

## **Terms and Conditions of Trade**

### **1. INTERPRETATION**

#### **1.1 In these Conditions the following words shall have the following meanings**

**PURCHASER** means the person firm or company who agrees to purchase the Goods from the Company subject to these conditions whose details are set out in the Purchase Order.

**COMPANY** means Click Entertainment Limited whose registered company office is at Unit 36, 88-90 Hatton Garden, Holborn,

London, EC1N 8PG

**CONTRACT** means the agreement between Click Entertainment Limited and the Purchaser for the sale and purchase of the Goods.

**DELIVERY ADDRESS** means the address for delivery of the Goods, which shall be the Purchasers principal place of business unless specified otherwise in the Purchase Order.

**ESTIMATED DELIVERY DATE** means the date on which the Company estimates that the Products will be delivered set out In the Purchase Order.

**GOODS** mean the goods (including any part or parts of them) which the Company is to supply to the Purchaser in accordance with these Conditions and which are described in the Purchase Order.

**INTELLECTUAL PROPERTY RIGHTS** means any or all of the following patents, trademarks, service marks, registered designs utility models design rights. Copyright (including copyright in computer software), database rights, inventions, trade secrets and other confidential information, know-how, business or trade names, rights to prevent passing off, and all other intellectual property rights and rights of a similar or corresponding nature, whether registered or not or capable of registration or not arid including all applications and the right to apply for any of the foregoing rights;

**PURCHASE ORDER** is the form, signed by an authorised representative of the Company, or the e-mail, sent by the Company to the Purchaser accepting the Purchasers order. This must include an official order reference number.

**DUE DATE** means the final date on which payment of the Goods shall be received by Click Entertainment Limited and will expire on 5pm (British time) on that date.

A **CLAIM** means any action against the Purchaser based on a claim that any of the Goods constitute an infringement of any Intellectual Property Rights of the United Kingdom or misuse of any confidential information belonging to a third party.

**INCOTERMS** means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made.

## 1.2. In these Conditions

- (a) References to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced;
- (b) References to the masculine include the feminine and the neuter and to the singular include the plural and vice versa as the context admits or requires, and:
- (c) The headings will not affect the construction of these Conditions

## 2. BASIS OF SALE

2.1. These Conditions apply to all Contracts for the sale of Goods entered into by Click Entertainment Limited (which, for the avoidance of doubt, shall include, but not be limited to contracts concluded by fax or e-mail) These Conditions are the only conditions on which Click Entertainment Limited is prepared to deal with the Purchaser - By placing an order with Click Entertainment Limited or accepting Click Entertainment Limited 's quotation, the Purchaser agrees to deal with Click Entertainment Limited on these Conditions to the exclusion of all other term's or conditions, warranties or representations contained in or referred to in the Purchasers order or correspondence or elsewhere or implied by trade custom, practice or course of dealing with the exception of any special terms specified in writing overleaf.

2.2. A quotation by Click Entertainment Limited (written or oral) does not constitute an offer. Click Entertainment Limited reserves the right to withdraw or revise a quotation at any time prior to Click Entertainment Limited's acceptance of the Purchasers order and in any event unless otherwise agreed in writing any quotation is valid only for a period of 7 days from its date of issue provided that Click Entertainment Limited has not previously withdrawn it by written or oral notice to the Purchaser.

2.3. A purchase order from the Purchaser shall constitute an offer to contract with Click Entertainment Limited subject to these Conditions and shall be deemed accepted by Click Entertainment Limited only upon the issue of Click Entertainment Limited's sales confirmation / pro forma invoice subject to the information in the purchase order being correct and as stated.

2.4 Click Entertainment Limited reserves the right to withdraw its acceptance in the event that the consideration specified by Click Entertainment Limited is not provided in the exact form specified by Click Entertainment Limited. The Purchaser agrees to inform Click Entertainment Limited immediately of any material information affecting the offer for purchase, such as the bankruptcy or insolvency of the Purchaser.

## 3. AUTHORISATION

3.1 No amendments or variation to these Conditions are binding on Click Entertainment Limited unless authorised and confirmed in writing by a properly authorised person on behalf of Click Entertainment Limited.

