

## Terms and Conditions of Sale

### 1. General

Unless the context otherwise requires:

**Agreement** means the agreement between Forbidden Toys and Customer for the supply of Goods by Forbidden Toys to Customer and shall be constituted in its entirety by these Terms and Conditions of Sale and, if any, Forbidden Toys' quotation and the Confidential Credit Application and Agreement;

**Australian Consumer Law** means Schedule 2 of the *Competition and Consumer Act 2010*;

**Customer** means the party to whom Forbidden Toys has agreed to supply Goods pursuant to the Agreement;

**Goods** means the goods and/or services agreed to be supplied by Forbidden Toys and purchased by Customer pursuant to the Agreement;

**GST** has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* or, if that Act does not exist means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act;

**Guarantee** means the guarantee document provided by Customer or Customer's directors, shareholders or principals to Forbidden Toys to guarantee the performance of the Agreement by Customer;

**Proprietary Information** means any and all information and intellectual property relating to the Goods or the installation or operation of the Goods including but not limited to patents, designs, drawings, instruction booklets, specifications, circuit drawings, componentry, trade secrets, trade marks and copyright in such information and intellectual property;

**Purchase Order** means the transaction through either Paypal, credit card, direct debit or other payment means by Customer to Forbidden Toys for the supply of the Goods.

### 2. Purchase orders

- In order to purchase certain Goods, Customer must place with Forbidden Toys a Purchase Order they will be given an order number, Forbidden Toys full description of the Goods to be purchased, the delivery date, delivery point and any other information required by Forbidden Toys. The Purchase Order may be accepted or rejected by Forbidden Toys at Forbidden Toys' sole discretion.
- A contract shall be formed by and upon Forbidden Toys accepting from Customer a Purchase Order pursuant to the clause immediately above and each contract shall be governed by the Agreement.
- The Agreement shall take precedence over any other representations, agreements, arrangements or understandings relating to the Goods and any matters in connection with the Goods.
- Any conditions or terms of purchase submitted by Customer deviating from or inconsistent with the Agreement will not bind Forbidden Toys, notwithstanding any statement by Customer in its Purchase Order that its terms and conditions prevail over the Agreement.  
In no case shall Forbidden Toys have any liability to Customer as a result of termination, but Customer shall pay to Forbidden Toys the purchase price of Goods actually supplied under the Agreement.

### 3. Payment of purchase price

- Unless otherwise agreed in writing, Forbidden Toys accepts Purchase Orders subject to the condition that Customer agrees to pay the purchase price appearing on Forbidden Toys' price list for those Goods current as at the date that Forbidden Toys accepts the Purchase Order.
- A copy of Forbidden Toys' publicly available price list for the Goods is available on the website. All prices on Forbidden Toys' price list are subject to alteration without notice.
- The total purchase price, unless otherwise stated in the Purchase Order, includes GST but does not include any delivery charges, packaging, freight, assembly costs, installation costs, costs and charges of third party suppliers such as electricians, insurance or any statutory, sales, excise, or other taxes, duties or imposts, all of which may be added to the purchase price or otherwise will be paid by Customer or reimbursed by Customer to Forbidden Toys, as Forbidden Toys may elect.
- Payment of the purchase price must be made in full at time of order. If goods have been sent with no payment being made or having been retracted by credit dispute, chargeback or any other avenue the customer will have 7 days only to make payment otherwise you allow your details to be passed onto our debt collection agency. Payment will be followed through as far as court proceedings at Forbidden Toys sole discretion.
- Customer must not set off any money owing or alleged to be owing by Forbidden Toys against money due by Customer to Forbidden Toys.
- If Customer does not pay money by the due date for payment, without prejudice to any other rights which it may have against Customer, Forbidden Toys may require Customer to pay on demand interest at the RBA Cash Rate Target effective from time to time plus 6% per annum calculated from the due date on daily balances of amounts unpaid. Or it will be forwarded to our debt collection agency.
- In the event of any default in payment, the Customer is liable to Forbidden Toys for all costs, expenses or losses incurred by Forbidden Toys as a result of the Customer's failure to pay (including without limitation the costs of any legal action, debt collection costs, Court costs, search costs and legal costs on a solicitor and own client basis). The Customer will immediately on demand pay to Forbidden all such amounts (on an indemnity basis).

