

Standard Terms and Conditions of Sale of Goods to a Non-Consumer



**ADDO
PLAY**
LTD

1. Definitions

1.1 The following definitions shall apply in these Conditions:

Contract any contract between you and us (or any Affiliate of ours) for the sale and purchase of Goods, and incorporating these Conditions;
Delivery Point the agreed point for delivery of the Goods which will be either at our premises in England or at the agreed point in England or elsewhere
Shipping Agent collects Goods from us or our nominated agent;

Goods any Products and/or Equipment and any other goods which we (or our Affiliates) may supply to you from time to time;

Product List the list of Goods available to order by you from us or our Affiliates, as notified by us to you, and as amended by us from time to time;
and

Shipping Agent the agent nominated by you and notified to us to whom Goods are to be delivered; delivery to Shipping Agent shall constitute delivery to you. Shipping Agent must have premises in England or within the country from which collection is made. If you nominate a Shipping Agent, you shall accept full responsibility for all acts and omissions of such Shipping Agent.

1.2 If there is any conflict between a Contract and these Conditions, the Contract will prevail unless expressly stated otherwise.

2. Formation of Contract

2.1 These Conditions will apply to all tenders, offers, orders, quotations, acceptances, deliveries and Contracts relating to the supply of Goods by us to you. You agree to purchase and we agree to supply Goods on the basis of and subject to these Conditions and Contracts made pursuant to them. You shall comply with all relevant provisions of the Order form in relation to the purchase and supply of Goods.

2.2 Each order will be deemed to be an offer by you to purchase Goods upon these Conditions. No contract shall exist between you and us until the order is accepted by us by way of a confirmation issued by us. Each offer shall be deemed to have been made in the Territory and acceptance shall occur in England.

2.3 Each Contract will be upon these Conditions to the exclusion of all other terms and conditions, including any terms or conditions which you purport to apply under any purchase order or other document. Only a director of ours has authority to amend or waive these Conditions and we shall not be deemed to have waived any of these Conditions by failure to object to provisions contained or referred to in the purchase order or other communication from you.

2.4 All descriptions, specifications, prices and other data quoted or submitted by us or included in any advertisement or price list are approximate only (except where stated in writing to be exact) and shall not form part of the Contract and we have the right to vary them at our discretion.

3. Pricing and Payment Terms

3.1 Prices for Goods shall be as set out in the Product List at the time of despatch. Prices are stated exclusive of VAT or any other sales or service tax, which shall be payable in addition if applicable.

3.2 We reserve our right at any time to vary the prices of any Goods and will give you thirty (30) days notice of the new prices. Any changes will automatically supersede previous prices.

3.3 Invoices for Goods shall be payable in advance and prior to despatch.

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3.4 If you do not pay any amount owing to us on the due date for payment, we may, in our sole discretion, but without prejudice to any other rights or remedies that we may have:

3.4.1 terminate the Contract without incurring any liability whatsoever for any loss thereby incurred;

3.4.2 refuse to accept any further orders and/or suspend delivery of Goods until such time as payment is made in full (and, upon such payment being made, you accept that we shall have a reasonable period in which to make delivery of any then outstanding orders); and/or

3.4.3 notwithstanding Condition

3.3 or any other provision of the Agreement, require you thereafter to pay for any or all Goods prior to despatch.

4. Credit Limits and Rights to Place Account On Stop

4.1 We may establish a credit account for you on such terms as we may specify. We shall be entitled at any time, in our sole discretion, to refuse, vary, suspend or withdraw any credit account or put your account on hold. You shall comply with such terms and operate within your credit limit from time to time. We may refuse to accept any further orders and/or suspend delivery of Goods to you if your account is put on hold.

4.2 You agree that we may make periodic searches with credit reference agencies and for fraud prevention, including deciding whether to make available or to continue, vary or to extend existing credit.

5. Orders, Delivery and Acceptance of Goods

5.1 You shall place orders for Goods as set out on the Order form. Orders are accepted by us subject to the availability of the Goods. You will comply with such reasonable administrative systems and procedures relating to the ordering and supply of Goods, including forward purchasing of stock and product labelling, as may from time to time be specified in writing by us. We shall agree with you a monthly stock purchase plan. The systems and procedures for ordering, delivery and receipt are set out in the Order form.

5.2 Orders cannot be changed once accepted without our agreement. Any changes agreed by us may incur additional charges.

5.3 Unless otherwise expressly stated in writing by us, Goods are delivered ex works our agent's premises as the case may be (Incoterms 2010). You warrant to us that all Goods will, following delivery, be exported to the Territory.

5.4 We will use reasonable endeavours to deliver the Goods within the time agreed in the Contract or, if no time is agreed, within a reasonable time, but time will not be of the essence. Any time or date specified by us for dispatch or delivery is intended as an estimate only.