3.2 Click Entertainment Limited's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by an authorised representative of Click Entertainment Limited in writing. In entering into the Contract the Purchaser acknowledges that it does not rely on any such representations, which are not so confirmed. The Purchaser irrevocably and unconditionally waives any right it may have to claim damages for and/or to rescind the Contract as a result of any misrepresentations whether or not contained in the Contract unless such misrepresentation was made fraudulently.

3.3 Any advice or recommendation given by Click Entertainment Limited or its employees or agents to the Purchaser or its employees or agents as to the storage, application or use of the Goods which is not confirmed in writing by an authorised representative of Click Entertainment Limited is followed or acted upon entirely at the Purchaser's own risk and accordingly Click Entertainment Limited shall not be liable for any such advice or recommendation which is not so confirmed.

3.4 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information, issued by Click Entertainment Limited shall be subject to correction without any liability on the part of Click Entertainment Limited.

#### **4. SALE AND PURCHASE**

4.1. The Purchaser agrees to purchase the Goods from Click Entertainment Limited and Click Entertainment Limited agrees to sell the Goods to the Purchaser on these conditions

4.2. The Purchaser shall not be entitled to cancel in whole or in part any order, which Click Entertainment Limited has accepted, or any quotation of Click Entertainment Limited, which the Purchaser has issued a purchase order in relation to.

4.3 Click Entertainment Limited reserves the right to make any changes in the specification of the Goods which are required to conform to any applicable safety or other requirements or which do not materially affect their quality or performance.

#### **5. DELIVERY**

5.1 Delivery of the Goods to the Purchaser will be deemed to have occurred upon Click Entertainment Limited's delivering the Goods to the Purchaser's carrier and whilst Click Entertainment Limited shall use its reasonable efforts to deliver the Goods on or around the Estimated Delivery Date, time of delivery shall not be of the essence of the Contract.

5.2. Click Entertainment Limited shall be entitled to deliver the Goods in instalments in which case each instalment shall be treated as an entirely separate contract and any default or breach by Click Entertainment Limited in respect of any such instalment shall not entitle the Purchaser to cancel any other instalment or treat the Contract as a whole as repudiated.

5.3. If the Goods are damaged on delivery or less than the correct amount of the Goods is delivered, then unless the Purchaser notifies Click Entertainment Limited and the carrier in writing (otherwise than by a note on the delivery note) within three days of delivery no claim against Click Entertainment Limited may be made in respect of damage to or short delivery of such Goods. In the event that the goods are damaged upon delivery and Click Entertainment Limited is notified in writing within the requisite time period, any redress awarded shall be provided at the discretion of Click Entertainment Limited. Any damage sustained to Goods will not amount to a termination of the agreement for the sale of those Goods.

5.4. If the Goods have not been delivered despite receipt by the Purchaser of the invoice from Click Entertainment Limited relating to them, then unless the Purchaser notifies Click Entertainment Limited within seven days after the date of such invoice, no claim against Click Entertainment Limited may be made in respect of non-delivery of those Goods.

5.5. The Purchaser shall be deemed to accept the Goods on delivery notwithstanding any late delivery by Click Entertainment Limited.

5.6. If the Purchaser fails to take delivery of the Goods or fails to give Click Entertainment Limited adequate delivery instructions before the Estimated Delivery Date, then, without prejudice to any other right or remedy available to Click Entertainment Limited, Click Entertainment Limited may: -

5.6.1. Store the Goods until actual delivery is made and charge the Purchaser for the costs (including but not limited to insurance or storage); and/or

5.6.2. Sell or supply the Goods to a third party in any country at the best price obtainable and (after deducting all storage and selling expenses) and account to the Purchaser for any excess or charge the Purchaser for any shortfall below the price under the contract and in either case shall be entitled to charge interest (both and after any judgement) on the price payable for the Goods under the Contract at 4% over the base rate from time to time of National Westminster Bank Plc from the Estimated Delivery date to the date of actual delivery.

## 6. PRICES AND PAYMENT

6.1. The price of the Goods shall be the prices set out in the purchase order and is based on the cost of materials, fuel, power, transport, taxes, duties, services, labour and all other costs at the date of the purchase order. If at the date of actual delivery of the Goods there has been any increase in all or any of such costs, the price payable for the Goods may be increased accordingly. Quotations given in a currency other than sterling are based on the rate of exchange at the time of quoting and (unless otherwise agreed in writing between the parties) the price may also be subject to revision if any different rate of exchange is ruling at the date of invoice.