### 4. Cancellation of orders

Customer may not alter or cancel a Purchase Order without Forbidden Toys prior written consent. If Forbidden Toys agrees to alter or cancel the Purchase Order, Customer will indemnify Forbidden Toys against any loss, damage and expense incurred by Forbidden Toys in relation to the alteration or cancellation of that Purchase Order, including the cost of return freight, return shipping to the warehouse of origin, items purchased from third parties for inclusion in the Goods and all other costs incurred by Forbidden Toys in the execution or part execution of the Goods and including compensation payable to any of Forbidden Toys' suppliers and loss of profit.

### 5. Return of Goods and credits

- Customer is deemed to have accepted the Goods unless it makes a claim in accordance with the clause immediately below.
- Customer may reject any Goods that are wrongly supplied or oversupplied by notifying Forbidden Toys of the claim and providing full particulars of the claim in writing within 5 days of receipt of those Goods. Forbidden Toys may dispute any such claim.
- Goods referred to in the clause immediately above may be returned to Forbidden Toys for credit if all of the following is complied with:
  - the Goods are returned to Forbidden Toys' premises by prior arrangement and with Forbidden Toys' written approval within 7 days of delivery, at no cost to Forbidden Toys, unless delivered as the result of an administrative error by Forbidden Toys, in which case Forbidden Toys will bear the cost of return;
  - the Goods are accompanied by a dispatch note stating Forbidden Toys' original invoice number and reason for return; and
  - the Goods are returned in an unsoiled, undamaged and resaleable condition in their original packing.
- Customer must not return any Goods to Forbidden Toys unless it has complied with the two clauses immediately above and has done all things necessary to permit Forbidden Toys to examine the Goods to Forbidden Toys' satisfaction within that period.

### 6. Delivery, Storage and Use

- All quoted delivery or consignment dates are estimates only. Forbidden Toys is not obliged to meet such dates and will not be liable to Customer by reason of delays caused by any reason whatsoever.
- Forbidden Toys is deemed to have delivered the Goods when the Goods are made available to Customer for physical collection by or on behalf of Customer at Customer's nominated delivery point (**Delivery**). Any unloading or loading shall be Customer's responsibility, unless Forbidden Toys otherwise agrees in writing.
- Without limiting any other provision of the Agreement, failure by Customer to pay any instalment, or any other amount when due, will entitle Forbidden Toys to withhold or delay delivery of any remaining Goods ordered.
- If Customer is unable to collect the Goods at Customer's nominated delivery point on the delivery day, Forbidden Toys may (at its option and without limiting its other rights and remedies) arrange suitable storage of the Goods, whether at its premises or elsewhere, and Customer must pay or reimburse all costs and expenses of storage, insurance, demurrage, handling and other charges associated with such storage. Notwithstanding Customer's inability to collect the Goods, Delivery is deemed to have occurred.
- The Customer acknowledges that it has the sole responsibility to confirm the suitability of the Goods for their intended purpose and that Forbidden Toys makes no representation or warranty in this regard.

### 7. Title and risk

- Title to the Goods shall remain with Forbidden Toys until all monies owing by Customer to Forbidden Toys for the Goods have been paid in full.
- Until such time as Customer has paid Forbidden Toys in full for the Goods, Customer shall:
  - store the Goods separately and mark them so that they are clearly and easily identifiable as Forbidden Toys' property and, if Forbidden Toys requests, inform Forbidden Toys of the location of the Goods;
  - hold the Goods as bailee for Forbidden Toys, subject to Customer's right to deal with the Goods in the ordinary course of Customer's business (**Bailment**);
  - indemnify Forbidden Toys against any claim arising out of the possession, use or disposal of the Goods by Customer or repossession or attempted repossession by Forbidden Toys.
- If:
  - a payment is not made in accordance with the Agreement;
  - Customer commits any other breach of the Agreement;
  - Customer becomes bankrupt, has an administrator, a receiver or a receiver and manager appointed, goes into liquidation (whether voluntarily or otherwise), or is wound up, dissolved or declared insolvent,
 then Forbidden Toys may at any time, without notice to Customer and without prejudice to any other rights that it may have against Customer:
  - terminate the Agreement and the Bailment;
  - suspend some or all its obligations to Customer under the Agreement; and/or
  - enter upon any premises owned or occupied by Customer where Forbidden Toys reasonably believes the Goods may be stored and

repossess the Goods (including uninstalling the Goods) without being liable for any damages caused.