5.5 If you or Shipping Agent fail to take delivery of any Goods or to provide any instructions, information or facilities required to enable Goods to be delivered, when delivery is attempted and/or on time (except solely on account of our or our agent's default), the Goods shall be deemed to have been delivered and accepted when delivery is attempted and (without prejudice to our other rights) we may:

5.5.1 invoice you for the Goods; and/or

5.5.2 store or arrange for storage of the Goods until actual delivery and charge you for all related costs and expenses.

5.6 Where relevant, we apply applicable trade marks to the goods. You shall not remove, replace or cover or otherwise interfere with any such trade marks.

5.7 You or Shipping Agent shall promptly inspect Goods on delivery for obvious signs of damage, defective packaging, leaks or signs of contamination and that they be free from objectionable odours and must sign on delivery to confirm the number of pallets/parcels delivered and to confirm that they are free of any such obvious signs.

5.8 You must notify us or our nominated agent by telephone within forty-eight (48) hours of delivery of any incorrect quantity or type of Goods delivered. If you do not so notify us or our agent, you shall be deemed to have accepted the Goods as delivered. The quantity and type of any consignment of Goods as recorded on despatch from our or our agent's premises shall be conclusive evidence of the quantity and type received,

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unless you provide conclusive evidence to the contrary.

5.9 You shall notify us within twenty-one (21) days of becoming aware of any non-obvious defect(s) with any Goods. We may refuse any claim which is not notified on time and/or that is not covered by our warranty in Condition 9.

5.10 You will be responsible for the preparation and processing of all necessary export and import documentation, country of origin certificates and any authorisations that are necessary in the Territory.

6. Delayed or failed delivery

6.1 If we are unable for any reason to fulfil any delivery in accordance with these Conditions, we will not be deemed to be in breach of the Contract nor will we have any liability to you for any direct or indirect loss or any damage whatsoever (including as a result of negligence) resulting from delay or failure in delivery. Any delay or failure in delivery will not entitle you to cancel the Contract unless you have given us fourteen (14) days' written notice requiring delivery and we have not fulfilled delivery within that period.

6.2 Subject to this Condition 6, if we are unable to deliver the quantity of Goods ordered, you shall be entitled to source the necessary replacement Goods directly from one of our suppliers. You shall have any supplier approved by us in advance.

6.3 Depending on the size of an order and/or type of Goods, there may be reasonable tolerance variations in quantities delivered compared to those ordered and such variations shall not be a breach of Contract, but you shall only be required to pay for the actual quantity delivered.

7. Title and Risk in Goods

7.1 Risk in the Goods will pass to you on delivery or, as the case may be, deemed delivery under these Conditions.

7.2 Notwithstanding delivery and passing of risk, title to any consignment of Goods shall not pass to you until we have received payment in full for such Goods, together with full payment for any Goods that are the subject of any other Contract and full payment of any Service Fees due to us under the Agreement.

7.3 Until title to the Goods has passed to you, you must and shall procure that the Shipping Agent shall:

7.3.1 hold the Goods as our bailee and fiduciary agent;

7.3.2 store the Goods (at no cost to us) safely and separately from those of you or any other person and in such a way that they remain readily identifiable as our property;

7.3.3 maintain the Goods in satisfactory condition insured on our behalf for their full price against all risks.

7.4 You may use and/or resell the Goods before ownership has passed to you on the condition that any sale will be effected in the ordinary course of the Business at full market value and you will account to us accordingly upon request.

7.5 You grant (and shall procure that Shipping Agent grants) us, our agents and employees an irrevocable licence at any time to enter any premises where Goods are or may be stored in order to inspect them, or, where your right to possession has terminated, to recover them and you shall cooperate and procure cooperation accordingly.

7.6 Pending payment, your right to have possession of the Goods shall end if the relevant Contract and/or the Agreement is terminated.

7.7 Until such time as title in the Goods passes, we shall be entitled at any time to require you to deliver up the Goods to us or our nominee and, if you fail to do so, enter upon any premises where the Goods are stored and repossess the Goods.

8. Termination

8.1 We may by notice in writing served on you terminate any Contract immediately:

8.1.1 if you are in breach of these Conditions or any other provision of the Agreement or the relevant Contract;

8.1.2 if you: become insolvent; have a receiver or administrative receiver appointed to all or part of its assets

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or undertaking; pass a resolution to wind yourself up (save for a bona fide reconstruction) or is subject to an order for your winding up or liquidation or enter any voluntary arrangement; have any distraint, execution or other process levied or enforced on any of your property; or anything analogous to any of the foregoing occurs in relation to you in any jurisdiction; or you cease to trade or appear, in our reasonable opinion, likely or are threatening to cease to trade.

8.2 All outstanding Contracts shall terminate immediately on termination of the Agreement.

8.3 Termination of a Contract is without prejudice to our rights and remedies, or your duties and liabilities, accrued prior to termination. Terms and conditions which expressly or impliedly have effect after termination will continue to be enforceable by us.