6.2. Click Entertainment Limited reserves the right, by giving notice to the Purchaser at any time before delivery, to increase the price of the Goods to reflect any change in delivery dates, quantities or specifications for the Goods which is requested by the Purchaser or any delay caused by any instructions of the Purchaser or failure of the Purchaser to give Click Entertainment Limited adequate information or instructions.

6.3. Unless otherwise stated in the purchase order, all prices are given by Click Entertainment Limited on an ex work basis, and the Purchaser shall be liable to pay Click Entertainment Limited's charges for transport, packaging and insurance together with any additional expenses, licence fees or duties paid or incurred by Click Entertainment Limited as a result of the Delivery address not being in the UK.

6.4. The price is exclusive of value added tax, which the Purchaser shall, if applicable, be additionally liable to pay to Click Entertainment Limited.

6.5. Click Entertainment Limited shall be entitled to invoice the Purchaser for all amounts due under the Contract on or at any time after delivery of the Goods unless the Goods are to be collected by the Purchaser or the Purchaser wrongly fails to take delivery of them, in which case Click Entertainment Limited shall be entitled to invoice the Purchaser at any time after Click Entertainment Limited has notified the Purchaser that the Goods are ready for collection or (as the case may be) Click Entertainment Limited has tendered delivery of the Goods.

6.6. The Purchaser shall make payment to Click Entertainment Limited (in the currency of the invoice) in respect of all invoices in full and without any deduction or legal or equitable set off (whether in relation to such invoice or otherwise) as set out in the purchase order or is otherwise agreed in writing by Click Entertainment Limited. Time of payment shall be of the essence.

6.7. All payments shall be applied to invoices and to Goods listed in such invoices in the order determined in its discretion by Click Entertainment Limited.

6.8. If full payment is not received by Click Entertainment Limited by the Due Date then without prejudice to its rights Click Entertainment Limited shall be entitled: -

- 6.8.1 Take legal action to recover the entire price of the Goods plus any reasonable legal and recovery costs incurred;
- 6.8.2. To charge interest (both before and after any judgment) at the rate of 4% over the base rate from time to time of National Westminster Bank Plc on the outstanding balance; and/or:
- 6.8.3. To claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

## **7. WARRANTY AND LIABILITY**

7.1. Unless otherwise stated and agreed in writing, the Purchaser shall only be entitled to the benefit of any warranty or guarantee given by the manufacturer or original supplier to Click Entertainment Limited and which Click Entertainment Limited hereby assigns to the Purchaser so far as it is able to do so.

7.2. There are no warranties, terms, conditions, guarantees or representations as to quality or fitness for a particular purpose of the Goods except as expressly stated in the Contract. All warranties, conditions and other terms implied by statute or common law (except for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

7.3. Click Entertainment Limited shall be liable for any death or personal injury arising from use or supply of the goods only to the extent that it results from the proven negligence of Click Entertainment Limited or its employees.

7.4 Subject to Clause 12.6 and in the event of any acceptance of liability of Click Entertainment Limited for any inherent faults with the Goods which Click Entertainment Limited considers to have been apparent before delivery, the agreement between Click Entertainment Limited and the Purchaser will not be treated as terminated in any way. The redress for any accepted defects or inherent faults upon delivery will either be the replacement of the Goods with Goods which are a "like for like" version of the original Goods, or a refund of the amount paid by the Purchaser for the Goods

7.5. (Subject to clause 7.2 and 7.3) Click Entertainment Limited will not be liable to the Purchaser in contract, tort (including but not limited to negligence), misrepresentation or otherwise for any'

7.5.1. Economic loss of any kind (including but not limited to loss of use profit, anticipated profit, business, contracts, overhead recovery, machining costs, revenue or anticipated savings), any damage to the Purchaser's reputation or goodwill;

7.5.2. Any product recall or business interruption costs; or

7.5.3. Any special, indirect or consequential loss or damage (even if Click Entertainment Limited has been advised of such loss or damage) arising out of or in connection with the Contract.

7.6. (Subject to the provisions of clauses 7.2, 7.3 and 7.4) Click Entertainment Limited's total liability in contract, tort (including but not limited to negligence), misrepresentation or otherwise arising out of or in connection with the Contract will be limited to two hundred and fifty thousand pounds (£250,000).