- (d) If Customer sells the Goods before payment in full to Forbidden Toys, or uses the Goods in a manufacturing process of its own or some third party, Customer holds the proceeds on trust for Forbidden Toys in respect of those Goods, and must keep such proceeds in a separate account until the liability to Forbidden Toys is discharged and must immediately pay that amount to Forbidden Toys.
- (e) The risk in the Goods passes to Customer at the time of Delivery.
- (f) Forbidden Toys reserves the right to register a security interest for the purposes of the *Personal Property Securities Act 2009*, as amended. The Customer agrees to provide Forbidden Toys with all such information that Forbidden Toys requires in order to register a security interest at any time. The Customer will immediately advise Forbidden Toys of any changes which may affect Forbidden Toys' security interest.

**8. Insurance**

Customer must keep the Goods insured against all risks for Goods of that kind from the time the risk in the Goods passes to Customer until the time that title to the Goods passes to Customer. Customer holds the proceeds of that insurance on trust for Forbidden Toys up to the amount it owes Forbidden Toys in respect of those Goods, and must keep such proceeds in a separate account until the liability to Forbidden Toys is discharged and must immediately pay that amount to Forbidden Toys.

**9. Warranty and Limitation of liability for Goods**

- (a) Other than what is provided for in this clause 9, Forbidden Toys makes no warranties or representations to Customer. The warranty in this clause 9 is in addition to any other rights or remedies which may be available to Customer at Law.
- (b) Forbidden Toys warrants the Goods to be free from defects in workmanship and materials under normal use and service for a period of 30 days only. This warranty does not cover costs of claiming under this warranty or of recovery of the Goods from the site or damage, fault, failure or malfunction due to external causes including accident, abuse, misuse, mechanical or electrical overload, abrasion, corrosion, incorrect installation, failure to comply with Forbidden Toys' or the original manufacturer's instructions (including any installation, operating or maintenance instructions or manuals), failure to perform required preventative maintenance or normal wear and tear.
- (c) During the Warranty Period, to the extent permitted by law, Customer's sole remedy with respect to breach of warranties set out in the clause immediately above will be to repair or replace (as Forbidden Toys may elect) any such defective Goods at Forbidden Toys' expense. The replacement or repaired Goods shall be covered by the unexpired portion of the Warranty Period in respect of the original Goods or for a period of 30 days, whichever is the greater.
- (d) For equipment forming part of the Goods, which equipment is not manufactured by Forbidden Toys, the original manufacturer's warranty will apply. Forbidden Toys' liability for such equipment shall not exceed the liability of the manufacturer.
- (e) In respect of Goods that are not ordinarily acquired for personal, domestic or household use or consumption, the liability of Forbidden Toys for a breach of any condition or guarantee applied by law is limited at Forbidden Toys' option to the repair of the Goods, the supply of replacement Goods or payment of the cost of having the Goods supplied again.
- (f) Forbidden Toys' liability under the Agreement will be reduced by the amount of any contributory loss or damage to the extent caused by Customer's act or omission.
- (g) To the extent that any goods or services supplied by Forbidden Toys are supplies to a 'consumer' as defined in the Australian Consumer Law, Forbidden Toys will comply with any applicable consumer guarantees and the following statement will apply:  
"Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure."
- (h) Any warranty claim must detail the basis of the alleged warranty breach in writing and be delivered to Forbidden Toys by post to PO BOX 2216, Tingalpa QLD 4173.
- (i) Customer acknowledges and agrees that, to the extent permitted by law, Forbidden Toys has no liability in contract, tort (including negligence or breach of statutory duty), by statute or otherwise for loss or damage (whether direct or indirect) of profits, opportunity, revenue, goodwill, bargain, production, contracts, business or anticipated savings, corruption or destruction of data or for any indirect, special or consequential loss or damage whatsoever.
- (j) Subject to clause 9(g), Forbidden Toys' total liability under any contract and the Agreement shall not exceed the total dollar amount of the Goods purchased by Customer under each contract.

