Company's place of business. Any agreement entered into in connection with these Terms will be deemed to have been entered into at the Company's place of business.