7.7. The prices charged for the Goods are based strictly on the understanding of acceptance by the Purchaser of the provisions in the Contract for the limitation of Click Entertainment Limited's liability.

7.8. The provisions of this clause 7 shall survive the termination or expiry for whatever reason) of the Contract.

## **8. TRADEMARK RIGHTS**

8.1. It is the buyer's sole responsibility where he sells the merchandise; the seller and its agent have no influence on this. The seller wishes to emphasize that the custom status of the goods does not imply the trademark rights are exhausted. The buyer should verify himself whether he is entitled to sell the goods in the market where he wishes to sell. The buyer is fully responsible and solely liable for any infringement and will indemnify the seller and its agent for any liability in this respect.

## **9. THIRD PARTY RIGHTS**

9.1. Click Entertainment Limited shall defend any action against the Purchaser and (subject to clause 7) pay all damages awarded against the Purchaser (except to the extent that the Purchaser is entitled to recover such sums under any policy of insurance) based on a claim that any of the Goods constitute an infringement of any Intellectual Property Rights of the United Kingdom or misuse of any confidential information belonging to any third party ('a Claim')

**PROVIDED THAT: -**

9.1.1. Click Entertainment Limited shall be notified promptly in writing by the Purchaser of any notice of a Claim;

9.1.2. Click Entertainment Limited shall have the sole control of the defence of any action on a Claim and all negotiations for settlement or compromise,

9.1.3. The Purchaser shall allow its name to be used in proceedings if necessary and provide all reasonable assistance in defending any action; and

9.1.4. The Purchaser shall take all steps reasonably possible to mitigate or reduce any damages and costs, which may be awarded against it as a result of a Claim.

9.2. The costs incurred by Click Entertainment Limited in defending any action against the Purchaser under Clause 8.1 above shall be apportioned as agreed between the parties.

9.3. If a Claim is successful or Click Entertainment Limited considers that it is likely to be successful, Click Entertainment Limited may, at its sole discretion, terminate the Contract in so far as it applies to those Products subject to the Claim, in which latter case the Company shall refund to the Purchaser the price paid for such Goods less depreciation on a straight line basis over the life of the Goods as determined by Click Entertainment Limited

9.4. In no event shall Click Entertainment Limited have any Liability under this clause with respect to any claim based on the use of the Goods in combination with any product or equipment not supplied by Click Entertainment Limited.

9.5. This clause states the entire obligation and liability of Click Entertainment Limited with respect to infringement of Intellectual Property Rights and misuse of confidential information

9.6. The rights of third parties to enforce any rights under this agreement are excluded, subject to the Contracts (Right of Third Parties) Act 1999.

**10. RISK AND TITLE**

10.1. Risk of loss of or damage to the Goods shall pass to the Purchaser on delivery of the Goods to the Purchaser's carrier and the Purchaser shall insure the Goods from that time until ownership of and title to them passes to the Purchaser. The Purchaser accepts responsibility to take all reasonable steps to ensure the goods are received by the Purchaser in the delivery time specified, including but not limited to maintaining good and open communication with agents employed by Click Entertainment Limited to deliver the Goods.

10.2. Ownership of the Goods shall not pass to the Purchaser until Click Entertainment Limited has received in full (in cash or cleared funds) all sums due to it in respect of:

10.2.1. The Goods, and

10.2.2 All other sums which are or which become due to Click Entertainment Limited from the Purchaser on any account

10.3. Until ownership of the Goods has passed to the Purchaser, the Purchaser must:

10.3.1. Hold the Goods on a fiduciary basis as Click Entertainment Limited's bailee;

10.3.2. Store the Goods (at no cost to Click Entertainment Limited) separately from all other goods of the Purchaser or any third party in such a way that they remain readily identifiable as Click Entertainment Limited's property

10.3.3. Not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;

10.3.4. Maintain the Goods in satisfactory condition insured through a reputable insurance company on Click Entertainment Limited's behalf for their full price against all risks to the reasonable satisfaction of Click Entertainment Limited On request the Purchaser shall produce the policy of insurance to; and

10.3.5. Hold the proceeds of the insurance referred to in condition 9.3.4- on trust for Click Entertainment Limited and not mix them with any other money, nor pay the proceeds into an overdrawn bank account

10.4. The Purchaser may resell, use or otherwise dispose of the Goods before ownership has passed to it only if any such sale, use or disposition will be effected in the ordinary course of the Purchasers business at full market value and will be a sale, use or disposition of Click Entertainment Limited's property on the Purchasers own behalf and the Purchaser will deal as principal when marking such sale, use or disposition.