**10. Proprietary Information**

- (a) Customer acknowledges that all Proprietary Information and all right, title and interest therein are the sole property of or licensed by Forbidden Toys and Customer shall gain no right, title or interest in the Proprietary

Information whatsoever. Customer specifically acknowledges Forbidden Toys' exclusive rights to ownership of any modification, translation or adaptation of the Proprietary Information and any other improvement or development based thereon, whether developed, supplied, installed or paid for by or on behalf of Customer or any buyer of Customer or otherwise.

- (b) Customer must not and must not permit any person reasonably within its control nor procure any person to modify, copy, clone or reverse engineer the Goods, or copy, modify or decompile any of Forbidden Toys' documentation relating to the Goods.

**11. Export/re-export/resale**

- (a) The Goods supplied are intended for use only in Australia and selected countries unless Forbidden Toys otherwise agrees. If Customer exports or re-exports the Goods, it is Customer's responsibility to ensure that the Goods and the use to which they are put comply with the laws of the destination.
- (b) Customer acknowledges that the Goods purchased by Customer may not be sold, leased or otherwise transferred to or utilised by a terrorist organisation, a party listed on any US denied persons or entities list or by an end-user engaged in related activities.
- (c) If Customer resells the Goods, it shall not, in connection with their resale, pay or offer to pay, money or anything of value to any government official, entity or organization, any political party, any candidate for public office, or their employees or relatives, or any other person or entity for the purpose of influencing purchasing decisions or for any other improper purpose.

**12. Miscellaneous**

- (a) The fact that Forbidden Toys fails to do, or delays in doing, something it is entitled to do under the Agreement, does not amount to a waiver of its right to do it. Forbidden Toys must agree in writing to any waiver.
- (b) If a clause or part of a clause can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from the Agreement, but the rest of the Agreement is not affected.
- (c) Forbidden Toys shall not be liable for any failure to fulfil or any delay in fulfilling any obligation arising under the Agreement if the failure or delay has been caused directly or indirectly by any act of God, war or other civil commotion, strikes, lockouts, stoppages and restraints of labour, breakdown of machinery, inability to obtain raw materials or fuel, fire or explosion, any government action or any other cause beyond Forbidden Toys' reasonable control and not as a consequence of Forbidden Toys' negligence.
- (d) Any notice to be given to a party under the Agreement must be in writing and must be sent by post, facsimile or email to the address of that party shown in the Purchase Order or order acknowledgment. Notice is deemed to have been given at the time it would have been received in the normal course of post if sent by post, or if otherwise given at the time it was actually received.
- (e) Governing Law: Forbidden Toys and the Customer agree that this Agreement and any supplementary Agreement for the supply of goods and or services by Forbidden Toys to the Customer is governed by the laws of Queensland. Both parties agree unconditionally to submit to the non-exclusive jurisdiction of the Courts in Queensland and any Court hearing appeals from those Courts.
- (f) Where there is more than one Customer then the liability of each shall be joint and several.
- (g) The rights and remedies provided in the Agreement will not affect any other rights or remedies available to Forbidden Toys.
- (h) Customer shall not assign this Agreement without Forbidden Toys' prior written consent.
- (i) If the Customer is a trustee, then the Customer is bound by the Agreement both personally and in its capacity as a trustee.
- (j) All products are sold as novelty only & are to be used by the Customer in the manner in which they are intended only. Forbidden Toys will not be responsible or accountable for any misuse of the products.
- (k) Upon Customer purchase of a product or service from Forbidden Toys they automatically are deemed to have read & agreed with all Terms & Conditions. The Customer is committed to & the Customer is bound by these Terms & Conditions. Through purchase the Customer is also agreeing that they are of legal age 18+.
- (l) Once Australia post or other courier service has informed Forbidden Toys that an order has been delivered Forbidden Toys is no longer accountable for the order & it's future movements.
- (m) All products, items, goods are used by the Customer at their own risk & by purchase agree to not hold Forbidden Toys liable for any harm or consequence through the use of these items.
- (n) Forbidden Toys reserves the right to substitute items if they have been discontinued or we deem it necessary. They will be substituted to products of similar description & visual appearance, of equal or greater retail value. Please note, actual product colour & physical product attributes may differ from the website to the product you receive. All substituted items will be fit for intended purpose.
- (o) Forbidden Toys reserves the right to change any Terms & Conditions at any time without prior notice. All judgements by Forbidden Toys are final.