9. Warranty

9.1 We warrant that any Equipment that we supply will be free from defects for a period of twenty-four (24) months in each case from the date of delivery or deemed delivery under these Conditions.

10. Exclusion and Limitation of Liability

10.1 Our liability (if any) under these Conditions (including under Conditions 5.7 to 5.9 or Conditions 6 or 9 shall be limited to replacing the Goods concerned within a reasonable time or issuing a credit note for the relevant invoiced amounts (plus VAT, if any). We decide in our sole discretion whether to issue a credit note.

10.2 In any event, our liability (if any) in contract, tort (including negligence and breach of statutory duty) misrepresentation, restitution or otherwise in connection with any Contract shall be limited to the amount of the price actually paid by you for the Goods under that Contract.

10.3 Except as expressly provided in these Conditions, no warranty, condition, representation, undertaking or obligation, express or implied, imposed by statute, common law, custom, course of dealing or otherwise on our part shall be deemed to be a term of the Contract or a representation by which you have been induced to enter into the Contract.

10.4 Except as provided in these Conditions, we shall not be liable to you whatsoever (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) for any damage howsoever caused arising out of or in connection with:

10.4.1 any of the Goods, or the manufacture or sale or supply, or failure or delay in supply, of the Goods by us or on the part of our employees, agents or sub-contractors;

10.4.2 any breach by us of any of the express or implied terms of the Contract;

10.4.3 any use made or resale by you of any of the Goods, or of any product incorporating any of the Goods;

or

10.4.4 any statement made or not made, or advice given or not given, by us or on our behalf.

10.5 Without prejudice to the other provisions of this Condition 10, we will not be liable under these Conditions in respect of any Goods delivered where:

10.5.1 the Goods have not been paid for in full when due; or

10.5.2 the Goods have been improperly altered in any way or have been subject to misuse or unauthorised repair; or

10.5.3 the Goods have been improperly, installed or connected or used; or

10.5.4 the damage to the Goods is the result of normal wear and tear; or

10.5.5 any maintenance requirements relating to the Goods have not been complied with properly or at all;

or

10.5.6 any instructions as to storage, handling or preparation of the Goods have not been complied with in all respects; or

10.5.7 you have failed to notify us of any defect or suspected defect in accordance with these Conditions; or

10.5.8 you have failed to comply fully with any provisions of the Order form applicable to the relevant Goods.

10.6 We do not exclude our liability (if any) to you for any matter for which it would be illegal or invalid for us to exclude or to attempt to exclude its liability, or for fraud.

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10.7 We shall not be held liable for any consequence, including failure to perform the Contract in whole or part, owing to any cause or circumstance beyond our reasonable control, including delay, supplier or distributor failure or default, shortages in raw materials, accident, riots, strikes, lockouts, Government restrictions, fuel protest, any act (or suspected or threatened act) of terrorism, flood, storm or other act of God.

10.8 Our prices for Goods are determined on the basis of the limitations and exclusions of liability set out in these Conditions.

11. Miscellaneous

11.1 Should the Goods be the subject of any special export or import enactment or regulation, we shall not be liable for any change in packing, price and/or other necessary consequence arising therefrom.

11.2 You agree that you shall ensure that all Goods delivered by us or our nominated agents to you as contemplated by these Conditions are imported into the Territory for onwards supply or sale within the Territory.

11.3 Each Contract of which these Conditions form part shall be personal to you and shall not, nor shall any rights under it, be assigned by you without our written consent.

11.4 We may vary these Conditions provided that you are notified of any such variation in writing.

11.5 No time or other indulgence granted by us to you shall constitute or be deemed to constitute a waiver by us of any of our rights under any Contract. No waiver by us shall be effective unless in writing signed by a duly authorised person.

11.6 You agree that, save for our Affiliates and our and their respective officers, employees, agents and subcontractors being able to benefit from the exclusions and limitations on our liability herein, it is not intended to give any third parties rights in relation to these Conditions.

11.7 These Conditions and all Contracts shall be construed in accordance with English law. For the avoidance of doubt, the application of the Uniform Laws on International Sales Act 1967, the United Nations Convention on Contracts for the International Sale of Products, the Convention on the Limitation Period in the International Sale of Products and any other similar law or convention which applies to contracts for international sales of goods are expressly excluded from these Conditions and the Contracts.

11.8 The courts of England and Wales will have exclusive jurisdiction to settle any disputes which may arise out of or in connection with these Conditions or the Contracts. You irrevocably agree to submit to that jurisdiction.

11.9 The agreement contained in Condition 11.8 is included for our benefit. Accordingly, we retain the right to bring proceedings in any other court of competent jurisdiction. You irrevocably waive any objection to, and agree to submit to, the jurisdiction of any such other court.

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