10.5. The Purchaser's right to possession of the Goods shall terminate immediately if:

10.5.1 The Purchaser has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any Act for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager! Administrator or administrative receiver appointed of its undertaking or any part thereof, or a resolution is passed or a petition presented to any court for the winding up of the Purchaser or for the granting of an administrative order in respect of the Purchaser or any proceedings are commenced relating to the insolvency or possible insolvency of the Purchaser, or

10.5.2 The Purchasers suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe/perform any of his/its obligations under the Contract or any other contract between Click Entertainment Limited and the Purchaser, or is unable to pay its debts within the meaning or section 123 of the Insolvency Act 1986, (or, where the Purchaser is resident in a jurisdiction other than England or Wales, the analogous legislation in that jurisdiction), or the Purchaser ceases to trade; or

10.5.3 The Purchaser encumbers or in any way changes any of the Goods, or

10.5.4 Anything analogous to any of the foregoing under the laws of any jurisdiction other than England and Wales occurs in relation, relation to the Purchaser

10.6. The Seller shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods have not passed from the Seller



10.7. The Purchaser grants the Seller, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Purchaser's right to possession has terminated, to recover them

## 11. AUTHORITY LAWS AND REGULATIONS

11.1 The Purchaser hereby warrants to Click Entertainment Limited that the Purchaser has all necessary authorities, licences, permissions and capacity to enter into the Contract and to purchase the Goods from Click Entertainment Limited.

11.2 The Purchaser shall comply with all laws and regulations relating to the ownership and use of the Goods including health and safety requirements, and export control legislation.

## 12. TERMINATION

12.1 Click Entertainment Limited shall be entitled to terminate the Contract forthwith by notice in writing to the Purchaser if:

12.1.1. The Purchaser commits an irremediable breach of the Contract, persistently repeats a remediable breach or commits any remediable breach and fails to remedy it within 30 days of receipt of notice of the breach requiring remedy of the same; or

12.1.2. The Purchaser has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any Act for the time being in force for the relief of insolvent debtors, (or being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or a resolution is passed or a petition presented to any court for the winding up of the Purchaser or for the granting of an administrative order in respect of the Purchaser, or any proceedings are commenced relating to the insolvency or possible insolvency of the Purchaser; or

12.1.3 The Purchaser suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986. (Or, where the Purchaser is resident in a jurisdiction other than England or Wales, the analogous legislation in that jurisdiction), or

12.1.4. The Purchaser encumbers or in any way changes any of the Goods; or

12.1.5. Anything analogous to any of the foregoing under the laws of any jurisdiction other than England and Wales occurs in relation to the Purchaser.

12.1.6. The Purchaser ceases or threatens to cease to carry on business, or

12.1.7. There is at any time a material change in the management, ownership or control of the Purchaser; or

12.2. In the event of termination by Click Entertainment Limited pursuant to clause 1.1.1. above then, without prejudice to any other right or remedy available to Click Entertainment Limited, Click Entertainment Limited shall be entitled to cancel the Contract or suspend any further deliveries under it without any liability to the Purchaser and, if the Goods have already been delivered but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary and the company shall be entitled to charge interest (both before and after any judgment) at the rate of 4% over the base rate from time to time of National Westminster Bank Plc from the time of such cancellation or suspension until Click Entertainment Limited receives payment. In addition Click Entertainment Limited reserves the right to charge interest under the Late Payment of Commercial Debts (Interest) Act 1998

### **13. EXPORT TERMS**

13.1. In these Conditions 'Incoterms' means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail

13.2. Where the Goods are supplied for export from the United Kingdom, the provisions of this clause 12 shall (subject to any special terms agreed in writing between the Purchaser and Click Entertainment Limited) apply notwithstanding any other provision of these Conditions. The undersigned confirms the Purchaser has read, fully understood and agrees to be bound by Click Entertainment Limited Sales Terms and conditions